

# Dáil Éireann debate - Wednesday, 22 Apr 1998

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## **An Bille um an Naoú Leasú Déag ar an mBunreacht, 1998: Céim an Choiste (Atogáil) agus ma Ceimeanna a bheidh Fágtha. Nineteenth Amendment of the Constitution Bill, 1998: Committee Stage (Resumed) and Remaining Stages.**

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Atogadh an díospóireacht ar an Sceideal.

Debate resumed on the Schedule.

### **Mr. Shatter**

To conclude the point I was making, what advice has the Government received on that problem? What will happen if somebody tries, shortly before it is envisaged the declaration might be made, to make it a justiciable issue? That presents a real difficulty. It is a matter we could address in the context of this Bill.

I wish to deal with the issue of whether the Government will make the declaration or whether it is a matter for this House and the Seanad. It is

my understanding that the formal Agreement concluded by this State on Good Friday has to be placed before the House for ratification. This would normally involve a formal vote. I hope, however, it will be ratified unanimously. When will ratification take place? If it is conditional on various events happening during the next 12 months with which we are all familiar, will it take place when the declaration is made? In the context of dealing with the issue in a democratic and politically correct way in the context of the Constitution, it is appropriate, if all the conditions that we require to be satisfied are satisfied, that the declaration should be made by the House and not simply by the Government. As I understand it, the Agreement has yet to be ratified by the House. Perhaps the Taoiseach will outline the timescale involved and explain why the House should not make the declaration.

Deputy Lenihan eloquently made the case that we made in the context of resolving issues that might arise and which are a cause of litigation or dispute as a result of the Agreement coming into force. Whether it is understood fully, it is inevitable that there will be a need for a common judicial body acceptable to all sides on this island and to the other international party to the Agreement, the British Government, to resolve disputes. Deputy Lenihan, somewhat whimsically, gave the example of a dispute at Tralee Circuit Court. It is not beyond the bounds of possibility that major commercial disputes could come before the courts in the context of implementing some of the common policies arising from the Agreement. It is not desirable or in the interests of harmony or progress that they be litigated separately in the courts of the Republic and Northern Ireland with the possibility of conflicting results.

This is a serious issue and it will not be resolved by the Taoiseach suggesting that the matter could go to arbitration. That is not the mechanism that will ultimately work. Whether it is understood fully — I am sure the Taoiseach understands this — there will be common institutional arrangements which will lead to joint ventures which affect both sides of the island. It is inevitable that disputes will arise which

cannot be resolved within political fora or dealt with on an ad hoc basis. It is desirable that there should be an acceptable common body to resolve such disputes.

### **Mr. O'Kennedy**

It is a special privilege for me, having been a Member of the Oireachtas for 33 years, to be present on this historic occasion, particularly when the unanimity and common purpose of the Members of the Oireachtas, the elected representatives of the people, have been shown so effectively. It is appropriate that this historic breakthrough should be greeted with unanimity. This is a great tribute to the Taoiseach and the Government on their unrelenting commitment to bring the negotiations to a successful conclusion on Good Friday. It is, equally, a great tribute to the leaders of all the other parties for the generous recognition they have given to the significance of what is the end of one stage of the journey and, I hope, the beginning of an even more successful journey.

The degree of unanimity evident among elected representatives here is reflected among elected representatives in Britain. I have reached agreement with my co-chairman of the British-Irish Interparliamentary Body to convene a special meeting of that body in Dublin shortly to enable its members to endorse the Agreement which arises from our generosity, confidence and commitment to build new relationships within and between these islands. To that extent, we are anxious to endorse the achievement of the two Governments and all the political parties and, in particular, to ensure that those who will have an opportunity to vote in the referendum will do so vigorously in support of the proposals put before them.

Deputy O'Keeffe raised the issue of whether separate proposals should be put to the people. Precedent, as the Deputy is aware, is a reliable indicator of what one can and cannot do. The provisions of the Bill contain a specific proposal. It states: "Article 29 of the Constitution is

hereby amended as follows. ." This is the text that will be put to the people and will be on display at every polling station. It can be reasonably argued that there are two subsections, (a) and (b). In that context, during the years proposals incorporated in a single Act were subsequently adopted, some of which would have had much less in common than the proposals to be put to the people on this occasion.

It is proposed to amend Article 29. We have amended this Article more than once before. I will refer briefly to the amendment which is now incorporated in Article 29.4.3°. It says "the State may become a member of the European Coal and Steel Community established by the Treaty of Paris on 18 April 1951".

The Treaty of Paris, 1951, was one special element. The European Economic Community was established by the treaty signed at Rome on 25 March 1957. Two separate treaties were signed in two separate places for two separate purposes, though all involved a consistent approach to what we then viewed as the European Economic Community. The European Atomic Energy Community was established by the treaty signed on 25 March 1957. That also was a distinct and separate treaty. All of those were included in the single referendum proposal adopted by the people in the procedure we are now following.

By way of confirming that approach, I mention that subsequently and even more recently, we followed the same procedure when we ratified the Single European Act, signed on behalf of the member states of the European Community at Luxembourg on 17 February 1986 and at the Hague on 28 February 1986. These were two separate Acts incorporated in one Bill and one referendum proposal.

It is fairly clear from the manner in which this proposal has been formulated that the precedent and advice will be the reassuring basis for what, will be a properly amended element of the Constitution.



