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FROM: R C MASEFIELD

4 APRIL 1989

RM/5709/89/JEC

DESK BY 12.45 PM

cc PS/Minister of State (B&L) - B
PS/PUS (B&L) - B
PS/Sir K Bloomfield - B
Mr Stephens - B
Mr Burns, o/r - B
Mr Thomas - B
Mr Spence - B
Mr Miles - B
Mr A P Wilson - B
Mr Bell - B
Mr Blackwell - B
Mr Kirk - B
Mr Hallett - B

PS/Secretary of State (B&L) - B

INTERGOVERNMENTAL CONFERENCE: REVISED DRAFT REVIEW COMMUNIQUE

I attach a further version of the draft final Review Communique as amended yesterday in the light of the Secretary of State's discussion with Mr Miles, and further work in the afternoon by officials led by PUS and Sir Kenneth Bloomfield. This text has now been passed to the Irish side, as that from which both sides should work at tomorrow's Conference. (We have explained to the Irish that, although we have tried to take account of the Secretary of State's preliminary views on the Irish draft, this version is one on which NI Ministers are likely to have further comments themselves).

2. The Irish side are most grateful for this text. They anticipate letting us have some suggestions for re-drafts of certain passages later tonight.

3. I also attach, at the Annex, a note of the main issues which have been identified at official level as remaining between the two sides, and needing discussion at the Conference. (There will in addition be a number of drafting points).

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4. The Secretary of State may wish to discuss these documents with officials at the briefing meeting at 3.00 pm this afternoon.

(Signed)

R MASEFIELD

4 April 1989

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THE ANGLO-IRISH AGREEMENT

REVIEW: DRAFT COMMUNIQUE

1. In accordance with Article 11 of the Anglo-Irish Agreement, the two Governments have completed a review of the working of the Conference and have considered whether any changes in the scope and nature of its activities are desirable. In conducting this review the two sides engaged in an assessment of the work of the Conference to date under each of the Articles of the Agreement and examined the overall achievements of the Conference in terms of the stated objectives of the Agreement and the relationship between the two countries. Their discussion in this respect had the benefit of a range of views put to each of them by interested groups and individuals and they wish to place on record their appreciation of all submissions made to them on the Review.
- Br to
propos
further
amend
2. Having conducted the Review, the two Governments reaffirm their commitment to the Agreement. [They underlined its continuing importance in their joint efforts to address all the dimensions of the Northern Ireland problem; and expressed their commitment to implementing it with determination and imagination.] They reiterate their unyielding opposition to any attempt to promote political objectives by violence or the threat of violence and commit themselves to close co-operation to ensure that those who resort to such methods do not succeed.
3. The two Governments reaffirm their commitment to the shared understandings and purposes set out both in the preamble and in the Agreement itself. [They stress that the Anglo-Irish Agreement represents an orderly framework for progress whereby the two Governments recognise and respect the legitimate aspirations of both communities.

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while at the same time providing flexibility for change in the internal or external arrangements of Northern Ireland, subject to the principle of consent.]

Br pass They stress that a change in the status of Northern
as subs Ireland can only come about with the consent of a majority
for 2nd of its people and that the Agreement represents an orderly
sentence framework whereby the two Governments recognise and
above respect the legitimate aspirations of both communities.

4. In line with the particular importance they attach to the mutual recognition and acceptance by unionists and nationalists of each others rights, they affirm their readiness, notwithstanding the completion of the present review, to consider adapting the future operation and machinery of the Conference to accommodate any change consistent with the basic provisions and spirit of the Agreement where the consent of the two communities for such change could be demonstrated.

The Conference

5. The two Governments reviewed the work of the Conference to date under each of the Articles of the Agreement. They welcomed the fact that the Intergovernmental Conference had met on 26 occasions since the signature of the Agreement. They considered that the Intergovernmental Conference, and the Secretariat composed of senior officials from both sides servicing it on a continuing basis, had provided an extremely valuable channel of communications between the two sides, enabling them to review in a regular and organised way political, security and legal matters mainly affecting Northern

Br amend Ireland and matters relating to the promotion of cooperation between both parts of Ireland. The Irish Government had used the Conference to put forward views and proposals on these issues for consideration by the British side. In the development of measures relating to Northern Ireland the Conference has played an important

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role, and both Governments look forward to working closely together in this context in the future along the lines laid down in the Agreement.

