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ASST
SEC - 3 NOV 1994
CENT SEC

M J WILLIAMS
US (POL)
2 NOVEMBER 1994

cc: PS/Secretary of State (L&B) -B
PS/Michael Ancram (L&B) -B
PS/PUS (L&B) -B
PS/Mr Fell -B
Mr Legge -B
Mr Bell -B
Mr Watkins -B
Mr Stephens -B
Mr Brooker -B
Mr Dodds -B
Mr Maccabe -B
Mr Smyth -B
Mrs Brown -B
Mr Maxwell -B
Mr Wood (L&B) -B
Mr Currie -B
Mr Lamont, RID FCO -B
HMA Dublin -B
Mr Caine -B

ENTERED 14 NOV 1994

Mr Thomas -B

LIAISON GROUP, LONDON, 1 NOVEMBER

I attach a record of the meeting.

[Signed MJW]

M J WILLIAMS
Ext 27083

Registry

New file should
be opened for
LIAISON GROUP
Does system show up
any earlier papers?

840/94 Mac (No)

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RECORD OF LIAISON GROUP MEETING, LONDON, 1 NOVEMBER 1994

Summary

A constructive meeting, with much more positive atmosphere than at the group's previous meeting. A British suggestion that the Irish Government should agree with the NI parties which functions should be delegated to the North/South Body, and at which level of competence, did not find Irish favour. We handed over our revision of the Irish draft joint memorandum, but without annexes specifying functions to be delegated to the North/South Body. Detailed British probing revealed considerable Irish uncertainty about what they meant by some of the functions they proposed delegating to a North/South Body, particularly the all Ireland transport planning authority. Before the Liaison Group's next meeting on 11 November, a small sub-group will meet to try to narrow differences on lists of designated functions.

Detail

2. Mr Thomas was supported by Mr Bell, Mr Lamont (RID), Mr Stephens, Mrs Brown and Mr Williams. Mr O hUiginn was supported by Mr O'Donovan, Mr Donoghue, Mr McDonagh and Mr Finlay.

3. After Mr Thomas had suggested that the meeting should concentrate on North/South Institutions, Mr O hUiginn commented that the proposals we had made last week were seriously unsaleable politically; they amounted to a Sunningdale-plus price, in exchange for a Sunningdale-minus product.

4. Mr Thomas said it was worth setting the discussion in context by recalling where we had got to. We had largely succeeded in identifying and setting out an ambitious scheme for North/South relations, including a North/South Body with a range of powers, including executive powers. In addition, both governments agreed on a range of functions being prescribed for the body at the outset by the two National Parliaments, the concept of a 'duty of service' for Northern Ireland post holders, links between the North/South Body and any successor to the IGC, and a dynamic mandate permitting new functions to be added and movement along the spectrum of competences. What was needed now was a further discussion on the North/South Body's role regarding EU matters, and the functions to be designated at the outset. Mr Thomas recalled that we stood by the principle of nothing agreed until everything agreed. Besides, Ministers would need to look at the whole scheme set out in the JFD. The scheme would certainly give difficulties to Unionists; but our judgement was that the two sides were now quite close, and we certainly wanted to work to achieve agreement on the JFD as a whole. We had found the Irish memorandum helpful and looked at it in detail; we now wished to offer a revised version of it, not containing annexes. (This was handed over; text at Annex A.)

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5. Regarding designated functions, Mr Thomas recalled that both sides agreed that there would be a hierarchy of competences, that some subjects would be designated at the outset by the Parliaments, that the two governments would need to seek the agreement of the Northern Ireland parties, and that the list would be a dynamic one. Both sides also envisaged drawing up an indicative list, even though the Irish did not like the British list. It was worth recalling that the island had been administered in two jurisdictions, with different laws, producing a centrifugal effect; so it was difficult to be confident about leaping straight away to the executive stage, and we saw more scope for starting at a lower level in the hierarchy of competences. We thought the Irish pessimism about the way the Northern Ireland parties would actually work a North/South Body mistaken; if it were in fact true, we faced real trouble.