My second point relates somewhat to what Deputy Blaney said. I endorse the views of my colleague, Deputy Lenihan, concerning those of us who have not really experienced at close hand the deep personal suffering, hurt and emotion. The North is a long way from Tipperary or Cork, whatever we think of our inherited traditions. Being closer personally and geographically to the hurt, suffering, enmity and bitterness over the years, it obviously impacted much more on the people in the North than it did on the rest of us.

I can understand very well Deputy Blaney's expressions of reservation. Despite those reservations, I acknowledge his readiness to endorse this historic Agreement. Deputy Blaney mentioned that the Act of Union is unaffected by the Agreement as he sees it but if there is one clear and unqualified statement in the Agreement it is that the Government of Ireland Act is repealed. That obviously incorporates all that was included in that Act.

Perhaps it would be helpful to Deputy Blaney if I mentioned section 75 because that too will go with the repeal of the Government of Ireland Act. That section stated that:

Notwithstanding the establishment of the parliaments of Southern and Northern Ireland, the parliament of Ireland or anything contained in this Act, the supreme authority of the parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in Ireland and every part thereof.

The supreme authority of the parliament of the United Kingdom derived from the Act of Union, 1801. It was incorporated in the Government of Ireland Act, 1920. Given that the Government of Ireland Act will be repealed, all that is incorporated in it is clearly caught up in that repeal, including the Act of Union.

The Agreement states that "The Government of Ireland Act, 1920, is

repealed". It is very clear and unqualified.

### **Mr. J. Bruton**

It is a two-edged sword.

### **Mr. O'Kennedy**

We are engaging in this issue as political representatives as distinct from lawyers. The Agreement goes on to say "this Act shall have effect, notwithstanding any other previous enactment". That second element is unnecessary but, it makes it clear beyond any doubt that the Bill which will be enacted as a result of an historic development with the endorsement of all the people North and South shall have effect, notwithstanding any other previous enactment.

Those two points relate to the broad constitutional issues and the legislation enacted before the 1937 Constitution and since then.

It is appropriate to recognise that the 1937 Constitution was an instrument of its time. It underlined the identity of all the people and their allegiance throughout Ireland. It enabled those who wished, to express that allegiance in contradistinction to what had been established in the Government of Ireland Act, 1920. That Act and the Act of 1925 was the only legislation then in place. Surely it was appropriate that there would be a constitutional confirmation of the position of the people of Ireland in contradistinction to that.

Over the years I have said many times that Articles 2 and 3 were not a claim by us with regard to the people in the Six Counties, for the simple reason that we had no right to make such a claim. No one ever suggested that those of us who legislated in the Twenty-Six Counties had the right to make a claim on the people in the Six Counties. Such a claim would not have been consistent with the elements in the 1937

Constitution which has stood the test of time so well. The Constitution was a statement of the integrity of the island, but not a claim by us on the Six Counties.

When we move into new relationships it will be the culmination of a close and effective relationship between both Governments. I hope it will be the beginning of a new harmony and understanding on the island generally.

Both the Minister for Foreign Affairs, Deputy Andrews, and I had the privilege of serving on the Committee on the Constitution with that great statesman and other senior figures from all parties at the time.

### **Mr. J. Bruton**

Gerard Sweetman.

### **Mr. O'Kennedy**

I have to acknowledge the role of the former Chief Justice, Tom O'Higgins, Seán Lemass and Gerard Sweetman. No one would object that two young Members of the Oireachtas like Deputy Andrews and myself had the privilege of being on that committee. It is reassuring to find that the formulation of the all-party committee proposed is following that earlier committee very closely. It borrows directly from the phrases and terminology of that committee. The report of the 1967 Committee on the Constitution states:

The wording which we would suggest is as follows:

1. The Irish nation hereby proclaims its firm will that its territory be reunited in harmony and brotherly affection between all Irishmen.
2. The laws enacted by the Parliament established by this Constitution

shall, until the achievement of the nation's unity shall otherwise require, have the like area and extent of application as the laws of the Parliament which existed prior to the adoption of this Constitution.

I am pleased to note — I am sure the presence of Deputy Andrews at these negotiations had something to do with it — that those terms are reflected in the amended Article 3. It states that "it is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and tradition".

I pay tribute to all those with whom we were privileged to serve in the Oireachtas, including Mr. Seán Lemass, Mr. Jack Lynch, with whom I was privileged to serve as Minister for Foreign Affairs when we had bilateral Anglo-Irish relationships, Mr. Liam Cosgrave, who brought about the first formal relationships in Sunningdale, and Mr. Charles Haughey, with whom I was privileged to attend the first Anglo-Irish summit in Dublin Castle in 1980. It was at that summit that the phrase "the totality of relationships" first emerged. I also pay tribute to the former Foreign Secretary, Lord Peter Carrington, who was a great parliamentarian and a consummate diplomat. He wanted to see the totality of relationships brought about in the manner in which the Governments have now done so. This is the end of one period of understanding and we hope those of us not directly involved in the negotiations can help to develop a new era of understanding.

The provision proposed in Article 2 is entirely consistent with the generous approach that is a feature of this Agreement. Article 2 states that it is the "entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation". That does not suggest that every person born in the island of Ireland must exercise that entitlement. It is a clear statement of an entitlement, the exercise of which depends on the citizen, North or South. That opens up a new avenue of tolerance and understanding. It is

important to recognise that some people do not propose to exercise that entitlement now or in the future. If that is their intention in perpetuity, we acknowledge that is their right. However, we must also acknowledge that it is their entitlement to opt for citizenship under the provisions of this Agreement. That reflects the generous and confident approach which was a feature of the painstaking work that went into this Agreement.

