

a

chrom
liQ J THOMAS, DUS(L)
18 October 1993
DUSL/MR/42560

PUS((L))-[1]

cc Mr Rickard-[2]*
—Mr Cooke-[3]
Mr Beeton-[4]
Mr May-[5]*
File copy-[6 of 6 copies]
* Mufax via Liaison(L)

JOINT DECLARATION INITIATIVE: IMPLICATIONS FOR INTERNATIONAL LAW

As we agreed, I spoke to Mr Lyne about two of the points discussed at the Prime Minister's meeting in the light of concerns expressed by the Attorney General.

2. On the first, Mr Lyne agreed that there had been apparent agreement on the need for the FCO to draw up a list of the fundamental principles undertakings and obligations under international agreements to which they have jointly committed themselves, as reflected in paragraph 3 of the Declaration. He did not think this would be needed until some way down the track.

3. On the second point, Mr Lyne said that the possible need for advice on the constitutional status of the text - was it, for example, a Treaty or not - had not been "summed up". There was accordingly no commitment to action, though he assumed we would want to look at it since the Attorney might return to the point.

4. In the light of this I spoke to Sir Timothy Daunt. He in fact thought the second point the more significant. He would have a discreet word with the Foreign Office Legal Adviser so that some thought could be given to it.

5. Sir Timothy also took delivery of the first point, though he was sceptical whether it was needed or helpful. I encouraged the idea that the FCO might take a robust line to the effect

that since the Declaration did no more than to say that existing obligations would not be affected by it, producing a list of such obligations might serve little purpose. The Foreign Office Legal Adviser might, I suggested, wish to colloque with Ms Juliet Wheldon.

6. In summary, Sir Timothy Daunt has taken delivery of both the points.

[SIGNED]

Q J THOMAS
18 October 1993
OAB 6447

P.S:

Sir Timothy Daunt phoned later in the day. He had spoken to his legal adviser (Mr Frank Berman).

On the first point the advice was reassuring: paragraph 3 did no more than refer to obligations the two Governments had already entered into together. It added nothing to them. Nonetheless it will be sensible to have an illustrative list of such joint obligations and the FCO could quickly run up at the right time. Sir Timothy mentioned Maastricht; the Anglo-Irish Agreement; Sunningdale; the ECHR and other human rights documents; CSCE and Helsinki. We can apply further to the FCO at the right time.

On the second point the advice was that the Joint Declaration was indeed what it said it was: namely a joint declaration. It was not a Treaty and it was nothing to be frightened of. Nonetheless the advice was that we would do well to have our legal adviser look at it. Frank Berman had indicated considerable confidence in our man (which we took to be a reference to Michael Saunders) and where anything involving international affairs cropped up he always readily sought advice from the FCO in any event. I think what this comes to is that Frank Berman thinks it is OK but does not wish to commit himself on territory which Michael Saunders might regard as his own. Sir Timothy will go back to Frank Berman if we ask him to proceed in that way. But if things are moving ahead it may be we have reached the moment when it will be sensible to show the text to Michael Saunders (on the assumption that he has not received it already via the Home Secretary or other Home Office officials). We might have a word about this.

P.P.S: Now all somewhat overtaken!