



# An Chartlann Náisiúnta National Archives

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*Meeting between The Taoiseach and British Prime Minister  
London 1 April 1998*

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Meeting between Taoiseach and Prime Minister

London, 1 April 1993

Overview Steering Note

1. This note sets out the position in discussions between the two Governments on the preparation of an agreed overall paper for transmission to Senator Mitchell tomorrow morning. It does not address Strand Two issues, which are being discussed through another channel.
2. Senator Mitchell is adamant that material must be with him by tomorrow morning. He proposes, after having made whatever adjustments he considers necessary, to give the parties a text on Friday. They will be asked to make their views known on Saturday and Sunday, to allow for an updated version to be tabled on Monday.
3. Clearly a major tactical issue for us is whether we can envisage the possibility of not reaching full agreement on all points with the British before tomorrow, thereby meaning that in certain cases the two Governments would have to supply separate texts. It would obviously be highly desirable that we be in a position to give Senator Mitchell a totally agreed text. However, it may be that on some key points we will have to reserve our position, rather than signing off on an unsatisfactory compromise now. When we raised this issue with Séamus Mallon this morning, he was insistent that "gaps are better than the wrong paper - you can fill gaps, but you can't undo a wrong paper".

Fully Agreed Material

4. Agreement was reached last Sunday on a paper on **constitutional issues**, incorporating the text of Article 1 of a new British-Irish Agreement. Formal clearance has not yet been received from our Ministers. It has not yet been determined how and when proposed amendments to the Constitution and to British constitutional legislation will be presented to the parties.
5. Agreement was also reached on a paper on a **British-Irish Council**. One caveat which has to be entered is that the treatment in that paper of a proposed inter-parliamentary tier will have to be adjusted in line with whatever is agreed on this matter in Strand Two.

## Outstanding Issues

### **Strand One**

6. The SDLP have made clear, both at Castle Buildings and in John Hume's meeting with the Prime Minister yesterday, their firm opposition to key aspects of the most recent British paper. They continue to look for (a) sufficient consensus as the decision-making mechanism at all levels (b) Ministers/ Heads of Department with clearly -defined executive functions, independent of committees and (c) collective responsibility exercised through a cabinet-style structure. The British will have to prepare a new paper. While they appear to have registered the points made by ourselves and the SDLP, it is unlikely that they will feel able to move the full distance - especially as the differences between the UUP and the SDLP are now clearly out in the open.
7. It should be emphasised that sufficient consensus is a bottom line issue for the SDLP. This will enable them to say that the new arrangements contain for the first time the fundamental safeguard that no provision can be introduced without nationalist consent. This will be critical in selling the Agreement to their constituency. However, it should also be said that Senator Mitchell has made clear that no other party shares this approach.

### **Strand Three**

8. In regard to the proposed **British-Irish Intergovernmental Conference**, the basic difference is that we want there to be a stand-alone IGC dealing exclusively with non-devolved Northern Ireland issues, while the British propose that there be an IGC dealing with all bilateral issues, and that Northern Ireland matters would be dealt with in one format of this Conference.

### **Policing and Justice**

9. Work is still continuing on an agreed paper. Both sides envisage the establishment of a Commission to report within a limited timescale on new policing structures. The nature of its composition and precise terms of reference remain unresolved. There is convergence on a number of points. The key sticking point remains the role of the Assembly in terms of the actual implementation of the recommendations of the

**Commission.** Our firm view, and that of the SDLP, is that reforms must be implemented and be functioning on a solid basis before there can be any question of devolving these responsibilities.

10. In regard to criminal justice, the British side have moved considerably from their opening and have offered terms of reference for a Government-led review.

#### **Decommissioning and Security Measures**

11. Agreed language between the two sides on these two issues should be achievable by later today or tomorrow. There is no issue of substance between us on the presentation of these issues at this stage. However, the neutral terms of the text mask different perceptions as to the timescale likely to be involved - this will have to be resolved among the parties in the final stages of the negotiations.

