

CONFIDENTIAL

FROM: MARTIN HOWARD
19 MARCH 1998



DESK IMMEDIATE

Copy to: see attached

PS/Mr Murphy (L&B)

INTENSIFYING NEGOTIATIONS

M
31/3

I apologise for not being able to get you any further draft papers yesterday as I had originally hoped (see my minute of 17 March). But I can now submit a further tranche of "crunch point" papers for the Minister's approval.

2. I attach:

- a) a paper on Strand 1 covering the issues of executive authority, the extent of legislative powers and safeguards. We should table this paper ourselves, though we will need let the Irish see a copy of it.
- b) a paper on Strand 2: functions, powers and accountability. This will inevitably be a controversial paper and will need to be cleared with the Irish in advance. We would obviously want it to be tabled by the Independent Chairman.
- c) another Strand 2 paper, addressing areas for consideration by a North/South Council. This paper has been fairly carefully couched to focus debate on what areas could be specified for co-operation, joint action using existing machinery, and action requiring the establishment of new implementation bodies. The detailed listings may need some adjustment to take into account the views of Northern Ireland Department: I will let you know of any suggested changes.) We have tried to avoid being too prescriptive on the issue of whether or not the implementation bodies should be set up at the outset in order to avoid provoking a completely negative reaction from Unionists. We will, however, have to clear this with the Irish in advance and we can expect them to press for the paper to include a clear statement of what the two Governments think about the principle. Again, once agreed with the Irish, we would see this being tabled by the Independent Chairman.

3. On the political front, there are outstanding papers on Constitutional issues and Rights. On the first of these, although it goes to the heart of the concerns of Unionists and Nationalists alike, we have not yet had the kind of detailed debate in the talks which would enable us to produce an informed "crunch points" paper. We also need to see how we get on in discussions with the Irish on our proposed revised text of a new Article 1 of a British/Irish Agreement. On Rights, officials are preparing a more detailed paper for floating in the talks. It may be that at this stage, therefore, we do not need to put forward a "crunch

CONFIDENTIAL

Ref: Paper.21

CONFIDENTIAL

points" paper in addition. We will however keep both of these issues under review for this kind of treatment in the coming days. On the issue of Nomenclature the view of most officials, is that we should not raise this as a "crunch issue" now. There is nevertheless a strong case, at some point in the near future, for sorting out the potential for confusion between bodies like the "Inter-Governmental Council" the "North/South Ministerial Council" the "Inter-Governmental Machinery" and (possibly) the "Inter-Governmental Conference"! But it might be best to try and encourage the parties to come up with alternative titles. This ought (and I say that with some trepidation) to be something that it should not be too hard to reach agreement on.

4. On Confidence Building Measures, Mr Leach and Mr Steele are providing separate advice to Mr Ingram's office on papers to be tabled in the course of next week. On balance, it looks as though these are unlikely to be in the kind of "crunch point" format that we have used on political topics, but I do not think that is a problem.

5. In sum, I should be grateful if the Minister could:

- approve the draft paper described at a) above and agree that it should be fed into the talks process by HMG at the appropriate moment next week;
- approve the papers described at 2b) and 2c) above as a basis for discussions with the Irish and that, once agreed, they should be fed into the talks by the Independent Chairman.

Signed MLH

MARTIN HOWARD

CONFIDENTIAL

Ref: Paper.21

CONFIDENTIAL

INTENSIFYING NEGOTIATIONS

cc: PS/Secretary of State (B&L,
Washington)
PS/Mr Ingram (DED, B&L)
PS/Mr Worthington (DENI, DHSS&L)
PS/Lord Dubs (DANI, DOE&L)
PS/PUS (B&L)
PS/Mr Semple
Mr Thomas
Mr Steele
Mr Stephens
Mr Bell
Mr Leach
Mr Daniell
Mr Watkins
Mr McCusker
Mr Jeffrey
Mr Shannon
Mr Kelly (B&L)
Mr Brooker
Mr Perry
Ms Bharucha
Mr Priestly
Mr Beeton
Mr Hill
Mr Maccabe
Mr Ferguson
Mr Whysall
Mr Johnson
HMA Dublin
Mr Clarke, Dublin
Mr Cary, Washington
Mr Sanderson, Cab Office
Mr Fergusson, RID
Mrs Collins

CONFIDENTIAL

Ref: Paper.21

CONFIDENTIAL

STRAND ONE: KEY OUTSTANDING ISSUES

1. Executive authority

Issues: -

- How are executive responsibilities to be discharged?
- What is the relationship between those acting as political Heads of Departments and committees?
 - How are policy priorities, the business of the Assembly and resource allocations to be determined?

