

From: Quentin Thomas (NIO)
Date: 12 December 1993

PTS.

PRIME MINISTER

cc John Sawers (FCO)
Jonathan Stephens (NIO)
Melanie Leech (CO)

JDI

- 1 Since dictating my earlier note I have spoken to my Secretary of State.
- 2 He discussed the relevant sentence yesterday with the Attorney General. In the light of that he strongly agrees that we should not break on this sentence.
- 3 He suggests that if you do want to try alternatives to "as of right" the words "properly" or "legitimately" would do. As I told him, I myself doubt if these would take the trick theologically.
- 4 If all else fails my Secretary of State suggests we should accept the sentence in the form it emerged from the Butler/Nally group that is:

"They accept that such agreement may, as of right, take the form of agreed structures for the island as a whole, including a sovereign united Ireland."

(We might get out "sovereign" which now occurs at the beginning of the paragraph, but that is a small point.)

S Macleod
PP QUENTIN THOMAS

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PRIME MINISTER

cc John Sawers (FCO)
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JDI

1 You asked for advice and analysis of a sentence in the JDI. I understand that exchanges broke off with the relevant sentence being in this form:

"They accept that such agreement may, as of right, take the form of agreed independent structures for the island as a whole."

2 We have for some time questioned the word "independent". You did so in Dublin. This was on the basis that the word was either unnecessary (if it meant a united Ireland) or unacceptable (if it referred to autonomous all-Ireland institutions in advance of unification). The Irish side probably intended the sentence to be a coy reference to the possibility of a united Ireland. But the next sentence makes clear our willingness to contemplate that, as does the opening of paragraph 4 and the opening of paragraph 7.

3 But as written the sentence could easily be read as allowing for independent all-Ireland structures now while Northern Ireland is in the UK. These could be the kind of North/South structures which might emerge from Strand 2 of the talks process. Although the Irish side last year appeared to envisage such possibilities, this year, after more thought, they have realised they would like this as little as we would. They do not want autonomous institutions which would probably be incompatible with the Constitution and with the need for accountability to the Dail.

4 Against that background, we provisionally agreed, at the Butler/Nally meeting, to replace "independent" with "including a sovereign united Ireland". On Thursday neither Minister thought Mr Molyneaux liked the appearance of this formulation, though the substance is repeated in the next sentence.

5 We have not, before yesterday, challenged "as of right". It is likely to be a point of ideological/theological significance to the Nationalists and the Republicans. I believe we can accept it on the basis that it is a political statement, not a document conferring a legal right. Mr Molyneaux has not taken issue with it.

Irish intentions

6 There are two possibilities:

- (i) that the Irish side is genuinely worried by our challenge to "as of right" because of its ideological significance;
- (ii) they have learnt that the JDI will not do the trick, want to blame HMG and therefore are looking for an issue ^{on} which to break.

Advice

7 My advice is that, whatever their intentions, we should not break on this sentence. It is the wrong issue. We need to look at all the outstanding points - and they do not seem insuperable - in the round. Therefore if you speak on the phone - and you should do so, initiating the call if necessary - you should make clear, early on, that we are not in principle opposed to "as of right". We raised a question about it in case, in context, it gave the wrong impression.

Note

8 If we are headed for a break the best issues for us are: constitutional guarantee; a need for more explicit Irish acknowledgement of consent; more specific reference to reforming the Irish Constitution. (For example replacing the territorial claim with an aspiration; agreeing to introduce a referendum in advance of an overall settlement. If the need for reform is accepted in principle why delay it?

9 If the Irish side is not playing for a break it should be possible to settle the text and make the Joint Declaration. If necessary officials could meet again early next week. It might even be possible to settle the matter on the phone once this matter is resolved.

Points to make

10 I hope we can resolve the outstanding points on the text. The points between us do not seem insuperable.

11 Our concern about the sentence in paragraph 4 arises from its lack of ~~security~~ *clarity*.

12 We raised a question about "as of right" only recently. Does it have great ideological significance? Does it ~~add~~ in substance add much to the next sentence?

13 If necessary, we can live with "as of right" if you tell us it has special value, and on the basis that this is a political statement not one confirming a political right.

14 Our worry about "independent" arises from the obscurity of its meaning

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in the context. If it is intended to refer to a united Ireland surely this is sufficiently covered in the next sentence (and elsewhere for example the opening of paragraph 4 and paragraph 7).

15 But if it refers to autonomous all-Ireland institutions in advance of unification could you live with it? What about accountability to the Dail and would it be compatible with your Constitution? Are you happy to have an equivalent sentence attributable to you?

16 We could make it clear that the structures, in advance of unification, would need to be subject to parliamentary accountability in both jurisdictions.

17 I suggest we look at the wording:

They accept that such agreement may, as of right, take the form of structures, with such independence as may be agreed, for the island as a whole.

They accept that such agreement may, as of right, take the form of agreed structures for the island as a whole, including an independent Ireland by agreement.

They accept that such agreement may, as of right, take the form of agreed structures for the island as a whole, whether in the form of a united Ireland or, short of it, in the form of a framework in decision-making capacity, subject to parliamentary accountability in each jurisdiction.

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NORTHERN IRELAND OFFICE
WHITERALL
LONDON SW1A 2AZ

[I suspect that either of the first two might be acceptable to the Irish side.]

Private Secretary to Irish Minister
10 Downing Street

10 December 1993

S Macleod
P QUENTIN THOMAS

JOINT DECLARATION INITIATIVE: BRUSSELS NEGOTIATIONS

Thank you for your earlier note of this afternoon.
I attach, in response, a briefing note in
similar style. It is the product of discussions here with
Quentin Thomas, and brief discussion with my Secretary of
State and Michael Ancram.

fthomas.sm

Our analysis here is that the Irish are either deliberately
playing hard in the end game to see what they can get out of
us, or (less likely) have already heard that JB will not do
the trick with the Provisionals and would not therefore mind
a break with the British. Either way, since the Irish seem
prepared to open up a few issues which we thought to be
closed, you might want to counter with some suggestions
which will be equally unpalatable to the Irish. Examples
include insisting on references to "separate consent" in
paragraph 4 and a commitment now to a referendum to withdraw
the Irish claim of right (some sources are suggesting that
the Irish might have been prepared to concede this).

The key issues are obviously paragraph 4 and the
Convention/Forum. Both go to the heart of how unionists
will react to the declaration. Ministers on Thursday judged
that the reference to "a sovereign united Ireland" in
paragraph 4 and any reference to the

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