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*Mr King
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*P.S. Tanswell
P.H. ; A.G. ;
Mr. Wells ; R.P. ; Mr. L.
Mr. de la Harpe ; Mr. Thorne
(2) Gualter P. 1*

6 April 1989

Mr. Dermot Gallagher
Assistant Secretary
Anglo-Irish Division
Department of Foreign Affairs

Dear Assistant Secretary

I enclose herewith a text of the draft Review document. Points for scrutiny are an entirely new British paragraph on the possible future adjustment to the Conference (para. 3), a section on relations with the security forces (14, 15) which has been softened somewhat by comparison with the text as left after the Ministerial discussion yesterday and the extra sentence suggested by Mr. King (para. 29), but not considered by our side, highlighting in a somewhat strained way the anti-terrorism function of the Agreement.

I made the general point to the British side that our misgivings remained about the dearth of items in the proposed draft of interest to nationalists. I said that Mr. King had gone to extraordinary and surprising lengths to divest the Review exercise of what he had dismissively termed "jointery". We had expected the exercise to reflect the spirit of partnership implicit in the Agreement and we had hoped this would have been facilitated by our agreement to avoid expressions of disappointment or recrimination about areas where the nationalist community clearly felt the Agreement had failed to live up to its expectations. I said that the Irish side had been left with grave misgivings about the attitude the British now brought to bear on the Agreement. I referred once again to the mistaken strategy of thinking that the mere existence of the Agreement was sufficient for nationalists, who on the contrary judged the Agreement by what it delivered, and trying to reassure unionists, whose basic objection was to the existence of the Agreement, by trying to show that it was going to do or mean very little in practice. The British officials said this was not an accurate summary of their position.

This PAR. in a possible form, is now more important than ever PAR?

H/

As regards the attached text I said that our original draft on possible future adaptation of the Conference had been intended to be helpful to Mr. King and we regretted that he had chosen not to accept it. On a quick reading I felt the new text picked elements from the preamble in a selective way, seemed to maintain quite gratuitously that the Review was confined to progress to date, whereas the November communique had highlighted future work, and generally seemed unlikely to commend itself to our side. I said I would consult about the issue. Our position on this part of the draft remained as indicated at the close of yesterday's Conference.

On the confidence text I said that we would wish to reflect on the overall impact of the text whose impact had progressively been diluted in the course of drafting. Our Ministers had not given any commitment to the text as it stood.

I said we did not object to the notion contained in the Secretary of State's final sentence, but felt it created an odd impression on stylistic and presentational grounds as it stood.

I undertook to consult with our own side and give them a considered view as soon as possible.

Yours sincerely

Sean O hUiginn

Sean O hUiginn
Joint Secretary

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THE ANGLO-IRISH AGREEMENT

REVIEW: DRAFT COMMUNIQUE - FIRST REVISION INCORPORATING
CONFERENCE DISCUSSION ON 5 APRIL

1. In accordance with Article 11 of the Anglo-Irish Agreement, the two Governments have completed a review of the working of the Conference and have considered whether any changes in the scope and nature of its activities are desirable. In conducting this review the two sides engaged in an assessment of the work of the Conference to date under each of the Articles of the Agreement and examined the overall achievements of the Conference in terms of the stated objectives of the Agreement and the relationship between the two countries. Their discussions in this respect had the benefit of a range of views put to them by interested groups and individuals and they wish to place on record their appreciation of all submissions made to them on the Review. The conclusions the two Governments have reached are set out below in the order in which the various subjects are covered by the Agreement.

2. Having conducted the Review, the two Governments reaffirm their full commitment to all of the provisions of the Agreement and to the shared understandings and purposes set out both in the preamble and in the Agreement itself as well as in the Hillsborough Communique of 15 November 1985. They reiterate their unyielding opposition to any attempt to promote political objectives by violence or the threat of violence; and they commit themselves to continuing close cooperation in the security field to ensure that those who resort to such methods do not succeed.

