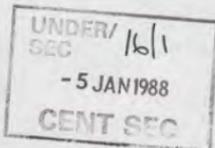


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PS/PUS (L) - by hand

cc: PS/PUS(B) - B  
PS/Sir K Bloomfield - B  
Mr Burns  
Mr Stephens - B  
Mr Chesterton  
Mr Elliott - B  
Mr Innes - B  
Mr Spence - B  
Mr Masefield - by hand  
HM Ambassador, Dublin - FAX  
Mr George, RID, FCO - FAX



AI STEERING GROUP - EVALUATION OF THE AGREEMENT; REVIEW UNDER ARTICLE 11

Review Under Article 11

Anglo-Irish relations in 1988 seem likely to remain "interesting" (as in the Chinese curse "May your children live in interesting times"). The continuing impasse on extradition alone would now prevent the Conference and Secretariat switching to a "care and maintenance" mode as was the Secretary of State's hope shortly before Christmas. There is also the McGimpsey challenge, which may cast an increasingly dark shadow as the months advance - including over the Review under Article 11.

2. There has so far been no formal discussion between the two Governments on this subject. It is possible the Irish will raise it at the next IC but, to judge by Mr Dorr's approach to the question when he saw Sir C Mallaby last month, their thinking was not far advanced - although there are some indications that their ideas may be clearer by the time of the next Conference. It is essential that our thinking at least keeps pace with the Irish, and as a first step towards evolving a strategy, I attach at Annex A a paper on the scope and conduct of the Review. At this stage, it seemed preferable to ask questions, to stimulate thinking, rather than offer definitive answers - especially when some of the answers will depend on genuine imponderables such as the future of our dialogue with the Unionists. As appendices to the paper, I also attach

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Annexes B and C) brief notes on what our, and what Irish objectives might be in the Review.

3. Group members might, therefore, find it helpful, assuming they regard my approach as at all sensible, to react fairly spontaneously to the paper (the Christmas break has, I am afraid, made it impossible to seek more considered views). In particular, Mr Fenn and Mr Elliott may be able to give members a clearer idea of what the Irish may have in mind. However, it seems unlikely that either side will see the Review as the occasion for major surgery on the Agreement. The fundamentals, including Article 1, are excluded anyway. For our part, we are committed to the broad policy of the Agreement; the Irish appear to be so too. Potentially, the Review is a 'Pandora's box': once we put one major element of the Agreement and its working in issue, the Irish may feel able to do the same. If we build it up publicly, expectation of, and pressure for, radical steps will grow. The only reason I can see that may cause us willingly to propose major changes in the Review would be a realistic prospect of encouraging political development. (We should, however, do well to remember that we might be impelled - unwillingly - into a rather wider review, if the McGimpsey litigation goes badly awry.) Sir K Bloomfield and Mr Burns may, therefore, want to sketch their preliminary thinking on what seems one of the trickiest aspects of the Review: not simply how do we manage simultaneously the Review and, let us hope, a continuing dialogue with the Unionists, to move the latter further in the direction we would wish. (I take it as read that extreme care needs to be taken that in everything we say and do about the Review, no signals are given that Unionists could misconstrue about our commitment to its fundamental purposes.)

4. We shall also, very shortly, need to consider in detail what we want from the Review. Our reflection on this might tie in with our Policy Evaluation. If properly conducted, this ought to give us some guidance as to issues where performance under the Agreement should have been better. Some will be beyond a merely institutional remedy; but in other cases the evaluation may suggest ways which through the Review, we might improve performance. I accordingly

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propose, in the light both of discussion at the Group, as well as in response to any further thoughts that may be offered in writing on this paper and its Annexes, as well as of the work on the Evaluation, to offer in about a month's time for further discussion a more focussed paper, suggesting a strategy for the Review. Within such a framework, individual Divisions might be able to offer detailed comments of their own, including suggestions for improvement in areas which were their responsibility. In parallel, we would need to justify our approach to Ministers as well, in all probability, as opening discussions with the Irish. On this scenario, by mid-March, say, we would have as clear an idea as factors outside our control would permit of what we hope to achieve from the Review, and how it should be conducted. The Group may also wish to react to this outline work programme, in the light, however, of the following paragraph.

