

Mrs Henrich
Framework Doc (13)

Beeton's copy
Destroyed
A

IMMEDIATE

FROM: D A L COOKE
SIL/TPU
22 NOVEMBER 1993

- cc PS/Sofs (L&B) - B
- PS/PUS (L&B) - B
- PS/Mr Fell - B
- Mr Legge - B
- Mr Thomas - B
- Mr Bell - B
- Mr Watkins - B
- Mr Williams - B
- Mr Wood (L&B) - B
- Mr Brooker - B
- Mr Quinn - B
- Mr Dodds - B
- Mr Maccabe - B
- Ms Lodge - B
- Mr Beeton - B
- Mr Archer, RID - B
- HMA Dublin - B
- Mr Caine - B

PS/MICHAEL ANCRAM (L,B&DENI) - B

THE IRISH LEAKED DOCUMENT: COMMENTARY ON TEXTUAL HIGHLIGHTS

As requested by Michael Ancram, I attach a selective commentary on the Irish document leaked to the Irish Press on 19 November. This also discharges the remit in Mr Bell's note of 19 November.

2. Although the commentary identifies a number of elements in the text which would clearly be unacceptable to us, I think that on the whole we would have been reasonably pleased if such a document had been tabled in the Liaison Group within the timescale originally promised. The document could certainly have been worse in terms of content. The gap between it and the Heads of Agreement document, and indeed our own 24 September draft towards the framework document, is clear but by no means evidently unbridgeable.

CONFIDENTIAL

3. More strikingly, the document would have been a first in terms of getting the Irish Government to put its cards on the table (even allowing that, at least initially, this would have been only a two player game). No Irish document during Round 2 of the Talks, last year, was anything like so forthcoming. In particular, the document includes a far more worked up and developed answer than we have ever had before to our frequently pressed question as to what the Irish side consider would provide adequate constitutional balance. As Mr Bell notes, this passage was trailed by Mr Spring in his US speech last week.

4. Unionists reactions so far to the leaked document have inevitably been dismissive. And the document is inevitably also damaged by the claim in the "Irish Press", which the Taoiseach has rejected, that it in some way incorporates the British Declaration demanded by Hume/Adams. The Taoiseach has given every appearance of disowning it.

5. Mr Thomas and Mr Watkins have already minuted on the response to the leak. The implications can be considered further at this afternoon's political development meeting.

(SIGNED)

D A L COOKE
SIL/TPU
22 NOVEMBER 1993
OAB EXT 6587

CONFIDENTIAL

SC/SIL/22283

THE IRISH LEAKED DOCUMENT: COMMENTARY ON TEXTUAL HIGHLIGHTS

Paragraph 3

The final sentence, as well as reflecting the usual Irish desire to stitch things up in advance between the two Governments, is also an implicit warning that the fruits of this work should not be discussed in the Ancram Round with the Northern Ireland political parties unless both Governments agree in advance on the modalities.

Paragraph 6-10

These paragraphs set this work firmly in the tradition of not only the Anglo-Irish Agreement of 1985 but also the over-arching Anglo-Irish Intergovernmental Council, which was established in 1981 following Prime Ministerial discussions in 1980. The last sentence of paragraph 10, picking up from the Irish position in Strand III of the 1992 Talks, is a stronger commitment to retaining elements of the present Agreement than the Unionist parties would readily accept in Talks. (The first sentence of paragraph 11 could be misread as an even stronger statement of continuity with the present Agreement. But it becomes apparent, in context, that this sentence is a present commitment, and is without prejudice to any new and more broadly based agreement which may emerge from further Talks.)

Paragraph 12

This paragraph restates the Spring six principles, with some adjustments. Principle 4 has been corrected to refer to "a majority of the people in Northern Ireland" rather than to the Unionists. There is considerable reformulation of the sixth principle, which now concedes that commitment to the democratic

process on the part of those who have renounced violence must be demonstrably expressed before they are entitled to a role in negotiations.

Paragraph 13

This could be misread as an allusion to joint authority, although in context it is simply a description of the joint framework approach of the two Governments.

Paragraphs 14-18

This is the long-awaited and many times pressed for Irish formulation of constitutional balance. The paragraphs provide a complex formulation, with a considerable amount of surrounding context setting.

There is a novel reference in the third sentence of paragraph 14 to "the two main Irish traditions living in Northern Ireland", which some may object to.

The first key new formulation comes in the first sentence of paragraph 15 (which reads as though something has gone slightly wrong with the wording). We are acceptably asked to agree that there is no strict consensus either that Northern Ireland should be part of the UK or that it should be part of a united Ireland. What is not acceptable about this formulation is its apparent equation of these two statuses as being on the same footing, given that Northern Ireland is currently part of the UK, and not just through brute fact but also through the operation of the agreed majority consent principle, and in international law. Nevertheless, there is certainly language we could work on in paragraph 15.