Br amen to sub for pass in []

6. With a view to improving the record of the Conference as a vehicle for resolving differences between them, both Governments agree that Conference meetings in the future should be organised on a more regular schedule. [at the rate of approximately ten per year]/ They noted that the Conference had met ten times in 1988 and adopted this as a future target. In addition to meeting the needs of the

ongoing work of the Conference, this regular pattern should give both sides an opportunity to review forthcoming events in either jurisdiction on a systematic basis, thereby enhancing the likelihood of resolving anticipated problems in the spirit of harmony called for by the Agreement and reducing the risk of misunderstanding or confrontation arising from particular events.

Br add "in principle"

7. Consistent with their objective of developing the potential of the Conference both Governments agree in principle that future Conference meetings should provide for widened Ministerial participation, at the invitation of the Joint Chairmen, so as to permit more structured discussion of sectoral issues of common interest to both parts of Ireland. In the interest of ensuring the fullest possible consideration of longer-term issues relevant to the agenda of the Conference, at least one meeting *

* will be devoted each year to informal Ministerial discussion.

British amend

8. In addition to these provisions the two Governments decided on a number of internal organisational procedures aimed at further enhancing the efficiency of Conference meetings. The Secretariat, which was established by the two Governments to service the Conference on a continuing basis has performed most valuable work as the liaison

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between the two Governments on matters relevant to the agenda of the Agreement. In response to a point made by several of those who offered their views, the two Governments have agreed that as much information about their discussions should be made available to the public after each meeting as possible, although some matters may have to remain confidential.

Political Progress

- Br prop
dele of
senten
- Br prop
dele of
passage
9. [Both Governments proclaimed their readiness to encourage and engage in political dialogue at all levels aimed at securing political progress]. It continues to be the British Government's policy, supported by the Irish Government, to seek progress towards the devolution of responsibility for certain powers to elected representatives in Northern Ireland. [on a basis which would secure widespread acceptance throughout the community.] Both sides recognise that the achievement of devolution depends on the cooperation of constitutional representatives of both traditions within Northern Ireland.

Accommodation of the Rights and Identities of the two traditions

10. The two Governments share a common view of the central importance in the implementation of the Agreement of measures to accommodate the rights and identities of the two traditions in Northern Ireland, to protect human rights and prevent discrimination. The Irish Government welcomed a number of positive measures which had been implemented by the British Government in this respect since the signature of the Agreement. These included the repeal of the Flags and Emblems Act, the enactment of the Public Order Order (1987) enhancing the powers of the police to control marches likely to give rise to provocation and the enfranchisement of the 'I Voters'.

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Br rev
of para 11. The introduction of new legislation on Fair Employment has been the subject of detailed discussion in the Conference. The two Governments further intend that the Conference will closely follow the effectiveness of the new legislation, recognising the need to eliminate discrimination in the workplace and establish fair employment practices in Northern Ireland. The Irish Government welcome also the launching by the British Government of a programme of action to address the social and economic problems in the most disadvantaged areas of Belfast and other deprived areas.

Br prop
del of
passage
in [] 12. Both Governments reaffirm the fundamental importance of the proper protection of human rights. They pledge to continue their efforts under the Agreement to ensure the fullest possible legislative and other protection of these rights in Northern Ireland. [and agreed to resume the study of a Bill of Rights for Northern Ireland as a means of promoting this aim.]

Br
addition
to 1st
sentence 13. The two Governments attach importance to the continuing efforts to improve community relations through developing increased cross-community contact and co-operation, and to encouraging greater mutual understanding including respecting the cultural heritage of both traditions. They recognise the valuable role which the education system can play in promoting mutual esteem and understanding between the two traditions and support the efforts made to reflect this objective in the new curriculum for Northern Ireland currently under preparation. They recognise also the importance of the Irish language in this context and undertake to support efforts to enhance awareness and appreciation of this particular strand of the cultural heritage.

