

CONFIDENTIAL



no 13

10 DOWNING STREET

From the Private Secretary

AF? 2/3/81

SIR ROBERT ARMSTRONG

Scope of the Anglo-Irish Joint Studies

The Prime Minister has seen your minute to me of 20 February on the relationship between the joint studies and "constitutional matters". She is not happy with the line you propose.

The Prime Minister has commented that she does not believe extradition is a constitutional matter (your paragraph 3 refers). Her recollection is that extradition is not forbidden by the Irish constitution but that the Irish interpret their international obligations in a way which precludes extradition. In the Prime Minister's view, both we and the Irish will find ourselves in difficulty if we discuss either the Irish Article 2 or our own Act of 1973.

Clearly all this will have to be discussed further after the Prime Minister's return from Washington.

I am sending copies of this minute to Stephen Gomersall (Foreign and Commonwealth Office) and Roy Harrington (Northern Ireland Office).

M. O'D. B. ALEXANDER

23 February 1981

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RB

① I do not believe that extradition is a constitutional matter. My recollection is that ①

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it is not forbidden by the Irish Constitution but the interpretation obligation is a substantive line of argument in his minute +
MR. ALEXANDER *very subtle* *with what is proposed in para 7?*
includes extradition for

them. ② I think we shall have *just* *some* *issues*
Scope of the Anglo-Irish Joint Studies *And 20/2*
is difficult if we discuss either the Irish

We have a problem over the relationship between the joint studies and Article 2 *on* *on* *1973 Act*
"constitutional matters". The problem arises from the vagueness of the phrase. *ms.*

2. It is a matter of presentation. There is no difficulty of substance. It is clear, and understood by both sides, that in the joint studies we do not discuss, still less negotiate, changes in the constitutional position of Northern Ireland. Any such change could come about only with the consent of the people of Northern Ireland and the United Kingdom Parliament. In that sense the talks are not about "constitutional matters".

3. But we cannot, and it would not be in our interests to, exclude from discussion in the joint studies (which are, under the Dublin communique, in the context of "the totality of relationships within these islands") anything to which the adjective "constitutional" can be applied. For instance, extradition of terrorists has a constitutional aspect, since it is the Republic's position that their Constitution has the effect of barring extradition for crimes with a political motive. We cannot refuse to talk - as we know the Irish expect to do - about the "constitutional claim" in Article 2 of their Constitution, as an obvious stumbling block to "mutual understanding"; but we shall not discuss it, in the sense of asking them to change it. If they offered to discuss the possibility of changing it, if we would discuss the possibility of modifying the guarantee, we should make it clear that that was a matter which we had no mandate to discuss, though we could explain the nature of the guarantee (if necessary) until the cows come home. If either of these matters features in the joint studies at all, they are likely to appear in the eventual report only as a restatement of the existing position on each side - in which form they might be beneficial as a signal that we had given nothing away on the guarantee.



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4. But that leaves us with the presentational problem. In the joint studies context the adjective "constitutional" has become a dirty word for Protestants in Northern Ireland. For the Protestants in Northern Ireland "constitutional matters" means only the constitutional status of Northern Ireland. If that meaning was universally accepted, we could say that "constitutional matters" are ruled out of discussion in the joint studies. But for most people the phrase has a wider meaning; so we cannot say simply that "constitutional matters are ruled out". Nor can we say that "constitutional matters are not ruled out except for the constitutional status of Northern Ireland". That would be unlikely to allay unjustified suspicion: Protestant opinion could well fasten on the first half of that sentence and ignore or disbelieve the second, and the sentence could become more grist for Dr. Paisley's mill in his electoral campaign.

5. The best way out of this dilemma is to take a firm public line that the studies take place within the existing constitutional framework and that the constitutional status of Northern Ireland as part of the United Kingdom is thus outside the scope of the studies and is not a matter we are prepared to discuss in the studies, but otherwise to decline for reasons of intergovernmental confidentiality to make any statement on the content of the studies. This avoids the question of "other" constitutional topics. It also provides a line which should be sustainable, unless and until we and the Irish deliberately and jointly decide that we want to be more forthcoming.

6. This line is fully consistent with the confidential letter the Prime Minister sent Mr. Molyneux on 16th February. It is also consistent with the Secretary of State for Northern Ireland's supplementary Answer to Mr. Molyneux in Parliament on 15th January (Hansard, Col. 1516) which indicated that extradition and the Republic's claim to Northern Ireland were both "proper matters to be discussed between Her Majesty's Government and the Government of the Republic" - since this answer deliberately did not refer to the joint studies as such. It is also consistent with the Prime Minister's statement to Mr. Powell on 10th February (paragraph 4 of Mr. Gow's record) that she would never agree to discuss with the Irish Government the constitutional position of Northern Ireland within the United Kingdom.


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7. The Irish have already told us, in the discussions we had on 30th January on procedure, that they would like the "mutual understanding" joint study to consider Articles 2 and 3 of their Constitution (i.e. their claim to the North) and also our guarantee to the North. We have recognised that an Anglo-Irish Treaty (on Franco-German lines) might incorporate provisions relating to both subjects, in the sense that it might be necessary for such a treaty to restate and thus entrench both the Articles in the Irish Constitution and the guarantee; and that the matters might therefore be relevant to the "institutional structures" study. We have also warned them of the need for extreme caution in this area. When they revert to the subject in the discussions of substance, in either study, we shall make quite clear that for our part we are not mandated to discuss the constitutional position of Northern Ireland as part of the United Kingdom, and that we shall need to go on referring, publicly and truthfully, to the fact that we are not prepared to discuss it; but that, subject to this, we are ready to consider anything they have to suggest.

8. I am sending copies of this minute to the Private Secretaries to the Lord Privy Seal and the Secretary of State for Northern Ireland.



(Robert Armstrong)

20th February 1981