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AN ROINN GNÓTHAÍ EACHTRACHA
DEPARTMENT OF FOREIGN AFFAIRS

BAILE ÁTHA CLIATH 2
DUBLIN 2

SECRET

20 August, 1992

Mr. Frank Murray,
Assistant Secretary,
Department of the Taoiseach,
Government Buildings,
Merrion Street,
Dublin 2.

Dear Frank,

The enclosed note is intended to flag to the Taoiseach the kind of decisions which the Government will very shortly have to address on the Talks. You may wish to pass it to him on his return.

It would be helpful to know what material the Taoiseach would wish prepared for the discussion at Wednesday's Cabinet.

Yours sincerely,

Seán O hUiginn
Assistant Secretary

Note for Taoiseach

Main points to be decided on Round-Table Talks

Procedural Issues

1. The Talks resume with a Business Committee meeting on 1st September, followed by a plenary session beginning on 2nd September. Delegations are to submit papers by 28th August (in our case papers on "Constitutional issues", "Identity and allegiance" and "Underlying realities"). It is envisaged that after 2nd September the Talks will go into a committee format (essentially a slimmed-down plenary) of three per delegation.

- Decisions:**
- (1) Clear papers before 28th August. (The drafts will be short general restatements of opening positions, and will avoid any new policy implications pending Government decisions on the Talks strategy).
 - (2) Decide composition of Government team for the committee format.

Substantive Issues

2. The unionist (and apparently British) objectives are:
 - confirmation of the UK status of Northern Ireland, to enable unionists to accept a modified Agreement.
 - Substantial devolution to Committees of an elected Assembly.
 - A directly elected "watchdog" panel of 3, and certain additional safeguards, such as a Bill of Rights.

- A residual functioning of the Agreement on non-devolved matters (security, some confidence issues).
 - A Council of Ireland.
3. Confirmation of the UK status of Northern Ireland is the basic unionist requirement for movement on any other front, and is now backed by the British. The Talks could therefore very quickly break on the issue of the Irish Constitution. This could be a divisive outcome here. It could also, for the first time since the troubles, make nationalists rather than unionists appear in the negative role as regards political movement. If Government negotiators are to avoid being put on the defensive on Articles 2 and 3, the Government may have to take the initiative in putting forward a plan of its own to widen the debate.
4. Such a plan - which would inevitably be leaked - would have to be sufficiently worthwhile from the nationalist point of view to justify changes in the Constitution and Agreement, if accepted. At the same time it should be sufficiently realistic to be seen as a reasonable stance by the public here and elsewhere, if it precipitated a unionist walk-out or rejection. (It should also encourage rather than reverse any rethink which may be taking place among the men of violence on the futility of their campaign).

Elements in Package

5. Broadly speaking any package will contain two elements:
- (i) language to deal with status/constitutional issues;
 - (ii) provisions for institutions or structures.

Language on Status

6. There is a danger that the British, sincerely or otherwise, may try to persuade us that we should make concessions on status in return for developments on structures. This requires great caution. The constitutional issue is the dominant political issue for unionists and nationalists alike. The latter may be dismissive of structures which carry no implications for status and any structure may collapse. We should therefore maintain the position that the concessions on status being demanded in a unionist direction should be offset by corresponding concessions in a nationalist sense. Since we accept that no change in status would take place without the consent of a majority in the North, the gesture might be some movement by the British from their present neutral acceptance of the legitimacy of agreed unity in the abstract, as in Article One of the Agreement, to some form of endorsement of the idea, however guarded, e.g. an echo of the aspiration in the Government of Ireland Act, but for any context, including independence, which both parts of Ireland may agree. The inclusion of such a notion in the mandate of new North/South structures would be politically valuable.

Structures and Institutions

7. In practice any new North/South structures are likely to be
- (a) some form of Anglo-Irish Conference, perhaps with some Northern participation;
 - (b) A Council of Ireland;
 - (c) Some combination of the two.