This is an historic event. While one feels a certain tinge of regret that one was not closer to the action, it is a great privilege to be in this House in a week when we endorse what the two Governments have done in our name. It is a privilege to contribute to this debate and I hope the few words I said on constitutional procedures and amendments will help Deputy Jim O'Keeffe.

The constitutional and political advisers, which the Government is fortunate to have available to it, deserve a special tribute. We were always fortunate that the advisers in the Department of Foreign Affairs and the Department of the Taoiseach were aware of political sensitivities and nuances. I have no doubt that they through their personal contacts and those of the Taoiseach and the Ministers will pursue constant contact with people who come from a different tradition on this island but whom we will respect in the same way as if they came from the same Nationalist tradition as ourselves.

Mr. Seán Lemass proposed the formulation of Articles 2 and 3 and the 1967 committee enthusiastically adopted it. When that was done we did not have the basis of the agreements which are now part of the proposals before us. We were prepared then to make a recommendation in respect of Articles 2 and 3 without having the counterbalancing repeal of the Government of Ireland Act, 1920. That was what we would have wanted. The Governments have now agreed that, therefore it is essential that it is copperfastened and adopted by the people in the referendum.

### **Mr. J. Mitchell**

I want to be associated with the congratulations to all those in successive Administrations both here and in Britain and to the political leaders in Northern Ireland. As a member of the Government in the 1980s when the then Taoiseach, Dr. Garret FitzGerald, and the Minister for Foreign Affairs, Mr. Peter Barry, negotiated the Anglo-Irish Agreement, I could not believe that we got concessions from the British which gave us an absolute right of consultation in relation to Northern Ireland. That vehicle has led to this historic Agreement.

This debate is like an extended Second Stage debate rather than a Committee Stage one because no amendments were tabled to any part of this Bill. However, I cannot help feeling that we may be walking ourselves into a constitutional nightmare because of a lack of detailed consideration. I am not sure, for example, what happens if the Government certifies that the Agreement is in place, we amend the Constitution and then the structures subsequently break down. The British can revoke their decision by an Act of Parliament but we will have amended our Constitution. What happens if the arrangements are in place and they are subsequently sabotaged as happened with the Sunningdale Agreement? There will always be questions about what will happen and if we allow ourselves to be burdened by those, we will not get anywhere. Nevertheless, such questions need to be asked.

I have been a Member of this House for a long time and in recent years I have been alarmed at the way the safeguards in our procedures have been constantly bypassed in regard to legislation and now in the case of constitutional amendments. It is inappropriate we should amend our Constitution by way of a Bill published a few days ago.

### **Mr. J. Bruton**

Published only yesterday.

### **Mr. J. Mitchell**

Maybe the exigencies of this situation make it unavoidable, but there is something fundamentally wrong with that process. It could lead to major problems down the road, as has been the case with many Bills that were rushed through this House. The five stages of a Bill were designed so that legislation is considered in great detail to ensure we do not do anything in regard to the Constitution or anything unfair that would give rise to difficulties later in the courts. Yet with great frequency the words "notwithstanding anything in Standing Orders" are used to set

aside our Standing Orders and they are laden with great danger. In this Agreement the word "notwithstanding" is used more than once as in the case of "notwithstanding anything in section 46", etc. It is important that be said, notwithstanding the euphoria and the unanimity about the Agreement in this House and elsewhere.

Assuming the amendments to the Constitution are passed, this will be the 19th in a series of amendments to it and it is beginning to look a little untidy. It no longer has a resonance of beautiful visionary language that one expects of a constitution. There was a reference to implications in this for other sections of Constitution not referred to in this amendment. Maybe we should consider some form of consolidation of the Constitution similar to the way we consolidate Bills. From time to time we consolidate the Finance Bill and Social Welfare Bill to make the totality of a Bill more readable and to facilitate cross reference of sections. Perhaps we should have a similar provision for the Constitution after so many amendments to it have been passed. That would enable us in calmer and less rushed times to reflect on the totality of the effect of the constitutional amendments and their implications for other sections and people's rights.

I do not want to compound the criticism I made that this Stage has become an extended Second Stage debate and I can understand why, but if this were the historic moment it is claimed to be, we would expect the press gallery to be full and the Leaders of the Labour Party and the Progressive Democrats and Democratic Left to be present. There is no sense of this being the historic document some of us believe it is or else there is a feeling there is nothing much we can do about it and why be present anyway? That is a feeling many of us have about this House for a long time.

### **Mr. Dennehy**

Like previous speakers, I congratulate all those participating in the talks



over the period. The Taoiseach, Deputy Ahern, deserves specific mention. His contribution was recognised in the poll ratings last week, but a range of other people have contributed to this process over the past ten years. I am glad Deputy O'Kennedy mentioned the British Irish Inter-Parliamentary Body because some of its members, including Peter Temple Morris on the British side and Peter Barry and Jim Tunney on the Irish side, have also made a major contribution. They laid the basis for a recognition of the difficulties in the working relationships between the two Parliaments and matters have evolved from that point. People have an understanding of one another's problems and how legislation can provide for the changes required.

