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

PRIME MINISTER

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

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.

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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, 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.

12 We raised a question about "as of right" only recently. Does it have great ideological significance? Does it not 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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NEW PARAGRAPH 11 [New - page 11]  
[I suspect that either of the first two might be acceptable to the Irish side.]

The Taoiseach and the Prime Minister are determined to build on the fervent wish of both their peoples to see old fears and animosities replaced by a climate of peace. They believe the framework they have set out offers the people of the island of Ireland [all the people living in Ireland], whatever their tradition, the basis to agree that from now on their differences can be negotiated and resolved exclusively by

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means. They appeal to all concerned to grasp the opportunity for a new departure. That step would compromise no position or principle, nor prejudice the future for either community. On the contrary, it would be an incomparable gain for all. It would break decisively the violence and the intolerable suffering it entails for the people of these islands, particularly for both communities in Northern Ireland. It would allow the process of economic and social co-operation on the island to realise its full potential for prosperity and mutual understanding. It would transform the prospects for building on the progress already made in the Talks process, involving the two Governments and the constitutional parties in Northern Ireland. The Taoiseach and the Prime Minister believe that these arrangements offer an opportunity to lay the foundations for a more peaceful and harmonious future for Northern Ireland, and for the island of Ireland as a whole, devoid of the violence and bitter divisions which have scarred the past generation. They commit themselves and their Governments to continue to work together, unflinchingly, towards that objective.

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