8. A revamped Conference would be the most practical North/South forum, since it would enable the Government to deal with all those areas where the British take the decisions (reserved matters, EC issues, etc.). Offering Northern participation in the Conference (for example to the Panel) would be seen as a conciliatory gesture and provide on-going dialogue with the unionists. On the other hand a Tripartite structure would involve an in-built British presence and perhaps limit the capacity of the Conference to by-pass unionist obstructionism, one of its main attractions for Northern nationalists. The Council of Ireland would have to operate on a basis of consensus and reciprocity between North and South. There would be great unionist resistance, and perhaps difficulties on this side also, to launching it with extensive powers. If it begins modestly, unionist wariness and administrative inertia on both sides are likely to seriously limit its capacity for growth. A combination of both structures might therefore be best.

Possible Proposal:

9. Balancing these various factors, the Government might consider proposing an alternative agreement with broadly the following elements:
- (i) a preamble (stressing equal legitimacy of both traditions, rejection of violence, etc.)
 - (ii) explicit reference to the UK status of Northern Ireland, balanced by a strengthened British acceptance of the legitimacy and, ideally, the desirability of agreed unity;
 - (iii) endorsement of Assembly/devolution arrangements, as they may be agreed between the Northern parties;

- (iv) strengthening of the three person "Panel" into an instrument for promoting cross-community consensus but with an internal nationalist veto on certain issues in Northern Ireland;
- (v) expand the Conference to a Tripartite Commission by adding the "Panel", with corresponding change in the Secretariat (Security issues still reserved to the Governments?)
- (vi) Give the Tripartite Commission
 - (a) the role of continuing the essential functions of the present Conference;
 - (b) a monitoring and appeal role in relation to work of the Panel, including provision for the two Governments to temporarily carry out its functions in case of failure or deadlock;
 - (c) a North/South coordinating role, ideally with a strong mandate for harmonisation and in relation to the EC;
 - (d) a human rights role on a Bill of Rights for Northern Ireland, with perhaps appointment of a joint Human Rights Tribunal;
 - (e) a supervisory role over a Council of Ireland, which would consist of structured North/South Ministerial meetings on devolved issues;
 - (f) possible constitutional role (to decide a border poll in Northern Ireland, make arrangements for further institutional change if agreed).

10. The security issue is particularly difficult: While many imaginative joint policing schemes could be devised, they suffer from the flaws that they could either involve the Irish police in areas beyond the Government's real control, or involve a joint management that could be too cumbersome to ensure efficiency, or perhaps control. There would be great British reluctance to make drastic changes in the RUC while serious violence persists. In the absence of dramatic change in relation to the political or security situation, it may be that a continuation of present patterns of cooperation is the least problematic approach. Similarly there is no very ready solution for confidence/harassment problems while violence lasts, and no obvious alternative to our strategy of maintaining pressure as best we can on an ongoing basis.

Constitutional Change

11. It will be necessary to offer some constitutional change if the unionists are to stay at the table, but of course in a context where this would be politically feasible. Subject to an acceptable overall package, perhaps the simplest form would be a minimal enabling amendment relating to a new Agreement itself, e. g. "the State may ratify the (...) Agreement". This might focus debate on the merits of the package and perhaps sidestep the more emotive issues. It would also leave matters closer to the status quo if the package collapsed.

Timing

12. Given the possible deadline of a Conference at end-September, it might be desirable to enter into the real substance of negotiations as early as possible in September.

Decisions ON Substance

- (1) Does the Irish Government put forward a proposal? If so, what?

