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CC PB
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Ulster Unionist Party - Talks

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Fax Message

For:

JOHN HOLMES.

Fax No:

From:

DAVID TRIMBLE.

Date:

25 Mar 98

Time:

Message:

Finally 10 pages follow as
response to yours — too many
meetings yesterday!

I will need to talk also
about the adjourned review
plenary.

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ULSTER UNIONIST PARTY

24 March 1998

Response to HMG paper of 23 March 1998

Numbers refer to paragraphs in HMG paper

1. Delete second sentence. Normal STV practice allows for by-elections. If it is right for the Dail in the Republic of Ireland and for NI district councils, then it is right for the Assembly.

The sentence could only make sense as a prohibition on by-elections and compulsory co-option on behalf of the party of the deceased member. It would be unsustainable to insert into legislation a requirement that the new member be of the same religion or supposed nationality as the deceased, this would be clearly in conflict with the ECHR.

If vacancies are to be filled on a party based system, then what about members who change parties, can they be permitted to change the balance of the Assembly?

2. As in previous comments devolution of legislative functions for all of the six NI Departments does not make sense. Your para. 12(v) tries to take account of this. But it would be better to sift through the functions of the Departments deciding where legislative devolution is actually needed.

3. The real safeguards are proportionality; legal actions based on the Bill of Rights and scrutiny by Westminster, probably through the Select Committee.

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Your (iii) and (iv) are quite unacceptable. Sufficient consensus as presently operated is right for talks which are agreeing on a system of government. It is quite a different matter when we come to the day to day operation of that system. In both sub paras you envisage that decisions can only be made by a 70% vote. This would hand a veto to those parties which are likely to reject these arrangements. The result will be paralysis and collapse. Analysis of likely election result (see below) shows that DUP and Sinn Fein are likely to have well over 30% of the seats. A weighted majority immune from such a blocking group would have to be pitched below 65%, at which point it would be simply an embarrassment.

This is an important issue for us. We have already made substantial concessions to nationalist feeling on this matter, especially when we compare our proposals to what you are doing in Scotland and Wales!

We could add the following as a substitute for (iii),
"arrangements to ensure that key decisions and legislation are proofed to ensure that they do not infringe ECHR etc before being presented to the Assembly."

Query reference in 3(ii) to a Human Rights Commission. The ECHR is being implemented on a UK basis, therefore the need for a Commission has to be considered on a similar basis or HMG is discriminating against some parts of the UK and so is in breach of Art 2 of the ECHR. Anyway the whole point of incorporation is to make it justiciable: enforcement a matter for the Courts.

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Para 3(v) a matter for Standing Orders. Para 3(vi) needs explanation. Is it last week's replacement for FEC etc. "Monitor" needs careful handling and "parity of esteem" a deeply flawed concept

4. This is fine as a statement of policy, but it could not be embodied in the legislation.

5. What is meant by "committees to cover..." Our view is that the function is delegated to the committee and then, as in the Wales Bill, the secretary would be the person accountable for that function. See also discussion relating to para 7.

Words from "subject to" to the end should be deleted. They reveal a failure to understand the d'Hondt principle. It distributes entitlements to choose. That choice is then untrammelled. It cannot be restricted by reference to a choice that others have made.

6. First sentence, perhaps, but delete second sentence. Under current proposals the Chairman is the speaker for the Committee. In view of that new role, it would be quite inappropriate to give him a political role.

7. This needs to be thought through. The term executive has no significance other than as an alternative to cabinet. The chief characteristic of both is collective responsibility. That means that all members are bound, whatever their private views, to support the same policy on pain of being dismissed.

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This is also the case if there is a coalition as the formation of a coalition is preceded by agreement on policy.

All this is quite different from an inclusive system where all parties get a position all the time. Clearly they all cannot agree on policy all the time and there is no sanction if someone publicly disagrees. In the absence of the discipline imposed by collective responsibility, we will need a mechanism to resolve disagreements between parties and also a way to convey information and decisions. So there may be a need for arrangements for liaison.

We also need to consider how we ensure that a particular Secretary does carry out agreed policy. At Westminster this is not a problem because of collective responsibility. But here there will be no collective responsibility – and such responsibility cannot be created merely by parties saying that they will behave as if it existed. It has to rest on a sanction – usually dismissal. Parenthetically, there is a contradiction between HMG desire to have an “executive” and at the same time wanting to free the Secretary from the direction of his committee. Consider the not unlikely problem of the “rogue” Secretary who is determined to do his own thing whatever others may want. Having a committee of all the Secretaries does not deal with such a person for there is nothing that can be done to restrain, other than to deny finance for new measures, and that will not prevent a considerable range of mischief! This is why the executive function must be delegated to the Committee as provided for in the Wales Bill.

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For long term planning of the Assembly's work and policy, we would need an informal understanding that would command a majority in the Assembly. It is our intention to seek such an understanding with the SDLP, but this could not be formalised in terms of the Assembly's structures.

It might be helpful to gather information as to operation in large local authorities. In Belfast the city council did operate a Finance and General Purposes Committee on the lines you mentioned. But that was in the days when Unionists habitually took all the committee chairmanships. When they moved to a system of distributing Chairs proportionally they had to change and now operate a Finance committee (now called Policy and Resources committee) which also is proportional, but does not include automatically include Chairs of other committees. All policy decisions with financial implications have to be cleared through that committee, and of course, all these policy matters have to go through the council as a whole regularly. It would be interesting to have advice from other large councils in Great Britain as to how they manage.

