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Irish paper on a possible role for an election in all-party negotiations:

(18)

Some questions to be addressed

1. At their meeting in London on 8 December last, British and Irish Ministers agreed that officials from both sides would examine proposals on a possible role for an elected body with regard to all-party negotiations. As part of that exercise the Irish side undertook to submit a paper on principles which had to be respected, and the practical difficulties which would need to be overcome, if such a proposal were to have any prospect of securing widespread acceptance. The following are some of the key considerations and issues which the Irish side would wish to put forward at this stage.
2. The present debate within Northern Ireland on the possible role of elections/an elected body in all-party negotiations coincides almost exactly with the unionist-nationalist divide. The main pro-union parties all support some version of the proposal, while the principal nationalist parties have made clear their opposition.
3. For as long as this remains the case, the proposal is potentially polarising rather than offering common ground. Nevertheless the Irish Government takes the view that all serious proposals should be considered constructively on their merits. Since it is the Northern parties which would be called upon to contest the elections (which could not in any case realistically take place without their agreement) their views on the issue must carry particular weight with the Governments.
4. If the present polarised views are to be transformed into agreement to proceed with the proposal in some form, it will be incumbent on those in favour of it to persuade the nationalist parties that such an approach would not prejudice basic principles of importance to the nationalist position, and would be conducive in practice to securing the early launch of all-party negotiations on generally acceptable terms.
5. In A New Framework for Agreement the two Governments acknowledged that in Northern Ireland there is a fundamental absence of consensus about constitutional issues.

The nationalist community within Northern Ireland have never felt able positively to endorse the existing dispensation of Northern Ireland as their own.

6. Their position in this respect reflects two related and deep concerns:
 - (a) the creation of Northern Ireland cut them off from the wider Irish framework, and the political arrangements in force there denied them any practical expression of this dimension.
 - (b) since Northern Ireland was deliberately designed to ensure a majority for the unionist community, nationalists were consigned to permanent minority status within that framework. The half-century of total exclusion from power under Stormont was a defining experience in this respect.
7. In every document agreed between the two Governments, including the Downing Street Declaration, the Joint Framework Document and the November Communiqué, it has been agreed and understood that any solution to the Northern Ireland problem requires all party negotiations. In the November Communiqué, the two Governments have committed themselves to the firm aim of achieving the launch of those negotiations by the end of February 1996. Any proposal which is not clearly seen as facilitating the early start of all party negotiations - and especially a proposal which could be seen as impeding or seriously delaying them - would fail to pass the test already set by the two Governments.
8. In assessing proposals for an elected body as part of the process of negotiations, nationalist parties would need reassurance on a number of issues of basic principle reflecting the foregoing concerns. The proposal also raises several problems of a practical order.

Issues of Principle

9. One of the key principles that has been agreed in respect of negotiations is that they will

be conducted on the most inclusive basis possible, and on a basis of parity of esteem. Elected bodies by their nature can be exclusionary and adversarial, and are likely to have an in-built majoritarian bias. For as long as the notion of elections is inter-twined with the need for negotiations, reconciliation of these factors represents a significant added hurdle in the way of successful all party talks.

10. The Communiqué of 28 November makes clear the agreement of the two Governments that substantive negotiations should address in a comprehensive manner all the relevant relationships in an interlocking three-stranded process. There is a strong consensus across the nationalist community in Northern Ireland (and more widely) that there can be no essentially internal solution in relation to Northern Ireland. For that reason they reject any basis of negotiation which gives primacy or special privilege or status to the internal strand of negotiations compared to the other two, and, in particular, the North/South strand.
11. Holding an election as the first step in the search for a solution might be construed by some as suggesting that the internal framework for a solution is accepted, and that it remains only to establish the wishes of the electorate within that framework. A formal and no less emphatic assertion of the equal importance and independent relevance of the other two strands would be a necessary component of any agreement on elections, to maintain the balance agreed in the 1991-1992 Talks.
12. It has been suggested that the requirements of the three-stranded process might be met by ensuring that the Strand One body would also develop mechanisms to deal with the North/South and East/West relationships. This would however imply that these two strands derived from Strand One, and would therefore be a particularly emphatic assertion of the primacy of the internal strand. It would be vital for Northern nationalists that the independent role of the two sovereign Governments should be acknowledged and reflected in the negotiations, as least as clearly as in the 1991-92 talks.
13. The principle that "nothing is agreed until everything is agreed" is particularly important

in terms of the role of the Irish Government, which, unlike the British Government would not be represented in all strands of the negotiations and could otherwise be committed to arrangements negotiated without its involvement or approval. It should therefore remain a key principle of the negotiations.

