



An Chartlann Náisiúnta National Archives

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Saturday, 9.00 pm

Multi-Party Talks
Current State of Play (including Drafts)

STEERING NOTE

Overview

1. Following an intensive week of negotiations, both in Belfast and in London, the two Governments are now close to agreement on drafts on all the main issues in the Talks. The main outstanding area of importance is Strand One. While the Government does not have a direct negotiating role, we are working intensively with the SDLP on tactics and drafting. We may have to try and bring our influence to bear directly on the British on the issues in question in the next few days, in order to get the right result. The outcome in Strand One will have a crucial read-across to Strand Two. Unfortunately, Sinn Féin are staying on the sidelines on this debate, largely for tactical and timing reasons related to the Assembly issue.
2. A brief outline of the state of play in regard to the various draft texts of the Agreement is contained in the brief, at the beginning of each particular section.
3. At the time of writing, the Taoiseach and the Prime Minister have achieved virtual agreement on the Strand Two paper. Agreement on this will provide an important impulse to the remainder of the negotiations as a whole.
4. The drafts as they stand contain all the essential elements of the Framework Document and the dynamic of change which will be necessary if a durable settlement is to be secured. In the course of intensive exchanges with the British side, the latter have moved considerably from what was an essentially minimalist approach in the first drafts.

Talks Belfast

5. Among the parties, there was a real sense of engagement this week and the atmosphere overall was positive. The switch to mainly bilateral mode undoubtedly helped considerably. The Government delegation, led by the Minister and the Minister of State, conducted intensive rounds of bilaterals with all the parties. These were helpful in clarifying areas of difficulty, particularly in regard to Strand Two. Over the course of the week, there was very deep engagement between our delegation and that of the SDLP and Sinn Fein. We worked extremely closely with them in the preparation of drafts of the various issues being negotiated with the British side.

Senator Mitchell

6. Senator Mitchell's main focus was on producing the first draft of his overall paper. While he was undoubtedly disappointed that it did not prove possible to table the first draft last night, as planned, he remains hopeful that the deadline for overall agreement of Thursday next can still be met. He himself is now playing a much more pro-active role, and will undoubtedly seek to continue in this vein in the final week.

The SDLP

7. **The SDLP** are very happy with the various drafts we have agreed with the British side (as indicated, we worked intensively with them in all cases). They believe that they represent a very considerable achievement and form the basis, if they can be converted into an overall agreement, for a settlement which can be sold to their electorate as representing real change. There was unease in the delegation about the fact that it did not prove possible for Senator Mitchell to table his first draft last night - although in the absence of a Strand Two paper, they believe that he made the right decision in not proceeding with any of the drafts.

8. Their main concern now is in regard to Strand One, which they feel is going to be crucial to the overall deal. They have had several bilaterals with the UUP and the Alliance on the issue during the week, and the gap is undoubtedly closing. At the same time, major differences remain (sufficient consensus, collective responsibility). We have been working closely with them on the matter, and will have a further session with their drafting team at Castle Buildings tomorrow (Sunday).

Sinn Féin

9. **Sinn Féin** accept that the drafts represent progress but - and this has been their approach throughout - feel that more needs to be done in fleshing out the detail. They believe that greater specifics will be needed in various areas if their objective is to be achieved. Against the background of the continuing hostility towards them from the UUP, the Ministers and the delegation have stayed in close touch with the party and the atmosphere is positive - we had, for instance, a useful two hour meeting with them on Friday evening (which also included the SDLP) in which we went through their concerns on each paper in detail. Our sense is that they are strongly engaged and committed to being part of an agreement, as long as they can be convinced that the dynamic of change can be demonstrated. While their reservations on the drafts may be partly tactical, they will argue that further elaboration is needed in a number of key areas for them (policing, prisoners, rights, the Irish language, constitutional change).

Other Parties

10. In terms of securing an overall agreement, much will clearly depend on the attitude of the UUP. Despite a dimension of posturing during the week, the sense is that they are now engaged and seeking to do a deal. It remains to be seen whether they will be able to make the necessary compromises for this to happen. **The PUP and the UDP** are playing a positive role, although there are indications that the latter are under considerable pressure this weekend within their own constituency, especially as regards what they are hearing about the Strand Two paper. **The Alliance** are

expressing confidence that agreement can be reached and are working closely with the SDLP on Strand One. **The Womens Coalition** continue to play a very active, constructive role and we have been staying in close touch with them.

