

Excerpts from DIFP volume one

Section 4: The Anglo-Irish Treaty

No. NAI DE 2/304/1

*Notes by Robert Barton of two sub-conferences held on
December 5/6, 1921 at 10 Downing St.*

London, 5/6 December 1921.

PRESENT:

BRITISH REPRESENTATIVES

MR. LLOYD GEORGE

MR. CHAMBERLAIN

LORD BIRKENHEAD

MR. CHURCHILL

IRISH REPRESENTATIVES.

MR. GRIFFITH

MR. COLLINS

MR. BARTON

SUB-CONFERENCE NO. 1. 3 P.M.

The Conference opened by LLOYD GEORGE saying that he must know once and for all exactly where we stood as regards the Ulster proposals. He said that the Ulster proposals in the document now before us were exactly those to which Arthur Griffith had agreed and on which he had undertaken not to let him (Lloyd George) down.

ARTHUR GRIFFITH replied that he had not let him down and did not intend to do so, but that before he gave a decision on the earlier articles in the document he must have a reply from Craig either accepting or refusing the unity of Ireland.

CHAMBERLAIN and LLOYD GEORGE argued that such a proposition was inadmissible, unreasonable and contrary to the undertaking not to let Lloyd George down.

MR. CHAMBERLAIN stated that it was due to the confidence they had in our undertaking that they would not be let down by us that his colleagues and he had adopted the attitude they did at the Liverpool meeting and staked thereon their political future.

MICHAEL COLLINS said that for us to agree to any conditions defining the future relations of Great Britain and Ireland prior to Craig's giving his assent to the unity of Ireland was impossible, that to do so would be to surrender our whole fighting position. That every document we ever sent them stated that any proposals for the association of Ireland with the British Commonwealth of Nations was conditional upon the unity of Ireland. That, unless Craig accepted inclusion under the All-Ireland Parliament, the unity of Ireland was not assured and that if he refused inclusion we should be left in the position of having surrendered our position without having even secured the essential unity of Ireland.

LLOYD GEORGE got excited. He shook his papers in the air, declared that we were trying deliberately to bring about a break on Ulster because our people in Ireland had refused to come within the Empire and that Arthur Griffith was letting him down where he had promised not to do so. He produced a paper from an envelope, stated that he had shewn it to Arthur Griffith at 's house and that Arthur Griffith had agreed to its contents. Lloyd George referred to this document as a letter and thereby mystified me and appeared to mystify Michael Collins. I could not recollect the existence of any letter on this subject other than the one Arthur Griffith wrote to Lloyd George on November 2nd after consultation with the other members of the Delegation. The paper was then passed across the table. It proved to be a memorandum, not a letter, and read as follows:-

'If Ulster did not see her way to accept immediately the principle of a Parliament of All-Ireland — coupled with the retention by the Parliament of Northern Ireland of the powers conferred upon it by the Act of 1920 and such other safeguards as have already been suggested in my letter of 10th November — we should then propose to create such Parliament for All-Ireland but to allow Ulster the right within a specified time on an address to the Throne carried in both houses of the Ulster Parliament to elect to remain subject to the Imperial Parliament for all the reserved services. In this case she would continue to exercise through her own Parliament all her present rights; she would continue to be represented in the British Parliament and she would continue subject to British taxation except in so far as already modified by the Act of 1920. In this case, however, it would be necessary to revise the boundary of Northern Ireland. This might be done by a Boundary Commission which would be directed to adjust the line both by inclusion and exclusion so as to make the Boundary conform as closely as possible to the wishes of the population.'

ARTHUR GRIFFITH declared his adhesion to his undertaking but argued that it was not unreasonable for us to require that Craig should reply before we refused or accepted the proposals now before us.

LLOYD GEORGE declared that to make receipt of such a reply conditional before accepting or refusing was letting him down on his proposals because the only alternative to Craig's acceptance of the unity of Ireland was the Boundary Commission and that his Government would carry the Boundary Commission proposal into effect with strict fidelity. He then said that they would have to withdraw to discuss the matter amongst themselves but first he would hear what objections or alterations we had to the proposal.

ARTHUR GRIFFITH replied that he understood from Michael Collins' interview with Lloyd George that certain alterations might possibly be made in the proposals.

LLOYD GEORGE asked what were the alterations we suggested but that we must understand that the first three Clauses were absolutely essential. There could be no discussion about these.

