



An Chartlann Náisiúnta
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Constitutional Working Group

1. Since Corfu, the Group established by the Prime Ministers has had three meetings, and made good progress, but has not completed its work.

Arts 2 and 3

2. On the Irish side our text has evolved. Article 2 has been expanded (and thus changed). It is now more readily recognized on the British side that we are proposing deep and substantive change, and taking significant political risks.
3. The main sticking point is retention of the phrase 'national territory' in Art. 2. The criteria of acceptability is two fold. Is the territorial claim gone, and can we persuade people that it is gone? Our clear advice is that the territorial claim on behalf of the Irish State to govern NI is gone. They are not entirely convinced of this. An aide-memoir has been prepared to help explain the changes.
4. The British put forward an alternative formula, which reads, Art. 2: 'The whole island of Ireland, its islands and the territorial seas are the shared inheritance of the Irish nation in their diverse identities and traditions' and Art. 3 'Pending the establishment of a sovereign united Ireland.....'. These formulations, as they stand, would not be sufficiently strong. The problem is that, given the fundamental change in Art. 3, a strong statement about the nation in Art. 2 needs to be retained to reassure Nationalists.
5. What we are putting forward is effectively a one nation (and territory)/two jurisdictions theory. We are also seeking to derive all sovereignty from the people, North and South, and to get rid of territorial claims (on both sides) independent of the wishes of the people of NI. The constitutional bar to recognition of the dispensation under which NI exists is removed.

de Jure *and without all other elements*

6. **British Constitutional Position**

They have only started to elaborate what the change in their position would involve, by way of the text of the Framework Document. They have asked us to help them draft the material and seem to be reasonably open. It will be important to pin them down more clearly on the principles we need incorporated. There is greater work to be done on this aspect.

PERSONAL



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

12 July 1994

Dear Albert,

I have had a report on the two meetings held between John Chilcot and Martin Mansergh since Corfu, and I am glad to hear that they will be meeting again later this week.

The team have clearly been going hard at it, as you and I asked them to do, and they have taken some steps forward. This is good news, and I hope that their meeting this week will register further progress.

I still believe that, for all the political sensitivity on both sides, we can achieve an historic deal if we can surmount the problem of Articles 2 and 3. Fundamental amendments to Article 2, as well as to Article 3, will be essential to reassure opinion in the North. Your readiness to consider this confirms my view that success is attainable.

I know that this is not easy for you. We must find a balance which is acceptable to both Nationalists and Unionists, as we did - just - in the Joint Declaration. From your perspective, radically new and "deep" approaches across all three Strands, and amendment of Article 75 of the Government of Ireland Act, are clearly important. I can envisage this. But we shall have to give the Unionists an absolutely clear and unambiguous assurance that the

PERSONAL

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territorial claim is no more. We agreed in Corfu that in practice you are not asserting it. The problem, which of course is not as simple as it may sound, is to put this into constitutional form. The language our officials have exchanged so far does not yet achieve that critical balance. But the progress they have made suggests to me, and I hope to you, that they should certainly continue their efforts most strenuously.

We agreed at Corfu that we had to put the Framework horse before the Summit cart. There is still time to hammer out agreement on the key points and hold a Summit this month. I have asked John Chilcot to work to that objective, and I am sure you will be doing the same with Martin.

I think that we should see how the Summit prospects look after their next meeting. We should, in any case, have a chance of a quick word at the Brussels Council this Friday, though it sounds as if we shall be working to a fairly crowded schedule there. I look forward to seeing you then.

Mr. Albert Reynolds, T.D.

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PERSONAL

SECRET

Meeting on Constitutional Issues
Government Buildings -- 13 July, 1994

S U M M A R Y

1. The British side reviewed the position which had been reached in the negotiation of the framework document. They stressed the extent to which the proposed package would have positive constitutional implications from a nationalist point of view. It would redefine the terms of reference of the British role, operationally rather than rhetorically.
2. In addition to either changing or dropping the Government of Ireland Act, the British were also prepared to use helpful language on constitutional issues in the framework document. They circulated a somewhat improved version of the relevant paragraphs in the document. The Irish side, while noting some improvements, pointed out the text also contained major difficulties. At British suggestion, it was agreed the Irish side would submit a redraft of these paragraphs for consideration.
3. On Articles 2 and 3, the British side, while accepting the significance of the proposed changes, doubted whether they met the test highlighted by the Prime Minister in Corfu as to whether the territorial claim was withdrawn. They suggested a rewording of Articles 2 and 3 to omit references to territory.
4. The Irish side stressed the severe limits on the Taoiseach's political room for manoeuvre and the danger that in attempting to meet the unionist viewpoint, Northern nationalists could be alienated or regard the changes as retrograde compared to the Joint Declaration.