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Public Bodies

Br re-wording of sent
Br add new sent 14. The two Governments affirm the importance they attach to ensuring that public bodies in Northern Ireland should be so constituted as to enjoy the widest possible respect and acceptance throughout the community. Exchanges will continue on ways in which this objective can be furthered. The Irish Government will continue to put forward views and proposals on the role and composition of such bodies for consideration by the British side. [The British Government undertook to use the powers available to it to redress as far as possible any imbalance arising in situations where the nominating powers of any public body were being exercised in a biased or discriminatory manner in favour of one community only.]

Confidence in the security forces and the system of justice

Br add of the security forces in Northern Ireland are perceived to 'are per- ceived to discharge their duties evenhandedly, acting at all times within the law, with equal respect for the unionist and nationalist traditions and with demonstrable accountability for their actions. They reaffirm their commitment to policies aimed at improving relations between the security forces and the community and enhancing respect for the rule of law.

Br dele 16. The Irish side welcomed new measures on marches and other public events, incitement to hatred, police complaints procedures, police/community liaison committees, and the need for the police to respect equally the two traditions in Northern Ireland which is set out in the Code of Conduct promulgated for the RUC. Further work of super- remains to be done in order to translate into reality the grass sen goals of the Agreement and to overcome problems acknowledged to persist in this area.

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17. The two Governments underline the special importance of ensuring that complaints against the security forces were speedily and fully dealt with and, in particular,
* that any patterns of alleged harassment were quickly
* investigated and remedied. In addition to the existing
* channels for handling complaints, a committee of senior
* officials had been established in the NIO in a monitoring
Br prop capacity. [with input from and briefing to the
del [] Anglo-Irish Secretariat.] Progress achieved through this
process will be reviewed on a regular basis at the Conference.

* 18. The British Government reiterates its objective, as
* stated in the Hillsborough Communique of November 1985, of
* ensuring as rapidly as possible that, save in the most
exceptional circumstances, there should be a police
presence in all operations which involve direct contact by
the armed forces (including UDR) and the community. Both
* Governments are agreed on the importance of further
effective development of this policy.

Br amend 19. The two Governments acknowledged the importance of
to sent emergency legislation in Northern Ireland for security
policy and the enforcement of the criminal law. They
noted the modifications which had been made in the
Emergency Provisions (NI) Act 1987 and the Prevention of
Terrorism Act 1989. They recognised that emergency
legislation had been enacted in response to the campaign
of violence and intimidation. The Irish Government
reaffirmed the importance it attached to reform of the
system of trial under emergency legislation and maintained
its view that the provision of three-judge courts would
enhance public confidence in the administration of
justice. The British Government repeated its view that it
was not presently persuaded of the merits of this
proposal. It was agreed that both sides would continue

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Br amend through the Conference to consider what changes might be
to sent made to emergency provisions and the way in which the
criminal law was applied with the aim of securing maximum
public confidence in the system of justice.

Br rev 20. The Irish Government noted developments affecting the
para Northern Ireland prison system, including the special
reviews of the cases of the remaining prisoners in special
category and those serving sentences at the Secretary of
State's pleasure, as well as life sentence review
procedures generally, the opening of the new prison at
Maghaberry, and matters affecting the prison regime. The
two Governments undertake to maintain exchanges on prison
matters, given the importance of careful and considered
treatment of this sensitive issue.

21. The two Governments are at one on the necessity for
effective legal procedures, including extradition and
extra-territorial trial, to ensure that fugitive offenders
are brought before the courts and made answerable for
their crimes. It is agreed that the two sides will
continue their close contacts on this issue through the
mechanisms of the Conference and the respective Law
Officers with a view to ensuring that acceptable and
workable arrangements are in place both in relation to
extradition and the application of extra-territorial
legislation.

Br add 22. The two Governments agree that there should be
of para further study of areas of the criminal law applying in the
two jurisdictions which might be harmonised. They note
that in a number of areas, including action against
terrorist and other illegal finance and the nature of
court proceedings, such work may prove fruitful and
officials have been asked to set it in hand.

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Security Co-operation

Br add
tribute

23. The two Governments condemn in the strongest terms the loss of life, human misery and wanton destruction brought about by those who seek to promote political ends by violent means. They reaffirm their determination to counter this evil by all possible means including through a process of close cooperation between the security forces on both sides of the border and they pay tribute to their sustained work and commitment. They noted in the Review that cross-border security cooperation had received regular and intensive consideration at the meetings of the Intergovernmental Conference as well as at frequent inter-police and official level meetings. A programme of work between the Commissioner of the Garda Siochana and the Chief Constable of the RUC as envisaged in Article 9 of the Agreement had been put in hand and substantial progress had been achieved under all of the headings listed.