The Taoiseach's rating of 84 per cent in the polls last week reflects more than satisfaction with success in achieving this Agreement. There are other issues involved, but this Agreement was a major factor in the public's recognition of his role. However, it is worrying that the findings of a poll taken at the same time reported in The Irish Times indicate many people were undecided on the matter at that time.

The debate this morning, particularly in regard to Articles 2 and 3, was technical. Those Articles are very important and it is appropriate they should be debated in detail, but there are many other issues involved. Many of the public are unaware of the benefits to be gained from this Agreement. There is a lack of knowledge and understanding in that regard and there is an onus on the Government, Members and all those involved to ensure they have the necessary knowledge before the referenda are held. Despite the McKenna judgment, we must take every possible step to ensure information is made available to the public in language that is easily understandable. The majority of the contributors this morning have a legal background and they debated technical points.

**Mr. J. Bruton**

The debate is not over yet.

**Mr. Dennehy**

Some Members who do not have a legal background were courageous enough to contribute to it.

**Mr. J. Bruton**

We have not yet got the answers to some of the questions.

**Mr. Treacy**

The Deputy should give us a chance.

**Mr. Dennehy**

However, 99.9 per cent of the public, who will make the decision on this Agreement in May, do not have a legal background or training.

**Mr. Treacy**

They do not need it.

**Mr. Dennehy**

These issues must be presented in a fashion in which they can be clearly understood.

I wish to ask the Taoiseach a question about the distribution of information. It was suggested the contents of the Amsterdam Treaty should be sent to every home, but I believe it is much more important that the contents of this Agreement should be sent to every home. I am not happy about the stockpiling of copies of the Agreement in Garda

stations, post offices and elsewhere. The fact that the first printed copies of the Agreement were picked up within hours of being sent to those outlets is indicative of the interest in it. Those we represent are entitled not only to have a copy of this Agreement sent to their homes, but to be given some explanatory material on it. That can be done without infringing the McKenna judgment. These issues can be explained carefully in simple English. Even the explanatory memorandum accompanying the Bill is so complicated that one finds it difficult to tread one's way through it.

Civil servants and others have been correctly praised for their contribution. They have worked on this Agreement for a long time and understand every aspect of it, but it is unfair to just present the Agreement to the public and ask them to adopt it. There is great support for the contents of the Agreement throughout the country. I have attended many meetings since it was published and one might expect difficulties to be raised about certain aspects of it, but I have been pleasantly surprised at the reception it received. It is widely accepted.

There is more involved in the Agreement than amendments to Articles 2, 3 and 29 or any other Article in the Constitution. We need to explain about the three strands mentioned in it and spell out the major benefits to be gained from them. For the first time we will have an input in regard to rights, safeguards and ensuring there is equality of opportunity for the people in the North. There is also the issue of the policing and justice system for the future in the North, which we condemned many times over the past 25 years. There are many other important aspects in the Agreement. The day-to-day issues for the people who will be affected are addressed in the Agreement. The Constitution is something which we will defend strongly, and we will tease out any changes in it and ensure, as Deputy Bruton and others stated, that we do not have difficulties with it later. Certainly, I would not want to see that happening.

Deputy Blaney and others mentioned the confusion which they face. If those of us who are professionals in the field have difficulty, just imagine the ordinary person on the street. We need to spell out what is involved. I ask the Taoiseach to ensure a copy of the Agreement is sent to every home and that briefing material is provided also to explain the technical aspects of it.

The debate over Articles 2 and 3 has always revolved in the public mind around their deletion. We need to explain what is involved in the amendments. There is a huge emotional attachment to these two Articles and we want to spell out that the same Nationalist approach can be taken from the amended Articles. It is important that people understand that. I do not think the proposed changes in the wording will be contested by anybody, but there will be a need to spell out what is involved.

Everybody has mentioned that this is an historic occasion, but my major fear that because the public does not understand, the people may have an attitude of indifference and may not vote because of ignorance. It is

important that we spell out to them that the potential benefits for the whole country are enormous. The mechanism for doing that can be debated and decided by the people involved, but the suggestion has been made that the two referenda should not be held on the one day. As an ordinary lay person and public representative, I am totally against that suggestion. For practical reasons, I am in favour of having both referenda on the same day. Bringing out the vote on the Amsterdam Treaty is one of the reasons, but there is also a practical one. I do not want to spend £2.5 million or £3 million of public money in a wasted effort simply to satisfy somebody's suggestion that we hold these referenda on separate days. I am quite happy to have the two referenda taken together. They are both technical, difficult and hard to understand, but the onus is on us to make sure that people are given the facility to understand them.

As a general note on the process, the three strands initially identified by Peter Brook, the then Secretary of State for Northern Ireland, and the late Deputy Brian Lenihan have been maintained throughout this agreement. It was of grave concern to many in this House and elsewhere that attempts would be made to eliminate the Strand Two element, which relates to the North-South relationship. That was not a sticking point, but it was a worry for many of us.

The establishment of a North-South Council is not a new idea. In fact, it was provided for in two previous agreements, in 1921 and more recently at Sunningdale. Nobody should regard these North-South bodies as threatening in nature. On the contrary, they simply represent the logical co-operation between people who have far more in common than dividing them. However, up to now the political maturity to allow the establishment of such bodies has been lacking and we all, North and South, have suffered as a result. I note that the health services in County Donegal and across the Border have been working happily for a number of years in providing facilities and working together for the benefit of the community, the clients, the staff and the Exchequer.

