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RW/532/3

NOTE OF A MEETING ON THE ARTICLE 11 REVIEW HELD IN THE SECRETARIAT
ON 22 MARCH 1989

Present:

Mr Burns
Mr Thomas
Mr Blackwell
Mr Masefield

UNDER/
SEC

30/3.

23MAR1989

CENT SEC

Mr Gallagher
Mr O hUiginn
Ms Anderson
Mr Harwood

inspire *24/3*
27/3 *Mr Wilson - To*
See & return
pl.

SUMMARY

1. The four hour discussion concentrated on the shape and content of the Final Review Communique (FRC), together with consideration of the associated procedures and timetable. In preparation for the Conference scheduled for 5 April, the Irish side undertook to try to get their draft final Review Communique (FRC) to the British side of the Secretariat by close on Wednesday 29 March, for discussion here by officials on 30 or 31 March, with a view to presenting to Ministers before the Conference a single document if possible, incorporating as much agreed text as practical.

2. The general Irish response to the British draft FRC was that it was too short on substance and too light in tone. The Dublin representatives offered a number of specific comments in respect of the passage on each Article (as recorded in the annex to this note). Both sides agreed to aim for publication of the FRC before the end of April, although it was acknowledged that this was a tight timetable, particularly as Ministerial consultation would be involved on the British side, and that if that target could not be met, publication would have to be postponed until after the District Council elections. The Irish side had no instructions from Ministers, but they were anticipating publication after a normal Conference meeting held in Stormont. They were unhappy at the prospect of the British side publishing a free-standing table of achievements on the same day as the FRC; a number of alternative options were noted. It was agreed that it would be helpful to prepare a short joint question and answer brief for use by Ministers following publication.

INITIAL IRISH RESPONSE

3. The Irish agreed that both sides were committed as far as possible to put a joint or parallel text(s) of the draft FRC before the Conference on 5 April. In commenting on the British draft which had been passed on 16 March, but not yet parsed for their Ministers, Mr O hUiginn recalled that the Review process had been signalled as early as last September. The Irish side wished to conclude it as soon as possible, and preferably before the District Council elections, though they recognised that the time was tight. In his view, the British draft fell short of being a product commensurate with the length of the gestation period. He recalled the opinion poll evidence on the view of both communities about the working of the Agreement, and said that while criticism of this and the Review itself had been held back during the Review process, further criticism would arise following publication of the FRC. He urged

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the British side not to (continue to) be so sensitive to potential Unionist concerns that they undermined the effectiveness of the Agreement in the eyes of the Nationalist community. Irish officials were working on the assumption that the conclusion to the Review would be handled by the joint chairmen and that it should take the form of a joint communique. That FRC should contain the three elements of affirmation, assessment and a future agenda. He regretted that the British draft FRC opened up no new frontiers that would have assisted in reaffirming to the Nationalist community the commitment of both sides to the Agreement.

4. In response Mr Burns said that while the British side had at one stage seen the Review as potentially contributing to political progress within Northern Ireland, the timing of its conclusion was not now affected by that increasingly unlikely prospect, although it was clear that the outcome of the Review would itself have an effect on the political situation. It was not yet clear whether sufficient progress would be made at the meeting on 5 April to be confident of wrapping up the process at a Ministerial meeting before the end of the month. The Secretary of State would have to consult Ministerial colleagues after the next Conference; it should not be assumed that there would not be queries at that stage. Moreover there might remain substantive issues between the two sides that needed to be resolved before publication. Mr Gallagher commented that in terms of promoting political dialogue in the north, he viewed the Review as neutral or now a negative factor, recognising that it would not tempt the parties into dialogue. Mr Burns said that he regarded the European elections and the marching season as significantly less sensitive periods for the publication of the FRC than the immediate run-up to the District Council elections. Mr O hUiginn commented that insofar as the outcome disappointed SDLP supporters, it would be a bonus for Sinn Fein. Mr Gallagher on the other hand asserted that if successfully presented, it might be neutral for the Unionist community and positive for Nationalists. There had been some criticism by opposition parties in the Dail about the length of time taken by the Review, but this was not a major concern for the Irish Government in deciding on the timing of publication.

PROCEDURAL MATTERS

5. Mr Burns said that the British side envisaged the Secretary of State concluding the Review with the Tanaiste, representing their respective Governments. This could entail presentation following a joint Ministerial meeting rather than a normal Conference. Mr Gallagher saw no theological necessity for a meeting other than a Conference to finalise the Review, with the co-chairmen mandated by their respective Governments. Mr Burns said that he anticipated a more formal outcome to the Review than simply the standard joint statement after a normal Conference. It should be a free-standing document, although it could in practice be annexed to a normal Conference joint statement. This would help to show that the Review exercise had been both serious and thorough. The Irish side agreed.

