



An Chartlann Náisiúnta
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Annex 4

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Non-paper on constitutional balance in any new Act
on the British side

1. The Irish Government has put forward for consideration the broad lines of an amendment to Section 75 of the Government of Ireland Act, so that the assertion of "the supreme authority of the Parliament of the United Kingdom" in that Act should be governed exclusively by the democratic wish of the greater number of the people of Northern Ireland and set in the context of the principle of self-determination as set out in the Joint Declaration.

2. Notwithstanding any such amendment, however, a wide-ranging new Act of the Westminster Parliament would be required to serve as the constitutional anchor in British law of any new arrangements for Northern Ireland. Such an Act would have high symbolic value as part of a "new beginning in relationships" Given its significance in this respect, it might include preambular and solemn declaratory provisions addressing issues of principle and political context, as well as the more customary provisions which would be needed to set up new structures and arrangements. It is important that its tone, as well as its operational terms and provisions, should reflect the values and aspirations of both communities.

3. For as long as the application of the principle of consent means that there is no change in the present constitutional status of Northern Ireland, the particular challenge will be to organise matters so that the nationalist community there can be as truly itself, and feel as truly at home, as it is possible to be in a context which does not reflect its allegiance and aspirations, and where moreover it suffers the disadvantage of an inbuilt communal minority status.

4. It will be particularly important for nationalist political leaders to be able to demonstrate to their constituents that any acceptance of new arrangements under British jurisdiction cannot be equated with acceptance of diminished prospects for realising the nationalist aspiration in the future. The terms of the new dispensation for Northern Ireland must therefore, at a minimum, be equally open and welcoming, both in theory and practice, to the realisation of nationalist aspirations with unionist agreement as it is to the maintenance of the present constitutional status of Northern Ireland.

5. In contrast with previous Northern Ireland acts, new legislation should explicitly acknowledge the unique status of Northern Ireland as a region deeply divided by two conflicting allegiances and aspirations, and the need for correspondingly unique political structures to cater for both, and special protection for human and communal rights. It should formally recognise the equal validity and worth of both aspirations, and the right of each to secure and satisfactory political, administrative and symbolic expression and protection.

6. New legislation should reaffirm the substance of paragraph four of the Joint Declaration.

7. The constitutional guarantee should be expressed more even-handedly than in the 1973 Act and without "loading", as a commitment to uphold the democratic wish of the greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland.

8. The definition of Northern Ireland's present status should be derived solely from and determined by virtue of the wishes of a majority of its people.

9. The legislation should reaffirm the commitment in Article 1(c) of the Anglo-Irish Agreement, that if in the future a majority of the people of Northern Ireland opt for Irish unity, legislative effect will be given to that wish.
10. The legislation should pledge that, for as long as there is no change in the status of Northern Ireland, British jurisdiction there will be exercised as a rigorously impartial stewardship on behalf of the members of both traditions, and dedicated to parity of esteem and equality of treatment for the identity, ethos and aspirations of both communities.
11. In upholding the present democratic wish of the majority in Northern Ireland on the specific issue of determining constitutional status, the legislation should declare that British administration will be equally cognisant and supportive of, and will create no impediments to, the option of future agreement among the people of Ireland through realising nationalist aspirations with unionist agreement and consent.
12. The legislation should also guarantee full respect for and equality of human, social, economic and cultural rights and freedom from discrimination for all.
13. (In addition to these declaratory provisions, the legislation will no doubt also contain extensive operational application of these principles in its provisions for Northern Ireland and North-South structures, and a Bill of Rights or other human rights instruments or provisions).

Annex 5

21/7/94

Irish "non-paper"

1. Both Governments accept that an overall settlement requires a balanced accommodation of the differing positions of the two main traditions on constitutional issues.
2. They agree that this requires a decisive departure from the traditional constitutional doctrines on both sides, whose rival claims should be replaced by a joint new approach, aimed at enhancing and codifying the fullest attainable measure of consent across both Irish traditions and fostering the growth of consensus between them.
3. This new approach should be based on the acknowledgement by both Governments of the special and unique status of Northern Ireland as a society characterised by a fundamental absence of consensus about constitutional issues and riven by conflicting views among its people as to whether the exercise of self-determination should legitimately assign the area to Irish or British jurisdiction.
4. In their approach to Northern Ireland they will apply the principle of Irish self-determination on the basis set out in the Joint Declaration: The British Government recognise that it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment, 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. The Irish Government accept that the right of self-determination by the people of Ireland as a whole must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.
5. They undertake that in all future arrangements relating to Northern Ireland they will each respect the full and equal legitimacy and worth of the identities, ethos and allegiances of the unionist and nationalist communities

there. Consequently, they commit themselves to ensuring, as far as lies in their power, the right of each to live under institutions affording it secure and satisfactory political, administrative and symbolic expression and protection, to the fullest extent compatible with the corresponding rights of the other community.