There are also a number of useful and novel suggestions in the Agreement, including a new civic forum which, it is hoped, will bring together business, trade and voluntary groups. I want all these benefits spelled out.

I passionately believe in the unity of this country which is in the best interests of the people, North and South. Partition was unjust and unfair. I accept the reality that the status quo cannot be changed without the consent of the people of Northern Ireland. This is a sea change. We are no longer asserting our right over these people, but that we will do whatever is to be done by consensus. I warmly welcome this Agreement. I endorse it and commend it not just to this House but to the general public.

### **Mr. J. Bruton**

I have three Report Stage amendments which I wish to have an opportunity to submit to the House.

### **Mr. Higgins**

(Dublin West): I will be brief. Two matters arise from the debate. Deputy

John Bruton raised the possibility of this being a Parliament without a defined territory, if I understand him correctly, when all these provisions are in place. I would be the last person to pose as an expert in bourgeois institutions, but a world without borders is actually the ideal of international socialism. However, I do not think we are there yet.

### **Mr. Shatter**

The USSR tried it in its constitution and it did not work too well.

### **Mr. Higgins**

(Dublin West): Surely Article 3 of the new Constitution answers the point, which is that "the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution". Therefore, it is clearly defined.

Two Fianna Fáil Deputies, Deputy Michael Ahern and Deputy Dennehy, have taken to task those of us who said that both referenda should not be on the one day. Deputy Michael Ahern accused us of thinking that people were stupid. That was not the point. It was a question of allowing a proper time for debate, particularly on the Amsterdam Treaty which is complex and important and will be overshadowed by the current discussion.

Tá dhá phointe agam. Deineann an Airteagal 3 nua tagairt do na daoine a maireann in Éireann "in éagsúlacht uile a bhféiniúlachtaí agus a dtraidisiún". Chím go bhfuil alt faoi leath ins an Chomhaontu faoi cheart an teanga i dTuaisceart na Éireann agus go ndeirtear gur ceart go mbeadh meas agus aitheantas caoi tugtha don Ghaeilge agus don teanga Albanach Ulaidh chomh maith le teangacha eile mionlaigh. Tá sé fíor tábhachtach go ndeanfar sin mar nach mbeidh aon teacht le cheile ag daoine ó culraí éagsula mura mbeidh meas agus ionannas idir

tradisiún difriúla. Gan dabht, tá gach chuid den pobail rí-thábhachtach ón bpointe sin. Tá sé scanallach go ndéanann daoine airithe ón dá thaobh íarracht cheist na teanga a úsáid i modh seicteach. Ag an bpointe sin, is teacht le chéile na gnáth daoine an freagra do na fadhbanna seo agus ionnannas idir tradisiúin agus teangacha seachas go bhfaigheann an tua idir politéoirí atá gafa ag politíocht seicteach go minic.

Unfortunately, Part II of the Schedule provides that the State may enact the Agreement, and then goes on to the proposed Article 3 of the Constitution. I am afraid that there is a major contradiction between the Agreement and what exists in Article 3 in the sense of speaking of "the will of the Irish nation, in harmony and friendship", etc.

Unfortunately, the structures of the Agreement envisage a permanent chasm between the communities and the institutionalisation of sectarianism rather than a coming together of people in unity.

Unfortunately, the choice before the people in the referendum is stark. If the referenda fail North and South the reactionary sectarians on both sides will come back on stage with a vengeance. We should mention today the horrific sectarian murder of an innocent worker, Adrian Lamph, in Portadown. That shows beasts are lurking in the wings and they would be much to the fore if the referenda fail. Given that there is no alternative on offer, the passage of the referendum is by far the more preferable scenario.

Ordinary working class people have borne the brunt of suffering in the troubles. The lasting solution to the problems in Northern Ireland is an economic, social and political alternative that can mobilise ordinary working class people. Such an alternative based on democracy and socialism would unite the communities in the eradication of poverty, unemployment, homelessness and the shameful neglect of marginalised communities. That would be a genuine coming together at the base of society rather than something cobbled together by



politicians, depending on sectarian divisions for their power base. This was the approach of the great founders of the trade union and socialist movement of this island, James Connolly and Jim Larkin who worked tirelessly for the unity in action of working class people, Protestant and Catholic.

The Socialist Party, my party, in Ireland continues that tradition. The Socialist Party in Northern Ireland has played a very active role in opposing sectarianism, particularly in the ranks of the trade union movement and in workplaces. Party members have been instrumental in mobilising thousands of workers, Protestant and Catholic, and their families in work stoppages and public demonstrations in opposition to sectarian killings and to the threats and intimidation of sectarian paramilitaries. We will continue, North and South, with this work to build a powerful political movement across the Northern Ireland divide which will embrace working people, the unemployed and the youth, coming together in action, with a political programme of democratic socialism, overturning the system that has brought unemployment, poverty and sectarian misery for generations.

This will also embrace the unity of working class people, North and South, in constructing a new society based on the prosperity, justice and freedom of opinion that genuine democratic socialism involves where borders become meaningless. A socialist Ireland, a free and voluntary federation of the people of Ireland, England, Scotland, Wales, the Channel Islands and the Isle of Man, reaching out also to the working class people across Europe, is the structure by which the major economic and political evils in society under the present system can be overcome and sectarian and racist divisions bridged in a new society.

