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22 July 1993

Confidential

Mr. Sean O hUiginn  
Assistant Secretary  
Anglo-Irish Division  
Department of Foreign Affairs

Dear Assistant Secretary

The Maastricht Vote and developments in British Policy

We spoke this morning about the report on page 2 of today's London Times headed Major makes 'right noises' to convince Unionists. The article quotes the text of a letter from the Prime Minister to Kevin McNamara which was released by Downing Street last night. I enclose a copy received here.

The Prime Minister says

As to your point about the Anglo-Irish Agreement, it has been our consistent policy that any different agreement, or more broadly based structure, would have to result from discussions with all the parties concerned.

The point made by Patrick Mayhew was that a successor to the Anglo-Irish Agreement - if one were generally agreed - should provide the opportunity for an unambiguous acknowledgement by all concerned of Northern Ireland's status within the United Kingdom.

An extension of the veto

In relation to the first comment, what the statement of 26 March 1991 actually says is that "for their part, the two signatories of the Anglo-Irish Agreement - the British and Irish Governments - have made clear that they would be 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 of the parties concerned".

The development here is that whereas

it was agreed under the 26 March 1991 statement that nothing would be agreed until everything was agreed in that process, it was explicitly stated that there was no guarantee of success and that a new and more broad agreement would be considered by the two Governments if it could be arrived at through direct discussion and negotiation with the parties,

the British are now saying that any different agreement or more broadly based structure would have to result from discussions with all the parties concerned.

This was the point to which I drew the Secretary of State's attention at the Conference of 8 July.

You will note my emphasis on the word "or". The 26 March 1991 statement refers to "a new and more broadly based agreement or structure". The discussions with the parties envisaged in that statement, therefore, refer to a new agreement or structure that the opponents of the existing Agreement would support; the statement does not rule out a new agreement that might not have their support. I may be too fine in regarding the Prime Minister's slight change in drafting as seeking to cover any new agreement, but, on the whole, where the British make any change in the agreed language, it is wise to look at it closely (I am also taking it that the NIO provided a draft for the Prime Minister).

I think what the Secretary of State was trying to do at the last Conference and what the Prime Minister is now supporting, is to extend the veto internal to the 26 March 1991 process to any other initiative that might be taken in the event that the participants in that process did not wish to take it forward. It is important to recall that one of the strong doubts we had before the 26 March 1991 statement - we vetoed a statement Mr Brooke intended to make the previous July - was that the Unionist parties would actually participate. Hence the remarks in that statement that all concerned had given assurances that they were committed to a forward-looking and constructive approach, would participate in good faith, make every effort to make progress and, in the case of the North/South talks, would participate actively and directly. Hence also the conditional language "if (a new agreement) can be arrived at through direct discussion and negotiation between all of the parties".

#### Acknowledging status

In relation to the second point in the Prime Minister's letter, nowhere is it stated in the 26 March 1991 document, as you pointed out this morning, that a successor to the Anglo-Irish Agreement should provide the opportunity for an unambiguous acknowledgement by all concerned of Northern Ireland's status within the United Kingdom. The British simply state their own position on consent for any change in the status of Northern Ireland within the United Kingdom; and all that is said on behalf of the participants is that it will be open to each of the parties to raise any aspect of the three relationships, including constitutional issues.

This is, therefore, a unilateral position and a development of British Government policy which we should consider countering: granted that the 26 March 1991 agreement took the form of a statement by the British Government, there has always been a

danger from our point of view that the British would seek to give the impression that any later interpretation of that statement was authoritative and somehow binding on all the parties to it.

We have been hearing, of course, for some time from the British that their aim is to achieve an unambiguously expressed consensus/understanding about the constitutional status of Northern Ireland which would confirm Northern Ireland's status within the United Kingdom until a majority decided otherwise and, therefore, require a referendum on our part to change the Constitution. That is what the Secretary of State has said on a number of occasions and for some time. When we first heard this phrase in the Liaison Group I recall saying that the British were setting up a test which would bring about the failure of the talks, because only a constructive ambiguity or a balanced accommodation of views could make a new and more broad agreement acceptable to the majority of Nationalists and Unionists alike.

