

Debate session began at 9.15  
with discussion of recent talks\*. This  
was followed by questions on Opening  
Statement by Irish Government.

Questions on Opening Presentation by the Irish Government

Lancaster House, 8 June 1992

Mr Maginnis (UUP) asked Mr Wilson if he accepted that a solution could only be reached by the democratic process and that the Irish Government did not contemplate anything outside the democratic process.

Mr Wilson agreed that the only acceptable way to achieve peace and reconciliation was through the democratic process. Underlying the Irish submission had been the belief that the only way forward was the democratic process which took into account the equal validity of the two traditions in Northern Ireland.

Mr Andrews said that of course his Government accepted the democratic process which necessarily included a complete denial of those who would oppose to the democratic process. He recalled the Taoiseach's first statement on the North which contained a strong condemnation of the IRA.

Mr Maginnis thanked the Ministers for their answers and said that his party were at one with them on this point. He went on to suggest that the baseline for democracy was the involvement of all the people in that democracy and this had been a problem in Northern Ireland since 1985.

Mr Flynn said that the Irish State had never shown any oppression or aggression towards Northern Ireland. The Irish state was a model of democratic stability built on democratic principles. It had honoured all its traditions and had striven to cherish all the children of the nation equally.

Mr Maginnis turned to paragraph 18 of the Irish presentation and to the references to accommodating and regulating differences and to "those who wish no change in the present status of Northern Ireland". He asked what did the Irish Government understand to be the present status of Northern Ireland.

Mr Wilson explained that in paragraph 18 the Irish Government had indicated their desire to accommodate differences. The purpose of the talks was for unionist and nationalist traditions to discuss for the first time possible ways to make progress.

\* Note to follow

Mr Maginnis said that he wished to develop this point further. What did the Irish Government understand the present status of Northern Ireland to be?

Mr Wilson replied that "verba clara non indigent interpretationem" - clear words require no explanation. The reference had been taken from the Anglo-Irish Agreement and was clear. The Irish Government was bound by that Agreement.

Mr Andrews said that Article 1 of the Anglo-Irish Agreement stated that change in the status of Northern Ireland could only come about with the consent of the majority in Northern Ireland and it was recognised that there was no such majority at present.

Mr Maginnis said that the Supreme Court ruling on the Agreement had also been clear but had been dismissive. He was, however, willing to acknowledge that the Government recognised the status of Northern Ireland in international law.

Mr Wilson pointed out that international agreements between Governments and courts of law operated at different levels.

Mr Maginnis replied that everyone was bound by the rule of law. His party had, however, taken note of the recognition of the status of Northern Ireland as enshrined in international law. He did not care to go into the implications for the Irish constitution and legal system.

Mr Andrews said that law is about diversity and difference of opinion. He suggested that it would be possible to address this issue further by way of a paper. He went on to quote chapters 4.14 and 5.3 of the New Ireland Forum Report in which it was accepted that a new Ireland would require a new constitution and that arrangements for a new Ireland would have to be freely negotiated and agreed.

Mr Neeson (Alliance) said that his party had considered participating in the New Ireland Forum but had been effectively prevented from doing so by the then Taoiseach's statement to the effect that it was a nationalist forum for a nationalist people.

Mr Hume (SDLP) denied that this was the case.

Mr Paisley (UDUP) referring to page 2 of the Irish Government's submission asked what was meant by the people in the room being a focus of hope. What was the focus; was it an agenda or was it persons?

Mr Wilson replied that in the room were strong and articulate leaders acting in a representative capacity who should be in a position to focus hopes.

Mr Andrews said that they had come with open minds. Of course, it was hoped to address an agenda, which was the accommodation of the two traditions on the island of Ireland.

Mr Paisley, again referring to page 2 of the Irish Government statement, asked what was meant by the use of the term "our political failure". Leaving aside unionist failures, what particular nationalist failures had led to the current situation?

Mr Wilson replied that the history of Northern Ireland had been such that only a single tradition had been catered for, which in his view had been a mistake. He noted that it had not been the Irish Government which had sought the end of the Northern Ireland Government. He believed that enough goodwill now existed to find new structures to cater for both traditions.

Mr Paisley understood the reference to mean that terrorism had resulted from failures on both sides. What had been the nationalist failures?