ARTHUR GRIFFITH replied that some alteration might be made in the Oath.

BIRKENHEAD said that Mr. Collins had handed in to him that morning a form of oath on which he (Mr. Collins) had been working and then produced it with his (Birkenhead's) alterations. We objected to the final words being 'British Empire' and suggested 'British Commonwealth of Nations.'

LLOYD GEORGE asked for any further objections.

WE objected to 'shall contribute' in Clause 5. and desired insertion of 'if any' after 'such sums' and elsewhere.

CHAMBERLAIN said that these alterations were matters of wording only. On Clause 6 we argued at great length that the word 'exclusively' precluded us from commencing to build vessels or make any preparations for taking over our own coastal defence at any time, and that the 'Conference for Review' referred to in the second paragraph might never be held if the British did not wish to reconsider the subject. There was a long argument over this in which Churchill, Michael Collins and myself went over all the arguments again.

CHURCHILL stated that if Ireland were permitted any navy it would be impossible to get the Treaty through Parliament. That the English people would believe that we were going to build ships which in war might be used against them. That the possibility of our building submarines of mine-laying vessels to attack their food ships would be argued from every angle. The discussion lasted a long time. We demanded the removal of the word 'exclusively'; this was grudgingly accorded. We then sought to get it explicitly stated that Ireland should be required to build one or more ships for her coastal protection; this was absolutely refused, except as regards revenue and fishery protection ships, and *CHURCHILL* stated that he would definitely oppose any provision that Ireland should have a navy of her own and would even oppose it five years hence if he had the opportunity.

MICHAEL COLLINS then took up the Trade Clause and said that Lloyd George had intimated that freedom on both sides might be accorded. He also dealt with the suggestion that the safeguards for Ulster should be a matter for discussion between ourselves and the Ulster representatives.

THE BRITISH then withdrew and we consulted amongst ourselves and decided that if they came back to break on our refusal to accept or refuse pending Craig's answer that Arthur Griffith's last card was to demand reference to the Colonial Premiers.

BIRKENHEAD then returned alone and took note again of the particular points we required changed. On their return we again took up the points in dispute. First in Clause 6, to which *CHURCHILL* agreed to add 'with a view to the undertaking by Ireland of a share of her own coastal defence,' and to a date five years hence being fixed for the Conference to review the clause, but refused every proposition to make this apply to (b) facilities in time of war. He refused to take 'Queenstown' out of the Annex, and explained that care and maintenance parties meant gunners and trained men to take charge drawn from the R.G.A. and R.E., numbering 1,060 men and 69 officers or thereabouts. He also stated that 'Admiralty property and rights' at Berehaven did not mean that they would demand compensation if at any time the docks etc. passed to us. *BIRKENHEAD* said that if they were handed over to the Crown representative in Ireland the Crown could not demand payment from the Crown.

LLOYD GEORGE said that on Trade he was prepared to agree provisionally that there should be freedom on both sides to impose any tariffs either liked subject to the Articles of Agreement being accepted by us. That he himself had been the strongest on their side on the compulsory Free State Clauses, but that he would withdraw his opposition on the conditions stated.

WE then went back to Ulster.

ARTHUR GRIFFITH agreed that he personally would sign the Treaty whether Craig accepted or not, but that his colleagues were in a different position from himself in that they were not party to the promise not to let Lloyd George down, and that it was not fair to demand acceptance or refusal from them before Craig replied.

Considerable discussion took place here on the justice and injustice of our being asked to agree or disagree before Craig replied and *ARTHUR GRIFFITH* made repeated efforts to avoid the question being put to Michael Collins and myself.

LLOYD GEORGE stated that he had always taken it that Arthur Griffith spoke for the Delegation, that we were all plenipotentiaries and that it was now a matter of peace or war and we must each of us make up our minds. He required that every delegate should sign the document and recommend it, or there was no agreement. He said that they as a body had hazarded their political future and we must do likewise and take the same risks. At one time he particularly addressed himself to me and said very solemnly that those who were not for peace must take full responsibility for the war that would immediately follow refusal by any Delegate to sign the Articles of Agreement.

He then produced two letters one of which he said he must that night send to Craig. One was a covering letter to H.M. Government's proposals for the future relations of Ireland and Great Britain and stated that the Irish Delegation had agreed to recommend them for acceptance by Dail Eireann. The other stated that the Irish Delegation had failed to come to an agreement with H.M. Government and therefore he had no proposals to send to Craig.