14. An election on the lines proposed could also be taken to imply that the negotiations themselves, or the arrangements which might flow from them, could be decided on majoritarian principles.
15. In A New Framework for Agreement the two Governments recognised as one of the guiding principles for their co-operation in the search for agreement that any new political arrangements must be based on full respect for, and protection and expression of, the rights and identities of both traditions in Ireland and even-handedly afford both communities in Northern Ireland parity of esteem and treatment.
16. While most nationalists accept that the constitutional status of Northern Ireland is to be governed by the principle of consent as defined in the Anglo-Irish Agreement and the Joint Declaration, they do not accept that any justification for a majoritarian approach to the governance of Northern Ireland can be derived from that principle. Indeed, the requirements of the principle of parity of esteem and treatment run in precisely the opposite direction.
17. It would be essential therefore that the terms of any such election should make clear that fundamental principles such as the need for clear cross-community support, and the application of the principle of parity of esteem would remain guiding principles for the two Governments, and not subject to veto by the majority community, even if such a position were the majority view endorsed by election.
18. Electoral indexation would also appear to imply some application of the majoritarian principle for the purpose of negotiations, and reassurance would be needed on this point if any such approach were to be mooted.

19. There is an eagerness across the nationalist community in Northern Ireland, reflected in the policies of their political representatives, to enter substantive all-party talks as soon as the unionist parties will agree. Any suggestion that an elected body is a substitute for negotiations would feed nationalist worries that the unionist parties are exploiting the tactical advantage of their situation, and refusing to acknowledge nationalist concerns or the need for a negotiated settlement to address them.
20. It would be particularly important therefore that any proposal for elections should be presented clearly as an enabling condition for immediate round-table negotiations, and not as an alternative or as a delaying factor in relation to them.

Practical Issues

21. Many of the operational questions which would arise in the formation of any body (such as its chairmanship, rules of procedure, committee arrangements, etc.) would evidently have implications in terms of the principles set out above and would need to be carefully considered in that light.
22. The timescale involved in legislating for and electing a body would inevitably involve a substantial and dangerous slippage in respect of the two Governments' firm aim of launching all-party negotiations by the end of February.
23. A negotiation involving 90 people would be clearly so unwieldy as to be totally impractical, so that the actual negotiations would be carried out by some small proportion of the whole - presumably the leading personalities in the parties at present. The election route to negotiations therefore involves a high degree of redundancy in the personnel involved in the process, with, inevitably, added difficulties for party leaders in managing their teams, and dangers of "grand-standing" by those left on the margins.
24. An election would, in any circumstances, be likely to have some polarising effect on the two communities. To win nationalist participation, it would clearly have to be explicitly linked to the launch of negotiations covering all three strands and fully involving the two

Governments. Conversely, this purpose could have the effect of provoking competition between the unionist parties for the hardest line of resistance to it. It is likely that elections would be dominated by the constitutional issue and that parties would feel obliged to adopt tactical or extreme positions, leading to mandates which would make subsequent negotiations more difficult.

25. Some sort of "non-aggression pact" to moderate the negative effect of elections would not only be hard to guarantee but also sits ill with the unionist view that the purpose of elections would be to see clearly where parties stood and consequently to equip them with a mandate. It is sensible to assume that an election process will generate its own, largely unpredictable and potentially negative dynamic.
26. It is possible that irrespective of the electoral system adopted the loyalist parties would not poll well enough to win representation, which would damage the fully inclusive nature of negotiations and could have destabilising effects at this stage.
27. The choice of electoral system would be problematic. While the list system has certain advantages in terms of allowing for a more compact number of negotiators and promoting the election of individuals capable of playing a valuable role in negotiations (and might possibly work to the advantage of the loyalists and the SDLP), it would almost certainly work to the disadvantage of the UUP and Alliance.

10 January, 1996.