8. Again see note at end. Is the second sentence laying the basis for the notorious "duty of service" with regard to the north/south body. We object in principle to that. We are trying to devise an inclusive system and such a duty may exclude the DUP. We must insist that efforts are made to cater for their inclusion, which are on a par with the efforts to include SF.

On the other hand the duties of Secretaries do have to be defined particularly as they cannot be sacked and there has to be some sanction if they fail to carry out their responsibilities.

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It is assumed, subject to the preceding sentence that Secretaries are only removable by nominating party during their term. Query whether that term should be the same as that of the Assembly, or should there be a chance for parties to rerun the d'Hondt formula half way through the Assembly's life so that they could have the chance of choosing different portfolios. I doubt if it is necessary to do the same for Chairs in view of their different role.

9. Again see comments to paras 5 and 7. There is a **very important issue** here, which goes to the very heart of the institution. The contrast between the vague language here and the clarity of the Wales Bill is striking.

On (ii), again we need definition of this. It would be unacceptable if some Quango, composed of the sort of person the NIO usually appoints could direct the legislature as to its actions. As on other points the legal avenue is to be preferred. Again "parity of esteem" is a dangerous term which has to be domesticated.

On (iii), these are not Select committees, they determine policy, just as a local government committee does. Again (iv) misconceives the nature of the relationship. In any event the square bracketed portion should be deleted.

10. OK!

11. See discussion on para 7 above, again delete sectarian vetoes.

12. Delete (ii) and (v) also not necessary if a sensible approach to the points made in response to para 2.

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13, 14 OK!

15. Please confirm that the summits referred to are those in the umbrella Council of the Isles/British Irish Council or whatever it is eventually named. We accept the need for representation to be balanced. We would now amend our proposals to a requirement that an Assembly delegation to an outside body is only properly constituted if **at least** two Secretaries are present, it being understood that at least one must be from each major tradition.

The concept of a Commission looks like an attempt to recreate the Panel and consequently would be unacceptable. It looks as though it is designed to bring in Sinn Fein: on which see note below. With regard to meetings either north/south or otherwise it has so far been accepted that all decisions will be unanimous: departure from that principle would be a mistake. In any event the device in this para would backfire. The first five choices under d'Hondt are likely to go UUP, 2, SDLP 1, DUP 1, SF 1. As the DUP may boycott this would give SF, if they were there a veto. Incidentally by my estimates Alliance only come in for a choice somewhere between 9 and 11 – see further below.

16. Why a Concordat. Is the English language that impoverished? I assume the arrangements Ron Davies explained to us this morning will apply to NI.

17 and 18. Delete reference to Assembly Commission in 17(i). We would expect the SoS to address and take questions in the Assembly. Please confirm that 17(ii) is a reference to legislation concerning reserved matters.

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Sub paras 17(iv) and (v) an unacceptable attempt to bring in a supervisory role. (vi) is also misconceived in so far as the SoS will not be responsible for matters devolved. In any event Westminster scrutiny can go best through Select Committee as in 18(iii) included.

I assume that 18(i) and (ii) are not an exhaustive statement of Westminster's legislative powers and that there is no intention to transfer legislative sovereignty over the matters for which the Assembly will have responsibly. Please list all the institutions included in 18(iii).

NOTE re Sinn Fein

It now appears that the Government is prepared to go through this process, and come to an agreement, without requiring Sinn Fein/IRA to establish its commitment to peaceful means or to disarm.

Consequently, we must now insist that, in addition to a formal commitment to something like the Mitchell principles, there will have to be complete and verified disarmament by the paramilitary groups linked to certain parties before those parties could benefit from the proportionality principle. This means that in the likely event of there being no resolution of the decommissioning issue before the Agreement, then that Agreement will have to provide for the exclusion of Sinn Fein and others from office until disarmament and disbandment had occurred. It would be indefensible for paramilitary related parties to enter the "government" with their terrorist groups intact and able to resume operations whenever it suited them.

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This means that the apparatus of decommissioning, including the Verification arrangements will have to be continued. We will also have to be sure that the British and Irish governments will defend Any new institutions vigorously.

NOTE ON PROPORTIONALITY

Based on last year's elections the likely result of the election envisaged at para 1 of HMG's paper is as follows.

UUP 30, DUP 17, SDLP 18, SF 14, Alliance 7 PUP 2, UDP 1, UKUP 1

This does not take account of any swings in opinion as a result an agreement and such swings have little effect under STV – it takes a 16% swing for 1 seat to change hands in a 5 member constituency.

If there are 7 Departments (we are considering splitting the Environment Dept) and 4 other Committees which would merit Secretary level appointments then under d'Hondt the entitlements would be as follows

If Sinn Fein included - First choice UUP, Second choice SDLP, Third choice DUP, Fourth choice UUP, Fifth choice Sinn Fein, Sixth choice UUP, Seventh Choice SDLP, Eighth choice DUP, Ninth choice UUP, Tenth choice Sinn Fein, Eleventh Choice Alliance.

In total, UUP 4, SDLP 2, DUP 2, Sinn Fein 2, Alliance 1. For the seven Departments it would be UUP 3, SDLP 2, DUP 1, Sinn Fein 1.

If Sinn Fein is excluded then for the full 11 posts UUP and SDLP gain 1 each and for the 7 Departments DUP gain 1.

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It will be seen from the above figures that the "communal" balance in the Assembly and in senior posts is very close.

Other posts It is doubted if the Business and Audit committees need a Chair as well as a Secretary, but there will have to be a Speaker and probably 2 deputies, making a total of 23 appointments, probably enough for a 90 member body.

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