

Appendix B: Parsing the Paragraphs of the Declaration¹

The drafters of the Jont Declaration for Peace, or the Downing Street Declaration, went to extravagant lengths to produce a document intended to reassure everybody. Each paragraph bears the marks of the necessary ambiguities in constructing such a declaration. It is an exquisite diplomatic patchwork, though it remains to be seen whether it is a stepping stone towards peace and conflict-resolution or merely another milestone in Northern Ireland's continuing political and military stalemate. Below we analyse the text of the Declaration.

1

The first paragraph suggests that 'the development of an agreed framework for peace' originated with the two prime ministers *last year*. This statement was designed to reassure unionists that the Declaration did not stem from the work of John Hume and Gerry Adams, who had been meeting regularly and who had declared that they had produced a basis for peace which Hume had transmitted to the two governments. It was also intended to reassure those people in the Republic and Britain who disliked any contact, however indirect, between the governments and Sinn Féin [although as it happens the British government had been communicating, if not negotiating, with Sinn Féin and the IRA for the best part of three years in the run-up to the Declaration].

The second paragraph tip-toed over numerous egg-shells. The key sentence is this:

[The two prime ministers] make a solemn commitment to promote co-operation at all levels on the basis of the fundamental principles, undertakings, obligations under international agreements, to which they have jointly committed themselves, and the guarantees which each Government has given and now reaffirms, including Northern Ireland's statutory constitutional guarantee.

Here the prime ministers avoided an explicit mention of the Anglo-Irish Agreement, so as not to antagonize unionists. However, the reference to 'obligations under international agreements, to which they have jointly committed themselves' implicitly reaffirmed the Anglo-Irish Agreement so the SDLP and constitutional nationalists could be assured that the Declaration had not undermined the 1985 Agreement.

The two prime ministers then seemingly made an explicit reaffirmation of 'Northern Ireland's *statutory* constitutional guarantee', obviously to reassure unionists. The relevant guarantee must refer to the Northern Ireland Constitution Acts of 1973, 1974 and 1982, which specify that the status of Northern Ireland is part of the United Kingdom, as long as a majority of its citizens so wish. However, the problem here is that the Taoiseach could not in constitutional law, or in fact, 'reaffirm' Northern Ireland's statutory constitutional guarantee. To recognize the relevant British statutes would be invalid under Ireland's Constitution, and to 'reaffirm' them would be impossible because no Irish government had previously given Northern Ireland the relevant guarantee, and none could do so given its Constitution.

We must therefore read the key sentence, which on a natural reading implies that both prime ministers reaffirm Northern Ireland's statutory constitutional guarantee, as one in which *only* the British government reaffirms this guarantee. There is a simple choice here: either the Taoiseach unintentionally recognized Northern Ireland's statutory constitutional guarantee, in which case his action is constitutionally void, or he did not, in which case there is no change in the status quo, and no net political benefit for unionists as regards the status of Northern Ireland. The latter is the right reading. The status quo is re-described in the Declaration to make it slightly more palatable to unionists.

There is one remaining ambiguity related to this sentence. Neither here, nor elsewhere in the document, is there an explicit exclusion of the idea of shared sovereignty or joint authority. The text refers, however, to the promotion 'of co-operation at all levels' by both governments. Northern Ireland's 'statutory constitutional guarantee' confirms its status as part of the United Kingdom as long as a majority of its citizens so wish, but, legally speaking, it does not rule out Northern Ireland becoming part of both the United Kingdom *and* the Republic of Ireland. Our reading of the text of the Declaration suggests that it excludes only two options for the future of Northern Ireland: its expulsion from the United Kingdom against the will of a local majority, and the imposition of a united Ireland against the will of a local majority in Northern Ireland. Neither the British nor Irish government can invoke anything in the Declaration which explicitly rules out from consideration in any subsequent constitutional dialogue any of the following options for Northern Ireland: agreed integration into the UK, an agreed power-sharing devolved government, an agreed power-sharing devolved government with strong Irish dimensions, or an agreed system for sharing sovereignty, or any other 'agreed' system.

