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Treaty

FROM: JONATHAN STEPHENS  
Associate Political Director (L)  
11 February 1999

Mr Fergusson, DAD

cc Mr Jeffrey  
Mr McCusker  
Mr Brooker  
Mrs Flanagan  
Mr Whysall  
Mr Keown  
Mr Gray  
Ms McClelland, HOLAB  
Mr Chamberlain,  
Deputy Legal Adviser, FCO  
Mr Rankin, Dublin

#### IMPLEMENTATION BODIES TREATY: AN EXIT CLAUSE?

I have seen, and we have briefly discussed, the recent papers on this issue.

2. This is a particular case of a general issue which we had to confront during the preparation of last year's Bill. Should we build in contingency arrangements for the possible collapse of elements of the Agreement? The emphatic reply then from both the UUP and the SDLP, which Ministers decided they had no choice but to accept, was that we should not plan for failure. As a result, the provisions for possible prorogation, suspension or dissolution of the Assembly or the Executive were all removed from the Bill.

3. Having taken that line (perhaps rather against the best interests of HMG), it would be hard to explain if we now made an exception for the implementation bodies. The SDLP, for example, might note that while the implementation bodies - set up, in principle, by decision of the Assembly, not HMG - would collapse if the Assembly collapsed, there was no means available, short of a fresh Bill, by which the Assembly

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ould be brought to an end if, for example, unionists refused to work the North/South Ministerial Council.

4. There seems to be no stronger case for saying implementation bodies should end if the Agreement ends, than there is for saying that all laws passed by the Assembly should end.

5. George Gray makes the practical point that it would be extremely messy if implementation bodies simply ceased without thought as to what should replace them. Equally, there is the political point that we might not want to lose the implementation bodies simply because of a temporary hiatus or suspension of the Assembly or the North/South Ministerial Council.

6. Finally, there is the slightly awkward point of Paul Murphy having argued against an amendment to this effect during passage of the Bill when he said:

“Of course they are interdependent, but it is important for everyone - including the implementation bodies - to understand that if something good is set up and working well, it need not necessarily collapse as a result of what may be only a temporary disagreement or problem with the Assembly. I entirely accept that the life of the North/South Ministerial Council depends on the life of the Assembly - if the Assembly goes so does the Council - but if, as the Hon Member for West Tyrone said, sensible co-operation resulted from the Assembly deciding what would happen by way of an implementation body, is it sensible for that body to disappear?”

7. I suggest therefore that we should resist pressure for an amendment to the treaty and say something along the following lines:

- as paragraph 5 of page 1 of the Belfast Agreement recognises, all the key institutions and structures are “interlocking and interdependent”. That is well understood;

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- the governing treaties for each of the bodies requires them to "operate in accordance with the provisions of the multi-party Agreement", which is itself based on the principle that all these institutions are interlocking and interdependent;
- we have - largely at the strong urging of the UUP and the SDLP together - deliberately chosen not to plan for failure of any of the institutions in any of the legislation. For example, there are no fall-back provisions for prorogation or dissolution in the event of the Assembly not functioning properly - nor is there any mechanism to force the collapse of the Assembly if the North/South Ministerial Council is not operating;
- consistent with this general approach which the parties have urged on us, we don't think it is right to plan for failure in respect of the implementation bodies either;
- in practice, if there was a collapse of the Agreement or the Assembly then this would engage the review provisions. Without the North/South Ministerial Council to give them policy and directions, the implementation bodies would be left in something of a limbo. Clearly some arrangements would have to be put in hand for the functions they were carrying out to continue to be carried out by someone, but we see no stronger case for writing this sort of contingency arrangement in than in respect of any of the other institutions.

8. In case the UUP get excited, it might be sensible to consult Paul Murphy with this suggested line (and remind him of what he said in the Commons). Perhaps you and Cent Sec could liaise as to who does this?

(Signed JAS)

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