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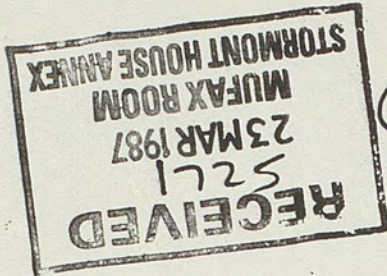
E.R. 20/20



Mr Chesterton

cc: PS/PUS (L&B) - M
 PS/Mr Bloomfield - M ✓
 Mr Burns
 Mr Stephens - M
 Mr Elliott - M
 Mr Spence - M
 Mr S Hewitt - M
 Mr Kirk
 Mr McConnell - M

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HANDLING MR HAUGHEY II

... I attach for your consideration and that of copy recipients, a first draft of a paper essentially updating the earlier joint FCO/NIO paper, and providing a summary of Departmental wisdom on how to develop a constructive working relationship with the new Irish administration in relation to Northern Ireland. You will note that, independently, SIL had arrived at broadly similar conclusions to those reached by us, and Mr Elliott, under Mr Burns' leadership, on Friday.

2. Once we have an agreed line, and a slightly shorter revised paper, my intention would be to seek FCO comment, and then for a revised final version to be put as early as possible this week, possibly under the cover of a note from PUS.

P N BELL

23 March 1987

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HANDLING MR HAUGHEY II

Introduction

(attached) The Secretary of State (as well as Sir Geoffrey Howe) endorsed the paper attached to PUS' minute of 13 February (Mr Watkins' note of 17 February), setting out guidelines for the conduct of Anglo-Irish relations, especially so far as the Anglo-Irish Agreement were concerned, after Mr Haughey became Taoiseach. For the most part, the analysis and conclusions in that paper remain valid, while the worst fears expressed about the likely damage a Fianna Fail administration might do to the successful operation of the Agreement have, so far, proved unfounded. Nevertheless, since the earlier paper, it has become clearer that Mr Haughey's attitude to the (Irish) constitutional implications to the Agreement and, in particular his attitude towards the principle of majority consent in Northern Ireland may make unionist acceptance of, or acquiescence to the Agreement ^{even} more difficult. It is also necessary to review our tactics in regard to the Intergovernmental Conference, in the light of the likely Irish approach.

(a)

2. This paper accordingly summarises how the Irish Government might allay concern over their commitment to the Agreement as a whole;

(b) defines the "ground rules" for the operation of the Intergovernmental Conference which we should seek to establish;

(c) reviews our tactics over the next three months; and

(d) identifies a possible agenda for the first meetings of the Intergovernmental Conference with the new administration.

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Mr Haughey's Current Views

3. Mr Haughey continues to reject the (Irish) "constitutional implications" of the Agreement, (even though he has conspicuously failed to take any action to challenge its constitutionality in the Irish courts) and his most recent statements, including those made since his election as Taoiseach, are only modestly helpful. (They are attached at Annex A.) In any case, the effect of Article 1 is contrary to Fianna Fáil's longstanding belief that it is for the British Government to end our guarantee to the unionists, as a step which would lead ultimately to Irish unity. It is true that in the 1980 Summit Communiqué, Mr Haughey seemingly endorsed our position on consent thought this was qualified by an unsatisfactory Irish wish for unity "by agreement and in peace". The exact significance of these various statements is analysed at Annex B. But the conclusion of these various statements, including those since he became Taoiseach once again, must be that Fianna Fáil cannot be said to accept unreservedly either:

- (a) the Anglo-Irish Agreement as a whole; or
- (b) the principle of majority consent in Northern Ireland in determining the Province's constitutional future.

4. Mr Haughey is also committed to seeking a renegotiation of Article 1 at some stage. This commitment was, however, played down during the election, and there are no indications that he will seek to renegotiate the Agreement in the near future. Similarly, ^{although} we know that the Irish will be considering internally the possibility of an Article 11 review, it is unlikely that they will make any early approach to us on this subject.

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How to Respond?

5. In a limited sense, the attitude of Mr Haughey's administration to Article 1 of the Agreement (or to British sovereignty over Northern Ireland in Article 2) is irrelevant since the Irish Government remains bound by the Agreement unless and until it is amended. But if Mr Haughey continues to stress such issues, then the delicate balance which underpins the Agreement will be tilted, and the credibility of the Agreement as it stands, and whatever value Article 1 has by way of reassuring unionists will be further damaged. Furthermore, although less satisfactory than the removal of Articles 2 and 3 of the Irish constitution, Article 1 does nevertheless represent, in Irish terms, a significant step towards accepting the principle of majority consent. It is therefore essential that we ensure that it retains its credibility.

