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NORTHERN IRELAND: PROGRESS OF POLITICAL TALKS - NOTE OF MEETING IN OLD ADMIRALTY BUILDING ON TUESDAY 27 OCTOBER 1992 AT 14.30

Those present:-

Mr R Alderton - No 12	Mr P N Bell - NIO
Mr G Archer - FCO	Mr D Bentley - HOLAB
Mr S Eldon - Cabinet Office (Left at 1500)	Mr A Dunn - NIO
Ms R Fletton - Home Office	Mr D A Hill - NIO
Mr J Harrison - MOD	Mr S Quinn - Cent Sec
Mr S Kelly - HMT	Mr B Porter - NIO
Mr I Llewellyn - MAFF	
Mr C North - DTI	
Mr A Rosling - No 10	
Mr N Schofield- DOT	
Mr J Simpson - Cabinet Office (Left at 1540)	

Apologies

Ms V McNiven - Scottish Office
Ms H Thomas - Welsh Office
Mr M I Bailey - DOE

Mr Bell welcomed everyone to the meeting and began with some background to the present round of Talks.

Background

2. Successive administrations had sought to establish stable institutions of government which were widely acceptable across the whole Northern Ireland community so that powers could be returned to locally elected and accountable politicians. Experience had however shown that, while widespread acceptance of new institutions in Northern Ireland would remain a necessary condition, it was not, in itself, sufficient for a lasting settlement. This must also take account of wider relationships within the British Isles, including the need to give appropriate recognition to the nationalist identity within Northern Ireland. Such thinking was part of the genesis of the Anglo-Irish Agreement 1985. The Anglo-Irish Agreement had brought an improvement in security co-operation and a degree of reassurance for nationalists, but it had driven Unionists, partly owing to the manner in which it was negotiated, partly because they were not reassured by those elements of the Agreement intended to reassure them, into internal exile.

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3. What the present Talks were seeking to do was to build on our growing understanding that a lasting settlement would require the consent of all they key players (the NI constitutional parties and the Irish Government as well as HMG). In his statement to Parliament of 26 March 1991, the then Secretary of State, Mr Brooke had said that we were "setting out to achieve a new beginning for relationships within Northern Ireland, within the island of Ireland and between the peoples of these islands".

4. Building these relationships required the utmost patience and sensitivity, and this was what all those involved had been trying to do since the General Election. If the process succeeded, a possible three stranded agreement could include:

New arrangements for the internal Government of Northern Ireland within the United Kingdom;

New institutional arrangements for consultation and co-operation between new institutions in Northern Ireland and Dublin;

A revised Anglo-Irish Agreement, acceptable to both parts of the community in Northern Ireland; and, an unambiguous consensus amongst all participants, including on the part of the Irish as to the constitutional status of Northern Ireland.

Crucially, the outcome would need to be acceptable to the people.

5. The Talks were now at a crucial phase in the run up to the meeting of the Anglo-Irish Intergovernmental Conference on 16 November, which the participants, particularly the Unionists, recognised as effectively the deadline in this round of Talks. The Talks had recently been in some danger of becoming bogged down and as a result, with the agreement of all the participants we had in effect, broken free of the somewhat artificial three-stranded structure of the Talks. Sir Ninian Stephen, originally Independent Chairman of Strand 2 only, had agreed to accept a wider role. He had agreed to be briefed by each of the participants, on what they would like to see emerging from the Talks as a whole - across all Three Strands. This had the advantage that it would show the inter-relation of the three strands. Sir Ninian was therefore (at the time of the meeting) drafting a paper on a possible outline settlement. His work on this has been accompanied by a good deal of informal contact with and among the Parties. If all went well, he should within the following 10 days or so be able to table Heads of Agreement. Although there were doubts about the enthusiasm of some participants and difficult issues remained to be resolved, there seemed to be a slightly better than evens chance for the Secretary of State to make a Statement to Parliament about a Heads of Agreement on or about the 11/12 November. [This outcome now seems less likely - Secretary 3/11]]

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Heads of Agreement

6. HMG was playing its full part in this process, and had given Sir Ninian a document giving our best judgement of what a generally acceptable outcome from the Talks might look like. No doubt Sir Ninian would test our presentation against his judgement, and against what others said to him. But we had provided him with the raw material which he could in principle draw on in presenting his own paper. Mr Bell provided an outline of this document and a summary in at Annex A. (Caution: the confidentiality of this document must be closely protected).

