

STRANDS TWO AND THREE - ESTABLISHING AN ULSTER UNIONIST POSITION

The recent joint Government position paper "Propositions on Heads of Agreement " offers an acceptable basis for us to begin negotiation , and also helps to speed us the process itself . While this is welcome , the paper can only offer itself as an acceptable framework for negotiation , it would not be acceptable as a final settlement . It is clear that it is likely that we will soon be in detailed final phase negotiations , and before we can enter such a phase , it is important that we have thought through in our minds the limits of our negotiating position , and consequently what our bottom line should be in each regard , and as a consequence what we should be prepared to offer as initial positions , with appropriate fall backs . This paper is designed to stimulate thought in clarifying that position .

1 CONSTITUTIONAL CHANGE

This is a problematical political area for us as any agreement here will provoke ill informed criticism from other Unionists . However , it is vital in any agreement , that any new relationship with the Republic must be based on a removal of the territorial claim . Separation of the concepts of the notions of entitlement to membership of the Nation on the one hand and the State on the other should be the guiding principle . The proposed change to Article 2 would appear to be acceptable . However , the proposed Article 3 would merely re-inforce the constitutional imperative . We need to remove the term "national objective " and replace it with a less strident concept .

In return the Republic will look for a balanced change in British constitutional legislation . Perhaps we should initially make proposals which only offer changes to the Irish Constitution , but ultimately be prepared to accept cosmetic but constitutionally insignificant changes to British legislation . This could include the repeal of S75 of the 1920 Act (but not its amendment) and a new consent clause in any new legislation . The new consent clause would have to be appropriately worded , and we would have to examine any proposals . For example , any consent clause which placed consent in an All Island context ie condetermination of consent North and South , would be totally unacceptable . Similarly we should not tolerate any tampering with the title deeds to the Union itself eg Act of Union , S1 of the 1920 Act . We should be reticent to make swift formal offers of British constitutional change , as in the event of a settlement not being reached , it would be a stick for unionist opponents to beat us with .

2 COUNCIL OF THE BRITISH ISLES (AND RELATIONSHIP WITH NORTH-SOUTH ARRANGEMENTS)

Much of the detail on COBI has already been spelt out in the explanatory document we produced on the subject, and this should be the guiding document in any proposals that we should make . COBI should act as the umbrella organisation for all the sets of relationships within the British Isles . Crucially , this means that provision should be explicitly made to allow implementation of agreements reached within at a summit level , and ratified , to be implemented on a British Isles wide basis . It is clear that if there is to be co-operation between the UK and the Republic , that in a number of cases the most practical method of implementation is on an Islands wide basis eg social security fraud , immigration etc . , There therefor needs to be explicit provision for such implementation .

Secondly , any provisions need to explicitly ensure that variable geometry can become a reality . Thus as well as provions for meetings at the full summit level , there must be provision and rules for meeting between two or more jurisdictions , with corresponding action . It is vital that anything that can be done between Northern Ireland and the Republic , could and will be done between Northern Ireland and Scotland . Arrangements for such Council meetings must be included .

There are three ways in which proposals could be put forward to ensure that the North-South arrangements are under the umbrella of COBI.

(a) Explicit detailed arrangements for Sub-Council meetings and action between two or more jurisdictions . Here North- South would be totally subsumed within COBI , with Strand 3 totally encompassing Strand 2 . There would be no need to directly mention even provisions for North-South , as it would merely be one of a range of relationships within COBI . There would be no direct mention of North- South structures anywhere else within the Agreement . Although this is the ideal solution from our point of view , it will be the least acceptable to Nationalists .

(b) Explicit provision is made for North-South arrangements . However these are put within the section on COBI and thus are clearly and perhaps explicitly a subset of Strand 3. In this model any arrangements for North - South would exactly mirror the other arrangements for relations between jurisdictions. It would clearly be an explicit off shoot of COBI.

(c) North- South arrangements contained in a seperate section from COBI . This weakens the umbrella argument from our point of view , and is thus the least acceptable to us. However , if there was explicit reference in COBI to covering the totality of relationships , and arrangements for other inter jurisdictional co-operation mirrored exactly the North- South arrangements , it would be acceptable to us . It would however have to be our bottom line . We could thus present North-South as an implicit off shoot of COBI .

Whatever model is put forward , we could also provide for an inter Parliamentary tier on a COBI basis . COBI is used as a useful shorthand , and indeed the title should not be of any major significance to us .