4. There is one point of immediate concern: what we say at the next Conference. I see value in our Ministers briefly mentioning the issue whether or not the Irish do. They might stress the importance of saying nothing to raise the expectations of the Review - especially false Unionist ones; perhaps the two sides might agree on a holding line, stressing the limited ambit of the Review, with reference to Article 11 itself, emphasising that it does not bear on Article 1, nor on the fundamental structure of the Agreement and its purposes; and saying that no decisions have been taken on the details. Our Ministers may also learn something about Irish thinking. If the Group agreed, it might accordingly be desirable to put forward a brief submission before the Conference, reminding Ministers that the Review was coming up, offering the holding line, and indicating that work is in progress. In the light of Wednesday's discussion, I will be happy to provide a draft.

Policy Evaluation

5. One but not the only main reason for completing our Policy Evaluation of the Agreement is to assist with the Review. I

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accordingly attach at Annex D a draft outline of the proposed Evaluation. It derives from one I circulated last year, but benefits from comments received since then. In particular I have refined the objectives section - but would be grateful for additional improvements from any source. AISG will note that although the Objectives section generally reflects the prospectus on which the Agreement was sold to Ministers at the time of signature, my draft brings out more clearly than the earlier version some of what I take to be the wider objectives of the initiative. Any attempt to appraise the Agreement exclusively in Northern Irish terms would lead to a significant distortion. The Agreement must be set in the wider context of Anglo-Irish relations as a whole, and indeed of our relationships with the rest of the world. Once we are further down the road to producing a draft (including after full consultation with colleagues), we can consider separately what can or ought to be put to Ministers.

(signed by P N Bell)

P N BELL

5 January 1988

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ANNEX A

REVIEW UNDER ARTICLE 11 OF THE ANGLO-IRISH AGREEMENT - QUESTIONS TO ANSWER

1. The Review

Article 11 reads:

ARRANGEMENTS FOR REVIEW

At the end of three years from the signature of this Agreement, or earlier if requested by either Government, the working of the Conference shall be reviewed by the two Governments to see whether any changes in the scope or nature of its activities are desirable.

2. Ambit of the review - General

A low-key, internal exercise; or a major political event? This depends, on our side, on what we seek to achieve. If we see little prospect of the review easing any of our problems, we may want as swift and minimal an exercise as possible.

The text of the Agreement is vague - the working of the Conference may mean 'the way it has worked over the past three years' or simply its mechanisms in the abstract. There may not, in the event, be much difference. The scope and nature of the Conference's activities are imprecise concepts. It is easier to set out what is not covered by the review:-

1. Article 1. We have always been at pains to emphasise that this is sacrosanct. But if it appears to have been undermined in the McGimpsey litigation, which may not reach its climax before the late summer or Autumn, it may push the other issues that might be covered by the review well away from centre-stage, perhaps for a time into political irrelevancy.

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2. The preamble. This is substantially without political significance in Northern Ireland; nor has it any practical importance except in defining our fundamental objectives; there is almost certainly nothing in it that we or the Irish would wish to change.

3. The fundamental structure of the Agreement: eg, the existence of a Conference: the absence of any bearing on responsibility for decisions, or on sovereignty.

4. East-West matters, including a Parliamentary body (Article 12); except, perhaps, as they bear on the working of the Conference; which might give the Irish a backdoor to raise the question of a Parliamentary body, about which we believe they are more enthusiastic than us.

3. Areas for Possible Examination

This would still leave room for the review to consider quite radical changes in the Agreement, as well as administrative adjustments, if the governments wished. The Policy Evaluation may identify specific areas where improvements are held both desirable and practical.

Areas that might be covered include:

1. Mechanics: conference meetings:

1. frequency
2. attendance
3. location
4. use of the tete a tete
5. joint statements - the right sort of thing?  
arrangements for drafting; etc

2. Mechanics: sub-group structure; working groups, the quadripartite etc.

3. The Secretariat; mechanics here too;

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4. Particular programmes of work and areas of concern to the Conference mentioned in the Agreement. Broadly they are at present:

1. identity measures - art 5
2. work within the purview of the Departments - art 5
3. appointments - art 6
4. security policy/security cooperation - arts 7 & 9
5. relations between the security forces and the community - art 7
6. prisons - art 7
7. legal matters - art 8
8. economic and social matters, including the Fund - art 10

Aspects that might be considered include:

1. Methods of handling of some of the programmes of work - eg appointments, which has given rise to problems.

2. The precise limits of the Conference's concern in particular fields - eg the extent to which individual security force complaints may be considered.