24. In the light of their common determination to combat terrorism and their common understanding of the scale of the threat the two sides, in the course of the Review, decided on a programme of future work between the two police forces to develop further their cooperation in this area, and to enhance their capacity to protect human life and property from terrorist outrage. They agreed that progress in cross-border security cooperation would be reviewed regularly by the Conference which the two Governments would continue to use as a framework to work together as effectively as possible to ensure that those who adopt or support violence do not succeed.

Cross-Border Economic Cooperation

25. The two Governments took stock of the pattern of cross-border economic cooperation since the signature of the Agreement. Apart from the work of the Conference

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itself a number of cross-border Ministerial meetings had taken place in the framework of the Agreement and a cross-border study of social and economic problems in the North West region had been commissioned with assistance from the EEC. The two Governments affirm their conviction that cross-border economic and social co-operation is to the evident benefit of all the people of Ireland, and deplore any actions which serve to damage such links.

Br add
of pass

26. They agree that future Conference meetings will include a systematic programme of assessment of all the main sectors to determine where the process of co-operation can most fruitfully be expanded. Where appropriate the responsible Ministers North and South will participate in the work of the Conference, which will have in addition an overall co-ordinating role. Officials will prepare these discussions and oversee the follow-up, which will be reviewed on a regular basis at the Conference. In a preliminary survey during the Review, both Governments considered an illustrative list of areas which offer scope for further work; including transport, tourism, agriculture, energy and health.

Br amend
to para

27. The two Governments considered also the implications of the completion of the internal market in the European Community in 1992. They recognised that these will be far-reaching and will generate common opportunities for both parts of Ireland as well as common difficulties arising from peripheral island status and other factors including the increase of competition. They agree that the Conference could provide a valuable forum for both sides to consider the cross-border dimensions of this change.

Br abbrev
of para

International Fund for Ireland

28. In September 1986 the two Governments, in accordance with Article 10(a) of the Agreement, established the

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International Fund for Ireland with the financial support of the United States, Canada and New Zealand and, from 1989, the European Community. In the interval since its foundation the Fund has committed over Stg£50m to projects in Northern Ireland and the border counties in the South and has been instrumental in creating a significant number of new jobs. The two Governments express their appreciation of the generosity of the donors to the Fund and undertake that they will continue to give every support to the work of the Fund and the emphasis it is now placing on improving the position in the most disadvantaged areas.

British-Irish Interparliamentary Body

29. The two Governments noted the decision by the Irish and British Parliaments to establish a British-Irish Interparliamentary Body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981. They commend this development as providing a valuable independent forum for inter-Parliamentary contacts and agree to give support as appropriate to this Body in the course of its work.

Conclusion

30. The two Governments commit themselves to continue to work together through the institutions and procedures of the Agreement for the realisation of the fundamental objectives of promoting peace and stability in Northern Ireland; ending the antagonism between the two major traditions in Ireland; creating a new climate of friendship and co-operation between the people of the two countries; and improving co-operation in combatting terrorism. Reaffirming the right of each tradition to pursue its aspirations by peaceful and constitutional means, they reiterate the objective of the creation of a society in Northern Ireland in which all may live in peace, free from discrimination and intolerance.

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31. They agree that the Conference, together with its related mechanisms, has proved its value to both Governments in the three years since the signature of the Agreement, and that, while requiring no fundamental change at present, its role could nevertheless be developed and enhanced in the ways set out above. They stress that the Agreement does not represent a threat to either community in Northern Ireland; it aims to serve both by providing a flexible and orderly framework, underwritten by both Governments, which guarantees the essential interests of both communities in the necessary search for mutual accommodation.

32. Both Governments state their readiness to consider future change in the scope and nature of the activities of the Conference, on the lines envisaged in Article 11 of the Agreement, where this could be shown to command the support of both communities and to be likely to serve the underlying purposes of the Agreement.