Next Week

11. While the cumulative impact of the drafts as they stand will be profound, it will be a considerable challenge to maintain the texts. There will be pressure from Sinn Féin, for instance, to ratchet them upwards. Inevitably, there will be extremely strong and countervailing pressure from the unionist side to claw back in certain areas. Strand One will be a particularly intensive area of focus. The role of the two Governments will continue to be key. In addition to facilitating the exchanges between the parties, it is inevitable that they will ultimately have to broker the final outcomes in the various areas of contention.

12. The overall sense this weekend is that a historic accommodation, embracing fundamental change and founded on partnership at all levels, is now in sight. All the core elements are in play and well advanced (with the possible exception of Strand One). With the two Governments at the centre, and with a critical role also for Senator Mitchell, there is a strong sense that the difficulties, however serious, can be overcome, and that a fair, honourable and balanced settlement can be achieved.

Anglo-Irish Division
4 April 1998

Constitutional Issues

The agreed paper on Constitutional Issues asks participants to endorse a commitment made by the two Governments to include in a new British-Irish Agreement an Article 1 expanding on the present Article 1 of the Anglo-Irish Agreement. The text of such an Article has been agreed between the two Governments. It is based on the Joint Declaration and the Framework Document, setting out the principles of consent and self-determination, as well as a commitment by both Governments to equality of treatment and parity of esteem, and to continuing dual citizenship for all the people of Northern Ireland. As is foreshadowed in the Framework Document, there is an acknowledgment of Northern Ireland's status as part of the United Kingdom, which reflects and relies upon the wish of a majority.

Proposals for change in the Irish Constitution and to British constitutional legislation would be annexed to an overall Agreement. The British intend to make clear that their new legislation on the constitutional status of Northern Ireland supersedes equivalent aspects of previous legislation. They will repeal section 75 of the Government of Ireland Act, and will add to their definition of the consent principle (set out in the 1973 Northern Ireland Constitution Act), a clause explicitly committing them to fulfil the wish of a majority in favour of a united Ireland.

The SDLP have been consulted at various stages on this approach, and appear broadly happy.

Sinn Féin are strongly opposed to the proposed changes to Articles 2 and 3.

However, it can be pointed out that there are to be changes in British legislation; that unionists are having to accept language on the right to self-determination of the people of the island of Ireland; that there is a commitment to parity of esteem and equality of treatment, in full Framework Document terms; and that the British Government is explicitly recognising the Irish citizenship rights of all the people of Northern Ireland.

(29 March 1998: 3.30pm)

CONSTITUTIONAL ISSUES

1. The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement, they will:

- (i) recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland;
- (ii) recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish; accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland;
- (iii) acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland's status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people;
- (iv) affirm that, if in the future, the people of the island of Ireland exercise their right of self-determination on the basis set out in sections (i) and (ii) above, to bring about a united Ireland, it will be a binding obligation on both Governments to, introduce and support in the respective Parliaments legislation to give effect to that wish;
- (v) affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities;

[(vi) recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.]

2. The participants also note that the two Governments have accordingly undertaken, in the context of this comprehensive political agreement, to propose and support changes in, respectively, the Irish Constitution and in British legislation relating to the constitutional status of Northern Ireland. Their proposals are at Annex [???].

Position in Strand One

At present, Strand One is the most underdeveloped section of the negotiations in the Talks Process. The main focus of discussion in this area to date has been between the two largest parties the SDLP and UUP. While there was some progress achieved during the last week, there are still large differences between the two parties.

UUP/SDLP negotiations

The British Government has given several texts to the UUP and SDLP which have strongly echoed the UUP position. Unlike the other areas of the negotiations, there was no counterbalancing influence from the Irish Government. The SDLP have found these texts to be unacceptable.

At the outset of the week, there were two large areas of difference between the UUP and SDLP, namely,

- the issue of sufficient consensus for all key decisions in the new Northern Ireland institutions i.e. such decisions would need the support of a majority of members from both communities and
- the need for some form of collective responsibility arrangement for the Northern "executive".

During the course of the week, the SDLP leader, John Hume, met with the British Prime Minister in London and there was some progress made, especially on the matter of sufficient consensus. This progress was reflected in subsequent British texts. The UUP has also dropped its resistance to the new Assembly having legislative powers.

