

## THE FRAMEWORKS PROPOSALS AND THE EUROPEAN DIMENSION

(A briefing paper - October 1997)

### 1: Europe on the Agenda

References to the European Union in the Framework documents are at times mystifying, and mutually contradictory. But the evidence suggests that they are seen by the two Governments as of considerable significance.

As recently as October 9th, 1997 the NIO Minister responsible for EU matters, Mr Paul Murphy, told a conference at Queen's University that 'the EU is a significant factor in improving the political situation' here, and that 'the fact of EU membership and all that has done for Northern Ireland and for the Republic of Ireland will help the talks process considerably'.

In paragraph 2 of the introduction to A Framework for Accountable Government in Northern Ireland, the two Governments commit themselves to create institutions and structures which 'while respecting the diversity of the people of Ireland, would enable them to work together in all areas of common interest'. The paragraph continues:

The two Governments recognised that such structures would include institutional recognition of the special links that exist between the peoples of Britain and Ireland as part of the totality of relationships, while taking account of newly forged links with the rest of Europe.

At the very outset, therefore, a European dimension to the new institutions or structures is put on the agenda. Nevertheless, that same document also notes that matters relating to foreign affairs would not be devolved to Northern Ireland, but would remain at Westminster. A final section to this first part of the Frameworks, paragraph 28., is headed Relationships with the European Union, and states:

New institutions in Northern Ireland would be responsible for implementing EC legislation and programmes in the transferred field. They would also be responsible for developing Northern Ireland's views on EU issues and representing them to the UK Government and in any new North/South institutions. Further consideration would need, to be given, with the British Government, to the arrangements which will be necessary for this purpose. These arrangements must respect the British Government's responsibility for the whole of the UK in the European Union and before the European Court of Justice.

So while the European dimension is flagged as something to be taken into account when creating new institutions and structures, this section of the



Frameworks indicates the limitations imposed by the UK's obligations as a member state of the EU.

## 2 The Wider Relationships

In the second part of the Frameworks, A New Framework for Agreement, however, these limitations seem to be largely ignored. A key paragraph may be no. 19 of the New Framework, which states that

They (the Governments) 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 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 short the 'parity of esteem' principle must extend to Northern Ireland's wider relationships. That phrase, 'Northern Ireland's wider relationships', must presumably include Northern Ireland's relationship with the European Union. Why else use it? The only other conceivable relationships would be those with the rest of the United Kingdom, and with the rest of the island of Ireland, and they could easily have been specified without recourse to this rather vague phrase. Besides, the EU has already been indicated, in Part 1, as something to be taken account of in any new arrangements.

Assuming that the phrase does indeed include the European Union, then paragraph 19 is stating that Northern Ireland's dealings with the EU must somehow respect the nationalist identity and sense of allegiance to Dublin. If the rest of the paragraph is also taken to apply to the EU dimension, then the two Governments are committed to institutions or arrangements for relations with the EU which afford 'satisfactory political, administrative and symbolic expression and protection' to the nationalist 'identity and sense of allegiance'.

How can that be? As we have already seen, the Frameworks themselves specifically recognise the responsibility of the UK Government for Northern Ireland in the EU, and declare that any new arrangements must respect this. Under the Treaties governing the European Union, Northern Ireland is a region of the United Kingdom, and all its dealings with the Union, and its relationship to the Union, is as a region of the member state, the United Kingdom.

It is extremely difficult to envisage any arrangements for Northern Ireland's relations with the EU which could combine proper observance of that, with



affording 'satisfactory political, administrative and symbolic expression and protection' to the nationalist sense of allegiance to the Irish state.

The only way of honouring this commitment in paragraph 19 would seem to be to give the Irish Government some role or part in the handling of relations between Northern Ireland and the European Union. Yet this is surely impossible under the present legal framework of the Union, and is in conflict with the insistence that new arrangements must respect the British Government's responsibility for the whole of the UK in the European Union.

Should it be assumed, therefore, that paragraph 19 cannot, after all, include the European Union in Northern Ireland's 'wider relationships'? Or is the explanation that Part 1 of the Frameworks, where the British Government's responsibility for Northern Ireland is affirmed, is the assessment of the *British* Government only, while Part 2 is a joint assessment put together by the two Governments? (This is made clear in the overall introduction to the Frameworks, paragraph 9, and in paragraph 1 of Part 1.) This is a point which requires clarification. NIO Ministers, however, have repeatedly declined invitations to clarify it.

### 3 The Broader Framework

It is useful to examine the issue in the context of the rest of the Frameworks, and also in the light of frequent assertions, by Irish Ministers and others, that it is both desirable and possible, that, for example, Dublin Ministers should speak on behalf of Northern Ireland in the EU's Council of Ministers.

