

4. Dec. 1997 18:56

S OF S PRIVATE OFFICE 1712106722

No. 0361 P. 2/5

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File

M-141.

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December 1997

HEADS OF AGREEMENT

You asked for comments on the revised version you sent over earlier today, following the Prime Minister's conversation with Mr Trimble yesterday.

Text

Paul Murphy prefers the second of your two alternatives. He floated this (without showing any text) with Mr Trimble on Tuesday and got a generally positive reaction. Indeed, Mr Trimble played the suggestion back to the Prime Minister (the last paragraph of page 2 of your note). Given that, Paul Murphy sees no point in offering alternatives and would prefer you to offer Mr Trimble only the second of your options. In doing so, you might remind Mr Trimble that it is in line with what Paul Murphy outlined to him.

Otherwise, the text causes no problems for HMG. But we are not so confident about nationalists generally and the Irish Government, with whom any agreement must be reached. Inevitably, at this stage, the text is beginning to look a little one-sided. We think the text would look more balanced if it included:

CONFIDENTIAL

APDL/216

4. Dec. 1997 18:56

S OF S PRIVATE OFFICE 1712106722

No. 0361 P. 3/5

CONFIDENTIAL

- the reference, in the previous draft under the intergovernmental tirit, to the machinery being used "to discuss and resolve all issues of mutual interest". This has disappeared in the latest draft although there is no record of Mr Trimble objecting to it. It sends a signal that the sorts of commitments in the Anglo-Irish Agreement - eg to make determined efforts to resolve any differences - will not be diminished. That is important to the Irish Government and nationalists;
- a reference, at the end of the first tirit, to "... and the Government of Ireland Act 1920". The need for balancing constitutional change has been well signalled by the Irish Government - we do not think they will change Articles 2 and 3 without it. But the issue is largely symbolic - they want change to the 1920 Act regardless of the fact that, legally, it is already virtually a dead letter. Helpfully, however, Mr Trimble as a lawyer knows this and knows that change can be achieved at little or no cost. His worry is about other pieces of constitutional legislation. So we think this amendment will reassure Mr Trimble and meet Irish concerns;
- the North/South tirit, as it stands, may not satisfy nationalists. They will look beyond the title. It would help if, at the end of the second line, you added "able to agree on joint or complementary action on issues of mutual interest". Also, at the end of the last sentence of the tirit "... with implementation for each side separately but, by agreement, agencies may be established to deal with specific matters on a cross-border basis". The importance of this for nationalists is that it keeps open the possibility of some joint bodies dealing with executive matters - their bottom line - but in a way which the UUP have already signalled they could live with. The suggested phrasing is taken almost directly from the paper Mr Trimble handed the Prime Minister on 30 July (see under the sub heading "Discharge of functions"). In our assessment, this represents where an agreement is genuinely likely to end up.

CONFIDENTIAL

4. Dec. 1997 18:56

S OF S PRIVATE OFFICE 1712106722

No. 0361 P. 4/5

CONFIDENTIALTactics

It is now very important to get the relationship right between this exercise and the work going on in the newly established subgroup in Castle Buildings. We have agreed, with the Irish Government and Senator Mitchell, to see if we can use this important new development to achieve "Heads of Agreement" among the participants (if necessary, adopted by sufficient consensus). The subgroup is due to meet next week to agree its report to plenary on Monday 15 December, so any "Heads of Agreement" will need to be played into the subgroup, most likely on Monday or Tuesday. The Irish Government have volunteered to draft and show us a version of "Heads of Agreement". Officials will meet to discuss this on Friday afternoon.

There is the strongest interest in now bringing these two exercises together. If we can achieve "Heads of Agreement" before Christmas that will send a very positive note about progress in the talks. (Even for Sinn Féin, we judge it is more important for them to show progress in the talks even at the cost of demonstrating that any settlement will confirm Northern Ireland's position within the United Kingdom - albeit with some important counterbalancing features.)

To achieve this outcome, we plan to:

encourage the Independent Chairmen to table a text in his own name for discussion in the subgroup, perhaps next Tuesday;

he will only do so if he knows such a text is acceptable to (and, in practice, drafted by) both Governments;

we must therefore attempt to reach agreement with the Irish Government first. They are already producing their own draft. If we are to achieve an agreed draft which reflects the sort of language discussed with Mr Trimble, we shall need to play that in - ideally by giving them the latest text surfaced with Mr Trimble.

CONFIDENTIAL

APDL/216

4. Dec. 1997 18:57

S OF S PRIVATE OFFICE 1712106722

No. 0361 P. 5/5

CONFIDENTIAL

Unless we hear to the contrary, at the meeting tomorrow, officials will therefore seek to agree "Heads of Agreement" with Irish officials, informed by whatever text has been sent to Mr Trimble and, if necessary, tabling it with the Irish side.

As to Mr Trimble, we suggest that, in sending the latest text to him, you say:

- we have taken account of a number of his concerns, including the proposal outlined by Paul Murphy;
- the Prime Minister is now seriously worried as to whether the SDLP and the Irish Government could any longer live with this text;
- so he feels he must try this text out on the Irish Government and will be doing so on Friday;
- in the meantime, Mr Trimble has his own opportunities to influence Irish Government thinking through his bilateral dialogue (the Taoiseach visits Castle Buildings on Monday);
- the Prime Minister wants to see if it is possible to play a text of this sort into the subgroup next week, allowing the talks to break for Christmas on a positive note but one which reaffirms that a settlement will see Northern Ireland remain within the United Kingdom;
- want to keep closely in touch with Mr Trimble, perhaps best done through Paul Murphy in Castle Buildings next week.

A copy goes to Jan Polley.

CONFIDENTIAL

APDL/216