6. To that end, it would clearly be best if the Irish Government did not allude to such reservations as they may have, or proffer tendentious interpretations of other articles. It is also highly desirable to the continuation of business that both Governments have, and are seen to have, a shared understanding of the Agreement as a whole. However, it must be assumed that Mr Haughey would find it difficult to give unequivocal backing to Article 1 in view of his past statements and the traditions of his Party. But a positive endorsement of Article 1 should remain our long term goal, even if we cannot expect to achieve it immediately. In the short term, however, our intermediate objectives might be to:

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- (a) explain why, despite telling our Ambassador privately that he saw no problem in continuing to operate the Agreement in all its parts, ^{Mr Haughey's} earlier and most recent statements on the constitutionality of Article 1 will foster the widespread assumption, not only by unionists, that this is the position of the new Irish Government - and make it exceedingly difficult, if not impossible, to achieve our common objectives through the Intergovernmental Conference;
- (b) emphasise that ideally HMG are looking for a positive statement that the new administration accepts Article 1 of the Agreement (for which the 1980 Summit Communiqué would be a precedent); but
- (c) recognising the difficulties such a statement might cause the Irish Government, it was essential that the Irish Government should say, as a minimum, that they accepted the Anglo-Irish Agreement as a whole, and that they would honour this international undertaking concluded by their predecessors; but
- (d) it remained open to the Irish Government to reaffirm their wish to secure the unity of Ireland by agreement and in peace, and indeed to point to the provision in Article 1(c) to come about if a majority so wished; but they should not mention their "reservations".

7. In approaching this question, which strikes at the heart of the constitutional tradition of the Irish Republic, it will be important not to make any declaration by the Irish Government a precondition for the resumption of the Conference

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It seems most imprudent to try and deal with a strongly nationalist politician of Mr Haughey's temperament in this way. Rather we might stress our common interests in seeking Unionist support for, or at least acquiescence to the Agreement and in not providing either Unionists or Sinn Féin with the victory that a breakdown in the Agreement would afford either.

8. It is possible that Mr Haughey might attempt, like Mr Mallon, to play up the potential of the Agreement to lead to Irish unity. But he is unlikely to. Not only is such a view intrinsically implausible, but such a position would conflict statements on the serious constitutional implications of Article 1, or previous criticisms of the Agreement as "copper fastening partition".

Defining Ground Rules for the Conference

9. It will be important soon if our strategy of "business as usual" is to succeed, to agree with the new administration ground rules for the handling of the Conference and the Secretariat. It would be in our interests to establish that

- (a) Conference discussions will continue to be conducted on an "in confidence" basis, with neither side going subsequently beyond matter contained in the joint press statements;
- (b) both Governments should avoid exposing differences in public; and
- (c) both Governments making clear, as a previous Irish administration were prepared to, where the decision making power in Northern Ireland continues to lie. We would, however, expect the

Irish to talk, legitimately, about their influence.

- (d) While content that Belfast should be the most favoured location for Conference meetings, we also expect that meetings there would regularly alternate with those in London or Dublin.

10. These points will need to be put delicately, but firmly. Again, it seems desirable to emphasise that it is in our common interests not to allow unionists or Sinn Fein to take advantage of apparent differences between the two sides.

Tactics over the Next Three Months

11. Our original joint NIO/FCO paper set out a tactical framework for action, when the new Irish administration had taken office. Much of that action has now either been successfully undertaken, or is well in hand, in particular:

- (a) HM Ambassador has already made contact both with the Taoiseach and Tanaiste and begun the process of educating them in Northern political realities;
- (b) a message has been sent from the Prime Minister to the new Taoiseach;
- (c) Mr Haughey has appointed the Tanaiste as joint chairman of the Intergovernmental Conference, and the Secretary of State has sent him a suitable message suggesting an early bilateral meeting before the next Conference meeting (perhaps in April); and
- (d) in addition, Mr Scott has met the Tanaiste, to pave the way for the Secretary of State's bilateral.

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12. As envisaged, that bilateral meeting would be the appropriate opportunity to capitalise on the educational process begun by the Secretariat, HM Ambassador and Mr Scott to:

- (a) make the points about the minimum wording which HMG could accept from Mr Haughey in relation to Article 1 of the Anglo-Irish Agreement (set out in paragraph 6 above);
- (b) agree ground rules for the handling of the Conference; and
- (c) probe Irish intentions towards the Conference, and to establish precisely how the first Conference will be held.