[3. By this reaffirmation of principle the two Governments commit themselves to develop the unique relationship between their peoples and the close cooperation between the countries. They recognise that a condition of genuine reconciliation and dialogue between the unionists and nationalists is mutual acceptance of each others' rights. They also recognise and respect the identities of the two communities in Northern Ireland and the right of each to pursue its aspirations by peaceful and constitutional means. The two Governments agree that the conclusions of this Review, as to the

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desirability of changes in the scope and nature of the activities of the Conference, can reflect only the progress to date in achieving the underlying objectives of the Agreement. If in the future it were to appear that these objectives could be more effectively served by adjustments to the operation and machinery of the Conference, consistent with the basic provisions and spirit of the Agreement, the two Governments would be ready in principle to consider the merits of such adjustment.]

The Conference

4. The Intergovernmental Conference has met on twenty-seven occasions since the signature of the Agreement. It has provided a valuable forum to address in a regular and organised way political, security and legal matters mainly affecting Northern Ireland and to promote cooperative action in both parts of Ireland. Through the Conference the Irish Government has put forward views and proposals on these issues for consideration by the British side. Thus, in the development of measures relating to Northern Ireland the Conference has played an important role, and both Governments look forward to working closely together in this way in the future along the lines laid down in the Agreement. They acknowledge the valuable contribution of the Secretariat in servicing the Conference and in providing a readily available and continuing channel of communication between the two Governments on matters covered by the Agreement, a role which they will seek to develop as appropriate.

5. With a view to improving the working of the Conference as a means of resolving differences between them, both Governments agree that Conference meetings in the future should be organised so far possible on a regular schedule, following the pattern in 1988 when ten were meetings held. In addition to meeting the needs of the ongoing work of the Conference, this regular pattern should give both sides an opportunity to consider forthcoming developments on a systematic basis, thereby enhancing the likelihood of resolving anticipated problems in the spirit of harmony called for by the Agreement and reducing the risk of misunderstanding or confrontation

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arising from particular events. In the interest of ensuring the fullest possible consideration of longer-term issues relevant to the agenda of the Conference, it was also agreed that at least once each year there will be an informal Ministerial meeting.

6. Consistent with their objective of developing the potential of the Conference as envisaged in Article 3 of the Agreement, both Governments agree in principle that future Conference meetings would provide for widened Ministerial participation, at the invitation of the Joint Chairmen, to encourage more structured discussion of sectoral issues of common interest to both parts of Ireland.

7. The two Governments note that a number of the submissions which they have received emphasise the importance of fuller information about discussions at Conference meetings being made public. Both Governments acknowledge the point and will seek to respond to it in future communiquees and press conferences.

Political Progress

8. It continues to be the British Government's policy, supported by the Irish Government, to seek progress towards the devolution of responsibility for certain powers to elected representatives in Northern Ireland as provided for in Article 4 of the Agreement. Both sides recognise that the achievement of devolution depends on the co-operation of constitutional representatives of both traditions within Northern Ireland.

Accommodation of the Rights and Identities of the two traditions

9. The two Governments share a common view of the central importance in the implementation of the Agreement of measures to accommodate the rights and identities of the two traditions in Northern Ireland, to protect human rights and prevent discrimination. The Irish Government welcomes a number of positive measures which have been implemented by the British Government in this respect since the signature of the Agreement. These include

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the repeal of the Flags and Emblems Act, enfranchisement of the 'I Voters' and the enactment of the Public Order (NI) Order 1987 enhancing the powers of the police to control potentially provocative marches.

10. The introduction of new legislation on Fair Employment has been the subject of detailed discussion in the Conference in the light of the commitment to eliminate discrimination in the workplace and establish fair employment practices in Northern Ireland. The two Governments agree on the importance of ensuring that such legislation shall be an effective means of meeting that commitment and the Conference will closely follow developments in this regard. The Irish Government welcomes also the launching by the British Government of a programme of action to address the social and economic problems in the most disadvantaged areas of Belfast and other deprived areas.

11. Both Governments reaffirm the fundamental importance of the proper protection of human rights and will continue to discuss through the mechanism of the Conference all legislative and other means by which such rights may be better protected in Northern Ireland.