Analysis:

These matters have been extensively discussed. Two main models have been advanced. Both see proportionality as the basis of appointment.

- (a) Each Departmentally-related committee collectively acts as political Head of Department, but chairs have some delegated authority. Co-ordination is achieved via the Assembly and there is no collectively of approach.
- (b) Those accepting executive responsibilities form a "Cabinet" or executive council. They are held to account by powerful scrutiny committees but are not members of those committees.

There is also the Welsh model in which subject chairmen are to be appointed on a proportional basis. Each committee also has an Assembly Secretary who leads the committee in the discharge of its executive responsibilities. Assembly Secretaries meet to co-ordinate business.

Lead Option:

A proportional distribution of posts with executive responsibility (and of Committee Chairmanships, if separate). A Code of Practice (to be reflected in Standing Orders) to distinguish between the roles and responsibilities of those with executive responsibilities, the subject committees and the Assembly as a whole. A mechanism in the form of a Committee of those allocated posts of executive responsibility/chairmanships to facilitate co-ordination, prioritisation and resource allocation decisions (all of which would be subject to ratification by the Assembly as a whole). The holders of the first five allocated posts could collectively undertake any necessary

CONFIDENTIAL

CONFIDENTIAL

representational functions in dealings with other institutions.

2. Extent of Legislative Powers

Issues: The extent to which devolved institutions should have legislative powers over the areas of responsibility devolved.

Analysis: All parties (except Sinn Fein) have accepted at least some legislative powers should be devolved. The argument is over the degree. The UUP argue for restricted powers only.

Lead Option: Full devolution of legislative powers in all areas devolved reflecting the view of a majority of parties. This approach does not, of course, preclude the Assembly from seeking agreement that individual pieces of Westminster legislation should be extended with any necessary modifications to Northern Ireland.

3. Safeguards

Issues: How to ensure minorities are not subject to majority rule. How to build cross-community consensus on critical issues.

Analysis: The spectrum of opinion stretches from no formal, additional safeguards other than legislative ones (such as a Bill of Rights/incorporation of the ECHR) to a requirement for weighted majority voting on all issues.

Lead Option: The provision of some formal additional safeguard to decide on, for example, changes to written constitutions is common place.

Special voting majorities might be required for:

- (i) the appointment of the presiding officer;
- (ii) adoption of, and changes to, standing orders;
- (iii) budgetary provisions;
- (iv) any measure where 30% of the 'Assembly' formally require a 'special' majority.

CONFIDENTIAL

CONFIDENTIAL

- (v) certain designated matters, such as employment equality, cultural issues.

An issue requiring a special voting majority might pass if supported by

- either (i) a weighted majority of 70% of those voting;
- or (ii) at least 50% of those voting including a majority both of those members identifying themselves as unionists and nationalists respectively.

If either of these conditions is met, the measure would pass.

4. Assumptions

There are, of course, many other important issues to be resolved in Strand One. The Government's view is that these can be sorted out if the three issues addressed above are resolved. To provide some indication, other measures might include:

- (i) initial devolution of the work of all six Northern Ireland Departments;
- (ii) a significant initial role in relation to Home Department functions with devolution to follow at a time agreed by the Secretary of State and Assembly;
- (iii) elections using STV with five or six seats per Westminster constituency;
- (iv) fixed four year terms;
- (v) potential for a consultative civic forum (but not a formal second chamber) if support warrants it;

Policing issues are dealt with in a separate paper.

CONFIDENTIAL

CONFIDENTIAL

STRAND 2:KEY OUTSTANDING ISSUES: ROLE AND REMIT OF THE NORTH/SOUTH MINISTERIAL COUNCIL

Issue: How should the Council take decisions in meaningful areas with an all-island or cross-border dimension? How should accountability to the Assembly and the Oireachtas respectively be ensured?

Analysis: There is agreement that the Council should bring together those with executive responsibilities in Northern Ireland and the Irish Government in particular areas. It is agreed that each side would remain accountable to the Assembly and Oireachtas respectively. There is disagreement over the extent to which those participating in the Council would be able to take decisions there without prior authority or subsequent ratification. There is a consensus that all decisions should be by agreement between the two sides, but a difference of view over what should happen in the event of a failure to agree.

Lead Option: Effective arrangements to ensure proper democratic accountability by those exercising executive responsibility in a new Assembly must be in place. Those attending the Council, acting within the limits of their authority, would be able to take decisions in the Council and would remain accountable to the Assembly and the Oireachtas in the same way as they would for their other duties. They would need to seek the approval of the Assembly and the Oireachtas respectively where they intended to take decisions, or had taken contingent decisions, in the Council which had implications for policy, administrative arrangements or finance going beyond the limits of their existing authority.