13. The Secretary of State's message should then be reinforced through the Secretariat (and, to the extent necessary, via the Dublin Embassy). If, as is likely, the Irish prove resistant, or fail to mend their ways, then the Prime Minister might be briefed to raise these issues at the European Council in June, where it is proposed she should meet her new Irish opposite number.

The Intergovernmental Conference

14. The UK objective remains to continue, subject to an acceptable response from the Irish on Article 1, with "business as usual". To that end we need to stress as early as possible the importance we attach to:

- (a) making more rapid progress over cross border security cooperation;

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(c) the need for concerted action against the MacBride Principles; and

(d) the need for a more constructive approach by both the Irish and the SDLP to suggesting candidates for public appointment (and a more constructive approach by the SDLP to Northern internal political development).

15. Papers for eventual transmission to the Irish are in preparation on (a). It seems, however, better to raise (d) orally, first through the Secretariat and later in the Inter-governmental Conference. Work is in hand in defining the points we wish to make.

16. We may need to press the Irish especially hard on extradition, given their reservations about the administration of justice in the UK generally (ie as well as in Northern Ireland), and the possibility that they may pursue a "prima facie" requirement.

17. As to Irish objectives, there are few precise indications of how the Fianna Fail stance in the Conference may differ from their predecessors. We know, so far, of few issues, with the exception of extradition, on which Fianna Fail have indicated that it might take a different substantive line from Fine Gael. Moreover, since the co-Chairman of the Conference will be the Minister for Foreign Affairs, he may be receiving very similar advice to his predecessor. Not in the present situation in the Dail, and the Government's preoccupation with economic problems, the Irish Government want to take radical initiatives for the time being. There is no reason, therefore, as yet, to think that Fianna Fail will seek significantly different objectives in the Conference, apart from giving a high priority to economic and social issues under Article 10. We do, however, know from Mr Haughey's and Mr Lenihan's own statements that the Irish are anxious to make progress on:

(a) the administration of justice;

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- (b) equal opportunity in employment; and
- (c) much greater economic and social cooperation between north and south.

18. In addition, we may reasonably expect stronger pressure in such familiar areas as:

- (d) the Irish language (Mr Haughey is Minister for the Gaeltacht as well as Taoiseach);
- (e) the RUC's accompaniment of UDR patrols; and
- (f) the RUC Code of Conduct.

It is, therefore, imperative that we are ready to exploit whatever opportunities for us, these issues may offer, and to deal effectively with likely Irish criticisms. Work is in hand to both ends.

19. But whatever differences there may be in the substance of the agenda, the Fianna Fail style is likely to be less accommodating. They will be more ready to attribute blame to HMG over security incidents in the north (and we may expect a passage of arms over the issues raised by the Sampson Report); and they may be more ready to publicise the workings of the Conference. To some extent we can ^{diffuse} the latter by seeking to establish early ground rules on operating the Conference. But even if, in private, the new administration prove themselves helpful colleagues, we must resign ourselves to some degree of more aggressive public rhetoric, and expect the new team to make more of "linkage". That is, the Irish are likely to prove less willing to commit resources or be accommodating over security cooperation unless we can demonstrate improvements in relations between the security forces and the community; or to more on extradition (or even permit the Irish ratification of the ECST) unless we can satisfy

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them of the adequacy of the administration of justice not simply in Northern Ireland but also in the light of recent Irish criticism in the Birmingham bombers and related cases, of the quality of justice in GB as well. We are more likely to succeed in this if we can convince the Irish that:

- (a) the problem of terrorism (and the political threat posed by Sinn Fein) is common to both Governments;
- (b) HMG, while in no way disregarding legitimate unionist concerns, does not give the impression of regarding reassuring them as more important than paying due attention to nationalist concerns; and
- (c) HMG is serious about promoting political movement in the north.

Ways of achieving (b) and (c), in the short term, are described in the paper "Breaking the Log-Jam" submitted recently to the Secretary of State.

20. It will be important that, unless and until we have developed a smooth working relationship, we do not make harder the achievement of our major objectives by insensitive handling of potential irritants of such matters as border road closures, or the handling of sensitive marches (so far as this is in our power), or by giving the impression (eg in speeches) that HMG is more concerned with reassuring unionists than meeting legitimate nationalists concerns.

The Next Meeting of the Conference

21. It is also necessary to decide how to handle the first meeting of the Conference which, in the absence of any suspicions that the Agreement is still operational should be held not later than the end of April. One possibility would be the "business as usual" approach,

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by which we would put together an agenda in the usual way, both sides proposing, via the Secretariat, agenda items. For our part, we would certainly want to discuss cross-border security cooperation, the MacBride Principles, and possibly also appointments (though this might feature more happily on a later occasion). For their part, the Irish might well wish to discuss relations between the minority in security forces, the administration of justice, and employment equality. We might also expect some new items, although the evidence from the Secretariat is that the Irish will wish to concentrate on both this and subsequent meetings on the social, security and other issues affecting minority rights in Northern Ireland which have featured on the Conference's agenda during the past year.