5. The British side concluded the matter should be left to top level political decision, which might result in either the Taoiseach or the Prime Minister modifying their positions. The British side did not rule out the possibility that the problem might be solved by "contextual" change, i.e. an agreed presentation on the significance of the amendments. The Irish side undertook to present a paper setting out their understanding of the implications of the proposed change.

6. The British suggested that both Prime Ministers should meet before the European Council on Friday. Such a reasonably substantive meeting would remove the need for a Summit in July, which they thought would be inadvisable in the absence of a completed framework document. Work on that could continue and the completed document be presented to a Summit in early Autumn.

SO

Sean O hUiginn

14 July, 1994

Existing

Article 2.

The national territory consists of the whole island of Ireland, its islands and the territorial seas.

Article 3.

Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.

As proposed

Article 2.

The national territory consists of the whole island of Ireland, its islands and the territorial seas, and is the shared inheritance of all the people of Ireland, in their diverse identities and traditions.

Article 3.1

Accordingly, the re-integration of the national territory, which is a primary legitimate national objective, shall be pursued only by peaceful and constitutional means, and shall be achieved, in a spirit of concord and reconciliation, only with the consent freely and concurrently given of a majority of the people in each of the jurisdictions which now exist within that territory.

Article 3.2

Pending the achievement of the objective above referred to, the laws enacted by the Parliament and the executive powers of the Government shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.

Article 75 (of the Government of Ireland Act, 1920)

Notwithstanding anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in Northern Ireland and every part thereof, [only so long as it is the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland, and on the basis that it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish.]

Aide-Memoir

Effect of the Proposed Changes in Articles 2 and 3

The essence of what is proposed on the Irish side is the conversion of a statement of sovereignty by the Irish State over Northern Ireland into a statement that there is one nation and one territory but two jurisdictions, while continuing to seek reunification by agreement and consent as a primary national objective. The consent principle is explicitly introduced into the Constitution for the first time.

The proposed changes both in the Irish Constitution and in British Constitutional Law, which would constitute a balanced accommodation, would be in the context of an overall settlement agreed not only between the two Governments but, ideally also, between the two parts of Ireland, and taking account of the rights of the two communities. The aim would be to derive jurisdiction in future exclusively from the wishes of the people of Northern Ireland, or in the case of a united Ireland from the wishes of the people both North and South, rather than from any territorial claim independent of such wishes on either side.

At present, Articles 2 and 3 assert a legal claim of right by the Government and Oireachtas over Northern Ireland, and in a political sense deny the ultimate legitimacy of Northern Ireland as an entity withdrawn from the jurisdiction of the Government and Oireachtas. Legally, they prevent a withdrawal by the Oireachtas or by the Government of the claims of their ~~of their~~ right to govern Northern Ireland. They also impose a constitutional imperative to pursue the unity of Ireland. All of these consequences of the existing wording would be changed by the proposed wording.

The effect of the changes proposed is as follows:

- A clear distinction is drawn between nation and territory on the one hand, and State and jurisdiction on the other.

*Every phrase what
done in writing
then when you look at
it that
the reference in
your
of UK*

*This begins
399 of 1984
Solves the problem - Consensus
Sovereignty of UK
should not be unless 1984 - 1985 vote?*

- Given the changes in Article 3, it can no longer be contended that Article 2 constitutes a legal claim of right by the Irish State to govern Northern Ireland. There is therefore no territorial claim asserted on behalf of the Irish State. The deletion of the phrase 'without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole territory' is the key substantive change in the whole text.
- As revised, the phrase 'the national territory' means the territory which belongs to the people of the whole island, that is to say, the Irish nation living now in two separate jurisdictions, and which they have a right to reintegrate by majority vote concurrently in each jurisdiction. The revised formulation does not assert that the whole of the national territory belongs by right to the Irish State. It can still be Irish soil inhabited by the Irish nation, without being part of the Irish State. There is nothing to stop Unionists being regarded, if they choose, as being both British and Irish. There is no inherent contradiction between saying Northern Ireland is part of the national territory, but that by the right of choice of its people, it is under the jurisdiction of another State.
- The addition to Article 2 defines the nation in a pluralist manner, meaning that Ireland belongs to both Unionist and Nationalist.
- Art. 3 is explicitly linked to Art. 2 by the use of the word accordingly (as well as other language that cross-refers).
- Unity is redefined as 'a primary legitimate national objective'. The only constitutional imperative is that it be pursued by peaceful and constitutional means, with consent.
- The exclusive use of peaceful and constitutional means, and of consent, not only incorporates the consent principle into the Constitution for the first time, but emphasises that no other methods are

permitted. The way in which consent is incorporated echoes the Joint Declaration. The right to withhold consent is clearly conceded. 21

- It is recognized that two jurisdictions now exist in Ireland. The Government are free to acknowledge a de jure status for the new dispensation (to be agreed) under which Northern Ireland will exist, by the right of choice of the people, as set out in a new Agreement.
- Art. 3.2 preserves unchanged an explicit limitation on the jurisdiction of the Parliament and Government. It ceases to be a merely de facto limitation.