Where there is no agreement there will be no decision. In those areas where it has been agreed that the Council will co-operate or take integrated action, the two sides should work constructively and in good faith to reach agreement. If there were a persistent failure to agree, and this were affecting the operation of the overall settlement, this would be a matter of concern to both Governments and the parties represented in the Assembly, who might therefore wish to consider the issue whenever they met together.

CONFIDENTIAL

CONFIDENTIAL

**STRAND 2: KEY OUTSTANDING ISSUES AREAS FOR CONSIDERATION
BY A NORTH/SOUTH COUNCIL**

Issues: Whether, recognising that there will be changes to the list over time, particular matters should be designated as part of the overall agreement as matters on which both sides in the North/South Council would be committed to co-operate;

Whether, within this set of matters, there should be 2 further, designated sets:

(a) those matters where there would be a commitment committed to joint action at a cross-border or an all island level working through existing democratically accountable machinery;

(b) those matters where there would be a commitment to setting up specific implementation bodies with a view to action at a cross-border or an all island level.

Analysis: There appears to be broad agreement among the parties that the North South Council could discuss all matters of mutual interest within the competence of a Northern Ireland Assembly and the Dail and would exchange information and consult on such matters. Discussion of the range of activity described above will clearly be affected by the outcome of discussion on the related issue of the role, functions and accountability of the North/South Council.

Subject to that outcome, the analysis of parties' contributions suggests that there is a straight choice:

(a) specify, as part of the overall agreement, a list of matters for co-operation and joint executive action, including in the latter case

CONFIDENTIAL

CONFIDENTIAL

an initial set of implementation bodies in designated areas to be operational in particular areas at a cross border or an all island level by a specified date or dates;

(b) do not specify at this stage but perhaps set out in the overall agreement a programme of work with timescales which would lead to such a list, which would include suitable implementation bodies, being identified and subsequently approved by the Dail and a Northern Ireland Assembly.

Lead Option: Parties will have their own views on how the various topics might be allocated to the categories described above, if after discussion it is agreed that topics should be so allocated. The attached Annexes A to C provide a suggested categorisation for consideration. the individual topics vary considerably in size and significance.

CONFIDENTIAL

Ref: Paper.21

POTENTIAL AREAS FOR CO-OPERATION

Agriculture

- research, training and advisory services
- development of the bloodstock industry
- animal and plant health
- rural development
- approaches to the Common Agricultural Policy

Education and Training

- education for students with special needs
- education for mutual understanding
- teacher qualifications
- school competitions
- exchanges of teaching staff

Health

- general hospital services
- major accident/emergency planning
- clinical waste disposal
- food safety

CONFIDENTIAL

Industrial and Trade Matters

- indigenous industries and the small business sector
- management development services to industry
- trading standards
- industrial and commercially based research
- university and industry-based centres of research excellence
- public purchasing
- university and industry-based centres of research excellence
- public purchasing

Marine and Waterways

- approaches to the Common Fisheries Policy
- fish health
- fisheries education research and training

Social Welfare

- welfare fraud

Energy

- energy projects

CONFIDENTIAL

Ref: Paper.21

POTENTIAL AREAS FOR JOINT ACTION (USING EXISTING MACHINERY)

The Environment

- environmental protection
- waste management
- pollution control
- mapping
- wildlife conservation

Culture, Heritage and the Arts

- heritage protection and restoration
- cultural promotion abroad
- the Irish language

Health

- disease registries
- post-graduate medical teaching and training
- public health and health promotion
- clinical trials

CONFIDENTIAL

Industrial and Trade Matters

- North/South trade
- inward investment
- promotion and marketing of food, manufactured goods and services

Marine and Waterways

- aquaculture
- marine matters
- drainage

CONFIDENTIAL

Ref: Paper.21

POTENTIAL AREAS FOR JOINT ACTION (POSSIBLE NEW BODIES)

Subject to the separate discussion on the role and remit of the North/South Ministerial Council and in particular lines of accountability, the following might be established as new bodies:

- an **EU Programmes Agency** covering work on the North/South INTERREG programme, the Special Programme for Peace and Reconciliation and LEADER II (or its successor), and new Structural Funds
- a **Regional Development Board**, covering the co-ordination and development of regional development strategies.
- a **Transport Planning Board** covering the co-ordination and development of the major transport services in Ireland, including the planning of road networks.
- a **Rivers Management and Development Agency** covering the joint development and management of inland waterways.
- a **Tourism Board** covering promotion, marketing and research for the island as a whole.
- a **Sports Council** covering promotion and support throughout the island.

