

6746

E.R/7/12

Mr Spence
Pl. give Mr Bell the
further guidance for subs on
to N/D road in
to light of our
discussion



2 AE 315.

19/6

RES 70/6

Mr S Hewitt - M

- cc: PS/Mr Bloomfield - M
- Mr Brennan
- Mr A Stephens - M
- Mr Elliott - M
- Mr Innes - M
- Mr Spence - M
- Miss Elliott
- Mr Gilliland - M



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INTERGOVERNMENTAL CONFERENCE - STRATEGY

... I attach what is very much a sighting shot of the draft submission for PUS to put to the Secretary of State later this week in preparation for next week's IC meeting. It reflects, I hope, fairly accurately, the thrust of PUS's conclusions, although there is scope for substantial refinement on points of detail and drafting. Some of these I have glossed in the margins. I shall also need to weave in some reference to the various legal working parties, currently passed over in silence - and shorter!

2. I should accordingly be grateful for your comments, and those of copy recipients in time for me to submit a revised draft to PUS not later than Wednesday morning.

P N Bell

P N BELL
9 June 1986

encl

PS: I shall also need further guidance on how to present the Newry/Dundalk Road. The attached was written before I had seen Mr Brennan's minute to PS/PUS of 6 June.

PNB

Secretary of State

cc: PS/SofS(B)
PS/Mr Scott (L&B)
PS/Dr Mawhinney (L&B)
Mr Bloomfield
Mr Brennan
Mr A Stephens
Mr Chesterton, o/r
Mr Elliott
Mr Fernyhough
Mr Gilliland
Mr Innes
Mr Spence
Mr Bell
Mr S Hewitt

INTERGOVERNMENTAL CONFERENCE - STRATEGY

The Need to Show Results

Mr Barry's expression in the Dail last week of his dissatisfaction with the results so far of the Intergovernmental Conference underlines the importance of reassuring the Irish Government that HMG continues not only to attach importance to maintaining, and even accelerating the momentum of the IC but also to achieving, via the Conference, a balanced package of measures that will both reassure the Irish (and nationalists) that the IC was producing worthwhile results and make it clear to the Unionists that the Conference would neither be overthrown nor stymied by their opposition. The need for the Conference to produce results is all the more important if the decision to dissolve the Assembly is not to be misinterpreted as an indication that our NI policies have not reached a deadend.

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Moreover, failure visibly to make progress would not simply lessen our chances of achieving the wider objectives for which we entered the Agreement but, perhaps more important, sacrifice our hopes of ensuring Irish cooperation in those areas to which we attach particular importance, and where their goodwill is vital. I have in mind particularly the ratification this autumn, without reservation, of the European Convention on the Suppression of Terrorism, a general improvement in extradition procedures, and continued progress in enhancing cross border security cooperation. In all these areas, where we are asking the Irish to commit substantial resources or enact what is for them controversial legislation, they have made abundantly clear that, unless we are prepared to implement measures that can be used to show that constitutional nationalism can pay, then we must expect severely limited progress above all in the security areas.

A Spring Package?

2. Clearly it will not be possible to announce dramatic measures at the next IC meeting, nor would it be prudent to do so following summer meetings through the marching season. Nevertheless, work on the following is sufficiently advanced for it to be possible, as well as desirable, for some measures to be announced after next week's meeting. They would serve as an earnest

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of our determination to make further progress in the autumn, and counteract current Irish pessimism about the progress of the Anglo-Irish process. They are:

- (a) Enfranchisement of 'I' voters. The Irish attach great importance to remedy the anomaly whereby in Northern Ireland a limited number of Irish citizens are not entitled to vote in provincial elections, though they can for Westminster or the European Parliament. A decision to enfranchise such voters could be represented as doing no more than bringing Northern Ireland into line with GB. Enfranchising I voters for District Council elections would require legislation by Bill and must therefore await a window in the Government's legislative programme. However, enfranchisement for the Assembly could be accomplished by Order subject to negative procedure (?) and could be laid in the autumn. Such an Order would have the additional benefit of reinforcing our argument that the dissolution of the Assembly was merely temporary and that the Government's commitment to devolution remained firm (the detailed arguments are set out in Miss Elliott's submission of 5 June);

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(b) Support for the Irish language. The Secretary of State has already approved Miss Elliott's submission of May on this subject. Although it would not be possible by next week (?) to announce the implementation of any of the specific measures in that programme, you could nevertheless

declare that the Government had approved in principle a programme for enhancing the status of the Irish language and the details would be announced later (see also paragraph 6 below); and

(c) Newry/Dundalk Road. Although not currently enjoying a high priority in the roads programme, the Irish nevertheless place a high political importance on this project and regard it as a test case in terms of the UK's commitment to cross-border economic cooperation. There is also a view that the nationalist community regard the project as meriting priority. A decision to proceed with the project (for which the Irish would meet some two thirds of the cost) could be defended as enhancing the main highway between Belfast and Dublin but its primary attraction is that the road is one issue on which the Secretary of State will be able to show flexibility in return for pressing the Irish to move on other matters.

(The case for the road would be even stronger if support became available from the International Fund.)

addition to the wider gain,
In return, and in/ we would naturally expect the Irish
 ←——— to give their wholehearted/^{public}approval to these
 ←——— developments and to use their good offices to
 ←——— encourage the SDLP to be similarly forthcoming
 ←——— including in the making of more fullsome, and
 ←——— regular tributes to the impartiality and professionalism
 ←——— of the RUC over the marching season.

An Autumn Package?

3. The marching season will preclude taking any major initiative that would substantially favour the Irish/SDLP - even though Unionists interests were in no way damaged. However, it is essential if we are to carry the Irish Government during the Autumn, when legislation to permit the ratification of the ECST is going through the Dail, /^{and as their own General election approaches} that we are able to demonstrate more solid benefits to the nationalist community if our own interests are to be best secured.

