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Meeting between Irish Ministers and UUP Representatives
Stormont, Friday 23 October 1992

Those present were:-

Irish side: Tanaiste, Minister for Energy, Minister for Justice (who joined the meeting after ten minutes because of a prior meeting with the Secretary of State) and Messrs. Brosnan, O hUiginn and Dorr;

UUP: Reg Empey and Chris McGimpsey.

The following is based on brief notes taken during an informal and friendly discussion which lasted about thirty minutes. (For clarity, I have added numbering to Empey's points below.)

Empey We do not have a great deal of time (because of the larger meeting of Talks participants) but I always think that short meetings held more frequently are best.

We have been looking back on 1973 (i.e. Sunningdale) to see where the flaws were. Seamus Mallon has made the point that it is necessary (in an agreement?) not to leave things on the long finger but to ensure that things are done simultaneously.

We felt first that there would be need to have (any institutions) boycott-proofed. We believe this can be done.

Second, it might be necessary to stipulate a certain minimum number of meetings per annum. We would see no difficulty about this.

Thirdly, as regards the areas which would be dealt with (by North/South institutions) they would obviously be the areas where powers had been transferred but there could also be circumstances where non-transferred matters would have to be dealt with. In that case, however, there would be need obviously for participation of HMG.

Fourth, we believe that in the period between outlining an agreement and its implementation there would be need to study and work with the aid of officials in order to identify areas of responsibilities so that we would have a starting off point

when it came to be implemented. We could not do this on our own. We are not experts and we would need the help of officials on that. However, we have been able from our own studies even at this stage to identify thirty-five areas where there is ongoing cooperation at present. It could be of benefit to rationalise these and include them in the functions. This could be worked out in that period I spoke of between the outline agreement and the actual implementation.

Fifth, as regards implementation - we think there are several ways in which it could be handled. There is no single answer and not everything would be slotted into the same system. If it were agreed (recommended) that certain policies should apply throughout the island or certain subjects should be harmonised they could be dealt with in different ways (according to the subject matter):-

- (a) It could be consultation and coordination between North and South and each jurisdiction would then apply the same provisions or regulations after such consultation in its own jurisdiction if that were the appropriate method
- (b) If this is not possible (? sic) an agency could be appointed, backed by legislation to perform its functions over both jurisdictions and report accordingly. We would see no difficulty about this provided it were given funding, a legislative base and powers. Such a body could implement functions on its own in accordance with its own mandate. An example could be tourist promotion in North America.

So, as we see it there would not necessarily be a single method but these are two which occur to us.

This does envisage executive functions on an all-Ireland basis without our feeling at constitutional risk and with benefit to all.

Sixth, as regards composition of the body. This has to be a grey area because we do not know where we are coming from in Strand Three as yet. We see no difficulty about Heads of Departments or whoever being involved. The point is however, there is a range of possibilities and until we are clearer about the institutions of Strand 1 it is difficult to be precise about the composition of the North/South body (i.e. in the sense of who would be the Northern representatives).

Tánaiste I appreciate what you have been saying. I am puzzled however, about Strand 1. Is there a chance of reconvening it and of achieving a rapport?

Empey We are anxious to get back to Strand 1. We met the SDLP last week and we hope to meet again today.

[The Minister for Justice and Mr. Brosnan joined the meeting at this stage and Mr. Empey recapped on what he had said so far broadly on the lines noted above.]

Minister for Justice Have you discussed this with the British Government?

Empey (While I did not make an exact note my memory is that Empey said that they had not done so in detail.)

Minister for Energy Does what you are saying have full agreement of your Party? For example does your Party Leader Mr. Molyneux agree with it?

Empey and McGimpsey together. There is no question of that - of course. This is party policy. That is quite clear.

Dorr If I might ask - I know that you would accept that North/South institutions are not merely for practical cooperation purposes but they would also have an important political role in any agreement. Would you see any difficulty if what you have been outlining for us were described as "significant executive functions"?

Empey I would see no difficulty in the sense that Executive functions can be performed on an all-Ireland basis provided the source of authority comes in a constitutionally correct way (he later explained this as meaning that powers come from Westminster via the Assembly rather than direct from Westminster to the North/South body).

