

Dermot Nally Papers

UCDA P254/6

ROUGH OUTLINE DRAFT FOR A POSSIBLE AGREEMENT

I

Introduction

1. [The Government of the United Kingdom] [Her Majesty's Government in the United Kingdom] and the Government of Ireland, after negotiations in which representatives of the four democratic political parties in Northern Ireland (UUP, UDUP, SDLP and Alliance) participated fully, have drawn up the present Agreement. The Agreement is subject to ratification as provided in Section [] below.
2. The Agreement is to be read as an integral whole and each of its parts is to be taken in conjunction with all of the others.
3. The Agreement may be cited as ["The British Irish Agreement 1992"?].

II

4. As the sovereign Governments involved, the Government of the United Kingdom and the Government of Ireland have each made a declaration in relation to their policy in respect of Northern Ireland. These declarations are set out in the immediately following Articles of this Agreement. The two Governments have also joined with all four of the Northern Ireland political parties to the negotiation in a common declaration as set out in Articles 14 to 17 below.

Declaration by the Irish Government

5. The Irish Government, are committed to the principle of national self determination but they recognise that the people of Ireland differ in their traditions and in their political outlook. It is for the Irish Government a matter for regret that these differences became the basis in this century for a political division in the island. They accept, however, that this political division of the island of Ireland

cannot now be ended without the consent, freely given, of a majority of the people of Northern Ireland.

6. For so long as the island remains divided, it shall be their endeavour to develop close and friendly relations between the peoples of both parts on a basis of mutual respect and tolerance. It remains the hope of the Irish Government that all of the people of Ireland, diverse as they may be in their cultural and political traditions, will in the future, agree by mutual consent, to live together in peace and harmony under political structures freely negotiated and accepted by the people of the North and by the people of the South.
7. In order to permit ratification of the present agreement and to permit the electorate to express explicit approval for its terms, the Irish Government will introduce legislation leading to a referendum to amend the Constitution. This legislation will provide for the amendment of Articles 2 and 3 of the Irish Constitution and for the inclusion in the Constitution of a new provision approving of this agreement.

Declaration by the British Government

8. Her Majesty's Government reiterate that Britain has no desire to advance its own direct strategic, political or economic interests in Northern Ireland. Its sole interest is to encourage peace and reconciliation within Northern Ireland and within the island of Ireland; and close and friendly relations between the peoples of both islands.
9. Her Majesty's Government commit themselves fully to the present Agreement and declare that it is their intention to enact legislation to give effect to its terms.
10. Her Majesty's Government declare, further, that they would [gladly] accept and give effect to any arrangements which may be made in the future to bring North and South in Ireland closer together politically and economically provided that such arrangements are democratic and that they are freely negotiated and agreed to by the people of the North and by the people of the South. If the outcome of such a future negotiation should be a decision by the people of the North and by the people of the South, freely taken by a majority vote in each area, to come together in closer union under agreed political structures, then Her Majesty's Government on behalf of the British people would welcome this and cooperate in giving it effect.

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III

Declaration by all parties to the negotiations

11. We, the representatives of the two sovereign Governments and of the four democratic political parties in Northern Ireland, taking account of the preceding declarations by the Irish and the British Governments respectively, solemnly commit ourselves to a new and determined effort to bring peace to the island of Ireland. Past efforts to overcome the legacy of a troubled history have failed. Now is the time to make a new beginning. X
12. We intend this agreement between us to mark a decisive break with the past and an end to conflict and dissension. We acknowledge that all of us have made mistakes in the past. We pledge ourselves now to work for a growth of trust and confidence between our peoples on a basis of generosity and understanding by each of the other's traditions and aspirations. In doing so it shall be our aim to build on the many values which all who live in the island of Ireland have in common and on what is best in the shared history of the peoples of Britain and Ireland to promote a future of peace, justice and prosperity for all our people.
13. We accept the principle of self-determination but we recognise that there are differences of view among those who live in Ireland about how it should be applied in the island of Ireland.
14. In particular we acknowledge that there are different aspirations, strongly held, in Northern Ireland today. These reflect historical differences in outlook and sense of identity between the two main traditions in the island of Ireland, one of which seeks to maintain the status of Northern Ireland within the United Kingdom while the other looks to the achievement in the future, by agreement, of a sovereign, united Ireland.
15. We recognise that both aspirations are legitimate; and that differing views on what should be the future political arrangements on the island of Ireland may be advanced and promoted freely, provided that this is done democratically and by peaceful means.
16. In this present agreement we do not seek to decide definitively between these differing views about the constitutional and political arrangements which should obtain in the island of Ireland. Instead we have agreed between us on a settlement, comprising both constitutional and institutional provisions, which will remain in effect for a specific period of years, subject to further renewal, as set out in Section IV below.

