



# An Chartlann Náisiúnta National Archives

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(Irish Draft 12 November 1997)

Issues for Consideration in Bilateral Consultations, 17-19 November 1997

Non-Paper by the Two Governments

Introduction

1. This non-paper has been prepared jointly by the two Governments at the request of Senator Mitchell, for his background use in preparing for the bilaterals with the parties. It is not intended that the non-paper would initially be handed over to parties. While the focus is on Strand Two, material has also been included on Strand Three in the context of the inter-connections between the Strands, as well as on cross-strand matters and the future conduct of the negotiations.
2. Broadly speaking, the material is divided into three sections, viz:
  - Areas of widespread agreement:
  - Issues to be resolved; and
  - Questions that might be put to the parties.
3. No questions are included on cross-strand issues ( none is deemed sufficiently crucial at this time.)
4. The section Areas of widespread agreement includes a number of elements which may be contested by Sinn Féin. The premise upon which the paper is inevitably based is that the overall structure of agreement will broadly follow that set out in the Framework Document.
5. In the interests of focus, the questions proposed are confined to those that might usefully be explored at this time. As will be seen from the list of issues to be resolved, they are not exhaustive and other questions will arise. However, given the objective of the series of bilaterals, it was felt advisable to keep the focus on those questions which would be of particular value, at this time, in facilitating the development of a broad outline of a possible agreement.
6. The questions that are proposed in regard to Strands Two and Three are based on the assumption that there will be devolved institutions in Northern Ireland with extensive powers.

Ms. McLoughlin  
Not handed on to the  
Tadjean - mentioned by  
British counter-draft and  
later agreed at today's liaison  
group meeting. h k 14.11.97



## **Strand Two**

### **A: Areas of widespread agreement**

- The development of an enhanced relationship between North and South is in principle desirable, even if the nature, form and extent of that relationship remains to be agreed.
- In addition to its practical importance, the development of all-Ireland relationships has a particular significance for the nationalist community within Northern Ireland as a means of expressing and validating their sense of identity and sense of allegiance.
- In determining those matters which are to be addressed by North and South together, account should be taken *inter alia* of the common interest of both parts of the island in a given matter, or the perceived mutual advantage to be derived from addressing a matter together.
- Interaction between North and South, both in its actual operation and in its future development, must be on the basis of agreement between the two parts of the island.
- In their management of the North/South relationship, the representatives of democratic institutions North and South must remain democratically accountable to those institutions.
- Within the North/South relationship, lines of financial and legal authority, responsibility and accountability must be clear.

### **B: Issues to be resolved**

- The format and scope of the institutional expression of relationships between the two parts of the island.
- The extent of the matters to be designated as coming within the scope of North/South institutions.
- The various levels of competence of North/South institutions in regard to those designated matters (i.e. consultative, harmonising, executive).
- The relationship between North/South institutions and the EU.
- The scope for further development over time of North/South institutions.

### **C: Questions which might be put to the parties**

- Is it your preference that relationships within the island of Ireland should be developed on an all-Ireland basis?

- Do you wish to strengthen the Union, together with the establishment of a new relationship between North and South?
- Do you agree that the North-South relationship could be developed through the establishment of a distinct body or bodies on which representatives of democratic institutions North and South would be represented, or which would operate under their oversight and direction?
- Is there any logical limit to the areas of government activity within their competence on which North and South might in principle either consult or act together?
- Might a body or bodies have in certain sectors the power to make decisions/settle policy and/or implement decisions jointly taken?
- If so, which sectors would be particularly well-suited to such designation ?
- Would you agree that some such sectors should be designated for action from the outset of the operation of new institutions?
- Would you agree that there should be no pre-determined limit to the future development, by agreement, of the North-South relationship in the mutual interests of both parts of the island?



### **Strand Three**

#### **A: Areas of widespread agreement**

- There should be a new and more broadly-based Agreement between the British and Irish Governments, developing and extending their co-operation and reflecting the totality of relationships between the two islands.
- Agreement on an overall settlement will require a balanced accommodation of the differing views of the two main traditions on the constitutional issues in relation to the special position of Northern Ireland.
- In addition to its practical importance, the development of East-West relationships has a particular significance for the unionist community in Northern Ireland.

#### **B: Issues to be resolved**

- The configuration, terms of reference and ambit of new intergovernmental institutions concerned with the two Governments' shared interests in Northern Ireland.
- The relationship between such institutions and (a) institutions within Northern Ireland and (b) institutions established under Strand Two.
- The role of such institutions in regard to the development of wider East-West relationships.
- The impact of constitutional change in the UK on East-West relationships.
- The terms of balanced change in relation to Northern Ireland in the Irish constitution and in British constitutional legislation.
- Arrangements for the overall monitoring and guarantee of the totality of arrangements agreed in these negotiations.

#### **C: Questions which might be put to the parties**

- What should be the configuration, terms of reference and ambit of new intergovernmental institutions?
- How should the representatives of institutions within Northern Ireland be associated with intergovernmental institutions?
- Should such new institutions concern only the two Governments' shared interests in Northern Ireland, or should they encompass wider East-West relationships?

- If so, should there be provision for the involvement in new East-West institutions of representatives of Scotland and Wales?
- Should any North-South institutions be associated with intergovernmental institutions, and if so how?
- What, in your view, are the essential criteria to be met if balanced constitutional change is to result in a satisfactory accommodation on constitutional issues?



## Cross-Strand Issues

### A: Areas of widespread agreement

- Harmonious and constructive relationships will have to be established between the various sets of arrangements emerging from each of the three strands.
- Human rights must be systematically and effectively protected under whatever institutional arrangements may be agreed now or at any future time.
- The outcome of these negotiations, as agreed by the participants under the Rules of Procedure, should be submitted for democratic ratification by referendum.

### B: Issues to be resolved

- Identification and formulation of human rights to be the subject of enhanced protection.
- Arrangements for the entrenchment, monitoring and enforcement of those rights.
- Possibility of a Charter or Covenant.
- Overview of interrelationships between the arrangements to be negotiated in the individual strands.
- Arrangements for democratic endorsement by referendum.

**Conduct of the Negotiations****Questions which might be put to the parties**

- How do you see the negotiations being structured after the Review Plenary?
- Would you favour the establishment of sub-committees/working groups within the strands?
- Would you support the establishment of committees of the Plenary to deal with, for instance, (a) human rights issues and (b) constitutional issues across the strands?
- Are there issues which you would like to see discussed which have not yet been raised?



Draft Material on Strand One

**A: Areas of widespread agreement**

- There should be new, democratically- elected political structures within Northern Ireland.
- The establishment and operation of such structures requires cross-community agreement.
- The incorporation into domestic law of the European Convention on Human Rights offers an initial basis for the enhanced protection of human rights.

**B: Issues to be resolved**

- The extent of the matters to be devolved to new institutions, and the possibility of phasing (esp. justice/policing matters).
- The nature of the powers to be exercised by those institutions: executive alone, or legislative and executive, or legislative, fiscal and executive
- The size and method of election of an Assembly or similar body.
- The format and method of selection/appointment of the executive branch.
- Ways to ensure cross-community consensus in regard to the actions of devolved institutions, and to protect the basic interests of both communities in those institutions.
- Structures and arrangements in the justice/policing areas.
- The work programme of new institutions, in particular as regards issues relating to equality, justice/policing and parity of esteem.
- The external relationships between new institutions and (a) North/South institutions (b) Westminster [and Edinburgh/Cardiff] (c) East-West institutions (d) the EU.