3 NORTH - SOUTH COUNCIL (ACCOUNTABILITY)

While we should envisage lower level co-operation at civil servant level , the formal basis of North - South co-operation should be at ministerial level , with appropriate safeguards .If properly agreed this can ensure that any relationship is politically accountable ,controllable by unionist politicians (the only group who can be relied upon to prevent a nationalist dynamic being created) and dependant on the existence of a Northern Ireland Assembly .Broadly speaking our model of Ministers of similar functions meeting to discuss matters can be in line with the proposed North - South ministerial Council proposed . The key problems will lie in the twin issues of accountability and implementation . Here we will need to be most vigilant , as they is probably the most politically sensitive (and therefor dangerous) element of the Talks Process . It is also the key area where the gulf being ourselves and Irish Nationalism is likely to be widest . Whereas the document is ambiguous on this at the moment , we will need to reach an agreement which protects the unionist position , and is clear enough to survive mischevious misiinterpretation . Whatever the bona fides of the people we are seeking to strike a deal with , we need arrangements which will survive potentially more clearly malevolent politicians in years to come . In short we must not agree something which in practise will become a booby trap for us at a later date .

There should therefor be key parts of any arrangement which we should not concede if we are to ensure accountability . Firstly , the role of the body should be consultative and co-operative in nature . Decisions should only be taken on the basis of recommendations and should not in themselves alone be binding . Thus the body itself cannot have an Executive Power . While prior mandate is useful , of greater significance is subsequent ratification . This is the only guarantee both that any such body is deprived of executive powers and also on a practical basis that any agreed policy or action is of benefit to the people of Northern Ireland . Prior mandate alone , which would in effect be public ,could weaken the hand of any Northern minister in negotiation , and provides no check as to whether that minister has subsequently acted within that mandate . Similarly , agreements based on the contingency of subsequent ratification , would be in practise possible with other regions of the UK , I cannot see any of them giving a free hand to their ministers to sign agreements without subsequent ratification . Lack of subsequent ratification would thus in effect blow any chance of symmetry between East-West and North - South and thus undermine the whole rationale behind our proposals. Thus for both practical and political reasons we cannot leave out the need for subsequent ratification , and thus the supremacy of the Assembly in North-South relations.

There are three other aspects to accountability. Firstly, the restriction of any North-South Council to matters which are devolved to an Assembly. I will deal with this later. Secondly, we should strive to ensure that protection is given to our position by the need for a Unionist to be present to constitute the North-South Council. This would mean that we would need rules requiring either two or three ministers/heads of Committee/ Deputy Heads to be present to enable a North-South Council to be constituted. The problem here is that it is less easy to objectively justify than the issue of subsequent ratification. The key guarantee should be subsequent ratification, but failure to guarantee a Unionist veto within the Council itself at all times, could be a stream of agreements coming from nationalist ministers North and South, which the Assembly would be under constant pressure to accept. This would create a politically difficult and dangerous situation for us. We should be loathe to accept such a situation.

Finally, we would require any decisions taken in a North-South Council to be unanimous, to prevent the North being outvoted. This should be the least problematical of the areas of accountability to achieve, as such proposals are already contained within the joint Government proposals.

4 NORTH- SOUTH COUNCIL (IMPLEMENTATION)

Along with accountability this is another crucial area which will make or break any agreement. The pressure will be put on us to agree the establishment of all Ireland agencies to implement North-South agreements. This should be resisted by us at all costs for a number of reasons, which I believe should preclude the offer of even a few all Ireland agencies as a tokenistic gesture.

- (1) Such proposals would be difficult to sell to the unionist electorate and politically damaging to the Party.
- (2) Acceptance of such bodies would divide and maybe even destroy the Party. In short, for both (1) and (2) such bodies are politically unsellable.
- (3) It is wrong in principle, and goes against the whole concept of our separate membership of the United Kingdom.
- (4) Once the principle is accepted, then the only grounds to refuse further all Ireland bodies is practicality. This becomes a very difficult line to draw as is a question of degree. The vast bulk of governmental functions could be done by an all Ireland agency if desired.
- (5) Once established, it would be difficult to see any British Government abolishing them, and indeed if the Assembly fell, the overseeing North-South Council could be filled easily by Government placemen. Thus there would be an incentive for hardline nationalists to bring down any Assembly, which because of the cross community requirement would be inherently unstable.

(6) Once established , there will be an inherent dynamic in such bodies , and there will be a consistent to both increase the number and scope of such agencies .

(7) Such bodies are not really accountable .