17. We are doing so in order to allow time for reconciliation, healing and the growth of trust between those who differ in their aspirations. Through the political institutions which we are now establishing we seek to promote cooperation between the different traditions within Northern Ireland and within the island of Ireland, without prejudice to differing views, which we know to be sincerely held, on what the future political arrangements in the island should be.
18. We hold to the principle that the consent of the governed is fundamental to the achievement of just and stable political institutions in any society; and we believe further, that stability and well-being will not be found in any political system which is refused allegiance or rejected on grounds of identity by a significant minority of those governed under it.
19. These principles apply within Northern Ireland. We recognise and accept that it is the wish of a majority in Northern Ireland that it should continue to be governed under the Crown. We believe that so long as that continues to be the case, that wish must be respected. If there should be a change at any future date in the view of a majority in Northern Ireland, then special arrangements will be needed to take account of the new situation in conformity with the provisions and the spirit of this declaration.
20. The present agreement establishes a special constitutional status for Northern Ireland for the duration of the agreement as set out in Section IV below. It also recognises and makes provision through the arrangements set out in Section V for the specific character of Northern Ireland as a divided society and the need, through appropriate institutions, to allow full scope and recognition of the differing identities and aspirations within it. ✕
21. There must be full and guaranteed rights and freedoms for every individual; the institutions and structures of society must be responsive to those who live under them; and each of the main traditions within the community must be able to feel that its sense of identity and its outlook are satisfactorily accommodated and find full and democratic expression through appropriate institutions and structures.
22. These principles apply equally to Ireland as a whole; and they must be put into effect if, at any future date, there should be agreement between North and South to establish political unity in the island. Unity in Ireland could come about only by agreement and with the full consent, freely expressed, of [the Unionist community ?] [a majority ?] in Northern Ireland. In that event similar arrangements to those now being put in place in Northern Ireland to accommodate the minority community, would be required.
23. Any such future united Ireland would have to be a pluralist society, with full guarantees for individual freedoms and the rights of every person living within it. The Unionist community, if they agreed to take part, would be entitled to require not only the full guarantees of individual rights and •

freedoms which apply equally to every citizen but such full accommodation and satisfactory expression through political structures as they consider necessary for their identity as a community.

24. As elected Governments and party representatives, we are confident that we speak between us for the overwhelming majority of the people in each of the three jurisdictions we represent in committing ourselves to these aims. We call solemnly on all persons of goodwill in both islands to join us in this task; and we look with confidence to the wider international community to support us in achieving it.
25. A first, vital step is an end to violence. Speaking as we do with the authority of elected representatives on behalf of the people of all three jurisdictions, we call solemnly on all of those who have taken up arms whether to advance their political aims or, as they see it, to defend their community, its values and its way of life, to lay down their arms now and work with us for a peaceful way forward.

IV

Constitutional status

26. The status of Northern Ireland for the thirty-year period of validity of this Agreement shall be that of a territory freely associated with Great Britain, within the United Kingdom, under the Crown. This status will be given statutory authority by the enactment of appropriate legislation by Parliament in the United Kingdom and constitutional approval in Ireland by amendment of the Irish Constitution so as to endorse the present Agreement.
27. At the end of that thirty-year period, the electorate in Northern Ireland will be consulted to ascertain whether they would wish the status of Northern Ireland to remain unchanged for a further period of twenty years or whether they would wish to see that status changed so as to provide for a closer and more direct political relationship between North and South in Ireland going beyond that provided for in the present Agreement.
28. During the period of validity of this Agreement, Northern Ireland will be governed under the provisions set out in the immediately following section of the Agreement. These provisions, taken together, may henceforth be cited as 'The Constitution of Northern Ireland'.

