

**Dermot Nally
Papers**

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Speech by the Taoiseach, Mr. Albert Reynolds, T.D.,
at UCD Law Society's Cearbhall Ó Dálaigh Memorial
Graduate Law Dinner, in Barberstown Castle on Thursday,
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Self-Determination and Consent in the Joint Declaration
for Peace in Northern Ireland

Cearbhall Ó Dálaigh was a man of tremendous integrity and talent. His sense of justice was exemplary. He will always be remembered for the inspirational part he played in the development of judicial interpretation of the Constitution and for his defence of the dignity of the individual. It is to the credit of the Law Society that you have instituted a memorial lecture in his honour.

Cearbhall loved his country and its culture. He strove always to be inclusive. He was ever eager to unite all sections of Irish society with a common bond of mutual respect and understanding. His continuous striving to learn from, and to understand others better, and to be, just, fair and generous in his dealings with all, set a fine example. Commenting on his untimely death, Siobhán McKenna said simply, "We had lost a marvellous man".

I feel it is particularly appropriate for me tonight, before an audience of lawyers, to speak on a subject that has a legal as well as a political dimension. If the peace process is to make progress, it is important to recognise that the Peace Declaration is not up for negotiation. Nevertheless, it is vital that any genuine doubts or confusions be cleared up. One of the most important issues that might benefit from a more detailed explanation is the right of self-determination and the allied notion of

government by agreement and consent, which are central concepts in the Joint Declaration agreed between the British Prime Minister and myself on 15 December.

It has been suggested in some quarters that the Joint Declaration provides insufficient recognition of the Irish people's right to self-determination. It is also held that the so-called Unionist guarantee is in contradiction to it. It is essential to examine these assertions. It would be tragic, if the peace process were to be blocked, because of basic misunderstandings about how self-determination operates in international law and international politics, and because something unattainable was being sought, that was not consistent with international norms.

The right of national self-determination has been one of the most powerful political principles of the 20th century, second only to democracy. It was responsible for creating the new States of Central and Eastern Europe after the First World War, as well as Finland and Ireland. Following the Second World War, it was the principle behind the whole decolonisation process. As a result, we now have an international community of some 180 or more sovereign States. Doctrines like imperialism and the balance of power, which served the interests of the Great Powers in the last century, have given way to a situation, where one nation can no longer dominate another, and where, in the words of President Woodrow Wilson, every people should be left free to determine "its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful".

The adoption by President Wilson of the principle of self-determination in 1917 was an historical turning point. But from the beginning he linked the right of nations to free self-determination to the principle of consent, when he stated:

"national aspirations must be respected; peoples may now be dominated and governed by their own consent".

President Wilson also stressed that national aspirations would be "accorded the utmost satisfaction that could be given, without introducing new, or perpetuating old, elements of discord and antagonism that would be likely in turn to disturb the peace of Europe". The final crucial aspect of his thinking was that all territorial settlements should be made "in the interest and for the benefit of the populations concerned", and not as a compromise between rival claims to sovereignty.

All of these points are relevant to Northern Ireland today, and show that the right to self-determination has to be applied sensitively, as a means of solving rather than exacerbating conflict, and with full regard to the wishes of the people.

Ireland's independence was clearly based on the principle of self-determination, the importance of which is reflected by its position as Article 1 of our Constitution.

We need to separate in our minds two different issues. The first is our view that partition was wrong in 1920-1. The second is how, given that Ireland has been divided in two parts for 70 years, we can legitimately restore Irish unity some time in the future. Other countries have had to face this problem too. Let us remember that two wrongs do not make a right. The fact that partition was enforced back in 1920 does not make it right to enforce unity today.

It is obviously true that partition reflected deep division among the Irish people. It can nevertheless be argued by democratic Republicans that partition was wrong, in terms of the right of national self-determination.

