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Treaty

From: G D Fergusson, DAD

Date: 17 February 1999

Mr McCusker

cc: Mr Stephens
Mr Bell
Mr Gray
Mr McCartney
Mrs Flanagan
Mr Keown
Ms McClelland, HOLAB
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Mr Rankin, Dublin

IMPLEMENTATION BODIES TREATY

1. I spoke yesterday evening to Rory Montgomery, following our earlier conversation.
2. I floated on him the possible wording on the "exit clause" set out in my minute to you of 15 February ("... and shall continue in force for as long as the NSMC continues to function"). Montgomery said that, speaking personally, he saw attractions in this approach. He was clear that the Irish had not intended the implementation bodies to operate in isolation from the other institutions; and he acknowledged the commitment arising from the Agreement that all the bodies should be interlinked. He said that Sinn Fein had contacted the Irish on Friday, having got wind of the Unionist concern on this score, and made clear their view that the implementation bodies should continue following any collapse of the other institutions. I said that we had approached this issue with some caution. We did not want to be in the position of advertising possible failure. It was also possible to envisage circumstances in which the other institutions might collapse but one or more of the implementation bodies had by then carved out a role which was uncontroversial and generally acknowledged as effective. We might not in those circumstances want lightly to break up something that was doing good - or move back scores of civil servants who had only recently had to relocate. Nonetheless, some tinkering would probably be necessary even if we wanted the bodies to continue in the same form. For instance, unless the bodies were perpetually to carry out only policies agreed by the NSMC while it existed, with no changes of policy, some substitute arrangement would have to be agreed; and para 15 of Strand 2 might arguably suggest that new arrangements would be needed to continue funding. The wording we were looking at for Article 9 would leave open the possibility of subsequent arrangements between the two Governments, either to wind up the bodies, to introduce transitional arrangements, or to keep them going.

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3. Montgomery said that this was broadly in line with the thinking of the Irish themselves. He liked the device of slipping this into Article 9 in the way we had suggested. He would introduce the suggestion into Irish official discussions forthwith. His only warning was that some of his colleagues might be nervous about an amendment on these lines in the light of the Sinn Fein representations. They might be inclined to leave this to the endgame.

4. I also raised the possible dropping of the reference to "memoranda" in Article 5. I explained that, in our view, the reference to "arrangements" already covered the memoranda point. Arrangements and memoranda were indistinguishable in this context, though I knew that the Unionists appeared to have built up "memoranda" into something much more formal and therefore alarming. Montgomery said that he had no problem with our suggestion of dropping it, for the reasons I had given. But he warned that some of his colleagues were highly suspicious of any suggestions coming from the Unionist camp and might be worried that it contained something more sinister. (Part of the problem is that, like the Unionists, some of the Irish too believe "memoranda" to be more powerful than they are, and are attached to them for this reason.)

4. All in all, reasonably promising, at the Rory level. But we shall need to see how the suggestions emerged from the meeting of Irish officials yesterday evening, where I suspect they will have had a rougher ride.

Signed

G D Fergusson
Devolved Administrations Department

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