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Mr Hare
Have we sent this
to the Taoiseach
already? Or was that
an earlier meeting?
C.C. PST, Mr. Teahan, Mr. Mansueth - D/T
PSM, PSMS, PSSG
Arms Land + Wash
+ participants (list)
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Steering Committee on the Implementation of the Good Friday Agreement

Iveagh House, 27 May 1998

25A

Attendance:

- Dept. of Foreign Affairs:** Dermot Gallagher (Chairman), David Donoghue, David Cooney, Paul Murray, Colm Ó Floinn, Tim O'Connor, Ray Bassett, Eamonn McKee, Rory Montgomery, Gerry Staunton, Stephen Dawson.
- Dept. of the Taoiseach:** Wally Kirwan, Simon Hare
- Department of Justice:** Brendan Callaghan
- Attorney General's Office:** James Hamilton, Liam O'Daly

1. The minutes of the first meeting of the group were agreed.

De-escalation of security

2. Gallagher reported on a recent meeting with Sinn Féin, at which they had stressed the importance for them of being able to show movement on the ground, in the form of de-escalation and demilitarisation. They had said it would be a serious mistake on the part of the British side not to move on this, as it would play very much into the hands of the 32 County dissidents. Donoghue said the British side had prepared a statement on demilitarisation, which they might intend to issue shortly. This was similar to the negative and minimalist document they had tabled to the Confidence Building Subcommittee of the Talks. We would have to try to persuade them to take a more dramatic and positive approach in the statement, and also press them to take measures on the ground.
3. It was felt that, while a continuing threat existed, there was inevitably an element of risk to de-escalation; however, the alternative was worse. Gallagher said a strong line had to be conveyed at political and official level to the British side of the importance of this issue. The Taoiseach would be doing the same at his meeting with Prime Minister Blair on 1 June.

Decommissioning

4. Gallagher said the Yes vote had given Trimble a bit of room for manoeuvre on this, and a good election result might give him more. There was a worry, however, that the UUP would put themselves on the hook on the issue, by pressing for a firm linkage of decommissioning with seats on the Executive. Ironically, from Trimble's point of view, if he raised this in the election, it could only play into the hands of Sinn Féin, as it could make Sinn Féin's role the issue in the election to the detriment of the SDLP, and perhaps suggest that there was a pulling back from the Agreement.
5. The British side had asked us to agree to bring in the Orders, implementing the decommissioning schemes, earlier than the end of June. It would be unfortunate, and probably send the wrong signal, if the first element of the Agreement seen to be implemented was decommissioning, but if it made the difference on a sensitive issue (e.g. on the prisoners legislation), we might just consider it. On the question of the letter from General de Chastelain, our response - which it was not intended to convey until after the meeting of the Liaison Group - would necessitate a wider political and official level review of the implications.

Draft Work Plans

6. Callaghan said an additional item to be included was the review of the Offences Against the State Acts. This would be conducted by an Interdepartmental Committee, probably with an independent chair, such as a retired judge.

Establishment of Subgroups

7. Gallagher said the amount of work to be done on Strand Two suggested the need for a Subgroup on this area. He suggested that it should include representatives of DFA, D/Taoiseach, D/Finance and the Attorney General's Office, and proposed an opening meeting of the Subgroup on Wed 3 June. He further proposed a collective meeting on 5 June with all the relevant Departments to brief them on the North/South area and introduce the Subgroup. He suggested that, following these initial meetings, which he would chair himself, the follow-up work of the Subgroup with individual Departments should, given his expertise and long experience in the area, be directed by Wally Kirwan, in conjunction with the Department of Foreign Affairs, with the Subgroup reporting back to the Steering Committee. There did not seem to be a need at present for other Subgroups, as all other issues could be dealt with for now in the Steering Committee itself. These proposals were agreed.
8. Kirwan said it might be useful to get D/Finance input on horizontal issues in Strand Two even in advance of the following week's meeting of the Liaison Group. (It was agreed to proceed immediately with a meeting with D/Finance). On Strand Three, it would be useful to get an inventory of existing East/West cooperation. There was some discussion of where these areas would be located - in the Conference or the BIC. Cooney suggested this would be largely dictated by whether the relevant powers were devolved to the

Assembly or not, and Montgomery said that in any case it would probably be the same officials in Dublin and London who would deal with both the BIC and the Conference. Donoghue said there would probably be few new areas falling to the Conference, but we could expect that the British would want demonstrably to include some non-Northern Ireland issues (e.g. the Common Travel Area) in that format. It was noted that the Minister for Foreign Affairs was planning a visit to Edinburgh. The Taoiseach had recently visited Glasgow, and met Donald Dewar and Alex Salmond. He had found the Scots enthusiastic about the BIC.