cc PS/Mr Murphy (DFP,B&L) ✓
PS/Mr Ingram (DED,B&L) ✓
PS/Mr Worthington (DHSS,DENI&L) ✓
PS/Lord Dubs (DANI,DOE&L) ✓
PS/Mr Pilling (B&L)
Mr Steele
Mr Thomas
Mr Jeffrey
NI Perm Secs
Mr Bell
Mr Daniell
Mr Leach
Mr McCusker
Mr Shannon
Mr Stephens
Mr Watkins
Mr Brooker
Mrs Brown
Mr Fergusson, RID ✓
Mr Cary, Washington) ✓
Dr Smyth, NIB) By Fax
Mr Warner

MENU

1. Springvale Campus:

- ◆ £10m capital - to plug present gap;
- ◆ £5m endowment - to pump-prime innovative community-based programmes;
- ◆ help in kind
 - to promote linkages with US bodies (academic and commercial);
 - visits by academics, video-conferencing and multi-media links, course sharing;
- ◆ other
 - to link academic and business worlds in the Applied Research Centre etc;
 - to develop research excellence, graduate schools.

2. Training

- ◆ RUC and prisoners - timing difficulties, but potentially useful for prisoners under current arrangements and once a programme has been agreed here;
- ◆ vocational training for prisoners - £5m - to equip 400 prisoners over a 3 year period with skills and qualifications to enable them to contribute to community on release. Would need to be dovetailed with any release programme.

- ♦ socially excluded, eg joyriders, those formerly on fringe of paramilitary groups. US experience in inner cities potentially valuable, as might be US association with some retraining programme.

3. Education

- ♦ integrated schools capital - £35m. Highly symbolic, though controversial on both sides;
- ♦ careers database - £1.5m over 2 years. Links with Maine;
- ♦ pre-school provision - £20m - increasing opportunities for early age positive play/learning experience;
- ♦ Irish-medium schools capital - £10m.

4. Infrastructure

- ♦ Newry/Dundalk section of Belfast/Dublin road. Already an EU TENS route, and preferred line for cross-border section already agreed with Irish. Most of construction in ROI (£50m); £25m in NI. Highly symbolic. Strong economic case. Other options/additions include dualling of Loughbrickland/Newry stretch (£25m).
- ♦ Derry/Dublin road: - £50m in NI. By-passes, realignment, widening: not dualling. Less important in economic terms, and less symbolic. In recent conversation Hume much preferred Belfast/Derry upgrading (Toome). But useful as west of Bann counterweight?

- ◆ Road improvements in North-West: £35m, including Toome, Dungiven and Limavady by-passes. See above on Hume.
- ◆ Crumlin Road Court/Jail development: £20m. Prison/court usage ending. Landmark buildings of architectural significance. Unlikely to find commercial use. Key interface location; critical to local regeneration. Potential HQ for Public Record Office; genealogical resource appealing to Americans; and for some local community use.

5. Business/Jobs

- ◆ 'blue ribbon committee of US businessmen': as part of the Chancellor's proposals DED has devised a marketing initiative. This would, inter alia, include a taskforce of prominent North American and Irish business people and other leaders;
- ◆ should avoid initiatives which would duplicate components of Chancellor's packages eg export marketing programme.

6. Rural

- ◆ canals for tourism development, eg Ulster Canal (£70m - half in NI), Lagan/Lough Neagh (£12m); Newry Canal (£15m). Links to Republic's waterways, so all-Ireland perspective. Shannon-Erne shows value to tourism/image;
- ◆ rural tourism/angling/forestry recreation - £15m;
- ◆ agri-food marketing/packaging development - £15m.

7. Social Inclusion

- ◆ foundation for community infrastructure - £5-10m;
- ◆ counselling/support to help with trauma of troubles - up to £4m a year;
- ◆ IT and communications skills for young people - £20m - multi-media equipment for schools and FE colleges, extending National Grid for Learning to libraries. Either NI-wide or targeted to disadvantaged areas.
- ◆ Job Corps-style initiatives for those not reached by New Deal - £4m*;

(* focused in local community learning centres)

8. Stars for Peace

- ◆ promote visits/shows by pop stars, other entertainers, sports personalities;
- ◆ encourage large commercial US sponsors to back events in NI;
- ◆ no cost to US taxpayer. Big impact on NI self-confidence and international image;
- ◆ NI Events Company available as delivery mechanism. Events possible this summer and autumn.

9. Other

- ◆ US contribution to new building for NI Assembly and HQ for North/South body? Say £10-20m. Both highly contingent. We need both, not just one. But highly symbolic.