

SECRET and PERSONAL

JOINT DECLARATION TEXT 6 and IRISH GOVERNMENT AIDE-MEMOIRE:  
COMMENTARYGeneral

1. Paragraph 4, a key paragraph in the latest Joint Declaration Text, would require HMG to commit itself to three major propositions which are contrary to present Government policy:

- The Irish people have the right collectively to self-determination;
- HMG would commit itself to give legislative effect to this right over a period agreed by both Governments, albeit a period said to allow sufficient time for the building of consent;
- HMG would join the ranks of the persuaders (that there should be a united Ireland). This would mean committing ourselves to a united Ireland as a desirable outcome.

2. The present text follows very closely the wording of Draft 4 of the Joint Declaration (JD.4). This was the version which Mr Hume handed to PUS, NIO on 29 April, and which we assumed had emerged from the DFA. It does, however, incorporate almost word for word (the middle three sentences of the present para.4), the alternative passage proposed by the PAC and conveyed by Mr Hume in June 1992. Our view at the time was that this passage was totally unacceptable.

3. A key difference on this round is that the Taoiseach is saying, in his accompanying Aide Memoire, that on the basis of indirect contacts he is satisfied that the present draft, if used, would bring PIRA's campaign of violence to an end. He believes that this opportunity should be grasped and asks the Prime Minister to consider and discuss with him the present draft of the Joint

Declaration.

4. On the face of it, on some fundamental points the present Joint Declaration draft does not say what the Aide Memoire says it says. In particular, paragraph 4 of the Aide Memoire says that "in practice" the Irish people's right to self-determination could "be exercised only jointly by North and South, separately and together". The memorandum goes on to leave in the air the definition of the proposed "period to be agreed by both Governments", while envisaging that the end result, an "agreed Ireland" defined as eventually involving the "full political unity and independence of the entire Island", should be achieved "over a generation". The Aide Memoire also says that this would not represent an absolute deadline, and that there could be no guarantee of a particular time frame for Irish unity. But none of this is clear from the text of paragraph 4 of the Draft Declaration itself: it could easily be read as meaning that HMG had agreed to give legislative effect to a united Ireland over a pre-set period, and not necessarily conditionally on the consent of a majority in Northern Ireland.

Draft 6 of the Joint Declaration

5. Paragraph 1 is identical to paragraph 1 of JD.4. The reference to recognising "past failures to settle relationships" seems unnecessarily question-begging.

6. Paragraph 2 on the context provided by "European Union" is also an exact re-run of JD.4. While the EC in particular does provide a helpful context for improving co-operation between Northern Ireland and the Republic of Ireland, paragraph 2 makes excessive claims for the impact of further development of European Union on the Northern Ireland problem, and will be read by Unionists as code for agreement by the two Governments that there should ultimately be a united Ireland. The paragraph is also problematic

in the Maastricht context.

7. Paragraph 3 also repeats JD.4, except that in the previous version of the penultimate sentence the two Governments made a solemn commitment to "use all their influence and resources" to promote co-operation etc. These words have now been dropped. Most of the paragraph sounds like Hume-speak, and is broadly unobjectionable, although the reference at the end to "a new political framework... encompassing the whole island" would alarm the Unionists. (In a number of respects the draft is less sensitive to the position of the Unionist tradition than the Hume/Adams joint statement of 26 April 1993.)

8. The key paragraph 4 is paragraph 4 of JD.4 with some minor amendments, but also, crucially, as amended by the PAC's substituted middle three sentences which they suggested last June. The only difference from the PAC's version is that they had suggested that the third sentence in the paragraph should read "They affirm their readiness to introduce the measures to give legislative effect on their side to this right within a specified period to be agreed and allowing sufficient time for the building of consent and the beginning of the process of national reconciliation." The replacement of "within a specified period to be agreed" by "over a period to be agreed by both Governments" must have been seen as significant by the Irish Government, but its practical effect is unclear.

9. The main points on paragraph 4, taken as it stands, are the following.

10. The reference in line 3 to the British Government's "sole" interest is objectionable.

11. The second sentence would commit the British Government to accept the principle of collective self-determination by the Irish

people. The Aide Memoire claims that this is qualified by paragraphs 3 and 5, with paragraph 5 in particular including a recognition on behalf of the Irish Government that the proposed "right of self-determination by the people of Ireland as a whole must be achieved and exercised with the agreement and consent of the people of Northern Ireland". But this qualification is not made clear in paragraph 4. It is therefore left uncertain how, if at all, it would relate to the period of time to be agreed by both Governments which paragraph 4 goes on to specify.