The New Framework for Agreement, paragraph 26, dealing with new North/South institutions states clearly that 'specific arrangements would be needed to apply to EU matters'. It continues:

Any EU matter relevant to the competence of either administration could be raised for consideration in the North/South body. Across all designated matters and in accordance with the delegated functions, both Governments agree that the body will have an important role, with their support and cooperation and in consultation with them, in developing on a continuing basis an agreed approach for the whole island in respect of the challenges and opportunities of the European Union.

As the southern administration is the Government of a Member State of the EU, with all EU business relevant to its competence, this means that any EU matter whatsoever could be discussed in the North-South body. Thus Northern members could raise any issue they liked about the Republic's EU policies and involvement, including presumably topics like neutrality, and the Southern Members could raise a range of issues on which the Northern



members had no competence whatever. The scope both for point-scoring and pointless debate would seem considerable.

The commitment to 'an agreed approach for the whole island' to the European challenge has a fine rhetorical ring to it, but is circumscribed by the fact that such an approach is limited to 'designated matters' and 'delegated functions', presumably meaning those matters placed within the competence of the North-South body.

Article 31 makes it clear that the Governments intend including 'EC programmes and initiatives' among the functions which might be designated 'at the outset' as coming under executive control of the North-South body, and the second part of paragraph 26 deals in more detail with functions over which the new body would have executive control. It says

In respect of matters designated at the executive level, which would include all EC programmes and initiatives to be implemented on a cross-border or island-wide basis in Ireland, the body itself would be responsible, subject to the Treaty obligations of each Government, for the implementation and management of EC policies and programmes on a joint basis. This would include the preparation, in consultation with the two Governments, of joint submissions under EC programmes and initiatives, and their joint monitoring and implementation, although individual projects could be implemented either jointly or separately.

What does that mean? At one level it is common sense; if a new North-South body has executive responsibility for a range of functions, and those functions fall within the scope of EC policies and programmes, then the North-South body might indeed reasonably be responsible for the implementation and management of those policies and programmes, *subject to the Treaty obligations of each Government*. It could be argued that the paragraph leaves scope for going further in that it appears, automatically, to give the North-South body responsibility for all European 'programmes and initiatives' to be implemented on a cross-border or island-wide basis.

In practice very few EC programmes or initiatives are implemented on a cross-border or island-wide basis. The Special Support Programme for Peace and Reconciliation is one example of a cross-border programme, as are the INTERREG initiatives. INTERREG One, 1991-93 was jointly prepared and administered - in theory at least - by the Department of Finance in Dublin and the Department of Finance and Personnel in Belfast. The INTERREG 2 programme itself says priority will be given to actions promoting the joint planning and implementation of cross-border programmes, and the setting up of shared institutional and administrative structures to sustain and promote co-operation.



In this respect the Frameworks are in line with the general EU approach to cross-border programmes. There was speculation during discussion of the Special Support Programme for Peace and Reconciliation that a special agency might be set up to administer the programme, rather than leaving it in the hands of the two departments. The Dublin Government backed this idea; the result would have been a cross-border executive to administer a programme 80% of which would be inside Northern Ireland, a most unusual procedure which has not, in the event, been followed.

Part of the concern over paragraph 26, therefore, would be that what initially appears as a sensible and practical approach could, in the event, mean that EC programmes which are largely related to Northern Ireland would be administered by the new joint North-South body.

Paragraph 26 is not just about cross-border projects. It lumps these together with programmes and initiatives which might be administered on an 'all-island basis'. The cross-border concept in the EU is related to border regions; an 'all-island' programme in Ireland would include a border region of one member state alongside the entire territory of another member state, an arrangement probably without parallel elsewhere in the EU.

What has not been made clear, either in the Frameworks, or subsequently by the Governments, is the extent to which the Treaty obligations of the two Governments would circumscribe the 'responsibility' of the North-south body for EC programmes and policies. How would the North-South body relate to the institutions of the EU? For example, would it deal directly with the European Commission in its preparation of submissions under EU programmes, and in their implementation?

Would the North-South body in time assume a quasi-governmental role *vis a vis* the institutions of the EU? Or, on the other hand, would it help preserve the rather privileged relationship Northern Ireland has enjoyed with, for example, the European Commission? (It could be argued that Northern Ireland, more than any other UK region, has been allowed, by the UK Government, to develop its own direct dealings with Brussels, to its advantage.)

What is needed is clarification of how the proposals in this section of the Frameworks would actually work in practice. While there is scope, even need, for more consultation and cooperation between North and South on EU programmes and policies, this matter has to be considered in the light of the almost total lack of interest shown hitherto by the two Governments. It must also be viewed against the background of the repeated suggestions from Dublin that it could more effectively represent Northern Ireland's interests in Brussels than London does, and that some such arrangement would be highly desirable.



