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Note: This advance information suggests that Sir M's proposed text may hinder rather than help matters. See Mr O Donovans tele (attached) for Pontich attitude. Ministers should consider whether Sir M. might be tactfully advised to hold over his text.

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28/10

For Asst. Sec. O hUiginn

from D. Donoghue

1. To confirm our earlier conversation, a meeting between Sir Ninian Stephen and Irish Ministers has been scheduled for 10.30 am tomorrow in Sir Ninian's office (subject to the convenience of our Ministers).
2. At that meeting, Ministers will be shown a copy of the document which Sir Ninian and George Thompson have prepared for possible tabling at Friday's Plenary.
3. I was informally given sight of this document in Sir Ninian's office this morning. I made clear that any response to this text which the Government might wish to give would be delivered by Ministers at their meeting with Sir Ninian tomorrow.
4. While it may well be amended in the light of the consultations which Sir Ninian is having with delegations later today, the following are the main features of the text as it stands at present.
5. It opens with the reminder that "nothing is agreed until everything is agreed" and it makes clear that delegations are not necessarily committed to any of the positions which it outlines.
6. The first section, entitled "The Governance of Northern Ireland", envisages a UK statute which would provide for arrangements for the government of NI. It proposes the familiar formula of an 85-member Assembly elected by PR etc. but does not make any pronouncement on the matter of where executive authority should lie. It leaves the door open in this respect, indicating that the question of a NI executive/administration is for further discussion and recalling the reserves entered in relation to the document of 10 June.
7. The next section deals with North/South institutions. The draft proposes a body which would permit "regular periodic contact" between the envisaged Assembly and the Irish Parliament. It would also "facilitate contact" between Irish Ministers and Heads of Department in the North. The authority for this body would come from the British and Irish Parliaments (with a formal instrument,

* Sir M. gave the SOLP to understand the UUP had backed away from executive functions for N/S body.

or Memorandum of Understanding, also envisaged between the Assembly and the Oireachtas).

8. The body's remit would cover "all transferred matters". It would have a mixture of "deliberative, recommendatory and decision-making powers". In relation to the decision-making powers, it is envisaged that the body would be "capable of taking decisions on matters on which it is agreed that joint action would be desirable" (an approximate, rather than precise, quotation). The draft also suggests that the body might include "the creation of instrumentalities with a cross-border jurisdiction".
9. The body would act by consensus. Its decisions would be implemented by the authorities in each jurisdiction.
10. The next section, entitled "Government-to-Government structures", is very weak from our point of view. It envisages a mechanism for "regular contact" between British and Irish Ministers on non-transferred matters and is noticeably silent on the nature or modalities of this "contact". It pointedly makes no reference to a Secretariat, speaking merely of the need for "permanent administrative support" for the mechanism.
11. The next section deals with constitutional issues and is also clearly problematic. It is confined to two points, summarised roughly as follows:
 - (1) Any action on constitutional issues to include a referendum to amend Articles 2 and 3 in order to remove the perceived threat to the Unionist position (or words to this effect);
 - (2) The principle of change by consent to be reaffirmed.
12. The next section deals with security. It underlines the importance of security cooperation between the two Governments. It leaves over for discussion at a later stage the question of any "post-devolution arrangements" in this area.
13. Further sections deal with the endorsement of a new agreement and periodic reviews. A concluding paragraph lists a number of points (all arising in Strand One - the question of a NI executive etc) which must be resolved if elements for a possible agreement are to be agreed.

For Assistant Secretary O hUiginn from Joint Secretary

1. To confirm: Sir Ninian is keen to see our Ministers as soon as possible tomorrow morning. He will want to show an outline draft of his progress report on which he is consulting all the participants. He proposes to work on the outline on Thursday and consult again with representatives of the participants on Friday morning before making his report on Friday afternoon. Mr Donoghue will be reporting further on contacts with the Chairman's office and the parties.

2. As I indicated by letter yesterday, the British are nervous of this exercise. They are not certain what is in the outline (they were to be briefed at 11.45 am) and think it could be fatal to simply plonk a proposal on the table. I agreed and suggested, in view of the British side's concern and the time constraints, that Mayhew might discourage Sir Ninian from the notion of a substantive report on Friday afternoon and propose instead that he make another procedural report. Mayhew considered this option at a briefing session with his officials this morning but concluded that Sir Ninian should produce some kind of judgement of Solomon but not to a full meeting. He intended to suggest to Sir Ninian that his judgement be given to a restricted meeting of heads of delegations or representatives. I said this was already in Sir Ninian's mind (the British said they were not so aware) and expressed doubt on the grounds that a substantive written proposal would be risky even in a restricted group and would be likely to be leaked anyway. The British side saw the point but seemed to prefer this risk to a simply procedural approach.

3. In response to my suggestion that the Ministers might meet any time tomorrow, say, early tomorrow evening on Mayhew's return to Belfast, the British side said that Mayhew could not be back before 1.00 am on Friday morning because of commitments, including a dinner with Sir Patrick Sheehy (who is reporting on police pay), after the Commons session tomorrow afternoon. They said they were thinking instead of a VCR conference either between 9.30 am and 9.55 am or, preferably, between 4 pm and 7 pm. (As you know the British have a secure video link between Stormont Castle and Whitehall which permits the participation of up to six people on either side.) I discouraged this idea on the grounds that our side would be unfamiliar with the setup here and that this was not the best occasion for an experiment. Mayhew agreed and sent a message to say he would cancel his dinner and could be available to meet our team (Ministers and a few officials) at 6.30 pm tomorrow in the Tanaiste's office here. This seems satisfactory.

4. As of 12.45 pm, the British session with Sir Ninian was still going on. Alston will brief me in the afternoon.