12. The two Governments attach importance to the continuing efforts to improve community relations through developing increased cross-community contact and co-operation, and to encouraging greater mutual understanding including respecting the cultural heritage of both traditions. They recognise the valuable role which the education system can play in promoting mutual esteem and understanding between the two traditions and the Irish Government supports the efforts made to reflect this objective in the new curriculum for Northern Ireland currently under preparation. The two Governments recognise also the importance of the Irish language in this context and undertake to support efforts to enhance awareness and appreciation of this particular strand of the cultural heritage.

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Public Bodies

13. The two Governments agree on the importance of the principle that public bodies in Northern Ireland should be so constituted as to enjoy the widest possible respect and acceptance throughout the community. Exchanges will continue on ways in which this objective can be furthered. The Irish Government will continue to put forward views and proposals on the role and composition of such bodies for consideration by the British side, which will be ready to consider what means may be available to remedy imbalances arising from the use by others of their existing nominating powers without due regard to fairness or balance.

Confidence in the security forces and the system of justice

14. The two Governments attach great importance to policies aimed at improving relations between the security forces and the community in Northern Ireland and at enhancing respect for the rule of law. They have considered the record of the working of the Conference in relation to fostering confidence in the system of justice in all its aspects and ensuring that the security forces are clearly perceived to discharge their duties evenhandedly, acting at all times within the law, with equal respect for the unionist and nationalist traditions and with demonstrable accountability for their actions. Special importance is attached to ensuring that representations by the public about the behaviour of members of the security forces are speedily and fully dealt with and, in particular, that any complaints of alleged harassment are quickly investigated and, if sustained, remedied.

15. A number of new measures affecting these confidence issues have been introduced, including those on marches and other public events, incitement to hatred, police complaints procedures, police/community liaison committees and the need for the police to respect equally the two traditions in Northern Ireland which is set out in the Code of Conduct promulgated by the RUC. Further work remains to be done and progress achieved will be reviewed on a regular basis at the Conference.

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16. Among further confidence-building measures that the British Government has in hand or envisages are the following: systematic monitoring of the nature, pattern and handling of complaints by the public about the behaviour of members of the security forces; further effective development of the policy, stated in the Hillsborough communique of November 1985, of ensuring as rapidly as possible that, save in the most exceptional circumstances, there should be a police presence in all operations which involve direct contact between the armed forces and the community; additional safeguards for members of the public being questioned by the police in connection with non-terrorist offences; and the publication of a guide to the operation of the terrorism provisions.

17. The Irish Government reaffirms the importance it attaches to reform of the system of trial under the Emergency Provisions Act 1978 and maintains its view that the provision of three-judge courts would enhance public confidence in the administration of justice. The British Government is not at present persuaded of the merits of this proposal. While it is recognised that such legislation was a response to the campaign of violence and intimidation, it is agreed that both sides will continue through the Conference to consider what changes might be made to emergency provisions and the way in which the criminal law is applied with the aim of securing maximum public confidence in the system of justice.

18. The Conference has considered prisons policy. There have been important developments affecting the Northern Ireland prison system, including the special reviews of the cases of the remaining prisoners in special category and those serving sentences at the Secretary of State's pleasure, as well as life sentence review procedures generally, the opening of the new prison at Maghaberry, and matters affecting the prison regime. The two Governments undertake to maintain exchanges on prison matters, given the importance of careful and considered treatment of this sensitive issue.

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19. The two Governments are at one on the necessity for fair and effective legal procedures, including those relating to extradition and extra-territorial jurisdiction, to ensure that fugitive offenders are brought before the Courts to stand trial. It was agreed the two sides would continue their close contacts on these matters through the respective Law Officers and the mechanisms of the Conference with a view to ensuring that appropriate arrangements are in place in relation to the application of the extra-territorial legislation and to extradition.

20. The two Governments agree that there should be further study of areas of the criminal law applying in the two jurisdictions which might with benefit be harmonised.

