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No 5

Initial Briefing for Conference

8th February, 1989

Handwritten notes and signatures:
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6/2

Review - Present State of Play

1. While we suspected from the outset that the British favoured a minimalist approach to the Review, the language to which (under considerable pressure) they committed themselves in the communique of the November Conference (attached) seemed to apply at least a resigned acceptance of a reasonably thorough approach. However, their tactics at official level in the intervening period seem designed to achieve a minimalist review by default - they have, for instance, been very loath to engage in any kind of creative or forward-looking thinking at review meetings.
2. Such meetings as have been held on individual articles have not been encouraging. On Article 5 (human rights, identities, Irish language) the gulf between our perceptions of the present - not to mention our approach to the future - are extremely wide. On Article 6 (public appointments) we are still hearing precisely the arguments we heard three years ago. On Article 10 (Cross-border co-operation) there is extreme caution about any suggestion that 1992 might be a catalyst for North-South co-operation.
3. We have also been faced in general discussion with a strong preoccupation with devolution. In particular there is a failure to understand the relationship between the Irish Government and the SDLP, a certain unwillingness to accept that the language in the Agreement on devolution is carefully qualified - and in two places, Articles 5(c) and 10(b), the Agreement actually envisages that it might "prove impossible to achieve and sustain devolution" on an acceptable basis - and that the responsibility for creating

conditions in which devolution might work is primarily that of the British Government.

4. It is clear, in the light to date of this unforthcoming British attitude on the review, that a major effort will be required to achieve any genuinely positive outcome to the exercise. However, the British side must sooner or later face the question as to whether it is in their own interest to allow the review to be publicly seen as a failure. When that cost benefit calculation is made, it is likely that the British will decide to go for a positive or neutral result to the review, in terms of public perception, with however as low a cost as possible in terms of substantive concessions on their part.

Approach at Wednesday's Conference

5. The priority at the Conference will be to convince the British that a new political impetus needs urgently to be given to the review process. We should emphasise that we are disappointed at the approach of the British to, and the outcome of the meetings on, Articles 5, 6 and 10. If, as is the intention, we are to emerge from the review with a credible communique, setting out a programme of work and priorities for the period ahead, we must be seen not alone to subsume (or reiterate) but, more importantly, to build on the reform programme in the 1985 Agreement and accompanying communique. It would not be credible for either side, and especially for us, to appear to have accepted a more moderate agenda than that agreed by the two Governments in 1985.
6. Moreover, nationalists in the North are extremely sceptical about British willingness to operate the Agreement in a positive and creative way. They see, for example, an increasing British preoccupation with, and concentration on,

security policy, including the introduction of measures which are likely to prove both ineffective and counter-productive (e.g. the oath against violence). The balance between security and reform, inherent in the Agreement, needs to be constantly monitored, restated and acted on; the review offers a valuable opportunity to do this.

7. We should, therefore, insist on a more intensive series of meetings at official level, followed by the submission of weekly reports to Ministers on progress achieved under the various articles. Ministers need to be actively engaged in the process at this stage. Ministers could, in the light of these weekly reports, judge whether they need to make contact before the next Conference (the Secretary of State will in any event be in Dublin on the 18th for the rugby match). The submission of weekly reports will also enable Ministers to assess the best timing for the next Conference; this should, I believe, be held later this month (in Dublin?), should set out to resolve any remaining difficulties between the sides and to pave the way for the subsequent drafting, at official level, of the review communique. This communique would then emerge from the following (March?) Conference.

Extradition

8. The recent meeting of officials in London showed that the British side were worried that decisions might already have been taken by the Government, or might be imminent, on the review of extradition legislation. While they were reassured by our response, they would probably appreciate being told at political level that the Government's intention is to present a short, factual report as required by statute, on the operation of the Extradition Act, before the Easter recess, and that the review of legislation will take some considerable time because of the practical as

well as political difficulties involved. The Government are, of course, considering the points put to them in two recent British papers.

Criminal Law Jurisdiction Act

9. Mr. King may enquire privately about the progress of the Ryan case.
10. The first Criminal Law Jurisdiction Act case (Sloan) came up in court on 31 January and was adjourned to 27 February. We could express satisfaction that the case is underway and encourage consideration of further cases. The British have asked for a paper on previous refusals by the DPP to proceed with prosecutions under the CLJA which they hope would guide them in their applications to the DPP. The Attorney's Office is looking at this but believes there is nothing useful that can be said.

Harassment

11. We could stress the importance we attach to the monitoring operation which is now in place in the NIO and the desirability of involving the army and police, neither of which attend the meetings at present (the Army is represented by a civilian representative). We wish to have a thorough briefing session in the Secretariat before each meeting of the monitoring group.
12. The Tánaiste might also ask how the Army is doing with its new policy of answering informal complaints within three weeks. We are aware of one or two cases where complaints were dealt with very speedily. We would like to see more of the same.

13. Accompaniment of the UDR is still a major problem. We asked at the last Conference if the British would ensure at least, and as an immediate measure, that the RUC be present at all fixed checkpoints. The British were uncertain how many checkpoints there were and said they would check.

Prisons

14. We could ask about the progress of the review of Special Category prisoners and express satisfaction with the decision to recommend release dates for 9 of the remaining eligible SOSP prisoners. Progress in the prisons area is having an important political effect in Sinn Fein. It is also depriving them of a traditional issue. Further progress would be desirable, especially on the Special Category prisoners, before the Local Government elections in May.