The Prime Minister has gone a step further to suggest that the acknowledgement of the constitutional status of Northern Ireland within the United Kingdom is what is required. He says this has been consistent policy and refers to a reply the Secretary of State gave to Peter Robinson in the Commons on 3 July 1992. Not quite true. What the Secretary of State said was

My predecessor's statement of 26 March 1991 made it clear that it would be open to each of the participants in the talks to raise aspect of the relevant relationships including constitutional issues. The Government will seek, as a product of the talks process as a whole, an unambiguously expressed consensus on the constitutional issues. . . we believe that such an outcome should thereby enable all participants to acknowledge Northern Ireland's present status as part of the United Kingdom.

On the basis of the Secretary of State's statement, it is possible to conceive of an understanding which would allow one side to claim that the requisite acknowledgement had been given, notwithstanding the word unambiguous, whereas the Prime Minister removes all doubt.

The Prime Minister's letter must reflect what the Government is saying privately to Unionists by way of comfort in order to encourage them to support the Government in the Commons (my SF 906 of 20 July); they may well be going further and it will be interesting to see what statements they may make publicly in coming weeks.

#### Joint Sovereignty

There is one other development which I should mention here. The British have been asserting recently that joint sovereignty is not for discussion because it involves a change

in status, that any such change must have the consent of a majority and that that consent will not be forthcoming. That is not so much an interpretation of the 26 March 1991 statement as a contradiction of it. What that statement says is that it is open to each of the parties to raise any aspect of the three relationships, including constitutional issues.

There has, I think, been something of a sea-change since the Secretary of State's Coleraine speech of last December courting Nationalists, stressing British neutrality, facilitation and lack of selfish interest, making gestures in the area of culture and identity and asserting the principle of parity of esteem. We have heard little on these lines since. I have no doubt that the Secretary of State was shaken by the depth of Unionist reaction to that speech, by the Unionist/Alliance criticism of us following the breakdown of talks, by the developing notion of Unionist alienation which dates from about the same time, and by the increasing threat from loyalist paramilitaries, especially to the police. The situation in the House of Commons has also been preoccupying his mind as you will have seen from my report of 25 June on a dinner conversation at Hillsborough.

You will also recall that Molyneux sought and obtained a meeting with the Prime Minister last spring. Shortly after that meeting, there were major statements by

- the Foreign Secretary at Oxford on 17 April (Republic not a rival for sovereignty),
- the Secretary of State in his Irish Times interview of 6 April (any new deal must fall within the confines of the present constitutional arrangements . . . he suggests this is one of the realities Mr Spring recognised in his speech of 5 March),
- the Secretary of State in his speech at Liverpool on 23 April (the talks will not conclude with joint political authority).

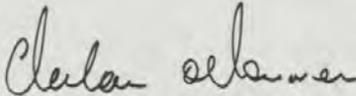
There was relative quiet in May and early June perhaps because of a desire not to provoke any argument in the lead-up to the Summit. But the line has been resumed strongly recently with the sustained attacks by the Secretary of State and the Prime Minister on the Labour research document on joint sovereignty leaked to the Guardian and Irish Times (appalling . . . we in the Conservative and Unionist Party stand four square behind the Union); and with the furious reaction to the Tanaiste's Guardian comments on the responsibility that will fall on the two Governments if talks do not resume and on joint sovereignty as a very interesting idea which deserved to be studied. I would think the strength of the reaction to the Guardian article was due to three main factors

- a feeling on the British side that we had decided to resist publicly the line they had been developing;

- a suspicion of collusion with the British Labour Party which is regarded, at least in the person of Kevin McNamara, as symbiotic with us;
- a desire that the Unionist boat should not be rocked.

It may be time for us to make a political statement setting out again the principles of the statement of 26 March 1991.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Declan O'Donovan'.

Declan O'Donovan  
Joint Secretary