

# **Dermot Nally Papers**

**UCDA P254/91**

SECRET

Meeting in Government Buildings on Constitutional Issues  
June 30th 1994

Present

British Side: Sir John Chilcot, Mr. Quentin Thomas

Irish Side: Dr. Martin Mansergh and the undersigned

1. Dr. Mansergh, opening the meeting, recalled the Taoiseach's comment that the constitutional issue was part of a larger exercise. Unless it was part of that wider package, Constitutional change, however satisfactory, would leave a political deficit. He recalled that nationalists in Northern Ireland looked to the Irish Government as their guarantor. They saw Articles 2 and 3 as the symbol of the right of the Irish Government to be involved. If they felt they were being abandoned, it would raise serious doubts whether a referendum could be sold in this jurisdiction.
2. Sir John Chilcot agreed the enterprise was part of a much larger attempt. Although the Irish side had invited the British side into dialogue on the Constitutional issue, its technical and legal terms had to be for the Irish side. The British could comment, but not more. There were two central points: the first was the question asked by the Prime Minister in Corfu: Did this withdraw the territorial claim? The second was how any agreement would be reflected in the framework document. The sensitivity of touching on Constitutional matters in the framework document affected also the balancing point in relation to Articles 75 of the Government of Ireland Act.
3. Dr. Mansergh agreed any proposal must pass both the political and the legal test.



4. Clilcot then asked for an assessment of Molyneaux position. Was his downplaying of the significance of Articles 2 and 3 a positive or a negative signal?
5. O' Huiginn thought that Molyneaux was balancing the devolutionary and integrationist tendencies in the Unionist Party. His downplaying of Articles 2 and 3 could be interpreted as a reassuring signal to the integrationists that he was really interested in a local Government type accommodation.
6. Chilcot said that there was two interpretations possible: either Molyneaux was trying to discount the value of Articles 2 and 3 as a nationalist bargaining chip, or he was trying to create an impasse where a deal was impossible. Clilcot himself inclined to the former view. He enquired about the SDLP attitude to Constitutional change.
7. Dr. Mansergh said they empathically did not want unilateral change in the Irish constitution. O' hUiginn said that Hume saw all of these issues being transcended in a European-type approach. Mallon would be very conscious of the fears of ordinary nationalist that they could be abandoned. McGrady also very strongly reflected Northern nationalists' traditional wariness in this area.
8. Chilcot asked whether Sinn Fein would accept change in the interests of nationalist solidarity, or would they be tempted to outbid other nationalist forces on this issue?
9. Dr. Mansergh said they used to be dismissive of Articles 2 and 3 as verbal Republicanism. An opportunity to outflank all other nationalists on the issue would be very tempting. On the other hand they wanted to come into the mainstream, so there would be countervailing tendency to avoid a major rift with the SDLP and the Irish Government. O' hUiginn thought that much would depend on the "gut reaction" of



Northern nationalists. It was difficult to predict reactions and if, in spite of our efforts, nationalists reacted negatively, Sinn Fein would be almost certain to jump on that bandwagon. That in turn could produce a political domino effect on the SDLP and, ultimately, in the South. Anything seen as a step back from the Declaration would be used to suggest that the Government's peace initiative had concealed an ulterior motive.

10. Thomas said that if Molyneaux was sceptical on the possible trade of Articles 2 and 3 for deep North-South institutions, how much more sceptical would he be if the trade-off was merely about change in Article 3 and not Article 2. If the problem was the fear of Northern nationalists that they were being abandoned there could be explicit provisions in a new agreement to show there was no such act of abandonment. The role of the Irish Government could be acknowledged in various ways.
11. O'hUiginn said this underlined the need made for an acceptable overall package. Thomas pointed out that the guarantor role had a certain value when asserted by the Irish Government, but a much greater value when accepted by the British Government.
12. Dr. Mansergh stressed that the maintenance of Article 2 was essential. The Irish proposal took Articles 2 and 3 as a whole. The Prime Minister's fears that there was no cross reference between Articles 2 and 3 were unfounded. The claim of right to govern Northern Ireland was explicitly withdrawn. The distinction between the Nation and the State was important for us. The proposal dealt with the Nation, and any claim of jurisdiction by the State was withdrawn. The British should understand that the proposal met their substantive concerns, but without giving the impression of a "sell-out" on the nationalist side.