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MAIN ISSUES IN THE COMMUNIQUE

1. Joint references - where 'both Governments' is used in relation to internal NI affairs (paras 9-20). The two are not equal in status in relation to policy in these areas - the British Government has responsibility; the Irish may put forward views and proposals. To make explicit this distinction in the text ('The British Government has done.....the Irish Government welcomes it') could create an impression of disunity, and also of the Irish Government as spectators. Moreover separate references to the Governments in the present Irish text usually signal an area of contention (eg three judge courts). One way round this may be more references to discussions already held in Conference demonstrating continuing Irish input.
2. Reciprocity The Irish acknowledge that the Agreement is a 2-way street but stress that it was set up to deal with the NI problem. Skilful drafting can probably convey the message we are seeking to get across without appearing to go beyond the terms of the Agreement.
3. 'Flexibility for change' - The Irish in paras 3,4 and 32 uses verbose language to convey the message that the Conference could be adapted to take account of changes in 'internal or external' arrangements brought about by popular consent. Two scenarios may be confused by the Irish drafters - (i) devolution in Northern Ireland with cross-community support, the prospect held out in Articles 4 and 5(c) of the Agreement; (ii) a more radical 'external' change of status, such as the united Ireland of Article 1(c). The Irish Government may find this ambiguity attractive for its relations with Unionists. The enemies of the Agreement may seize on these references as evidence that the two Governments want to get off the Hillsborough hook.
4. Conference Structures The main Irish proposals (paras 6-7) are (i) a target of 10 meetings per year (ii) widening of Ministerial representation at Conferences and (iii) an annual 'Gymnich'

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Ministerial meeting. Largely these are issues of Ministerial Convenience but the proposal to include Departmental ministers at meetings could be seen as politicising non controversial cross-border co-operation through association with the Conference.

5. Bill of Rights Consideration of a Bill was firmly put on the agenda by the Agreement but reached an impasse in 1986. The present Irish Government will not wish to see it dropped. To them it is a self evidently sensible step supported by almost all shades of NI political opinion. From the British point of view it is not on, unless in an all-UK context. To include a reference in the communique would hold out hope of future consideration which would have little chance of coming to fruition. Not to mention it would be regarded as a retrograde step by the Irish.

6. Public Bodies The Irish have expressed much disappointment over the past year at the apparent failure of Article 6 of the Agreement to alter significantly the political complexion of NI public bodies. Paragraph 14 of the communique refrains from direct criticism on this score. It does though concentrate on one aspect of the issue, the alleged tendency of nominating bodies, particularly District Councils, to put forward Unionists to public bodies. Ways of countering this practice are being considered by NI Departments but it is not an easy matter and the bullish tone of the final Irish sentence in para 14 may be premature, though they will argue for some British commitment.

7. 'Supergrass' trials The Irish would like to attribute the end of the 'supergrass' phenomenon to the Agreement (para 16). Doing so in a way which does not offend judicial sensitivities nor tie the hands of prosecuting authorities in future will prove difficult. Uncorroborated evidence prosecutions are mentioned in the proposed 'record of achievement'.

8. Complaints The Irish draft plays up the NIO Complaints Monitoring Committee and links it with the Secretariat. Too explicit a reference to the Secretariat especially may cast doubt on the value of existing procedures for dealing with complaints against

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the security forces. In particular the police may shy away from co-operating with the NIO group (para 17).

9. Three-judge Courts This is one of the few points (para 19) where the Irish text explicitly records a difference of view between the two Governments. It is unlikely that the Irish have much serious expectation of progress on this front but to omit it would be regarded by them as a defeat.

10. Cross-border Co-operation The Irish text made much of cross-border co-operation, and particularly of 1992 (para 27). This has certain attractions as a non controversial counterpoint to the political and security dimensions of the Agreement. But there are risks in playing up and politicising routine co-operation which is probably best conducted by the experts on the ground. Certainly with 1992 the Irish have rosy expectations which are unlikely to be borne out in reality. In some areas Northern Ireland and ROI industry will be in competition after 1992. For some purposes (eg agriculture) Northern Ireland regional interests will continue to be subordinate to UK national policies.

11. The Parliamentary Body The Irish text goes further than the present position in terms of Parliamentary agreement. A reference closer to the original British text in the first sentence of para 29 is required.

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