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cc FA/PS
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FROM: D J R HILL
CONSTITUTIONAL AND POLITICAL DIVISION
19 DECEMBER 1997

cc see attached list

PS/Mr Murphy (L&B)

MOVING THE NEGOTIATIONS FORWARD IN THE NEW YEAR

Your letter of 18 December to John Holmes sets out our proposals for encouraging progress towards Heads of Agreement.

2. This submission considers what preparations we should make for carrying the wider negotiating process forward in the New Year, including on the likely scenario that there will be no agreement between the two Governments and the three main parties on the outline of a settlement by the time the negotiations resume at Castle Buildings on 12 January.

3. In essence, we propose that:

- a) the Government, as chair of Strand 1, should encourage the participants to focus on the discussion paper (Working towards Agreement) which it circulated to Strand 1 participants on 18 November;
- b) the two Governments should rework the parallel paper produced on 14 November for deployment by Senator Mitchell in the Strand 2 consultations, and table that as a basis for discussion in Strand 2;
- c) the two Governments should use the "introductory" paragraph of that paper to give a fuller picture of the key elements of a settlement;
- d) in parallel the two Governments should work up a discussion paper (or papers) on Strand 3 issues - East/West arrangements and constitutional issues - for circulation to the parties in mid-January. This would, inter alia, play in the ideas on East/West institutional architecture which we gave the Irish last month;
- e) we should aim to concentrate the negotiations into "Strand 2" while encouraging a generous definition of the scope of that strand, so that North/South arrangements,

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East/West arrangements and perhaps constitutional issues could all be discussed together in that benign format;

- f) in anticipation of a likely deadlock in the "Heads of Agreement" discussions between the UUP and the Irish Government, we should work up a paper setting out how new North/South arrangements might work on a "Council of Ministers" model (as recently expounded by the SDLP) and be ready to play that in, initially with the Irish and possibly then with the UUP and SDLP or as a Strand 2 discussion paper;
- g) in general the Government, in co-operation with the Irish Government in the Strand 2, should aim to play a more active role, tabling papers and making interventions designed to lead the talks participants towards agreement.

Detail

4. The papers referred to at (a) and (b) above should facilitate further discussion in Strands 1 and 2. They provide relatively neutrally-phrased checklists of the issues which need to be addressed in each strand, couched in a form of questions. They would provide a basis for meaningful activity in January even if the attempt to reach agreement on the outlines of a settlement had not been brought to a conclusion. Conversely, if there were general agreement on the outline of a settlement it would be easier to focus the discussion arising from the various questions and make progress more rapidly.

5. The Strand 1 discussion paper of 18 November already incorporates a brief summary of the key elements of that agreement. There is a strong case for building a more developed version into any revision of the Strand 2 discussion paper. This might take account of any progress made in producing Heads of Agreement, but would not be a substitute for that. It would begin to prepare the ground for any agreement on the outline of a settlement by giving participants a view of the key elements of a deal. As the document would be presented by the two Governments as their assessment of the issues which needed to be addressed in Strand 2 and the framework within which they should be viewed, it ought not to cause any party too much difficulty. I attach a Strand 2 discussion paper on these lines. If the Minister is content we will send it to the Irish with a view to agreeing a joint paper by 12 January. A meeting of the Liaison Group is planned for Friday 9 January, in London. (We believe it would be better for the paper to be submitted by the two Governments, rather than the Independent Chairman, because it would be less open to "challenge".)

6. The main purpose of working up a more developed paper on the Strand 3 issues would be to put on the table our current thinking on the

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shape of a new British/Irish Agreement, incorporating East/West institutional architecture designed to camouflage whatever North/South arrangements emerge from Strand 2. The Irish have not responded formally to the paper we gave them on this set of issues, but have indicated privately that they have little difficulty with it, though much will depend on the precise relationship between the North/South and East/West components, with Unionists wishing to subordinate the former to the latter. Playing those ideas into the negotiations during January would demonstrate the two Governments' readiness to respond to points made by the UUP on the first Strand 3 discussion paper (circulated on 14 October). The paper, on a companion piece, might also begin to lift the veil on possible changes to constitutional legislation in both jurisdictions, initially by suggesting the elements of an agreed statement on constitutional issues which might in due course be entrenched in any formal agreement to emerge from the talks and then reflected as appropriate in changes to the Irish constitution and British constitutional legislation. IPL will work up a draft on these lines for consideration in the New Year.