13. Chilcot accepted that the proposed text widened and deepened the distinction between the Nation and the State. He asked whether identity played a role. Was the nation the people born on the island, irrespective of their outlook? Dr. Mansergh said it would be difficult to depart from a comprehensive definition of the nation - "Catholic Protestant and Dissenter".
14. Chilcot stressed again that an unamended Article 2 was a very major political problem on the British side. Dr. Mansergh pointed out there were many Unionists who identified themselves as Irish. Even if some de facto acceptance were allowed for opt out, it would be important to make clear that the Nation covered 32 counties.
15. Chilcot said the nation implied people but Article 2 was about ground. He asked whether we could accept an amendment which said "the reintegration of the national territory, to include the whole island of Ireland etc. is a legitimate primary national objective etc. (remainder of proposed text unchanged)" with however the present order of Articles 2 and 3 reversed to make clear through the new sequence that the definition of territory in Article 2 was subservient to the proposed redraft of the present Article 3.
16. Dr. Mansergh said the approach of the Government was of "minimum necessary change" to the Constitution. Irrespective of order, Article 3 governed Article 2. The psychological need on our side was to give the impression of minimum movement.
17. Chilcot and Thomas said that the need on their side was to show change. The problem was that Article 2 was manifestly about territory. The language of the Joint Declaration enshrined a different vision, and dealt with people who might exercise rights in particular ways.



18. Dr. Mansergh disagreed that the proposed amendment was still about territory. It was about the Irish political position. The desirability of unity has been accepted in the Treaty etc. in 1920-21. It was even referred to in Mayhew's recent "Sunday Life" article.
19. Thomas quoted from speeches from the Taoiseach that there could also be legitimate exercise of Irish self-determination which did not result in unity. That was difficult to reconcile with the emphasis on Ireland as a territorial unit.
20. Chilcot enquired whether the new elements in Article 3 could be inserted before Article 2 e.g. as 1(a). O'hUiginn said that an amendment which reversed the existing order of the two articles would give rise to endless byzantine debates, and would be a political quagmire.
21. Chilcot repeated that leaving Article 2 unamended could create such major political difficulties with Unionists as to make an accommodation difficult or impossible, irrespective of what followed. Dr. Mansergh recalled that Mr. Michael McGimpsey had said that he had no problem with Article 2. He stressed that the changes put forward on the Irish side were far reaching and had been volunteered unilaterally.
22. Challenged by Thomas to say how he would sell the proposal to Unionists Dr. Mansergh pointed out that it removed the claim of jurisdiction and explicitly recognised that there would be no imposition or coercion. If any Constitutional imperative now remained it was an imperative merely to seek consent. The decision on the political future was being remitted to the people.
23. Thomas objected that the changes proposed would be



discounted as being already in the Joint Declaration. It would be pointed that the package was ambitious and deep in relation to Strand 1, North-South structures and the continuing role of the Inter-Governmental Conference, whereas the changes to the Irish Constitution would be minimal. The heart of the matter was that Article 2 remained unchanged. Dr. Mansergh objected that that was not the heart of the matter and reiterated the significant nature of the changes proposed.

24. At Chilcot's invitation Dr. Mansergh went through the proposed redraft of Article 3. He said the political idea was that the people were sovereign, and legitimacy derived from the wishes of the people of Northern Ireland, either in conjunction with people in the South or alone. The word "objective" was weaker than "imperative" but stronger than "aspiration".
25. Thomas enquired whether the objective was that of the nation, or of the state, or both? Would all arrangements be subject to an overriding pre-agreed national objective? How would this be reconciled with the notion that an agreed Ireland might not necessarily be a united Ireland?
26. Dr. Mansergh said that an agreed Ireland, even if not a united Ireland, would not preclude a united Ireland for all the time. He confirmed, in response to a question from Chilcot, that the proposed wording did not prejudice the conclusion that an agreement short of unity was acceptable. Chilcot raised the difficulties inherent in the "fifty percent plus one" approval for a united Ireland. Did the reference to majority in the proposed text mean a simple majority, and did that preclude e.g. weighted majority.
27. The Irish side confirmed their understanding that it referred to a simple majority and felt a shift now to a weighted majority would be seen by Northern nationalists as



"changing the goalposts". O'hUiginn suggested that probably the best protection against this danger were agreed institutions, both within Northern Ireland and in Ireland as a whole. Dr. Mansergh pointed out that the text for the first time envisaged the need for a referendum in the South as a condition for unity. This was a hidden protection, in that the electorate down here would probably refuse a proposal likely to produce great turmoil.