Security Co-Operation

Murder
21. The two Governments condemn in the strongest terms the actions of those who in seeking to promote political ends by violent means cause the most callous loss of life, human misery and wanton destruction. They reaffirm their determination to counter this evil through continuing close cooperation between the security forces on both sides of the border and pay tribute to the sustained work and commitment of these forces. They note that cross-border security cooperation has received regular and intensive consideration at meetings within the framework of the Intergovernmental Conference as well as at frequent meetings between the respective police forces. A programme of work between the Commissioner of the Garda Siochana and the Chief Constable of the RUC as envisaged in Article 9 of the Agreement was put in hand and substantial progress has been achieved under all of the headings listed.

22. In the light of their common determination to combat terrorism and their common understanding of the scale of the threat the two sides, in the course of the Review, have decided on a programme of future work between the two police forces to develop further their cooperation in this area, and to enhance their capacity to protect human life and property from terrorist outrage. They agree that

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progress in cross-border security cooperation will be reviewed regularly by the Conference which the two Governments will continue to use as a framework to work together to ensure that those who adopt or support violence do not succeed.

Cross-border economic co-operation

23. The two Governments have taken stock of the pattern of cross-border economic cooperation since the signature of the Agreement. Apart from the work of the Conference itself a number of cross-border Ministerial meetings have taken place in the framework of the Agreement and a cross-border study of social and economic problems in the North West region has been commissioned with assistance from the European Community. The two Governments affirm their conviction that cross-border economic and social cooperation is of obvious benefit to all.

24. They agree that future Conference meetings will include a systematic programme of assessment of all the main sectors to determine where the process of co-operation can most fruitfully be expanded. Where appropriate, the responsible Ministers North and South will participate in the work of the Conference. In a preliminary survey during the Review, both Governments have considered an illustrative list of areas which offer scope for further work, including transport and communications, tourism, industry and agriculture, energy and health.

25. The two Governments have considered also the implications of the completion of the internal market in the European Community in 1992. They recognise that these will be far-reaching and will generate common opportunities for both parts of Ireland as well as common difficulties arising from peripheral island status and other factors including the increase of competition. They agree that the Conference could provide a valuable forum for both sides to consider and assess the cross-border implications of the Single European Market and to maximise, consistent with national policies, the potential benefits. Various practical ways of advancing work in this area will be considered and the continuation of the dialogue on this issue begun at Louvain in December 1988 will also be encouraged.

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International Fund for Ireland

26. In September 1986 the two Governments, in accordance with Article 10(a) of the Agreement, established the International Fund for Ireland with the financial support of the United States, Canada and New Zealand and, from 1989, the European Community. In the interval since its foundation the Fund has committed over Stg£50m to projects in Northern Ireland and the border counties in the South and has been instrumental in creating a significant number of new jobs. The two Governments express their appreciation of the generosity of the donors to the Fund and will continue to give every support to the work of the Fund and the emphasis it is now placing on improving the position in the most disadvantaged areas.

British-Irish Inter-Parliamentary Body

27. The two Governments welcome the progress which has been made towards the establishment of a British-Irish Inter Parliamentary Body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981, which would provide a valuable independent forum for inter-Parliamentary contacts.

Conclusion

28. The two Governments commit themselves to continue to work together through the institutions and procedures of the Agreement for the realisation of the fundamental objectives of promoting peace and stability in Northern Ireland; helping to diminish the divisions between the two major traditions in Ireland; creating a new climate of friendship and co-operation between the people of the two countries; and improving co-operation in combatting terrorism. Reaffirming the right of each tradition to pursue its aspirations by peaceful and constitutional means, they reiterate the objective of the creation of a society in Northern Ireland in which all may live in peace, free from discrimination and intolerance.

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29. They agree that the Conference, together with its related mechanisms, had proved its value to both Governments in the three years since the signature of the Agreement, and that, while requiring no fundamental change at present, its role could nevertheless be developed and enhanced in the ways set out above. They stress that the Agreement does not represent a threat to either community in Northern Ireland; it aims to serve both by providing a flexible and orderly framework, underwritten by both Governments, which guarantees the essential interests of both communities in the necessary search for mutual accommodation. (It aims also by facilitating cooperation in the fight against terrorism, to remove a major obstacle to a better life for all the people in the island of Ireland.)

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