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NORTHERN
IRELAND OFFICE

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SIL DIVISION

Doct

FROM: P N BELL, AUS(L)
20 October 1993DESK IMMEDIATE

Mr Thomas

cc PS/PUS (L&B)
PS/Mr Fell
Mr Watkins
Mr Williams
Mr Brooker
Mrs Collins
Mr Cooke
Mr Dodds
Mr Maccabe
Mr Quinn
Mr Beeton
Ms Lodge
Mr Archer, RID
HMA, Dublin
Mr Hallett, RAD, FCO
Mr Caine**AMENDMENT OF ARTICLES 2 & 3: JOINT FRAMEWORK DOCUMENT**

I was on the point of responding to Mr Watkins' most recent minute to me of 13 October saying that I saw attractions in working up his constitutional 'wheeze' as a 'second best' formulation on the grounds that the acceptance by the Irish in their constitution that Northern Ireland is the unit of determination would be a major prize even if Articles 2 and 3 remained substantially as they are. I also saw great merit in his suggestion that the less the Irish felt politically able to put the full constitutional goods on sale, then the smaller should be the price that we should be prepared to pay in terms of new institutions - not least those which lack, so far many of us can see, any administrative justification.

Negotiating Tactics

2. Then, on returning yesterday from Belfast, I saw your minute to Mr Watkins of 18 October which has inspired one or two observations, both on tactics and substance, of how to build on his ideas which may be of more general, longer term interest to the handling of this critical issue. The former may, in one sense, be the more important of the two at this stage in our negotiations - and even perhaps for some little time. Even accepting that the approach you suggest, may

- 1 -

CONFIDENTIAL

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CONFIDENTIAL

broadly speaking, be on the right lines, I share your hesitancy about volunteering it at Thursday's Liaison Group or perhaps for some little time to come. (Our aim, we agree, should be to continue to 'flush them out'.) I have several reasons for saying this: first, if we continue to see intrinsic advantage in the Irish publicly accepting that Northern Ireland is part of the United Kingdom it follows that we should not give up pressing the Irish to do so unless we are absolutely convinced that they will never subscribe to such a doctrine. My suspicion, like yours, is that even they will not know whether they are able to take the plunge until such time as they themselves get into dialogue with Unionists - certainly not in the Liaison Group. If one accepts this train of thinking, we should not let the Irish prematurely off the hook, retreating from a strong position which it will be very hard for either officials - or Ministers - to return (either within the talks process or, possibly, in any other context) in relation to two Articles described by Mr de Rossa in only this morning's 'Independent' as a 'fantasy' which most in the South would be happy to change.

3. Second, there is the 'price' we extract for the Irish demand for constitutional balance. The Irish have, largely as a result of Unionist tactics, been placed in the happy position - though I do not expect to hear them admit it - that, in return a little clever constitutional drafting, they can extract in return a range of substantial institutional concessions from us. Hence, if we are to scale down our narrowly 'constitutional' objectives, we need also to think rather carefully about what we are offering the Irish elsewhere in the Framework Document (or more generally) above all, in relation to North/South institutions. Our tactics, as embodied in that document, were to lead the Irish along, from a statement of heart-warming general principle via reassurances about possible new NI institutions to a 'warm' presentation of new North/South institutions whose 'constitutional resonances' would make it easier for the Irish to take the plunge we hope from them. If we make it too easy, too soon for the Irish on constitutional matters, they will still ask for the maximum on the institutional side. In other words, we may need to look carefully first perhaps at the drafting (and still more the underlying substance) of, say, paras 20 and 22.

CONFIDENTIAL

CONFIDENTIAL

4. Third, there is the more general point that we do not throw away our Court Cards now to take tricks in a particular game which may be over, or due for an indefinite postponement, or replacement. There is little in the current political atmosphere to suggest that the Talks Process is about to come good; nationalists of all stripes will have increasing reasons, as I imperfectly understand it, to sulk; Unionists (or UUs) to sit where they are - or on new Committees. Neither have clear incentives to risk daring compromises.

