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Issues Paper

Strand 3: East/West Institutions

1. This paper sets out the principal issues likely to arise in negotiations in Strand 3 on East/West issues, focussing in particular on the proposals set out in *A New Framework for Agreement* and on the likely lines of Unionist criticism. Assuming that the position of the Government will be as set out in the Framework Document, it examines the prospects for deflecting or lessening Unionist unhappiness with that position without sacrificing its essentials.

Background

2. The British Government encouraged the Unionist parties to participate in the 1991/2 Talks process by holding out the prospect of their direct involvement in the renegotiation of a revamped Anglo-Irish Agreement: Peter Brooke's statement of 26 March 1991 included a statement that "For their part, the two signatories of the Anglo-Irish Agreement...have made clear that they would be prepared to consider a new and more broadly based agreement or structure if such an arrangement can be arrived at through direct discussion and negotiation between all of the parties concerned." This is repeated in the Ground Rules paper, together with a statement that "The two Governments for their part, have described a shared understanding of the parameters of a possible outcome of the negotiations in *A New Framework for Agreement*."
3. The 1992 Talks did not reach a point where new structures were seriously under discussion. However, both the Irish Government and the SDLP made clear their firm commitment to the Anglo-Irish Agreement both as a practical vehicle for the protection and promotion of nationalist interests within Northern Ireland, and as a symbolic manifestation of the wider Irish dimension of nationalist identity.
4. During the 1992 Talks, the UUP proposed a new Council of the British Isles, involving in different formations elected representatives from the UK and the Republic, who might identify and pursue common interests both across the East-West spectrum as a whole and as between North and South. This proposal was repeated, without significant elaboration,

in the UUP's "Statement of Aims" (November 1995). The essential thrust of the UUP argument is that North/South relations - political, economic, cultural - should be seen as a subset of the East/West relationship, and as an aspect of normal inter-state linkages. Some of the more pragmatic figures within the party accept that in substance North/South relations will carry more weight than the East/West axis, but suggest that only the political cover offered by the wider relationship will permit a development of North/South ties.

5. Nationalists are sceptical of such arguments, believing that they are intended to dilute, or to swamp, the North/South linkages which they regard as an essential expression of an all-Ireland identity and as a vital quid pro quo for acceptance of the legitimacy of Northern Ireland on the basis of the preference of a majority. For that reason, the SDLP stress that the Anglo-Irish relationship should properly be focussed on Northern Ireland and on reconciliation among the Irish people. At the Forum debate on the East/West section of the Framework Document, they said that as well as addressing matters on the island of Ireland, East/West structures could also yield benefits across a range of other areas. But this should not detract from the core political import of the Anglo-Irish Conference in providing continuing institutional expression of the Irish Government's recognised role and concern in relation to Northern Ireland, thus complementing the role of North/South institutions in fulfilling the right of nationalists to have their identity recognised and expressed.
6. Sinn Féin's position, as stated at the Forum, is that a sovereign united Ireland will be able to establish good neighbourly relations with Britain. Its spokesman claimed at that time that little of value had been achieved for the nationalist community under the Anglo-Irish Agreement.
7. The Alliance Party, Democratic Left and the Workers' Party, while broadly supportive of a continuing Anglo-Irish Conference with a role in the oversight of local institutions and North/South bodies, would all wish to see a comparatively greater emphasis placed on British-Irish relations.

Existing East-West Structures (other than Anglo-Irish Intergovernmental Conference)

8. A framework for co-operation in the British-Irish relationship as a whole was established in 1981 with the creation of the Anglo-Irish Intergovernmental Council. Comparatively low-key work on education and culture continues. Broadcasting, which technically should be for the Council as it falls outside the competence of the Secretary of State, has in recent times been addressed in the framework of the Anglo-Irish Conference.

9. In December 1995 the Taoiseach and Prime Minister endorsed a report prepared by officials on an enhanced programme of cooperation between Britain and Ireland. This set out a somewhat disparate list of contacts, meetings and possibilities for further work in a range of areas. There was unanimous agreement that the exercise did not require the creation of any new formal structures.