6. Both sides agreed that they anticipated the Review Conference would be held in Northern Ireland, at Stormont, noting that Hillsborough, (which Mr Gallagher said the Irish side were not suggesting) was not appropriate in part owing to repairs.

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7. There was some brief discussion of the Parliamentary dimension, with the British side anticipating that the Secretary of State would wish to make a statement to the House of Commons, preferably not long after the publication of the FRC. One approach might be an early Conference in Belfast, leaving time for a Parliamentary statement that afternoon. Mr Gallagher said that he was confident in principle that the Irish Government would facilitate British desires, believing that their Dail requirements were not so pressing, though he pointed to the precedent of delayed Parliamentary statements made after European Council meetings.

THE ACHIEVEMENTS PAPER

8. Mr Burns said that the Secretary of State's current intention was to publish the achievements paper at the same time as the Review was made public. Mr Gallagher said that the Irish side would have considerable difficulty if the British side unilaterally published a free-standing achievements paper at the same time as the FRC. The Irish side had seen attraction in incorporating more of the achievements into the FRC itself. Mr Burns made the point that it was as much the difficulty of arriving at a joint achievements document which had determined the British preference, to which the Irish side responded that they did not consider that it would prove to be such a task. The British side had favoured the publication of the paper as additional material demonstrating the value of the Agreement on which British Ministers could draw. Mr O hUiginn said that the Tanaiste's approach to the Review exercise was to play down differences between the two Governments and to emphasise the areas of agreement; in that light, the Irish side would be content to highlight the achievements and would be unlikely to quibble much over the British text.

9. Mr Burns said that he noted that there were arguments in favour of prior publication, and that the Irish version of the draft FRC could well include more achievements under the individual headings, with which the British side would be unlikely to take issue. Mr Thomas made the point that another alternative might be to publish the fuller achievements paper in response to a Parliamentary Question after the publication of the FRC, rather than in advance of it. The British side undertook to pass to the Irish side a fresh text of the achievements paper, containing some slight revisions to that passed the previous month, during the week beginning 27 March.

THE FINAL REVIEW COMMUNIQUE

10. Mr O hUiginn repeated his view that the British draft would be seen as an exiguous product after so many months work. He made three points: (a) the reaffirmation should be both more sonorous and explicit, (b) there were a series of points where the text reflected British rather than joint views with which the Irish side would take issue, and (c) there was not enough substance in the draft reflecting the expectations of the Nationalist community or the need for an agenda for the future. Mr Gallagher emphasised that the draft had been helpful in focussing Irish thinking, and they would come back with an equivalent draft as soon as practicable. His

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preliminary comments were: (a) the Conference was about consultation and indeed it went beyond consultation in that determined efforts would be made to resolve differences, (b) the section on the Conference should also say more about the structure and forward planning of meetings, (c) there was insufficient emphasis on Confidence issues, (d) the reference to socio-economic cooperation under Article 10 should be amplified, perhaps with an annex setting out areas which would benefit from cooperation. He hoped nevertheless that there should be no great difficulty in marrying the two papers together or in producing a third version with certain passages alongside in square brackets. Ms Anderson commented a propos of the structure of the British draft that, while she understood the wish to avoid reference to the Articles throughout, it essentially followed the order of the Articles in the Agreement with only two small exceptions.

11. Ms Anderson then made a series of comments covering matters which the Irish side would wish to see added or changes in the existing draft. In some cases a discussion on the relative merits ensued. This important part of the discussion is recorded in the annex.

CONCLUDING DISCUSSION

12. The discussion noted a number of areas, including the reference to Article 1 and a question as to future Review exercises where officials agreed that it would be beneficial to prepare a joint question and answer brief for use by Ministers following publication of the FRC.

13. Mr Gallagher undertook to do his best to make available through the Secretariat an Irish draft FRC by close on Wednesday 29 March. In making the point that he did not see the difference between the two sides as too great to bridge, he said that the relationship between them had been developed to a degree which twelve months ago no-one would have anticipated, and on which they could build further. It was agreed that a further discussion between officials following receipt of the Irish draft was necessary in advance of the Conference; this could in practice take place no later than 31 March. Mr Burns said that in preparation for the Conference, officials should advise Ministers that in respect of passages and areas where there was no great difference between the two sides, they could aim to resolve these in contact or correspondence outside the Conference, while Ministers should focus on 5 April on the major issues where differences of substance still existed between the two sides.