6. Mr Thomas pointed out that the indicative list of functions must meet the tests both of technical and practical feasibility, and of the 'zone of convergence'. We wanted to keep looking constructively at what the list might contain. However there was a possible alternative approach. HMG was willing in principle to designate to the executive level any function which had been devolved to the Northern Ireland Assembly, subject only to necessary savings and to the agreement of the NI parties. Consequently we would be quite happy to envisage the two governments not designating any functions at the outset, leaving it for the Irish Government to agree the list of functions direct with the parties. We had drawn up possible language setting this out, as a new alternative B in paragraph 22 of the JFD (the text was circulated; see Annex B).

7. Mr O hUiginn started responding by saying that they had been in a considerable state of shock last time after they saw our list of functions, but he was prepared to repeat the substance of the remarks he had made then. Turning to Mr Thomas' proposal for paragraph 22, Mr O hUiginn went on that it was difficult for the Irish if the functions to be designated were left to the hazards of negotiations. They would have a political problem if the JFD contained a shared understanding on areas which reflected unionists' interest, but not on the crucial section of the powers of a North/South Body, which represented the expression of nationalists' interest. They recognised that what functions went into the list depended on our best endeavours with the unionists, but had confidence in British persuasive powers with them. Mr Thomas recognised the moral force of the two governments putting forward an agreed list, but wished the Irish to keep in mind that HMG would be happy with the alternative approach he had proposed if the discussions got irretrievably bogged down.

8. Turning to the British revision of the joint memorandum, Mr O hUiginn saw two difficulties. First, he was worried at the emphasis which it gave to the fact that the decision on functions to be designated to the North/South Body was left with the

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parties. Second, regarding the European Union, our paper seemed to remove from the North/South Body even those programmes which were intended to cross borders eg INTERREG. Not only was this not imaginative, but it actually fell behind the existing level of collaboration, eg on the structural funds. There would be a serious backlash in Irish terms against such a proposal. Besides, it was unlikely that the Unionists would find much scope for movement on these matters, given the sovereignty preoccupations which we had expressed at the previous meeting. Responding, Mr Thomas pointed out that on the EU our aim was not to rule out such items. Our language was actually quite positive, and was intended to enable the North/South Body to get involved in such areas; we were prepared to look for alternative wording. On Mr O hUiginn's first point, he recalled that the Tanaiste had said that the two governments could "commend but not impose" any part of the JFD on the NI parties. Again we are prepared to look at alternative language, but the issue was the need to coopt people in Northern Ireland, through our persuasive powers, actually to work the institutions. There was no sense in setting them up for people not to run. Mr O hUiginn thought that the vision of the two governments had very high symbolic value. Even if the JFD couldn't be imposed, it would have great political significance as a benchmark to the Unionists, presenting common ground which both governments would need to defend. Mr Thomas recalled that the purpose of the JFD was both to bring people back into talks and give focus to those talks. Both governments needed to have confidence that what the JFD contained was saleable and acceptable. If necessary, the governments could of course agree to modify the terms of the JFD. But it was better not to give any hint of trying to impose it.

9. Turning to the question of which functions should be designated, Mr Thomas posed two questions regarding the designation at executive level of a single transport planning authority. First, we were not sure what it meant. Second, we did not quite see how it meshed in with the designation at harmonising level of other transport areas, for instance planning of national road routes etc. Initially the Irish side claimed that there was no contradiction, even though there might be some overlap; but after probing questions from Mr Thomas, Mrs Brown and Mr Stephens, they accepted that there was some uncertainty about just what was meant by executive competence for this kind of function. Mr Thomas pointed out that executive meant that the North/South body would have responsibility for seeing to the implementation of policy in that particular area, although the implementation could be through other agencies. In the light of the discussion he was not sure that the proposal for a single transport planning authority at executive level really stood up. He pointed out that if the two governments put forward a joint list, the parties would quiz them very closely about what exactly was meant by the various items on it. Perhaps more precise language might identify areas which were more suitable for harmonising, possibly with small elements at the executive level. Mr O hUiginn suggested that it might be possible to leave the North/South body to work out this kind of detail. Mr

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Thomas agreed, but said that then the language which would be used by the two governments in designating the function should be pretty general. Mr O'hUiginn had no objection to using precise language to define the executive function, but thought that experts needed to have a political mandate first.