Mr Wilson said that the very fact that they had not addressed the issues which led to the current situation had cost the South dearly, in such things as defence costs.

Mr Paisley asked that Mr Wilson clarify what he saw as the nationalist failures.

Mr Wilson replied that both traditions lived on the same island and both had a responsibility to solve the problem.

Mr Andrews explained that the reference indicated that there had been a collective failure. The unionists had not been totally to blame. There had been a failure of dialogue and this was what the current process was about. Neither side had made a sufficient effort to bridge the gap between them.

Mr Paisley asked if therefore the Irish delegation condemned the people who had refused to take part in the Council of Ireland and who had reneged on the Tripartite Agreement of 1925.

Mr Andrews remarked that we seemed to be strangled by our history. What happened in 1920 and after was relevant in a historical context but what should now be addressed was 1990 and after. The Irish delegation was not trying to avoid

answering questions; they were ready to answer any question. If unionists wished to talk about the 1937 Constitution or Articles 2 and 3, they were at their disposal.

Mr Wilson said that it might be useful to look at the 1920 Government of Ireland Act. He quoted from the speech introducing the Bill the House of Commons in which it had been stated that the division of Ireland was distasteful to the British Government and to all the people of Ireland; the Bill had been framed to lead to union between the two parts of Ireland. Regarding the Tripartite Agreement, the founder of his party had sought a referendum but this had been denied to him. Under the 1931 Statute of Westminster, Dominion law could not be invalidated by English law nor could English law automatically extend to the Dominions. The 1937 constitution had therefore been passed by proper procedures under English law.

Moving on to page 4 of the Irish presentation, Mr Paisley asked Mr Wilson what he thought "an honourable accommodation" might be.

Mr Wilson said that it would involve an agreement that recognised the validity of both traditions. Without that basic philosophy, agreement could not be reached.

Mr Paisley asked if Mr Wilson was arguing for joint authority.

Mr Wilson replied that the Irish Government had not been involved in Strand 1 which had considered the internal arrangements for Northern Ireland. In due course the fruits of those discussions would come before the Irish Government.

Mr Paisley asked if the Irish Government felt they should have been included in Strand 1.

Mr Wilson said that the Government had accepted the strands of the process.

Mr Paisley said that the basis of the Irish paper had been that the Government should be part of the process. Did they therefore believe that they should have been part of Strand 1?

Mr Wilson replied that he was not quarrelling with the talks structure established by the Secretary of State.

Mr Paisley insisted that the unionists had only entered into the talks on the basis that structures of Government for Northern Ireland would only be within a United Kingdom context and not in any other relationship.



Mr Andrews said that the Secretary of State's statement of 26 March 1991 had set out the modus operandi for the talks. The question of joint authority was one which would have to be teased out at a later stage.

Mr Mallon (SDLP) intervened to remind delegations that the talks process had been agreed upon by the two sovereign Governments involved and they had agreed to a gap in meetings of the Anglo-Irish Conference to facilitate the talks.

In reply, Mr Paisley stated that if there had been no break in Conference meetings, the two unionist parties would not be present at the talks. He had understood the Irish attitude to be that they should be part of Strand 1.

Mr Andrews repeated that the Irish Government delegation would not avoid answering questions. The question of participation in Strand 1 just did not arise; the two Governments had come to a decision in relation to the 3 Strands for the talks. He added that in the event of delegates not being satisfied with the time available for examining their presentation, he was prepared to continue answering questions on it the following week.

8. 7. 1992:      11. 20 a. m.

Questioning of the Irish Government's opening presentation resumed after the adjournment. Dr. Paisley stated that he would ask a number of brief questions and, in view of the fact that the Irish Government had agreed to continue answering questions at next week's opening meeting, would then give the floor to other delegates.