28. Thomas enquired whether that wording was compatible with Article 1 of the Anglo-Irish Agreement, which pledged the Irish Government to legislate for unity in the event of a majority in Northern Ireland so deciding. It was agreed that this legal complication should be referred to the lawyers.
29. Dr. Mansergh said the use of the word jurisdiction did not of itself imply je iure status. This derived in the text from a combination of the removal of "without prejudice" clause, the explicit references to consent, and the recognition of the fact of a separate jurisdiction. Legitimacy in Irish eyes, would be derived from the decision of the people, and not, for example, from the Act of Union. The Taoiseach had been careful to refer only to British jurisdiction.
30. Dr. Mansergh said we did not have difficulty referring to the UK in various texts. The term went back to union with Scotland in 1707, although he accepted that the British on their side might want to refer to "the United Kingdom of Great Britain and Northern Ireland," as derived from the Act of Union in 1800. The doctrines could be compatible, but not identical. The British Side clarified this to mean the Irish would see Northern Ireland as Irish territory under British jurisdiction, while the British would see Northern Ireland as part of the British territory of the United Kingdom of Great Britain and Northern Ireland. The common



element would be acceptance of United Kingdom.

31. Chilcot thought that what was needed was a common statement on which both sides could agree. O'hUiginn enquired if that meant they saw the Constitutional amendment on our side as enabling provisions for a wider agreement, rather than the substance of the agreement itself. Chilcot confirmed this was so.
32. Dr. Mansergh asked the opinion of the British on the proposed change in Article 75 of the Government of Ireland Act. Chilcot said jokingly their problem was that we "pinched their parliamentary draughtsman" (?) There could be a problem with the Unionists, who would try to "run the price up" once the Government of Ireland Act was mentioned. He was hopeful there would not be a major problem. Thomas was less optimistic, recalling Peter Robinson's statement that the Anglo-Irish Agreement had "put Northern Ireland on the window ledge of the union," and would see this as worse. Dr. Mansergh argued in detail that the proposed change did no more than reflect, or bring up to date, the broad constitutional approach adopted in the 1920-21 period.
33. Discussion continued on a more informal level over lunch. The British side repeated, in somewhat more emphatic terms than used at the meeting that without a change in Article 2 it was difficult, if not impossible, to envisage a deal. The Irish side emphasised again the difficulties involved: if Article 2 were not in the Constitution already, things might be somewhat easier. However it was in the Constitution and therefore any change would be an immediate focus of controversy. Northern nationalists were fearful of abandonment. They wanted some objective form of recognition for their part in the Irish nation. Any change in Article 2, to be meaningful for the unionists, presumably had to say that Northern Ireland was not part of the national territory. That would be used to infer it was not Irish, or



would become Irish only when Unionists agreed.

34. Chilcot and Thomas canvassed on a personal basis some form of alternative scenario. They seemed to have in mind a detailed new agreement, which dealt in a new way with the complexities of the situation, including extensive recognition of the status and rights of nationalists in Northern Ireland. Chilcot speculated that this might go as far as a scrapping of the Government of Ireland Act in favour of a comprehensive new treatment of the situation. They thought that much could be done through a people based approach, which could not be done in a territorial based approach.
35. The Irish side pointed out that the formula in the Joint Declaration was, in essence, an enhanced recognition of the All-Ireland framework by the British in return for enhanced recognition of the principle of consent on the Irish side. Anything which now moved away from an all-Ireland framework was obviously problematic in terms of follow-up to the Declaration. Anything which left the rights of Irish people in, say, Crossmaglen, (however generous) equivalent to the rights of Irish people in Kilburn missed an essential psychological point. Nationalists would look to some formal and objective acknowledgment of their rightful participation in the Irish nation. They would inevitably interpret a change in Article 2 as a move in the opposite direction. Unless the British side could offer some safe way out of that dilemma, it was very difficult to see nationalist approval for any change in Article 2.
36. There was an informal exchange on the possibility of getting work completed before a possible Summit in July. Chilcot was highly dubious on the prospect. Thomas was less so, considering that if the hard political decisions could be taken on the territorial issue, much could then be done quickly.



37. It was agreed that both sides would report the discussion to Ministers. A further meeting could be held in London on Thursday 7th July to review how things stood.

A handwritten signature in dark ink, appearing to read 'Seal', with a long horizontal stroke extending to the right.

Sean O hUiginn

30 June 1994