22. An alternative would be to use the first meeting to have a general discussion of work in hand under the Agreement. This would have the useful effect of delaying further damaging demands for progress from the Irish, but might lead to harmful delays on the matters to which we attach importance. Furthermore, any agenda that might be represented as a "review" might stimulate expectations of the kind we most seek to avoid.

23. A compromise, therefore, might be for the Secretariat to table a joint paper reviewing progress so far made on which each side might be expected to draw attention to those items to which they attached especial importance, and where further work needed to be put in hand with a view to inclusion on a subsequent agenda. But also some other items should be allowed. To avoid an excessively long first meeting, each side might be restricted to two items (in our case, cross border security cooperation and MacBride) while the Irish might raise those issues on which they might hope for progress before a UK general election (eg Irish language street names).

24. Further thought should be given to the location of the next meeting. While Belfast might be hard to resist ^{although} (the last

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full meeting was in Belfast), from our point of view, London or even Dublin would be preferable. (The case for London in particular would be strengthened if the Secretary of State had his preliminary bilateral in Dublin.)

Conclusions

25. The strategy and tactics outlined in the previous FCO/NIO paper on Handling Mr Haughey remain valid. Worst fears about the impact on a Fianna Fáil administration on the Agreement have not been fulfilled. To the extent that the Taoiseach has accepted "business as usual" in the Intergovernmental Conference, a good start has been made but, equally, his (and to a lesser degree Mr Lenihan's) recent statements about the Agreement, and the Irish Government's constitutional reservations, have been less reassuring than they might have been. But this reinforces the need to make clear to the Irish not only that the United Kingdom remained fully committed to the Agreement, but that it was necessary to find a way of discouraging any further utterances on the lines of Mr Haughey's less helpful remarks, and of persuading his government to endorse the Anglo-Irish Agreement in its entirety and without reservations.

26. These objectives could best be secured if the Secretary of State used his early bilateral meeting with his co-Chairman to:

- (a) persuade the Irish to make a helpful public statement accepting the Anglo-Irish Agreement as a whole, and undertaking to honour this international obligation (paragraph 6);
- (b) agree sensible guidelines for handling Conference business; and

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(c) probing Irish intentions towards the Conference, and determine how the first Conference should be conducted. This demarche should be followed up by the Secretariat.

27. The first meeting of the Conference (to be held, probably, some time in April) with the new administration should include a review of progress made under the Agreement so far, but also two items from each side of current business.

SECURITY AND INTERNATIONAL DIVISION

March 1987

STATEMENTS ON THE ANGLO-IRISH AGREEMENT BY NEW IRISH GOVERNMENT

- 7/3/87
(Irish
Times
inter-
view)
- Mr Haughey "It is important that there be a good relationship between Taoiseach of the day and a British Prime Minister" He looked "forward to a meeting with Mrs Thatcher as part of the Anglo-Irish process". He also said he accepted that the Anglo-Irish Agreement was an accord which had been entered into by an Irish Government and therefore it had to be accepted as binding. "In so far as the conference of Ministers and the Secretariat of civil servants are achieving results, that work should be continued."
- 10/3/87
(Dail)
- Mr Haughey "We will fully support and press for any and all worthwhile reforms or improvements in the position of the nationalist community in Northern Ireland that can be brought about through the Anglo-Irish Agreement without prejudice to the reservations we hold on the constitutional aspects of the Agreement".
- 11/3/87
(Radio
inter-
view)
- Mr Lenihan "If changes were necessary they would be pursued in consultation between the two sovereign states. We would decide together how best to improve it".

13/3/87

(Dublin)

Mr. Haughey "We will fully support and press for any and all worthwhile reforms or improvements in the position of the nationalist community in Northern Ireland that can be brought about through the Anglo-Irish Agreement without prejudice to the reservations we hold on the constitutional aspects of the Agreement".

16/3/87

Mr. Lenihan "Ultimately, in the last analysis there can be no real solution to the Northern Ireland problem except in a 32 country context, an all Ireland context. Every sensible person would agree with that.but in the interim period we are willing to co-operate and acknowledge our responsibilities with regard to the Agreement".

17/3/87

(In Washing-
ton)

Mr. Lenihan "There is no question of the new Government asking the US Administration to hold off payments into the fund set up under the Anglo-Irish Agreement, pending a review of the accord by Fianna Fail".