Stalker/Sampson

15. We could enquire about the progress of Mr Kelly's disciplinary proceedings. There is criticism of the fact that now, in 1989, over six years after the Armagh shootings of late 1982, no police officer has yet been disciplined and two senior police officers have been allowed discharge on medical grounds without any action being taken against them.

Northern Solicitors

16. The Tánaiste might like to say in the tete-a-tete that he is concerned about the recent remarks of the Home Office Minister, Douglas Hogg, in the House of Commons that some Northern solicitors are "unduly sympathetic to the cause of the IRA". This was all the more unfortunate because of rumours circulating that Mr Paddy McGrory and certain other solicitors may be targeted by loyalist paramilitaries. We

could repeat (very privately) our view that Mr Paddy McGrory is certainly not a solicitor we would regard as being "unduly sympathetic" towards the IRA. We see his relationship with IRA clients as entirely professional.

House Searches

17. Mr King will probably refer to recent finds of arms in the course of house searches. We could agree of course that the search for arms is of vital importance but stress the importance of courtesy during searches and a carefully selective approach to the number of houses searched. There has been criticism that the Army is searching a very high number of houses, in what are called area searches, without suspicion that there is a find to be made but for the reason that attention will be diverted from the real targets. The Home Office Minister, Douglas Hogg, admitted that this practice existed during debate recently in the PTA committee of the Commons. Mr King later denied there were random searches but did not deny there were "area" searches. He said there was 'good reason' for every search.

Fair Employment

18. The point to be got across is that, while some critics of the Bill may have over-reacted, the reality is that unless improvements are made in a number of key areas, the new legislation will not win general support in Northern Ireland or abroad. Strengthening of the affirmative action provisions is essential; (in particular, there is a need to ensure that an employer undertaking an affirmative action programme does not thereby become vulnerable to a charge of indirect discrimination).

19. Among other important requirements are the removal of the proposed discretionary element in withholding government grants and contracts from discriminatory employers, and a reduction in the threshold above which employers are required to monitor job applications (the current proposal is that only firms with more than 250 employees should monitor applications).

West Belfast

20. As a result of pressure from the Irish Government through the Intergovernmental Conference and Secretariat, the British Government presented a £10m package of measures for West Belfast on 19 July 1988. In addition to this, a further £55m was announced on 30 November 1988 to be spent over three years. On Monday last, 30 January, a "Strategy for Action" was publicly presented by the British Government which broadly outlines its strategy for the social and economic development of the area. It is essentially an expansion of existing programmes such as the Belfast Action Teams (BTAs) - groups of Government officials working full time aiding community development in specific areas - and youth training (YTP). The paper also envisages greater private development in the area stimulated by the further Government incentives.
21. The Communique might welcome the publication of this "Strategy for Action" and link the initiative to Conference discussions. We should also seek to have this initiative extended to other disadvantaged areas in Northern Ireland - the communique of the 4th May Conference spoke of responding to "the serious economic and social problems of West Belfast and other disadvantaged areas". This gives us a good basis on which to seek to extend the initiative.

2 February, 1989.

*Please take account
to PST; PSM; Hm
Nelly; PH; Hm Hobbies;
Hm Traveller; (3) Correlation*

Joint Statement following the Anglo-Irish Conference

2 November 1988

A meeting of the Anglo-Irish Intergovernmental Conference took place in Belfast on 2 November 1988. The Irish Government was represented by the Joint Chairman, Mr. Brian Lenihan, T.D. (Tánaiste and Minister for Foreign Affairs) and Mr. Gerard Collins, T.D. (Minister for Justice). The British Government was represented by the Joint Chairman, Mr. Tom King, M.P. (Secretary of State for Northern Ireland), accompanied by Mr. Ian Stewart, M.P. (Minister of State for the Northern Ireland Office). The Commissioner of the Garda Síochána and the Chief Constable of the Royal Ulster Constabulary were present for that part of the Conference which dealt with security cooperation.

The Conference reviewed ongoing work in relation to security matters, confidence in the system of justice and the preparation of legislation on fair employment. Both sides reiterated their condemnation of continuing terrorist outrages which were totally contrary to the cause of political progress. They noted a number of further steps being taken in the context of cross-border cooperation. There was a further exchange between the two Governments on measures to enhance the confidence of both sides of the community in Northern Ireland in the system of justice and in the security forces. The British side described a number of recent measures adopted in this area and the Irish side submitted their views on the need for further work on the issue.

The Conference discussed in detail the implementation of Article 11 of the Agreement, which provides that at the end of three years from signature of the Agreement the working of the Conference shall be reviewed by the two Governments to see whether any changes in the scope and nature of its activities are desirable.

Both sides recognised the political importance of the review process as an opportunity at the end of three years to undertake a thorough and serious review of the working of the Conference under each of the Articles of the Agreement. They agreed that the main emphasis should be on a positive programme for the future to further the aims of the Agreement to which they reaffirmed their commitment. Each Government would take careful account of views expressed to it, both on the past experience of the Conference and on any changes which might be desirable in its scope and nature.

Ministers also considered the preliminary work that had been carried out on the Review by officials on both sides as agreed at the last Conference meeting on 13 of September. They agreed that working groups comprising senior officials of both Governments would now undertake an overall assessment of the work of the Conference to date in terms of the stated objectives of the Agreement and the relationship between the two countries. Both sides envisaged that the Review will be completed in the early part of 1989.

The two sides agreed that the next Conference would be held shortly and would deal, in addition to other items on the agenda, with the issue of confidence in the system of justice and relations between the security forces and the community.