#### 4 Unnecessary Harmonisation

European Union aspects of a range of policies and activities are mentioned as areas for potential harmonisation (paragraph 32). The examples given suggest a very limited approach, but the possibility is left open for harmonisation on a very broad scale, though no attempt is made to say why such harmonisation would be beneficial, or how it would relate to the harmonisation of the relevant functions in Northern Ireland with those in the rest of the United Kingdom. The stress on harmonisation in a European context is somewhat odd; the concept of harmonisation is largely discredited in European integration circles. It was a vogue of the 70s, much criticised by United Kingdom Governments. The whole thrust of the Single Market programme of the 1980s and 1990s, much supported by the United Kingdom, has been to abandon harmonisation except where absolutely essential to the open market, and to opt instead for mutual recognition and subsidiarity. For instance the "harmonisation" of teacher training between North and South in the island of Ireland is an illogical objective, when mutual recognition of teaching qualifications between the United Kingdom and the Republic is guaranteed under a 1989 European Directive. In practice that mutual recognition is of limited value as the Government of the Republic insists that a qualification in the Irish language is essential - even to teach metal-work to English-speakers - and has had recourse to the European Court to defend that position. There is no need for "harmonisation" of teacher-training to allow teachers to move freely within their profession throughout Ireland - just a relaxation of Dublin's Irish language rule.

That example illustrates why harmonisation was largely abandoned in pursuit of the European single market. The objectives of the market - free movement of goods, services, people and capital - were seen to be much more readily and efficiently attained on the basis of mutual recognition, than by the painful and interminable process of harmonisation.

#### 5 A Low Priority

Under a new Anglo-Irish agreement to cover east-west matters, the Governments see an Intergovernmental Conference providing a framework for a coordinated approach on EU issues. Paragraph 49 leaves it open as to whether this would be achieved through formal or ad hoc arrangements.

This reference to Anglo-Irish coordination in the area of EU affairs is a reminder of how low a priority such coordination, or even North-South coordination on EU matters, had had up to the Frameworks documents.



Cooperation between Northern Ireland and the Republic on European Union matters would seem an obvious and positive area for consultation and a degree of coordination, but one of the remarkable features of the workings of the Anglo-Irish Agreement has been the almost total lack of any such inter-governmental consultation.

When the Agreement was negotiated and signed in 1985, both Northern Ireland and the Republic had been within the European Community for more than a decade. Yet the only reference to the EC in the thirteen articles and numerous sub-clauses of the Agreement comes in the preliminary paragraph expressing the wish to develop close cooperation between the UK and Ireland 'as friendly neighbours and as partners in the European Community'. There is no mention of the European dimension in the mandate given in the Agreement to the Intergovernmental Conference, not even where it deals with Cross-Border Cooperation on Economic Matters. In Article 10 (a) the two Governments say they will cooperate to promote the economic and social development of areas which have suffered most from the Troubles, and they will consider the possibility of securing international support for this work, but there is no reference to the European Community.

Since then the mechanisms of the Agreement - the Conference and the Secretariat - seem to have played little or no part in coordinating approaches to the EC. Nor for many years was there much evidence of effort to coordinate approaches outside the Agreement. In 1987 the problem caused to the Republic by the rapid growth of cross-border shopping was solved, not by consultation through the Agreement, but by unilateral action and a case at the European Court of Justice. The comprehensive development plans drawn up in 1989 for both Northern Ireland and the Republic for presentation to the European Commission under their designations as Objective 1 regions for structural aid showed little sign of awareness of each other. Embarrassingly, the Northern plan sought funds for the upgrading of the Belfast-Dublin rail link, while the Southern Plan made no similar request as regards the Dublin-Belfast link.

By 1993, when plans for the second round of structural aid (1994-99) were being drawn up, both private and public sector interest in cross-border cooperation had increased considerably, and was increasingly discussed in the context of the European Union, partly because the Single Market was already boosting the volume of cross-border trade. This time the plans submitted by Belfast and Dublin to Brussels included an identical chapter, headed **Cooperation with the Republic of Ireland**, in the Northern plan, and **Cooperation with Northern Ireland**, in the Dublin document. The chapter noted similar strengths and weaknesses in both parts of the island, and said closer integration in the EC posed similar challenges. It added that there was a need to examine ways of deploying EC aid so that it would yield 'the maximum level of mutual benefit both North and South', while at the same time conceding that the relationship between the two parts of the island was in some aspects characterised more by competition than by cooperation.



The chapter was able, rather blandly, to state that a great deal of economic cooperation, did, of course, already exist and steady progress in promoting cross-border partnership had been made over the past decade. It also asserted that the scope for enhanced collaboration remained considerable. It pointed to INTERREG, and to other EC initiatives such as STRIDE and STAR which had cross-border elements, the latter having helped fund the optic fibre link between Belfast and Dublin. It noted the cross-border dimension to the work of the International Fund for Ireland, and the involvement of the CBI (NI) and the Irish Business and Employers' Confederation in promoting cross-border trade, and exploring the east coast economic corridor.