#### **Prisoners**

12. Work is continuing on a text intended to present this issue in neutral and balanced terms without prejudice to the positions the Governments have adopted to date. This is equally likely to be a critical issue for certain parties in the final stage of the negotiations. At tonight's meeting, the opportunity should be taken to underline the importance of applying the benefits of new release arrangements to persons imprisoned in the UK, and/or transferred from there.

#### **Rights and Equality**

13. Considerable progress has been made in closing the gap between the British and ourselves but a number of key issues remain unresolved. The two main sticking points are
- how to ensure that the principles of parity of esteem and equality of treatment should be given general statutory force, as foreshadowed in the Framework Document;
  - how to give due recognition to the Irish language in Northern Ireland (the British have as yet to give us a serious text).

**Other Matters**

13. We are still waiting for the British to respond to our texts on **victims of violence and reconciliation**, on a possible **introductory declaration**, and on validation. The question of the form of a **British-Irish Agreement**, also remains unresolved (we gave the British an informal paper as an aid to discussion) but does not have to be addressed in the Mitchell material.

Anglo-Irish Division

1 April 1998

Meeting between the Taoiseach and British Prime Minister

London, 1 April 1998

Speaking Points

General

- Let me be very frank. I am in an extremely difficult position.
- Unionists are gaining a huge historical prize, the acceptance by nationalist Ireland, North and South, of the position of Northern Ireland within the UK. This legitimacy has been withheld for 70 years, indeed perhaps for hundreds of years.
- The equivalent on the other side would in many ways be a united Ireland. If nationalists were gaining a united Ireland, we would give Trimble a blank sheet on which to write his requirements. This is the scale of the problem I and nationalists face. We simply cannot do it without a deep agreement.

Pull back from Framework

- The Joint Framework Document has to be our bottom line.
- For us, it is a compromise text. We both said on 27 January that we were firmly committed to it, and that it offered the best chance of a solution.
- We are again putting forward this compromise to Mitchell. We cannot change the rules now and pull back from it.

- The status quo with a few "add ons" will not work. Any such agreement would be profoundly destabilising, and would send the SDLP and Sinn Féin into a spin. We could not sign it.

### **Historical break-through**

- We are on the threshold of signing Sinn Féin up to a solution - they have, after huge debate and hard work, accepted the Framework Document. If this happens, the gun will in my view soon be gone forever from Irish politics.
- Unionists cannot be allowed to blow this prize, as they have done so often in history. We are putting our changes, our commitments in concrete. They must do so too. If not, an agreement makes no sense. We can't have concrete on one side, and sand on the other.

### **Framework Document**

- Nationalists entered the negotiations firmly expecting to see an agreement along the lines of the Framework Document. And we have made some major concessions along the way.
- We have agreed to a British-Irish Council, which was not envisaged in the Frameworks. More generally, both in the negotiations and in the delivery of a settlement, nationalists see the UUP as obtaining gains upfront, while much of what they want is long-fingered.
- Unionist gains will include changes to Articles 2 and 3; a recognition of the status of Northern Ireland; an Assembly; a British-Irish Council.

- Nationalists, on the other hand, are going to have to wait to see real change in policing, and delivery of many other issues such as rights and prisoners. There will naturally be a great deal of scepticism about reviews and commissions. The Boundary Commission precedent must have been raised with me a hundred times in the past week.
  
- Don't get me wrong. I firmly believe that a deal is possible. But all I am trying to do is to underscore just how difficult it will be to convince both sides that it is worth supporting an agreement. That in turn means that everyone - including David Trimble - must be prepared to make real moves. He cannot hold the two islands up to ransom.

### *Two Governments Together*

- It is also absolutely crucial that the two Governments continue to stand side-by-side, and that we present joint texts. This is what has brought us this far.
  
- Our officials have done good work in agreeing on many of the issues [update].
  
- It is obvious that the crunch questions for us this evening arise in Strands One and Two.

### *Strand One*

- As regards Strand One, I hear from John Hume that you had a very useful meeting yesterday. The key point is that the SDLP wants to see genuine teamwork and partnership in Northern Ireland, and it wants government to be effective. We need to get people working together on real issues. They want

sufficient consensus, collective responsibility, and real Ministers - even if these are all called something else. Otherwise, the Assembly will be just like a bunch of squealing cats, much like the Forum in Belfast today. This could lead to the whole system collapsing. And, for us, Articles 2 and 3, and the safety net of the Anglo-Irish Agreement, would be gone. Where would I be then?