Dr. Paisley referred to the Irish statement that "we will never solve our problems by denying each other's existence". He asked whether the Irish Government had ever denied the unionists their existence. Mr. Wilson replied that they had not. Dr. Paisley asked whether he had ever denied the Irish Government its existence. Mr. Wilson replied that he did not think so but stated that there were certain connotations in NI regarding the existence of two traditions. Dr. Paisley asked whether the 1937 Constitution did ~~not only~~ to deny but to eliminate the existence of the unionists in NI. Mr. Wilson stated that he could not accept that proposition, which was based on a very tight reading of Articles 2 and 3. Article 3 delimited the area of operation of the Constitution to the former Free State area which was surely a heavy recognition of the political situation in NI. Mr. Andrews suggested that the Constitution was an excellent document which could, if necessary, be used as a basis for a Bill of Rights at some stage, if necessary. He stated that in Article 29.2, the Constitution affirmed adherence to the principle of the pacific resolution of disputes. It never denied the unionists' right to exist. The Irish Government was, however, concerned at the manner in which the unionists may in the past have denied the nationalists their right to exist.

Mr. Andrews stated that Article 2 of the Constitution defined the national territory as the whole island of Ireland; Article 3 stated that "pending the reintegration of the national territory", the laws of the state would have the like area and territorial effect as those of Saorstát Éireann. Dr. Paisley suggested that that constituted a territorial claim over NI and a rejection of the fact that a separate state existed in 1937 which was a part of the UK.

Mr. Andrews stated that he did not necessarily accept that this constituted a territorial claim and that he assumed Dr. Paisley approved of the limitation set out in Article 3 regarding the effect of the state's laws. The Constitution expressed the legitimate desire of the Irish people for unity and reflected the solidarity of nationalists in both parts of the island. In this, it was democratic. He stated that Articles 2 and 3 were extremely important to the Irish nation and that he was not certain that at this stage in the process it should be suggested that they be put into an aspirational context or lifted from the Constitution. This was not the stage to discuss such matters, which were part of a deeper

argument. The Articles represented the legitimate desire of Irish nationalists for unity and were not a sinister aspiration.

Dr. Paisley stated that Mr. Andrews had put a gloss on the Constitution which he would like to think represented the legal standing of Articles 2 and 3; however, it did not. This was clear even from the fact that two documents had to be signed under the Anglo-Irish Agreement and from the title on the message from the two Governments read out at the start of the Plenary meeting. He stated that he liked the gloss put on the Articles by the Minister but that it did not conform to the legal position. He stated that there was nothing illegitimate in nationalists aspiring to a united Ireland; they were quite right to do so. He himself would like to aspire to making everyone a Free Presbyterian. IF it were only a question of aspirations, there would be no difficulty. In fact, however, there was a legally established claim over the territory of NI and an attempt to deny NI the right to exist as a political entity. He stated that in the McGimpsey judgment in the High Court in Dublin it had been made clear that Articles 2 and 3 did not represent an aspiration but a Constitutional imperative that Government Ministers should have as a burden upon them in all their decisions. He suggested that Mr. Andrews could not surely be saying that the Articles were just an aspiration.

Mr. Andrews responded that the ARTICLES did not constitute an aggressive claim. The Irish courts had made it clear that they must be interpreted in the context of the Constitution as a whole: Article 29.2 clearly expressed a commitment to the pacific settlement of international disputes. In addition, the Irish Government had obligations under the Helsinki Final Act of the CSCE and under the Paris Charter regarding the pacific settlement of border disputes.

Dr. Paisley suggested that this was not factually correct and that the courts and practice had shown that there was a claim over the territory of NI. This was also a point of disagreement between the British and the Irish Governments. He stated that at a meeting he attended with the other party leaders with the Prime Minister, Mr. Hume had stated that the territorial quarrel was now over. He, Dr. Paisley, had replied that it was not over as long as Articles 2 and 3 remained in force and the Prime Minister had stated that he had to accept that. There therefore was a territorial quarrel. It was a welcome development that Mr. Andrews had stated that the articles represented an aspiration; there should therefore be no difficulty in clearing up the matter and getting rid of "the Berlin Wall between our countries". He concluded by referring to Article 29. He stated that it referred to international disputes and asked whether the Irish Government did not regard the question of NI as an international dispute.

*internal*

Mr. Wilson referred to the negotiations leading to the CSCE Final Act. He stated that there had been considerable discussion on the wording regarding frontiers. The FRG and Irish delegations had worked to ensure that the word "immutable" was not used in regard to borders and had achieved agreement on the use of the word "inviolable". The idea <sup>behind</sup> ~~between~~ the term "inviolable" was <sup>the</sup> borders must be changed by agreement and not by force.

