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**Reference Code:** 2021/94/42

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2 September 1992

Northern Ireland Talks - an approach  
to the negotiations

1. This paper is an attempt to think out the best approach to the intensive negotiations which are beginning with the resumption of Strand Two in Committee format after the holiday break. The views offered are purely personal.

Our present approach

2. Our present approach is one of considerable reserve in relation to Articles 2 and 3 of the Irish Constitution. The Taoiseach has indicated that these Articles are "on the table" - as also, in our view, is the Government of Ireland Act 1920 which partitioned Ireland. Privately, we (like the SDLP) are casting around to see what structures and institutions might be substantial enough to warrant possible amendment of Articles 2 and 3; and we are considering how we could put forward any proposals we may come up with in a way which does not lead simply to their being swallowed up in the negotiation.
3. Our underlying assumption is that if and when something substantial looks like emerging from the Talks, the Government will consider whether to propose amendment or deletion of Articles 2 and 3. In the meantime, however, Paisley has been threatening to walk out at some point unless the necessary constitutional change is made in advance of any agreement (a position from which Robinson may try privately to extricate him).

Disadvantages of our present approach

4. The disadvantage of this approach is that it puts the focus immediately on our willingness - or not - to change or delete Articles 2 and 3. This leaves us with the dilemma of either coming up with some proposals substantial enough to warrant our doing so or risking a breakdown of the Talks on the specific issue of our unwillingness to change Articles 2 and 3.
5. A breakdown on the issue of Articles 2 and 3 could be disadvantageous for us. It would break the common position of the two Governments (based on the deliberate ambiguities of Article 1 of the Anglo-Irish Agreement), leave the British on the side of the Unionists, and leave us - as far as public opinion in the South and elsewhere is concerned - appearing to be the intransigent party (a position occupied since 1985 at least by the Unionists).

Proposal for a different approach

6. I would venture to suggest instead a rather different approach at this stage which would shift the emphasis, give us a better position in the effort to get a settlement and leave us in rather a better position if that effort broke down.
7. This would involve our taking the initiative now in putting forward (in the Committee ?) a short, direct and focused paper based essentially on the following ideas:-
  - (a) The Irish Government is willing to work for a comprehensive agreement which it would ask the electorate to "endorse into" the Irish Constitution. This would be done by referendum in somewhat the same way as the Maastricht Treaty; and Articles 2

and 3, and indeed the rest of the Constitution, would henceforth have to be read subject to its terms;

(b) This agreement, negotiated between the two Governments and the four Northern Ireland parties, would have three main elements:-

- (i) a suitable preamble
- (ii) a formulation of the principle of "unity, if and only if, there is consent" on the general lines of Article 1 of the Anglo-Irish Agreement. (This principle is in fact accepted by all participants including the Irish Government and the SDLP but it has never yet been given the Constitutional status which it would have if contained in an Agreement endorsed into our Constitution by referendum in the way proposed.)
- (iii) a "new deal" for Northern nationalists adequate to provide full safeguards and guarantees for their rights and full accommodation for their identity.

8. Advantages of new approach

The new approach proposed here may seem at first sight like merely a change of emphasis but it would have some significant advantages:

- (a) It would allow us to take the initiative at an early stage in the negotiation;

- (b) It would lay down a general but fundamental "equation" or structure to govern the negotiations and set a framework for their outcome;
- (c) It would do this by outlining an overall "package" and stating explicitly at this early stage the Governments willingness to put such a package to the people for endorsement into the Constitution, thus "constitutionalising" for the first time the "consent" principle (to which we are committed in any case) provided that the agreement also contains an adequate "new deal" for Northern nationalists;
- (d) This integrated approach would avoid separating the two issues of amending or deleting Articles 2 and 3 on the one hand and working out political structures on the other. Instead, this approach envisages offering to modify the Constitution by means of the agreement (we might have to consider later whether we would also need to envisage some modification of Articles 2 and 3 or Article 6);
- (e) This would shift the argument from whether or not we will change Articles 2 and 3. It would focus it instead on achieving the kind of agreement that would allow us to do so (by "writing it into" the Constitution). This would give us a good and principled approach to the negotiation from the outset and focus attention on the kind of "new deal" structure that would be required.
- (f) It would enable the Irish Government to put forward a significant proposal without at the same time wedding itself at this stage too directly to any specific institutional proposals;

- (g) This would help to ensure complementarity between the negotiating positions of the Government (willingness to modify the Constitution as suggested) and the SDLP (who would have to judge just what the minority would need on the identity issue);
- (h) If there were a breakdown in the negotiations at any stage our position would be an eminently respectable one. We would have a paper on record stating our willingness to reach an agreement which would modify the Constitution. The onus for the breakdown would be on those who made such an agreement impossible.
9. In brief the argument in this paper is that the approach suggested would shift the focus from whether the Irish Government will change the Constitution in order to make an agreement possible. It would put it instead on the question of whether all of the participants in the Talks will be willing to reach an agreement such that it will be possible for the Irish Government to propose to the people to put it into the Constitution in such a way as to modify or govern all of the rest of the Constitution including Articles 2 and 3.
10. This note has concentrated on a proposal about our approach to the negotiations. If the idea is worthwhile it would need to be acted on quickly so as to set the terms of discussion as soon as possible rather than allowing ourselves to be dragged along on Paisley's "pre-condition". A separate short note attached considers some general aspects of the idea of working for an agreement on the lines proposed above.

N.D.