

# **Dermot Nally Papers**

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**Shape of a Northern Ireland Settlement: A Possible Outline**  
**Summary of Papers Prepared in Anglo-Irish Division**

1. The Anglo-Irish Division has prepared, as a stimulus to discussion, a number of working papers on a wide range of the issues under consideration at the multi-party negotiations. These are brought together in the attached brief. This note summarises the key proposals and suggestions made in the papers. It is hoped that this will facilitate an overview of what a package emerging from the negotiations might conceivably look like.

**Strand One: Structures in Northern Ireland**

2. The Government is not involved in Strand One negotiations, nor is much said about arrangements within Northern Ireland in the Joint Framework Document, other than that they should enjoy cross-community support (the British, of course, published A Framework for Accountable Government in Northern Ireland simultaneously with our joint text). However, building on suggestions from the SDLP, we have prepared material for consideration. This would need to be discussed further with the SDLP and, in due course, Sinn Féin.
3. The paper suggests that a wide range of matters, though not initially including policing and justice, would be devolved to Northern Ireland from Westminster. Local institutions would have both executive and legislative functions.
4. There would be an **Assembly**. Most or all of its members would be elected on a PR-STV basis from 18 5-seater constituencies (with the same boundaries as the Westminster constituencies). Thought might be given to some form of top-up, using a variant of the list system, both to bring in members of small parties (especially the loyalists) and possibly to rectify slight nationalist under-representation.

5. To protect the interests of the nationalist community, and effectively to enshrine cross-community partnership, there would be provision for the use in decision-making of a form of weighted majority. This would combine both a percentage threshold (say 60%) and a variant of the sufficient consensus rule, which would mean that majorities among the representatives of the two communities would be required.
6. It is suggested that, even though the Assembly would have a strong committee system, executive powers would be exercised not through the chairs of those committees, as the UUP propose, but through a cabinet-style **Executive**, formed by a coalition of parties. These would need to be able collectively to meet the weighted majority/sufficient consensus threshold. There would be a **First Minister** and a **Deputy Minister**, and perhaps up to **eight other** members of an Executive.

#### **Strand Two: North/South Structures**

7. The establishment of a **North/South body with executive functions** is fundamental for the Government. There is otherwise no realistic possibility of Sinn Fein or the SDLP signing up to a settlement, or of constitutional change being put to a referendum. For the Government, therefore, this is a central and critical part of the negotiations.
8. Our general approach is loosely based on the **EU model**, making due allowance for the differences between the two situations. There would be a **North/South Council**. It would involve Ministers/Heads of Department from both North and South with responsibility for specific sectors or areas of responsibility. There would also be arrangements for Summit-level meetings, and perhaps also for some sort of **General Affairs Council** to oversee the broad spectrum of work.
9. The Council would have the **general purpose of promoting consultation, co-operation and common action** on all matters of mutual interest. Its level of responsibility in regard to these matters would be three-fold: (i) it would in certain designated areas **take decisions, determine policy, and agree arrangements for the implementation** of those decisions or policies; (ii) in other specified areas the members of the Council would use

their best endeavours to reach agreement, which could result in joint action or the adoption of a common policy; (iii) on all other matters the Council would act as a forum for consultation and co-operation: it would of course be open to the two sides, by agreement, to take joint action or adopt a common policy on these matters also.

10. Implementation of the decisions and policies of the Council would be either by functional **executive bodies**, or by the two administrations acting separately.
11. The Council would operate by agreement between the two sides, each of which would be bound by whatever rules for political accountability and collective responsibility existed within its system. Participation would be a duty of service in the two administrations.
12. The Council would agree its own financial requirements and those of subordinate bodies, which to begin with would be based on current levels and patterns of expenditure. While this would have to be studied further, we could in due course envisage it being funded by block grants from North and South on an agreed key. Legal arrangements also need to be sorted out.
13. We would envisage that the Council would be supported by a **Secretariat**, made up of officials from both North and South.
14. There would be arrangements for the Council's view to be put forward in **EU institutions**, through the association of its representatives with those of the Irish and UK delegations. We might undertake that the joint Council view would be advanced by the Irish Government in relevant instances.
15. There would also be a **North/South parliamentary forum**, and a **consultative forum** appointed by the two administrations comprising the social partners and authorities on social and economic questions.

16. Intensive analysis of which **matters** which might from the outset be designated as falling within the **executive competence** of the Council and where, therefore, all-island agencies would be established is currently in progress. Our sense is that it will be necessary to set priorities, and to seek agreement on a selective but appropriately high-profile list.

Leading candidates for designation from the outset could be drawn from:

- policy formation and implementation of the **CAP**
- EU initiatives including **INTERREG**, the **Programme for Peace and Reconciliation**, and **LEADER** (or its successor).
- **Tourism** promotion (including formation of a single tourism body)
- **Overseas marketing** of Irish goods and services (including formation of a single trade promotion body), and services in support of domestic industries
- **Training and employment** services
- The protection of the **island's cultural heritage** and the promotion of **the arts** (including the formation of single Irish language, heritage and arts bodies)
- **Sport** (including the formation of a single sports body).
- **Marine research**
- **Aquaculture**
- **Science and technology** policy
- **Environmental protection**
- **Waste management**
- **Regulation of local radio**
- **Management of inland waterways**
- **Wildlife conservation**

**Industrial development**, including foreign investment, should also be considered. Its inclusion would require agreement on a common tax regime, North and South.