7. Mr Rosling asked for a fuller explanation of the Panel. Mr Bell explained that it had its genesis in an earlier SDLP suggestion that there should be a Panel of 6 Commissioners, who would be jointly responsible for the conduct of any NI administration. The proposal was inspired by the European Commission and its consensual approach. Three Commissioners would, on this view have been directly elected within Northern Ireland taken as one constituency, and the other three would each have been appointed by HMG, the Irish Government and the European Commission. The purpose was to prevent any relapse to Unionist domination of Government in Northern Ireland which had previously so alienated the Nationalist community. Although the exact role of the Panel as now envisaged would be a matter for further discussion it was expected that it might have a (quasi-presidential) role with significant consultative, monitoring, referral and representational functions, and with certain powers over proposed legislation, public expenditure, public appointments and administrative actions. Mr Quinn added that it would be, essentially but not exclusively, a referral and appeals mechanism, if there were sufficient demand for its intervention in disputes in the Assembly. It was an article of faith that the Panel would achieve consensus more easily than conventional arrangements. Mr Bell noted that the Panel was 'an interesting constitutional innovation' whose success would ultimately depend on finding a formula for its workability.

8. As there were no other questions at this point Mr Bell handed over to Mr Hill to move discussion onto the implications any agreement might have for Departments in Whitehall.

9. Mr Hill said that if there were an Agreement, urgent action would be required by the NIO to reassure other Departments that their vital interests were not affected. The political context was different and in Northern Ireland the process leading to the new institutions for the Government of Northern Ireland could not be compared to demands for devolution for Scotland. Ministers would want the new Northern Ireland institutions to survive and Ministers would look to their Cabinet colleagues for support and encouragement. For example, GB Ministers would need to be ready to

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receive Panel Members. Constructive interaction between Whitehall and the new institutions would need to be developed quickly.

European Community

10. Although most of the activities of the Northern Ireland institutions would not impinge adversely on Whitehall, there was a small number of areas where tension seemed possible. One of the most obvious of these was the European Community. There were two aspects to this. Firstly, the new institutions would be responsible for the implementation of EC directives. Whitehall Departments would therefore need to consult these institutions when the UK policy line was being formulated. MAFF did this already and it was to be hoped that any consultation process would continue on the basis of trust that already existed.

11. Secondly, the new institutions would have no formal direct relationship with the European Commission, which would remain the responsibility of the UK Government. One possibility might be for the Heads of NI Departments (ie the political head) to be invited to join the UK delegation where a matter of particular interest to NI was being discussed. On technical matters, as now, there would continue to be direct relations between the Commission and NI officials. Nevertheless, the NI Parties are likely to want direct access to community institutions and it would be difficult to draw up guidelines for this. The UK Government would wish to retain a right of access to the new cross-border institutions when EC matters were being discussed.

Finance

12. It could be expected that broadly similar financial arrangements as currently existed would continue, though there was a question about the splitting of the NI Bloc.

Human Rights

13. There was a common desire amongst all the NI Parties for further formal protection of human and civil rights; a desire most commonly expressed as a need for a Bill of Rights. There was however no clear agreement as to what rights should be covered. The most commonly supported proposal was for the incorporation of the European Convention for Human Rights into NI law. The UK Government would find this difficult. For the moment, the question of entrenched rights was being left for further discussion by the parties. The Secretary of State for Northern Ireland would shortly be asked to take a view on the ECHR and on the wider question of the entrenchment of human rights.