12. Paragraph 4 envisages the "period to be agreed by both Governments" as being the period over which HMG would introduce measures to give legislative effect to the right of the Irish people to collective self-determination. This appears to mean measures designed to promote and ultimately culminating in a united Ireland. Although the period would "allow sufficient time for the building of consent" the implication is that the period would be defined in advance, and that its length would not be conditional on securing the consent of a majority in Northern Ireland.

13. The penultimate sentence in paragraph 4 would firmly commit HMG to adopt something like the Labour Party policy of joining the ranks of the persuaders. (In its entirety, the present draft would commit HMG to positions well beyond Labour policy.)

14. The final sentence of paragraph 4 would require HMG to acknowledge that it is the wish of the British people to see Irish unity. This proposition has not, of course, been reliably tested. The word "independent" is a recent insertion which did not appear in JD.4.

15. The remainder of the text appears to follow JD.4 word for word. In these paragraphs (5-8) the Irish Government takes the strain. The Taoiseach would indicate his intention of

SECRET and PERSONAL

establishing a consultative and advisory Irish Convention which would be open to all political parties in Ireland which abide exclusively by the democratic process. The Convention would make recommendations, in effect, on how barriers of distrust could be removed to the exercise in common by the people of Ireland of self-determination on a basis of equality.

16. Paragraph 5 would record the Taoiseach's acceptance, on behalf of the Irish Government, that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with the agreement and consent of the people of Northern Ireland, and must provide entrenched guarantees of the civil rights and religious liberties of both communities. It is not made clear how this apparent qualification of the principle of self-determination would work in relation to the "period to be agreed" to be mentioned in paragraph 4, or how it would be given practical effect. The reference to entrenched guarantees of civil rights and religious liberties is similar to the idea of a North/South "Covenant" (not the same as the advisory Irish Convention mentioned in paragraph 7) about which Mr Spring speculated in his speech of 5 March.

17. Paragraph 6 appears to envisage interim institutions which would help prepare the way for ultimate Irish unity. It is not clear how these institutions would be arrived at (although it seems that HMG would be committed to legislating for them), or why there is any expectation that the Unionists would not boycott them.

18. Paragraph 7 deals with the proposed consultative and advisory permanent Irish Convention. The Unionist parties would be eligible to participate, but could be expected not to do so, at least in the context of the Declaration envisaged in the present draft. The Convention would be a means of providing a forum for political participation by a Sinn Fein presumed to have pledged itself to pursuit of democratic politics only. (The Aide-Memoire

envisages that such participation would take immediate effect.) The reference to "agreement as defined in the Forum Report" would not help with the Unionists.

19. As with previous versions of the Joint Declaration text, this one makes no presuppositions about what contact, if any, there would be between HMG and Sinn Fein after the cessation of violence envisaged as the concomitant of delivery of the Joint Declaration text.

#### Aide Memoire

20. The first paragraph of the Aide Memoire records the Taoiseach's hope that the Prime Minister will consider and discuss with him the present draft Joint Declaration, which he is satisfied would end PIRA's campaign of violence.

21. It is reported in paragraph 2 that Sinn Fein and PIRA accept the present draft as a basis for an alternative political strategy for peace, which would involve a lasting cessation of violence.

22. The assertion in the third paragraph that the draft Declaration is fully consistent with the international obligations of both Governments and with the terms of Article 1(c) of the Anglo-Irish Agreement may be technically correct (although this is arguable), but there is no doubt that what is envisaged would run counter to Article 1 of the Agreement taken as a whole by tilting the balance in favour of a united Ireland, which both Governments would promote, and perhaps to be achieved over a specified period.

23. The third paragraph also maintains that the acceptance by the entire nationalist tradition of the consent principle would represent an historic shift. This is questionable, partly because it is left unclear what acceptance of the consent principle would

amount to in practice, and also because elements in Sinn Fein have already acknowledged that the Unionists could not be coerced into a united Ireland.

24. Both the third and fourth paragraph use the tell-tale words "practical" and "in practice", tacitly acknowledging that the relationships between achieving Irish unity, the period to be agreed, and the consent of the people of Northern Ireland, are left unclear in the draft Joint Declaration text.

25. The reference to "joint self-determination" attributed to Mr Chris McGimpsey of the UUP cannot be assumed to have general UUP backing, or indeed to mean anything like what is envisaged in the Joint Declaration text.