### Strand Two

- What is agreed in Strand One is absolutely critical for the North/South relationship. We are quite happy for there to be clear guarantees regarding the accountability of Northern members of the Assembly, and how these procedures will work in practice. That is the essence of democracy.
  
- But, to put it simply, when Irish Ministers go to the North/South Council, they will want to know that the people across the table from them are in a position to do business and take decisions.
  
- We got John's Strand Two paper yesterday. But it simply isn't in the ballpark. The best way forward, if you agree, is for us to work forward on the basis of our paper.

1 April 1998

Irish Draft - 23 March 1998

SECRET - PERSONAL

### NORTH/SOUTH MINISTERIAL COUNCIL

1. Under a new British/Irish Agreement, and in subsequent implementing legislation at Westminster and in the Oireachtas, a North/South Ministerial Council to be established to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to deal with present and future political, social and economic inter-connections on the island of Ireland. The Council to have overall responsibility for the promotion and development of consultation, co-operation and integrated action within the island of Ireland - including through implementation on an all-island basis - on all matters of mutual interest within the competence of the administrations, North and South.
  
2. Northern Ireland to be represented by [ ], the Irish Government by the Taoiseach and relevant Ministers. Participation in the Council to be an essential function attaching to relevant posts in the two Administrations. The Council to be, in institutional terms, a single entity, but to meet in different formats:
  - (i) in plenary format twice a year, with Northern Ireland represented by [ ] and the Irish Government led by the Taoiseach;
  
  - (ii) in specific sectoral format (e.g. agricultural issues, industrial issues, social and community issues, environmental issues) on a regular and frequent basis (once a month in each format) with each side represented by the appropriate Minister/[ ];
  
  - (iii) in "general affairs" format on a regular and frequent basis (once each month), bringing together the Minister and [ ] with overall responsibility for the co-ordination of North/South relations to consider institutional or cross-sectoral matters (including in relation to the EU) and to review unresolved issues.

3. Agendas to be settled by prior agreement between the two sides, but open to either to propose any matter for consideration or action.
4. All Council decisions to be by agreement between the two sides. Each side to be in a position to take decisions in the Council on the basis of the collective responsibility of its executive. Each side to remain accountable to the Assembly and the Oireachtas respectively.
5. The Council's level of responsibility in regard to the matters within its remit to be three-fold:
  - (i) in certain designated areas to take decisions, determine policy, and make or oversee arrangements for the implementation of those decisions or policies, primarily through the implementation bodies described in paragraph 6 below, but in other cases through closely co-ordinated action by the administrations North and South separately;
  - (ii) in other specified areas its members to use best endeavours to reach agreement resulting in joint action or the adoption and implementation of a common policy, and to make determined efforts to overcome any disagreements between them;
  - (iii) on all other matters to act as a forum for the exchange of information, consultation and co-operation: to be open to the two sides, by agreement, to take joint action or adopt and implement a common policy on these matters also.

A list of matters for inclusion from the outset in each of these categories of responsibility is attached at Annex X.

6. The British-Irish Agreement, and subsequent implementing legislation at Westminster and in the Oireachtas, also to provide for the establishment, at the inception of the operation of the Agreement or as soon as feasible thereafter, of implementation bodies