Whether in an Irish proposal or in response to other proposals:

- (2) Do we deal with the demand to acknowledge the UK status of Northern Ireland (with implications for a referendum)
- By refusing it?
 - By accepting it, subject to equivalent moves in a nationalist direction?
 - If the latter, what sort of language or commitment would we seek?
- (3) As regards internal Northern structures
- Can we accept any structure acceptable to both communities there?
 - Do we attempt to strengthen the "Panel" as an internal nationalist veto?
- (4) In North/South terms do we
- Accept the residual Conference?
 - Seek to strengthen its mandate in terms of North/South cooperation and add the "Panel"?
 - Do we aim for an ambitious Council of Ireland as an embryonic joint administration?
 - Do we settle for a low-key Council (probably all on offer in any case)?
- (5) Do we propose major changes in security/courts area or accept, for the time being at least, a continuation of present systems.

(6) Do we decide on a constitutional amendment, and if so in what form and in return for what package?

Seán O hUiginn
20 August, 1992

Outline of Possible Irish Proposal/Alternative Agreement

SECTION 1

Preamble

- Recall unique bonds between two islands and peoples;
- costs of failure to resolve political relationships;
- collective repudiation of violence;
- determination to cooperate;
- affirmation of legitimacy of both traditions;
- resolve accordingly to make special provisions for whichever community is in a minority position, whether in Northern Ireland now or in an all-Ireland context in the future.

SECTION 2

Language on Status/Constitutional issues

(to be worked out, but broadly:)

- development of Article 1 of the Agreement to recognise factual position of Northern Ireland as part of UK;
- no change without majority consent;
- equal validity of both traditions and commitment of both Governments to promoting cooperation, harmony and reconciliation between them and to create conditions where both traditions in Ireland can decide as freely as possible and without outside constraint, on their relationships (ideally joint endorsement of ultimate goal of Irish unity by consent);
- readiness to legislate for agreed Irish unity.

Solemn repudiation of violence and commitment to settle all differences relating to the right of self-determination by the Irish people exclusively by peaceful and political means.

Resolve that, given the equal validity of both traditions there shall be agreement to ensure special provisions, rights and safeguards in Ireland for whatever community is in a minority situation, whether in the present context of Northern Ireland or any future all-Ireland context.

SECTION 3

Structures in Northern Ireland

For as long as majority in Northern Ireland elect to remain in UK, the following structures will operate:

- Assembly (on lines to be agreed in Strand One);
- Body with executive responsibility including representatives of both communities (on lines to be agreed in Strand One);
- Directly elected Panel (different title, e.g. Presiding Council of Northern Ireland = PCNI ?)
- Technical provisions on the powers, respective competences of these bodies, relations between them, elections, committees, provisions for appointing alternatives to PCNI, etc.

Role of PCNI

- To establish and promote consensus on fundamental issues affecting constitutional matters, human rights and measures to accommodate the rights, etc. of the two communities in Northern Ireland, so as to ensure the right of each to parity of esteem and to pursue its aspirations by peaceful and constitutional means;
- to prevent discrimination and abuse in the exercise of devolved powers;
- to ensure that all legislation in the devolved field has cross-community support and does not prejudice either community;
- to certify the budget on the same grounds, and to arbitrate in general disputes between Departments regarding allocation of expenditure in devolved areas;
- to represent the people of Northern Ireland on the Tripartite Commission (see below);
- to advise in respect of the exercise of reserved powers;
- to oversee and represent interests of the people of Northern Ireland in other countries and in the EC and other relevant international organisations.

Methods of operation

- Except where there is a requirement to decide by consensus, the PCNI shall decide by a qualified or "bridging" majority, that is a majority which comprises a representative of both communities;

- Own resources and staff.

