

FROM: M J WILLIAMS
US(POL)

26 November 1993

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

Mr Cooke - B

THE IRISH LEAKED DOCUMENT: FURTHER COMMENTS

Following our brief exchange before the main meeting on political development on 22 November, I thought it may be helpful if I set out what I think the main problem areas are likely to be in the text as leaked to the Irish Press on 19 November. As you point out in your minute of 22 November, the document could clearly have been worse; however the document as leaked still presents serious difficulties and would have no hope of securing general agreement in Northern Ireland, including therefore that of unionists, without major changes. Some of these have been picked up in Mr Watkins' minute of 23 November, with whom I had discussed my ideas previously.

2. The difficulties start with paragraph 14. Unionists are likely to be seriously alarmed by the terms in which the Northern Ireland problem is defined. Although an academic might well describe the situation along the lines set out in paragraph 14 I believe that HMG should resist using such a formulation, which already points the way to a certain type of solution. Every problem is sui generis; not just Northern Ireland. Also paragraph 14 overlooks, as you pointed

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out in your commentary, (but in relation to paragraph 15) that Northern Ireland is in fact and in law currently part of the United Kingdom, and that a substantial majority of its population wish it to remain so.

3. You and Mr Watkins have pointed to the ambiguity between the paper's references to the principle of consent for Northern Ireland (the re-assertion, with some variations, of the third and fourth Spring Principles in paragraph 12; the reference to Article 1 of the Anglo-Irish Agreement in paragraph 17) and its suggestions that the unit of determination might be the entire island of Ireland; the latter is implied by the first Spring Principle in paragraph 12 (curiously now described as being in some way implicit in the Anglo-Irish Agreement, an expression also used by Mr Spring in answering questions in the Dail on 18 November, but which Mr O'Donovan was unable to explain when I questioned him on it), the final sentence of paragraph 16, the reference in paragraph 17 to the goal of Irish unity by agreement being cherished by the greater number of people living in Ireland, and the reference in paragraph 18 to the consent and allegiance of all the people of Ireland. Such ambiguity might be acceptable, if it served as a device to enable constitutional nationalists to argue that there had been a genuine Ireland-wide consultation of popular opinion, in order to undercut the arguments of unreconstructed Republicans that there has been no valid test of Irish opinion since the 1918 elections. If it were clear that this was all that constitutional nationalists wanted, and also that such a device would win the trick with the torch bearers of the true Republican flame, it might be acceptable; but neither protasis appears convincing.

4. The crux of the paper comes in paragraph 17. However the mutual recognition formula is unbalanced (in marked contrast to the ideas on which Mr Thomas was working). The use of the double negative in the formulations makes it difficult to see precisely what is being

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proposed. However it appears that the Irish would be required to do no more than endorse Article 1 of the Anglo-Irish Agreement which they have already endorsed and to which they are committed, whereas the British would be expected to acknowledge, by some means which are not spelled out, both the goal of Irish unity, and also the need to give "meaningful operational expression and opportunity" (whatever that means) to the objective of unity. There is no specific suggestion of any amendment of Articles 2 and 3. The explicit reference to the formulation of Article 1 of the Anglo-Irish Agreement (hardly calculated to appeal to Unionists!) makes it quite clear that the Irish Government is not offering any formulation which would recognise Northern Ireland to be part of the United Kingdom. We would need to press for them to be more forthcoming on both these points. On the other hand, the British side of the formulation seemed designed both to endorse the goal of Irish unity (which I cannot see us being able to do), and to require practical steps leading in this direction.

5. Paragraphs 19 and 20 fall into the same trap as the Opsahl Commission report, in appearing to identify only two communities, without defining them. This formulation ignores the existence of the Alliance Party and similar cross-community bodies.

6. On paragraphs 21 to 23, regarding North/South institutions, the main problem, besides those referred to by Mr Watkins, is that the lead role on the UK side appears to be that taken by HMG at Westminster, rather than by the new devolved assembly in Northern Ireland.

7. Paragraph 28 appears to me to make the new political institutions in Northern Ireland formally answerable to the Intergovernmental Conference. The only way I can construe this paragraph is that the Conference should possess quasi-judicial powers in relation to allegations of discrimination, and quasi-executive powers in the event of a manifest breakdown in the

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institutions or in their effectiveness. The Conference has powers of guaranteeing, intervening, and exacting redress, with the clear implication that these powers would no longer belong to HMG alone. This is a totally different set of powers from those belonging to the present IGC, which gives merely a kind of consultative role to the Irish Government, and explicitly preserves each side's sovereignty and area of jurisdiction. Paragraph 29 of the document seems to imply likewise that the Conference should "guarantee" the North/South body; however it does not spell out that the Conference has powers of intervention and redress, although that may be implicit in the use of the word "guarantee". What this would mean in practice is very unclear. Apart from being, in my view, impractical, I do not see how such provisions would ever be thought likely to secure majority agreement in Northern Ireland; nor is it easy to water them down to make them more acceptable.

8. It would of course be possible for us to start from the Irish document for negotiating purposes. Tactically, there could be advantage in our doing so, if the Irish confirm it as official (which now looks pretty unlikely); and it certainly confirms that the Irish position has recently moved towards a greater realism in some respects. However it is regrettable that, although many of the ideas which appear in the document had originally been trailed before us in the Liaison Group, the Irish seem to have shown very little sign of having accepted the reservations we spelt out about whether their ideas would be acceptable to a majority of the population of Northern Ireland.

[signed MJW]

M J WILLIAMS

Ext 27083

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