- in certain of the designated areas falling within the remit of the Council (as defined in para. 5 (i) above). These bodies to be responsible for the implementation, on an all-island and cross-border basis, of relevant policies and decisions agreed by the Council, to which they would report. Further such bodies may be established as the Council agrees. The Council to appoint members of the bodies' boards and/or their senior officers and to allocate funds to them. The bodies to be established are also listed at Annex X.
7. These arrangements to be capable of development, in line with the development of the relationship between North and South in all its aspects and with no pre-ordained limit to their evolution, the potential for which is limited only by the extent of the competences and responsibilities of the two administrations. Such development, including the transfer of matters from one category of responsibility as defined in paragraph 5 above to another, and the establishment of new implementation bodies, to be on the basis of agreed recommendation of the Council and with the endorsement of the [Assembly] and the Oireachtas.
  8. A continuing failure to reach agreement on important designated matters to be resolved by the general affairs Council, or failing that in accordance with the overall guarantee/oversight mechanisms in place within the settlement as a whole. In the case of disagreement on technical issues (for example, whether a particular action by one side met its agreed commitments), the Council shall appoint arbitrators (for instance, judges or other senior legal figures).
  9. The Council to agree its own financial requirements and those of the implementation bodies. To be funded by the two Administrations as a necessary public function, initially on the basis of existing patterns and levels of expenditure North and South, plus shared administrative costs. Within its first two years of operation, the Council to examine whether its financing by the two Administrations could be on the basis of an agreed key based on objective criteria, and also to examine the possibility that dedicated sources of revenue could be assigned to it. Mechanisms for the allocation to the Council of funding received from the EU or other external bodies to be agreed. This to be assigned to the

Council, along with any agreed matching funding, by the two Administrations, as part of their overall contribution to it.

10. The Council's expenditure to be audited jointly by the Comptroller and Auditor-General's Office and by the Northern Ireland Audit Office. Their joint report to be submitted simultaneously to the Oireachtas and to [the Assembly].
11. The Council to be supported by a standing Secretariat, located at an appropriate place within Northern Ireland and staffed (at least partially) by members of the Northern Ireland Civil Service and the Irish Civil Service and appointed by the Council. The Secretariat to operate as a single administrative structure, under the direction of the Council and accountable to it. To be entitled to make proposals to the Council, both in regard to particular policies or decisions under consideration and to the future development of the Council.
12. The Council to have appropriate level of responsibility for European Union dimension of matters within its remit, including the implementation of EU policies and programmes and the adoption of agreed approaches towards proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at the EU Council of Ministers and at meetings under its aegis.
13. The two Governments, and the parties,
  - (i) to recommend the creation of a joint body bringing together equal numbers of members of the Oireachtas and the Northern Ireland Assembly. The body to consider, and make recommendations on, all matters of mutual concern. Also to have a role in scrutinising the North/South Council
  - (ii) to establish an independent Consultative Forum, appointed by the two administrations, representative of civil society, comprising the social partners and other

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members with expertise in social, cultural, economic and other issues. The Forum to offer advice on issues subject of consideration within the Council, and to have particular responsibility for analysing and reporting on aspects of the medium-to-long term development co-operation on the island.

## NORTH/SOUTH MINISTERIAL COUNCIL

*British Draft*  
31.3.98

1. In the context of the establishment of the [British-Irish Council] to deal with the totality of relationships, a North/South Ministerial Council to be established under a new British-Irish Agreement, to bring together those with executive responsibilities in Northern Ireland and the Irish Government, operating under agreed mandates of the Northern Ireland Assembly and the Oireachtas respectively, and accountable to them. The Council to enable those with executive responsibility on each side, acting within those respective mandates, to develop consultation and co-operation within the island of Ireland - including, where agreed, implementation of mutually beneficial actions on an all-island basis - on matters of mutual interest within the competence of the administrations, North and South.

2. Northern Ireland to be represented by [ ], the Irish Government by the Taoiseach and relevant Ministers. Participation in the Council to be one of the responsibilities attaching to relevant posts in the two Administrations. The Council to meet in different formats:

- (i) in plenary format twice a year, with Northern Ireland represented by [ ] and the Irish Government led by the Taoiseach;
- (ii) in specific sectoral format, on agreed issues, on a regular basis with each side represented by [ ];
- (iii) in other formats, as necessary and agreed, to resolve institutional or cross-sectoral issues (including in relation to the EU).

SECRET - PERSONAL

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3. Agendas for all meetings to be settled by prior agreement between the two sides, but open to either to propose any matter for consideration or action.
  