3. Areas of concern to be added or removed: any such changes would be of considerable political significance.

4. Devolution and the Conference. Much will depend here on prospects for devolution at the time of the review. We have emphasised that the coming of devolution would have implications for the working of the Conference; this may be the opportunity to resolve them. Unionists have sometimes said they will not talk about devolution 'within the framework of the Agreement': it should be possible to say something reassuring on this. The question whether there would be any role left for the Irish in respect of devolved matters is not absolutely clear from the Agreement; some

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clarification may be desirable. (It is possible that some of Mr George's points about foreign affairs and devolution (his letter to Mr Kirk of 20 November) might also be raised.)

5. Unionists and the Conference. We may want to consider ways of reducing unionist antipathy to the Conference. There may be something more possible in the way of demystification. The old suggestion of a unionist 'parallel body' may arise again. We should be prepared for the Irish to put suggestions in this field on the review agenda: Mr Haughey told the Prime Minister at the June European Council that he would put forward later areas on bring Unionists into play: it might therefore be worth considering what ideas we have of our own. (See also 4 below)

6. The review of extradition law promised by Mr Haughey will coincide roughly with the Article 11 review (assuming that radical changes have not been made by then); the two probably not profitably be combined, but the latter will no doubt enter into the political balance.

Should we aim to agree early with the Irish the rough ambit of the review, and have an agreed public line ready? There may otherwise be the danger of one of two expectations gathering ground in Northern Ireland; either that the review is the route to the suspension, if not the permanent neutering of the Agreement; or that it opens the way to a further major step down the Dublin road.

4. Public participation

Especially if the review is a high-profile exercise, we shall have demands for participation; Unionist exclusion from the negotiations leading to the Agreement still rankles. Hence resisting their participation, in particular, will provoke more assertions that Unionists' interests are being prejudiced without their being consulted. This is a trick we should not lose twice, even though any involvement that does not result in the dismemberment of the

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Agreement may do little really to satisfy them. However, if our dialogue with the Unionists continues at the time of review, some at least of the Unionist input to it may come from there in a form that should be more, rather than less, constructive. Other (not necessarily exclusive) methods of securing participation may include inviting submissions; discussions between leaders of the constitutional parties with NIO Ministers; possibly even discussions with Irish Ministers; or even public sessions, Forum-style - which would be liable, however, to turn into bear-gardens.

5. Conduct of review

This will depend very much on the extent and method of public participation; on the ambit of the review; and on the involvement of others on our side beside NIO, and on the Irish beside DFA. Very probably the Department of the Taoiseach will be involved in Dublin. A minimal review might be conducted by exchange of papers, and discussion, through the Secretariat. A more substantial exercise might call for a working group, along Article 8 lines. It is possible the Irish may propose an Armstrong-Nally type group - they suggested something similar over extradition (indicating mistrust of the NIO?). Since the review does not go to fundamentals in the way the Agreement did, such a high-powered arrangement seems out of place. Ministerial meetings during the period of the review will not doubt affect its course, but they can hardly be the sole forum for it. Use of outsiders - eg academics - for parts of review is perhaps a suggestion we might be ready for from the Irish; it seems entirely inappropriate. On balance, the Secretariat seems the best channel for conducting the review supplemented by other Ministerial and other senior official contacts where appropriate.

6. Promulgating the result

1. A communique?
2. A part-published report
3. A supplementary treaty?

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7. A summit?

The Prime Minister and Taoiseach might meet to set their seal on the results of the review, unless it is a complete non-event; they have not met formally since Hillsborough; there is a commitment in the Hillsborough communique to a meeting at an appropriate time to take stock of the development of relations...and of the implementation of the Agreement'; we might expect Mr Haughey to seek a formal meeting (it might tie in nicely for him with the Dublin Millenium celebrations). Mr Dorr has tentatively mentioned the idea to Sir C Mallaby; to hold the meeting in the summer, however, before the outcome of the review, seems premature. Should we offer one before being formally asked? We could sound out the Irish.

8. Parliament, International, Media

A substantial review would no doubt generate widespread interest; pressure for a debate in Parliament; a possible case for an American trip by a Minister (though our position, MacBride apart, being good, there may not be much benefit); much media analysis.

9. Another review?

Do we continue Article 11 principle - continuing provision for period reviews, and a review at any time at the instance of either party? They suggest impermanence; but it may be wise to leave formal provision for considering changes in the Agreement's working, against the possibility of political changes in Northern Ireland itself. A question to be considered later.

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10. Timing

1. Go early?

In the absence of something unforeseen (eg dramatic progress on devolution, extradition provoking a crisis), there seems no reason to invoke our right to an early review. There is no particular objective we wish to secure.