The SDLP take the position that the proposed arrangements in the British/UUP proposals for exercising power are unworkable. They believe that there needs to be a clear definition of where the executive authority lies. The party opposes the UUP proposal which envisages a local

authority type structure (i.e. based on committees controlling the executive which would only have a loose central coordination). Such an arrangement would greatly weaken the North/South Ministerial Council, as the Northern representatives would have little power and would lack a central orientation. The Government shares the SDLP position.

The other parties have to date been largely uninvolved in the UUP/SDLP negotiations but they all have their own vital interests to protect. The smaller parties will wish to ensure that the electoral system adopted gives them a reasonable chance of being represented in the new Assembly. This is a particular concern for the PUP, UDP and the Northern Ireland Women's Coalition. The text of the British drafts envisage that all 18 Westminster constituencies would return 5 members each. The smaller parties would like some arrangement whereby there would be a guarantee of seats for parties achieving a certain minimum % of the poll (e.g. 2%). This will be a matter for negotiation during the forthcoming week. The Secretary of State is sympathetic to the smaller party's concerns.

Anglo-Irish Division

4 April 1998

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*Qemoz***STRAND ONE****DEMOCRATIC INSTITUTIONS IN NORTHERN IRELAND**

1. A 90-seat Assembly with five members elected by PR/STV from each of the 18 parliamentary constituencies.
2. Devolution of executive and legislative functions covering the responsibilities of the six Northern Ireland departments, in accordance with principles set out in paragraph 10 below.

Safeguards

3. Safeguards to ensure all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including:
 - (i) allocation of Chairs, Assembly Secretaries and Committee membership in proportion to party strengths;
 - (ii) the ECHR and any Bill of Rights for Northern Ireland supplementing it which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission;
 - (iii) arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland;
 - (iv) arrangements to ensure key decisions are taken on a cross-community basis. This might require that any key decision would

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need to secure either the support of a majority of members voting who also comprise at least X per cent in each case of those members identifying themselves as nationalist or unionist respectively or a weighted majority of members voting (Y per cent).

- (v) key decisions requiring cross-community support to be designated in advance (eg election of presiding officer, standing orders, budget allocations, employment equality, cultural issues) and/or be triggered by a right of petition exercised by a significant minority of Assembly members (Z per cent);
- (vi) an Equality Commission to monitor a statutory obligation to promote equality of opportunity in specified areas and parity of esteem between the two main communities, and investigate individual complaints against public bodies.

Operation of Assembly

4. Committees for each of the main executive functions of the Northern Ireland Administration. Membership, Chairs and Assembly Secretaries to be allocated proportionally, using the d'Hondt procedure, with the Assembly Secretary accountable for the executive function to the Committee, as set out in paras 6 and 9.
5. A Liaison/Policy Coordination Committee bringing together the Assembly Secretaries of the departmental committees. Two members of the Liaison/Policy Coordination Committee to be appointed as Chair and Deputy Chair respectively. These appointments to be the first two

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Assembly Secretaries selected through the d'Hondt procedure, or on some other basis which commands cross-community support in the Assembly. Other non-departmental committees (eg Audit Committee, EU Committee, Justice and Home Affairs Committee) at Assembly's discretion, with members, Chairs and Assembly Secretaries appointed according to procedure in paragraph 4 above.

Executive authority

6. **Executive authority to be administered by the relevant Assembly Secretary (eg Assembly Secretary for Agriculture) acting as head of department, subject to the Code of Practice described in paragraph 9, and:**
 - (i) **abiding by the ECHR, existing anti-discrimination provisions and any Bill of Rights for Northern Ireland supplementing it;**
 - (ii) **a statutory obligation, monitored by an Equality Commission, on all public bodies to promote equality of opportunity in specified areas and parity of esteem.**
7. **Funding for Assembly's responsibilities to be determined primarily on basis of existing comparability and block arrangements.**
8. **Liaison/Policy Coordination Committee to table a programme setting out an agreed budget, linking resources with objectives, policy and legislative proposals, in advance of each financial year. For approval by Assembly, after scrutiny in departmental Committees, on a cross-community basis. In-year changes by the same procedure.**

