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19 May 1998

No of pages including this one: 8

To: HQ
To: Secretary Gallagher

From: Belfast
From: Joint Secretary

Subj: Conversation with Tony McCusker

Tajisearh
There may be a
NIO tendency to disregard
para 10 of strand 2,
which will need
watching. I
am
making
this
print
to D/FD.
hkr
21.5.98

1. Tony McCusker, as you are aware, was recently appointed at the behest of the Secretary of State to a specially created high-level post at the NIO as Director of Policy and Presentation. Along with John Semple, he is currently charged with overseeing the transition from direct rule to the new institutions in Strands One and Two. Both are likely to figure prominently in the support arrangements at official level for these institutions (with Semple a likely candidate for Cabinet Secretary or its equivalent).
2. McCusker called to the Secretariat yesterday for an informal discussion of various matters relating to implementation of the Agreement.

Settlement Bill

3. We pressed for the earliest possible receipt of a copy of the envisaged Settlement Bill (or, at the very least, a detailed briefing on the Bill's main elements pending finalisation of the draft).
4. Although he is not directly responsible for it, McCusker confirmed that work is actively underway on the Bill and that the aim is to have draft instructions ready for the Parliamentary Counsel by the end of this month. The subsequent timetable envisaged is that the Bill, having been brought to finality by the latter, would be tabled either at the end of June or in the first week of July; that it would clear its Second Reading before the summer recess; and that the "spill-over" period next

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October would be used for the Lords and its Third Reading, enabling passage by the end of the year.

5. McCusker and Bell, who was also present, undertook to arrange a briefing for us at the earliest practicable time (which, they indicated, would be around 10-15 June) and to follow up with a copy of the Bill some time during the second half of the month. In the latter respect, they emphasised the problem of Parliamentary privilege (which could become even more sensitive than usual if there is a highly contentious Assembly election campaign in progress at the same time). They recognised, however, that it should be possible to give us a comprehensive account of the material in the Bill without breaching the principle of Parliamentary privilege.
6. Bell indicated that the references in the Bill to the North/South Ministerial Council will be of a fairly summary kind. (We hope to obtain more details shortly).
7. McCusker and Bell emphasised the unique complexity of the Settlement Bill and the problems involved in trying to telescope its preparation so that it may be capable of introduction by early July. They mentioned that interim standing orders for the Assembly are also in preparation at present.

Strand One

8. McCusker said that they have had little further response from the parties to the questionnaire which they sent around last month on logistical matters relating to Strands One and Two.
9. We took the opportunity to deliver a mild rebuke for the issuing of questions relating to Strand Two arrangements without any consultation with ourselves. We pointed out that we should have been consulted both on the intention to put such questions and on the terms used and we criticised the prejudicial language used on some points. McCusker, who had not been directly involved in the exercise, acknowledged our criticisms to be justified and assured us that there would be full consultation in relation to all such matters in future.

10. The NIO have had occasional exchanges about Strand One logistical matters on the margins of more general discussions with David Trimble, Mark Durkan and others arising from the referendum campaign. The Secretary of State has also met Sinn Féin. However, no very clear picture of preferences has emerged from these contacts.
11. On the location for the shadow Assembly, the UUP, Alliance, the Loyalist parties and the NIWC all favour Parliament Buildings. Sinn Féin, on the other hand, are opposed to any location within the Stormont estate (because of the historical resonances and also for security reasons). The SDLP appear to be open-minded. Hume expressed no view either way when the matter was raised with him. Durkan, who has been nominated as the party's contact person on practical matters of this kind, was relaxed on the subject but suggested that Mallon might lean towards the Sinn Féin view of Parliament Buildings.
12. It is for the Secretary of State to decide the location for the shadow Assembly. McCusker and his colleagues are anxious for organisational reasons to have her take this decision this week. From a logistical point of view, Parliament Buildings is the most suitable venue - except that this option would require the transfer of the Secretary of State and her Ministers from their offices there. The other possibility is Castle Buildings but this has very limited space and would require extensive reconstruction.
13. McCusker made clear that he will be recommending Parliament Buildings but that the decision is ultimately a political one - "it depends on who she is willing to have a row with". He thought that the Secretary of State's decision would not be indicated publicly until after the Assembly election.
14. As for the Assembly's permanent location, this is in the hands of the Assembly itself. McCusker suggested that the options would come down to Parliament Buildings (whether or not it has been used for the shadow period) or the construction of a purpose-built premises. In the latter respect, he mentioned that the SDLP have already proposed a possible site - the former Gasworks area in Belfast which is currently being restored. He anticipated that this matter would have to be resolved in political horse-trading between the parties - and ideally before the Assembly election.