Legislation in this jurisdiction - Strand Two

9. Gallagher said he understood the preliminary view of the Attorney General's Office had been that there might not be a need in legal terms for legislation for the Ministerial Council itself, although there could be a political rationale for a short Bill to enshrine it, in order to underline its importance and to match the British side (which would be incorporating the Council in Westminster legislation). This could be done after October. Hamilton said there certainly did not seem to be any need for legislation for the shadow Council, which was essentially a political entity. As regards the actual Ministerial Council, this was envisaged, but not actually established, by the Agreement, and there was the question of how it was to be established - whether by a further Agreement, an exchange of letters etc. As a preliminary view, he felt that there would have to be some means of formal establishment by the two Governments - perhaps at the same time as the implementing bodies were being finalised. Constitutionally, Article 29 would be amended as soon as the President signed the Bill, and this would permit the establishment of the Ministerial Council. But there would seem to be a need for a further step, with the British, to establish it, and this would have to be done before the entry into force of the British-Irish Agreement. It was not clear that the Ministerial Council would need legislation to give it powers, but, since such legislation would definitely be needed for the implementing bodies, it seemed sensible to avoid any doubt and do the same for the Council itself at the same time. Further consideration was needed of all of this.

10. On the implementing bodies, Gallagher said he understood the Attorney General's Office to be leaning towards separate International Agreements for each body rather than an Omnibus Bill. The relevant Act for each body could be quite short, with the International Agreement as an annex. Hamilton confirmed that this was his thinking at this stage. Much depended on what the nature of the bodies turned out to be. It seemed likely they would be quite varied in scope and powers, with no clear model which could be catered for easily in an Omnibus Bill. He envisaged the detail perhaps being in the Supplementary International Agreements, with the Acts themselves quite short. Another possibility, if all the bodies were agreed on time, was a single Act with separate chapters, and all the Supplementary Agreements annexed. It might also be more transparent to do it this way - to seek the approval of the Oireachtas for Agreements, rather than introduce Bills which were supposedly ordinary legislation, but for which in fact no amendments could be accepted.

11. Kirwan said the British would be subsequently transferring the powers for these areas to the Assembly, but he felt we would want the statutory basis to remain in Westminster legislation. This was agreed. Hamilton said even if the powers were transferred, the UK would retain the obligations under the International Agreements.
12. Hare emphasised the need to give the Chief Whip as much notice as possible of legislation. Hamilton agreed, and also the Draftsman and the AGO. They needed notice of when Bills might be expected and the scale of what was involved. He suggested perhaps a small group - two or three people - might keep an overview of the flow of prospective legislation.
13. Gallagher said there was a need to obtain the approval of the Dáil for the British-Irish Agreement. Technically, we would have until early 1999 to do this. Kirwan said there might be an advantage in terms of the political cover for any delay on other matters, and in terms of maintaining momentum, in doing it early. Hamilton said he would look at how this had been dealt with e.g. on Maastricht. He would favour doing it soon, before anyone thought of seeking more injunctions.

Implementing Bodies

14. Kirwan said we needed to come to an understanding at the Subgroup meeting on our order of preference for the implementing bodies.

The areas listed in the Agreement were:

1. Agriculture - animal and plant health
2. Education - teacher qualifications and exchanges.
3. Transport - strategic transport planning.
4. Environment - environmental protection, pollution, water quality, waste management
5. Waterways - inland waterways
6. Social Security/Social Welfare - entitlements of cross border workers, fraud control.
7. Tourism - promotion, marketing, research, product development.
8. Relevant EU Programmes such as SPPR, INTERREG, Leader II and their successors.
9. Inland fisheries.
10. Aquaculture and marine matters.
11. Health: accident and emergency services and other related cross-border issues.
12. Urban and rural development.