The two governments then identified five priority areas for enhanced cooperation under the Structural Funds and indicated some ways in which this might be achieved. But the chapter included no major new projects or initiatives, nor did it suggest any new mechanism to ensure enhanced cooperation between the two administrations. Outside the cross-border programmes such as INTERREG and Peace and Reconciliation, contacts between Belfast and Dublin on the implementation of the comprehensive development plans north and south, both funded by Brussels, remained, and apparently remain, essentially ad hoc.

## 6 Europe and Irish Unification

It would seem that institutional or structured cross-border cooperation as regards the EU became a priority only in the political context of the Framework proposals, where it could be presented as an obvious candidate for an all-island approach. This enthusiasm for common cause in the European arena for clearly political purposes, coupled with very little action at a practical level, has long been a feature of the nationalist approach.

Garret FitzGerald, writing in 1972 on the eve of the UK and Ireland joining the EC, gave as his view that membership of the EC might well prove to be the most important single factor influencing events in a positive direction as regards the removal of what he called the psychological and economic obstacles to Irish unification. 'Such influence as membership of the EC will have is likely to be uniformly directed towards easing the path towards a united Ireland.' (*Towards a New Ireland*)

This was based partly on a belief that EC membership would eliminate economic differences between the UK and the Republic, but also on his prediction that common interests within the EC would draw north and south together, as it became obvious that in some areas, such as agriculture and regional policy, Northern Ireland would be closer to the Republic's concerns than to those of Great Britain. He noted that Northern Ireland's representation in the institutions of the EC, as a region of the UK, would be indirect, unlike that of the Republic, and that it would have only one member in the European Parliament. It was clear, he wrote, that Northern Ireland's



interests would be much better represented by the Republic than by Britain, and this must bring the two parts of Ireland together. He suggested the Republic might 'make available' to Northern Ireland part of its representation in the European Parliament. He predicted that modifications of national sovereignty in the context of European integration would take the heat out of transferring Westminster's powers over Northern Ireland to Dublin.

Dr FitzGerald and other southern politicians have returned frequently to this assertion that Northern Ireland's interests within the EU are more closely aligned to those of the Republic than they are to those of the UK generally, and that therefore the Government of the Republic might more appropriately and efficiently represent Northern Ireland in Brussels. At other times Dr FitzGerald has put forward the proposition that Dublin might represent Northern Ireland in international affairs generally.

While these propositions sound manifestly absurd, requiring as they would, for implementation, a complete revision of the European Union and its Treaties as well as major constitutional change for the United Kingdom, they appear less so to nationalists who have, for more than 20 years, had their sights fixed on some form of joint authority over, or shared responsibility for, Northern Ireland as their preferred solution. Representing the whole island at international level would satisfy what have become the largely theoretical ambitions of southern nationalism.

Similar and related proposals continue to emerge from the south. For instance the (Dublin) Institute of European Affairs, in its Report on the 1996 Intergovernmental Conference entitled **Issues, Opinions, Implications** considered the policy options for Dublin regarding Northern Ireland and the EU in a situation where the United Kingdom continued to resist further European integration, and extended its practice of opting out of major policy areas, and made the following suggestion:

Northern Ireland could be designated as a special region of the Union entitled to choose whatever Community policies suited its regional interests from among the policy packages applying separately to the Republic and to the UK. This idea has been already advanced on the grounds that economic growth could be enhanced by allowing the Northern Ireland economy to dine à la carte off the EU policy menu.

A related proposal had been made earlier by, among others, Dr Garret FitzGerald again, to the effect that Northern Ireland might be represented in Brussels by *either* London or Dublin, the province being given the option of deciding which more nearly represented its interests in particular policy areas - the *à la carte* approach. There were indications that there was at least some support for this idea within the Northern Ireland Office. A later publication from the Institute, **Britain's European Question; The Issues for Ireland**, credited Sir David Fell, then Head of the Northern Ireland Civil



Service, with the 'imaginative proposal' that Northern Ireland be treated as a special case for the purposes of EU policy, suggesting that Northern Ireland's best interests might be served by aligning in different policy areas with the Irish or British positions, choosing, issue by issue, which suited it better, and also of raising the question of both Dublin and Belfast delegating the management of their relations with the institutions of the EU to some new north-south body.

Sir David, speaking at seminars in Belfast and Dublin, had referred publicly and somewhat non-committally to these proposals, but in private had offered the opinion that given sufficient imagination and political will, the idea of Northern Ireland dining *à la carte* in Brussels was possible. This was clearly taken as an indication of UK Government willingness to contemplate such an arrangement.