4. All Council agreements to be by unanimity. Each side may make agreements in the Council within the delegated authority of those in attendance, subject to the relevant agreed mandates of the Northern Ireland Assembly and Oireachtas respectively, and any arrangements in place for co-ordination of executive decisions within each jurisdiction. Each side to remain accountable to the Assembly and the Oireachtas respectively, [whose explicit approval, through whatever arrangements are in place on either side, would be required for decisions beyond the delegated authority of those attending.]
  
5. Within the Council both sides would be able to:
  - (i) exchange information and discuss with each other matters of mutual interest;
  
  - (ii) consult with each other on all such matters with a view to cooperating with each other where that would be in mutual interest;  
  
and in accordance with paragraph 4 above,
  
  - (iii) agree to cooperate in specified areas or take a common approach to policy, with implementation by each administration through its own system, working through the normal democratically accountable machinery;

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(iv) agree to pursue other action, in specified meaningful areas, at an all-island or cross-border level, through suitable implementation bodies and mechanisms, to be established as set out below.

6. A list of specific areas for the North-South Council to deal with initially is in Annex?

7. At the inception of the operation of the British-Irish Agreement or as soon as feasible thereafter, implementation bodies and mechanisms in the designated areas listed at Annex ?? to be established, with appropriate legal status and procedures for accountability. These bodies to implement relevant agreements of the Council, as set out in paragraph 5(iv) above. Further such implementation bodies and mechanisms may be established in other areas, by agreement of the Council through the procedures in paragraph 4 above.

8. These arrangements to be capable of development, by agreement between each side within the Council and after the endorsement of the Northern Ireland Assembly and the Oireachtas, subject to the limitation of the extent of the competences and responsibilities of the two administrations.

9. Failure to reach agreement on designated matters to be considered by one of the plenary sessions. By agreement between the two sides experts could be appointed to consider a particular issue and report.

10. The necessary costs of the Council and implementation bodies and mechanisms to be funded by the two Administrations as a necessary public function.

SECRET - PERSONAL

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11. This expenditure to be audited jointly by the Comptroller and Auditor-General's Office and by the Northern Ireland Audit Office. Their joint report to be submitted simultaneously to the Oireachtas and to the Assembly.

12. The Council to be supported by a Secretariat, staffed by members of the Northern Ireland Civil Service and the Irish Civil Service. The Secretariat to service the meetings and functions of the Council and to take on other such tasks as both sides may agree.

13. Each side within the Council to consult on the European Union dimension of matters within the designated areas, and consider agreed approaches towards proposals in these areas under consideration in the EU framework, with arrangements to ensure that the views of the Council can be taken into account by each sovereign Government in determining its approach in appropriate EU meetings.

North-south Ministerial Council des

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## British Strand Two Paper: Summary Analysis

### Overview

This British paper represents an improvement on last week's draft, with many of our ideas and some of our language taken on board. Nevertheless, many issues of concern remain, including in particular:

- the concept of the Council as a body with a clear institutional identity does not emerge strongly from the British text, either in paragraph 1 or elsewhere. At all points it is the two sides within the Council, not the Council itself, who are acting. This may be essentially a presentational point, but it is highly important if we are to be able to sell an Agreement to the public;
- the Council would be situated within an East/West context;
- the question of a legislative basis for the Council is not addressed;
- it is not clear whether certain matters would be assigned to the Council in advance, or whether there would simply be a work programme of matters for it to consider;
- the legal basis of implementation bodies, and their relationship with the Council, are not addressed satisfactorily;

The further crucial point remains that the capacity of Northern representatives at the Council to take decisions will ultimately depend on what is agreed in Strand One. In this context, the language on the "agreed mandate" of the Assembly in respect of the delegated authority of such representatives is worryingly imprecise.

### Paragraph 1 (General Purpose and Basis of Council)

The British paper's description of the general purpose of the North/South Ministerial Council has some similarities to that in our text. However, there are significant differences, including:

- British continue to place Council "in the context of the establishment of the [British-Irish

Council].”

- Council to be established under a new Agreement: no reference to legislative basis.
- insertion into the paragraph of language on accountability, which is repeated in more detail in paragraph 4. [*Comment: It would be better from our viewpoint to omit such language from this paragraph. It is not necessary, given that there is a substantive paragraph on the matter. What leaps off the page is that the Council is the creature of the Assembly and the Oireachtas.*]
- Instead of “The Council to have overall responsibility”, the British have “The Council to enable .....”.
- “Integrated action” as a responsibility of the Council is dropped.
- Implementation on an all-island basis to be “where agreed.”
- “Matters of mutual interest” instead of “all matters...”.