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Legislation

14. An assembly in NI would mean the virtual end to the current Order in Council procedure and to the annual Interim Period Extension Order. On the other hand, the NI parties would want all future NI legislation at Westminster to be by Bill procedure. All of this would be in the Reserved Category, and it might be possible to keep the Order in Council procedure for some criminal justice matters, but the NIO would nevertheless like to have at least one Bill per year. Transferred matters would of course become the responsibility of the Assembly, but it was likely that most measures would continue to follow the UK model. A desire for a Northern Ireland Select Committee was certain but there was likely to be less interest taken in Parliament in the day to day details of Northern Ireland administration.

15. Mr Alderton commented that all Departments had to bid for legislation in the normal round through FLG committee and NIO could be no exception. Bills were increasingly framed as enabling legislation, with their provisions implemented by Statutory Instruments. Parliamentary counsel would be unlikely to want to change this trend for NI legislation. Mr Hill explained that the NI parties wanted primary legislation affecting NI to be by Bill. There was particular symbolism attaching to this for Unionists. Mr Alderton also pointed out that the Prime Minister had given an undertaking to review the handling of Scottish Office business and there might therefore be read across implications for NI. Mr Alderton wondered also whether an NI Select Committee would risk becoming too unwieldy if it were to be big enough to allow sufficient NI representation and still retain a Government majority. Mr Bell explained that Unionists were particularly in favour of an NI Select Committee but they accepted that the Government must have a majority and that any NI representation would be minimal. He also noted that the Select Committee on Procedure had recommended in favour of an NI Select Committee.

Scotland

16. Mr Rosling asked what mechanisms there would be to prevent any read across of developments in NI to Scotland. Mr Hill explained that NIO officials met regularly with their Scottish Office counterparts to discuss political developments and other items of mutual interest. It was accepted that there was a political problem because of the Government's differing approach to NI and Scotland, but NIO had been careful to avoid use of the term "devolved government" in public. The note of this meeting would go to the Scottish Office. Mr Bell added that the NIO had formed a Presentation and Implementation Group to consider the public handling of any agreement, and this was already ensuring that the Scottish dimension was taken full account of.

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Consultation

17. Mr North noted that at present there was full discussion amongst Departments about the implementation of EC policies, and wondered whether a new NI institution would be involved in these discussions in the future. Mr Hill said that there was no reason why consultation should not be successful at the implementation stage. However, there was some risk of leaks at the earlier stages of negotiation with the European Commission. NI Heads of Departments would not be constrained by collective responsibility. The risk should not however be exaggerated as the same officials who were familiar with existing procedures would still be in place. Mr Hill noted that with the experience of Direct Rule the NI civil service now knew how Whitehall worked and would wish to retain their contacts there. Mr Quinn emphasised that there were certain areas where Northern Ireland relied on Whitehall's expertise - social security payments, public sector pay, electricity regulation - were several examples. NI Departments would therefore have to have good access to Whitehall or the good and effective Government of Northern Ireland would collapse. Clear guidelines on contacts between the institutions would be necessary. It was worth noting also that Northern Ireland civil servants would continue to be appointed under the Crown. He added that it would be more effective for NI Departments to continue their bilateral contacts with Whitehall Departments rather than establish a procedure of referral through the NIO. Mr Hill said that the NIO would continue to have a role in liaising with the NI Departments where subjects were to be discussed at Cabinet.

18. Mr Kelly said that he assumed that it was open to an Assembly to change its policy on transferred matters and therefore end the consistency which currently existed with existing UK legislation. Mr Quinn agreed that the scope to digress did exist but he believed that there would be caution within the NI administration, certainly in the early years.