Question of substance

5. You will note that in all of this I have not argued that a constitutional formulation (whether in the Irish constitution alone, or, as seems to me more likely, in a combination of an amended constitution plus the text of a new agreement,) in which the Irish are not prepared to admit that Northern Ireland is a part of the United Kingdom is unlikely to satisfy Unionists given the corner into which they have with maximum publicity painted themselves - some more vociferously, true, than others - but all to some degree. Nor have I put the more fundamental point, as to whether it is more than self delusion on our own part to believe we can strike a satisfactory (and lasting) agreement under the '26 March rules' with a neighbouring state which still cannot bring itself to admit publicly that part of its neighbours territory is precisely, and lawfully that.

6. Such considerations have, however, transferred us from the domain of tactics to those of substance. The most general issue - the 'Article 1(a) point' - I have already passed over. Others would include:

- the risks of throwing into painfully stark relief the asymmetry between HMG's attitude to Northern Ireland and that of the ROI (and contrasting official language with that used in a range of Ministerial speeches, including now most recently by the Prime Minister at Blackpool);

CONFIDENTIAL

Talks process as a whole as unambiguously expressed consensus on the
 - a number of drafting points of greater or lesser
 significance. (2(vi) and 3(vi) could be read as implying
 if only some generic Irish role in matters which had been devolved to
 NI institutions. More important, perhaps, I do not
 understand, though I fear what others would make of accepting
 the 'integrity and validity' of the Irish Government's
 position which is that ... "it holds that [Ireland is
 indivisible and] there should one day be established a
 sovereign United Ireland". My observations on ambiguity have
 been recorded separately, but I always suspect that weasel
 word 'understands'. Its most spectacular recent use was by
 General de Gaulle in addressing the massed Pieds Noirs of
 Algiers: "Je vous ai compris", he said - and then promptly
 shafted them.

(Signed PEB)

Conclusions

7. To sum up, therefore, I believe we are at one in believing that
 in the short term - and certainly so far as Thursday is concerned -
 we should press hard for the existing formulations in our Framework
 Document while seeking to allay Irish concerns about the 'neuralgia
 points' they identified at our last meeting. And that we should do
 so all the time while resisting Irish efforts, either to drive a
 wedge between ourselves and the other players in Ancram II or to
 betray ourselves into a 'special relationship' with the Irish for
 them to exploit after the possible demise of Hume/Adams, the Talks
 Process or whatever - an effort which does seem a current, as well
 as persistent thrust of their diplomacy. This is, of course,
 entirely compatible with putting the emphasis at our next meeting on
 getting the Irish to define their own position, including, if they
 are able to, their wish list for 'constitutional balance'. Who
 knows, they may even have a paper for us? We have, as you wisely
 said, no need to move unless and until they show more of their hand.

8. But even if we do eventually move, my own suggestion would be in
 the direction of a text very like yours which, to borrow the
 Secretary of State's own words yet again, seeks 'as a product of the

CONFIDENTIAL

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CONSTITUTIONAL ISSUES (TO REPLACE PARAS 35-42)

1. Both Governments seek, as a product of the Talks process as a whole, an unambiguously expressed consensus on constitutional issues which will reflect a balanced accommodation of the differing positions of the two main traditions, and which will be genuinely acceptable to all. [Both Governments]/[The British Government] believe[s] that such an outcome should thereby enable all participants to acknowledge Northern Ireland's present status as a part of the UK.

2. In order to facilitate the development of such a [understanding] consensus both sides set out their own present understanding of the position.

3. The position of the British Government is that:

- (i) it [supports the Union of Northern Ireland and Great Britain]* [and/or] [reaffirms that, as a matter of both domestic and international law, Northern Ireland remains part of the United Kingdom of Great Britain and Northern Ireland];
- (ii) it affirms that it would be wrong to change Northern Ireland's status as part of the United Kingdom save with the consent of a majority of its people;
- (iii) it affirms that it has no selfish strategic or economic interest in retaining Northern Ireland within the United Kingdom against the wishes of its people;

* a 'steal' from the Prime Minister.

