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Butler/Nally Dinner, Friday, 18 December, 1992

Some Notes on points discussed

The dinner took place in Government buildings. Those present were:

British Side: Sir Robin Butler, Cabinet Secretary; David Fell, Permanent Secretary, NIO; John Chilcot, Permanent Under-Secretary, NIO; Sir Timothy Daunt, Deputy Under-Secretary, FCO; Quentin Thomas, NIO and Ambassador Blaithewick.

Irish Side: Messrs. Nally, Brosnan, O hUiginn, O'Donovan, Ambassador Small and the undersigned.

The following are partial notes only on some of the points discussed.

Political Situation in Ireland

The Irish side, in the interests of a fuller understanding, outlined for the British side the situation following the election of 25 November and the current possibilities for the formation of a new Government. The British side was, naturally, particularly interested in the likely policy consequences in relation to Northern Ireland. The Irish side explained that while there might be differences of emphasis between parties, it was likely that any Government which emerged would have to address the same realities in Northern Ireland once it came to office. In particular in considering the possibility of a referendum to change the Constitution (which is now a condition for any new agreement so far as the Unionist parties are concerned) any Irish Government would have to weigh carefully the chances of success. Any Government would, therefore, be concerned to ensure that the 'package' which emerged from negotiations was such that it would carry the day in a referendum. How far it adequately met the position of the Northern Ireland minority would be an important factor in judging the chances of success with the electorate here.

Possible resumption of negotiations

The British side emphasised the urgency of the timetable in the new year if substantial talks were to be got under way. Chilcot said that the local elections of 6 May would cast a strong 'backward shadow' and lead to greater competition between the DUP and the UUP. He thought, therefore, that the choice the two Governments would face in January was whether to engage in what he called 'an uphill fast sprint' or a much longer race (extending well beyond 6 May).

As to the formation for any talks which might now take place, he thought that the principles of the 26 March statement were right but that some new formula might need to be considered. He spoke of the previous talks as having advanced things and brought parties closer but noted that the closer they come the more difficult the issues become. He compared the talks in this respect to two magnets of like polarity which repel each other more strongly as they are brought closer together. Fell thought there would be several phases in any negotiation:

1. Working out heads of agreement.
2. Six months further work to flesh out the heads of agreement into an actual agreement.
3. Popular approval (referendum/election).
4. Such legislation as may be required.

He thought that much of the work towards heads of an agreement had been done in the previous talks except for the area of security cooperation and estimated that to complete it might take two months. He thought, therefore, that it would be necessary to be into genuine negotiations by the beginning of February. If not, then he wondered about either pausing to allow private bilateral meetings to take place or seeking to arrange a much longer gap (between Conference meetings) which would carry the process through the elections of 6 May on a basis which did not involve any party commitment during the election period. For this reason he thought January would be a crucial month and that it was urgent to begin contacts. He suggested that once an Irish Government was formed there would presumably be an informal meeting between the Secretary of State and the relevant Irish Minister and this would possibly be followed by two Conferences in quick succession before the gap.

Chilcot commented that the DUP and the UUP are now in mortal combat.

Dorr said that if the election of 6 May was casting a shadow the effect would already be felt. He emphasised also in considering the four stages outlined by Fell that it was necessary not to see the matter as a bureaucratic exercise only but to look at it politically. It would be necessary to think through the effect of announcing heads of agreement and then engaging in six months further work to flush it out. The Sunningdale experience should be kept in mind in judging whether this approach was politically wise.

Chilcot thought that the 'fleshing out' process could extend to a year.

Nally wondered if it might be possible to devise a form of negotiation where negotiation could take place in private with reporting back to political leaders through groups or committees.

O hUiginn said that the Unionists had come in to the previous talks with great expectations that the Nationalists would be oncoming. This had not been borne out and it had been a somewhat messier business. (They should not exaggerate what the Nationalists could 'give'.)

Quentin Thomas felt that the previous talks had never quite broken through to a proper negotiating mode because of various preconditions. However, in the last four weeks the talks had tried to break out of this bind. Then a second problem had arisen - the reluctance to engage in specific terms. There was a great deal of talk at the level of generality. Is there a deal there and are we going to find it? He said 'we think yes'.

O'Donovan wondered if the local elections in May were as serious an obstacle as the British side suggested. If so then there were fundamental questions to be considered now.

Chilcot raised a question which he felt there was no easy answer. Is it necessary to bring in the DUP?

Dorr Yes. Another point to remember is that if we let it be known that talks had ended definitively without prospect of resumption then this would encourage violence.

O hUiginn felt that the British side were too pessimistic about the local elections. He also noted that for many in the South Ian Paisley is the representative Unionist. He asked the British side if they could get the Unionists back to the talks without preconditions?

Fell As well as the competition between the UUP and the DUP in the local elections we must also think of the competition between the SDLP and Sinn Fein.

As regards the talks all parties signed up to come back again. We should engage in all sorts of bilateral meetings. These will demonstrate what preconditions there may be, whether a gap is needed, whether the parties can continue to negotiate through the May elections and so on. The minimum we should address now is these issues.

Butler Nothing is absolute. But to minimise the risks we should be getting on ahead as soon as possible.

O hUiginn Is getting the Unionists back to the table as likely as all that?

