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SECURE FAX 164

7 March 1994

TO: HQ

FOR: A/SEC O HUIGINN

FROM: BELFAST

FROM: JOINT SECRETARY

Liaison Group

Herewith British counter draft of elements paper just received (2.30 pm).

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[Signature]

cc. PST

PSS: Murray

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British Draft 7 March 1994ELEMENTS FOR A SHARED UNDERSTANDING BETWEEN THE TWO GOVERNMENTS
ON FUTURE TALKS

1. The Liaison Group was invited to identify, as a basis for discussion, aspects of a possible outcome, consistent with the Joint Declaration and the Statement of 26 March 1991 likely to prove acceptable to all participants to the Talks. The Liaison Group considered how the two Governments might reach a shared understanding of the parameters of an outcome to the Talks process which could realise the goal of "a new beginning for the relationships in Northern Ireland, within the island of Ireland and between the peoples of the two islands". They noted that once such a shared understanding had been established, there would be a series of judgements required about the use to be made of it, how and when it should be shared with others and whether, when and on what basis the two Governments might act in the light of it, within or without a process of dialogue involving others. Pending the making of these judgements, both sides agreed that the exchanges between them would be kept confidential. The following preliminary report is ad referendum to Ministers.

2. The Joint Declaration of 15 December 1993 sets out certain principles and realities. In it the two Governments expressed the belief that the agreed framework it comprises provides the starting point for a peace process designed to culminate in a political settlement. The details of the political, legal and administrative structures and arrangements which would comprise the political settlement, and which would give practical expression to the principles set out in the Joint Declaration, are deliberately left to be agreed in subsequent negotiation.

3. The two Governments remain firmly committed to such a comprehensive process of political negotiations, to address satisfactorily all the relationships involved - those within Northern Ireland, between North and South and between the two islands. They will promote a new round of such talks on the basis agreed in the Statement of 26 March 1991. They will aim for the widest possible participation of the main political parties concerned in the problem which have established their commitment to exclusively, peaceful and democratic methods and wish to share in political dialogue about the way ahead.

4. In working towards a political settlement, both Governments would seek to build on the principles which they hold in common. These include those set out in the preamble to the Anglo-Irish Agreement on which that Agreement is based:

- recognition of the major interest of both countries and, above all, of the people of Northern Ireland in diminishing the divisions there and achieving lasting peace and stability;
- recognition of the need for continuing efforts to reconcile and to acknowledge the rights of the two major traditions that exist in Ireland, represented on the one hand by those who wish for no change in the present status of Northern Ireland, and on the other hand by those who aspire to a sovereign united Ireland achieved by peaceful means and through agreement;
- their total rejection of any attempt to promote political objectives by violence or the threat of violence and their determination to work together to ensure that those who adopt or support such methods do not succeed;

- recognition that a condition of genuine reconciliation and dialogue between Unionists and Nationalists is mutual recognition and acceptance of each other's rights;
- recognition of and respect for the identities of the two communities in Northern Ireland, and the right of each to pursue its aspirations by peaceful and constitutional means;
- their commitment to a society in Northern Ireland in which all may live in peace, free from discrimination and intolerance, and with the opportunity for both communities to participate fully in the structures and processes of government.

5. The Joint Declaration also sets out a number of key principles and realities which the Governments agree will form part of the foundation of future arrangements. These must be taken as an integral whole in the terms agreed in the Declaration. They include, among other things, the following themes, which could be taken into account or developed further in work between the two Governments and with the parties:

- The determination of both Governments to overcome the legacy of history and heal the divisions which have resulted.
- Their commitment to promote co-operation at all levels on the basis of the fundamental principles, undertakings, obligations under international agreements, to which they have jointly committed themselves, and the guarantees which each Government has given and now reaffirms, including Northern Ireland's statutory constitutional guarantee.

- Their aim of fostering agreement and reconciliation leading to a new political framework founded on consent and encompassing arrangements within Northern Ireland, for the whole island and between these islands.

- The importance of the European dimension.

- The commitments of the British Government, as set out in paragraph 4 of the Declaration and including its reaffirmation that the British Government will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the union or a sovereign united Ireland; the statement that their primary interest is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island, and to work together with the Irish Government to achieve such an agreement, which will embrace the totality of relationships; its acknowledgement of its role of encouraging, facilitating and enabling the achievement of such agreement over a period through a process of dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland; its acceptance that such agreement may, as of right, take the form of agreed structures for the island as a whole, including a united Ireland achieved by peaceful means on the stated basis; namely that it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish.

- The observation by the Taoiseach, in paragraph 5, that stability and well-being will not be found under any political system which is refused allegiance or rejected on grounds of identity by a significant minority of those governed by it.
- The acknowledgement by the Irish Government, as set out in paragraph 5, that the democratic right to self-determination by the people of Ireland as a whole must be achieved and exercised with, and subject to, the agreement and consent of a majority of the people of Northern Ireland and must, consistent with justice and equity, respect the democratic dignity and the civil rights and religious liberties of both communities and the commitment by the Taoiseach that such rights and fundamental freedoms would be reflected in any future political and constitutional arrangements emerging from a new and more broadly based agreement.
- The commitment by the Taoiseach, in paragraph 6, that he will work to create a new era of trust, in which suspicion of the motives or actions of others is removed on the part of either community; and his commitment to examine with his colleagues any elements in the democratic life and organisation of the Irish state that can be represented to the Irish Government in the course of political dialogue as a real and substantial threat to their way of life and ethos, or that can be represented as not being fully consistent with a modern, democratic and pluralist society, and his undertaking to examine any possible ways of removing such obstacles.
- The acknowledgement by the Taoiseach, in paragraph 7, of the presence in the constitution of the Republic of

elements which are deeply resented by northern Unionists; his belief that the time has come to consider how best the hopes and identities all can be expressed in more balanced ways and his commitment that in the event of an overall settlement the Irish Government will, as part of a balanced constitutional accommodation, put forward and support proposals for change in the Irish constitution which would fully reflect the principle of consent in Northern Ireland.