### **Mr. Treacy**

I heartily congratulate the Taoiseach, the Ministers and their advisers, both here and in Maryfield, on the tremendous work that has been done

on this Agreement. We must all focus on our purpose here. For many years major efforts have been made to achieve agreement on this island. For the first time ever, historically the political leaders on this island have sat down and reached agreement about the future evolution of this country. That Agreement is protected, copperfastened and underpinned by the Governments of the Republic of Ireland and the United Kingdom. It behoves us as elected professional practitioners in politics to ensure we acknowledge the changes and recommendations made and that we give this Agreement an absolute endorsement. It is vitally important that the people have ownership of it.

On behalf of a youth group in my constituency, I would like to read a letter issued recently to the leaders of all political parties involved in the peace process, which expresses the feeling of young people towards the Agreement.

On behalf of the Youth of Athenry, Co. Galway, we would like to offer our heartfelt congratulations and sincere thanks to all of you for your courageous efforts in finally bringing peace to our island.

Our town, Athenry, proudly boasts links with both sides of the divide. Edward Carson, the founding father of Unionism, whose mother hailed from CastleEllen, a small townland two miles from Athenry, spent his summer holidays here and was proud to play hurling with the local team, Carnaun. His kindness to the people of the area is legendary. On the other side of the coin, Liam Mellows, the leader in Athenry of the Easter Rising 1916 is fondly remembered here, with a National School and The Agricultural College named after him.

We belong to a generation who have witnessed constant violence in Northern Ireland. We salute your braveness in coming to this agreement. For the first time in decades, the armlock of sectarianism and tribalism has been broken. Fears, anxieties and prejudices can now be alleviated. A lasting peace is now a real hope and Ireland both North and South

can look forward to a great future.

May God reward your efforts!

Michael O'Regan, Niamh Kelly

On behalf of the Youth of Athenry.

It is vitally important to endorse this Agreement and that we all ensure, between now and 22 May, there is massive endorsement for it across the nation so that future generations will have opportunities which past generations never had.

### **Mr. J. Bruton**

In regard to the issue of the Government not being forced by the courts to grant votes to citizens wherever they live, they are relying on the territorial definition of the State, which is in the Government of Ireland Act — that is the only place it exists. We are told that as part of this Agreement the Government of Ireland Act will be repealed. This issue needs to be clarified. I refer again to pages 14 and 15 of the book on the Constitution authored by Kelly and others.

This Agreement should not be bogged down in the courts as the Sunningdale Agreement was bogged down as a result of an action taken by Kevin Boland. To that end I make four suggestions. There should be a clear statement as to the form of the declaration the Government will make in saying that the State is obliged to implement the Agreement. There should be a specific requirement that the Agreement should be approved by the Dáil, as required under Article 29.5.2° of the Constitution. I suggest that the State should not be able to make a declaration that it is obliged by the Agreement other than on the basis of a resolution passed by the Dáil. That is contained in my first amendment.

As Deputy Shatter argued, any declaration made by the State that it is obliged by this Agreement should not be justiciable before the courts. Nobody should be able to go to court to prevent the Government making the requisite declaration. It should not be capable of being bogged down in the courts. That is the purpose of my third amendment.

My second amendment refers to the fact that it appears under the provisions herein contained that no court will have jurisdiction over the activities of a North-South body. There cannot be a legal vacuum of that kind. There must be a court to which an aggrieved person should be able to appeal. I suggest that in the setting aside of the provisions of the Constitution and the application of other organs of State in regard to North-South bodies there should be one exception in regard to the provisions of Article 34.4° of the Constitution which allow people to appeal to our courts. There must be a right of appeal to the courts, and that is the purpose of my second amendment.

I hope on Report Stage the Government will accept some or all of those amendments, all of which are designed to ensure the Agreement is not bogged down in the courts as was the Sunningdale Agreement, that it works as the House intends and that there is legal certainty as to how it will work.

### **The Taoiseach**

On Deputy McManus's point about the British recognition that some of the people in Northern Ireland are Irish citizens only, that may have implications down the line for the British rules requiring oaths of allegiance. As long as our jurisdiction is confined to the Twenty-six Counties under Article 3, the organs of Government apply only to that area and the people must mean the citizens of the State. The Deputy said that there is no definition of "people" in the Constitution. I answered that question previously.

Deputies McManus and O'Keefe raised the matter of constitutional reform. A major programme of constitutional reform is being undertaken by the Blair Government. Lord Alderdice has introduced a Bill covering a number of the points raised by Deputy McManus. The oath of allegiance is an issue at Westminster but that is a matter for the parties with members elected to the House of Commons. The oath is not an obstacle to the SDLP and it is not the only obstacle which applied to Sinn Féin. I believe the Deputy implied that it was that party's sole difficulty but it is not.

Deputy Jim O'Keeffe inquired about the provisions of Article 46 of the Constitution. The Bill contains only one proposal for the amendment of the Constitution, it contains no other proposal. This accords with Article 46. The proposal is a single proposal in that its elements are inter-related and none of them can stand alone. If there were separate votes on each element, the possibility would arise of an absurd and inconsistent result. The Deputy made it clear he does not wish to see this happen.