The additional areas in the side letter by the Taoiseach to Mr. Trimble were:

- Promotion of the Irish language
- Trade Promotion and Business Development

- Training and Employment Services
- Scientific and Technological Research and Development

In addition, it was felt that consideration should be given to Arts and Community Development (as two other areas we had included in our list in the Talks).

Other areas for legislation

15. Callaghan said the Human Rights Commission would certainly need legislation, and they had asked the AGO if it might also be needed for the release of prisoners convicted of capital murder. Hamilton said they were not sure on this latter point yet. On the HRC, the AGO felt there was an argument in favour of establishing it at some distance from Government, on the model of the Law Reform Commission - i.e. linked to the AGO rather than to Justice as the line Department. If it were to work, the HRC would sometimes have to "tread on the toes" of Departments, who might be in the position of "defendants". Bassett said the HRC was to parallel the Northern HRC, which was a very sensitive matter. Human Rights came under the remit of the Secretary of State and the NIO, rather than a Department, and it was likely to stay that way for the foreseeable future. Hamilton said the DFA Human Rights Unit might also want to get involved: there might be reporting and recommendatory functions involved.
16. Callaghan said Government approval would be sought by the end of June for the review of the Offences Against the State Act. Ó Floinn said the British White Paper on emergency legislation was expected at the end of July.

Contacts with the British

17. On prisoners, Donoghue said the British hoped to table their Bill the following week, and the Irish side would be briefed in the Secretariat the following day. It seemed that the Bill was not yet ready - Blair had been unhappy with the section covering his "pledges". This was a very sensitive area, and the Secretariat were urgently seeking sight of the Bill. Their information was that the Bill would involve an overall judgement, not a "series of hoops". The Minister's forthcoming conversation with the Secretary of State, and the Taoiseach's meeting with Blair, would help to impress the importance of getting this right. Gallagher said we had to send a very strong message that we needed to see the legislation, especially as it regarded the pledges, and in time to come back on it, if necessary at the highest level. If the British legislation reopened, or moved beyond, what was in the Agreement, it would cause profound difficulties for us.
18. The Bill was important primary legislation, and was being introduced now to allow time to get it through. Donoghue said the British did not want to miss the end of June - the first deadline under the Agreement. They were allowing time for Conservative delaying tactics in the House of Lords, and seemed happy they would get it through in time. Gallagher said the Bill was likely to give pain to either Sinn Féin or Trimble.

19. The Settlement Bill will be the main British legislation to implement the Agreement. Donoghue said they intended to table it in early July. We were pressing them for sight of it by mid June, but in fact they had done very little on it yet. Hamilton felt it would be very useful for the legal people on both sides to meet at an early stage, before their thinking had got very far, or crystallised. Both sides would be asking much the same questions re the Ministerial Council, for example. The Secretariat would try to set up an early meeting.
20. There was a discussion of the names apparently in the picture for the Policing Commission, which might be announced as early as the following week. The British had offered a meeting on 1 June, perhaps to brief us on the names. Gallagher said he was very unhappy about the timing - ideally, an announcement should be postponed until after the election. We wanted consultation on the names. Kirwan emphasised that the Commission would be virtually subterranean for twelve months. The names would be the only thing to make an impact, and it was important to get them right.
21. The British wanted to announce the names for the Criminal Justice Review soon, so that it could get to work over the summer. One of our nominees had agreed to serve. Gallagher felt that, again, any announcement before the election would be wrong.
22. Gallagher noted that the Minister for Foreign Affairs was to talk to the Secretary of State the next day (28 May) and the Taoiseach was meeting Blair on 1 June. The Liaison Group would meet on 2 June to discuss implementation. Donoghue said there would be a meeting on the Human Rights Commission in the Secretariat the following week, and a meeting with Departmental Secretaries on Strand Two, which might give us some sense of how they might see ten Northern Ireland Departments being created.
23. There was a brief discussion on symbols and emblems, which would probably come up early in the context of Standing Orders for the Assembly. Bassett said that the issue was wider than the Assembly and that all aspects of public life were involved. Given how difficult it would be for the parties to agree on the issue, there was a strong case for putting it in the hands of an outside expert. Gallagher said the SDLP were not keen on Stormont as the home of the Assembly. Perhaps it was time for someone to take a look at the Harbour Commissioners Building. Donoghue said most of the mooted alternatives to Stormont would necessitate extensive rebuilding.

Stephen Dawson
Anglo-Irish Division
29 May 1998