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New File on North South arrangements under Agreement Copy (2)
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Some worrying aspects here which I am raising with D/F Foreign Affairs

No of pages including this one: 3

*hmm
22.5.98*

19 May 1998

To: HQ
To: Secretary Gallagher

From: Belfast
From: Joint Secretary

*cc Mr. Zacher - Mr. Sella
Mr. Alastair H. McNeill
✓ Co-ordinator AI
A-b k.*

Subj: Strand Two material in the Settlement Bill

1. We have been asking about the treatment of Strand Two in the draft Settlement Bill on which British officials are working at present.
2. By way of response, we have had informal sight of an internal minute for NIO Ministers which addresses this point among others.
3. The following key points from this minute are worth noting:

Legislative provision is required to permit Assembly Ministers to discharge the functions of the North/South Ministerial Council (as set out in para 5 of the Strand Two section of the Agreement);

The provision sought is similar in purpose to Section 12 of the NI Constitution Act (1973);

The Agreement, the minute observes, uses some terminology (such as "best endeavours" and "determined efforts") which is not appropriate to legislation but which would be more compatible with e.g. a Memorandum of Understanding between the Assembly and the Irish Government;

Legislative provision will also be needed to allow for the establishment of implementation bodies as a result of decisions taken by the Council;

It is clear, the minute notes (from para 3 of the Validation section and from para 10 of the Strand Two section), that the "at least twelve" implementation

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bodies which the shadow institutions are required to agree on by 31 October must come into being at the same time as all the other institutions become operative and that the two Governments are required to make all necessary provisions to ensure that the bodies are properly established;

- The Agreement requires, therefore, that the two Governments take the lead in establishing the twelve bodies. This will require the making of international agreements. to come into effect at the same time as all the other insitutions become operative;
- The British Government must take enabling powers in the Settlement Bill to give appropriate legal underpinning to the bodies. (These can only be enabling powers, the minute explains, because the Bill will be introduced in Parliament during the summer but the purpose, functions etc, of the bodies concerned are not required to be decided until the end of October);
- The British Government must also make legislative provision to allow the Assembly to make international agreements with the Irish Government to establish new implementation bodies (or to disband or otherwise alter already established bodies) and to give these bodies legal underpinning in the form of Measures of the Assembly;
- As part of the above, it will also be necessary for the Settlement Bill to contain provision for the Secretary of State to transfer legal responsibility for the twelve bodies to the Assembly at an agreed point. At an agreed moment, the international agreements between the two Governments which establish the twelve bodies should be superseded by new agreements between the Assembly and the Irish Government; ???
- The power enabling the Secretary of State to make legislative provision for the twelve bodies should entitle her to do so by subordinate Order, subject to (negative) resolution. Both the Secretary of State's and the Assembly's powers to make legislation for implementation bodies should allow them to cover such areas such as finance, transfer of functions etc; No!
This would defeat the author in Westminster legislation
- The Settlement Bill should also make legislative provision to authorise

funding arrangements for the North/South Ministerial Council, including staff and other costs associated with the Secretariat. (The provision, the minute notes, should take account of the possibility that the Council may seek a direct voice in the EU, perhaps by opening an office in Brussels);

- The Bill should also permit members of the Assembly to meet members of the Oireachtas in a joint parliamentary forum and provide legislative approval for any expenditure connected with this activity;
- The Bill should also permit the Assembly, in consultation with the Irish Government, to establish a consultative forum and to authorise any associated expenditure;
- The Bill should also ensure that the Assembly's power to make Standing Orders is wide enough to deal with issues relevant to Strand Two. It should also enable the Assembly Ministers in the Council to produce a Memorandum of Understanding with the Irish Government covering issues relevant to the operation of the Council.

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This is
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reassuring
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Secure Fax: 542

19 May 1998

No of pages including this one: 2

To: HQ
To: Secretary Gallagher

From: Belfast
From: Joint Secretary

cc ASH/ASAC/PSBG
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Notes W & L
Cassidy A1

Subj: Prime Minister's criteria for the abandonment of violence

1. We have had a number of exchanges here about the criteria mentioned in the Prime Minister's Balmoral speech last Thursday (p. 4) and the manner in which the British intend to reflect these in legislation.
2. We have also been emphasising our expectation that, in anything he may say during his visit here which begins tomorrow evening, the Prime Minister will not go beyond these criteria or develop them along lines not previously agreed with us. In particular, we are presuming that he will resist temptations to endorse the decommissioning spin which David Trimble attached to his remarks last week.
3. The line we are being given - from Tony McCusker yesterday and again from Peter Bell following consultation with London - is that the Prime Minister intends to remain faithful to the Agreement and that his Balmoral speech sought merely to clarify the latter, not to alter it in any way. He is not setting new preconditions or barriers. Attention is being drawn to the "overall judgement" which he would intend to reach on the basis of these factors. This judgement would be formed continuously and progressively as the Agreement is implemented. The factors mentioned in the speech are all relevant to it but they do not constitute separate hurdles to be crossed. The Prime Minister is conscious, we are told, of the need to avoid becoming "hung up on individual hooks". He is, however, very serious about the underlying issues.
4. The question of how the factors will be reflected in the Settlement Bill is receiving attention. The view at official level, Bell indicated, is that they can appear only in summary form and minus the more rhetorical elements. An approach which some would support, but which may not find favour with Ministers, would be to highlight

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the "overall judgement" and require - without supporting detail - satisfaction that the ceasefires are indeed complete and unequivocal and that full cooperation is taking place with the Independent Commission. We have asked to be kept briefed on thinking in this regard.

5. On the point about decommissioning, and Trimble's claim that the factors amount to decommissioning actually beginning before Ministerial office can be assumed, we are told that the Prime Minister will resist invitations to move off the language he used last week and that, more generally, he wants to get the message across once more that there can be no "cherry-picking" of the Agreement by anyone.