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FR: TONY McCUSKER

26 FEBRUARY 1999

PS/SECRETARY OF STATE (B&L) - O

see copy distribution below

**NORTH/SOUTH IMPLEMENTATION BODIES - "SUNSET" CLAUSE IN TREATY/
LEGISLATION**

Issue: Unionists, generally, want to see a clause in the Treaty and legislation to provide for the collapse of the North/South Implementation Bodies in the event of the collapse of the Assembly. SDLP, Sinn Fein and the Irish Government are totally opposed to this. All parties are now aware that the draft Treaty proposed by the British and Irish Governments on 11 February 1999 did not contain such a clause.

Detail

1. When the FCO and the Irish Government were working together to produce a draft Treaty for the establishment of the North/South implementation bodies over the past few months, the question of the inclusion of a "sunset" clause did not emerge. The Irish would not have wished to see such a clause included and the Government's view, expressed during the progress of the Northern Ireland Act by Paul Murphy, was that we were not planning for failure. A draft Treaty on N/S bodies, which had been largely agreed between the FCO and the Irish Government was passed to the First and Deputy First Ministers by Paul Murphy on 11 February 1999, along with three other Treaties covering the establishment of the NSMC, the BIC and the BIIGC. Unionists immediate reaction to the N/S bodies Treaty was that it was unacceptable because the Treaty did not contain an exit clause. This issue had been raised with them specifically by Robert McCartney.
2. When Sinn Fein became aware of the Unionist view they made it clear their view that the implementation bodies should continue following any collapse of the other institutions. The Irish, on the other hand, confirmed that it had not been their intention

that the implementation bodies would continue to operate in isolation from the other institutions, in line with the commitments in the Good Friday Agreement that all the institutions should be interlinked.

3. The FCO view, as reflected in George Fergusson's minute to Tony McCusker of 17 February (not to all) was that we did not want to be in the position of advertising possible failure. It was possible also to envisage circumstances in which other institutions might collapse, but one or more of the implementation bodies had by then carved out a role which was uncontroversial and generally acknowledged as effective. We might not in those circumstances want to break up something that was operating well or to move scores of civil servants who had only recently had to relocate. In the event of the collapse of the Assembly, and the consequent collapse of the North/South Ministerial Council, it would however be necessary to make new arrangements for the policy direction to the bodies and possibly for funding. The FCO and the Irish agreed that some wording along the lines of "the bodies shall continue in force for as long as the NSMC continues to function" would leave open the possibility of subsequent arrangements between the two Governments, either to wind up the bodies, to introduce transitional arrangements, or to keep them going. Sinn Fein have made it clear that they would not be prepared to accept even a clause such as this.

Robert McCartney

4. The draft Treaty on Implementation Bodies was circulated to Assembly parties on 24 February. I understand that David Ferguson has minuted you separately on the circulation of the draft Treaty to the parties. Robert McCartney immediately contacted the press to express his concern that the absence of an exit clause in the draft Treaty meant that once the bodies were created there was no provision to say that they could not continue to exist even if the Assembly fell. The UUP Spokesman on North/South matters, Esmond Birnie, was quoted in the Belfast Telegraph last night as saying that the UUP had rejected the Treaty since it did not contain the exit clause.

o Take

5. The Government had not considered it appropriate to include an exit clause in the draft Treaty, since it is not our policy to plan for failure- the Act had no collapse clause.

The Belfast Agreement had made clear the interlocking nature of the new institutions.

Clearly there will be a need for a review of the situation following any Assembly collapse.

Realise this is a sensitive issue; discussions continue.

T McCUSKER

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TO: DAVID FERGUSON
26 FEBRUARY 1999

cc PS/Secretary of State (B&L)
PS/Mr Murphy (DFP,B&L)
PS/Mr Pilling (B&L)
PS/Mr Semple
Mr Jeffrey
Mr Stephens
Mr Bell
Mr Brooker
Mr Maccabe
Mr Sweeney
Mrs Flanagan
Ms Dodds

Mr McCusker

NSMC/BIC PAPERS: RELEASE TO THE PARTIES

1. We had a snatched conversation this morning following our exchange on the phone yesterday morning about the release of material on draft treaties and the BIC work programme to the Parties this week. Since last night's front page story in the Belfast Telegraph still has some life this morning, I thought I would drop you a note for the record.
2. Contrary to the last line in Noel McAdam's piece in later editions, this was not, as a "well placed source" has suggested, an administrative error. When I discussed Mr Murphy's letter and attachments of 11 February with Mr Trimble's and Mr Mallon's advisers on Wednesday of last week there were no concerns about content but there was some sensitivity on the SDLP side about releasing material which in their view was more East-West than North-South. It was therefore agreed that we should await developments over the next 24 hours on the Implementation Bodies Order.
3. By Friday morning of last week, it was becoming clear that approval at political level for releasing the Order to the Parties for consultation was unlikely to be given before the early part of this week. I therefore put a submission on the other material to the First and Deputy First Ministers over the week-end:

- a. reminding them of how they had handled similar material on the BIC from Mr Murphy last November;
 - b. indicating my understanding that the recent material was expected to be handled in the same way;
 - c. reflecting the discussion with advisers a couple of days previously;
 - d. seeking a steer on release to the Parties with a covering note from me on behalf of the First and Deputy First Ministers inviting comments direct to Mr Murphy on the draft treaties and to Mr Trimble and Mr Mallon on the BIC work programme.
4. Mr Mallon's office responded first - by phone on Tuesday and in writing the following day - indicating that he was content with release. Mr Trimble's office responded later on Tuesday in writing indicating that he saw no reason why the material should not be released. There were no explicit instructions about holding any of the material back. On the contrary, I am quite clear, particularly on the basis of the earlier discussion with advisers, about what was to be issued. The package was sent out (without Mr Murphy's covering letter) the following morning.
5. I have just learned that the Secretary of State has asked for some background on the episode. I hope, by copy, that this is sufficient for the purpose.
6. Glad to provide further clarification, if required.

David Ferguson

DAVID FERGUSON

☎ 28151/21423

N/S Bodies P 1 of 2

Treaty +
negotiation

Attn Rosalie

Haragan -

DRAFT LETTER FROM THE PRIME MINISTER

The Rt Hon David Trimble MP
First Minister (Designate)
The New Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST BT4 3XX

I have only been able
to find the draft of letter -
not the final version - under

cover of Nick Perry's letter to
John Sawers of 24/3
February 1999

Thank you for your letter of 22 February.

As you say, the Agreement is quite clear that all the institutional and constitutional arrangements "... are interlocking and interdependent and that in particular the functioning of the Assembly and the North/South Council are so closely inter-related that the success of each depends on that of the other".

David Brett

DAD

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22/x

Naturally, we shall give full effect to that. We have proposed to the Irish Government a provision in the draft Treaty such as you suggest. They have not yet accepted it; nor, it seems, have the SDLP. This and a number of other provisions are still the subject of negotiations. We shall not lose sight of your concern.

We are committed to full implementation of this aspect of the Agreement, as to all other aspects. That will still be a Treaty obligation on both the British and Irish Governments, by virtue of Article 2 of the new British-

Agreement, whatever the provisions in the Treaty on implementation
odies.