3

The third paragraph was designed to appeal to the SDLP, the most Europhile party in Ireland. It was originally much longer and more 'Euroactive', but, according to our sources, was pared down at the insistence of the British government. It states that 'the development of Europe, will, *of itself*, require *new approaches* to serve interests common to both parts of the island of Ireland' (our italics). These phrases, which envisage cross-border institutions and functional co-operation within a European rather than within an explicitly Irish national framework, have long been commended by the SDLP. They are balanced by the suggestion that the 'new approaches' will also apply 'to Ireland and the United Kingdom as partners in the European Union'. However, no explicit reference is made to new institutions, so that Europhobic Tories and unionists cannot formally be disturbed.

4

The major paragraph is the fourth. It is a solemn commitment from the British prime minister. It opens with John Major apparently restating the British government's unionist guarantee *and* the principle permitting change in the status of Northern Ireland cherished by constitutional nationalists:

The Prime Minister, on behalf of the British Government, reaffirms that they will uphold the democratic wish of *a greater number of the people* of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland.

One novel feature here was the deliberate use of the phrase in italics. James Molyneux, the leader of the Ulster Unionist Party, prefers this wording to the normal expression 'a majority' – on the grounds that it shows that those in favour of the Union go beyond 'the majority', i.e. Northern Irish Protestants, and include Northern Irish Catholics. Symbolically John Major was being as courteous as he could to the leader of the Ulster Unionist Party. Whether the expression 'a greater number of people' is the same as a majority might seem a moot point, since it could be translated as 'a plurality'. However, because it is specified that the wish of the greater number will be upheld only with regard to a dichotomous choice between the Union and a united Ireland the phrase 'a greater number' can only be interpreted as the equivalent of a majority in a referendum conducted on that basis. Moreover, in subsequent clarification of the text with Sinn Féin the British government made it plain that there was no difference between 'a greater number' and 'a majority'.

Another noteworthy feature is that the British prime-ministerial 'reaffirmation' was confined to giving unionists a majority veto on being expelled from the Union or in consenting to a united Ireland. The unionists, by implication, have no majority veto on the nature of the Union, the manner in which it is to be governed, or the UK's relations with the Republic of Ireland – other than having a majority veto on coerced unification.

The next sentence 'reiterates' previous statements by Peter Brooke and Sir Patrick Mayhew that the British Government 'have no selfish strategic or economic interest in Northern Ireland', and adds that the British Government's

primary interest is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island, and they will work together with the Irish Government to achieve such an agreement, which will embrace the totality of relationships.

This wording had several objectives. It was designed to treat seriously, and politely reject, the classical republican thesis that British imperialism is the key cause of the conflict (see chapters 1 and 2). The message was, firstly, that the British state is not the cause of the conflict, and secondly, that the 'totality of relationships', a phrase first coined by Brian Lenihan of Fianna Fáil, was open to negotiation and agreement between the two governments and those who live in Ireland. The language is also close to 'the agreed Ireland' long advocated by the SDLP. These words were meant to soothe constitutional nationalists and constitutional republicans, north and south.

Indeed the British Government now offered a new definition of its role:

to encourage, facilitate and enable the achievement of such agreement over a period, through a process of dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland.

This role falls short of what many believe Gerry Adams, Martin McGuinness and Sinn Féin wanted, namely a commitment on the part of the British Government to become an active persuader, an advocate of Irish unity, but, together with the declaration that it has 'no selfish strategic . . . interest' it is clearly as close to neutrality as John Major's government felt it could go.

It is also worth observing that British Ministers are at pains to point out that it is significant that there is no comma separating selfish from strategic in the wording of the Declaration.² The meaning of the relevant phrase must therefore be that Britain has no 'selfish strategic interest' in Northern Ireland, but that it may have another selfish interest, such as self-identification with those who wish to remain part of the Union, although that selfish interest cannot be economic. Alternatively it may also be construed to mean that Britain has a non-selfish strategic interest in Northern Ireland – a possibility which is open to multiple interpretations, including a joint strategic interest with the Republic in stability.