Mr. Andrews responded to Dr. Paisley's point by emphasising that he believed Articles 2 and 3 expressed the right and the aspiration of the Irish nation to unity. //

Dr. Paisley stated that the use of the term "the right" represented a claim on the territory. He would wish to return to the issue at a later stage as it was at the heart of the matter to be dealt with by the current process.

Mr. Flynn referred to the Irish Supreme Court judgment on the McGimpsey case in 1990. He stated that Mr. McGimpsey had claimed ~~in~~ the case that the Anglo-Irish Agreement was in contravention of the 1937 Constitution. Article 1 of the Agreement was well known and did not need to be quoted. Article 2B was also relevant, however. It made it clear that the Agreement resulted in no derogation from the sovereignty of the Irish and UK Governments: each retained the responsibility for government within its own jurisdiction. He stated that the Supreme Court had decided that the only reasonable interpretation of Article 1 of the Agreement, taken in conjunction with Article 2B, was that it constituted a recognition of the de facto situation. The Supreme Court had referred to the de facto status of NI without abandoning the claim to the reintegration of the national territory. It had pointed out that insofar as the Agreement provided a means for the reintegration of the national territory, it could never be inconsistent with the Constitution, which expressly stated that the state was devoted to the peaceful resolution of international disputes.

Gap. -> Dr. Paisley asked Mr. Flynn to state whether he would accept that in a new agreement the status of NI should be spelt out as an integral part of the UK.

*that in his statement to the Strand 3 formation meeting*  
Mr. Flynn stated ~~that~~ Dr. Paisley's reading of the Supreme Court judgment, that Articles 2 and 3 constituted an imperative, seemed to be that it was suggesting that any means were appropriate to the achievement of the end of a united Ireland.

He stated that such a reading flew in the face of the tenor of the judgment. The Anglo-Irish Agreement was in harmony with the Constitution and with Art. 29.2 on the peaceful resolution of disputes. He stated that the Agreement recognised the de facto status of NI. He concluded by commenting that he welcomed the fact that Dr. Paisley now recognised the legitimacy of the aspiration and right of nationalists to unity.



Dr. Paisley responded that he had not recognised such a right.

Mr. Flynn stated that it was legitimate to work for the achievement of the aspiration by peaceful means and that the Supreme Court had accepted that it was a task for the Irish Government to work towards that ideal in adherence to the principle of the pacific settlement of international disputes stated in Art. 29.2 of the constitution.

Dr. Paisley suggested that Mr. Flynn had read into the record a paper prepared by civil servants and repeated that he had never accepted the right of nationalists to Irish unity. He stated that it was not appropriate for Mr. Flynn to refer at this meeting to what had been said in another Strand and asked again whether the Irish Government was prepared to spell out in a new agreement the status of NI as an integral part of the UK.

Mr. Flynn stated that he would be happy to discuss the question of such proposed formulations at subsequent Strand 2 meetings. This was not the stage in the process to pursue the matter.

Mr. Maginnis suggested that there was an ambivalence in the Irish position. He asked whether there was not an obligation on the Irish Government, under the CSCE, to observe existing national boundaries and therefore to acknowledge, as it exists today, the frontier between NI and the Irish Republic.

Mr. Wilson repeated that considerable care had been taken in agreeing the wording of the Helsinki Final Act. The concept of immutability of frontiers had been unacceptable to the FRG and to the Irish Government. From the point of view of the Irish Government's policies and philosophy, a very significant word had been put in instead: "inviolable". This indicated acceptance that no physical force could be used to alter a frontier, whatever about political and diplomatic action. Mr. Andrews stated that the existence of the border was a tragedy which had caused much conflict. However, matters in relation to the border could only be settled by pacific means.

Dr. Paisley welcomed Mr. Flynn's statement that he would come back to the discussion of the status of NI and repeated that he had not conceded the right of nationalists to unity. In response to a question from Mr. Flynn as to whether he agreed it was legitimate for nationalists to articulate their identity, he stated, "you can say whatever you like". Mr. Andrews stated that Articles 2 and 3 expressed the right and the aspiration to the unity of the territory throughout the island of Ireland and that this was where the unionists and the Irish Government parted company. The task now was to bridge that gap as far as was possible.