Thomas No one of us sees any real preconditions being set by them except of course for the Article 2 and 3 issue.

O hUiginn There are two elements in the Unionists parties. One wants to use the Article 2 and 3 issue in a symbolic way to show that this or that needs to be done; the other will say that Articles 2 and 3 are of no account and that the real

issues lie elsewhere. A fuller understanding of the issue of possible change in Articles 2 and 3 had been helpful to the liberal Unionists. It was clear that any referendum here could not be a plebiscite on approving partition - otherwise the proposal would be lost. It also seemed that Articles 2 and 3 would have to be 'burnished' to help the liberal Unionists (i.e. by showing what a major step it would be for Irish nationalism to give them up).

Nally Looking at the three Strands as someone who was not directly involved in the talks it seems to me that in Strand 1 there is virtual agreement on an assembly. The problem is that the SDLP are insisting on external Commissioners. In Strand 2 the problem relates to the North/South institution and whether it should have legislative powers from the Assembly on the one hand and from the Dail on the other. This is very difficult; in Strand 3 there is the question of Articles 2 and 3. This depends on what type of institutions will emerge. However, all these problems can be analysed in order to produce a composite draft agreement. What I wonder is - can work go ahead at official level on these issues and bring the politicians in later?

Thomas That would mean excluding the four Northern Ireland parties. The greatest need in my view is to be specific about North/South institutions, how they would be financed, staffed etc.

Butler It is in Strand 2 that there is least precision. But there are a series of areas where it would be in everybody's interest to have organised North/South cooperation through institutions.

O hUiginn The political issue continues to intrude.

Dorr explained that apart from any desirable practical benefit from North/South cooperation there was a political need to point to a substantial North/South institution in so far as minority identity were concerned. Sunningdale and the Anglo-Irish Agreement provide a schematic model for any new agreement in the sense that each had a provision setting out a constitutional accommodation (parallel declarations at Sunningdale and Article 1 of the 1985 Agreement). On this in turn certain institutions were built. Some similar pattern would now be required and it could not simply be a matter of trading off change in Articles 2 and 3 in return for institutions. There had to be an internal balance in the accommodation reached on the constitutional issue and the balance in turn between that and the institutions rather than simply an institutional/constitutional trade off.

O hUiginn said that the problem in Northern Ireland is that everyone identifies themselves as belonging to one or other community. The British presence is the fulcrum of all politics in the area. There are, therefore, two ways to go:

(a) to drift on with direct rule tempered by the Anglo-Irish Agreement; or

(b) to try to crack the problem and get something that people will rally to.

The constitutional problem underlies everything and it infects the institutional and the security problems. Therefore, something has to be worked out on the constitutional issue first. But that cannot be a plebiscite endorsing partition.

The problem, therefore, is can you find something that will work for both communities. At present the Nationalists are relaxed because they think they are winning while the Unionists are afraid because they think they are losing. For us also the British presence is central. If we are to take risks we need an insurance policy from you (i.e. the British). Therefore, when we have a Government formed it is best that our Ministers get together quickly.

Chilcot spoke of the disagreement in Strand 1 where a key point for John Hume was the separation of powers. He felt that it would be possible to provide for this in ways other than those which Hume had pressed for.

General Comments

The foregoing are very partial notes only. (I ceased to take notes during the latter stages of the dinner.)

The following are some overall impressions which I formed and which may be of interest.

1. At the outset the British side seemed concerned, in a coordinated way, to impress on us the urgency of a decision to get dialogue under way again once a new Government is formed here because of the shadow which will be cast backward by the local elections on 6 May. As discussion proceeded, however, they were much less insistent on this and indeed did not seem to press the issue very much further. Perhaps they felt they had made their point and left it with us.
2. The British side are considering the possibility of an agreement without Paisley but do not know whether this would be feasible or not. They see a possibility that support for the DUP would drop greatly in the local elections.
3. The British side, at their most optimistic, think that heads of agreement could be worked out within a few months but they see a long drawn-out bureaucratic process of fleshing this out afterwards before an actual agreement emerges. This kind of stretched out timetable is something we need to consider - would it be unwise

politically to announce heads of agreement and then take six months or a year of further work before an agreement emerged?

4. Butler seemed unfamiliar with the argument that the Constitution (i.e. Articles 2 and 3) could not be traded off against institutions. He seemed to approach the idea of North/South institutions from the viewpoint of practical benefit without any deep conception of the political role of such institutions from the viewpoint of the minority. Ambassador Blaithewick in private conversation with me felt that both sides were talking at cross purposes on this issue. He assured me that the British side do understand the political importance of North/South institutions in any settlement and that they are not just focused on the practical benefits of cooperation.
5. The British side may have overestimated the possible differences in Government policy on Articles 2 and 3 which would arise from the formation of a Government with one party rather than another in power. I felt they would have got a clearer picture from our discussion that certain realities and constraints exist which any Government here would have to take into account - notably the need to have an adequate package which the Northern Ireland minority would find acceptable if there was to be a referendum here on Articles 2 and 3.
6. The British side may also have felt that differences of approach on the part of SDLP leadership - particularly as between Hume and Mallon - are of particular significance from their viewpoint. We emphasised to them that they should not take the 'softer' parts of the respective positions in building up a composite view of what the SDLP will stand for.



N. Dorr
Secretary
21 December, 1992.