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Annex BPoints of difficulty
Strand I

1. We can be reasonably confident that the proposals on Strand I in the Framework document accurately reflect the wishes of the main parties in Northern Ireland. This section of the document - Part 1 - closely reflects a contingent agreement reached between the UUP, DUP, SDLP and Alliance during the 1992 talks. The SDLP reserved their position on two issues but that was partly for tactical reasons until the shape of Strands II and III became clearer. We are not therefore expecting a major re-negotiation of the Strand I proposals although we would not be surprised if, for reasons of the internal management of the Republican movement, Sinn Fein were to seek to have an extensive and vigorous examination of whether an Assembly is desirable and how it would work.

2. There will be plenty of scope for the parties to re-visit the fine-tuning of the Assembly - the composition and operation of Departmental Committees, checks and balances to prevent the majority overriding the minority, the range of legislative responsibilities for the Assembly, etc. We do not, however, see these as areas of major disagreement. We suspect that the parties will eventually drop the idea of the supervisory Panel - in effect a "watch dog" over the Assembly - on the grounds that it is unnecessary.

3. Where we can expect lengthy discussion is over the Assembly's role in law and order matters, including policing. This is clearly a highly sensitive issue for both communities. During the earlier talks the SDLP consistently pressed the case for radical reform of the RUC; they will be joined in that this time by Sinn Fein who may also want to grandstand on emergency powers, demilitarisation and prison issues. They may link these issues to decommissioning. The extent to which it would be prudent to pass responsibility for policing and security matters to a new Assembly will depend on judgements nearer the time about the longer term security

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situation and the likelihood of a deep and lasting political settlement.

4. A further area where there is scope for protracted discussion in Strand I is the protection of human rights. Most if not all of the Northern Ireland parties favour a Bill of Rights but so far there is no agreement about what it should contain. It remains to be seen how quickly this can be resolved and how the incorporation of the ECHR and any future plans nationally for a Bill of Rights will affect the parties' thinking.

Strand II

5. There was relatively little negotiation on Strand II in 1992. The proposals in Part II of the Framework document therefore rely heavily on the two Governments' assessment of what the parties will support.

6. The Framework document proposed the establishment of a North/South body made up of Heads of Department ("Ministers") from the Assembly and Irish Parliament. Ministers acting in the new body would derive their authority from, and be accountable to, the Assembly and Irish Parliament respectively. There would be different levels of co-operation - 'consultative'; 'harmonising' - where it would be sensible for the two jurisdictions to bring their policies more closely together; and 'executive' where the Body would be mandated to deliver defined services.

7. This is a crucial area for both Unionists and Nationalists. The so-called "Irish dimension" has dogged previous attempts at a settlement and, in 1974, as a result of strong Unionist/Loyalist resistance, caused the downfall of the power-sharing executive. For Unionists it remains one of the most sensitive topics because of fears that it will open a pathway to a united Ireland.

8. It is equally highly significant to Nationalists. They want the practical benefits of close co-operation between the North and South but, more importantly, see the North/South

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dimension as a fundamental expression of their Irish identity and derive profound reassurance from the knowledge that the Dublin Government maintains a close interest in Northern Ireland affairs. A strong North/South dimension also, of course, plays into Nationalist aspirations for a united Ireland.

9. Given these conflicting positions there remains a wide gulf between the Nationalists, who want a visible evidence of a close and dynamic cross-border relationship reflected in institutions, and the Unionists who envisage only sensible, pragmatic co-operation on matters of mutual interest. They are deeply suspicious about new institutions, fearing that they could turn into a "third Parliament" for the island or pave the way for a united Ireland.

10. These conflicting attitudes also mean that, if agreement is reached on the North/South relationship along the lines of the Framework document, there will be a clear contrast between the way that it is presented by Unionists and Nationalists. The Unionists will regard any agreement as final and drawing a line under what they are prepared to accept; conversely, the Nationalist community, and Republicans in particular, will present it as purely an interim step as part of a transitional agreement.

