

NOTE FOR THE RECORD

JOINT DECLARATION INITIATIVE: DISCUSSION BETWEEN THOMAS AND O HUIGINN ON 1 OCTOBER 1993

While I was in Dublin for a meeting of the Liaison Group, I met Mr O hUiginn separately for a resumed discussion of the Joint Declaration Initiative.

2. I handed him the letter the Prime Minister had sent to the Taoiseach. As agreed with Mr Lyne I pointed out that, as would be seen when the letter was opened, it was dated the 24 September and accordingly pre-dated the Hume/Adams demarche.

3. I said that it was hoped that the Butler/Nally group could meet in the following week, and I offered some dates which he is seeking to test out with Mr Nally. Mr O hUiginn was clearly pleased at this evidence of British interest.

4. On the Initiative generally, I said that there was no change in the British Government's position, with which he was familiar. Our conversation should accordingly take place on that basis. The British Government did not wish to take an active part in what might be represented as a indirect negotiation with the Provisionals, and accordingly we were not ourselves willing to trade text. On the other hand, as the Prime Minister had made clear to the Taoiseach, we would want to consider seriously any proposition put forward by the Irish Government. Against that background we could explain issues of principle; point to difficulties and make some points about language, particularly in that "constitutional balance" was a central issue under discussion between us in connection with the overt political talks.

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5. I went on to say that I would wish to ask a number of difficult questions about the scheme which the Joint Declaration Initiative envisaged. If Mr O hUiginn was not in a position to answer them I hoped they could be the subject of further discussion in the Butler/Nally group. The points I would raise spoke to real concerns which would need to be satisfied if the Initiative were to prosper. If he wished to see them in a positive light he might note that they were the kind of issues which a government would need to settle before it could take such an initiative seriously.

6. I emphasised, and Mr O hUiginn agreed, that all the political and other sensitivities of which we had been aware throughout our exchanges had been greatly exacerbated, and the time shortened, by the Hume/Adams demarche. There was need for enormous care: the Hume/Adams demarche had brought out very sharply the sensitivity of opinion in both Great Britain and Northern Ireland (and indeed in the Irish Republic) and there were great risks in any suggestion that the Government had been involved. The room for manoeuvre had been reduced. Mr O hUiginn agreed and said that these were indeed arguments which had been put to Mr Hume by the Irish Government in an attempt to stop him going public. I noted that it had been some saving that the Hume/Adam demarche had involved a report to the Irish Government, rather than to both governments. Mr O hUiginn said that he was pleased that had helped. He claimed it as a point he had pressed himself, though he had noted that some Unionists had interpreted it as an insult to the British Government. I stressed that once any report was said to have been put to the British Government our room for manoeuvre, and the time available, would be very limited. The longer the Irish Government could defer any report to the British Government the better. How did the Irish side envisage the "briefing" from Mr Hume being handled?

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7. Mr O hUiginn said that it was expected that the "briefing" from Mr Hume might take place on Thursday 7 October or Friday 8 October. It might be oral only. Nothing new would be learned. The only thing Mr Hume had to report would be earlier versions of the Joint Declaration. It would not involve the latest text (JD.8) since, though Mr Hume had seen and approved it, it had not been shown to the Provisionals. I wondered if the Irish Government might not say that though Mr Hume's report was interesting it clearly required further consideration and work and that they were not at that stage making any report to the British Government. Mr O hUiginn said that he could see the merit from our point of view, and perhaps from the point of view of the Initiative as a whole. It would be difficult if the Irish Government seemed to be encouraging Mr Hume to negotiate indirectly with the Provisionals on their behalf. Perhaps, I speculated, in the light of the meeting, Mr Hume might himself take the view that he needed to do further work? Mr O hUiginn was not sure.

8. In any event I registered very clearly that once a report was said to have been sent to the British Government we should have little room for manoeuvre and unless something was clearly acceptable would have to repudiate the initiative.