10. A somewhat higher profile, and a stronger institutional identity, has been developed for the British-Irish Interparliamentary Body since its creation in 1990. Its bi-annual plenary sessions are well-reported (in Ireland, if not in Britain) and the reports of its committees have been regarded as useful contributions. However, while it has benefited from SDLP participation, Unionist MP s, tracing the Body's origins to the Anglo-Irish Agreement, have not taken the places made available for them. It is also arguable that the perhaps inevitable imbalance in the relative levels of interest in the British-Irish relationship on the two sides of the Irish Sea has been reflected in the comparatively lower calibre and status of British members - both the Taoiseach and Tánaiste, while in opposition, have been members.

Framework Document Proposals

11. The Governments "envisage a new and more broadly-based Agreement, developing and extending their co-operation, reflecting the totality of relationships between the two islands, and dedicated to fostering co-operation, reconciliation and agreement in Ireland at all levels."

12. The Framework Document stresses the last of the three purposes of a new Agreement

- the development of reconciliation among the people of Ireland (cf. paras 41, 42). A new Anglo-Irish Conference would also “provide a continuing institutional expression for the Irish Government’s recognised concern and role in relation to Northern Ireland.”

13. However, the desirability of developing co-operation between the two Governments and both islands “on a range of “East-West” issues and bilateral matters of mutual interest” is also stated (para. 43)
14. Effective security co-operation is mentioned as a continuing objective (para. 42). It is envisaged in para. 44 that the two Governments will consider “new possibilities and opportunities for enhancing community identification with policing in Northern Ireland” for so long as law and order issues are not devolved. [The questions of policing and of security co-operation are being separately examined].
15. A new Conference would also be a framework for consultation and co-ordination between both Governments and North/South institutions where the wider role of the two Governments is particularly relevant, for example in relation to EU issues.
16. In outline, the new standing Intergovernmental Conference envisaged by the two Governments would in its structures closely resemble the existing Conference: there would be British and Irish co-chairmen and a permanent secretariat.
17. However, there would also be a number of significant differences, including:
 - the exclusion, in normal circumstances, of devolved matters from the consideration of the Conference, which would substantially narrow the range of its day-to-day activities; indeed, if policing/justice issues were to be devolved, either ab initio or eventually, virtually no substantive matters would remain.
 - the “association” of representatives of agreed political institutions in Northern Ireland with the work of the Conference, whether through giving them notice of what was to be discussed in Conference, participation in aspects of the

Conference's work, or "other more structured arrangements ..devised by agreement."

18. In particular, the Conference would be charged with responsibility for the oversight and guarantee of "the workings of the Agreement...and the fair and effective operation of all its provisions and the new arrangements established under it." Where an institution "established as part of the overall accommodation" was not functioning properly, or in the case of another breach, the Governments would seek to agree a common position or to agree a procedure to resolve the difference between them. Adequate measures to redress the situation would be taken on the responsibility of each Government within its own jurisdiction (para. 46)
19. The British Government also agreed that if direct rule were re-introduced "other arrangements would be made ... to promote co-operation at all levels between the people, North and South..and to ensure that the co-operation that had been developed through the North/South body be maintained." (para. 47).

Unionist Criticisms

20. The following are the essential Unionist criticisms of the Framework Document's treatment of East/West relations:
- Unionists have been implacably opposed to the Anglo-Irish Agreement and entered talks in 1991/2 with a view to replacing it: what is now proposed would maintain and in some respects strengthen it.
 - the prospect that if there were devolution devolved matters would be removed from the immediate purview of the Conference was held out as an inducement to Unionists in the Anglo-Irish Agreement: it was insufficiently attractive then and will not work now.
 - the language of the Framework Document, while seemingly lofty and vague, in

fact indicates that the real purpose of East-West structures is further creeping all-Ireland integration (“reconciliation at all levels...”)