Levin
Recognition in the Constitution of the will of the people in the two jurisdictions and, derived from that, of the dispensation under which Northern Ireland exists, does ~~very much~~ depend politically on the terms of that dispensation, which will apply in future.

British non-paper

13 July 1994

REVISED VERSION OF CONSTITUTIONAL PARAGRAPHS

changes from current draft marked as bold in text

29. Both Governments accept that an overall settlement requires a balanced accommodation of the differing positions of the two main traditions on constitutional issues.

30. Both Governments accept that Northern Ireland is part of the United Kingdom, in accordance with the present wishes of a majority of its people and that it would be wrong to change that status without the consent of such a majority. Accordingly the Irish Government recognises that, pending the possible establishment of a sovereign united Ireland, the British Government exercises legitimate authority in Northern Ireland by virtue of the wishes of a majority of its people and because of the shared acceptance that a united Ireland should be established if, but only if, a majority of the people of Northern Ireland consent to it.

31. The British Government's position is fully explained in the Joint Declaration of 15 December 1993. Its primary interest is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island. It is ready, as part of an overall settlement involving a balanced constitutional accommodation, to take any necessary steps to initiate and support changes in UK constitutional legislation, including the Government of Ireland Act 1920, to reflect the principles and understandings in that Declaration, including that it will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland, and in this shared understanding.

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32. The British Government acknowledges that a significant minority of the people of Northern Ireland wish for, either immediately or some time in the future, a united Ireland; itself fully accepts and is open to the possibility of such a change provided it is on the basis of consent, exercised freely and without fear, intimidation or coercion; accepts the right of those in favour of it to pursue that aspiration from a basis of equity of treatment and parity of esteem by peaceful and democratic means and with impediment; and recognises the importance of ensuring that the settlement to which both Governments are working fully reflects the culture and identity of those with that aspiration as well as of those who wish to maintain Northern Ireland's present status as part of the United Kingdom.

33. Both Governments are agreed that if, in the future, a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in their respective Parliaments legislation to give effect to that wish.

34. The British Government will work to ensure efficient, effective and even-handed government in Northern Ireland unless and until it may cease to be part of the United Kingdom in the circumstances envisaged in the preceding paragraph.

35. In discharging its responsibilities the British Government will do so in a way which does not prejudice the right of the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, and which in particular:

- respects its commitment to a society in Northern Ireland in which all may live in peace, free from discrimination and intolerance, and with the opportunity for both communities to participate fully in the structures and processes of government;

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- reflects its acceptance that the Nationalists' and Unionists' identities are equally valid, and that the principles of equality of opportunity, equity of treatment and parity of esteem for all its citizens must be upheld and applied;

- supports its policy of transferring, with Northern Ireland, executive and legislative responsibilities over a wide range of subjects, with scope for further transfers, to locally accountable political institutions - provided such institutions command broad assent across the whole community and provide opportunities for representatives of both main communities and other groupings which attain sufficient electoral support to participate fully in the structures and processes of government in a society in which all may live in peace.

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NORTHERN IRELAND QUESTION TIME

14 JULY 1994

Reporter, Jim Dougal: The Secretary of State was answering a question from Ulster Unionist David Trimble who said that in its search for a way forward the Government was being strung along by Dublin and the IRA.

Mr. Trimble: "that the reported concession being offered by the Irish Government in terms of amendment of Article 3 of the Constitution is utterly worthless and totally hypocritical and isn't it time to bring this charade to an end?"

Jim Dougal: Sir Patrick said he did not recognise the charade and that the Government was not being strung along.

Secretary of State: "But it is the duty of us all to demonstrate as much patience as we can so long as there seems to be a realistic prospect of bringing forward a process of discussion to success. Now if it becomes clear that that cannot succeed then I shall remember and the Prime Minister will remember that it is the British Government that has responsibility for Northern Ireland. And it then will be for us to consider what we bring forward ourselves by way, unilaterally, by way of facilitating the kind of overall settlement to be achieved by the political parties that has been everybody's objective for so long."