4. There are two scenarios: the Irish continue to press us with unremitting vigour for the institution of three-man courts. The objections to these include certain practical difficulties, and the opposition of the legal establishment both in Northern Ireland and of the Lord Chancellor. Nor could one pretend that

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the Unionists would welcome them, even though Dr Paisley has spoken out in the past in their favour. On the other hand, the objective case - and independent of Irish representations - is cogent: Diplock courts put an intolerable burden on a single judge in complicated cases and, in the continuing absence of juries, and are widely perceived, especially by nationalists, as an affront to natural justice. Their introduction could be justified on their merits as part of a continuing effort to improve the system of criminal justice in Northern Ireland pending our ability to return to jury trials, and such an innovation could also be restricted to the more serious and complex trials.

5. There can be little doubt either of Irish sincerity on this subject and the political fact that it would be extremely hard, and probably impossible for them to deliver what we want on extradition or even keep up such momentum as exists on cross-border security cooperation if we cannot accommodate them. If we can, there can be little doubt that we would secure our major policy goals without too much difficulty. (And materially reduce the likelihood of the Fianna Fail government following the Irish election.) There is, accordingly, a good case for reexamining the possibility of such courts with an open mind/ and, if we are convinced that we can meet the Irish to some degree, then of your seeking to persuade the Prime Minister and other colleagues of the advantages in doing so.

6. If it is not, however, possible to concede such courts, then it will be even more important to offer in the autumn a number of nationalist-oriented matters - including some which would be desirable in any case. These include:

- (a) Flags and emblems. The repeal of this legislation via the Public Order Order (which would also tighten up the legislation on incitement to hatred) would remove a major, and long standing symbolic grievance of nationalists. At the same time, we would not be putting the Union flag in any less privileged or protected position than it enjoys elsewhere in the United Kingdom. This is, in my view, a highly desirable and long overdue measure;
- (b) Irish language. It is in the autumn that we must announce and give effect to our full programme. This will give material help to the SDLP in beating off Sinn Fein who are seeking to exploit the current revival of interest in Irish in the North for their own ends;
- (c) RUC Code of Conduct. It is perhaps unfortunate that the Chief Constable has not felt able to promulgate ^{the} / Code of Conduct, enjoining equal recognition of both traditions, which was trailed in the joint press statement following the first

meeting of the Conference. The importance of such a Code is, of course, primarily symbolic. But Unionists cannot reasonably object to a declaration of evenhandedness, while the response from the Irish (and the SDLP) is likely to be particularly warm;

- (d) RUC Accompaniment of Army patrols. There are genuine logistical problems in implementing such a policy fully. Nevertheless, it is increasingly desirable to demonstrate, with reliable statistics, that such accompaniment is increasingly the rule.

7. To the extent that we may not eventually be able to deliver our three man courts, further measures we might offer could include the injection of an independent element in investigating complete complaints against the Police to which the Irish continue to attach considerable importance although we have drawn their attention to the difficulties; and we would also have to give further thought to a variety of minor reforms in the administration of justice system. Some of these, which may also be desirable on other grounds, might include changes in the conditions for bail, and for remand as well as/ a ceiling on the number of defendants. We might also, although it would not seem justified in terms of workload, wish to press for the appointment of another High Court judge, preferably from the minority. But these are difficult waters into which we should not, unless we are forced, seek to sail.



Other Measures

8. There are a range of other items for which the Irish are pressing and which ~~many~~ accordingly are candidates for favourable decisions by us. Many, however, are simply undesirable for well-known reasons: demolishing Divis, for example, or introducing PR for Westminster elections. Others we could defer for further study in the spring: the question, for instance, of a Bill of Rights for Northern Ireland. Others, more neutral in their effects, we hope may materialise through the passage of time: the International Fund would be the best example, although this should not prevent us from seeking to exploit whatever presentational bonuses they give us. We should keep on the lookout for any windfalls, and an open mind about alternative procedures (eg making greater use of extra-territorial jurisdiction than in the past) from which we may be able to extract both practical and political advantage.

Conclusions

9. There is an urgent need to develop, and to begin displaying as soon as possible, a balanced package of measures to reassure the Irish and the nationalists on the one hand, that we are genuinely committed to making a success of the Anglo-Irish Agreement. Otherwise, apart from failing to achieve such objectives as ending minority estrangement, or developing more

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supportive relations on security with the Irish Government, we should give our Unionist opponents a victory by default and fail to secure those advantages which we would hope to use to demonstrate that the Agreement was genuinely capable of benefitting everyone in Northern Ireland, and provide a further inducement to Unionists to resume their interrupted dialogue with Government in the autumn. Further benefits that we could expect, on this side of the balance, from the kind of gestures to the Irish sketched above - and for which we should continue to press hard during the summer and autumn - would include a clear acceptance by the latter that our various measures for improving relations between the minority and security forces were acceptable, sufficient for the time being and deserved to be given a chance to work. We would also expect to see open encouragement by the Irish and the SDLP for nationalists to join the RUC. The importance of the last cannot be overrated but will not be achieved without fairly substantial gestures on our part.

10. I should accordingly be grateful for an indication of whether you were content with the strategy sketched above, and in particular that you would be prepared to authorise the announcement following next week's IC meeting of the "mini-package" described in paragraph 2. If you were content, I believe it would be desirable to look again more critically at the arguments concerning three-man courts and to evaluate the likely effects of a possible scheme for their

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operation. We would also propose, throughout the summer, to work out in detail the proposals for the more substantial autumn package outlined paragraphs 3 to 7. You may like to have a word before Tuesday's meeting.

R J ANDREW

June 1986