(8) There is no real need for all Ireland agencies to in practise achieve cross border co-operation.

(9) The existence of an All Ireland agency in any area of Government will effectively nullify any possibility of real co-operation with any other region of the UK. It will thus weaken the ability of East-West to mirror North- South and destroy the proper context on any Agreement .

(10) The practical effect of such agencies in practise will be to harmonise policies North and South , and thus in effect slowly detach Northern Ireland from the mainstream of the UK.

(11) We need to bear in mind the possibility of both the Talks failing to reach Agreement , and then the Government putting forward a Frameworks type referendum to the people . To defeat such a referendum will be difficult enough , but to do so we will need to show both that our proposals are reasonable , and that Government proposals are unreasonable . Whereas the first necessity means that we need a reasonable final stance , the second necessity means that there has to be sufficient clear blue water between our proposals and any Government Frameworks type proposals . To support even one or two all Ireland agencies in our proposals , would leave the public confused as to why we couldn't accept a Government proposal for say ten . Poisonous Government proposals would merely be seen as a slightly greener version of our own blueprint .

Given I think therefor these problem , it is important to examine the options surrounding implementation , or at least those which could be contained in any agreement .

(a) Explicit ruling out of All Ireland agencies . Here the agreement would explicitly state that any policy or action agreed between North and South would be implemented seperately . Arguably this is the most desireable from our point of view , and the least acceptable to nationalists .

(b) Appropriate agreed mechanisms . This would state that implementation of policies/action would be by the appropriate mechanism agreed by North and South . This would by implication allow implementation at a later date by all Ireland agencies , but only with our agreement (which I doubt in practise we would ever) and not explicitly saying so .

(c) By appropriate mechanisms such as This is a variant on (b) and would spell out the range of mechanisms eg a cross border body covering a limited geographical area , seperate implementation . This could explicitly include all Ireland agencies, but again leave a veto for us , which we would have to employ in the future, as well as other co-operative options.

(d) Implementation by all Ireland bodies . This explicitly names the method of implementation and therefor removes alternative options by implication . It does not name specific North- South bodies up front .

(e) By all Ireland bodies , with specific examples . This would name the first tranche of all Ireland agencies in the Agreement, and obviously point the way in other areas . A more subtle variant on this would be to name a number of all Ireland agencies upfront but leave other areas of co-operation a little more vague.

In negotiations , the opening nationalist position , as already suggested by the Irish is (e) . The current British - Irish document is probably closest to option (d) on at least one interpretation . However , if the willingness were there it would require much amendment to bring it into line with option (c) . I believe that options (d) and (e) are unacceptable to us . We should consider putting forward an initial position of either option (a) or (b) , with option (c) as our fall back bottom line .

5 ROLE OF HM GOVERNMENT AND THE IRISH GOVERNMENT

Ideally meetings of the two Governments should be under the auspices of COBI . It is however clear that whatever the structure of meetings , that both Governments will want to meet each other . This is something we must accept. Proposals to include us where matters concerning Northern Ireland are discussed are welcome .

However , it is clear that any future relationship must be within the context of a replacement for the Anglo-Irish Agreement . With the provision for a small secretariat for COBI , we must ensure that the Maryfield Secretariat is got rid of . Similarly , we must be wary to prevent any opportunity for the two Governments to establish any North-South ministerial bodies in non devolved matters . The Republic has already flagged up the possibility of a North-South Council on security , manned by NIO ministers and their Southern counterparts . Such a proposal would set a very dangerous precedent and would undermine safeguards in other areas .It must therefor be resisted at all costs .

6 OTHER ISSUES

There are three other areas we need to watch out for . Firstly , nationalists will want to build in a dynamic within the agreement . We must be careful on this . We are looking for a settlement not a transitional arrangement . Consequently any future development of relationships must be subject to our veto .

Secondly , we must avoid any override mechanisms . This was clearly spelt out in the Frameworks Documents. We should avoid allowing the two Governments rights

to interfere in the work of the Assembly or North-South relations. We can't allow big brother to look over our shoulder and effecttively force us to be good boys and girls if we are not behaving as nationalists would want . In particular , we must avoid the default mechanisms envisaged in the Frameworks Documents , so that North-South structures continue in the event of the Assembly being scrapped . Co-operation must be entirely dependant on the existence of the Assembly , otherwise it will merely be an incentive for nationalists to bring it down .

Finally we should avoid any reference to North South harmonisation . If harmonisation is to happen anywhere it should be on a British Isles wide basis .