COMMENT

14. This was a useful meeting even though (or perhaps partly because) the Irish side had not yet finalised their draft FRC at official level, still less received any degree of Ministerial blessing on a text. It gave us the chance not only to explain the thinking behind the British draft, but also to put down some fairly firm markers as to how far Ministers might be prepared to go in

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respect of difficult areas like Article 1 and the Bill of Rights. The discussion brought home to the Irish the amount of work still to be done to achieve publication of the FRC by the end of April.

R C Masefield
March 1989

cc PS/PUS (B&L)
PS/Sir K Bloomfield - B
Mr Burns - B
Mr Miles o/r - B
Mr Thomas - B
Mr Spence - B
Mr A P Wilson - B
Mr Blackwell o/r - B
Mr Bell - B
Mr Hallett - B

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ANNEX

NOTE OF IRISH COMMENTS (AND BRITISH RESPONSES) ON MATTERS TO BE
COVERED IN THE FINAL REVIEW COMMUNIQUE

1. Introduction. The Irish would prefer some introductory affirmation, strong on rhetoric, as well as a finale in the same vein.
2. In the passage on the Conference the Irish would prefer stronger language, implying better practice in future. Mr Burns said that this did not appear to present a problem in principle, though he took the opportunity to refer to the other points on consultation, reciprocity etc which he had made in discussion in Dublin with senior Irish officials.
3. On Conference arrangements, the Irish side would want reference to
 - (a) a specific number of meetings perhaps ten a year,
 - (b) one or more Gymnich style meetings per year,
 - (c) widened Ministerial attendance at the Conference,
 - (d) better forward planning before Conferences,
 - (e) more public information about what was happening at Conference meetings.

Mr Burns said that the British side had carefully considered the last issue. While both sides already tried to be fairly forthcoming after Conference meetings, there was a difficulty in settling the agenda too far in advance, though we already did so on occasion in respect of individual items which were included in the joint statements. The British draft had deliberately omitted any reference to the number of meetings. While officials would find more routine handling of Conference meetings helpful, Ministers tended to see Conferences as occasions for political use. Mr Gallagher suggested that while it was important to have a target number, it would not matter critically if in practice that was not met. Mr O hUiginn accepted that predictable regularity could pose security problems. He also suggested that greater openness could be demonstrated for example by the publication of Conference papers on cross border economic cooperation.

4. Confidence Issues. Mr O hUiginn stressed the importance placed on Confidence issues by Irish Ministers. They would be looking in the future to do better on accompaniment of Army patrols, and while the Complaints Monitoring Committee was moving in the right direction, they had some doubts as to whether it had yet gone far enough. It was important that the FRC should make clear that neither side was complacent and that there was ground to be made up. It was therefore helpful to refer to as many perspectives as could be opened up. Mr Burns stressed that Confidence issues were of importance to the British side for their own sake as well, and warned against over-emphasising the role of the Monitoring Committee. In respect of complaints against the police, there were

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already two bodies other than the NIO statutorily charged with supervisory powers. Changing tack, Mr O hUiginn said that the courts issue remained, and the Irish side would want to consider how best this should be treated. Mr Blackwell emphasised that in preparing this section of the text, the British side had been trying to look forward, recognising that courts' concerns were no longer so central as they had been in 1985.

5. The Irish had no great difficulty with the passage on extradition.

6. The Irish agreed that harmonisation could be a constructive area for study.

7. Security Cooperation. The Irish agreed that the communique should refer to progress made in this area and to work for the future, although they wondered whether there should be such a specific reference to the successes of the security forces which might provoke Unionist criticism.

8. Article 4. The Irish side had no major problems with the proposed formulation. Mr Burns said that it would be prudent if the British side let the Irish side know in due course what they would propose to say about political development in Northern Ireland in a wider context at the time of the presentation of the outcome of the Review.

9. Article 5. The Irish would prefer to start the passage with the achievements, and prefer to strengthen the language of the reference to human rights and Irish language. While recognising that the Bill of Rights posed a problem for the British side, they said that they faced Parliamentary Questions on that subject, and there would be criticism at the least if the subject appeared to drop from the agenda. They suggested it would be helpful if progress towards the Irish language institute coincided with the FRC. This led to a discussion as to how far it would be helpful to put a number of substantive developments in the FRC itself, given that the British side saw the document as setting the agenda for the future rather than announcing current decisions; there was moreover the point that there could be criticism about other Articles if only a few specific decisions were mentioned. Mr Burns explained that the Bill of Rights posed a substantive difficulty for the British side. The advantages and disadvantages, as contained in the Agreement, had been explored. There was further the question of what rights a Bill might protect above those already protected in existing legislation. He then explained the difficulties of enshrining in statute law a provision binding Parliament. It was important that the FRC should not be loaded with points that both sides recognised were unlikely to prove constructive. He recalled that the British side had proposed a declaration on rights following the exchange on a Bill; this had been a genuine attempt to move forward, and he was confident that the British side would not refuse to return to that subject in discussion. He emphasised that the credibility of the Review would not be enhanced by including areas where progress could not subsequently be realistically made. Mr Gallagher accepted that this was a difficult area but said that equally for the Irish there was a political requirement for some reference.

