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THE IRISH LEAKED DOCUMENT : COMMENTARY ON TEXTUAL HIGHLIGHTS

1. I am grateful to you for your most helpful commentary on the Irish document (accompanying your minute of 22 November to PS/Michael Ancram).
2. As you indicate, this is the most forthcoming document which has emanated from the Irish, and certainly increases our understanding of what the Irish side consider would provide adequate constitutional balance.
3. Inevitably with such a document there are both positive and negative features, and I offer the following comments by way of supplementing your commentary:

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- I agree that paragraphs 15 and 17 appear to be pointing the way towards a mutual recognition formula (coupled with the helpful proposed constitutional entrenchment of the principle of NI consent in relation to the constitutional status of Northern Ireland). However, when discussions resume with the Irish on these matters, we shall need to probe them on exactly what they have in mind in these paragraphs - for the avoidance of ambiguity (constructive or otherwise!). Also, although a mutual recognition formula would have a contribution to make to the parity of esteem element of any package, tactically I am sure we should be pressing the Irish on Articles 2 and 3, if only to make way for the argument that a less advanced position by them on these Articles will have implications for other elements of any package. Present Irish proposals, including the apparent attempt (para 17) to lure HMG into the ranks of the persuaders (if something has "value", it should be actively supported), and the paragraphs on Strand II, suggest that the desire to have their cake and eat it remains strong in Dublin (whether substantively or as a negotiating posture remains unclear, of course).
- As a corollary to the above, we need, I think, to consider carefully the context and implications of some of the language which the document uses in relation to Northern Ireland. In addition to explicit references to Northern Ireland being "sui generis" (para 14), and the "unique reality" of Northern Ireland (para 15), there are references to the people of Ireland, North and South, being free to determine their own future (para 12), to "two main Irish traditions living in Northern Ireland"

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(para 14), and unqualified references (eg, paras 15, 16 and 18) to the people (singular) living in Ireland in unit of determination-type contexts. This could be seen as an attempt to set the Northern Ireland question exclusively/almost exclusively in an "island of Ireland" context, and hence to undermine the de jure and de facto locus of HMG in relation to the matter. (I recall that, in commenting on the first of the Spring principles, you made a somewhat similar point.) Indeed, to the extent that the analysis of the problem is wide of the mark (eg, para 14 "Irish traditions", para 15 blurring NI's status in law and majority preference), it is scarcely surprising if the prescription is likewise.

The continuing role which para 27 and 28 envisage

- We shall need to unpackage the references in paras 16 to 19, eg, to the need to give the two identities "equally satisfactory, secure and durable expression and protection" (my underling). While the basic point that due provision needs to be made for members of each tradition is unexceptionable, the application of parity needs to be squared with the application of "democratic principles" to two identities of unequal strength. I find the term "operational" especially intriguing (para 17) - use of Irish, tricolours beside Union flags, etc? We would also need to probe the asymmetry in the movement required of the Irish Government and HMG respectively. It may be that the double negative formulation in para 17 is necessitated by fear of judicial challenge, but the picture is still left of little change required from the Irish (resting on existing Agreement provisions) but major change from us.

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- The Irish Strand II proposals, which include entrenched North/South institutions with all-Irish executive powers, are not unexpected, but leave unanswered significant funding, accountability and workability issues (including the role of any NI Assembly or equivalent). These issues would need to be carefully examined and resolved before we went down this road, as part of any balanced overall package. On the other hand, the Irish seem to have made nothing of hints in the UUP November 1992 paper, adopted explicitly by us, of a standing unit of officials to service a North/South body: whereas they have picked up the point in relation to Strand III (para 25).
- The continuing role which paras 27 and 28 envisage for the IGC in relation to transferred matters seems to me to replicate a key defect in the Anglo-Irish Agreement, as it perpetuates the lack of accountability of the Irish side of the Conference to the people of Northern Ireland. The removal of transferred matters from the IGC seems an essential remedy for this democratic deficit - and NI nationalists would be represented and protected in the NI institutions. As you note, the role of the IGC in relation to both transferred matters and North/South matters is ill-defined, and we are both alive to the possible joint sovereignty overtures of some of the language in paras 28, 29 and elsewhere, particularly if reserve powers are operable in relation to specific issues ("intervention and redress", para 28?). The rather bizarre nature of this proposal, if applied to specific issues coming within the North/South body, becomes the more intriguing when one considers that the Irish Government would form one half of that body: "Heads

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nationalists win, tails unionists lose"! The notions of consent, convergence and consensus still run very shallow.

4. To summarise then, the Irish document has provided an illuminating insight into Irish thinking, and contains some useful features. Had it remained a confidential document, it would have presented a not unreasonable or even unexpected starting point for negotiation. We would however have then had to point to those elements which would have failed the convergence test and express disappointment that the Irish had not taken on board concerns we had expressed at Liaison Group discussions of suggestions such as the monitor/guarantor role of the IGC. Sadly however, with its appearance in the public domain the paper's value for negotiating purposes, and any contribution which it might have made to promoting convergence, will have been seriously eroded. I wonder, though, if its potential has been wholly lost ?

[Signed DJW]

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