[note: it may be possible to build up this concept of a distinctive constitutional status (linked with institutional provisions) to a greater extent than has been done here]

V

Institutional Arrangements - The Constitution of Northern Ireland
(included here as reminder only)

29. [It is envisaged that, at this point, the Agreement would make appropriate provision for whatever institutions may be worked out in the current negotiations - Strands One, Two and Three. These might include, among other things:-
- (a) An Assembly on lines to be negotiated in Strand 1
 - (b) A "Panel" or other institution with a supervising, monitoring and approving role in relation to the actions of any devolved administration in Northern Ireland. This body in addition to possible elected members, could have members appointed by the British and Irish Governments respectively and by a European body - either the European Court of Human Rights or the European Court of Justice.
 - (c) A North/South Council of Ireland or Inter-Irish Relations Committee (with a Secretariat) which would have
 - (1) a coordination role in certain areas of activity North and South.
 - (2) a direct executive role in certain specified areas in which it would have full authority and responsibility for action.
 - (d) a Bill of Rights; or incorporation North and South of the European Convention on Human Rights.
 - (e) Possibly - a joint Court with membership drawn from North and South(?) This would deal with scheduled offences and with issues arising from the Bill of Rights; alternatively perhaps, a provision under which a joint Court could be established at some future date by agreement
 - (f) Provisions on security to be determined - possibly restructuring of the police force in Northern Ireland either through establishment of separate County forces or through separation of the unarmed community policing and the armed gendarmerie functions; and (possibly) North/South Commission (?). [note: this is both a difficult and an important area]
 - (g) A "residual" role for the Anglo-Irish Conference or some alternative British/Irish structure.

VI

Ratification and entry into effect

30. This Agreement shall come into force when it has been democratically approved and ratified in each of the three jurisdictions. Ratification in Northern Ireland will be by referendum; in Ireland by legislation and referendum amending the Irish Constitution so as to give constitutional approval to the Agreement; and in the United Kingdom Parliament by the enactment of legislation to give statutory force to the Agreement.
31. When the Agreement has been duly ratified and approved in each jurisdiction as provided in Article 4, it will be registered with the United Nations by both Governments as an International Treaty under Article 108 of the Charter.
32. The Agreement shall take effect on the day after completion in all three jurisdictions of the ratification process set out in Article 4. While it remains in effect, the Agreement shall supersede and replace the Anglo-Irish Agreement of November 1985.
33. The Agreement shall remain in effect for a period of [thirty] years from the date on which it comes into operation provided however that:
 - (1) the Agreement will cease to have effect if the two Governments, acting in conjunction, make a joint determination that the institutions provided for in Section V have not come into operation or that they have ceased to function effectively.
 - (2) the Agreement may be terminated on three months notice by joint decision of the two Governments acting with the assent of [any two] [all four] of the political parties in Northern Ireland referred to in Article I.

In either case the Anglo-Irish Agreement of 1985 shall again come into effect and both Governments will continue to operate it fully.

34. If in any of the three jurisdictions there is a decision against ratification in the course of the ratification process set out in Article 4 above, then the present Agreement shall not come into effect and the signatories shall not be bound in any way by its terms. In that event, the Anglo-Irish Agreement of November 1985 shall remain in effect and will continue to be operated by the two Governments.

Annex

There are various ways in which Articles 2 and 3 might be amended and the proposed new Agreement given constitutional endorsement. One way of doing so would be to the following:

Add a new Article after Article 3 in the following terms:

- (1) It is hereby declared that the reintegration of the national territory referred to in the preceding Article shall take place only with the consent of a majority in each part of Ireland.
- (2) The State may ratify the Agreement signed at - on - and the provisions of this Constitution shall be read subject to its terms.