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Message

Constitutional Issues

When you met David Hill and Chris Maccabe earlier this week, I understand they promised you some factual background on constitutional issues. You were interested in the key statements of position of the British Government in recent years on these issues. I attach extracts from the relevant texts. The Anglo-Irish Agreement, Downing Street Declaration and the Framework documents were of course agreed under the previous Government: but the Labour Party manifesto recalled Labour's support for all three, and in particular for the principle of consent.

You asked for a listing of the key pieces of constitutional legislation. They seem to us to be the following:

The **Act of Union 1800** of the Parliament of Great Britain, together with the **similar Act of the Parliament of Ireland**, which gave effect to articles of union jointly put forward by the two Parliaments, uniting from 1 January 1801 the two separate kingdoms of Great Britain and Ireland, which already shared a king. In consequence was established a Parliament of the United Kingdom of Great Britain and Ireland (the style of which was altered to "the Parliament of the United Kingdom of Great Britain and Northern Ireland" by the Parliamentary and Royal Titles Act 1927).

The **Government of Ireland Act 1920** made provision for two Parliaments and two Governments in Ireland. Following the establishment of the Irish Free State, the **Irish Free State (Consequential Provisions) Act 1922** provided that the 1920 Act should no longer apply to any part of Ireland other than Northern Ireland.

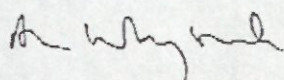
The **Ireland Act 1949** recognised that the part of Ireland to be known as the Republic of Ireland had ceased to be part of His Majesty's Dominions, though it declared that the Republic of Ireland was not to be regarded a "foreign country" for purposes of UK law. It also included provision on the constitutional status of Northern Ireland - similar to that now in section 1 of the Northern Ireland Constitution Act 1973 (below), except that it referred not to the consent of the majority of the people of Northern Ireland voting in a poll, but to the consent of the Northern Ireland Parliament.

The **Northern Ireland Assembly Act 1973** and the **Northern Ireland Constitution Act 1973** established a new system of devolved government in Northern Ireland, to replace that under the Government of Ireland Act 1920, which had until the imposition of direct rule in 1972 remained in force there. A number of extra provisions concerned chiefly with how devolved Government could be resumed in Northern Ireland were added by the **Northern Ireland Act 1982**. One key element of the Constitution Act is section 1(1), whose terms are set out in the attachment.

The **Northern Ireland Act 1974**. The two Acts of 1973, and the 1982 Act, remain in force; but, since the resumption of direct rule in 1974, they have been suspended from year to year by Orders made under the Northern Ireland Act 1974 (with the approval of Parliament). The Act overlays the 1973 provisions with the machinery of direct rule. So it is possible to legislate by Order in Council for subjects on which the Assembly set up in 1973 would have been able to legislate; executive powers which would have fallen to the devolved authorities are exercised subject to the direction and control of the Secretary of State etc.

You ask what "balancing" constitutional changes the Government envisaged as part of a settlement. I have already mentioned the extracts from the Downing Street Declaration and the Frameworks Document below. You will also have noted the references in the Propositions of 12 January to balanced constitutional change based on commitment to the principle of consent in all its aspects by both British and Irish Governments, to include changes to the Irish Constitution and to British constitutional legislation; and the clarification of that reference in paragraph 5 of the accompanying joint statement, in which it was recorded that constitutional change would include changes to section 75 of the Government of Ireland Act 1920. We are of course working further on this, with a view to discussion of it in the Talks process.

I am hoping to be in Castle Buildings on Monday, and would be happy to talk you through this further then.



A J Whysall

(20 March 1998)

CONSTITUTIONAL ISSUES

View of the British Government

1. Northern Ireland is a part of the United Kingdom in domestic and international law.
2. Relevant texts bearing on the British Government's view on constitutional issues are set out below.

Section 1 of the Northern Ireland Constitution Act 1973

It is hereby declared that Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom, and it is hereby affirmed that in no event will Northern Ireland or any part of it cease to be part of Her Majesty's Dominions and of the United Kingdom without the consent of the majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1 to this Act.

Article 1 of the Anglo-Irish Agreement, 15 November 1985, and the main relevant preambular paragraph

[The British and Irish Governments ...]

recognising the need for continuing efforts to reconcile and to acknowledge the rights of the two major traditions that exist in Ireland, represented on the one hand by those who wish for no change in the present status of Northern Ireland and on the other by those who aspire to a sovereign united Ireland achieved by peaceful means and through agreement ...

- a) affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland
- b) recognise that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland
- c) declare that, if in future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish.

Paragraph 4 of the Downing Street Declaration, 15 December 1993

The Prime Minister on behalf of the British Government, reaffirms that they will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland. On this basis he reiterates, on behalf of the British Government, that they have no selfish strategic or economic interest in Northern Ireland. Their primary interest is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island, and they will work together with the Irish Government to achieve such an agreement, which will embrace the totality of relationships. The role of the British Government will be to encourage, facilitate and enable the achievement of such agreement over a period through a process of dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland. They accept that such agreement may, as of right, take the form of agreed structures for the island as a whole, including a united Ireland achieved by peaceful means on the following basis. The British Government agree that it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish. They reaffirm as a binding obligation that they will, for their part, introduce the necessary legislation to give effect to this, or equally to any measure of agreement on future relationships in Ireland which the people living in Ireland may themselves freely so determine without external impediment. They believe that the people of Britain would wish, in friendship to all sides, to enable the people of Ireland to reach agreement on how they may live together in harmony and in partnership, with respect for their diverse traditions, and with full recognition of the special links and the unique relationship which exists between the peoples of Britain and Ireland.