CONFIDENTIAL

Paragraph 16 is broadly unproblematic, except that it is not spelled out in the last sentence that endorsement by all the people living in Ireland would have to be affected separately, North and South.

The second key part of the formulation comes in paragraph 17. The second sentence makes clear that what is contemplated here is a form of mutual recognition formula.

The third sentence, dealing with what the Irish Government would sign up to, implies that the principle of Northern Ireland consent would need to be reflected without reservation in the Irish Constitution. This may not be such a good commitment as it seems, given that Article 1 of the Agreement is already held to be compatible with the Irish Constitution.

For our part, HMG would have to acknowledge the full legitimacy and value of the goal of Irish unity by agreement. There should be no difficulty about "legitimacy". But "value" goes too far. While it is not quite "joining the ranks of the persuaders", there is some implication that we would acknowledge the value of the goal of Irish unity even in circumstances where a majority in Northern Ireland did not want this. The description of Irish unity by agreement as "cherished by the greater number of people living in Ireland" is clearly not value free, and is arguably unbalanced. There is also an unhelpful hint in the latter part of this sentence that new North/South institutions would somehow be a one-way ticket to Irish unity.

Paragraphs 19-20

These deal unexceptionably with Strand I issues, save for the unclear but probably excessively strong part envisaged for the new Agreement in guaranteeing and entrenching basic rights. However, the treatment is both very thin and very general. There is

CONFIDENTIAL

SC/SIL/22283

nothing about a Panel, and nothing about external commissioners. Equally, there is nothing which would rule them out either.

Paragraphs 21-23

These deal with new North/South arrangements.

The second sentence of paragraph 21 appears at first to envisage that the two Governments would decide and delegate the executive functions for the North/South institutions, although the sentence goes on to make clear that it does not pre-empt the extent to which this delegation would be done by the new administration in Northern Ireland rather than in initial Westminster legislation. One unnecessary piece of question begging is that it does not follow, as this paragraph implies, that if the new North/South institutions had a particular executive function this would mean that that matter had to be administered "uniformly throughout the island."

Paragraph 22 seems to be consistent with what we envisage in the Heads of Agreement document.

Paragraph 23 may be misread as hinting at joint authority. It actually does no more than set out a flowery but broadly acceptable mandate for the new North/South institutions.

Paragraphs 24-29

These paragraphs on Strand III matters are disproportionate in comparison with those (paragraphs 19-20) on Strand I matters.

Paragraph 26 stops just short of saying that representatives of new Northern Ireland institutions would be able to attend the Intergovernmental Conference, although the implication is probably that that would be on offer.

CONFIDENTIAL

Paragraph 27 implicitly acknowledges that matters transferred to new political institutions in Northern Ireland would not come within the ambit of the successor to the Intergovernmental Conference, but turns the point 180 degrees by saying that the Conference would need to be able to have some kind of role in relation to these matters. This would be for agreement between the two Governments.

Paragraphs 28-29 envisage that the Intergovernmental Conference would have some form of guaranteeing and monitoring roles in relation to both the new institutions in Northern Ireland and the mandate of the new North/South body. All this is so vague and ill-defined that the possibilities which it could cover range from the unexceptionable to the entirely unacceptable.

Some, for instance, could read these paragraphs as implying that in circumstances to be worked out joint authority would be operated between the two Governments through the mechanism of the Intergovernmental Conference.

On the other hand, it is not unreasonable to envisage that the Conference might have some form of long-stop contingency role in the event that the new arrangements were simply not operating in the overall way intended - for instance if, as is entirely possible, they were being boycotted by both sides of the community.

Again, it is not unreasonable to envisage that there might be some form of periodic tripartite review arrangements for the elements in each of the strands of an overall settlement, although it is not a foregone conclusion that such meetings would have to be designated as part of, or under the auspices of, the IGC. The "contingency powers of intervention and redress" envisaged for the IGC would certainly be problematic if it were envisaged that these could be operated by triggers in individual cases or in relation to individual subjects, rather than as a response to an overall

CONFIDENTIAL

SC/SIL/22283

breakdown of the system. If this amounted to saying that any hard decision which had to be taken by the new institutions in Northern Ireland could be appealed at will by one side or the other to the IGC, this would fatally undermine the foundations of the new Northern Ireland institutions, and destroy any incentives built into the system for compromise and consensus building. The question of what powers of redress are envisaged for the IGC is also crucial.

Overall, the conclusion must be that these paragraphs are at present too vague to allow a proper assessment of their implications to be made.

Paragraph 30

This paragraph simply ducks the question of how endorsement for the new arrangements would be achieved by repeating the formula in the statement of 26 March 1991 that the new arrangements would "need to be acceptable to the people".