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28 May 1992

CONFIDENTIAL

Mr. Sean O hUiginn
 Assistant Secretary
 Anglo-Irish Division
 Department of Foreign Affairs

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Dear Assistant Secretary

Impasse in the Talks

We have reported by secure fax on this weeks' proceedings so far. According to the British Joint Secretary, Robert Alston, the position in brief is that the SDLP want to move to Strand Two on a twintrack approach but the Unionists will not contemplate moving with the SDLP paper still on the table and as originally presented. There is now a probability that Mayhew will not judge it appropriate, in the words of the March 1991 statement, to propose the start of Strand Two early next month.

Party leaders seem resigned to a breakdown

Alston described the mood among the party leaders this week as gloomier and more resigned (to breakdown) than at any previous point in the talks. The British paper circulated on Monday night seems to have been ignored, neither accepted or rejected as a basis for discussion. Alston saw the papers put in by the representatives of the parties in the Sub-Committee yesterday as intended to justify their various positions rather than to bring them together or find a way round them.

British considering procedural ideas to avoid breakdown

The British mood conveyed by Alston is downbeat (this may, of course, be intended to get us to use our influence with the SDLP to modify their position). There is no meeting of the Sub-Committee today but it is expected to meet tomorrow before reporting to the Plenary on Monday. The British have been considering possible ways round the problem. I understand their ideas are procedural (move to Strand Three?) and will not attempt to deal with the substantive problem. They will

brief us and canvass our views at the Liaison Group meeting in Dublin tomorrow morning.

Meeting of the Taoiseach and Prime Minister in RIO

I have no doubt the British will make further efforts to try to persuade the Government to pull back the SDLP on the "externality" issue in order to end the impasse and get Strand Two going. Alston said it was fortuitous that the Taoiseach and Prime Minister would have a private discussion at the forthcoming Environment Conference in RIO and he let me see that the British invest considerable hope in that meeting as a last resort. Presumably, they will wish to avoid a definitive breakdown before then and their procedural ideas will be intended to fill the gap.

British position in event of a breakdown

Alston did not anticipate a resumption of the talks in the event of a breakdown now. He expected that the Agreement would continue to be operated as a matter of course but that the continuing absence of Unionist consent would cause difficulties (this is a standard British line - which we have never accepted - that their capacity to operate the Agreement in real life depends to an extent on the political climate).

None of the parties to see Sir Ninian Stephen

The Secretary of State did not attempt to conceal the current impasse from Sir Ninian Stephen when he saw him in London yesterday. I am told none (SDLP?) of the parties has indicated a wish to see him. Paisley sent a curt response last weekend to Mayhew's letter broaching the matter saying, apparently, that he would only have business dealings with Stephen (Paisley discovered some time ago that the Irish and British delegations at the Treaty talks never shook hands until the Treaty was signed and resolved on a similar course of action himself!). Stephen is not now travelling from Dublin to Belfast on Friday as planned.

At this point, it may be useful to set out the underlying British attitude to the situation that has arisen as best I can judge it from here.

External elements of the SDLP scheme seen as the basic problem

The British say they have been impressed by several points in the SDLP presentation, including the design of the scheme to be proof against destruction by extremists on either side and, especially, to take the wind from the sail of SinnFein/IRA. The SDLP scheme should not have surprised them (the EC model was foreshadowed publicly in the party's recent election manifesto) but they appear to have been taken aback both by the sweep of the proposals and by the SDLP refusal to modify them. (They might have expected the SDLP to show little of their hand in Strand One and to have to force the pace

*Sir P.
has no
mediating role
between Sir N
& the parties*

themselves to secure broad areas of agreement on devolution which they would then have used to justify transition to Strand Two to the Unionists.)

Instead, they have been desperately trying to move the SDLP off the external parts of their scheme and to absorb the rest of it in the flow of conventional thinking about devolution. They suggest that the Unionists are prepared to contemplate the SDLP's idea of separation of powers, the proposal for a small powerful executive commission, a relatively weak Assembly and a Council of Ministers of Ireland although they wonder how the SDLP will flesh out that proposal. They say these ideas have merit and are all open to discussion but the external and (half) unelected nature of the commission is too much for Unionists to swallow and must be removed to permit further progress. The British convergence paper circulated on Monday night to the party leaders suggesting residence qualifications and a system of cooption by the elected commissioners, with the SDLP consulting Dublin as they wished, was a step in that direction.

