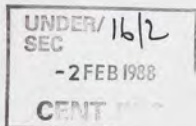


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PS/Secretary of State (L)

cc: PS/SofS(B)
PS/Mr Stanley (L&B)
PS/Dr Mawhinney (L&B)
PS/PUS (L&B)
PS/Sir K Bloomfield
Mr Burns
Mr Stephens
Mr Chesterton o/r
Mr Elliott
Mr Innes
Mr Spence 2/2
Mr Masefield
Mr Kirk
Mr J McConnell
Mr Wood (L&B)



REVIEW UNDER ARTICLE 11 OF THE ANGLO-IRISH AGREEMENT

The Review

There must be a review of the working of the Conference - though not of the Agreement as a whole - by the end of 1988 under the terms of Article 11 of the Anglo-Irish Agreement. Once Anglo-Irish relations have returned more closely to normal, we are likely to hear more about this both from the Irish as well as from the Unionists (who are already alert to the issue). This submission, therefore, which reflects the recent conclusion of PUS' Anglo-Irish Steering Group, sets out the main issues as they now appear to officials, and seeks to prepare the way for preliminary soundings of the Irish. It also takes account of PS/Dr Mawhinney's minute to you of 28 January.

Timing

2. It is not clear whether Article 11 (attached) prescribes that the Review would start in November 1988, three years after the Agreement's signature, or should be completed by November. However, we believe that, subject to anything they may say tomorrow, the Irish are now looking for a review Conference in November 1988 which

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would consider the outcome of a previous (official ?) review. The Article also allows for a review in three years or earlier if requested by either Government. The Irish could, therefore, put the seal on their interpretation by asking for a review earlier than the three year period if they so wished, While it is hard to reach a judgement at present, a later rather than an earlier review seems more likely to be productive. But although we need not accept the Irish interpretation in any preliminary discussions, there is still plenty of time to discuss this question with them. It is more important now to prepare the way for later substantive discussions with them from which one of the pay offs ought to be a mutually acceptable date.

Scope of Review

3. It would again be premature to try and determine now the ambit of a review under Article 11, although it seems unlikely to be the occasion for major surgery on the Agreement or its operation. The fundamentals, including Article 1, are excluded anyway. For our part, there is no major change we want to see in the working of the Conference: we remain committed to the broad policy objectives of the Agreement; unless recent events permanently shifted their perception 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 at issue, the Irish may feel justified in doing the same. Moreover, if we build it up - and, even if we do not go 'public', news of such developments is sure to leak - expectation of, and pressure for, radical steps will grow. Unionists, in particular, may misinterpret such reports: either as suggesting that we are resiling from our commitment to the principles of the Agreement; or that we are compassing another step 'down the Dublin road'.

4. On the other hand, it is too early to rule out something more far reaching: for example, it cannot be discounted that Mr Haughey may seek to do a deal with the Unionists - he has never been totally, or emotionally committed to the Agreement - or in some

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other way put his stamp on it and try and seek to widen the scope of the Review beyond the workings of the Conference. But the Review could also be affected by a number of other present unknowns: the longer term impact of our present difficulties, a decision in the Irish Courts in favour of McGimpsey, or real progress in talks with Unionists - all could produce a decision to review the Agreement itself, resulting in a major political exercise.

The Unionist Dimension

5. There is also the hard question of how we can best exploit Unionist interest in the review (and also stop, as Dr Mawhinney fears, the review being used to divert attention from the political realities in Northern Ireland). Unionists will undoubtedly wish to influence the course of the review, but, but if possible, without seeming to be giving 'legitimacy' to the Agreement in doing so. We also need to devise means for ensuring the review reflects so far as possible Northern views and indeed promotes political development. We must also avoid, if we can, renewed charges of doing a deal with Dublin while ignoring majority sentiment. Officials will consider these issues carefully over the coming weeks and advise accordingly. In the meantime, while the internal NI political scene and Anglo-Irish relations generally are so opaque - and sensitive - it would be premature for the Secretary of State to prejudge in public the choices he may wish to make as events become clearer.

6. In short, we cannot at present envisage how far a Review would go: it could be a low key exercise directly related to the workings of the Conference; or, owing to Irish insistence or NI internal political developments it be more far reaching. While there seems no any advantage to us in the latter approach, we should nevertheless keep an open mind. However, by the end of the summer at latest, we would need to have decided what our objectives for the Review should be. Officials have, therefore, already started preliminary work to this end.

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What do we say to the Irish?

7. We know that the Irish have begun to focus on the Review. It is far too soon to try and involve them in detailed discussions of the timing, ambit or procedures of the Review. Nevertheless, it is more than ever desirable to keep abreast of their developing thinking, and to encourage it to move on a convergent, rather than divergent course. We should also avoid arousing false expectations, whether North or South of the border, by incautious remarks. (The Taoiseach's RTE interview on 10 January, referring once again on his 'constitutional problems' about Article 1, and speaking of the Article ceasing to be binding if 'reviewed', albeit by mutual consent, is the sort of thing we should not promote).

8. The subject is not suitable for the agenda of tomorrow's Special Conference. But there is, as Mr Elliott recommended in his submission of 8 January, a case for a brief and procedural mention of the Review at the next 'normal' meeting of the Conference, largely in order to make it clear to Irish Ministers level that we do not expect to address the substantive issues of the Review until much later in 1988, perhaps September. The Secretary of State could exploit this opportunity to remind the Irish of the dangers of giving unhelpful signals that might suggest to Unionists that the Agreement as a whole (including Article 1) was going to be put into the melting pot.

9. It is also for consideration whether the first part of this message might be communicated more widely through a brief mention of the Review in the Joint Statement issued after such a Conference. However, the first reactions of the Irish side of the Secretariat were that there was a danger that if we mention the Review at all in the statement, however dismissively, this could have the effect of heightening the expectations rather than dampening them down. On reflection, the Irish are probably right. And, unless there is extensive media speculation between now and the next normal Conference, we should not take the risk of stirring it up.

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Recommendations

10. I recommend that the Secretary of State should note the 'long finger' approach to the forthcoming Review endorsed by PUS Anglo-Irish Steering Group earlier in January(but including the preliminary internal work now being put in hand by officials) But he may wish to raise the subject briefly, as also recommended by Mr Elliott, at the next normal meeting of the Conference. His approach would be reinforced by regular contact through the Secretariat. But that there should not, on this occasion, be any mention of the Review in the subsequent Joint Statement. Nor, while the general political situation is disturbed, should he make any public statement on the subject that went beyond acknowledging (and that only in response to direct questions), that there must be a review of the workings of the Conference by the end of 1988; but that it was far too soon to be getting down to detailed planning.

9. Officials would be happy to discuss with the Secretary of State the wider issues in more detail.

(Signed by P N Bell)

P N BELL
1 February 1988