10. Commenting on the fact that the Irish list included animal and plant health as an executive function, Mrs Brown pointed that there were statutory differences in the regimes North and South, and also in funding practices. Mr O'hUiginn commented that in 1992, the parties had agreed that the question of Brucellosis should be dealt with on an all Ireland basis, but we were now going back on that. Mr Thomas pointed out that functions needed to be technically as well as politically feasible. Mr Bell pointed out that Foreign Offices, dealing with policy issues, were not always aware of the complexities of detailed administration which was the responsibility of implementing departments. Mr O'hUiginn took the point, but emphasised that the complexity of aligning two distinct regimes was not an argument against attempting to do so if it was worthwhile. Mr Finlay wondered if a fourth category in the hierarchy of competences might be needed, where harmonising action was initially required, leading to a particular function being designated at the executive level. Mr Thomas considered this an interesting idea.

11. Turning to other items on the Irish list for executive action, Mr Thomas said that broadly our reaction was as follows:-

- environment protection and pollution management, yes;
- inland waterways, yes;
- wildlife management and conservation, yes;
- marine and freshwater fishery issues, including aquaculture, difficult;
- joint management of cross border river/lake systems, yes probably.

12. Mr O'Donovan had one comment and two questions on our revision of the Joint Memorandum. First, its language looked like an invitation to the NI parties to whittle down the functions designated. Second, he wondered if the intended list of functions was the same as we produced the previous week. Third, whereas previously we had put the words "designated" and "delegated" in square brackets as alternatives, now the latest text seemed to use the two words interchangeably. Mr Thomas responded that it made the document more politically saleable if the word "delegated" was used in certain places, but he recognised it should not be used too often. Regarding the lists of functions, Mr Thomas thought it was recognised that both sides needed to do more work. In some areas more allusive language might be appropriate, in other areas more precise language was needed. He suggested that two people on each side should get together to look at the actual lists and try to

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narrow differences, perhaps including some sections in square brackets, and report back to the next meeting of the Liaison Group. It was agreed that this sub-group should consist of Mr O'Donovan and Mr Donoghue on the Irish side, and Mrs Brown and Mr Williams on the British side, and should meet at the Secretariat. It was also agreed that the next meeting of the Liaison Group should be on the morning of Friday 11 November, in Dublin, beginning at 11 o'clock and continuing work over lunch if necessary.

1. In the Joint Declaration the British and Irish Governments recognised that the ending of divisions could come about only through the agreement and co-operation of the people, North and South, representing both traditions in Ireland. They therefore made a solemn commitment to promote co-operation between the people of Ireland, North and South, at all levels. They undertook to seek, along with the NI constitutional parties through a process of political dialogue, to create institutions and structures which would enable the people of the island of Ireland to work together in all areas of common interest.
2. Both Governments consider that new institutions should be created to cater adequately for present and future inter-connections on the island of Ireland. Paragraph 22 of the Joint Framework Document stated that the Governments had identified a range of matters which might be designated to be discharged or overseen by a North/South body. It is, however, primarily for all the Talks participants to agree to the structures, powers and role of any North/South body and also to agree to the determination of the subjects to be delegated to it. The Joint Framework Document, therefore, stated that the Governments would be seeking agreement on the nature and extent of delegation in discussion with the parties in Northern Ireland.
3. The purpose of this Note is to initiate discussion on North/South institutions with Talks participants.

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4. Both Governments believe that a new institutional framework for

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ANNEX A

(British Draft 31/10/94)

Draft Proposal for a Joint Memorandum of the British and Irish Governments on North-South Institutions

1. In the Joint Declaration the British and Irish Governments recognised that the ending of divisions could come about only through the agreement and co-operation of the people, North and South, representing both traditions in Ireland. They therefore made a solemn commitment to promote co-operation between the people of Ireland, North and South, at all levels. They undertook to seek, along with the NI constitutional parties through a process of political dialogue, to create institutions and structures which would enable the people of the island of Ireland to work together in all areas of common interest.
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3. The purpose of this Note is to initiate discussion on North/South institutions with Talks participants.

Mandate

4. Both Governments believe that a new institutional framework for

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North/South co-operation should be established and mandated by legislation in both sovereign parliaments. Its mandate would be

- to promote agreement at all levels among the people of the island of Ireland and to develop co-operation between them across a wide range of interests;
- to serve to acknowledge and reconcile the rights, identities and aspirations of the two major traditions; and
- to exercise delegated executive, harmonising and consultative functions over an agreed range of matters where this could be to the overall benefit of the people of both parts of the island of Ireland.