Two vital sentences follow. The British Government

accept that such agreement may, as of right, take the form of agreed structures for the island as a whole, including a united Ireland achieved by peaceful means on the following basis. *The British Government agree that it is for the people of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish.*

The British government here confirmed that it rules out no agreed all-Ireland structures, including a united Ireland. More remarkably, however, as the italicized words demonstrate, it has recognized the right of the people of Ireland as a whole to self-determination, without explicitly mentioning any right of self-determination for Northern Ireland. This message is addressed directly to Sinn Féin and the IRA: the right to self-determination of the Irish people as a whole has been recognized by a British government. By implication, there is no need for their 'long war' to continue. This right of self-determination is, of course, qualified: a united Ireland can only come about 'by agreement' between North and South, respectively (meaning 'each separately'), on the basis of consent, freely and concurrently given.

The symbolic power of the formula is that Northern Ireland is not explicitly mentioned as having the right of self-determination, which makes us wonder whether this passage could conceivably have been agreed by James Molyneux, the leader of the Ulster Unionist Party.³ The practical import of the word 'concurrently' is that the mechanism through which an agreed united Ireland can occur, at some future juncture, is that advocated by the SDLP, namely two referendums, held in Northern Ireland and the Republic.

What is ambiguous is whether the mechanism of two referendums is to apply to any other form of agreed Ireland, other than a united Ireland. Our reading of the text is that the mechanism of two referendums is only required for consent to a united Ireland. It is not mandatory for any other form of 'agreed structures', but it is also not precluded. This reading, of course, implies that the two governments have not agreed precisely how to agree an agreed Ireland, merely on how to agree a united Ireland, at some future hypothetical juncture. Only the latter has a precise mechanism for implementation. However, John Major subsequently

assured unionists that any negotiated settlement would be put to the population of Northern Ireland in a referendum.

The final section of paragraph 4 confirmed that the British will facilitate whatever agreement 'the people of Ireland' arrive at, presumably through inter-party negotiation, which is important because 'the people of Britain' are impliedly defined in a way which suggests that they are both geographically and politically different from 'the people of Ireland', including the people of Northern Ireland. In this respect the Declaration is symbolically significant: the people of Northern Ireland, irrespective of whether they support the Union, are explicitly not defined as British, but rather as Irish.

5 and 6

The Taoiseach confirms in a parallel statement that the Irish Government considers it would be wrong to attempt to impose a united Ireland 'in the absence of the freely given consent of a majority of the people of Northern Ireland'. He

accepts, on behalf of the Irish Government, that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

He does so, in an appeal to both republicans and unionists, because he considers that

the lessons of Irish history, and especially of Northern Ireland, show that stability and well-being will not be found under any political system which is refused allegiance or rejected on grounds of identity by a significant minority of those governed by it.

The Taoiseach plainly meant that a united Ireland achieved without consent would be no better than Northern Ireland is now, a political unit which lacks widespread allegiance.

This declaration by the Irish prime minister restates traditional nationalist and republican complaints about Northern Ireland, but in a balanced manner which recognizes that a second wrong – a united Ireland achieved without minority consent – would not correct the

first wrong – the formation and maintenance of Northern Ireland without minority consent. It combines an appeal to unionists to remake Northern Ireland's political institutions in a manner acceptable to the northern nationalist minority with a promise from the Irish Government to protect national, religious, political, civil and socio-economic rights in its jurisdiction as part of 'any future political and constitutional arrangements emerging from a new and broadly based agreement'.

The only strange issue here is why the British Government failed to make a similarly explicit parallel declaration about entrenched rights which would accompany any new agreement. The British commitment to protect the 'rights and identities' of both traditions might have been considered sufficient, or the British government may have been reluctant to embrace either an individualist bill of rights or a bill protecting cultural rights. Alternatively the Irish emphasis on rights may flow from the Labour side of the coalition government. This interpretation is strengthened by paragraph 6, where it is stated that 'in recognition' of unionists' fears: 'The Taoiseach will examine *with his colleagues* any elements in the democratic life and organisation of the Irish State' which can be seen as 'not being fully consistent with a modern democratic and pluralist society'.

