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From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

2. PUS to see

DM
(5/11) ✓ / Mr Chicket

22 December 1993

Ref: A093/3790

Dear Juliet,

Joint Declaration

Many thanks for your letter of 15 December about the "as of right sentence" in paragraph 4 of the Joint Declaration. We have had several subsequent conversations about this, and this is to record the outcome.

When I negotiated the inclusion of the words "as of right" in this sentence, Dr Mansergh, having consulted the Taoiseach, assured me that the Irish Government regarded the Joint Declaration as a political declaration having no legal status and were prepared to do whatever was necessary to make that clear. That was the background to my asking you on the evening of 14 December whether the Attorney would advise getting a written understanding with the Irish on this matter.

I tried on Dr Mansergh the draft side letter which you attached with your letter of 15 December. Dr Mansergh confirmed that the Irish Government stood by our oral agreement but said that the Irish Government would prefer to have a general understanding rather than one referring specifically to the "as of right sentence". His point was that this sentence was one of particular importance to the Nationalists and the existence, let alone the possible leaking, of a side letter referring to this specific sentence and appearing to qualify it could be very damaging indeed in relation to Nationalist opinion, particularly among the Provisional Army Council. He therefore suggested an alternative and more general formulation which ran as follows:-

/"I am writing

Ms Juliet Wheldon
The Legal Secretary to the Law Officers
Attorney General's Chambers

Mr Thomas
Mr Daniell
Mr May
Mr Beeton - Deserved
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AS/A

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"I am writing to confirm our agreed understanding that the Joint Declaration of 15 December between the Taoiseach and the Prime Minister is a statement of their joint respective political positions and not of legal obligations."

You were unhappy about this, since there are some parts of the Joint Declaration, in particular the sentence referring to the commitment of both Governments to introduce the necessary legislation to give effect to a united Ireland achieved by consent, which clearly is a statement of a legal obligation. I suggested that we might try the alternative formulation that the Joint Declaration "does not change the legal position of either Government", but this did not meet the concern about the "as of right sentence", which was that it might be read as implying a pre-existing legal right.

We therefore concluded that no general statement was likely to take the trick which we are seeking and that I would not pursue the matter further with the Irish Government. Instead, we would rely on recording the oral understanding between us, which is no doubt also recorded in the Irish Government's papers.

ANCHOR ROUND - NEW MEETS

Following the Joint Declaration on 15 December, the Prime Minister underlined the importance of the political discussions presently being taken forward by Michael Anker. You will recall the Prime Minister called for these discussions to be intensified. The Minister has welcomed this publicly.

Yours ever,

Robin

2. There is an urgent need therefore to progress the Anchor Round as soon as possible in the new year. The Minister would like to be in a position to have further meetings with the parties in week commencing 10 January 1994 and would therefore be grateful if you would, in the interim, consider what format these meetings would take and what issues might usefully be discussed. The Minister's view is that there is much to be discussed in Strand I, including the proposals put forward by the DUP in their Blueprint. Dr Alderdice has also suggested to the Minister in conversation that he too has some new ideas on Strand I issues. It would be helpful, however, not to be seen to be restricting discussions to Strand I, although this may prove difficult unless the Irish Government are prepared to be more forthcoming than hitherto on their position on

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