5. Although various structures for a form of co-operation can be envisaged, both Governments believe that the essentials should include:

- a North-South body, involving political Heads of Departments from North and South. This might be a unitary body responsible for all designated forms of functional co-operation or it could operate through a series of functionally-related bodies subsidiary to it;

- a North-South Parliamentary Forum, comprising elected representatives drawn from the new internal NI institutions and the Oireachtas;

- an administrative support unit staffed jointly by members of the NI Civil Service and the Irish Civil Service.

6. The legislation establishing new arrangements would

- provide a clear institutional identity and purpose for the body;

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- establish its terms of reference, legal status and arrangements for political, legal, administrative and financial accountability;
 - establish provisions for the financing of the body as a necessary public function by the two administrations;
 - define the initial executive, harmonising and consultative functions of the body;
 - make participation in the body a duty of service in the relevant posts of the two administrations.
7. The remit given to the body should be dynamic, facilitating progressive extension of its functions to new areas, with its role developing to keep pace with the growth of harmonisation and with greater integration between the two economies, and the development of co-operation under the aegis of the European Union. The legislation should accordingly enable the future enlargement of the body's competences, by agreement between North and South, with appropriate saving clauses in respect of both Governments' powers and obligations, eg to ensure compliance with commitments under international agreements.
8. Both Governments envisage that the North/South body would meet on a regular and frequent basis to discharge its duties and functions and to oversee the work of any subsidiary bodies. The Heads of Department on each side would operate within the overall terms of reference defined by the legislation of the two Governments, and under the rules for democratic accountability agreed by local institutions in Northern Ireland and the Oireachtas respectively.
9. All decisions within the body would be by agreement between the two sides, thereby ensuring that decisions are made on the basis

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of equality and guaranteeing complete protection for the rights and interests of both sides.

10. The operation of the new body would be subject to regular scrutiny in the new institutions in Northern Ireland and in the Oireachtas respectively.

Categories of Competence

11. Both Governments envisage that, as a general principle, representatives of North and South in the body should be able to raise for discussion and consideration any matter of interest to either side which falls within the competence of either administration.
12. There would, however, be specific provisions designating areas where the body would exercise consultative, harmonising or delegated executive functions respectively. These would be as follows.

Consultative

13. The North/South body would be a forum where the two sides would consult on any aspect of designated matters on which either side wished to hold consultations. Both sides would share a duty to exchange information and to consult about existing and future policy. There would be no formal commitment that agreement would be reached or that policy would be harmonised or implemented jointly, but the development of mutual understanding and common or agreed positions would be the general goal.

Harmonising

14. In respect of matters designated for this category, there would be, in addition to the duty to exchange information and to consult on the formulation of policy, an obligation on both sides to use their best endeavours to reach agreement on a

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common policy and to make determined efforts to overcome any obstacles in the way of that objective. The two administrations would retain their separate responsibilities in respect of these matters, but would be committed to take the necessary action within their powers to give effect to the body's decisions, reached by agreement between the two sides.

Executive

15. In the case of these delegated functions, the body itself would be responsible for the establishment of an agreed policy and for its implementation on a joint basis. Implementation would be undertaken either by existing or specially created mandated bodies, either jointly or separately North and South.
16. In determining the functions to be discharged by the body, whether by consultation, harmonisation or executive action, account would be taken of:
 - the common interest in a given matter on the part of both parts of the island; or
 - the mutual advantage of addressing a matter together; or
 - the mutual benefit which may derive from it being administered by the body; or
17. As envisaged in the Joint Framework Document, the two

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administrations, North and South, could elect, by agreement, to upgrade the body's initial competence in a particular matter along the scale from consultative to executive action.

Functions

18. Both Governments agree that legislation in the sovereign Parliaments should designate those matters, the delegated functions of which should, from the outset, be undertaken by the North/South body; and they seek agreement on the nature and extent of this designation in discussion with the relevant political parties in Northern Ireland. As the Joint Framework Document makes clear the two administrations and legislatures, North and South, could subsequently in agreement delegate further functions. The British Government for its part believes that, in principle, any matter devolved to the institutions in Northern Ireland could be designated, subject to any necessary savings in respect of the British Government's powers and duties, for example to ensure compliance with international obligations. [The Irish Government is also ready in principle to contemplate designating a comparable range of functions.] However both governments believe that, subject to discussion with the relevant Northern Ireland parties, the initial competences of the body to be set out in legislation in the sovereign Parliaments should be on the following lines.