LLOYD GEORGE stated that he would have to have our agreement or refusal to the proposals by 10 p.m. that evening. That a special train and destroyer were ready to carry either one letter or the other to Belfast and that he would give us until ten o'clock to decide.

We then argued that the twelve months transition period was of the greatest danger to our people. Craig could say 'Yes' at any time; he could say 'No' finally before six months but he need not say 'No' for twelve months, so that for twelve months we might not know whether there was to be unity or not. Meantime life might be made intolerable for our people in Ulster.

LLOYD GEORGE argued that that contingency had been apparent from the first, but if it were a serious stumbling block we could shorten the transition period at any time we chose.

MICHAEL COLLINS said that the recent occurrences in Tyrone — the seizure of the County Council books, etc., and the support of the Ulster Government with English troops had shaken our confidence in their fidelity.

LLOYD GEORGE answered that they had no jurisdiction on this matter in Ulster. It was a matter over which the Northern Government had complete control under the 1920 Act. He then suggested that they should withdraw in order that we might discuss the duration of the transition period amongst ourselves. They did so.

WE decided to reduce the period to one month. Rang for them to return and stated our decision.

LLOYD GEORGE said he considered the decision ill advised as a month did not give the Ulster people sufficient time to reflect. He affirmed that Craig was going to refuse the terms and that he (*Lloyd George*) knew this for certain. However, as we preferred one month, he was prepared to accept the alteration and redraft the Clauses. A month was the least possible that could be given Craig to make a final decision. He then proposed that we dismiss and reassemble again at 10 to give him our final decision.

There was a discussion amongst ourselves lasting from 9 to 11.15 at 22, Hans Place, at which a decision was eventually reached to recommend the Treaty to the Dail.

SUB-CONFERENCE NO. II

11.15 p.m. — 2.20 a.m.

At 11.30 we returned to Downing street and attacked the document again. We endeavoured to get Clause 3 removed, but failed. We, however, succeeded in getting the word 'Governor-General' out, it being left to us to decide upon a term. The title 'President' Chamberlain stated, was inadmissible.

MICHAEL COLLINS demanded and secured the removal of the word 'local' as a prefix to the Irish Free State's military defence force.

They agreed to the verbal changes in financial clause 5. *CHAMBERLAIN* took exception to the 'if anys' going in, as he said it was too late to quibble over such small points. We pointed out that Clause 9 was still left intact and that it should have been removed under the agreement on 8. *LLOYD GEORGE* said that it referred to transport only. It meant ships entering harbours and that there must be provision to prevent boycotting of English shipping.

BIRKENHEAD said that the wording of the clause was ambiguous now that the compulsory Free Trade clause was gone and suggested redrafting it. This was done immediately.

MICHAEL COLLINS required the removal of Clause 14 (e). (the Ulster Army) and that its substance be got into the safeguards for Ulster clause. This was agreed to.

MICHAEL COLLINS queried the reference to summoning of the Southern-Ireland Parliament in Clauses 15 and 17, and *BIRKENHEAD* immediately drafted an explanatory memorandum as follows:-

'It is intended by Clauses 15 and 17 to make it plain that the functions therein referred to shall be discharged by the Provisional Government of Southern Ireland and that for that purpose a transfer shall be made by them of the necessary powers under the Government of Ireland Act, 1920, as soon as the mutual ratifications have been exchanged.

The Provisional Government will it is contemplated upon such ratification undertake the Govt. of S. Ireland immediately until the necessary Acts in statutory authority contemplated in this instrument. (both Parliaments confer upon it the) 'B.'

LLOYD GEORGE then asked whether we as a Delegation were prepared to accept these Articles of Agreement and to stand by them in our Parliament as they as a Delegation would stand by them in theirs.

ARTHUR GRIFFITH replied 'We do.'

WE then discussed the release of the prisoners and procedure for ratification and other matters whilst awaiting the final draft.

The final draft was read over, agreed to and signed; also the Annex.

No. DE 2/304/1

*Final text of the Articles of Agreement for a Treaty between
Great Britain and Ireland as signed.*

London, 6 December 1921.

1. Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa with a Parliament having powers to make laws for the peace order and good government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State.
2. Subject to the provisions hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State.
3. The representative of the Crown in Ireland shall be appointed in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments.
4. The oath to be taken by Members of the Parliament of the Irish Free State shall be in the following form:-

I do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H.M. King George V., his heirs and successors by law, in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.
3. The Irish Free State shall assume liability for the service of the Public Debt of the United Kingdom as existing as the date hereof and towards the payment of War Pensions as existing at that date in such proportion as may be fair and equitable, having regard to any just claim on the part of Ireland by way of set-off or counter claim, the amount of such sums being determined in default of agreement by the arbitration of one or more independent persons being citizens of the British Empire
4. Until an arrangement has been made between the British and Irish Governments whereby the Irish Free State undertakes her own coastal defence, the defence by sea of Great Britain and Ireland shall be undertaken by His Majesty's Imperial Forces, but this shall not prevent the construction or maintenance by the Government of the Irish Free State of such vessels as are necessary for the protection of the Revenue or the Fisheries. The foregoing provisions of this article shall be reviewed at a conference of Representatives of the British and Irish governments, to be held at the expiration of five years from the date hereof with a view to the undertaking by Ireland of a share in her own coastal defence
5. The Government of the Irish Free State shall afford to His Majesty's Imperial Forces
 - (a) In the time of peace such harbour and other facilities as are indicated in the Annex hereto, or such other facilities as may from time to time be agreed between the British Government and the Government of the Irish Free State; and
 - (b) In time of war or of strained relations with a Foreign Power such harbour and other facilities as the British Government may require for the purposes of such defence as aforesaid.
8. With a view to securing the observance of the principle of international limitation of armaments, if the Government of the Irish Free State establishes and maintains a military defence force, the establishments thereof shall not exceed in size such proportion of the military establishments maintained in Great Britain as that which the population of Ireland bears to the population of Great Britain.
9. The ports of Great Britain and the Irish Free State shall be freely open to the ships of the other country on payment of the customary port and other dues.
10. The Government of the Irish Free State agrees to pay fair compensation on terms not less favourable than those accorded by the Act of 1920 to judges, officials, members of Police Forces and other Public Servants who are discharged by it or who retire in consequence of the change of government effected in pursuance hereof.

Provided that this agreement shall not apply to members of the Auxiliary Police Force or to persons recruited in Great Britain for the Royal Irish Constabulary during the two years next preceding the date hereof. The British Government will assume responsibility for such compensation or pensions as may be payable to any of these excepted persons.
11. Until the expiration of one month from the passing of the Act of Parliament for the ratification of this instrument, the powers of the Parliament and the Government of the Irish Free State shall not be exercisable as respects Northern Ireland, and the provisions of the Government of Ireland Act

1920, shall, so far as they relate to Northern Ireland remain of full force and effect, and no election shall be held for the return of members to serve in the Parliament of the Irish Free State for constituencies in Northern Ireland, unless a resolution is passed by both Houses of the Parliament of Northern Ireland in favour of the holding of such elections before the end of the said month.

12. If before the expiration of the said month, an address is presented to His Majesty by both Houses of the Parliament of Northern Ireland to that effect, the powers of the Parliament and the Government of the Irish Free State shall no longer extend to Northern Ireland, and the provisions of the Government of Ireland Act, 1920, (including those relating to the Council of Ireland) shall so far as they relate to Northern Ireland, continue to be of full force and effect, and this instrument shall have effect subject to the necessary modifications.

Provided that if such an address is so presented a Commission consisting of three persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland, and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act, 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.

13. For the purpose of the last foregoing article, the powers of the Parliament of Southern Ireland under the Government of Ireland Act, 1920, to elect members of the Council of Ireland shall after the Parliament of the Irish Free State is constituted be exercised by that Parliament.
14. After the expiration of the said month, if no such address as is mentioned in Article 12 hereof is presented, the Parliament and Government of Northern Ireland shall continue to exercise as respects Northern Ireland the powers conferred on them by the Government of Ireland Act, 1920, but the Parliament and Government of the Irish Free State shall in Northern Ireland have in relation to matters in respect of which the Parliament of Northern Ireland has not the power to make laws under the Act (including matters which under the said Act are within the jurisdiction of the Council of Ireland) the same powers as in the rest of Ireland, subject to such other provisions as may be agreed in manner hereinafter appearing.
15. At any time after the date hereof the Government of Northern Ireland and the provisional Government of Southern Ireland hereinafter constituted may meet for the purpose of discussing the provisions subject to which the last foregoing Article is to operate in the event of no such address as is therein mentioned being presented and those provisions may include:-
 - a. Safeguards with regard to patronage in Northern Ireland.
 - b. Safeguards with regard to the collection of revenue in Northern Ireland.
 - c. Safeguards with regard to import and export duties affecting the trade or industry of Northern Ireland.
 - d. Safeguards for minorities in Northern Ireland.
 - e. The settlement of the financial relations between Northern Ireland and the Irish Free State.
 - f. The establishment and powers of a local militia in Northern Ireland and the relation of the Defence Forces of the Irish Free State and of Northern Ireland respectively,