Minister for Justice Would that be more or less the same as an expanded Anglo-Irish Agreement?

Empey It would be complementary. This body (?) would be linked directly to the new body we would see. The point is we are excluded at present (and would need to be brought in?). We envisage that the two Governments will continue to meet together on their own. We would expect to be part of the parent body (I am not sure that I fully understood what he envisaged on this point.)

Minister for Justice Some reserve functions would stay with the Inter-Governmental body and other functions would go to a body where all party representatives would be involved in the cooperation stakes? Is that what you are talking about?

Empey We are suggesting more than that. We are talking about something that can do something because we want it to be done.

It would have the qualities set out in that document which we did not agree (presumably the draft report of the Committee to Plenary which was not agreed because of the DUP position). It would have the capacity to do something if we agreed that that was an area where things needed to be done.

The difference between us perhaps is that you seem to see powers coming from Westminster to the North/South body. The constitutionally correct way in our view would be via the Assembly.

[There was some discussion of this point which did not, I felt, wholly clarify Mr. Empey's thinking. On the one hand he seemed to accept that the body would have to be part of an agreement and be in a position to be up and running once the agreement was ratified and ready to be implemented while on the other hand he seemed to attach importance to a "constitutionally correct" procedure which would make the Assembly the parent body insofar as transferred matters were concerned at least. A further point would be the handling of certain non-transferred matters which the body might deal with in certain circumstances with HMG representatives also present for such matters.]

The Minister for Justice pressed these points.

Empey We envisage that the body would be agreed as part of the initial package.

Minister for Justice But you say that the critical underpinning would rest with the Assembly?

Empey Yes. We envisage that the Secretary of State would be able to replace representatives if there were to be a boycott.

Minister for Justice I take it that the price would be constitutional adjustment by us.

Empey Yes

Minister for Justice Have you contemplated the kind of constitutional adjustment we need on the other side to meet the nationalist position?

Let me say here that sometimes the SDLP have a requirement which is not sufficiently advanced to meet our requirements and vice versa.

Empey That is a rather cryptic point?

Minister for Justice You might as well mention it Tanaiste.

Tanaiste Security

Minister for Justice What it means is that the significance of some things to people here are different to their significance to us and vice versa.

Empey and McGimpsey We agree very much that security is an important issue. We have not had time at our meeting to discuss it with the SDLP. But, of course, we ourselves are not free agents in that area. It appears not to be envisaged that security initiative (?) would rest with the Assembly. But we would like to consider certain issues. For example, prisons. A lot of the (violent) activity is really fuelled by a need to keep up and support families and so on. If you read Father Paul on this he brings out the point. There are many people who have been punished for what they have done but have a low re-offence rate (his point was apparently that there is a good deal in Father Paul's view that an enlightened prisons release policy could have an important effect in weaning families away from dependence on and support for the IRA).

Minister for Energy Here we can only make the point that it is an area of importance to be addressed.

McGimpsey We tabled two papers on that. We cannot move however until we see the papers which you and the SDLP promised. It needs to be looked at.

Minister for Justice That is reasonable.

Tanaiste Do you see already thirty-five areas which you would expect to transfer (to the North/South body)?

Empey Yes.

Minister for Justice Do I take it that you envisage significant executive functions without a reference back (to Assembly and Dail).

Empey As we see it, the body would be given a mandate to perform a particular function and provided with a framework of law. It would therefore be able to do its duty: it would be funded and supported from each jurisdiction. Therefore, it could perform its functions and its duty; and as long as it does that it would be free standing and autonomous. In other words if each Assembly decided that it wanted a function to be performed we would establish a mechanism to do that.

Minister for Justice It would be underpinned in advance by a built-in 'no-running away clause'?

Empey When you get things down on paper sometimes you see things that you did not see immediately at the table (i.e. in trying to think things out you see points that need to be addressed and dealt with).

Minister for Justice That is very good. We will be happy to consider what you have been telling us.

Empey Thank you. What we are saying I think should be treated as a confidential discussion to this group. We will be ready at any time to discuss these things further and to chat with you at any stage.

The meeting ended at this point as delegations were already overdue at the full meeting of the Committee scheduled for mid-day.

N.D.
23/10/92