7. Formally, such a paper should be discussed under the Strand 3 Liaison arrangements, but once it is circulated we would have no objection to it being discussed anywhere and the Irish Government is probably now ready to accept that (provided the actual negotiation of a new Agreement is formally left as a matter for the two Governments, meeting in the Strand 3).

8. The most benign format for the negotiations is Strand 2, which has an Independent Chairman and comprises both Governments and all the parties on an equal footing. It is also the Strand which needs to tackle the most difficult outstanding issues - principally, future North/South arrangements. If we can encourage a generous interpretation of the Strand 2 remit to allow participants to discuss East/West and perhaps constitutional issues as well, it would create a negotiating forum in which most of the key issues were under consideration at the same time, maximising the scope for trade offs (especially between North/South and East/West structures) and for overall agreement. It might be necessary to cater for Unionist sensitivities about discussing certain constitutional issues with the Irish Government, but Mr Trimble has long been an advocate of running Strands 2 and 3 together.

9. On this analysis it would be desirable to put the focus of the negotiations in January on to Strand 2, perhaps blocking out a period of time after the week beginning 12 January for a sustained look at Strand 2 issues.

10. Meanwhile we trust progress will be made on the lines set out in your letter of 18 December to John Holmes towards outline Heads of Agreement. It seems clear (even discounting the Taoiseach's wilder

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remarks) that the main obstacle to agreement will be the very different views of the Irish Government and the UUP on future North/South arrangements. With a view to breaking any deadlock it may be helpful for HMG to play in a paper setting out how a "Council of Ministers" approach to North/South arrangements might work. This was recently aired by the SDLP and seemed attractive to the UUP. The Irish "Heads of Agreement" text of 5 December seemed consistent with it, but the Taoiseach's remarks to the Prime Minister at Luxembourg and some of what he had said previously in the Dail and in press interviews would imply the creation of a rather more powerful all-Ireland institution. A paper illustrating how a "Council of Ministers" model could actually achieve the substance of nationalist desires while being presentationally much easier for Unionists could help to ease likely difficulties in the Irish Government/UUP negotiations and point the way towards a key component in any outline agreement. IPL will prepare a draft for consideration early in the New Year.

11. Other issues which we will need to tackle in the New Year include:

a) timetable

There is currently an expectation that a further review plenary will be held at the beginning of February; and the proposal on the table (though not agreed - see below) is that meetings should take place in London on 26-28 January and Dublin on 16-18 February. There is a general desire that the London and Dublin meetings should be significant and successful (and there has been a coded warning from the UUP that if the London meeting is not successful, the Dublin one won't be either). We need to consider what "achievements" might be realistic on the proposed timescales and how that might tie in with a review plenary.

b) decommissioning

The Independent Commission - possibly at Ken Maginnis' urging and despite hesitation by the Irish Government - has just circulated two draft schemes for decommissioning. The Governments will no doubt come under pressure to convert those draft schemes into legislative form by the time of the review plenary, which would give the UUP a platform for holding up progress at that point unless there is some decommissioning. We may need to ensure that the UUP have enough political cover to get through the review plenary without making a big issue of this: good progress in their exchanges with the SDLP and Irish Government would provide the best context for avoiding difficulty.

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The UUP are now claiming that they did not agree the dates for these meetings and have repeated their concern that the talks should not move from Belfast until there is something positive to discuss. This could be a way of putting pressure on the Irish to "face up to realities" and part company from Sinn Féin early in the New Year to allow, for example, discussion of outline "Heads of Agreement" in London. That might, in turn, set the scene for a constructive discussion of North/South arrangements in Dublin in February (assuming we get through the review plenary). However, such a timescale looks quite unrealistic at this stage. It may be best to plan on deferring the London and Dublin meetings until late February and April respectively, on the basis that the kind of "achievements" mentioned above would at least be more likely on that timescale. However, we needn't change our position until we how things have developed by mid January. (The issue is likely to surface at the Business Committee on 12 January.)

12 Jan

12. This submission has been seen and approved, with minor amendments, by Mr Thomas.

Signed: David Hill

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*The main thing is to get
up agreement on the 4th of A
because until that is done, the
rest is useless.*