The latest support for such thinking came recently, in the summer of 1997, when Michael O'Kennedy spoke at the Magill Summer School in August. While not regarded as the Republic's shrewdest thinker, O'Kennedy is a very experienced politician, having been Foreign Minister and having served as European Commissioner. He has also been a member of the Parliamentary tier of the Anglo-Irish Agreement. He chose this speech as the occasion for announcing his intention to seek the Fianna Fail nomination for the Irish presidency.

Declaring that the European Union 'can and must' play a major part in shaping the future Ireland, he said:

The people of Northern Ireland, and their elected representatives, have been effectively deprived of any meaningful or influential role in the European Union and in the regular negotiation by Member States at the Council of Ministers, which is a vital part of the Union's business. Their elected representatives, in sharp contrast with their counterparts in the Republic, have no role and no place at the Council of Ministers or at the European council. The United Kingdom Government has never nominated a Commissioner from Northern Ireland while the other regions of the United Kingdom, namely Scotland and Wales, have been so represented. It is time to end this discrimination against Northern Ireland representatives.

O'Kennedy claimed that lack of direct representation underlined the disability from which Northern Ireland suffered in the European Union. 'In fact it is fair to say that the major discrimination affecting Northern Ireland at this point is in the vital area of international relationship where it has no direct voice either at the European Union or United Nations.' The basic cause of this unfortunate situation, he said, was the Government of Ireland Act of 1920. This was now



'outdated and inadequate' and did not serve today's needs of the Northern Ireland people in the European Community. On the other hand he maintained it could be argued that the 1937 Constitution imposed on Dublin 'a *de jure* if not *de facto* obligation to provide non discriminatory representation at international level' for all the people on the island.

He repeated the argument that within the EU there were many areas, such as agriculture, fisheries, tourism, regional development, social policy, education and the environment, where the interests of Northern Ireland were much more closely aligned with those of the Republic than with the rest of the United Kingdom. A classic example of this, he said, was the BSE crisis. Somewhat extravagantly O'Kennedy asserted that 'uniquely, of all the regions throughout the European Union, Northern Ireland has no visible or effective presence at the crucially important negotiation sessions of the Union', while the Republic had actually presided over important negotiations.

Therefore I am suggesting that there is great scope for according formal access for the elected representatives of Northern Ireland to our delegations at the Council of Ministers in the European Union. This could eventually develop to a shared role with the Republic in all negotiations affecting the direct interest of the people of Northern Ireland.

The elected representatives of Northern Ireland are entitled by right to the same privileges and responsibility as those of any other region in the EU. It is unthinkable that they would willingly and deliberately deprive themselves of the exercise of that right if offered to them. Such an arrangement, far from being in conflict with the Constitution of Ireland, would be entirely in harmony and consistent with it. It need hardly be said that the effect of such an initiative would be far-reaching and exciting.

There is much that is bizarre, even absurd, in these comments and proposals. Northern Ireland, for example, has probably had more direct and privileged access to the institutions of the EU than any comparable small region in a large member state, and it is, numerically, over-represented in the European Parliament in comparison with other UK regions, and with comparable regions in other large member states. The European Commission also has its own representative office in Belfast, Northern Ireland being the smallest of the very limited number of regions anywhere in the EU to have one.

The O'Kennedy proposals may not be in conflict with the Irish constitution, but they certainly would be with the constitution of the United Kingdom and with the basic Treaties of the EU. The significance of the speech is that it illustrates rather extravagantly the tenacity with which southern political leaders cling to the idea that the European Union somehow holds the clue to persuading Unionists to accept constitutional change.



## 7 Nationalism and European Integration

Northern nationalism, as represented by the SDLP, has repeatedly stressed its strong support for European integration, and has described the ideals and institutions of the European Community as providing both inspiration and model for a solution in Northern Ireland. At party conferences John Hume has spoken more simply of 'a new Ireland in a new Europe' or 'an Ireland that is whole in a Europe that is whole'.

He was thus deliberately, and with considerable success, seeking to identify his own party's basic nationalism with the progressive idea of European integration. In his own person he has, remarkably, managed to gain a world-wide reputation as a radical statesman in a post-nationalist Europe, while at the same time remaining the leader of a party based on the old-fashioned, simplistic nationalism which was the prime cause of war and division in Europe, and which remains the antithesis of European integration today.

In this massive confidence trick he has been aided by the crudely anti-European posture of unionism. By enthusiastically endorsing the Euroscepticism of the British Tory Party, or dabbling, as Mr Paisley does, in the darker recesses of the Old Testament to vilify the European integration movement, unionism has enhanced Mr Hume's progressive image on the wider stage, and by extension has helped obscure his essential nationalism.

