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COFY

RBS/28/89

FROM: R B SPENCE
DATE: 26 JANUARY 1989

cc. PS/Sir Kenneth Bloomfield
Mr Wilson

NI PERMANENT SECRETARIES

REVIEW OF THE ANGLO-IRISH AGREEMENT : ARTICLE 5

Permanent Secretaries will be interested to see the attached paper from the Irish side about Article 5, in particular:-

- (1) the criticism of the UK's failure to respond in an imaginative and forthcoming way to the need to accommodate the nationalist identity;
- (2) the concentration on Irish language issues;
- (3) the doubts expressed over whether sufficient progress will be made in ending economic discrimination (Mr Parkes will want to comment on the references in para 6 to the school inspectorate);
- (4) the suggestion that SACHR's role and powers should be re-examined;
- (5) the suggestion of a Ministerial-led team - with Irish Government representation - to oversee progress towards greater equal opportunities and "the wider economic and social implications of Government initiatives in various areas";

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- (6) the pressure for further action in disadvantaged areas; and
- (7) retabling of the idea of a Bill of Rights.

We received this paper a couple of hours before the meeting and there was, therefore, no time to consult Departments. There was, what I can only describe as, a robust debate, during which we questioned several of the assumptions and perceptions underlying the Irish paper.

The next stage is for the UK side to draft a short paper for discussion with the Irish side setting out an agreed agenda for further action under Article 6.

We promised the Irish side a meeting on the Irish language issues on the education front and we will be in touch with DENI to agree a date.

RMS

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C O N F I D E N T I A L

Review under Article 11 of the Anglo-Irish Agreement

Article 5

1. Article 5 is one of the most wide-ranging articles of the Agreement and a review of its operation therefore necessarily touches on a considerable number of areas. This paper looks briefly at some individual elements of Article 5 and makes a number of specific proposals. However, we would preface these proposals with some general remarks on the scope and operation of Article 5. We would also make the point that Article 5 is to be read in conjunction with, and is usefully illuminated by, the preamble to the Agreement, particularly paragraphs 3, 5, 6 and 7.

Operation of Article 5

Rights and Identities

2. It is widely accepted that the Northern Ireland problem arises to a significant degree from the clash of identities between the two traditions, and that this conflict of identity must be acknowledged and addressed if there is to be any real progress towards a solution. The wording of Article 5 suggests an outreach role for the Conference in concerning itself with "measures to recognise and accommodate the rights and identities of the two traditions in Northern Ireland". The use of "accommodate" in particular suggests a forthcoming attitude, and implies a readiness to facilitate, and indeed initiate, proposals to give expression to the identities of both traditions. Given the history of Northern Ireland, and the dominant economic, social and cultural position of the unionist tradition, it is reasonable to interpret Article 5 as holding particular promise for the nationalist tradition.

3. The truth is however that three years after signature of the Agreement, the nationalist community does not have a sense of an imaginative and forthcoming attitude on the part of the British Government towards accommodation of the nationalist identity. The feeling is instead of concessions always having to be fought for, sometimes won, sometimes lost, sometimes so diluted in the

achievement as to be emptied of substance. The issue of the place of the Irish language in the new school curriculum is perhaps a good illustration. In the light of the wording of Article 5, it would not have been unreasonable to expect the British Government to start from a position of considering some provision for Irish teaching in Northern Ireland parallel to the arrangements for teaching of the Welsh language in Wales; in fact, even the revised British Government proposals, as amended after strong representations from the nationalist community, fall very significantly short of the Welsh model.

4. There are other illustrations where the outcome is even less satisfactory: the failure to repeal the legislation prohibiting street signs in Irish is, for example, incomprehensible to the nationalist community. Beyond any specific examples, however, what is sought is an attitudinal change so that, on identity issues, the nationalist community can - insofar as is reasonably possible - perceive itself as working with a willing government rather than constantly having to persuade an unwilling one.