26. In the fifth paragraph, it is not at all clear that the opening sentence accurately describes the actual effect on paragraph 4 of the Joint Declaration text. That paragraph does not say in terms that achievement of a united Ireland over the envisaged pre-set period would be conditional upon majority consent in Northern Ireland. It is worth noting here that even if paragraph 4 of the Joint Declaration text were amended to make clear that this was what it meant, it would still require HMG to do two things contrary to present Government policy: to acknowledge a principle of self-determination for the people of Ireland as a whole; and to join the ranks of the persuaders. It is nowhere made clear how a principle of self-determination for the Irish people as a whole could effectively be qualified by a separate principle of the consent of the people of Northern Ireland, or through what arrangements this could be given practical effect.

27. The references in the fifth paragraph to the position of the British Government in 1920 and 1921 are contentious, and need to be seen in a wider context (including 1925). The British

Government's position has consistently been that we should start with where we are now, and not with the claimed lessons of a highly controversial period over 70 years ago.

28. The claim in the sixth paragraph that it is accepted on all sides that the pursuit of a united Ireland is a legitimate aim is generally uncontentious, although some Unionists would not accept it.

29. The seventh paragraph comes close to being an accurate description of the present mainstream political Talks process. The reference to strong North/South institutions with executive power could be squared with a number of options which would be acceptable to HMG, and also possibly the UUP in the more forward positions which they adopted during Round 2 of the Talks. What is not clear is that the conditions necessary for pursuit of such a political development process would still obtain after a Joint Declaration along the lines envisaged had been made.

30. The eight and ninth paragraphs deal with the key questions of the "period to be agreed", what is meant by an "agreed Ireland" and what should happen within the agreed period. The relationship between these elements is not properly established. What is said does not match up unambiguously to the literal meaning of the Joint Declaration text, and goes well beyond it. It is clear that the term "agreed Ireland" ultimately envisages political unity and independence for the whole of the island of Ireland, but the terms seems also to include in the interim agreed North/South structures. The concept of an "agreed Ireland" is said to carry within it the concept of agreement and consent, but it is not made clear exactly how this qualification applies or would work.

31. Paragraph 8 indicates that the Irish Government would seek to achieve an agreed Ireland over the space of a generation, and that it would be reasonable for HMG to support this. The ninth



Paragraph says that the concept of a "agreed Ireland" (although curiously not the concept of "the period to be agreed") would not represent an absolute deadline, and indeed that it is consistent with the practical requirement for consent that there could be no definite guarantee of any particular time framework by which Irish unity would be achieved. The "period to be agreed" does not itself seem to be defined at all. None of this is made clear on the face of the Joint Declaration text.

32. Possible interpretations of the discrepancy between the two texts are that the Irish Government, are being disingenuous; that they are being carried away by the prospect of a lasting cessation of violence to do more of a selling job than the Joint Declaration text will bear; or that they are dropping hints as to how the text might be amended in ways which they would support. The last paragraph of the Aide-Memoire suggests that the Irish envisage a process of barter.

33. The tenth paragraph speculates about the Unionist and Loyalist reaction. There can be little doubt that the Unionist community as a whole would regard the present text as a betrayal. To claim that the Loyalist paramilitaries would stop because their violence is reactive is unrealistic: the likelihood is that there would be a massive escalation of Loyalist paramilitary activity if the Unionist community thought they had been sold out. The claimed phenomenon of Protestant alienation would be strongly reinforced, perhaps to the point of putting allegiance to public order in general question. These likely reactions could to varying degrees be mitigated by various substantive changes to the text. Equally, it seems likely that if all the elements in the text which are contrary to present Government policy were removed, and not replaced by any alternative new forms of words, the PAC would not regard the result as sufficient for a lasting cessation of violence. The Irish Government might not support the resulting text either.

34. The penultimate sentence of paragraph 10 includes a description of a possible outcome from the mainstream political talks process which is unobjectionable, but also likely to be unachievable in the context of the present version of the Joint Declaration text. The final sentence, however, while correctly stating that Irish unity is not ruled out as a possible outcome of the political development process, appears (through the words "all going well") to pre-judge the desirability of such an outcome.

35. The eleventh paragraph envisages the proposed Irish Convention in unobjectionable terms.

36. The twelfth paragraph of the Aide Memoire invites the Taoiseach and the Prime Minister to decide at a later meeting whether the text provides a basis on which to proceed. It advises that the definition of the period to be agreed, and any proposed changes to the text, as well as adequate notice of the date of its promulgation, would have to be conveyed to the parties concerned in order to produce the envisaged lasting cessation of violence. The Aide Memoire is not, however, clear about how the timing of the Joint Declaration and the cessation of violence would work in relation to each other, or how any changes to be suggested to the Joint Declaration text would be brokered with the PAC and Sinn Fein, or what role Mr Hume would have.

NORTHERN IRELAND OFFICE

10 June 1993