2. When should the review start, if we do not go early?

Article 11 is ambiguous: start or finish after three years? The former is the more obvious meaning, but it leaves latitude for the governments to agree on a convenient date. Political considerations - in the Northern Ireland political situation; in Dublin - will Mr Haughey still be there? will the McGimpsey case have made an impact?; in London - ministerial changes?

3. When do we talk to the Irish about all this?

Mr Burns gained the impression in the DFA that the Irish may raise this at the next Conference. On the other hand, Sir C Mallaby's conversation with Mr Dorr on 11 December did not suggest that their thinking had gone very far. It may be worth our raising the question in general terms, to give the Irish an indication of our expectations (and to forestall the danger that Irish ministers may for reasons of their own drop public hints of momentous developments being in prospect through the review process).

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UK OBJECTIVES IN THE REVIEW - A FIRST SKETCH

General Considerations

The policy evaluation should help in formulating these in detail.

No demand has arisen in Government for any significant changes in the working of the Conference, and none for any changes in the text of the Agreement.

The objectives for which we signed the Agreement appear to be still valid, and we shall want to see them reflected in the results of the review:

- enhancing security;
- reassuring the majority about their place in the UK;
- reassuring the minority that their interests are respected;
- permanent improvement in relations with the Republic.

Our Objectives

It will be an important objective to ensure sustained, preferably faster, progress on security.

A little may be possible on reassuring Unionists that the Agreement is not an instrument for their displacement from the United Kingdom (or of joint rule); we shall have to bear in mind the need to ensure that the review itself is not seen as another turn of the screw, as some in Northern Ireland may, depending on political circumstances, want to portray it. The reassurance of Unionists may become much more important if the McGimpsey litigation goes wrong. (However Article 1 is not within the scope of an Article 1 review.)

It is perhaps unlikely that we shall want to do much under the third

heading, reassuring nationalists: we have had some success; it is unlikely that anything we can practically do will bring us more.

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Another important objective will be to ease the way to political progress in Northern Ireland: we may achieve this by reducing unionist antipathy to the Agreement generally; and also by reassuring them on devolution (talks 'outside the scope of the Agreement': a more concrete statement of the contraction of the Agreement's range in the event of devolution; etc). This suggests, as a minimum, finding some method of formally consulting Unionists.

The Anglo-Irish relations, not least owing to the existence of the conference and Secretariat are now generally conducted on a more rational and calmer basis, resting on improved mutual comprehension. It is important that AI process continues to mature on these lines.

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Irish objectives in the review

Little is known. Evidently the Irish have the subject in mind: and Mr Burns had the impression that they might raise it at the next Conference meeting. But it seems from Sir C Mallaby's discussions with Mr Dorr on 11 December (Mr Fenn's note of that day) that DFA had devoted little coherent thought to the subject although there are some indications that this may be changing. The DFA's thinking is, perhaps, unlikely to be radical; there is little sign that the present arrangements displease them, rather the reverse; they are as aware as we are of the international credit the Agreement has brought.

But it is possible Mr Haughey himself will wish to be more radical: to put his mark on the Agreement, and establish himself once more, instead of Dr FitzGerald, as the Taoiseach who has done most in advancement of Anglo-Irish relations (or resolution of the national question, depending on his audience). He forewarned the Prime Minister at the June European Council that he would be coming forward with plans for greater involvement of Unionists; and Mr Dorr reminded Sir C Mallaby that Fianna Fail still hankered after a Conference of all the constitutional parties in Ireland.

On the other hand, Mr Haughey's domestic position is not necessarily secure. Fine Gael made a condition of support for him in the Dail that he should respect the Agreement, which apparently remains popular with the electorate to which he might precipitately have to answer. Accordingly he is likely to steer clear of anything that risks being seen to endanger the achievements of the Agreement. The economy will still be make considerable demands on his Government's time and there is some evidence that Anglo Irish relations is not a major preoccupation of the Irish Government.

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This suggests that whatever the Irish put forward will be low-risk. Playing the green card, as Mr Haughey has done before, is unlikely to be an element. After the difficulties over extradition (assuming they can be resolved), the Irish may want to make a show of improved relations. Root-and-branch changes in the structure of the Agreement are also unlikely (not least because of the limited scope of Article 2 and the 'Pandora's Box' effect). On the other hand, proposals for changes that have great presentational value to the Irish government are not unlikely. Perhaps generally they will want to give the impression of activity, the review and in its outcome, to counteract Fine Gael allegations (current last year, and liable to revive) of insufficient application to the operation of the Agreement.