λ The Chairman intervened to suggest that it was possibly too early in the process to ask the Irish Government to give more precise definitions: these would hopefully emerge clearly enough as the days rolled on. Considerable areas of discussion had already been opened and it was premature to ask for more precise answers which delegations might feel bound by.

Mr. McGimpsey raised the matter of the Forum Report. He stated that he and his brother had given evidence to the New Ireland Forum but that their concerns had been ignored in the Report which was seen as offensive to unionists. He asked why the Irish Government in its presentation (p. 12) had referred to the report as "a departure point for our discussions" and stated that this would not be acceptable to unionists. He asked whether the Irish Government was prepared to consider possible relationships and structures outside the three options recommended by the Forum Report.

Mr. Wilson stated that his delegation's agenda was not a constricted one and that everything was on the table. Mr. Andrews stated that the Forum Report had advocated an agreed relationship between the two traditions and that it would not be helpful for the unionists to seek a relationship which they alone would decide on. Such an approach would constitute a return to the idea of winners and losers which had bedevilled the history of the country since its division.

Mr. McGimpsey stated that the point of his question was how the Irish Government could expect to make progress on the basis of a Report which advocated nationalist solutions. Economists commissioned by the Forum had, for instance, stated that the Government could not afford Irish unity financially; nevertheless the Report had advocated a unitary state as its No. 1 option.

Mr. Andrews replied that Chapter 5 of the Report had stated that the parties to it were open to discussion of other views which might contribute to political development. He stated that the totality of relations was on the table. Nothing was ruled in or out for discussion. Mr. Wilson referred to economic matters and stated that businessmen on either side of the border met regularly and were convinced that in the context of Europe they could only make progress by cooperating in a single export and import market. Mr. Flynn stated that the Forum Report had set out the nationalist case. It had established the principle that equal respect for the two identities was central to a solution. It had listed three possible solutions but had made it clear that others could be entertained. It was on this basis that the Irish Government was involved in the talks process.

Mr. Mallon stated that his starting point for the discussions was a nationalist one, just as Mr. McGimpsey's was a unionist one. In response, Mr. McGimpsey stated that unionists could not be expected to adopt a nationalist analysis as a starting point for discussion; neutral ground was required for negotiations to commence.

Mr. Flynn repeated that the Forum Report had put the nationalist case and established the principles that nationalists saw as necessary. The basic principle was that any settlement should recognise the two identities. The Irish Government had a nationalist preference but it was clearly understood that they were not confined to the three options for a solution suggested in the Forum Report.

Mr. Mallon stated that he had been a member of the Forum and that the SDLP would take as a starting point in negotiations the nationalist position spelt out in the Forum Report. He stated that he had two questions relating to Articles 2 and 3 which he wished to put to the Irish Government delegation. First, if the simple removal of Articles 2 and 3 were proposed in a referendum, not as part of an overall agreed package, would it, in their opinion, be supported by the Irish people? Mr. Wilson stated that he felt such a proposition would not be carried in a referendum but that he did not expect that a situation would be reached where such a simple question, separate from a question seeking approval for a set of structures for a solution, would be put. Mr. Mallon asked whether the Irish Government believed that a referendum in the context of an overall package for a solution would be more likely to be carried. Mr. Wilson said that he believed so, depending on the nature of the package proposed. He stated that he believed it would be a total disaster if a simple proposal to remove the Articles from the Constitution were put forward and defeated; this would leave the field open to exploitation by the men of violence. Mr. Andrews stated that if a package for a solution had the agreement of the four parties and the two Governments, the prospects for success would be increased.

Mr. Mallon raised the issue of the economy of the border areas. He stated that he would wish to ask both Government delegations for their views on the way EC initiatives on the development of border regions, such as the Interreg Programme, were being implemented. He stated that he saw very few signs of the effect of the EC programme on either side of the border and asked whether there was a serious element of partitionism in the Republic. He believed that there was and that it was harming the border region.