Paragraphs 14-21 of "A New Framework for Agreement"

14. Both Governments accept that agreement on an overall settlement requires, inter alia, a balanced accommodation of the differing views of the two main traditions on the constitutional issues in relation to the special position of Northern Ireland.

15. Given the absence of consensus and depth of divisions between the two main traditions in Northern Ireland, the two Governments agree that such an

accommodation will involve an agreed new approach to the traditional constitutional doctrines on both sides. This would be aimed at enhancing and codifying the fullest attainable measure of consent across both traditions in Ireland and fostering the growth of consensus between them.

16. In their approach to Northern Ireland they will apply the principle of self-determination by the people of Ireland on the basis set out in the Joint Declaration: the British Government recognise that it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment to exercise their right of self-determination on the basis of consent, freely and concurrently given. North and South, to bring about a united Ireland, if that is their wish; the Irish Government accept that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

17. New arrangements should be in accordance with the commitments in the Anglo-Irish Agreement and in the Joint Declaration. They should acknowledge that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of the people of Northern Ireland. If in future a majority of the people there wish for and formally consent to the establishment of a united Ireland, the two Governments will introduce and support legislation to give effect to that wish.

18. Both Governments recognise that Northern Ireland's current constitutional status reflects and relies upon the present wish of a majority of its people. They also acknowledge that at present a substantial minority of its people wish for a united Ireland. Reaffirming the commitment to encourage, facilitate and enable the achievement of agreement over a period among all the people who inhabit the island, they acknowledge that the option of a sovereign united Ireland does not command the consent of the Unionist tradition, nor does the existing status of Northern Ireland command the consent of the nationalist tradition. Against this background they acknowledge the need for new arrangements and structures - to reflect the reality of diverse aspirations, to reconcile as fully as possible the rights of both traditions, and to promote co-operation between them, so as to foster the process of developing agreement and consensus between all the people of Ireland.

19. They agree that future arrangements relating to Northern Ireland, and Northern Ireland's wider

relationships, should respect the full and equal legitimacy and worth of the identity, sense of allegiance, aspiration and ethos of both the Unionist and nationalist communities there.

Consequently, both Governments commit themselves to the principle that institutions and arrangements in Northern Ireland and North/South institutions should afford both communities secure and satisfactory political, administrative and symbolic expression and protection. In particular, they commit themselves to entrenched provisions guaranteeing equitable and effective political participation for whichever community finds itself in a minority position by reference to the Northern Ireland framework, or the wider Irish framework, as the case may be, consequent upon the operation of the principle of consent.

20. The British Government reaffirm that they will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland. On this basis, they reiterate that they have no selfish strategic or economic interest in Northern Ireland. For as long as the democratic wish of the people of Northern Ireland is for no change in its present status, the British Government pledge that this jurisdiction there will be exercised with rigorous impartiality on behalf of all the people of Northern Ireland in their diversity. It will be founded on the principles outlined in the previous paragraph with emphasis on full respect for, and equality of, civil, political, social and cultural rights and freedom from discrimination for all citizens, on parity of esteem, and on just and equal treatment for the identity, ethos and aspirations of both communities. The British Government will discharge their responsibilities in a way which does not prejudice the freedom of the people of Northern Ireland to determine, by peaceful and democratic means, its future constitutional status, whether in remaining a part of the United Kingdom or in forming part of a united Ireland. They will be equally cognizant of either option and open to its democratic realisation, and will not impede the latter option, their primary interest being to see peace, stability and reconciliation established by agreement among the people who inhabit the island. This new approach for Northern Ireland based on the continuing willingness to accept the will of a majority of the people there, will be enshrined in British constitutional legislation embodying the principles and commitments in the Joint Declaration and this Framework Document, either by amendment of the Government of Ireland Act 1920 or by its replacement by appropriate new legislation, and appropriate new provisions entrenched by agreement.

21.

As part of an agreement confirming the foregoing understanding between the two Governments on constitutional issues, the Irish Government will introduce and support proposals for change in the Irish Constitution to implement the commitments in the Joint Declaration. These changes in the Irish Constitution will fully reflect the principle of consent in Northern Ireland and demonstrably be such that no territorial claim of right to jurisdiction over Northern Ireland contrary to the will of a majority of its people is asserted, while maintaining the existing birthright of everyone born in either jurisdiction in Ireland to be part, as of right, of the Irish nation. They will enable a new Agreement to be ratified which will include as part of a new and equitable dispensation for Northern Ireland embodying the principles and commitments in the Joint Declaration and this Framework Document, recognition by both Governments of the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its constitutional status, whether they prefer to continue to support the Union or a sovereign united Ireland.