15. The parties have signalled broad agreement that support staff are required for the Assembly and for the First Minister and Deputy First Minister. It is envisaged that the Assembly's Secretariat will consist of most of the officials who until recently serviced the Forum. As for the two senior Ministers and the shadow Executive more generally, a single Secretariat will probably be provided for the shadow period, with the option of separate arrangements for individual Ministers left for subsequent decision. A number of officials from the NI Civil Service, probably no more than half a dozen, will be seconded to it in due course. McCusker indicated that some will start work immediately after the referendum while others will have to be recruited through a systematic "trawl" of the Civil Service (in order to comply with fair employment procedures).
16. He mentioned that Martin Morgan of the SDLP has been emphasising recently in private conversations the importance which his party attach to having advisers and programme managers to support them in the initial stages of the Assembly. Without taking a view on this particular point (which they see as one for the Executive to decide in due course), the NIO recognise that the complete lack of experience of Government which is common to all prospective members of the Executive ("with the possible exception of John Taylor") could give rise to some difficulties. McCusker referred in this context to the teething problems experienced by the Labour Government last year after an absence of eighteen years from power.
17. As regards the timing of the inaugural meeting of the shadow Assembly, McCusker said that the SDLP and the UUP appear, for different reasons, to favour leaving this until the end of July. Durkan seemed to feel that the parties could do with a break after the rigours of two exhausting and divisive campaigns before plunging into the untested waters of the Assembly. There is, in any event, an extremely narrow window (a couple of days only) between the Assembly election on 25 June and the week leading up to Drumcree (5 July).
18. Trimble, in turn, wants to defer for as long as possible the prospect of sitting down in the Assembly with Sinn Féin. A point of considerably greater sensitivity for him, of course, is the question of Ministerial office for the latter. McCusker's understanding of Trimble's position is that, while he recognises that the First Minister and Deputy First Minister will be elected at the inaugural meeting of the shadow Assembly, he would ideally wish to avoid altogether the appointment of shadow

Ministers (i.e., delay the appointment of the Executive until the legislation has come into effect and the Assembly is formally in existence). He would hope to evade the question of Sinn Féin's participation in the Executive until a period of several months has elapsed in which the tests mentioned by the Prime Minister last week - and glossed by Trimble himself to mean the beginning of actual decommissioning - can be applied.

19. We made the obvious point that this would run counter to the Agreement, which clearly assumes that shadow Ministers will be appointed during the shadow period. It is envisaged that all of the new arrangements will come into effect in tandem, albeit in shadow form, during this period; a delay in the appointment of the Executive could seriously disrupt this agreed timetable. McCusker agreed, while observing that the North/South Ministerial Council can still meet even if the Northern side consists of the First Minister and Deputy First Minister only.
20. A factor which would militate in favour of the Assembly meeting earlier rather than later, he suggested, is the fact that allowances will only be payable as and from the inaugural meeting.
21. As regards the selection of a presiding officer for the Assembly, McCusker said that the Secretary of State will have discussions about this with the parties immediately after the Assembly election. While there could be a problem if the number of Yes candidates elected is dangerously low, the expectation is that an Alliance candidate will be chosen (probably Sean Neeson if he is elected).

Strand Two

22. According to McCusker, the parties have not indicated so far any particular preferences in relation to the timing or venue of meetings of the North/South Ministerial Council or the arrangements for its Secretariat.
23. On the timing of the Council's inaugural meeting in shadow form, he suggested that, if the Assembly does not meet until the end of July, the first meeting of the Council

may have to-be left until early September. While recognising the importance of the Assembly and the Council being seen to meet in fairly close succession, he suggested that any presentational difficulties might be handled by an announcement from the Assembly's inaugural meeting of an agreed date in early September for the Council's first meeting.

24. The downside of the Council not meeting before September, however, is that this could jeopardise the deadline of 31 October for identifying and agreeing the areas for "cooperation and implementation for mutual benefit".

25. We considered this point against the background of the general approach to this work which was agreed at the most recent meeting of the Liaison Group. McCusker is entirely in agreement with the idea of the two Governments exchanging views on these issues either in the Liaison Group or in a very similar format. Pending the formal establishment of the new institutions, the preparations for the implementation bodies will be taking place under the Secretary of State's auspices (and there is explicit reference in the Agreement to consultation with the British Government).