Mr. Wilson stated that Interreg was constructed in a manner which required dual participation, by the two Governments. Specific agreed projects were being implemented under the programme although progress might be slow because of the nature of the scheme. He offered to provide specific details at a later stage and rejected the suggestion that a partitionist mentality was interfering with the development of the Interreg Programme. Mr. Andrews stated that a recent survey in the South had shown that 75.1 per cent of people shared the aspiration to Irish unity. There was not a partitionist mentality.

Mr. Flynn stated that he hoped Mr. Mallon was not implying that there was no willingness for cooperation on the development of NI, which was a part of the island of Ireland. He stated that there had been very considerable cooperation, for instance, in the areas of tourism, sharing of water supplies and sharing of power supplies. Mr. Mallon replied that he was happy to see development of structures in such areas. Mr. Andrews stated that the Irish Government delegation would be happy to provide a paper on ~~the operation of the Interreg programme~~ *the operation of the Interreg programme.*

Mr. Mallon stated that Articles 2 and 3 were very important for nationalists in NI. The articles had an effect on unionists but they also had a very potent effect on nationalists.

Mr. Maginnis intervened to refer to Mr. Wilson's statement that the rejection of a referendum on the removal of Articles 2 and 3 could be used by the men of violence. He asked whether there was not a validity therefore in the unionist position that the existence of the Articles provided a justification for the men of violence. Mr. Wilson replied that the men of violence had always been hostile to the 1937 Constitution. He repeated the view that Mr. Mallon's initial question on a referendum had been a hypothetical one and stated that it was his personal view that rejection of a referendum simply proposing the removal of the Articles would create a vacuum which would be exploited by the men of violence.

The Chairman suggested that as the time for the adjournment of the session was approaching, only one more question could be taken. He called on Mr. Neeson.

Mr. Neeson referred to the statement in the Irish Government presentation that "the nationalist tradition in Ireland as a whole is the source of unionist fears". He asked whether the Irish Government would accept that there were wider issues which gave rise to unionist fears, such as socio-economic arrangements and Church-State relations. He asked whether the Irish Government had not recently been embarrassed by a number of social issues.



X Mr. Andrews replied that on the question of Church - State relations, he personally would not be influenced in parliament by any church. He was independent and had been seen to be so on the issues of divorce, contraception and the decriminalisation of homosexuality. On the final part of Mr. Neeson's question he stated that he would answer in the negative.

The Chairman asked the meeting to move in its final seven minutes to consideration of a number of housekeeping matters. A short draft statement for issue to the media was approved by the meeting.

Mr. Alderdice asked whether the Chairman intended to make a statement on the issue of confidentiality and leaks. Sir Ninian stated that it was his inclination not to refer to the matter publicly at this stage. However, if there was a repetition of leaks it would be necessary to confer with the delegations regarding the possible issuing of a statement to the media about leaks. He turned to Mr. Robinson's request during the morning session for information regarding the copying of documents and statements. It <sup>had been</sup> the practice that one copy of all relevant documents from the meetings ~~would be~~ <sup>were</sup> provided to the Chairman, his Private Secretary and the notetakers. Delegations' copies were delivered to the conference room or to delegations rooms. In addition, further copies had been provided to delegations at their request. ^ Because of mechanical problems, some delegations had also made use of the support staff to copy their documents. If a problem <sup>had arisen</sup> ~~had arisen as a result~~ of over-duplication of documents, it was clear that it would be easier once the Sessions moved to Belfast to control the security of documents. Procedures would be re-examined in advance of the first Plenary meeting in Belfast. Dr. Paisley stated that 125 copies of the UDUP opening presentation had been made the previous day. The party had not requested that such a number be made and regarded it as a very serious matter.

On the arrangements for the next Plenary Session, the Chairman proposed that the Business Committee meet in Belfast at 9.00 a.m. on 15 July, with the Plenary meeting starting at 10.00 a.m. He stated that he hoped the two Governments would have information on the gap in Conference meetings to communicate at that meeting and that he would hope to conclude the procedure of questioning and responses in meetings on Wednesday, Thursday and Friday.

^ The meeting agreed to a request from Mr. Andrews that the opening Plenary meeting on 15 July be put back until 11.00 a.m. in order to facilitate the Irish Government delegations' travel arrangements. It was agreed that the Business Committee would meet at 10.00 a.m.

The Chairman adjourned the meeting at 12.30 p.m.