SDLP proposals "taken too far"

Alston urged that this initiative should not fail because proposals (the SDLP's) had been "taken too far". If it was allowed to fail on that ground, the two Governments would feel a sense of guilt in retrospect. He was referring here to a sense, which no doubt is shared by the Secretary of State, that Faulkner was pressed too hard on the Council of Ireland at Sunningdale and that the Unionists should have been brought in somehow on the Anglo-Irish Agreement.

I declined the idea that the SDLP had gone too far. The weakness of the conventional models of devolution was something we had discussed before and that had been analysed by Seamus Mallon, in particular, in statements and interviews. The weakness was that any executive or committee elected by an Assembly, purely internal in character, and given only modest powers and specifically not security, anti-discriminatory or fiscal powers, would be inherently unstable, appearing responsible enough to be a target for extremists but lacking the weight to deal with the basic problems. Moreover, these models all posited the Unionist belief, most often publicly asserted by Paisley, that security policy could be separated from political policy which was a view rejected by both Governments. It was reasonable to argue that only a scheme with the elements, including the external elements, put forward by the SDLP could actually provide the stability and durability everyone was looking for.

Unionists responsible for the impasse

The impasse had been caused not by the SDLP initiative but by the Unionist refusal to negotiate on the basis of all the proposals. From the moment of its tabling, they and, indeed, the British, had wanted the SDLP to withdraw from their

proposals or at least from the element of "externality". The Unionists would not negotiate for devolution under Article 4 of the Agreement because the Agreement was anathema and any talks had to be held outside it; now that talks were being held outside it, they were seeking to limit the SDLP to what they thought the authors of the Agreement had envisaged.

Exactly // Alston was prepared to acknowledge the last point. The British accept that the SDLP are entitled to put forward their proposal for external membership of an executive commission since the talks are taking place outside the terms of the Agreement. They even profess to be agnostic about a Dublin nominee in the executive commission (although opposed to an EC nominee). They argue simply that whatever their merits the external elements of the scheme are unachievable, a "war issue" for Unionists in Peter Robinson's phrase last week, and certain to bring the talks to an end if they are maintained. It remains the British view that the SDLP are inflexible, saying "take it or leave it", and that they must realise that they have no hope of getting the Unionists down their road.

Success of the SDLP a factor?

The British attitude to the SDLP is, I think, coloured by the view that the SDLP has been successful - perhaps too successful for British strategy - in strengthening its position within Nationalism and vis a vis Unionism since the Agreement. They have won seats and influence and obliged the Unionists to accept the three-relationships analysis for the talks and a veto for Dublin on internal structures ("nothing is agreed until everything is agreed"). They have now forced the Unionists into further rethinking of their own proposals by taking the initiative in Strand One. The British would argue, in short, that the SDLP have done very well for themselves but have now gone too far in expecting the British Government and the Unionists to swallow a suddenly-produced plan for external elements in the government of Northern Ireland.

It is one of many ironies that it is the Nationalist rather than the Unionist side that has taken seriously the formal position that the talks are outside the Agreement and has come up with new proposals. The British have steered a typically steady but unimaginative course. It has been their policy for the last twenty years to secure devolution on the basis of widespread acceptance in Northern Ireland and that policy is stated in Article 4 of the Agreement where the Irish Government also declare their support for it. To give effect to the policy, the Unionists needed to be got off the hook of their refusal to talk about devolution or anything else while the Agreement was in place. Once that was achieved and leaving aside the issue of scrutiny of Northern Ireland legislation at Westminster, it is doubtful if the British gave practical thought to anything very different in substance to the Agreement plus devolution on conventional lines. They and, perhaps, many of the Unionists see the formal position

that the talks are taking place outside the Agreement as just that, a formality.

Unionists prepared to live with the Agreement ?

The British argue that the Unionists are now prepared to live with what they violently opposed in 1985/86, ie, a role for Dublin in the government of Northern Ireland in respect of powers that are not devolved, notably, security and human rights. Alston even suggested that the Unionists might yet openly accept the Agreement and seek devolution under Article 4 as a lesser horror than the SDLP plan. Whatever about the last suggestion, the British would argue that if the Unionists are prepared to live quietly with a role for Dublin in the affairs of Northern Ireland, then what the authors of the Agreement set out to do has been achieved and the Irish Government and the SDLP should work on the basis that the internal structures in Northern Ireland should indeed be internal. They point out that the Irish Government is bound by Article 4 of the Agreement to support the British Government's policy of achieving devolution on the basis of widespread acceptance (this is the case but we could argue reasonably that any particular proposal would require SDLP support to pass the test of widespread acceptance).