9. Recalling that the British Government had not accepted this approach in principle, and had significant difficulties with the current text, I asked how the Irish side envisaged bringing matters to a successful conclusion in the light of the Hume/Adams demarche and the fact that they would not themselves negotiate with the Provisionals. Mr O hUiginn said that there were real difficulties. But the Taoiseach's approach was that if a text could be devised which the British Government found acceptable in principle, he would wish to put it to the

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Provisionals in effect on a take it or leave it basis. If the Provisionals made minor or constructive drafting suggestions they might be entertained; if they made serious or wrecking amendments the Taoiseach would draw the conclusion that the Provisionals were not acting in good faith. Such a text would be put to the Provisionals through the Mansergh/Reid link, rather than through Mr Hume. (Indeed Mr O hUiginn stressed the Taoiseach's insistence that JD.8 was something for which the Irish Government was responsible, and not Mr Hume. He acknowledged that there was some tussle of ownership of the Initiative between the Taoiseach and Mr Hume.)

Cessation of violence

10. I asked Mr O hUiginn what bankable assurances there were that such a Joint Declaration would lead to a cessation of violence, and that it would not be resumed subsequently. In response Mr O hUiginn said that the Taoiseach believed that a cessation of violence was what was on offer. He acknowledged that the text was silent on this point, save for the point that eligibility for participation in the proposed Convention was restricted to those democratically mandated political parties which abide exclusively by the democratic process.

11. I asked whether there was any suggestion that arms would be surrendered to the authorities. Mr O hUiginn said that to the best of his knowledge there had been no discussion of such directly military matters. The Taoiseach's view was that what was involved was a watershed shift in the political posture of the Provisional movement. This involved both a major shift in their attitude to the Irish Government (which of course the Provisionals had traditionally regarded as illegitimate) as well as to violence and to the British Government. It was to secure and capitalise on this political shift that the Taoiseach sought

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respond. For him there were <sup>2</sup> ~~to~~ bedrock issues on which there could be no fudging: an end to violence and the consent principle. Provided those were safe-guarded the Taoiseach was prepared to take some risks - and Mr O hUiginn repeated that he regarded himself under an obligation to the Prime Minister to provide some cover - to achieve this historical shift.

12. I explained the difficulty of the British Government perhaps being brought to make a politically risky demarche, deploying language more advanced than it would naturally use, with no evidence that it would produce a secure cessation of violence or that in six months time the campaign might not start again.

13. Mr O hUiginn noted the difficulty. He said he thought the Provisionals might well start with a ceasefire which would turn into a permanent renunciation of violence. It might be too much to expect them to move at once to declare a permanent renunciation of violence, and to hand over their weapons.

14. I speculated that the British Government would be in a stronger position if it were able to say that it had decided that it was appropriate to make the Joint Declaration on the basis of clear advice from the Irish Government that it would lead to a cessation of violence. Mr O hUiginn noted this possibility.

15. On the possibility of a resumption of violence, I stressed the importance of clarity on both sides. There should be no misunderstanding about what was involved. Mr O hUiginn said that he agreed and had been anxious to avoid language which could lead to subsequent misunderstandings.

16. During this exchange Mr O hUiginn said that he thought there had been no discussions concerning an amnesty for prisoners.

~~He~~ he gave it as his judgement that there would be an expectation that if peace held that question would be addressed. I said that would be a most difficult issue and there was no suggestion whatsoever that the British Government would be willing to entertain that possibility. Mr O hUiginn said that he understood the sensitivities. Repeating that he did not think the issue had been discussed in the context of the Joint Declaration Initiative, he speculated that a scenario might be that an initial prolonged ceasefire might lead, through the process of political reconciliation which the Convention was intended to initiate, to the suggestion that there should be some gradualised amnesty in parallel with the surrender of arms.

Joint Declaration Initiative and the Talks process

17. I raised the question of the relationship between the Joint Declaration Initiative and the Talks process. Did the Irish Government see the Joint Declaration Initiative as displacing the Talks, or as formally compatible with them; and would the Irish Government remain committed to the Talks process.