and if at any such meeting provisions are agreed to, the same shall have effect as if they were included amongst the provisions subject to which the powers of the Parliament and the Government of the Irish Free State are to be exercisable in Northern Ireland under Article 14 hereof.

18. Neither the Parliament of the Irish Free State nor the Parliament of Northern Ireland shall make any law so as either directly or indirectly to endow any religion or prohibit or restrict the free exercise thereof or give any preference or impose any disability on account of religious belief or religious status or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school or make any discrimination as respects State aid between schools under the management of different religious denominations or divert from any religious denomination or any educational institution any of its property except for public utility purposes and on payment of compensation.
19. By way of provisional arrangement for the administration of Southern Ireland during the interval which must elapse between the date hereof and the constitution of a Parliament and Government

of the Irish Free State in accordance therewith, steps shall be taken forthwith for summoning a meeting of members of Parliament elected for constituencies in Southern Ireland since the passing of the Government of Ireland Act, 1920, and for constituting a provisional Government, and the British Government shall take the steps necessary to transfer to such provisional Government the powers and machinery requisite for the discharge of its duties, provided that every member of such provisional Government shall have signified in writing his or her acceptance of this instrument. But this arrangement shall not continue in force beyond the expiration of twelve months from the date hereof.

20. This instrument shall be submitted forthwith by His Majesty's Government for the approval of Parliament and by the Irish signatories to a meeting summoned for the purpose of the members elected to sit in the House of Commons of Southern Ireland and if approved shall be ratified by the necessary legislation.

(Signed)

BRITISH REPRESENTATIVES

MR. LLOYD GEORGE

MR. CHAMBERLAIN

LORD BIRKENHEAD

MR. CHURCHILL

IRISH REPRESENTATIVES.

MR. GRIFFITH

MR. COLLINS

MR. BARTON

6th December, 1921.

ANNEX.

1. The following are the specific facilities required:-

Dockyard Port at Berehaven.

(a) Admiralty property and rights to be retained as at the date hereof. Harbour defences to remain in charge of British care and maintenance parties.

Queenstown.

(b) Harbour defences to remain in charge of British care and maintenance parties. Certain mooring buoys to be retained for use of His Majesty's ships.

Belfast Lough.

(c) Harbour defences to remain in charge of British care and maintenance parties.

Lough Swilly.

(d) Harbour defences to remain in charge of British care and maintenance parties.

AVIATION.

(e) Facilities in the neighbourhood of the above ports for coastal defence by air.

OIL FUEL STORAGE.

(f) Haulbowline: To be offered for sale to commercial companies under guarantee that purchasers Rathmullen : shall maintain a certain minimum stock for Admiralty purposes.

2. A Convention shall be made between the British Government and the Government of the Irish Free State to give effect to the following conditions:-

(a) That submarine cables shall not be landed or wireless stations for communication with places outside Ireland be established except by agreement with the British Government; that the existing cable landing rights and wireless concessions shall not be withdrawn except by agreement with the British Government; and that the British Government shall be entitled to land additional submarine cables or establish additional wireless stations for communication with places outside Ireland.

(b) That lighthouses, buoys, beacons, and any navigational marks or navigational aids shall be maintained by the Government of the Irish Free State as at the date hereof and shall not be removed or added to except by agreement with the British Government [...]

(c) That war signal stations shall be closed down and left in charge of care and maintenance parties, the Government of the Irish Free State being offered the option of taking them over and working them for commercial purposes subject to Admiralty inspection, and guaranteeing the upkeep of existing telegraphic communication therewith.

3. A Convention shall be made between the same Governments for the regulation of Civil Communication by Air.