McCusker wished, however, to maintain a distinction between general exploratory work which would not commit either side and the furnishing of detailed advice on the implementation bodies to the Ministers who will constitute the Northern side of the Council. His particular worry (which was also reflected by Bill Jeffrey in the Liaison Group) is that the Unionists will get wind of any work underway between the two Governments on the implementation bodies and will suspect, and claim, that a "stitch-up" is in progress.

27. His preferred approach is that the present NI Departments would use the next couple of months to develop advice and proposals on these bodies for the future Ministers - but, in deference to Unionist sensitivities about Council decisions being preempted, in a manner which would suggest that there has been no significant engagement with the Irish Government on these issues.

28. The "consolidated official advice" mentioned in the questionnaire to the parties would be the fruit of feasibility studies which are to be launched within the NI Departments on the options for the implementation bodies. It would be offered to the new Ministers on their appointments (and could also be made available to them, if they

NOT consultation - it is for the work to make legislative and other preparatory work here on Strand 2

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wished, though informal briefings beforehand). Information arising from this process of Departmental study would be exchanged with us through the Liaison Group or otherwise but what the future Ministers receive would be presented as the advice of the NI Departments alone.

29. McCusker envisages, therefore, no representatives of the NI Departments taking part in discussions in the Liaison Group, and at most informal contact with their Departmental colleagues in the South, in the period prior to the Council's first meeting. He considers it important that Unionist Ministers should have no sense during the sensitive shadow period that deals have been done with the Irish Government in advance or that their prerogatives have been interfered with in any way.
30. As for the officials likely to be supporting the Executive (as distinct from Departmental officials), he was clearly nervous about contact between them and ourselves in the period prior to the inaugural meeting of the shadow Assembly. A "Chinese wall" would have to be maintained between these officials, once designated, and their NIO colleagues. By the same token, care would have to be taken in respect of contact with the Irish Government before instructions had been received from their future political masters. McCusker hoped, however, that the appointment of the First Minister and the Deputy First Minister at that stage would lead quickly to their officials being authorised to prepare the way for the North/South Ministerial Council and the implementation bodies, including through contact with ourselves.
31. On the assumption that Ministers from both sides arrive at the Council's first meeting equipped with basic orientations in relation to the implementation bodies, McCusker anticipates that it should be possible for officials, under their direction, to complete the task of "identifying and agreeing" areas before the 31 October deadline.
32. As regards the Secretariat for the Council, he distinguished between the arrangements to be made to support the inaugural meeting (and any subsequent meetings during the shadow period) and those for the permanent Secretariat which would come into effect with the passage of the legislation. A number of people will be made available from the NI Civil Service to join colleagues from our side in servicing the inaugural meeting. This and any subsequent meetings would be prepared by this team on an

ad hoc basis.

33. As for the permanent Secretariat, thinking on the Northern side has not advanced appreciably since our last conversation (with Semple, McCusker and Ferguson). On staffing, McCusker confirmed that they favour a small core team and, noting that the Southern element is likely to be led at Assistant Secretary level, said they would intend to match this on their side.
34. The location for the Secretariat is linked, of course, to the venue or venues envisaged for the Council's meetings. McCusker was reluctant to enter into detail on this point in the absence of any steer from the prospective Ministers on his side. He emphasised, however, that Unionists could be expected to resist what they would perceive as "two Maryfields" if both the future IGC Secretariat and the North/South Secretariat were to be located permanently in Northern Ireland. He returned to the idea of the North/South Secretariat involving two separate teams in Belfast and Dublin respectively. Peter Bell observed that, thanks to modern communications, bilocation has not been a problem for the NIO (divided between London and Belfast). This approach might also be considered more appropriate to "a partnership between equals".
35. We made clear that our Government would favour a single North/South Secretariat in a fixed location in Northern Ireland. The Agreement clearly envisages a single entity and considerations of managerial efficiency alone require this. It is also important to demonstrate seriousness of purpose on the part of the two administrations about the Council and the implementation bodies under its wing. As for the "two Maryfields" point, we trusted that the NIO would defuse any fears by pointing out that (a) the future IGC Secretariat will have a significantly reduced set of responsibilities compared with the present one; and (b) the North/South Secretariat will have to operate, like the Council it serves, by consensus between North and South.
36. We were unable to take this discussion much further yesterday but agreed to come back to it at a future date.