- contrariwise, there seems little real interest in strengthening genuine East-West co-operation (this criticism is offered not just by Unionists but also by Alliance, the Workers’ Party and DL).
- The leaders of new Northern institutions, as the democratic representatives of the people, should play a clearly defined and substantive role in a new Conference: what is proposed suggests a “grace and favour” approach.
- the oversight, guarantee and default provisions envisaged for a new Agreement would give the Irish Government direct control over the conduct of devolved institutions in Northern Ireland, which would be both unnecessary - given the various safeguards already envisaged - and a further move towards de facto joint authority.
- it would be inappropriate for the Irish Government to adjudicate upon the working of North/South institutions in which it was itself a participant: when it failed to persuade Northern representatives to adopt a particular course of action it could then put renewed pressure on them through the Conference.
- the fact that North/South co-operation would continue even if devolved institutions failed would be used to threaten unionist participants in such institutions into agreeing to nationalist demands and would offer a positive incentive to nationalists to ensure that devolution did fail.

Issues for Consideration

21. Some unionist concerns regarding aspects of the proposed new East-West structures are unanswerable in themselves, because they stem from a fundamental objection to the nature of the intergovernmental process as a whole. The only argument that can be

deployed is that such structures are for nationalists a vital part of an overall accommodation which as a totality is to Unionists' advantage. This is particularly the case in relation both to the continuing existence of the Conference and to the guarantee/default provisions envisaged for it.

22. However, there are other issues on which further assurances might be offered. On the guarantee/default provisions, it might be confirmed that:

- they would be used only as a last resort, in cases of complete stalemate on key matters and after the most strenuous possible efforts to secure direct agreement between the parties;
- these provisions would be used only in regard to the conduct of institutions in reaching decisions and not in regard to the substance of those decisions [a kind of "judicial review"];
- honest disagreement in the course of serious engagement on an issue would not be regarded as grounds for invoking them
- there would be a political agreement between the two governments that no indirect benefit would accrue to anyone as a consequence of wrecking tactics - this would apply to the Unionists in their attitude to North/South co-operation as much as to nationalists vis-a-vis Strand 1 institutions.

23. With regard to direct Northern participation in the Anglo-Irish Conference, thought might be given to the possibilities which exist for those "more structured arrangements [which] could be devised by agreement", subject to the requirement that the two Governments continue as the co-chairs and that arrangements retain the flexibility to allow them to meet, and act, bilaterally.

24. The possibility of enhanced and structured East-West co-operation running alongside or

within a revamped Anglo-Irish Agreement should be fully examined. There are attractions in envisaging that as part of a process of mutual understanding and reconciliation embracing all relationships that this axis too might be enhanced. However, several counter-arguments could be put:

- the disparity in size which exists between the two countries militates against a real relationship of equals, even if the Northern Ireland issue were resolved; harmonisation is more likely to run from East to West than vice versa.
- the reality is that the Irish side will always be much more interested in and committed to the relationship than the British side.
- there is already a huge mass of interconnecting relationships between Britain and Ireland - commercial, cultural, professional, educational, sporting, human - which would defy, and render superfluous, any attempt at systematisation through an upgraded intergovernmental relationship.
- Already over-loaded Ministers and Departments would not welcome new consultative mechanisms.
- On many key EU matters our views and policies differ: it would not be in our interests to be linked to or identified with British concerns.
- adequate formal intergovernmental and interparliamentary structures are already in place: their relative lack of substance - and indeed the low-key nature of the December 1995 initiative - tells its own story about the necessity for and wisdom of ambitious new schemes.

Areas for Further Work

25. It would be useful to have factual papers on:

- The Anglo-Irish Intergovernmental Council (inc. the December 1995 initiative)

- The British-Irish Interparliamentary Body
 - The functioning of the Anglo-Irish Agreement (basic statistics etc.)
 - The Commonwealth.
26. A Q & A/rebuttal paper might also be prepared on Unionist objections to the Framework Document's proposals in this area.
27. It could also be helpful to prepare research papers on:
- Ways to associate Northern Ireland representatives with a new Anglo-Irish Conference
- and - The enhancement of the East-West relationship (preparation of this paper could include a critical examination of possible models, eg the Nordic Council, the Benelux arrangements, and Franco-German co-operation)

Research Unit

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