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Secure Fax

To: Mr. Paddy Teahan ✓
From: Secretary Dermot Gallagher
Date: 16 July 1998
Pages: 1 + 3

Mr. Hara

This is a good letter - I understand it will have gone by now.

[Signature]

To see the attached letter please before we send.

16.7.98

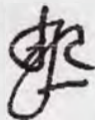
Mr. Gallagher

*As agreed. Release
copy to P. Zacher. G. + Hamilton
H. Marshall before was found.
16/7/98*

Northern Ireland Bill

We received the published text of the Northern Ireland Bill through the Secretariat yesterday evening and will be studying it during the course of the day. However, one immediate point of concern is that, far from acceding to our demands (and those of the SDLP and Sinn Féin) to strengthen the provisions of the Bill relating to the North-South Council, the British have removed the main substantive clause of the 6 July draft dealing with North-South cooperation, leaving only a passing reference to the role of the First and Deputy First Ministers in ensuring representation on the North-South Council and a provision for the Secretary of State to reestablish implementation bodies in the period before the transfer of power to the Assembly.

I believe that both we and the nationalist parties are entitled to regard this action, which it is understood was taken in response to pressure from the DUP, as a serious departure from both the spirit and the letter of the Agreement. I would propose that the Minister or the Taoiseach should write immediately to their British opposite number setting out our concerns in this regard. A draft is attached.



David Cooney
16 July 1998

Dear

I would like to thank you for having provided us with text of the Northern Ireland Bill which we received through the Belfast Secretariat yesterday afternoon. May I congratulate you, your Ministers and officials on having produced this complex piece of legislation in such a short period of time. We are currently studying the text and may wish to come back to you on certain points. However, we have one significant difficulty with the Bill which I am sure will be shared by the Northern nationalist parties and which I feel it necessary to bring to your attention immediately in the hope that the matter can be addressed before it becomes a significant cause of contention.

You will no doubt recall that one of the most difficult questions to arise in the negotiations was the extent to which the North-South Council would be given a legal base in Westminster legislation. Nationalists argued for a maximalist position, unionists for the opposite. The Agreement (paragraph 1 of the Strand Two Chapter) dealt with the matter as follows (my underlining):

“Under a new British/Irish Agreement dealing with the totality of relationships, and related legislation in Westminster and the Oireachtas, a North/South Ministerial Council to be established to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, cooperation and action within the island of Ireland - including through implementation on an all-island and cross-border basis - on matters of mutual interest within the competence of the administrations, North and South”.

In the draft of the Northern Ireland Bill dated 6 July, on which observations were sought both from us and from the political parties, there were three provisions dealing with North-South cooperation. First, in Clause 26, a general provision, which carried forward the existing provisions of Section 12 of the Northern Ireland Constitution Act 1973, allowing for a Minister or Northern Ireland Department to consult with and enter into agreements with authorities in the Republic. Secondly, a passing reference in Clause 66 to the responsibility of the First and Deputy First Minister to ensure participation in the North-South Council. Thirdly, in Clause 67 (Clause 68 in the 15 July version of the Bill), a provision allowing the Secretary of State to establish implementation bodies in the period leading up to the transfer of powers to the Assembly.

We felt that this fell some way short of the commitment in the Agreement to provide for the establishment of the North-South Council in Westminster legislation and, through the Secretariat, urged you to strengthen these provisions. I understand that the SDLP and Sinn Féin expressed similar views in meetings with your Ministers and officials.

You will understand my concern, therefore, on learning that, far from reinforcing the

North-South provisions in the Bill, you have decided to drop Clause 26 of the 8 July draft, thereby removing from the statute books even the existing minimal provisions for North-South cooperation. I understand that this action was taken in response to Unionist pressure, even though the line taken in the enclosure to Paul Murphy's letter to the parties is that Clause 26 was not necessary to the implementation of Strand Two of the Agreement.

I would like to make a number of points in response to this action. First, it will be difficult for nationalists to understand how, in practice, the North-South Council which, under the Agreement was supposed to be given a legal base in Westminster legislation, will actually be accorded a lesser level of legal underpinning than was provided for North-South cooperation under the 1973 legislation. There is a serious risk that elements opposed to the Agreement will be able to claim, on the basis of the current proposals, that the new arrangements actually mark a retreat from Sunningdale. Secondly, it will be difficult to explain why, when we in this jurisdiction felt it necessary to introduce specific amendments into our Constitution to provide for the sharing of sovereignty involved in the operation of the North-South Council and its implementation bodies, even your existing legal provisions covering such activity are to be removed. Thirdly, arguments that the Bill must contain only those provisions absolutely necessary for the implementation of the terms of the Agreement will not stand up to scrutiny when set against other provisions contained in the Bill, not least those dealing with the exclusion of parties from Ministerial office and the criteria which the Secretary of State is required to take into account in this regard.

Let me say, in regard to this last point, that I understand your political need to include such provisions. However, as we both completely agreed on many occasions, it is necessary to be aware of the political sensitivities of both communities in the drafting of a Bill of this kind.

I believe it is very important that the above serious shortcoming in the latest version of the Bill be quickly addressed. My fear is that the proposals contained in the Bill in relation to North-South cooperation will convey to nationalists the sense that the provisions of the Agreement are not being implemented in a full and balanced way. This should be avoided at all costs.

Yours sincerely

David Andrews, TD
Minister for Foreign Affairs