The idea of involving the European Community and Irish and UK membership of it, in some real and practical way in the Northern Ireland situation seems to have begun in the context of the Brooke-Mayhew talks of 1991 - 1992. Thus in 1992 the SDLP told the Mayhew talks that the party believed that 'the EC institutions offer an accessible and persuasive model of how new arrangements for Northern Ireland might be shaped...'

The SDLP's 'European model' proposal put to the Mayhew talks, designed to give the Irish Government a formal, if small, role in the administration of Northern Ireland, sought also to involve the European Commission. A six-man commission to administer NI was to include, in addition to three elected members, members nominated by each of London, Dublin and the European Commission. When President Delors effectively ruled out any such direct participation by the Commission, the European nominee was quietly dropped from public statements and comments by Mr Hume and others, but presumably remains an integral part of the proposal.

Meanwhile the insistence that the EU does indeed provide a model for an 'agreed Ireland' along lines envisaged by the SDLP continues. This is an assertion that needs to be challenged, for it is based on serious distortion of the original motivations for the movement towards European integration, and of the nature of its institutional framework.



The whole motivation of the European Union, the reason it was invented, is an ever closer union of its components, culminating in some form of European unity, and its institutions and mechanisms are designed to forward that end. Its key principle is the sharing of authority, and, indeed, of sovereignty. Through the basic Treaties the various member states agree to give the institutions of the Union authority over agreed areas of common interest. It is indeed, at European level, a system of joint sovereignty/joint authority. An all-Ireland arrangement based on the European Union would, therefore, have to be assumed to have Irish unity as its goal, achieved through a system of shared authority, and to be designed to promote this end.

But the European Union is a carefully balanced arrangement voluntarily entered into by its participating components - the member states - to promote integration. Within the Union the member states retain strong individual voices - Luxembourg has one seat on the Council of Ministers, just as Germany does. To transfer the European model to the island of Ireland, as the SDLP constantly proposes, the agreement would be between two states, the United Kingdom and the Irish Republic, and would have as its purpose not the integration of those two states, but the administration of one small region of one of those states. The cases are so totally different that it is illogical to suggest that the European Union provides any sort of model for the administration of Northern Ireland or for the creation of cross-border institutions between north and south.

Nationalists have cited the Anglo-Irish Agreement as being based on the EU experience, with its institutions mirroring those of the EU. While there is a superficial resemblance between the Council of Ministers, European Commission and the European Parliament on the one hand, and the Intergovernmental Conference, Anglo-Irish Secretariat, and Parliamentary tier on the other, the parallel is hard to sustain. The essence of the EU is a voluntary coming together of its component parts, the member states, to share sovereignty in a manner agreed in the Treaties, that sharing taking place throughout the territories of the signatories. The Anglo-Irish Agreement, on the other hand, is an agreement between two principals - the UK and Ireland - on sharing a measure of responsibility for the administration of one territory, Northern Ireland. The territory the AIA is all about, Northern Ireland, is not *itself* a signatory to the Agreement, and indeed has never accepted it.

If the AIA was truly based on the European model, then it would cover the complete territories of the two states, and both the British and Irish Governments would be ceding some authority in their own areas to the Intergovernmental Conference and the Secretariat. Nothing like that is envisaged.

## 8 Europe and Disputed Borders



On a more general level, it is worth remembering that the movement towards European integration has never been about abolishing the historic states as political units, and certainly not about altering their boundaries. It is essentially about softening borders, making them pervious, allowing maximum movement of people ideas and commerce. The real relevance of the European Union in this regard is that within it the economies of the United Kingdom and the Republic are being progressively integrated, and that both states are part of a single market within which free movement of goods, services, capital and people is to be guaranteed. The economic and social inter-action between the Republic and Great Britain is far more significant than between North and South in Ireland and consequently the "challenges and opportunities of the European Union" require an agreed approach not for "the whole island", but rather for the two islands, and the two states.

The broader European experience is relevant to Northern Ireland in ways which the Irish Government and Northern nationalists choose to ignore. This is particularly the case as regards the treatment of reluctant minorities trapped by history in one state when they very much want to be in a neighbouring one. The Anglo-Irish approach has been to encourage the aspirations of the minority, to give its political aspirations 'parity of esteem', to involve the neighbouring state on its behalf, but to insist that change can come only by agreement with a majority in the region concerned. It has not worked so far.

This concept underlying current Anglo-Irish policy on Northern Ireland, that the northern nationalist minority can be accommodated only by giving the Dublin Government some formal role on their behalf in the administration of Northern Ireland, has been out of fashion in Europe since Adolf Hitler used it towards the Sudetan Germans in order to dismember Czechoslovakia in 1938.

In post-war Europe the problem of minorities - minorities trapped on the 'wrong' side of political boundaries - has been based on the vital principle that boundaries are accepted, and minorities are protected, indeed cherished, within the states in which they find themselves, and to which they are expected to give unqualified allegiance.