18. Mr O hUiginn said that the Irish Government believed the Initiative was indeed compatible with the Talks process. Indeed some of the language of the Declaration implied the need for the Talks process to bring about agreement and overcome differences. In practice he wondered whether, at least at first, the Unionists would be ready to continue the Talks process. But the Irish Government would remain committed to it. The Taoiseach, he explained, saw the Joint Declaration Initiative as providing a "decompression chamber" (or, he speculated, a decontamination chamber) to bring the Provisionals into constitutional political activity.

19. I asked whether the Irish Government would be arguing that Sinn Fein should be admitted to the Talks process. Mr O hUiginn said that this, and indeed much about the Convention, had frankly not been thought through.

20. I said that the British Government, and indeed the Unionists, were likely to need to have it demonstrated over a period that violence had been renounced before they could contemplate Sinn Fein's admission to the Talks process. Was there a risk that Sinn Fein misunderstood this?

The Permanent Irish Convention

21. On the Convention Mr O hUiginn noted that participation in it would be uncertain. It might be that only the Labour Party, Fianna Fail, the SDLP and Sinn Fein took part at first. Fine Gael would have a dilemma, and he thought the PDs and the Democratic Left would hesitate before taking part in a body which involved Sinn Fein from the outset.

22. On the work of the Convention I speculated that it might be that an initial task could be the concocting of some broad statement of principles. Such a task might helpfully take at least six months. The statement of principles would major heavily on the commitment to peaceful and democratic procedures. If after something like six months there had been peace, and if Sinn Fein as a participant in the Convention could be seen to have signed up to some such declaration of principles, I could see that it could provide a foundation on which the Irish Government might urge the other participants in the Talks process, including the British Government, that Sinn Fein should be included. Mr O hUiginn noted that these were helpful possibilities.

Attitude of Taoiseach

23. More generally Mr O hUiginn stressed that the Taoiseach saw the Joint Declaration Initiative as a staging post. The Taoiseach was sceptical whether the Talks process could in itself bring about peace. He saw the Joint Declaration Initiative as an opportunity to secure peace, that being an intermediate step to the wider agreement which the Talks process envisaged. If the Provisionals were in good faith in seeking a historic shift towards peace then the two Governments should go to the outer limits of politically acceptable language to bring this off. If the Provisionals were not in good faith then the Taoiseach wanted nothing to do with the matter and the Provisionals would have rejected the best chance they are likely to have for a long time to get off the hook of violence.

24. Mr O hUiginn volunteered that the Taoiseach took the view that Articles 2 and 3 should be left for the wider package. Including the issue Joint Declaration Initiative would simply make the approach less attractive to the Provisionals.

25. I asked about the reference to the Irish Constitution in paragraph 7 of the draft Declaration. What was its significance? Mr O hUiginn explained that it was to make clear that this Convention was governed by the Irish Constitution, and did not constitute a separate and rival source of authority in Ireland. The point was of considerable significance within Ireland since the Provisionals had historically rejected the Irish Constitution and regarded the Government as illegitimate. Accordingly if Sinn Fein were to take part in a Convention it would be an important step in terms of their reconciliation to the legitimate authorities in the Irish Government.

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26. I repeated that the points I had raised reflected real difficulties and concerns. If the British Government were to participate in the Joint Declaration they would need to see the scheme as a whole. Since the British Government was not in a position to negotiate with the Provisionals, much might depend on any assurances the Irish Government could give.

The text

27. Mr O hUiginn gave me a new consolidated text (attached as JD.9). This incorporates changes to paragraph 4 which he had mentioned on the telephone earlier in the week. In that paragraph there have been additions and shifts of language to reflect some of our concerns, and a major re-ordering of the sentences.

28. Explaining that I remained unable to engaged substantively on the text, I registered two central difficulties, both of which I have mentioned before:

(i) The imperative political need for some reference to the constitutional guarantee.

(ii) The need for the greatest care if there were to be any use of the expression "self-determination".

