

Treaty

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NORTH/SOUTH BODIES: DEVELOPMENTS OVER THE WEEKEND

This note records the main exchanges in which I was involved over the weekend in the final stages of agreeing the Treaty and Order on the North/South implementation bodies. Tony McCusker, George Fergusson, Rosalie Flanagan and colleagues were on duty in Belfast for most of the time, and in touch with the Irish about detailed aspects of the text. These are not covered here.

2. On Friday evening, John Sawers and I met Paddy Teahon at No.10, and discussed the two main outstanding points. On the first - the inclusion in the preamble to the Treaty of some words from the Agreement on the interdependence of the various institutions, to give Trimble some comfort on the "collapse" question - although the Secretary of State had expressed to me the view that Trimble could reasonably be asked to rely on a letter of comfort from the Prime Minister, the Prime Minister himself had indicated to John that he thought Trimble had a good case. We therefore asked Teahon at least to look at the matter again. At the time, he was clear that any amendment to the preamble would be unacceptable to Sinn Féin and Mallon, and would make it more difficult to handle Sinn Féin on decommissioning. But he would talk to the Taoiseach.

3. On the second issue - whether there should be a board for the Trade body and if so whether it should be executive or advisory - I said that I thought Trimble's concern was that, as expressed in the "executive" version, the Board was the body; would no doubt be comprised in such a way that unionists would be in a minority; and could assume a high profile policy making role and get in the way of the Chief Executive in the day-to-day management of the organisation. Teahon agreed to look

at changes to the language to make the overriding role of the NSMC more explicit, and (responding to a suggestion of mine) perhaps to provide for the Chief Executive to be appointed by the NSMC rather than the Board.

4. On Saturday morning, Teahon and Gallagher had a meeting with the Taoiseach, after which I had a number of discussions with both of them. The Taoiseach had, in the event, decided to try to meet Trimble on the preamble, by including a more extensive quotation from the Agreement, including the fact that the parties pledged, in good faith, to work to ensure the success of each and every one of the arrangements. Teahon and Gallagher had been despatched to discuss this approach with Sinn Féin and Mallon.

5. On the board for the Trade body, Trimble and Empey could be assured that, in making appointments on the southern side, the Irish Government would consult closely, and did not have it in mind to appoint people from a specifically nationalist background. The appointees were much more likely to be business people with no political axe to grind. Trimble and Empey could also take some comfort from Article 3 of the Treaty, which obliged each body to implement any decisions of the North/South Ministerial Council, and paragraph 1.1 of the common arrangements for accountability and reporting, which (as then drafted) required that in exercising their functions the bodies should at all times act in accordance with directions from the NSMC.

6. I said that I could see the force of these points, but that some change in the wording still seemed desirable. After some further discussion, Teahon and I agreed changes to the text, the most significant of which were to amend paragraph 10.1 to say that the body would have a board (rather than that it would consist of the board members); that the board would exercise the body's functions and that in doing so it would act in accordance with any directions from the NSMC; and that the Chief Executive would be appointed by the NSMC.

7. I put these changes to Lavery later on Saturday morning. He suggested that I canvass them direct with Empey. In the meantime, John Sawers had had a conversation with Trimble, in which Trimble had again said that his main concern was to get Empey on board on the Trade body.

8. I managed to track Empey down late on Saturday morning. His main concern was that the text as it stood included a clause to the effect that the British and Irish Governments would designate the first chairperson and vice-chairperson. He thought that it was wrong for the two Governments to make the initial appointments in this way, pre-empting the NSMC. I put this point to Teahon, who readily agreed to drop the clause, on the understanding that the northern parties would sit down sufficiently far in advance of the first meeting of the NSMC to avoid any unnecessary delay. His main concern was that there should not be a long gap before the appointments were made. I got back to Empey, who said that on that basis he was content. I reported this to Lavery, who spoke to Trimble. Trimble asked for the text to be faxed to him, and I subsequently discussed it with him early on Saturday afternoon. He was not greatly impressed by the changes, but said that he would discuss them with Empey. He asked where we stood on the preamble. I said that the Irish was still considering their position. They hadn't ruled anything out, but my sense was that they might not be able to meet him.

9. Later on Saturday afternoon, Gallagher told me that initial soundings of Sinn Féin and the SDLP on the preamble had, against expectations, not been too discouraging. Sinn Féin seemed in a better mood, in part because of Trimble's invitation to talks early this week. Mallon had reacted badly, but was reflecting. The Taoiseach would speak to Adams and Mallon later. Having been warned by Tony McCusker that there was talk on the Irish side of Mallon and Adams not being squared until Sunday, I said that the sooner this could be done the better. We were still planning to take the Implementation Bodies Order in the Commons today. Beyond a certain point, the lack of any real opportunity to give the other parties advance notice would leave us with no option but to postpone the debate. This would require a statement by the Leader of the House of Commons rearranging the

Business. It would be a pity if the difficulties we were going through became public. Gallagher agreed. They would do their best to move things ahead quickly.

10. I rang Trimble who had just concluded a conversation with Empey. The Trade body text was not satisfactory. The trouble was that the Irish had lost Empey by the way they had handled the whole matter. He suspected Mallon's malign influence. I said that, from my most recent conversation with Gallagher, I was beginning to get the impression that the Irish might after all be able to do something on the preamble. Trimble said that, in that case, I could tell Gallagher that, if they would agree to adjust the preamble, he would, very reluctantly, be ready to live with the unsatisfactory text on the Trade body. I passed this on to Gallagher.

11. On a more minor point, during the course of Saturday I agreed with Teahon that our undertaking to bring forward the necessary legislation to enable the Agriculture and Marine Matters Body to become the General Lighthouse Authority should be expressed in terms of the necessary legislation being introduced, if possible before, and in any event as soon as possible after, the entry into force of the Agreement. The Irish had been asking for a time limit of 3 or 6 months, but DETR were clear (as indeed were we) that we could not bind the Parliamentary business managers.

12. Early on Saturday evening, the Taoiseach spoke to Adams. After an initial hiatus (because the Taoiseach had gone straight off to Mass after the conversation and no one knew what had happened), we heard that Adams was content with the expanded reference in the preamble.

13. The Taoiseach's conversation with Mallon, later in the evening, did not go as well. Mallon was implacably opposed to any change in the preamble. No reason was given, but it was clear that his view was that Trimble should not be indulged any further. Mallon had agreed to sleep on it. Gallagher would go to see him yesterday morning. Gallagher and I had agreed that we had no choice but to put the Order on hold, and Tony McCusker and his colleagues were stood down.

14. Gallagher rang me shortly before mid-day yesterday morning. He had had a difficult hour and three-quarters with Mallon, but he had eventually come round. We could go ahead. There was a brief flurry later when Teahon told me that the words I had agreed with Trimble and Empey on the Trade body were, in Irish lawyers' view, too compressed. There should be separate sentences to the effect that the functions of the Body would be exercised by the Board, and that in exercising its functions the Body would at all times act in accordance with any directions given by the NSMC, whereas I had run the two together. I read the preferred Irish version of that text and the proposed change to the preamble over the telephone to Trimble, and he said that he was content.

15. Tony McCusker and his colleagues then arranged for all three texts to be delivered urgently to the parties. In the course of the earlier exchanges, the Irish had said that they would welcome it if the Secretary of State were able to sign the Treaty in person in Dublin this morning. I discussed this with the Secretary of State when I reported progress to her on Saturday evening, and she agreed to reshuffle her diary to enable her to do so.

(Signed)

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