This sentence clearly suggests the influence of Dick Spring, and his Labour colleagues, and their agenda for altering the Irish Constitution and other public laws in the direction of moral liberalism. This interpretation probably explains why the above promise is immediately balanced by reassurances to Fianna Fáil, and Gaelic and Christian traditionalists that any such examination will have

due regard to the desire to preserve those inherited values that are largely shared throughout the island or that belong to the cultural and historical roots of the people of this island in all their diversity.

There is, however, at least one other possible reading of paragraph 5. Confidential sources have suggested to us that the list of rights promised by the Irish government, beginning with 'the right of free political thought' and ending with 'the right to equal opportunity', is exactly what loyalist paramilitaries, through intermediaries, requested of the Irish government, and the wording of the rights is exactly what they requested. This explanation would

account for why 'freedom of political thought' is specified in the Declaration rather than 'freedom of political expression'. 'Thought' is essentially private whereas expression is not, which is why it is strange to have 'political thought' protected in a carefully drafted international text. If the Irish government was seeking to reassure loyalist paramilitaries then this passage may explain why loyalist paramilitaries were initially quiet and restrained in the wake of the Declaration – they had been consulted, and had been assured of the good faith of the Irish government.

7 and 8

In paragraph 7 the two governments jointly accepted that Irish unity would be achieved only by persuasion and consent, and without coercion, and repeat, without explicitly saying so, the promises they both made in the Anglo-Irish Agreement. More importantly the Irish Government declares that 'in the event of an overall settlement' it will be willing to propose changes to Articles 2 and 3 of its Constitution which would 'fully reflect' the principle of consent.

This promise, which implicitly recognizes that Articles 2 and 3 are offensive to unionists because they do not 'fully reflect' principles of consent, is significantly qualified: any changes to the relevant Articles must be 'part of a balanced constitutional accommodation'. Fianna Fáil, the SDLP, and Sinn Féin are being reassured that constitutional republicanism, embedded in Articles 2 and 3, will only be modified if there are reciprocal but unspecified concessions forthcoming from unionists. This offer is obviously a key element in the 'open, frank and balanced approach' to constitutional dialogue encouraged by the Irish Government in paragraph 8.

9

The two Governments imply in paragraph 9 that, along with Northern Irish political parties, they will seek *through dialogue* 'to create institutions and structures' of a cross-border nature – across the land border in Ireland, and the sea border between Britain and Ireland. They also refer back to the mention of their joint membership of the European Union made in paragraph 3. No specific commitments are made here, but plainly both governments are accepting that cross-border bodies will form part of any wider settlement, or part of any interim settlement in the absence of broader agreement. Such bodies could be

functional cross-border agencies, functional agencies with delegated executive powers, inter-ministerial conferences, inter-governmental conferences, a British and Irish equivalent to a Nordic Council, a British and Irish equivalent to the European Coal and Steel Community of the 1950s, and/or a British-Irish-Northern Irish inter-parliamentary body. In short, Irish dimensions are open to negotiation, as are British dimensions, and they can be put within European frameworks.

10, 11 and 12

The two Governments then confirmed the main purpose of the Declaration as regards the republican movement. 'Democratically mandated parties' will have a full place in democratic politics and dialogue provided they renounce violence and 'have shown that they abide by the democratic process'. This passage was particularly addressed to Sinn Féin, but also, by implication, to loyalist organizations which are, or might wish to become, political parties.

This offer was immediately followed by a declaration from the Irish Government that they 'would make their own arrangements within *their jurisdiction* to enable democratic parties to consult together and share in dialogue about the political future . . . [and] . . . make recommendations on ways in which agreement and trust between both traditions in Ireland can be promoted and established'. The Forum for Peace and Reconciliation, to be held within Ireland's 'jurisdiction', was obviously meant to entice Sinn Féin, and presumably was the Irish Government's response to what may have been contained in the proposals agreed by John Hume and Gerry Adams. The Forum opened in Dublin in October 1994.