"To Protect Human Rights and to Prevent Discrimination"

5. The protection of human rights in a society under threat from terrorism is no easy task. The obligation to protect the most basic human right, the right to life, is obviously paramount. But wherever the case is made that the protection of human life necessitates the erosion of other rights, the arguments in support of that case obviously require the most careful scrutiny. The point is not, of course, merely an academic or philosophical one; the reality is that the conditions of abnormality brought about by the suspension of civil liberties are the very conditions in which terrorism thrives and can make spurious claims to legitimacy. It must therefore be a cause of deepest concern to both governments that there is a growing perception within Northern Ireland that, in the balancing of security requirements and protection of civil liberties, the Government consistently shows itself insufficiently concerned with the protection and development of citizens' rights.

6. In terms of ending economic discrimination, the introduction of new fair employment legislation - which we believe requires strengthening in a number of key areas during its passage through Parliament - is the most significant advance made under Article 5. It is important to remind ourselves however that the introduction or passage of legislation will not, and cannot, of itself reassure nationalists that the pervasive employment discrimination which characterised society in Northern Ireland has come to an end. Their daily experience tells them otherwise. To take the civil service for example: the absence of Catholics in the most senior echelons is constantly pointed out to us by Northern nationalists. We are also repeatedly told that in, for example, the Department of Education, among almost 60 school inspectors and 8 senior inspectors (school inspectors are of course a high visibility profession), there is hardly a handful of Catholics. Arguably, much of this is a legacy of the past and will in time be corrected. But one can hardly wonder at the sense of urgency behind nationalist demands for a fair deal in the workplace, or their insistence on suspending judgement on the new legislation until its results are seen in practice.

Specific Proposals

(1) Human Rights

The question of a Bill of Rights is considered separately below. A number of the problem areas in the human rights/civil rights area also relate to the subject matters of Article 7 and 8 of the Agreement and are most appropriately dealt with under that heading. However we would wish to advance at this stage a proposal for a joint assessment within the Conference of the role and powers of the Standing Advisory Commission on Human Rights (SACHR)

As the primary body dealing with human rights issues in Northern Ireland, SACHR is a repository of very considerable expertise in the human rights area. Established in 1973, its present role is of course merely advisory and not to any degree regulatory. The question arises whether the role of SACHR could usefully be reinforced at this stage. We would envisage the establishment of a working group of the Conference which would meet with representatives of SACHR and discuss with them their experience to date and any recommendations for a change in their role. The object of the exercise would be to draw up a paper for the Conference which would outline ways, if any, in which SACHR might be strengthened and given a more central role in dealing with issues relating to human rights.

(ii) Cultural Heritage

(a) Irish Language

Some limited progress has been made in promoting the Irish language, including the ending of the practice of not accepting correspondence in Irish by government departments, the publication of an ordnance survey map in Irish, the establishment of a research unit into Irish placenames at Queen's University and the provision of £25,000 to the Northern Ireland Arts Council for the promotion of Irish cultural activities.

These changes, however, do not amount to adequate recognition of the importance of the Irish language in the cultural heritage of nationalists. In addition to the repeal of that section of the NI Public Health and Local Government (Miscellaneous Provisions Act) 1949 which prevents local councils from erecting street signs in anything other than English, we would propose that

- (i) a special institute be established to promote the use and knowledge of the Irish language and traditions.
- (ii) there be greater provision for scholarships to Gaeltacht areas.

- (iii) additional assistance be given to support schools where instruction is carried out through the medium of Irish.

The failure to promote actively the use and knowledge of Irish as a legitimate and valuable feature of the nationalist identity is illustrated by the secondary role accorded it as a modern language in the education reform proposals. We are concerned that the proposals on the Irish language in the curriculum as currently formulated will not promote the teaching of Irish. Indeed, senior figures in the nationalist community have expressed the fear that the enforced coupling of the Irish language with a second modern European language will adversely affect the study of Irish. In the light of growing dissatisfaction in the nationalist community on the secondary role being accorded Irish, we wish to have the proposals amended to take account of these concerns. We have submitted a paper and await a response.

We note the proposal to include cultural heritage in the cross-curricular themes to be established under the education reforms. We are anxious to ensure that this takes sufficient cognisance of the importance of the nationalist cultural heritage and the Irish language.

