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FROM: D J R HILL
POLITICAL DEVELOPMENT TEAM
10 DECEMBER 1996

POLITICAL AFFAIR
DIVISION
10 DEC 1996
N.I.O. BELFAST

cc: Mrs Evans, HOLAB - B
Mr Stephens - B
Mr Watkins - B
Mr Bell - B
Mr Beeton - B
Mr Maccabe - B
Mr Lavery - B
Ms Bharucha - B
Ms Mapstone - B
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THE IRISH CONSTITUTIONAL CLAIM AND INTERNATIONAL LAW: UNIONIST ARGUMENTS

I apologise for not commenting within your deadline on the paper you circulated on 26 November.

2. You offer the draft as a paper for Ministers and as a possible focus for the forthcoming "seminar" with FCO colleagues. I think it could fulfil the latter remit rather well. Last Friday's Forum debate on "Human Rights" featured the Unionist arguments in this area and demonstrated that they continue to try to score debating points on this basis.

3. I was pleased to see confirmation in your minute of 9 December that the paper is only part of a broader stream of advice to Ministers on the constitutional issue. My own preference would be to put the whole lot forward together, rather than deal with this aspect in isolation. Any advice to Ministers should address the central constitutional issues, rather than the presentational question of whether the Unionists have a half decent argument (especially as your paper effectively concludes that they have not).

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4. As my previous minuting on this subject has suggested I believe we should be advising Ministers to argue for the total renunciation by the Irish state of any territorial or jurisdictional claim over Northern Ireland. We should not argue this on the basis of its compatibility with the various UN, OSCE and other international instruments which the Unionists (mis) quote in support of their case. Rather, we should stress the incompatibility of Articles 2 and 3 with the principle of consent; the spurious legitimacy which it confers on Republican terrorism; the counterproductive effect of the current claim on Unionist attitudes to any dealings with the Republic; and the huge political gains (in terms of developing relations with the Unionists) which could reasonably be expected to flow from renunciation of that claim and the consequent depoliticalisation of cross-border contact and co-operation. We could also stress the acceptability of maintaining the aspiration to Irish unity on a basis consistent with the principle of majority consent in both parts of Ireland - a position which, as I understand it, would also be entirely consistent with the letter and spirit of the various international instruments which the Unionists are so fond of quoting.

5. The Framework Documents present a resolution of the constitutional issue as a key element in any comprehensive settlement. I believe this to be true but I would not want to accept too readily the traditional Irish argument that it is only in such a context that constitutional amendment could be considered. Mr Bruton seems ready to go further than his predecessors, and the Irish intelligentsia at least seem to have written off any prospect of Irish unity in the foreseeable future. Perhaps we are at or close to the point where we should be pressing for amendments to the Irish Constitution regardless of any wider political developments.

6. At a metaphysical level I think it would be desirable to go further and challenge the prevalent Irish view that the "Irish nation" includes the Unionist community in Northern Ireland.

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7. In short, I look forward to the further papers you intend to produce on the various constitutional issues; and I would be inclined to hold the present paper back until the whole collection is ready to be presented to Ministers. Meanwhile it should indeed provide a very helpful focus for any seminar.

(signed)

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Mr Thomas
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Ms Hapstone
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Mr Lamont, RID,
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Mr Clarke, Dublin

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TALKS: DEALING WITH CONFIDENCE BUILDING MEASURES (CBMS)

Michael Ancram has noted your submission of today with thanks. The Minister has said that he is still not certain how we avoid creating the Forum for "Equivalence" which was discussed on the VCR. The Minister has added:

"This would be totally unacceptable to HMG and the perception would be that we had made a concession to the IRA on a fundamental issue where illegal arms and demilitarisation were somehow in balance. We must find a way of being able to show that this will not happen. Otherwise this joint paper is helpful."

(signed)

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