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ANNEX D

DRAFT OUTLINE FOR A POLICY EVALUATION OF THE ANGLO-IRISH AGREEMENT

1. Introduction - Purpose of the Policy Evaluation

1. To review the Anglo-Irish Agreement (including the work of the Intergovernmental Conference/Secretariat) in the light of:

(a) performance (in terms of effectiveness and where possible, efficiency and economy) against objectives; and

(b) changes in the external environment.

2. Definition of Objectives

1. Ultimate Objectives:

(a) the promotion of a lasting political settlement in Northern Ireland acceptable to both communities (thereby also facilitating the eradication of terrorism, and improved economic prospects);

(b) Eliminating the costs imposed by the Northern Ireland situation on UK policy (and finances) more generally; on UK relations with the Republic of Ireland; and on the international relations of the UK generally.

2. Intermediate Objectives:

(a) establishment of Intergovernmental Conference/Secretariat;

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- (b) enhanced cross border security cooperation;
- (c) promoting a greater willingness amongst Unionists to play a constructive part in securing a lasting political settlement by providing reassurance through formal recognition from the Irish that the constitutional status of Northern Ireland cannot change without majority consent, through a firmer commitment by them to cross border security, and by reconciling nationalists further to the institutions of Northern Ireland as part of the UK; and
- (d) promoting a greater willingness amongst nationalists to play a constructive part in the search for a lasting political settlement, and to readier acceptance of the apparatus of government in Northern Ireland by giving the Irish a formalised (but not executive) role in respect of Northern Ireland affairs affecting the nationalist community.

3. Secondary Intermediate Objectives:

- (a) strengthening constitutional nationalism (and undercutting support for Sinn Fein/IRA);
- (b) improving relations with the Republic;
- (c) improving international image of Northern Ireland, resulting in financial assistance and increased industrial investment; and
- (d) promoting of social and economic development in Northern Ireland.

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4. Critique of Objectives

How many of above, and to what extent do they remain valid.

5. Analysis of Special Factors affecting the Evaluation

1. The Inter-relationship of political/security/economic policies;
2. The Complexity of the Anglo-Irish relationship (east/west as well as north/south)
3. The difficulties to the evaluation caused by:
  - (a) the attribution of cause/effect relationships;
  - (b) externalities;
  - (c) international factors.
4. Problems of quantifying (some) measures of achievement and efficiency.
5. Problems associated with establishing the "base case" or counterfactual (ie "what would have happened if we had not done x, y or z?").

4. The Context of the Agreement. Short account of why the Agreement was thought desirable, involving:

- (a) short account of political development under direct rule; and
- (b) the political and security situation prevailing in November 1985 (the base time) and

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- (c) prospects as then seen for Northern Ireland without the Agreement (the outline "base case").

5. EVALUATION

1 Intermediate objectives

- (a) Mechanics: Effectiveness of IC/Secretariat in terms of what it has achieved in addition to existing channels of governmental communication;
- (b) security: effectiveness of the security effort; changes in security compared with so far as we can hazard any reasonable guess, what would have happened had we not signed (the "base case" or "counterfactual"); especially in respect of security questions on which cross-border cooperation particularly bears
- (c) nationalists: changes in attitude assessed by:
- (1)attitudinal surveys
  - (2)popularity of constitutional, as against unconstitutional nationalism;
  - (3)effects on republican violence and public disorder;
  - (4)manifested support for institutions;
  - (5)propensity for nationalists to engage in constructive political activity;
- compared with what we believe would have happened
- (c) unionists: changes in attitude assessed by:
- (1)attitudinal surveys
  - (2)election results;
  - (3)effects on loyalist violence and public disorder;
  - (4)manifested support for institutions;

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(5) propensity for unionists to engage in constructive political activity; compared with what we believe would have happened

2. Secondary intermediate objectives, similarly assessed

3. Final objectives

(a) Promotion of peace, stability and reconciliation etc. (Perhaps too early for anything useful to be said?)

(b) Elimination of NI constraints on wider UK policies; progress to date.

4. Costs and Benefits

1. Financial and economic costs: and benefits

2. Assessment of their significance to the wider picture

5. Conclusions

1. Striking the balances in respect of each of the areas identified above;

2. identifying better alternative (if any) measures for achieving those objectives which remain still relevant.

Annexes

1. More detailed papers covering areas summarised especially in 3 above (security, international effects etc);

2. Tabular summary of action to date under Articles of Agreement.