(b) Broadcasting

The subject of broadcasting has been discussed over an extended period, including in the A. I. I. C. context, without any progress being achieved. Improved reception of RTE in Northern Ireland would not alone respond to the desire of nationalists to affirm their cultural identity; it would also fulfil an important function in helping to convey mainstream Irish attitudes on political issues arising within Northern Ireland. We accordingly consider that, as a matter of urgency, measures should be undertaken to allow for the improved reception of RTE radio and television in Northern Ireland. We would also wish to discuss

ways in which reception of Radio na Gaeltachta in Northern Ireland could be improved.

(iii) Electoral Arrangements

We would assume that the Elected Authorities (Northern Ireland) Bill enabling I voters to vote in local council elections, will be passed in time for the local elections in May 1989. We have also raised a number of other issues concerning electoral reform which we would wish to see pursued in the Conference.

(iv) Flags and Emblems

The Flags and Emblems (Display) Act (Northern Ireland) 1954, was repealed under section 27 of the Public Order (Northern Ireland) Order 1987. We continue to attach importance to the impartial treatment of flags and emblems which symbolise the nationalist identity.

We reiterate our view that the new legislation on fair employment should contain a strong and specific prohibition on the display of offensive flags and emblems in the workplace. This is an issue which we will pursue in the context of our continuing discussions on fair employment.

(v) Avoidance of Economic and Social Discrimination

Economic and social discrimination is often indirect and unintentional, occurring as a side effect of policy directed primarily at other objectives. For example, a policy directed at rationalisation of health services in the Belfast area might in practice amount to a cutback in health services as well as employment opportunities in West Belfast - an outcome which would run directly contrary to attempts to strengthen the economic and social fabric of West Belfast.

We have previously indicated our support for the proposal advanced both by SACHR and the FEA that a committee be set up

within the civil service, chaired by a Minister, which would ensure a co-ordinated effort to achieve the Government's equal opportunity objectives. We would now wish to revive and broaden that proposal. We would suggest that such a committee, which would include inter alia IDB and LEDU representatives, would concern itself not just with equal employment opportunities but also with the wider economic and social implications of Government initiatives in various areas.

Consistent with Article 5(c) of the Agreement, we would propose that an Irish Government representative should be a member of this Committee.

West Belfast

West Belfast has suffered most heavily from the twin evils of violence and socio-political alienation. An encouraging start to tackling the problems of the area has been made with the "Making Belfast Work" programme; however a long-term commitment will be required if lasting and comprehensive results are to emerge. We have suggested that, in the course of the Review, a full appraisal should take place of the present operation and future direction of the programme. We have also suggested that the establishment of similar schemes in other disadvantaged areas should receive urgent consideration.

(vi) Bill of Rights

We reiterate our support for the adoption of a Bill of Rights for Northern Ireland. As set out in considerable detail in our submissions of July 1986 and February 1987, we see inherent merits in a Bill of Rights based on the European Convention on Human Rights with whatever additions may be considered necessary and appropriate from other sources.

Apart from the substantive arguments for introduction of a Bill of Rights, it appears to us that, at a time when there is so much emphasis on identifying areas of possible agreement across the political divide in Northern Ireland, it makes little sense to ignore one of the very few areas where there is cross-community agreement.

As we understand it, the main hesitation about movement in this area is that it would be difficult to introduce a Bill of Rights for Northern Ireland alone, as there would inevitably be pressure to formulate a Bill for the whole of the United Kingdom. However, it must be pointed out that the circumstances of Northern Ireland are unique within the U.K. The province has been singled out for distinctive legislative treatment in a number of ways. While there would undoubtedly be some pressure for extension of a Bill of Rights to the U.K. generally (as, for example, there will inevitably be some pressure to extend advances in the fair employment area) it seems difficult to imagine that such pressures would not be containable.

Work within the Conference on the issue of a Bill of Rights has been suspended for some time; the last submission was that of the Irish side in February 1987. We would suggest that consideration of the matter should resume as a matter of urgency, on the basis of the British submission of March 1986 (which we found helpful) and the two subsequent Irish submissions of July 1986 and February 1987.

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