The Agreement was negotiated as a package and will stand or fall as a totality, North and South. It is logically and politically correct to say "yes" to some elements and "no" to others. All the proposed constitutional changes are ultimately interlinked and the advice of the Attorney General is that this is the correct approach and consistent with Article 46. I assure the House that much consideration was given to that point in recent months.

With regard to the assertion that there is an unchallenged British claim to Northern Ireland, this places the matter in a distorted and simplistic frame. In the Joint Declaration agreed between the two Governments, the British Government made clear that it has no selfish, strategic or economic interests in Northern Ireland. Northern Ireland is a part of the United Kingdom solely by virtue of the principle of consent. For the first time in their constitutional legislation, the British will introduce a clear mechanism for giving effect to a majority wish for a united Ireland. It is obvious, from virtually every section of the Agreement, that Northern Ireland is unique in terms of the United Kingdom. For example, the British acknowledge that a substantial section of the people in Northern Ireland share the legitimate wish of the majority of the people of the island of Ireland for a united Ireland and they accept the right to dual citizenship. A form of administration is to be established in Northern Ireland which has no parallel in any other jurisdiction and which is based on a recognition that nationalism and unionism are key determinants to identify in Northern Ireland and are both equally legitimate.

Deputy Blaney raised a number of points with which I dealt this morning. If I have time later I will return to them. However, I do not want to repeat what I stated earlier.

Deputy Jim O'Keeffe and others raised the making of a declaration by the Government and the role of the Dáil. Steps to implement the State's international obligations are part of the executive power of the State which, under Article 29.4.1° of the Constitution, is to be exercised by or on the authority of the Government.

### **Mr. J. Bruton**

When will the Dáil ratify the Agreement?

### **The Taoiseach**

I will deal with that matter in a moment. With regard to the North-South Council and bodies, the essential point is that through the North-South Ministerial Council, structures are being created to enable North and South to work together in partnership across all matters within the competence of both Administrations. That is an enormous and unprecedented step forward in terms of bringing together the different traditions on the island. As stated earlier, the areas to be covered by the implementation bodies will be for final decision between the two Administrations, North and South, before the end of October.

Deputy Shatter inquired about the Preamble to the Constitution. That is a matter for the All-Party Committee on the Constitution. However, the Preamble is a description of our historical origins. We are prepared, in the general context of constitutional reform, to consider this and other parts of the Constitution. The Deputy asked about my political position on that but we do not want to overload the Agreement with any further changes at this stage.

An interesting debate took place between Deputies John Bruton and Brian Lenihan. The proposed Article 29.7.2° enables any new institution to be conferred with powers in addition to or in substitution for any person or organ of state. This will allow the jurisdiction of our courts to be excluded in favour of an all-Ireland court or dispute resolution mechanism such as an arbitration body. However, it is clear that the jurisdiction of the courts in respect of cases involving questions on the validity of any law is not affected by this provision and such questions remain matters for the High Court and Supreme Court on appeal. Therefore, the amendment suggested by Deputy Bruton is not necessary. As Deputy Lenihan pointed out, other provisions of the Constitution are not excluded unlike earlier constitutional amendments. For example, an implementing body operating within our jurisdiction will be bound to observe the provisions of the Constitution other than those conferring powers and functions on particular bodies.

With regard to the definition of the term "State", it is worth noting that the British, in repealing the Government of Ireland Act, will have no definition of Northern Ireland. However, 78 years of practice and usage of the term "Northern Ireland" make clear what its boundaries are and they see no need to define the matter further.

Deputy Shatter made the suggestion that the making of a declaration under subsection 3 should not be justifiable. We cannot altogether exclude the risk of some court challenge. The Hanafin action was not a constitutional action, it was an election petition. I do not know if the Deputy is making the point that we should exclude election petitions but, in principle, it is undesirable to exclude the courts' jurisdiction. We have sought to tighten the provisions to ensure that there will be nothing for a court to consider as a justifiable controversy.

The second part of Deputy Shatter's proposal is interesting but it cannot be completely proven. If we state that the Government's certificate is non-retrievable although someone may still challenge an earlier stage of



the process, for example, the Government's notification under Article 4(2) of the Agreement or the legislation to establish subsidiary bodies. At some point, the Oireachtas must have faith in judges' ability to separate a good point from a bad one. While Senator Hanafin lost his petition, it would be untrue to state that he had no arguable case because the Supreme Court believed his case to be sufficiently arguable to allow him his costs even though he lost in the final analysis.

Deputy John Bruton raised the question of the territory of the State not being defined but there is no need to insert a definition. The courts have held, on the basis of the existing Article 3 of the 1937 Constitution, that the area of jurisdiction as defined in Article 3 means Ireland minus the area of Northern Ireland. This is not being changed. The reference to Saorstát Éireann will be removed but the new definition means the same thing, namely, the same area and extent of application as the laws enacted by the pre-1937 Parliaments.

I was asked if the Oireachtas will be asked to approve the British-Irish Agreement? The answer is "yes". A separate motion will be brought before the House for approval of the Agreement, pursuant to Article 29.5 of the Constitution, when the referendum has been passed and after the President signs the Nineteenth Amendment of the Constitution Bill.

Deputy Mitchell raised the procedures of the North-South bodies. In one form or another, these matters were debated under the three strands in the past number of years. I confirm that copies of the Agreement will be delivered to every home.

Deputy Micheal Ahern and others inquired about the position of Article 2 of the Constitution in international law. It is important to note that Article 2 has no standing in international law because treaty obligations take precedence over rules of municipal law, where these are constitutional or merely statutory.