A wide range of other matters would be specified as falling within the second level of the Council's competence, i.e. in these areas the two sides would use their best endeavours to reach agreement on common actions or policies.

All other matters would be the subject of consultation and the exchange of information.

There would be clear scope for the development by agreement of the Council or its functional bodies, and for the extension of its competence.

### **Strand Three: East/West Structures**

17. Our paper recognises that the creation of structures within Northern Ireland, and structures involving both North and South, will address the need for institutional expression of some key relationships. We propose in addition the creation of a **British/Irish Council** which would bring together for the purposes of consultation and co-operation on matters of mutual interest the British and Irish Governments and the administrations in Northern Ireland, Scotland and Wales.
18. The Council would primarily involve meetings at summit level, but there would be scope for co-operation, consultation and joint initiatives at lower levels on an ad hoc basis, as agreed. In addition, there would be scope for the development, under the general umbrella of the Council but not under its direction, of bilateral or multilateral links between two or more of its members. Particular arrangements would be put in place in recognition of the special relationship on East/West matters which exists between the two sovereign governments.
19. Distinct from arrangements for co-operation on East/West matters, there would be a **British/Irish Intergovernmental Conference** in relation to Northern Ireland, in particular in regard to non-devolved matters. It would also be a forum for North/South

co-operation on such matters. Matters would be transferred between it and the North/South Council depending on the extent of devolution to Northern Ireland institutions, the representatives of which would be associated with the meetings of the Conference.

20. There would be a revamped **British/Irish Interparliamentary Body** which would bring in members of the three devolved institutions in the UK.

#### **Constitutional Matters**

21. As part of a comprehensive overall settlement, there would be balanced constitutional change. Options for the wording of possible changes to our Constitution, in line with the commitments made in the Joint Declaration and the Framework Document, are under internal consideration. The British Government will be required to bring forward new constitutional legislation, incorporating the commitments made by them in the Joint Declaration and Framework Documents, and repealing the relevant sections of the **Government of Ireland Act, 1920, and the Northern Ireland Constitution Act, 1973.**

#### **Human Rights**

22. As envisaged in the Framework Document, fundamental rights (both individual and communal) would be the subject of enhanced protection, both through the inclusion in an overall agreement of a Bill of Rights or equivalent provisions, and through strengthened monitoring and enforcement arrangements. General constitutional legislation should enshrine such key concepts as non-discrimination and equality of treatment. There is a commitment on our part to adjusting our own human rights protections in line with whatever is agreed within Northern Ireland.

#### **Policing Reform and Justice/Equality and Confidence Issues**

23. The justice/equality areas represent a further critical dimension of the Talks from a nationalist standpoint. The **policing issue**, in particular, will be essential to the securing of an overall agreement. While the Sinn Féin demand for the disbandment of the RUC

is regarded by other parties as unrealistic, the SDLP, in particular Séamus Mallon, have made clear that without a commitment at the very least to substantial reform and change in regard to policing, an overall settlement will not secure the agreement of even moderate nationalists. On the other hand, unionist resistance to any significant change in the RUC, including in the Talks context, remains undiminished (our sense is that this view may well be shared on the British side, certainly at official level). The issue will, therefore, require very careful handling in the Talks.

24. As a possible option, we are exploring an approach which would combine a commitment to the broad principles which should govern future policing arrangements (including acceptability to both communities, balanced representation in recruitment, changes in culture, practice and structures, including the options of regionalisation or a two-tier service) with agreement on the creation of a Commission which would be required to present detailed proposals for change, both in policing and in the legislative framework in which it operates, within a defined timescale. Whichever approach is adopted, it is evident that this is a most important issue for the nationalist population on the ground. Moreover, it would be necessary for commitments to change, if they are to be carried through in practice, to be expressed in the clearest possible terms in advance of a settlement.
  
25. While issues such as fair employment and the promotion of the Irish language will probably be taken forward most productively outside the Talks, there is also scope for using the opportunity presented by the Talks to encourage action by the British Government. **The Irish language issue carries a particular resonance for Sinn Féin.** Here too, commitment to general principles as part of an overall settlement would be important. The same applies to confidence issues, including prisoners issues, and the de-escalation of security measures. Some general understanding on prisoners will, however, be essential if Sinn Féin or the loyalists are to buy in to a settlement.

#### **Decommissioning**

26. The resolution of the decommissioning issue has been agreed by the Plenary to be an



indispensable part of the process of negotiation. The Independent Commission is at present elaborating possible practical schemes for decommissioning. However, prospects for actual decommissioning, either during the negotiations or afterwards, remain unclear, and continue to depend on further progress on political issues. How this issue will be taken forward, both practically and in terms of its place in the negotiations, remains a matter for further consideration.

#### **Validation of Agreement**

27. The two Governments are committed to putting the outcome of negotiations to the people, North and South. We are exploring the technical issues associated with the preparation and timing of a referendum or referendums, and with the elaboration of a new British-Irish Treaty, to replace the Anglo-Irish Agreement.

#### **Review and Monitoring of Agreement**

28. The Framework Document proposes that the two Governments would have a general monitoring and guarantee role in relation to agreed arrangements. In addition, there might be merit in a formal review process which would bring together the parties, the two Governments and the current Independent Chairmen. Furthermore, EU and US representatives might sit on a board overseeing the disbursement of what is hoped could be a substantial package of additional economic support for a settlement. Consideration could be given to associating the International Fund for Ireland with such an initiative.