11. In terms of the negotiations, the Unionists will look very critically at the prospective role, functions and structure of any institutions. They will focus particularly closely on the source of authority and accountability; they will want to ensure that institutions are firmly rooted in the Assembly. They will also look carefully at the range of functions allocated to the body and how those functions can be added to. Their aim will be to focus as much as possible on the lower end of the scale - the consultative functions - and to keep the harmonising and executive functions to a minimum.

12. At the other end of the spectrum the Irish Government, SDLP and Sinn Fein will want the North/South body to be a highly visible entity with a wide and dynamic remit. They will want it to have as many executive responsibilities as possible.

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Strand III

13. This Strand is essentially for the two Governments but, in reality, requires the blessing of the Northern Ireland parties as well. There will be two main areas of controversy

- the need to reach a balanced accommodation on constitutional issues, and
- structures for East/West co-operation.

14. The recent exchanges with the Taoiseach have given an indication of how difficult it will be to produce an agreed position on the constitutional issues. Any agreement will have to deal with the issue of consent in all its aspects, as reflected in the constitutional legislation, the Anglo-Irish Agreement, the Joint Declaration, the Framework document and whatever else might arise in the talks. The negotiation must also embrace the associated issue of self-determination. Overlying this, the Unionists will look closely at how the Irish Government fulfills the undertaking in Frameworks to amend the Irish constitution to fully reflect the principle of consent and remove the territorial claim in Articles 2 and 3.

15. Conversely, the Irish Government, SDLP and Sinn Fein will watch closely how the British Government addresses the undertaking to amend its constitutional legislation so as to reflect the position that it will not impede peaceful and democratic movement towards a united Ireland. This could entail the amendment or replacement of the Government of Ireland Act 1920.

16. The Irish Government, SDLP and Sinn Fein will also be seeking to hold the British Government to various undertakings in paragraphs 14-20 of Part 2 of the Framework document (pages 26 and 27). In addition to dealing with consent and self-determination these paragraphs offer a number of assurances that the Government will respect the legitimacy,

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identity, sense of allegiance, aspiration and ethos of the Nationalists as well as the Unionist community. The two ~~also~~ Governments^{11/12} committed themselves to entrenched provisions to guarantee equitable and effective political participation for whichever community happens to be in a minority. The British Government also pledged that its jurisdiction would be exercised with rigorous impartiality and would be founded on full respect for civil, political, social and cultural rights and freedom from discrimination, parity of esteem, and to just and equal treatment for the identity, ethos and aspirations of both communities. It also pledged that the British Government would discharge its responsibilities in a way which did not prejudice the freedom of the Northern Ireland people to determine the Province's constitutional future. These issues will be highly significant for Nationalists who will regard them as a litmus test of the British Government's commitment to creating a climate and culture in Northern Ireland which can reconcile them to the Province remaining within the UK.

17. The Framework document also envisages the replacement of the current Anglo-Irish Agreement with a new and more broadly based agreement. The current Intergovernmental Conference would be replaced with a similar Conference but one which largely excluded the Assembly's responsibilities from its remit. The new Conference could also take on the function of monitoring new political institutions, both in Northern Ireland and between Northern Ireland and the Republic, to ensure that they were functioning properly. If that failed to happen the two Governments could then consider what remedial action was necessary and implement it in their own jurisdiction. There would be no derogation from sovereignty. Unionists will be very wary of this role. They will want to be sure that the Irish Government cannot use the Conference as a back door to interference in Northern Ireland.

18. The Unionists are also likely to argue that East/West institutions should be more broadly based. They dislike the way that the present infrastructure between the two nations is designed to focus solely on Northern Ireland; they may well argue for a "Council of the British Isles" where Northern Ireland would be just one subject area on a wider agenda

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encompassing the broad relationship between the UK and Republic.

19. It is as yet unclear what the Irish would make of this. They are unlikely to welcome the focus being shifted away from Northern Ireland; on the other hand, we know that they are interested in developing the East/West relationship generally. The fact that it is some years since they have sought to exploit the machinery of the Anglo-Irish Intergovernmental Conference (AIIIC), which covers the totality of relationships, suggests that they will be luke-warm.