Accordingly, if a claim were made before an international court that Ireland was obliged to recognise the status of Northern Ireland, it would not be an answer for the State to say that Article 2 of the Constitution precludes it from doing so. The State is, therefore, potentially exposed to an argument that its constitutional claim is in violation of the Anglo-Irish Treaties of 1922 and 1925. Such a claim has not been made in an international court but as Ireland does not accept the compulsory jurisdiction of the International Court of Justice in The Hague, there is no forum in which such a claim could be brought. In any event such a claim would be a matter for states rather than individuals and it may be unlikely that the British Government, as distinct from one of the political parties in Northern Ireland which supports the union, would ever wish to bring such a claim.

The conclusions from that is that in the sphere of both international and domestic law, the substitution of the new proposed Article 2 of the existing text will establish a much more sound basis for the right of persons born in Northern Ireland to membership of the Irish nation, and hence citizenship, than the existing text.

Several speakers asked about the point I made earlier on Article 3. The proposed new Article 3, taken in conjunction with the changes to take place in British constitutional legislation, the new British-Irish Agreement and with elements of the multi-party Agreement — accepted by the prounion political parties in Northern Ireland — makes a change of immense positive significance for the aspiration towards Irish unity, in that it establishes a legal mechanism whereby the unification of Ireland can come about without the interference of any person outside the island. In this respect, the new Article 3 represents a considerable improvement over the existing Articles 2 and 3 which provide for no such mechanism. The mechanism that will now be established under the new Article 3 is the consent of a majority of people democratically expressed in both parts of the island and it thus reflects the agreed approach to self-determination and consent. That was set out in the

## Downing Street Declaration of 1993.

The implication of the acceptance of this proposed provision of the Constitution by the British Government as well as by the Northern Ireland parties supporting the union — the Ulster Unionist Party, the two loyalist parties and the Alliance Party — is the recognition not only of the separate existence of Northern Ireland for as long as a majority of its people wish it to continue but also the right of Northern Ireland to become part of a united Ireland if a majority of the people of Northern Ireland so wish. The achievement of a united Ireland is made entirely conditional on decisions made by people on the island. For example, it will no longer be possible as a legal proposition for a majority of the electorate in the United Kingdom or for a majority in the United Kingdom Parliament to block a united Ireland if a majority of the people of Northern Ireland want it. This is an important change in the existing situation and, as a matter of law, the British Government will now be bound by a solemn treaty obligation, as well as by its own legislation once the agreed changes in that are made, to give effect to the wishes of the people of Northern Ireland should they decide in the future that they wish to become part of a united Ireland.

Deputy O'Kennedy asked me a number of questions but I will not have time to deal with all of them. He asked about the wording at the end of annex A, the draft clauses and schedules for incorporation into British legislation. He also asked about the repeal of the Government of Ireland Act, 1920, and assumed that included the other Acts. That was the legal advice and the understanding. This issue was raised many times as well as issues I raised when I had the opportunity of talking to the UK constitutional experts and others. The understanding was that it included the Act of Union and all other Acts. This question was examined over several days and that was the legal advice available to me from all those who examined it.

I realise time is limited but I will refer briefly to the amendments.

Amendment No. 1 is not necessary having regard to what I said earlier. Under Article 29.5 of the Constitution, the British-Irish Agreement has to be approved by the Dáil and will be brought before it by way of motion after the referenda and when the President has signed the Bill.

I am advised the second amendment is unnecessary. In regard to Article 29.7.2, it is the jurisdiction of the High Court under Article 34.1 to consider the validity of any law. The amendment is technically incorrect. It should refer to Article 34.3.1 as well as Article 34.4 to be effective.

In regard to the third amendment, there is no practical way to prevent people going to court, even if the declaration is made non-justiciable. People can still challenge earlier stages of the procedure or they could bring an election petition, which action was taken by Senator Hanafin. One has to have some trust in the courts not to entertain nonsensical actions. The reference to the two Houses of the Oireachtas introduces a discretionary element which would be contrary to the British-Irish Agreement and could interfere with the Government's exercise of the executive powers given to it by Article 29.4.1 in connection with the external relations.

I thank the Members who contributed to the debate, particularly Deputy Bruton who remained in the Chamber for the entire debate. I accept time is limited. I know that the wording of the Constitution that came out from the Agreement is not altogether the best way to proceed but I thank the House and those Members who took an interest in this Stage.

### **An Ceann Comhairle**

Ós rud é go bhfuil sé ceathrú tar éis a dó, ní foláir dom an Cheist seo a leanas a chur de réir Ordú an lae seo ón Dáil: "Go n-aontaítear leis seo i gCoiste ailt 1 agus 2, an Sceideal, an Réamhrá agus an Teideal agus go dtuairiscítear an Bille gan leasú don Teach dá réir sin; go gcríochnaítear leis seo an Ceathrú Céim; agus go ndéantar leis seo an Bille a rith." As it is

now 2.15p.m. I am required to put the following question in accordance with an order of the Dáil of this day: "That sections 1 and 2, the Schedule, the Preamble and the Title are hereby agreed to in Committee and the Bill is accordingly reported to the House without amendment; Fourth Stage is hereby completed; and the Bill is hereby passed."

Cuireadh agus aontaíodh an cheist.

Question put and agreed to.

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