

STRAND TWO - CONSTITUTIONAL ISSUES

Paper presented by the Irish Government

1. In its paper, "Strand Two - Principles and Requirements", the Irish Government stated that "an accommodation will involve an agreed new approach to the traditional constitutional doctrines of the two Governments and the two main traditions along the lines set out in paragraphs 14-21 of *A New Framework for Agreement*". This current paper seeks to elaborate further on the position of the Irish Government in that regard. Given their centrality in terms of the position of the Irish Government on the matter, the paper includes the full text of paragraphs 14-21 of *A New Framework for Agreement*, together with a brief commentary, where appropriate. The paper is an introductory one and the Irish Government will be expanding further on its position on the matter as the negotiations proceed.
2. Paragraphs 14-16 of *A New Framework for Agreement* state as follows:
 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 consent of a majority of the people of Northern Ireland.*
3. This remains the guiding basis of the Irish Government's approach, shared by the British

Government, to self-determination and consent in the constitutional context. The Irish Government recognises that while the approach of the two Governments to the principles of self-determination and consent has attracted broad support, North and South, there is not full agreement on how these principles are to be exercised. Securing the widest possible level of agreement across both main traditions in this regard will be a core task of these negotiations.

4. Paragraphs 17-18 of *A New Framework for Agreement* state as follows:

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 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.*

5. The Irish Government believes that the challenge for all of the participants in the negotiations will be to develop in detail the shape and nature of such arrangements and structures dealing with the totality of relationships, including in the North/South context, in a way which will secure the agreement of the widest possible spectrum of opinion in Northern Ireland and Ireland as a whole.

6. Paragraph 19 of *A New Framework for Agreement* states as follows:

19. *They agree that future arrangements relating to Northern Ireland, and to 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 the 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.

7. The Irish Government believes that it will be essential that the accommodation achieved in regard to the constitutional expression of identity and allegiance meets the requirements of both main traditions in a balanced and even-handed way. The Joint Declaration acknowledged that there can be no stability under a system rejected on grounds of identity by a significant minority and there is widespread acceptance of the need for both traditions to feel secure about their future, whatever constitutional framework should pertain.
8. In paragraphs 20 and 21 of *A New Framework for Agreement*, the two Governments spelled out the commitments which they will respectively discharge in executing the new approach for Northern Ireland agreed by them, as follows:
 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 their jurisdiction there will be exercised with rigorous impartiality on behalf of all of 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 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 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 would 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.

9. The Irish Government wishes to reiterate that the context of proposals for change described above will be, as outlined in the Joint Declaration and the Framework Document, (a) an overall settlement and (b) 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. The Irish Government is deeply sensitive to the reality that what is at issue in this regard for both main traditions are matters of the most profound importance for each in terms of national identity, allegiance, aspiration and ethos. The Irish Government repeats, therefore, that what emerges in terms of constitutional change cannot reflect in any sense the pre-eminence of one tradition over the other, but rather must represent an honorable, balanced accommodation of the positions of both.