(Contrary to what is frequently asserted, the basic Treaties of the EU make no reference to recognition of existing boundaries between Member States. But such recognition and acceptance was an essential foundation of the whole edifice.)

A recent Treaty between Hungary and Romania, also concerned with disputed borders and national minorities, embodies a different approach. It may have much more relevance to the problems of Northern Ireland than the frequently-cited 'peace-processes' of South Africa and the Middle East. The Treaty on Understanding, Cooperation and Good Neighbourhood was signed on September 16th 1996 by the Hungarian and Romanian authorities.



Some 1.6 million Hungarians live in Romania, making up almost 8% of the population. They found themselves on the wrong side of the border at the end of the Great War, when the former Hungarian principality of Transylvania was incorporated into Romania. Today they constitute more than 20% of the population of Transylvania. Hungary has a much smaller Romanian minority population within its borders. The Treaty is largely concerned with guaranteeing the rights of those minorities.

It deals, in a lengthy Article (15), with the rights and duties of persons belonging to national minorities. The Article commits both states to apply the Framework Convention of the Council of Europe for the protection of national minorities, and to incorporate in legislation the provisions of a specified range of agreements on minority rights emanating from the United Nations, the Organisation on Security and Cooperation in Europe, and the Council of Europe

Sub-clauses confirm the rights of individuals or groups to express, preserve and develop their 'ethnic, cultural, linguistic and religious identity, and to establish their own educational, cultural and religious institutions, organisations and associations'. The right to use a minority mother tongue is guaranteed, as is the right to adequate opportunities for being trained in that tongue at all levels of the State education system, and there are provisions for its use in relations with local administrative and judicial authorities, and in street names.

As regards cross-border cooperation, the Treaty says the two states will develop their cooperation in the field of the mass media, and the free flow of information on social, political, economic, cultural and scientific matters. Further cooperation is urged on health care, medical research, social security and social protection, with the possibility of specific agreements on these areas. Border crossing and custom control will be simplified, and police cooperation developed to help combat organised crime, terrorism, drugs-trafficking, hi-jacking and smuggling.

Article 5 of the Treaty says the states will establish an appropriate framework for cooperation in all fields of mutual interest, with special attention being given to the enhancement of cooperation and the extension of relations between the legislative and executive bodies. Regular exchanges of views are envisaged to ensure further development and deepening of bi-lateral relations. There will be annual meetings at both Prime Ministerial and Ministerial level to review the implementation of the Treaty. On the implementation of the specific clause on national minorities, an intergovernmental expert commission is to be established.

The crucial point is that the Treaty specifically commits the two signatory states to respect each other's territorial integrity, 'in accordance with the principles and norms of international law and the principles of the Helsinki



Final Act', and both states formally confirm '...that they have no territorial claims on each other and that they will not raise any such claims in the future'.

#### 9 Agenda 2000

As noted above, the basic Treaties of the European Union make no reference to boundary disputes or territorial claims, but clearly assume that all signatory states fully accept the existing boundaries within the Union. This has been underlined this year, 1997, by the European Commission, in its Agenda 2000 document, its comprehensive analysis of the future of the European Union and the impact of its impending enlargement. Agenda 2000 contains the following statement on Border Disputes:

The Commission considers that, before accession, applicants should make every effort to resolve any outstanding border disputes among themselves or involving third countries. Failing this, they should agree that the dispute be referred to the International Court of Justice.

In any event, all candidate countries should therefore, before accession negotiations are completed, commit themselves to submit unconditionally to compulsory jurisdiction, including advance ruling of the International Court of Justice, in any present or future disputes of this nature...

No one any longer denies that Articles 2 and 3 of the Irish constitution are a territorial claim on the territory of another member state; no one can deny that the Republic disputes the border with its neighbour. But despite the fact that this particular border dispute has been at the heart of the worst internal violence within the EU for more than a quarter of a century, the European Commission seems not to have noticed.

Agenda 2000 says that the prospect of accession to the EU should act as a powerful incentive to states to settle any border disputes, and the Commission points to the Stability Pact promoted by the EU as a pointer in this regard. The Stability Pact, like almost every other European or United Nations declaration on border disputes and minority problems takes the line that isolated minorities are best protected within existing boundaries, by guaranteeing minority rights. Territorial integrity and respect of existing boundaries are seen as basic principles essential to stability.

Agenda 2000 is a discussion document prepared at the request of the EU member states. Will the Irish Government happily endorse one set of rules for applicant countries, while persisting with its own territorial claim and unresolved border dispute?

Will it continue to ignore Article 29 of its own constitution which declares that



Ireland affirms its adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination.

Ireland accepts the generally recognised principles of international law as its rule of conduct in relations with other states.