- 6 -
CONFIDENTIAL

CONFIDENTIAL

- (iv) it acknowledges that a significant minority of the people of Northern Ireland wish for, either immediately or at some time in the future, a united Ireland and that they have the right to pursue that aspiration from a basis of parity of esteem by peaceful and democratic means and without impediment;
- (v) it confirms that if, in the future, a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, it will introduce and support legislation to give effect to that wish;
- (vi) it affirms it will work to ensure efficient, effective and even-handed government in Northern Ireland unless and until it may cease to be part of the United Kingdom in the circumstances envisaged above;
- (vii) and confirms that, in doing so, it wishes to benefit from the views and proposals which the Irish Government may put forward on [aspects the government of Northern Ireland, except in so far as they are the responsibility of new political institutions there,]/[matters relating to Northern Ireland which remain the direct responsibility of the British Government] on the basis that the two governments will make determined efforts to resolve any differences between them.

3. The position of the Irish Government is that:

- (i) it holds that there should one day be established [by consent] a sovereign united Ireland, [although it accepts that, for the present, Northern Ireland is part of the United Kingdom of Great Britain and Northern Ireland];

CONFIDENTIAL

- (ii) it affirms that this should be achieved only with the full and free consent of a majority of the people of Northern Ireland;
- (iii) it confirms that if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, it will introduce and support legislation to give effect to that wish;
- (iv) it acknowledges that at present no such majority exists, and that the wishes of those who seek to maintain Northern Ireland's present status [within the United Kingdom]/[outside a united Ireland]/[] deserve respect and should be accorded parity of esteem, both at present and in the eventuality of their being a united Ireland;
- (v) it affirms that, pending the establishment of a united Ireland, the British Government, as the legitimate authority, should work to ensure efficient, effective and even-handed administration in Northern Ireland;
- (vi) confirms its wish that it should continue to enjoy and exercise a right to offer views and proposals to the British Government on [aspects of the Government of Northern Ireland, other than those which are the responsibility of new political institutions in Northern Ireland,]/[matters relating to Northern Ireland which remain the direct responsibility of the British Government] on the basis that the two governments will make determined efforts to resolve any differences between them.

4. Against this background, the Irish Government declares that, if there is an agreed outcome from the process of dialogue established by the statement of 26 March 1991 consistent with these principles, it will put forward proposals for the amendment of Articles 2 and 3 of the Irish Constitution to

CONFIDENTIAL

- 8 -

CONFIDENTIAL

CONFIDENTIAL

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reflect the understandings in this document and seek the necessary support for their implementation. It envisages that the amendments would provide.

5. The British Government similarly declares it will take the necessary steps to initiate and support changes in UK constitutional legislation to reflect the same understandings.

- Mrs Collins
- Mr Cooke
- Mr MacCabe
- Mr Quinn
- Mr Beston
- Ms Lodge
- Mr Arthur RID
- EMA Dublin
- Mr Halliott
- Mr Caine

AMENDMENT OF ARTICLES 2 and 31 JOINT FRAMEWORK DOCUMENT

Thank you for your minute of 19 October which seems convincing to me.

2. I have amended my illustrative draft as you proposed and it is attached.

3. Meanwhile we wait to see if the Irish side table anything before the meeting. You told me what the Ambassador had mentioned to you that Noel Barr had said that he had "seen" the Irish paper. Let us hope that this does not belong in the same category as those reports from the middle ages of sightings of the unicorn.

4. If the Irish side do not produce specific proposals (which I suppose need not necessarily be in writing) I doubt if we will be driven to amend our paper to any extent before the IGC. On that basis I would envisage a report to the IGC which recapped what we had tabled our paper, the meetings we had had on it,

CONFIDENTIAL