Powers

- No draft legislation in devolved field can become law without certification by the PCNI that it is not prejudicial to the interest of either community. Where such certificate is refused the Bill will be referred back to the Assembly, stating the reason for the refusal.
- Administrative actions in the devolved field referred to the PCNI by x% of the Assembly to be investigated/referred to appropriate judicial review?
- An opinion of the PCNI (or, failing that, opinions of individual members) to be tabled at second reading of Bills on reserved matters in Westminster. (Be part of Council for Orders in Council?)
- Approval of PCNI required for annual allocation of budget expenditure.
- Approval of PCNI needed for designated public appointments in devolved area.
- Consultation of PCNI on designated appointments in reserved area (veto by consensus ?).
- Some appropriate monitoring role of PCNI in relation to statutory bodies?
- PCNI to commission SACHR/or set up analogous body to recommend a programme of measures to enhance mutual understanding and respect between the two traditions, including a charter/code of practice on ensuring parity of

esteem, avoiding divisive symbols in administration, etc.
The PCNI to have power to propose legislation in these
issues.

- The PCNI to have power to propose legislation arising from deliberations of Tripartite Commission.

SECTION 4 - North/South Structures

Tripartite Commission on Northern Ireland

- Anglo-Irish Conference to be expanded into Tripartite Commission by addition of the three members of the PCNI.
- The Tripartite Commission to have a mandate (derived from Section One) to promote "bonds of union" (to echo the Government of Ireland Act memorandum) between North and South.
- The Tripartite Commission to subsume all the functions and competences of existing Anglo-Irish Conference and the principles and understandings relating to it
- (Security to remain reserved to both Governments, subject to regular briefing of Tripartite Commission as a whole ?).
- Any member of PCNI may put forward views and proposals on any matter within the competence of the Tripartite Commission.
- Tripartite Commission to be the appeal body where PCNI fails to function. (Decide issue (a) by consensus of two Governments or (b) majority vote among five members, with veto powers for Government on matters of sovereignty,

constitution, basic security and exchequer expenditure? Veto collectively for PCNI also ?).

- Tripartite Commission to assume role and function of PCNI pending elections for next term of office if the PCNI becomes unable to function for any reason.
- Bill of Rights (and inter-community charter?) to be entrenched with Agreement. (Tripartite Commission to appoint a mixed human rights Court?)
- Tripartite Commission to promote and coordinate North/South cooperation (again with explicit and proactive mandate and possibly agreed programme of work).
- Tripartite Commission to draw up coordinated approach to maximise benefits of EC for both parts of Ireland. (Specific programme in this regard? Specific powers?)
- A Council of Ireland to be established, with consultative and possibly limited executive powers, involving structured periodic meetings of North/South Ministers in devolved areas. The nature and competences of the Council will be defined in the Agreement.
- Tripartite Commission to oversee work of Council of Ireland in devolved areas and coordinate with it, through joint meetings, etc., on appropriate matters involving reserved or excepted areas.
- Tripartite Commission to have consultative role on security situation with powers to recommend withdrawal to barracks, review of prison issues, etc., in the event of an improved security situation, etc. (as a way of discreetly flagging potential changes which might flow from peace).

- Tripartite Commission to have monitoring/decision role in relation to future constitutional developments (e.g. expediency of holding a border poll, proposing changes in structures, etc.).

SECTION 5:

General

- Pledge by both Governments that measures to protect unionist minority in any future all-Ireland arrangement would incorporate at least as extensive a range of safeguards as those to be in force in Northern Ireland under the present agreement.
- Some additional appropriate entrenched safeguards for the unionists in that eventuality (e.g. that if a majority agreed to a united Ireland in terms of Article 1 of the Agreement, the key constitutional, human rights, etc. arrangements would require approval of a majority of representatives of unionists before unity arrangements could be put in place).
- Role of Tripartite Commission and functioning of present Agreement to be reviewed twice yearly at Prime Ministerial level between the Irish and British Governments.
- Provisions for review/amendment of the Agreement, etc.

AMENDMENT OF IRISH CONSTITUTION

Note: Consequential amendment of Irish Constitution might be kept minimal: Possibly a simple enabling amendment could be added, without deletion of existing provisions, e.g. "The State may ratify the Agreement". If necessary a general clause

could be added on the lines "the provisions of this Constitution shall be interpreted in light of its terms".

SOh

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