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FROM: S QUINN
CENT SEC PLANNING UNIT

DATE: 29 OCTOBER 1993

cc PS/SofS L&B - B
PS/M Ancram, DENI, L&B - B
PS/PUS L&B - B
PS/Mr Fell - B
Mr Thomas - B
Mr Bell - B
Mr Williams - B
Mr Watkins - B
Mr Brooker - B
Mr Maccabe - B
Mrs Collins - B
Mr Morrow
Mr Archer, RID - B
HMA Dublin - B

F: PD: (Framework Doc)

MR COOKE - B

NORTH/SOUTH BODY: REMIT AND POWERS

1. I have been giving some thought to how a North/South body might operate, in light of:
 - (a) Mr Watkins 14 May 1993 submission to PS/Secretary of State on North/South Contact and Co-operation;
 - (b) developments in Liaison Group and Ancram II.

2. I have also noted the report by Philip Stephens in the 29 October issue of the Financial Times, which suggested that "joint proposals [would include] the creation of a number of powerful executive boards to increase cross-border co-operation" and that "..... Britain would agree to the establishment of a number of cross-border executive boards in such areas as transport, dealings with the European Community's social funds and tourism". This part of the article reads as if it may be based on Dublin

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briefing, but as I recall it, no such specific proposals have been discussed in Liaison Group. Given that no detailed studies, involving the Departments who best understand the issues, have yet been undertaken, this kind of speculation seems to be premature and unhelpful. Certainly it would seem right for HMG, on our part, to refer more generally to North/South structures which would give full effect to the opportunities for co-operation and mutual benefit.

3. Mr Watkins' submission set out the reservations which Central Secretariat and NI departments have about making a North/South body the sole statutory authority in relation to a function. Very briefly these are:

- (a) there could be serious and highly dysfunctional disputes over resources and priorities;

- our dealings with the Irish on Financial Burden Sharing on Talks were extremely difficult and protracted; I see from successive notes of Delegation Meetings that our dealings with the Irish on Maryfield costs are also frustrating and problematical. In both cases the amounts involved are modest. If these difficulties and tensions were translated into budgets of tens or hundreds of millions, the political and functional consequences could be significantly adverse;

- (b) there could be similar disagreements on other aspects of policy and, if the agreement of both sides was necessary (as must be the case if the North/South body were itself the statutory authority), political stalemate could occur and the delivery of services be disrupted;

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- (c) the benefits of co-operation can demonstrably be achieved by the voluntary, bilateral agreement of two separate statutory authorities, which would retain the discretion to act in their own jurisdiction if bilateral agreement did not emerge.
4. For these reasons, it might be worth looking at John Hume's hankering after an EC Council of Ministers-type structure, as explored most recently in his 21 October meeting with Michael Ancram. In summary his proposals are:
- (a) a North/South body would act only by agreement; if agreement was not reached, the two administrations would be free to act in their respective jurisdictions;
 - (b) NI participants in the North/South body would act in accordance with mandates agreed by the internal NI administrations;
 - (c) agreements would, in the manner of EC Directives, be binding on the two administrations, who would be required to take whatever administrative and/or legislative action was required to give effect to them;
 - (d) the remit or competence of the North/South body to reach agreements/issue directives would be agreed (by the two administrations? or possibly by the two Governments? - unclear).
5. This approach solves the workability problems in relation to decision-making on policy, resources and priorities. However it raises two political problems from a unionist perspective:

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- (a) unionists would want NI nationalist participants (say the Head of the Agriculture or Education Department - dealing one to one with a Dublin Minister) in a North/South body to be subject to some check on how they interpreted and implemented their mandate - otherwise they could be faced with the fait accompli of a binding directive which did not reflect a true consensus;
- (b) the power of directive, even if drafts were subject to ratification by the two internal administrations/legislatures, would make the North/South body superior in a sense to the Assembly.
6. This may explain the UUP's apparent preference for the Foyle Fisheries Commission-type model (the sole statutory authority); but they may also have cynically calculated that the continued existence of two fiscal units and economic competition between North and South (eg on tourism and transport, Financial Times notwithstanding) makes the sole statutory authority model substantially a dead end.
7. Before these things get set in stone, whether in a joint Framework Document or in some other form, I would like us to consider canvassing, with the Irish Government and the NI parties:
- (a) John Hume's model modified by
- (b) draft directives being subject to ratification by internal institutions before they can be signed and given binding effect.

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8. This approach is designed to be workable, to give the North/South body a significant status, but to reassure unionists that NI nationalists could not abuse the powers of the North/South body. While a body whose agreements were subject to ratification would be less attractive and resonant to nationalists, this seems essential to sustain the consensus-promoting characteristics of the overall package (within which the Strand I activities of unionists should and would be subject to elaborate procedural checks). This is my attempt to balance the need for a North/South body which can be presented positively (capable of making all-Ireland instruments) with the need to build in mutual checks and balances.

9. The 14 October version of the Joint Framework Document includes two relevant references:

para 20 Both Governments believe that the legislation should provide, within the framework, for:

.....

(ii) the ability, within defined parameters, to discharge or oversee suitable cross-border executive functions.

para 23 They also expect that the framework would have or be able, subject to democratic approval, to discharge or oversee suitable cross-border executive functions.

10. If that model were to attract wider support than the alternative I suggest, then clearly we would run with it, notwithstanding its inherent functional demerits. But I would not want that to happen without us giving the Irish and the NI parties the opportunity to consider the alternative approach. If we wished to pursue this

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possibility, then a discussion in the next Liaison Group would be appropriate before any exploration with the NI parties. An in-house discussion would be an essential preliminary.

[Signed SQ]

S QUINN

- Mr. P. J. Kelly
- Mr. Bell
- Mr. Williams
- Mr. Williams
- Mr. Draper
- Mr. Collins
- Mr. Doyle
- Mr. McCabe
- Mr. Quinn
- Mr. Beeton
- Mr. Lodge
- Mr. Archer SID, PCO
- EMA Dublin
- Mr. Hallett via SID
- Mr. Cairns

ANNOUNCEMENT OF ARTICLES 2 AND 3 - JOINT FRAMEWORK DOCUMENT

We are grateful for your minute of 20 October. We entirely understand (and accept/respect) your comment in paragraph 7 that part of the task we are trying to take is to get as forward as possible from the Irish Government that the conventional issue turns on the consent of a majority with the people of Northern Ireland.

Your comment that he does not mind assuming the integrity of someone else's position. But not, in this case, its validity.

Signed:

D. E. McILROY
PRIVATE SECRETARY
25 OCTOBER 1993

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