6. Reaffirming the commitment to encourage, facilitate and enable the achievement of agreement over a period among all the people who inhabit the island, they acknowledge that the option of a sovereign United Ireland does not at present command the consent of the unionist tradition, nor does the present status of Northern Ireland command the consent of the nationalist tradition. They agree therefore that new arrangements and structures should be put in place, to reflect and manage the reality of diverse aspirations, to reconcile as fully as possible the rights of both communities, and to promote cooperation between them, so as to foster the process of developing agreement and consensus between all the people of Ireland.
7. New arrangements should confirm the commitment in the Anglo-Irish Agreement and in the Joint Declaration that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland, and that if in future a majority of the people there formally consent to the establishment of a united Ireland, they will both introduce and support legislation to give effect to that wish.
8. They agree accordingly that jurisdiction over Northern Ireland will be determined by the democratic wish of a greater number of the people there on the issue of whether they prefer to support the Union or a sovereign United Ireland. They pledge reciprocally that under whichever option so obtains, jurisdiction over Northern Ireland will be exercised in all respects as a rigorously impartial trust

on behalf of the entire population and dedicated to parity of esteem and equality of treatment between the two communities as set out in par 5 above. They commit themselves to entrenched provisions guaranteeing equitable and effective political participation for whichever community finds itself in a minority position by reference to the Northern Ireland framework or the wider Irish framework, as the case may be.

9. In view of the diverse identities and divided allegiances of the population in Northern Ireland satisfactory provision will also be made to cater for the Irish, or, upon a change in jurisdiction, the British dimension, cherished in either case by a substantial part of the population of Northern Ireland, and therefore not appropriately subject to veto by the other.

10. For as long as the democratic wish of the people of Northern Ireland is for no change in its present status, the British Government pledges that its jurisdiction there, maintained only in function of the democratic wish of that segment of the Irish people, will be exercised as a rigorously impartial stewardship on behalf of all the people of Northern Ireland in their diversity. It will be founded on full respect for, and equality of, human, social economic and cultural rights and on freedom from discrimination for all citizens and on parity of esteem and equality of treatment for the identity, ethos and allegiance of both communities. In upholding the present democratic wish of the greater number of people in Northern Ireland, under structures which can attract nationalist consent, it will ensure that its administration is equally cognizant and supportive of, and does not create any impediment to, the achievement of agreement among the people of Ireland on the realisation of the nationalist aspiration on a basis that has unionist consent. This new dispensation for Northern Ireland would be enshrined in British constitutional

legislation, either by amendment of the Government of Ireland Act or by its replacement by appropriate new legislation, and entrenched by Agreement.

11. As part of an agreement confirming the foregoing understanding between the two Governments on constitutional issues, the Irish Government is prepared to introduce and support proposals for change in the Irish Constitution to implement the commitment in the Joint Declaration, to remove the claim of right for the Irish Government or State to exercise jurisdiction over Northern Ireland contrary to the will of its people, and to enable a new Agreement to be ratified acknowledging the legitimacy of the new dispensation for Northern Ireland to be enshrined in it.

12. On the basis of this broad understanding on constitutional issues, the two Governments will seek to win the support of the major democratic parties in Northern Ireland for a comprehensive agreement embracing new structures and institutions across all three sets of relationships. They would hope this could be achieved in a climate where the issue of sovereignty ceases forever to be, as in the past, symbolic of the domination of one community and the denial of the other and will instead be qualified by far-reaching and entrenched protection for the rights and dignity of the minority, irrespective of who may exercise jurisdiction or who the minority may be.

13. They would hope in this way that the two communities in Northern Ireland can cooperate honourably and with full mutual respect in new universally recognised structures which will not prejudice their diverse allegiances and will leave the question of sovereignty to be decided, under agreed ground-rules, in a competition of persuasion and advantage rather than one of coercion and menace. In this way they hope the relationship between the two communities in Northern Ireland could become bonds of understanding and

union, rather than a source of contention, between the wider Irish and British democracies.