Security Policy

19. Mr Harrison asked whether the terms of reference of an NI Select Committee would cover the whole field of security policy, meaning that there would be an overlap with the Defence Select Committee. Mr Bell accepted that this was likely to be so. Mr Harrison then asked what the relationship between the NIO and the new Assembly would be. Mr Hill said that it would be necessary to distinguish between those matters devolved to the new Assembly from others such as security. The new institutions would have no formal power over security policy, but it could be assumed that they would wish to debate it and that the Assembly would form a security committee, as the Prior Assembly had done. Mr Bell said that the

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real interface between the NIO and the new institutions might be with finance. Within the existing arrangement of one NI block, the NIO bids for resources from other departmental programmes when a major incident (such as the bombing of the NI Forensic Science Lab) occurred. The new institutions would not wish to hand over any money and the resulting arguments would lead to serious friction. On reflection, current thinking seemed to indicate that the one block system may not be best. This needed further thought. Mr Bell noted that MOD would be 'shielded' generally speaking from the new institutions by the Secretary of State for Northern Ireland. There was no question of the GOC (or Chief Constable) being accountable to new NI institutions. (It seemed likely that it would not be until the RUC no longer needed military support that there would be any question of devolving security responsibilities to new institutions!) Nevertheless there may be some contact with the new institutions for example over road closures. Mr Bell underlined that in its role of providing Military Aid to the Civil Power, the army would continue to be aiding the Secretary of State for Northern Ireland. In the different role of Military Aid to the Civil Ministries, the army might be called upon by the new institutions for assistance.

NI MPs

20. Mr Rosling asked whether there would be any change to the number of NI MPs at Westminster. His question was prompted by reference to the "West Lothian Question". Mr Hill explained that Northern Ireland's representation at Westminster was set out in Act of Parliament and was not under consideration in the current round of Talks. There was no question of this issue being discussed. The Northern Ireland Parliamentary Boundary Commission was starting its reviews of NI constituencies and depending on its recommendations NI would continue to have between 16 and 18 MPs at Westminster. These MPs would continue to have their full powers and be able to speak on wider issues affecting GB. Mr Bell suggested that, in addition to this legislative background, it must be said that the "West Lothian Question" did not really apply as the NI MPs did not determine the colour of the Government. There were not enough of them and they had their own parties.

Position of Secretary of State

21. Mr Llewellyn asked whether the Secretary of State for Northern Ireland would continue in his position as one of the UK's Agriculture Ministers. He was thinking of the circumstances in which the three territorial Secretary's of State and the Minister of Agriculture Fisheries and Food were asked to decide on the split up of agricultural payments over the whole of the UK. Mr Hill said that the Secretary of State would continue to be an Agriculture Minister if the issue were a matter for the Cabinet. He assumed that if the matter involved splitting up a sum of money then the Head of the Northern Ireland Department would be brought in, however

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these were his initial thoughts and it was not an issue that had really been thought about. Mr Hill agreed that further consideration would be given to this issue with interested colleagues.

Miscellaneous

22. Miss Fletton asked how the question of entrenched human rights would be discussed amongst the parties and specifically whether the question of a Bill of Rights would be discussed. Mr Bell said that for the moment we must rely on the phrase used in the HMG's suggested Heads of Agreement:-

"Greater formal protection for civil, human and communal rights to be put in place on a basis to be agreed, taking account of the positions set out in the relevant paper agreed by the Strand One Sub-Committee on 16 June".

Handling

23. Mr Llewellyn asked how other Ministers will be brought into consideration of any agreement. Mr Bell said that the NI Cabinet Committee was unlikely to meet before 16 November. Nevertheless he hoped that the Secretary of State would be able to make a presentation at Cabinet, possibly based on a formal Cabinet Paper next week. If agreement were reached the Secretary of State would make a statement to Parliament on 11 November (or less probably 12). [Again, this scenario has now been revised; the Secretary of State now is likely to minute colleagues this week.] Mr Bell concluded by saying that our presentation strategy would make sure that the Scots and Welsh were not embarrassed.

24. There being no further questions the meeting ended at 16.30.

SIGNED:

BRIAN PORTER
ESL DIVISION
3 NOVEMBER 1992

cc: Those present
Mr A Finlay, Scottish
Office
Ms McNiven, Scottish
Office
Ms H Thomas, Welsh Office
Mr M J Bailey, DOE

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