17/3/87

(In Washing
ton)

Mr. Haughey welcomed "American support for the Anglo-Irish Agreement and our efforts to solve the continuing and tragic problem of Northern Ireland".

Mr. Lenihan "the Government intends to work through the Anglo-Irish ministerial conference establishedwe will use the conference to improve the position of

Haughey's Position on Majority Consent

Introduction

1. Mr Haughey's public position on the principle of majority consent in Article 1 of the Anglo-Irish has varied but is perhaps not as inconsistent as some believe. It is worth comparing Article 1 of the Agreement with the 1980 Summit communique and the Forum Report.

The Texts

2. Article 1 of the Agreement begins:

"The two Governments:

- (a) affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland...."

The communique issued after Mrs Thatcher and Mr Haughey met on 21 May 1980 included the following:

"...while agreeing with the Prime Minister that any change in the constitutional status of Northern Ireland could only come about with the consent of a majority of the people of Northern Ireland, the Taoiseach reaffirmed that it is the wish of the Irish Government to secure the unity of Ireland by agreement and in peace".

Discussion

3. There are strong resemblances between the two texts but there are also significant differences which allow Mr Haughey to argue that he has maintained a different line from Dr Fitzgerald. In particular, he might argue that:

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(a) the first 'leg' of his statement simply recognises the requirement in UK law (ie Section 1 of the 1973 NI Constitution Act) that majority consent has to be sought for any change in Northern Ireland's status; and that since his statement was purely political and not legally binding (unlike the Anglo-Irish Agreement) it could have no implications for the Irish Constitution; and

(b) (as he actually did in the Dail debate on the Agreement) the more important part of his statement was the second 'leg': "It is the wish of the Irish Government to secure the unity of Ireland by agreement and in peace". This formula does not say with whom the agreement might be, and in practice Mr Haughey would* argue that it should be with the British Government rather than a majority in Northern Ireland. Nor is there any recognition of the principle of majority consent in Northern Ireland.

4. In any case, Mr Haughey has said a great deal since 1980, including since 1985 on the Agreement itself, which would make it hard for him to accept in public that he and Dr Fitzgerald mean essentially the same things.

Mr Haughey's Views on 'Consent'

5. But at the heart of the controversy over Article 1 is the commitment to 'consent'. Now we know from statements made by Mr Haughey that he does not share our commitment to the principle of majority consent. The fullest exposition we can find of Mr Haughey's views come from a private session of the New Ireland Forum where he said:

*on his track record

"As regards the veto - the constitutional guarantee - we should make a clear distinction on consent. Consent is only applicable to arrangements for a new Ireland. But consent of the Unionists to British action to find a solution is not required. This common effort by the British and Irish Governments to find a solution is not contrary to the idea of consent. Only when we sit down with the Unionists to devise new structures - at that point - does the question of prior consent arise."

6. In short, the consent of a majority in Northern Ireland is required for the particular arrangements for a new Ireland; but whether they become politically part of the new Ireland depends on the initiative of the two sovereign Governments. The underlying assumption is that once the British "guarantee" is removed and the British declare their intention to withdraw the Unionists would be prepared to enter into discussions with other Irish groups.

7. The Forum Report (which Fianna Fail helped to produce) reflected this thinking and spoke (in para 5.4) of "the desire of nationalists for a united Ireland in the form of a sovereign, independent Irish state to be achieved peacefully and by consent". The role of "consent" in this formulation is ambiguous; it is not clear that a majority in Northern Ireland have a right not to consent to a united Ireland, although that construction could reasonably be put on the words. (Nor, in my view, are the other formulations in the Report any more satisfactory from our point of view).

8. Mr Haughey's more radical ideas were not given any prominence during the recent election campaign both because they are clearly not in the realm of practical politics, and because the Irish electorate seem to prefer the Anglo-Irish Agreement. Nor did he raise them with our Ambassador at his recent interview (Dublin Tel no 90). But his son, Mr Sean Haughey, did put them strongly to the Fianna Fail Ard Fheis. One doubts he spoke without his father's approval.

Conclusion

9. There is no doubt that in 1980 Mr Haughey trimmed a little to the consistent British commitment that there could only be a united Ireland if a majority in Northern Ireland were to agree. But, pace Dr Fitzgerald, Mr Haughey's statement was not wholly unambiguous and, taken in the context of his other statements, there is no conclusive evidence that Mr Haughey has ever accepted the principle of majority consent with reservation.

10. There is, however, some reason to believe, that while it seems improbable that Mr Haughey will in the short term at least (he has said so much to the contrary) endorse that principle (or Article 1), he may at least accept the fait accompli of the Agreement by which he is bound.

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