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10. Article 6. The Irish side said that there should be some appropriate reference to Article 6 in the FRC, and wondered whether the constructive approach might be to refer to a mutual recognition of the problem of proportionality and preparedness on the British side to consider the scope for movement. Mr Burns explained that the British side was separately, following the publication of the Consultative Paper on Local Government, looking at a range of local government issues. It was likely that proportionality would be addressed in that context, although he could not predict at this stage what the outcome would be. In effect the subject should be put in square brackets in any draft of the FRC at this stage. The British side accepted that there was a problem under the existing system, but there was no advantage for either side in additional representation for Sinn Fein as a result of exchanges in the Conference. Mr O hUiginn pointed to the existing Sinn Fein representatives on public bodies, and added that the success rate of Irish "nominations" under Article 6 had been unsatisfactory.

11. Article 10. The Irish side would expand this section. Mr Burns said there was a question as to whether it was more advantageous for departments to continue to co-operate bi-laterally or to come in under the umbrella of the Agreement. Mr Gallagher said that in Dublin at least there was some kudos for other departments in taking part in the Conference, and that factor, together with 1992, suggested that the issue of Ministerial attendance at Conferences would be given a sharper focus. The Irish side clarified that their intention was that only NI Departmental Ministers should be involved in Conference discussions, except, possibly, on an issue such as the road link from Stranraer where it might be appropriate to seek a contribution from a British Minister. There was then some discussion on the practical issues of grafting departmental discussions onto the existing Conference mechanism. Mr O hUiginn suggested that agreement might be reached that a Conference in say 2 months time would focus on a specific subject, and that as a start the Secretariat might draw up a hierarchy of departmental issues in priority. Mr Burns stressed that while 1992 needed to be considered by both sides, it would not necessarily effect them both in the same way; it might or might not prove to be divisive.

12. The International Fund. The Irish side advocated a separate paragraph on the Fund with strengthened language, paying tribute to past donors.

13. Interparliamentary Body. It was agreed that the opening to the British passage on the Body needed amendment. Ms Anderson reported that of the Irish delegation Mr Tunney had expressed concern that the scheduled meeting of the Body in London in June might be deferred. Mr Burns explained that there were a number of procedural matters to be arranged before the British delegation could be finalised, and it was unlikely that in practice these could all take place by June. Nevertheless he accepted that demonstrable progress should have been made by then. He expressed in passing concern that the DFA was seeking to be represented on the Secretariat of the Body. Ms Anderson replied that the DFA were not seeking to intervene in the policy of the Body, but rather their aim was to ensure that the approach taken by the Irish delegation was constructive. Mr Gallagher added that there was no dispute between the two sides over the nature of the Body itself. Finally Mr Burns

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commented that instead of a reference in the FRC, Ministers might prefer to note the progress on the Body in their press conference comments.

14. Concluding Section. Mr Burns explained that the British draft had deliberately echoed the language of the November 1985 Communique rather than the Agreement. The Irish side agreed that the FRC needed to end on a positive note, although it was noted that the last sentence in the British text needed amendment. Mr O hUiginn suggested that it might be preferable not to refer to Article 1 at all in the FRC. Mr Burns explained that the original British proposal had been to link it with Article 4. They had hoped that the current brief reference was non-controversial, and he believed that the Secretary of State would be very keen to have some such reference. It was noted in discussion that in the British draft this Article was the only one to be singled out by name.

15. Future Reviews. Mr O hUiginn said that the press would ask whether there would be future Reviews. It was recognised that there were a number of possible responses. One approach would be along the lines that of course the two Governments would keep under review the way in which the Conference was working and that they might decide at some stage in the future that a further Review would be helpful. Mr Gallagher agreed that there should not be more than a general reference to the subject at most in the FRC, and that possibly it should be dealt with separately in the press conference. Both sides agreed that there would be value in the preparation of a joint question and answer brief for the publication of the FRC, though this need cover only the most tricky issues. It was agreed that the Secretariat should in due course identify questions to which careful answers would be needed, including Articles 1 and 11. Mr O hUiginn commented that Ministers would need a defence against critical questions about their overall commitment.

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