- The need for institutions and structures which, while respecting the diversity of the people of Ireland, will enable them to work together in all areas of common interest and build the trust necessary to end past divisions.

6. In addition to the principles set out in the Joint Declaration and the Anglo-Irish Agreement future political dialogue would also seek to build on progress made in the Talks process, whose goals remain valid and achievable.

7. Both Governments reaffirm their full commitment to all the provisions of the Agreement and to its shared understandings and purposes. As its signatories, they are also prepared to consider a new and more broadly based agreement or structure if such an agreement can be arrived at through direct discussion and negotiation between all the parties concerned. They agree that any new agreement should enhance the structures of co-operation established between the two Governments under the Agreement. Both Governments agree that the way in which it gives institutional expression to a legitimate concern and role for the Irish Government in relation to Northern Ireland, must be fully provided for in any such new and more broadly based agreement.

8. In considering what might be an acceptable outcome from future talks, the Liaison Group noted that:

- (i) both Governments are committed to seek to create new institutions and structures, along with the Northern Ireland constitutional parties, through a process of political dialogue.
- (ii) both Governments agree that some of the decisions to be made fall within the responsibilities of the two Governments and that others will require negotiation and agreement between other participants in the Talks process.
- (iii) the British Government's role will be to encourage, facilitate and enable the achievement of a comprehensive agreement over a period through a process of dialogue and co-operation, as stated in paragraph 4 of the Joint Declaration;
- (iv) it is important to proceed in a way which maximises the prospect of securing the support of all the people of Ireland, noting in particular the Taoiseach's observation, in paragraph 5 of the Joint Declaration, that stability and well-being will not be found under any political system which is refused allegiance or rejected on grounds of identity by a significant minority of those governed by it.

9. Elements of a shared understanding between the two Governments might include:

- Agreement (or provisional agreement) on:
 - (i) Intergovernmental structures, including east/west arrangements between the two Governments, which would reflect the totality of relationship between the United Kingdom and the Republic of Ireland.
 - (ii) Provisions for a balanced accommodation of the two main traditions on constitutional issues.
 - (iii) A statement, or reaffirmation, of principles held in common between the two Governments.

- Illustrative elements of what might form the parameters in which negotiations among the participants took place might include:
 - (iv) New North/South institutions which, in the context of a comprehensive new agreement, the governments would be prepared to establish through legislation, with suggestions for functions to be administered by the bodies and for the mandate, scope and rules of the new structures. This would enable representatives of the various communities, north and south, to enter into new, amicable and constructive relationships. These institutions should have clear identity and purpose and would be mandated by appropriate legislation to discharge or oversee an agreed range of executive functions. The scheme might make clear that the Governments are prepared, in the context of an agreement, to promote legislation in their respective Parliaments to establish such a new

institutional framework to bring together representatives of the Irish Government and of new agreed political institutions in Northern Ireland. The illustrative scheme might identify functions or matters, if any, apt to be administered through these new institutions, if appropriate uniformly throughout the island. The scheme would also set out the possible mandate, scope and administrative and executive roles of new north-south structures to discharge such functions and to implement any other appropriate objectives of the Declaration or other shared objectives identified by the two Governments, and identify possible default mechanisms should for any reason such new institutions fail to provide services on the basis envisaged.

- Additionally both governments might agree to acknowledge their continuing support for:

- (v) Locally accountable political institutional structures such as would command assent across the whole community. These should involve executive and legislative responsibilities over a wide range of subjects, with scope for further transfers, to locally accountable political institutions - provided such institutions command assent across the whole community and provide opportunities for the equitable and effective participation in the discharge of these responsibilities by elected representatives of both main communities and other

groupings which attain sufficient electoral support to participate fully in the structures and processes of government in a society on which all may live in peace. Both Governments reaffirm that this policy should be carried forward through dialogue and negotiation involving the British Government and the main Northern Ireland constitutional parties, as part of a process encompassing wider relationships including the relationship between new agreed political institutions within Northern Ireland and the Westminster Parliament, among the people of the island of Ireland, and between the Governments. Both Governments envisage that any new devolved institutions in Northern Ireland should incorporate significant measures to promote consensual approaches, to protect minority interests and to promote the mutual acceptance by representatives of both communities of each other's rights, identities and ethos. Both Governments envisage that there will be greater forms of protection for human and civil rights. Both Governments also envisage default mechanisms should for any reason such new institutions fail to provide services on the basis envisaged.

10. In further work the Liaison Group, if Ministers agree, will provide amplified proposals under these headings as a basis for the shared understanding referred to in paragraph 1. They will also consider whether or not there is scope for making public any part of these proposals in advance of a new round of Talks and whether any parts of the scheme might be implemented in default of agreement at Talks.

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11. In its further work the Liaison Group will, if Ministers agree, explore the Irish proposal that new structures should be underpinned and complemented by a charter or covenant between the elected representatives of all the people of Ireland, enshrining a solemn dedication to mutual respect between the two traditions, entrenched and enforceable guarantees of rights, a collective commitment to the exclusively peaceful resolution of all differences between them, including in relation to the exercise of their right to self-determination, and a repudiation on behalf of all the Irish people of any recourse to violence for this or any political end.

12. Both Governments are agreed that any new agreement reflecting the principles and approach envisaged in this paper would need to be acceptable to the people. One way of testing this would be to submit the overall outcome of negotiations on these issues for democratic ratification by referendum, both north and south.