#### **Paragraph 2 (Formats)**

Broadly similar to our paper. Idea of participation as an essential function of office-holders is retained. Meetings of sectoral formats to be “on a regular basis” - not “regular and frequent (once a month in each format)”. Idea of general affairs format retained, though name dropped, and meeting to be only “when necessary and as agreed.” No function in reviewing unresolved issues.

#### **Paragraph 3 (Agendas)**

As in our paper.

#### **Paragraph 4 (Decision-Taking and Accountability)**

The British text spells out the procedures for accountability much more fully than we do, making clear that two sides would both operate within their delegated authority, and that explicit Assembly approval would be required for decisions going beyond such delegated authority.

*Comment: The British text seems to me reasonable as far as it goes in spelling out the implications of the concepts of accountability and agreement. Clearly, however, the nature of whatever is agreed in Strand One on the form and extent of executive authority, co-ordination/collective responsibility, mechanisms for accountability, remains absolutely critical. The meaning in this context of "agreed mandate" is crucial. Does it mean that every action of a Northern member of the Council has to be mandated by the Assembly in advance? Or does it just refer to the extent of the competence of devolved institutions?*

**Paragraphs 5 and 6 (Functions)**

Our approach is much more categorical. The British have "both sides would be able." Their description of functions is a reasonable approximation to the Framework's definition of executive, harmonising, and consultative functions. What is not at all clear is, however, whether there would be specific agreement in advance to the assignment of subjects to these categories (other than in respect of implementation bodies). The British "A list of specific areas for the North/South Council to deal with initially" is not definite. It may well amount to the idea of a work-plan from which the Council could later, after initial consultation, choose to assign matters to the higher categories.

**Paragraph 7 (Implementation Bodies)**

British agree that such bodies are, in certain designated areas, to be established at the inception of the operation of the Agreement or as soon as feasible thereafter. They are very vague on the legal basis and status of the bodies, and are silent on their relationship with the Council (save to say that they will implement relevant agreements of the Council)

**Paragraph 8 (Future development)**

Broadly as in our text.

**Paragraph 9 (Disagreement)**

Disagreements are now to be "considered", not "resolved" and in the plenary rather than general affairs format. No reference to overall arrangements for review/fallback (*comment: probably not necessary if adequately covered elsewhere*).

**Paragraph 10 (Funding)**

British accept that "the necessary costs of the Council and implementation bodies and mechanisms

to be funded by the two Administrations as a necessary public function." No reference to our more ambitious ideas on future funding (*comment: may not be necessary to spell out at this stage*).

**Paragraph 11 (Auditing)**

As in our text.

**Paragraph 12 (Secretariat)**

Concept accepted. Not described as "standing" or as a single administrative structure. No reference to its location, or to its right of initiative.

**Paragraph 13 (EU matters)**

British text somewhat weaker. It misses the point that, where a certain matter is to be dealt with jointly, its EU dimension must logically fall within scope of Council.

Our proposals on a North/South interparliamentary body and on an independent Consultative Forum have been dropped.

Rory Montgomery

31 March 1998

**Revised British Strand Two Paper**

- We acknowledge some movement on first draft.
- Fundamental problems remain.
- East/West context - in first sentence - jumps out.
- Paragraph 4 potentially hugely difficult. Depending on interpretation, "subject to ...mandates of NI Assembly..." could mean that each decision required the prior approval of the latter. What does this mean. This is key point.
- Lack of clear institutional identity for Council is major step back from Framework (references throughout to "each side"). Where is collective personality of Council?
- Legislative basis for Council unclear.
- Whether matters are to be assigned to certain levels of functions in advance unclear.
- Relationship between Council and implementation bodies very vague.
- Power of Secretariat to make proposals critical.
- No reference to InterParl Body. This essential. Consultative Forum also omitted.
- Lack of clear institutional identity for