Will the United Kingdom Government, whose territory is claimed, go beyond its timid assertion that the claim is 'very unhelpful', and brave the wrath of Dublin by suggesting a joint trip to the Hague and the impartial judgement of the International Court of Justice?

Southern politicians may take the line that they are trying to resolve the territorial dispute within the context of the all-party talks. Such an approach is surely contrary to the generally recognised principles of international conduct as outlined by the European Commission, and therefore, contrary to the Irish constitution itself.

#### 10 European Union - Friend or Foe?

Frequent reference by Irish nationalists to European integration as a model or pattern for Irish unification, and attempts by both the SDLP and southern politicians to exploit the EU as a means of furthering nationalist aims should not be allowed to distort the overall perception of the European dimension. The movement towards European integration has its roots in the need to combat nationalism, not foster it, and the structures of the EU are designed to help defuse or neutralise the nationalist impulse, not satisfy it. In many ways the 'European' approach is much closer to the philosophy of unionism than to nationalism.

Nevertheless many unionists remain apprehensive about the European dimension. It is true that the EU generally, and the European Commission and the European Parliament in particular, have enthusiastically endorsed the Anglo-Irish approach, and the Anglo-Irish Agreement. This is hardly surprising, as that is the approach of the two Member States involved, and John Hume and southern MEPs have been active in winning general endorsement in the European Parliament of the same approach.

Beyond this, there are some who remain suspicious of the European Commission, or of some elements in it, and who see in its enthusiastic support of cross-border cooperation, and in its handling of the Special Support Programme a motivation more related to narrow political objectives than to the general principles of European integration.



While this concern should not be exaggerated, it is probably true that a small number of Commission officials - British and Irish - have consistently sought to enlarge and shape the involvement of the Commission in Northern Ireland in a manner more concentrated on an Irish dimension than a properly European one. In some cases this may result from a genuine belief that the EU could and should do more to help solve the problem along the Anglo-Irish lines espoused by the two Governments.

It is interesting to note that in its recent appointment of a representative in Northern Ireland, the Commission passed over numerous candidates with extensive knowledge of and experience in EU matters, and selected a local political journalist with no background in EU matters. None of the Commission's other 22 offices in Member States is so staffed. Most, if not all, are headed by long-serving Commission officials. Sources indicate that the reason for the unusual Belfast appointment was a desire, by the Commission, and presumably by the British and Irish Governments, that the office here should play an essentially political role - 'bringing Northern Ireland closer to Europe' was how one source put it.

This could mean a perfectly valid concern to make Northern Ireland more aware of its European involvement, but could also imply an intention to detach, to some extent, Northern Ireland from the United Kingdom in its relationship with the EU, thereby encouraging an 'all-island' approach. (None of this implies, in any way, criticism of the ability or the integrity of the individual appointed to the post in question.)

Concern has been expressed too about the role of the District Partnerships which have been created by, and play an important role in the Special Support Programme for Peace and Reconciliation. These were included at the insistence of the European Commission, and while many see them as the most positive aspect of the Programme, others regard them as a potentially dangerous by-passing of the normal practices of representative government.

A District Partnership exists in each local government council area, and is the vehicle through which large amounts of EU money are disbursed to promote economic development, regeneration and social inclusion. Each partnership is made up, in three equal parts, of elected Council representatives, of nominees from the community or voluntary sector, and of private sector interests. The Programme is administered by a central Partnership Board.

The Commission proposed the partnerships to 'encourage a bottom-up approach and empower people at grass-roots level to decide actions for local areas'. That might normally be achieved through elected representatives in local areas, and decisions taken in local councils. The invention of Partnerships could therefore be taken as a vote of no-confidence - understandable perhaps - in local government in Northern Ireland.



While the Partnerships seem to have been successful, there have been some odd results. Through them Sinn Fein was able to participate in local development and in decisions on public-spending at a time when it was excluded from political dialogue by Government, and indeed when the Republican movement was still engaged in violence and destruction. Moreover, some fear that the very success of the Partnerships can mean a further undermining of the role of locally elected representatives, and of democratic local government.

Many of these fears may turn out to be unjustified. But it is still necessary, in the current situation, to scrutinise all proposals with an EU dimension to ensure that they are practical and beneficial, and that the main motivation for their suggestion is not either to remove significant decision-making relevant to Northern Ireland out of Northern Ireland and the United Kingdom and into a shared context with the Republic, or to by-pass the normal processes of elected representational government at either central or local level.

## 9 Conclusion

None of these concerns should obscure the reality that the European dimension is fundamentally anti-nationalist. The whole experience of post-war Europe, both inside and outside the EU, constitutes a series of arguments for the acceptance of a settlement which confirms the existing state boundaries, while minimising their economic or social significance, and at the same time maximising cross-border cooperation.