On the constitutional guarantee, Mr O hUiginn said that he understood this though it would clearly make the text less saleable. He wondered about including, perhaps in paragraph 3, a statement on behalf of both Governments which repeated the language of Article 1(a) of the Anglo-Irish Agreement: "the two Governments affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of

~~The~~ people of Northern Ireland". I said that might be a possibility, though it was a difficulty that those words had to some extent been compromised. As we both knew those words had been chosen carefully to ensure compatibility with Articles 2 and 3 of the Irish Constitution and accordingly could be read as a statement of political reality, rather than an affirmation of a principle. It was likely that any text of this kind should include a plain statement that Northern Ireland should remain in the United Kingdom unless and until that was no longer the wish of a majority of its people. In those terms it would of course need to be a statement by the British Government only, since the Irish Government, in advance of reform of Articles 2 and 3, could not acknowledge Northern Ireland's status as part of the United Kingdom. I speculated that a re-statement of this guarantee might be more saleable if it was part of a formulation which went on to state one of the elements of the statement of more appeal: for example the formulation that the British Government had no selfish strategic or economic interest in retaining Northern Ireland within the UK against the wishes of its people.

29. On self-determination, I noted that JD.9 has two sentences which use that expression. Perhaps the first could be dropped. Mr O hUiginn said he thought it essential that there was some acknowledgement in the text of the legitimacy of self-determination for Ireland as a whole, though in a formulation which made it clear that its operation required the consent of both parts of Ireland. He believed the key sentence, if the document were to be saleable, was this one:

"They acknowledge the legitimacy of any form of self-determination for Ireland as a whole which secures agreement on the basis of consent, North and South, of the people living in Ireland"

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I speculated that one might speak of the legitimacy of claims to rights of self-determination. I also wondered whether the sentence might be improved if it included the word "concurrent," which I noted usefully occurred later in the paragraph in place of the earlier unhelpful word "joint".

30. More generally I suggested that it might be necessary, if a text were to be acceptable to the British Government, to use "self-determination" in a context which in effect defined it in terms of all the elements of the British Government's posture in respect of Northern Ireland, including the constitutional guarantee. Mr O hUiginn sucked his teeth.

31. I asked about the sentence: "They accept that such agreement may, as a right, take the form of agreed independent structures for the island as a whole." What were the "agreed independent structures" which were envisaged? Were they North/South Institutions? Mr O hUiginn said that this was language which meant in effect a united Ireland.

32. I noted that our discussions had concentrated on paragraph 4. There might be points on other parts of the text. In particular I registered the sensitivity of paragraph 2 with its attempt to link British/Irish relationships to the EC. I said that I found it difficult to believe that that was there to reflect a crucial interest of the Provisionals, or indeed of the Irish Government. Did the paragraph not simply reflect a particular pre-occupation of Mr Hume? The paragraph could give real difficulty to the British Government. Mr O hUiginn agreed to look into why it was there and to consider the possibility of its deletion.

Conclusion

33. In concluding the meeting, Mr O hUiginn asked me to impress the view of the Irish side that if this initiative were to have any chance of prospering we must reach agreement on a text very quickly. If that were done the Taoiseach would want to put it, via Mansergh/Reid, to the Provisionals on a take-it or leave-it basis (subject to the possibility of minor and constructive changes) and then it would either be "go" or "no go".

34. I agreed that time was limited, particularly once the Irish Government said that it had put any report to the British Government. Accordingly the longer that could be held off the better.

35. Finally I said that I hoped that at the end of these exchanges, whether they led to the declaration being made or not, relationships between the two Governments would be enhanced and at least not damaged. This led Mr O hUiginn to acknowledge that he allowed the possibility that the Provisionals were indeed primarily interested in driving wedges between the constitutional politicians. He thought there was a good deal of evidence that they were genuinely turning towards peace, but scepticism was always needed in anything concerning the Provisionals.

[SIGNED]

Q J THOMAS  
4 October 1993  
OAB 6447