More to come from the SDLP?

It is relevant to the judgements now being made by the British and the Unionists that they assume that the SDLP paper is not the full story and that there would be more to come in Strand Two particularly on the Council of Ministers.

Government of Ireland Act 1920

They also wonder whether our proposals in Strand Two will not be just as radical. They are still anxious about our wish to have the Government of Ireland 1920 Act on the table as the Minister of State told the Dail again this week in reply to a question from Deputy Peter Barry (Alston thought it unhelpful that Deputy Barry had put down the question). If, as Mayhew told me at Hillsborough last month, the raising of the 1920 Act is intended as a tactic to counter the Unionists on Articles Two and Three, he has no problem with that although he urges us to avoid mentioning the Act and to rest simply on the March 1991 statement which permits everyone to raise any issue including constitutional issues. The reasoning seems to be that whereas Articles Two and Three represent a claim, the 1920 Act is the legal basis for the existence of Northern Ireland within the United Kingdom. To have it on the table is to have the status of Northern Ireland on the table. It is one thing for Nationalists to say they would like a United Ireland; it is another to insist that the legal basis for the status of Northern Ireland must be on the table when a majority in the North clearly has no wish to change that status and when the Agreement affirms that any change would only come about with majority consent.

A "collective decision" on Strand Two?

In the present circumstances, the British are no longer echoing the old Unionist condition of substantial progress before moving to Strand Two or even talking of the need for momentum as Alston has been suggesting here in recent weeks. This week, he spoke of what to do if there is "no progress". He hinted that Mayhew may suggest a "collective decision" not to proceed to Strand Two. I doubted very strongly if we would be amenable to any such suggestion; the decision was the responsibility of the Secretary of State under the terms agreed in March 1991; and he could scarcely expect us to join in a decision to end or defer talks in which we had never had an opportunity to participate.

Mayhew has genuinely wanted to move to Strand Two and, of course, has put himself on record that that is what he wants to do after 5 or 6 weeks. He may in the end try to persuade the Unionists into Strand Two on the basis that that is the agreement among the participants and that the process should be fully tested. However, the British make the point that he could not oblige them to go into Strand Two even if he wanted to. Under the terms of the statement of 26 March 1991, he will "propose" that Strand Two be launched when "after consultation" he judges that appropriate. At the moment, the British are saying in effect that even if he did judge it appropriate to move, his proposal would not be accepted by the Unionists.

Unionist position on breakdown?

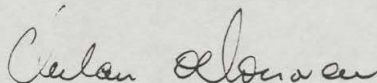
We have to rely here on British assessments which does not put us in the best position to judge the Unionist position. For what its worth, I have the sense that whereas hitherto, Unionists have backed off potentially fatal positions or allowed the British to find a way to get them through their own obstacle course, this time they will break on the external elements in the SDLP scheme unless the British Government puts them under very strong pressure which they do not yet seem disposed to do. The Unionists would then hope to persuade the British Government to act unilaterally to step up security and to bring a measure of democracy to the Province as they would put it. That is likely to involve a Westminster Committee or other means of scrutinising legislation, more powers for local government and greater access by the Unionist parties to the administration. Unionists might also call on the British Government to impose a form of devolution (granted the British Government's own 20 year policy that devolution must be on the basis of widespread acceptance, we could presume they would not heed such calls).

These palliatives would not tackle the underlying problem and although Mayhew is a strong Unionist and appears a less patient man than Brooke, his keen interest in coming here and his attempts to allay Nationalist suspicion of him suggest

that he will continue Brooke's work for agreement on more substantial measures, although perhaps ringing some changes. It might be that having been frustrated, as they see it, by the SDLP, the NIO will renew their discreet courtship of Sinn Fein.

Finally, there is a view here that the political parties are simply not equipped to deal with the problem and that below the political level there is a more vital and imaginative impulse already at work in both communities which will change the scene in a few years. A fellow guest at a NIO dinner tonight, who is involved with community organisations, found sympathy for her worry that the talks may be taking place too soon, that any deal struck now is likely to be inadequate and that something much more impressive might be agreed a little down the line.

Yours sincerely



Declan O'Donovan
Joint Secretary