EU Matters

19. Both Governments envisage that the North/South body will have an important role in respect of European Union matters. A number of its designated functions are likely to concern matters in which the European Union has competence; and more generally the North/South body would provide a forum to consider the harmonisation of the positions the two administrations adopt towards EU matters in which they have an interest. The body may wish to develop means of representing its shared views to EU

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institutions and more widely. More specifically both Governments believe the North/South body should be given defined responsibilities for responding, in a way to be agreed, to the challenges and opportunities of the EU, with the support of both Governments.

Consultative functions

20. The consultative remit of the body could cover a wide range of designated policies, decisions or actions of either administration which might have actual or potential repercussions or might find application in the other jurisdiction. It could also include consideration of external or international developments with significant implications for one or both jurisdictions, or for the relationships between them. Functions which would appear suitable for designation to the consultative remit are set out in Annex A.

Harmonising functions

21. The harmonising remit of the body could cover a wide range of activities where the criteria listed in paragraph 16 above, or the human, social and economic interactions between both parts of the island, make a harmonised approach in both jurisdictions desirable. An indicative list of matters which the two Governments believe could be appropriate for inclusion in the body's harmonising remit is set out in Annex B.

Executive functions

22. The two Governments consider that the body could exercise full delegated executive powers on the lines set out in paragraph 15 in relation to a number of areas where they consider the case for a single North/South decision-making capacity is

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particularly strong. An indicative list of functions which could be suitable for full executive action by the North/South body is set out at Annex C.

23. These functions include:

- sectors involving a physical or natural all-Ireland framework, where a correspondingly integrated approach in policy, and possibly administrative, terms might be appropriate;
- aspects of marketing and promotional activity, projecting Ireland as a single entity;
- heritage issues.

24. In any area where both sides agree that discussions in the body or the implementation of any of its decisions would be enhanced by, or require the involvement of the British Government, the British Government is prepared to participate, on a basis and in circumstances to be agreed between them and the representatives of North and South.

25. This dimension might also be addressed through formal or ad hoc arrangements agreed between the body and East/West institutions involving the Irish and British Governments.

Parliamentary Forum

26. Both Governments believe that the body should be complemented by the establishment of a North/South parliamentary forum, drawn from the Oireachtas and new local institutions in Northern Ireland. This forum would scrutinise the body's actions on a regular basis. It might also have an advisory and consultative role in relation to the work of the body and to North/South relations in general. The composition and function of such a forum would be for consideration between the participating parliamentarians in the first instance.

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ANNEX B

LAST PART OF PARAGRAPH 22

Against that background, the two Governments envisage that legislation in the sovereign Parliaments should designate those functions which should, from the outset, be discharged or overseen by the North/South body; and they will seek agreement on the nature and extent of this designation, as on other features of North/South arrangements, in discussion with the relevant political parties in Northern Ireland. It would also be open to the North/South body to recommend to the respective administrations and legislatures for their consideration that new functions should be designated to be discharged or overseen by that body; and to recommend that matters already designated should be shifted on the scale between consultation, harmonisation and executive action. [A The British Government for its part believes that, in principle, any function devolved to the institutions in Northern Ireland could be so designated, subject to any necessary savings in respect of the British Government's powers and duties, for example to ensure compliance with international obligations. The Irish government is also ready in principle to contemplate designating a comparable range of functions.] More specifically [the Irish government] [both Governments] identified a range of functions that might be designated at the outset which they will be ready to deploy in future discussions with the relevant Northern Ireland parties. [B Subject to any necessary savings in respect of its powers and duties, for example to ensure compliance with international obligations, the British Government has no limits of its own to impose on the nature and extent of functions which could be agreed between the Irish Government and the relevant Northern Ireland parties, or, subsequently between the Irish Government and the Northern Ireland administration, itself recognising that significant responsibilities, including some functions at the executive level, are likely to be a feature of such agreement.]

NOTE

A and B are alternatives: B being deployed if there is not an agreed range of functions, but only an Irish Government proposed list.

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