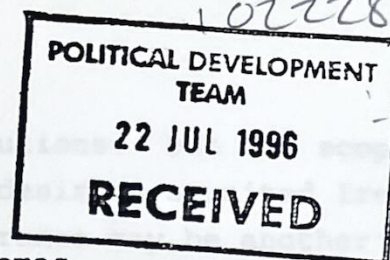


FROM: MRS J MAPSTONE
IPL
22 JULY 1996



cc Mr Thomas
Mr Leach
Mr Hill
Ms Checksfield

-B
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1. cc AW
GH
2. BTM
MR STEPHENS

BEYOND THE OPENING PLENARY: PAPER ON THE CONSTITUTIONAL ISSUE

The constitutional issue and its appropriate handling is central to the prospects for success in the negotiations. For the two Governments, much of the ground has been covered in earlier documents and agreements, in particular, the Anglo-Irish Agreement 1985, the Joint Declaration 1993, and Frameworks for the Future 1995. These documents chart the advances made by the two Governments in reaching agreement on major points of principle with regard to the constitutional position of Northern Ireland.

2. The key principle in this respect is the principle of consent. The constitutional guarantee in the Northern Ireland Constitution Act of 1973 was reaffirmed in the later agreements referred to above. The joint agreements convey the Irish Government's acceptance that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised subject to the agreement and consent of a majority of the people of Northern Ireland. In addition, the report of the Forum for Peace and Reconciliation, accepted by all parties participating in the Forum except Sinn Fein, further affirms the principle of consent.

3. It is clear that the application of this principle means that the constitutional position of Northern Ireland as part of the United Kingdom will not change in the foreseeable future. Once this is accepted, emphasis in negotiations shifts to agreeing structures which can successfully provide reassurance to both sides of Northern Ireland of absolute protection for equality of status and the right

to participate equally in governing institutions. But the scope for common ground between unionists and those desiring a united Ireland is extremely limited, and one man's reassurance may be another's fear for the future. The factor intervening between any new arrangements and their achieving co-operation and confidence is the willingness of the communities to accept, in the interests of a peaceful and stable society, aspects of new arrangements they do not agree with. The major acceptance problem is still likely to be reconciling unionists to new arrangements to provide representation and safeguards for the nationalist population. It will therefore be a reassurance exercise for unionists and a reality exercise for nationalists to deal with the constitution issue at an early stage.

3. The attached short paper has been drafted to table with the parties at any appropriate point (this issue is common to all Strands). It is designed to get everyone over the first hurdle, a clear acceptance of the consent principle and its implications, so that substantive negotiations can concentrate on other political developments.

4. All comments welcome.

(signed:) Northern Ireland is part of the United Kingdom, both in domestic and international law, and its citizens have the same rights and responsibilities as all other UK citizens. [NI

JULIE MAPSTONE (Northern Ireland Act 1973)].

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22 JULY 1996

... views exist within Northern Ireland on the issue of the constitutional status of Northern Ireland. There are those who support the maintenance of Northern Ireland within the United Kingdom; at the same time others wish to see Northern Ireland as part of a sovereign united Ireland.

DRAFT

THE CONSTITUTIONAL ISSUE

Introduction

1. The structures and institutions of a democratic state should, by reflecting and protecting the major identities in the community, gain wide acceptance and trust, such that all sections of the community feel a sense of belonging and have a stake in the status quo. For this to be achieved in Northern Ireland requires a balanced constitutional accommodation which takes account of different identities and allegiances, and is capable of gaining the co-operation and confidence of both traditions.

Facts and Principles

2. The issue of the constitutional status of Northern Ireland contains within it a number of facts and principles which it is important to clarify at the outset. General agreement to these facts and principles will provide common ground as a starting point for discussion of this issue.

- Northern Ireland is part of the United Kingdom, both in domestic and international law, and its citizens have the same rights and responsibilities as all other UK citizens. [NI Constitution Act 1973].
- Two opposing views exist within Northern Ireland on the issue of the constitutional status of Northern Ireland. There are those who support the maintenance of Northern Ireland within the United Kingdom; at the same time others wish to see Northern Ireland as part of a sovereign united Ireland.

- It is the present wish of the majority of people in Northern Ireland that it should remain within the United Kingdom. Evidence for this comes from repeated opinion polls and survey results, and from the level of support for Unionist parties in recent elections.
- As a point of principle, it would be wrong to change the constitutional status of Northern Ireland other than with the consent of the majority of people in Northern Ireland. [For the British Government, this is more than simply a moral principle; it is a statutory constitutional guarantee that in no event will Northern Ireland cease to be part of the United Kingdom without the consent of a majority of the people of Northern Ireland. [NI Constitution Act 1973. Also Anglo Irish Agreement 1985, Joint Declaration 1993, and Frameworks 1995.]]
- If at some point in the future, a majority of people within Northern Ireland wished for it to become part of a United Ireland, both Governments would do whatever was necessary to ensure that it happened, including bringing forward new legislation, amending existing constitutional legislation, and effecting necessary changes to political institutions. Both Governments have agreed to recognise and abide by whatever choice is made, and will not place impediments in the way of either. [Anglo Irish Agreement 1985, Joint Declaration 1993, and Frameworks 1995].
- The constitutional legislation of both countries should enshrine these principles.

3. So long as the majority in Northern Ireland desire to remain within the UK, the British Government acknowledges a responsibility to provide for all the people of Northern Ireland security, stability and good government, and to exercise its jurisdiction with rigorous impartiality, basing its rule on respect for the equal legitimacy of both the Unionist and Nationalist traditions. The policies pursued will be informed by the principles of equality of

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opportunity, equity of treatment and parity of esteem irrespective of political, cultural or religious affiliation or gender, with the provision of opportunity for members of all sections of the community to participate fully in structures and processes of Government.

PS/sir David Pell
Mr Thomas
Mr Legge
Mr Bell
Mr Watkins
Mr Steele

Political developments

4. Whilst a strong matter of principle for many people, the major constitutional issue has to be seen alongside other political developments which may arise as a result of negotiations. In this context these concern primarily measures to provide recognition of and representation for the two main traditions in Northern Ireland, and safeguards for different aspirations and cultural affiliations. Both traditions need to feel secure about their future, and the general acceptance of the validity of different identities within the populace is central to ensuring that both communities have confidence in the tolerance afforded to different traditions, and in the principles and practice of social justice and equity of treatment, before they can have confidence in a stable future for Northern Ireland.

5. Parties are invited to affirm their consent to the facts and principles in paragraph 2.

The purpose of this submission is to seek Minister's approval of the attached draft statement on decommissioning which might be made by all the talks participants, with a view to passing to the Irish

2. The Joint Paper by the British and Irish Governments which was circulated to delegations at 9.00 am this morning proposed an agenda for a resumed opening plenary which suggests, at item 4 (b), that all the participants make a commitment to work constructively to implement all aspects of the Report of the International Body.

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22/11/82/valke