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Code of Practice

9. A Code of Practice to be drawn up by the Assembly on the basis of a cross-community vote. Subsequent amendments to the Code also to be made on a cross-community basis. The Code would codify and build upon the provisions of this agreement making it clear in particular that:
- (i) each Assembly Secretary to have delegated authority, subject to agreed arrangements for policy oversight, allowing him to carry out his functions within policy guidelines agreed with the relevant committee. The relevant Chairman would have access on behalf of the Committee to departmental papers.
 - (ii) an Assembly Secretary to be presumed to have the necessary delegated authority when operating within understandings reached in the Liaison/Policy Coordination Committee, or in accordance with budgetary policy or legislative proposals approved, after scrutiny by the Departmental Committee and by the Assembly, as set out in paragraph 8.
 - (iii) but in the event of any dispute between him and the committee, on this or other matters, the Assembly as a whole to have the power of decision exercised on a cross-community basis.
 - (iv) as stipulated in paragraph 3(v) any issue to be brought, on petition by X per cent of the Assembly, before the Assembly for determination on a cross-community basis.

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- (v) Assembly Secretaries to be expected to fulfil all responsibilities and duties connected with their posts.
- (vi) a postholder to be removed from office when he loses the confidence of the Assembly voting on a cross-community basis, either for failure to meet his responsibilities or because the Assembly believes, on a cross-community basis, that his retention of office is incompatible with democratic expectations and constraints.
- (vii) Parties and individuals could decline to take up posts. Parties could remove postholders if they lose confidence in them. Casual vacancies to be filled by a member of the same party.

Legislation

10. Assembly to pass primary legislation for Northern Ireland in devolved areas, subject to:
 - (i) the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void;
 - (ii) decisions by simple majority of members voting except when decisions on a cross-community basis required;
 - (iii) detailed scrutiny and approval in the relevant departmental committee;

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- (iv) mechanisms, based on arrangements proposed for the Scottish Parliament, to ensure suitable coordination, and avoid disputes, between the Assembly and the Westminster Parliament;
 - (v) option of Assembly seeking inclusion of Northern Ireland provisions in UK-wide legislation in Westminster Parliament especially on devolved issues where parity normally maintained (eg social security, company law).
11. Assembly able to legislate in reserved area with the approval of the Secretary of State and subject to Parliamentary control.
 12. Disputes over legislative competence to be decided by the Courts.

Relations with other Institutions

13. Arrangements to represent the Assembly as a whole, at Summit level and in dealings with other institutions, to be agreed. Otherwise, representation to be by the Assembly Secretary of the relevant departmental committee.
14. Terms to be agreed between appropriate Assembly representatives and UK government to ensure effective coordination and input by Assembly Secretaries to national policy-making, including on EU issues.
15. Role of Secretary of State:

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- (i) to remain responsible for NIO matters not devolved to Assembly, subject to regular consultation with the Assembly and Assembly Secretaries;
 - (ii) to approve and lay before the Westminster Parliament any Assembly legislation on reserved matters;
 - (iii) to represent Northern Ireland interests in the United Kingdom Cabinet;
 - (iv) to have the right to attend the Assembly at their invitation.
16. Westminster Parliament (whose power to make legislation for Northern Ireland would remain unaffected) to:
- (i) legislate for non-devolved issues, other than where Assembly legislates with approval of Secretary of State and subject to control of Parliament;
 - (ii) reserve powers to legislate to ensure United Kingdom's international obligations are met in respect of Northern Ireland;
 - (iii) scrutinise, including through the Northern Ireland Grand and Select Committees, the responsibilities of the Secretary of State.

● Strand Two: North/South Ministerial Council

In regard to Strand Two, the paper virtually agreed between the two Governments effectively preserves the essence of the Framework Document, while relabelling certain elements and setting out more fully the safeguards in the Framework text in regard to accountability and the need for agreement between both sides in working the Council.

Crucially, from a nationalist viewpoint, the Council would have a clear institutional identity, underpinned by legislation; it would have defined functions across a wide range of areas, from (a) consultative, through (b) best endeavours to achieve common policies (i.e. the harmonising function of the Frameworks), to (c) decision-making and action (i.e. the executive function of the Frameworks). The decisions of the Council would in some areas be implemented separately (e.g. by Government Departments), and in other cases by all-island implementation bodies; a number of such implementation bodies would be set up right away, alongside the Council and answerable to it.

What has not been discussed in any detail as yet is how many, and which, areas are to be designated from the outset, particularly in regard to implementation bodies. We have made clear to the British that we will be looking for ten such bodies, operating in significant areas. This will be a key element for negotiation next week.

The SDLP are very satisfied with the above. **Sinn Féin** are likely to continue to object to the "veto" which they see a Northern Assembly having over the operation of the Council. This is far from the case, as any reasonable reading of the text will show. At the same time, it is impossible to see how, democratically, such a Council could work other than by agreement as envisaged in the Framework Document.

Draft - 4 April 1998 (12.00)

SECRET

NORTH/SOUTH MINISTERIAL COUNCIL

1. Under a new British/Irish Agreement dealing with the totality of relationships, and related legislation at Westminster and in the Oireachtas, a North/South Ministerial Council to be established to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, co-operation and action within the island of Ireland - including through implementation on an all-island basis - on matters of mutual interest within the competence of the administrations, North and South.
2. All Council decisions to be by agreement between the two sides. Northern Ireland to be represented by [], the Irish Government by the Taoiseach and relevant Ministers, all operating in accordance with the rules for democratic authority and accountability in force in the Northern Ireland Assembly and the Oireachtas respectively.
3. The Council to meet in different formats:
 - (i) in plenary format twice a year, with Northern Ireland represented by [] and the Irish Government led by the Taoiseach;
 - (ii) in specific sectoral formats on a regular and frequent basis with each side represented by the appropriate Minister/[];
 - (iii) in an appropriate format to consider institutional or cross-sectoral matters (including in relation to the EU) and to resolve disagreement.

4. Agenda for all meetings to be settled by prior agreement between the two sides, but open to either to propose any matter for consideration or action.
5. The Council:
 - (i) to exchange information, discuss and consult with a view to cooperating on matters of mutual interest within the competence of both administrations;
 - (ii) to use best endeavours to reach agreement on the adoption of common policies, in the areas listed in [], making determined efforts to overcome any disagreements;
 - (iii) in specified areas set out in [] to take decisions on action for implementation separately in each jurisdiction;
 - (iv) in other specified meaningful areas set out in [] to take decisions on action at an all-island and cross-border level through implementation bodies to be established as set out in paras. 7 and 8 below.
6. Each side to be in a position to take decisions in the Council within the defined authority of those attending, through the arrangements in place for co-ordination of executive functions within each jurisdiction. Each side to remain accountable to the Assembly and Oireachtas respectively, whose approval, through the arrangements in place on either side, would be required for decisions beyond the defined authority of those attending.
7. For the areas listed in [], where it is agreed that new implementation bodies are to be established, the two Governments to make all necessary legislative

and other preparations to ensure the establishment of these bodies at the inception of the British/Irish Agreement or as soon as feasible thereafter, such that these bodies function effectively as rapidly as possible. The bodies to have a clear operational remit. To implement, on an all-island and cross-border basis, policies agreed in the Council. [To be responsible, and] to report, to the Council, while remaining subject to normal accountability to the Northern Ireland Assembly and the Oireachtas.

8. Any further bodies in addition to those specified in [] and other developments of these arrangements, to be by agreement in the council and with the specific endorsement of the Northern Ireland Assembly and the Oireachtas, subject to the extent of the competences and responsibility of the two administrations.
9. Disagreements within the Council to be addressed in the format described at paragraph 3 (iii) above or in the plenary format. By agreement between the two sides, experts could be appointed to consider a particular matter and report.
10. The necessary costs of the Council and the funding of implementation bodies to be agreed within the Council, subject to normal procedures in the Oireachtas and the Northern Ireland Assembly. Funds to be provided by the two Administrations on the basis that the Council and the implementation bodies constitute a necessary public function.
11. The Council's expenditure to be audited jointly by the Comptroller and the Auditor-General's Office and by the Northern Ireland Audit Office. Their joint report to be submitted simultaneously to the Oireachtas and to the Assembly.

12. The Council to be supported by a standing joint Secretariat, staffed by members of the Northern Ireland Civil Service and the Irish Civil Service.
13. The Council to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings.
14. The Northern Ireland Assembly and the Oireachtas to be encouraged to develop a joint parliamentary forum, bringing together equal numbers from both institutions for discussion of matters of mutual interest and concern.
15. Consideration to be given to the establishment of an independent consultative forum, appointed by the two administrations, representative of civil society, comprising the social partners and other members with expertise in social, cultural, economic and other issues.

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