There is no doubt that British Governments at the time, both in the Home Rule context and in the context of the establishment of the Irish Free State, strove hard in negotiation to persuade Unionists to maintain at least the facade of Irish unity. Extra-constitutional resistance by Unionists between 1912 and 1914, and an unyielding attitude thereafter, essentially brought about partition. Only last week, I had a letter from a Presbyterian Minister in a large town near Belfast, who told me that, while any solution now must be based on consent, he considered it "to have been an unfortunate and costly mistake for the British Government not to have stood up to Unionist demands in the early decades of this century". One can also take the view that, by modern international standards, the partition of Ireland in 1920-1 was still an injustice. For instance, a UN Declaration of 1960 on the granting of independence to colonial countries and peoples declared that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country was incompatible with the United Nations Charter.

That UN Declaration, however, applied to situations that had yet to be settled. It was not intended to reopen territorial settlements that had already been in existence for some considerable time. How we regard the past is one thing, on which we can and do legitimately differ. It is quite another issue, and a more relevant one, as to how we can resolve the unsatisfactory differences that we have inherited, in keeping with the principles of international law and behaviour today. We all have to live by the generally recognised principles of international law. We do not have any choice in the matter. These principles, as I shall explain, are clear.

At first after 1921, North and South moved rapidly even further apart. The political movement that had the force and vigour to found the Irish nation State represented a fusion of cultural and political nationalism, and in the absence of the Unionist community the new State was moulded over the next few decades mainly by a single dominant political culture. Northern Ireland was formed into an exclusively Unionist mould, despite a substantial Nationalist minority. The drawback of this experience, not just in Ireland, but repeated many times elsewhere, was that other communities and traditions were relegated for the time being to a subsidiary position. This situation has been altering again since the 1960s, under the influence of massive economic, social and cultural change, which is not always recognised or acknowledged outside, and North and South are in many ways beginning to converge again.

Fear of Nationalist hegemony had been partly responsible for Unionist resistance to even a limited form of self-government for the island as a whole in 1912. That resistance had helped by example to precipitate complete independence for most of Ireland, and limited autonomy for the North. The tortuous and ultimately inconclusive nature of the 1921 Anglo-Irish settlement has led one historian, less inclined to the straightforward colonial interpretation, to describe Ireland as 'a classic for the study of national self-determination', in the sense of exhibiting most of the problems and complications of its application that were to appear elsewhere. The Anglo-Irish Treaty of 1921 was the moment of truth, which decided rightly or wrongly how self-determination was in fact to be exercised in Ireland at that time. Given that Irish leaders, even at the time, felt it was not right or practicable for the rest of the Irish people to coerce the Unionists of Ulster, the Treaty represented, for better or for worse, a reluctant compromise, which allowed the Unionist majority of the six counties of Northern Ireland to opt out of the Irish Free State, and remain with Britain. Nevertheless, both the Treaty and the Government of Ireland Act 1920 were based on the principle of 'the essential unity of Ireland', and envisaged an evolution over time towards an agreed unity through joint institutions and North-South co-operation.

In international law, it is in the course of the constitutional settlement, when these issues are primarily decided. Subsequent developments have to take account of the new realities decided then as their starting-point, particularly over 70 years on. We cannot go back to the 1918 Election, or the First or Second Dáil, and persuade ourselves that neither the Republic nor Northern Ireland really exist.

At the New Ireland Forum, an Alliance Party member Robin Glendinning admitted that the unfortunate effect of the 1921 settlement, and he might have added of the

Boundary Commission fiasco, was that the Nationalist community in Northern Ireland were denied their right of self-determination as part of the wider Irish nation. This is true, and to maintain that situation Northern Nationalists were subject to a good deal of coercion of various kinds since that date. One of the most important features of the Joint Declaration is that it has reasserted the right of Northern Nationalists, which of course they never lost, to share as of right in Irish self-determination, as specified. The island of Ireland, not just Northern Ireland, now makes up the framework for self-determination, following the Joint Declaration.

In Europe, flagrant abuse of the doctrine of self-determination to cover aggressive expansionist ambitions led to World War II. In the Atlantic Charter of 1941, the American President and the British Prime Minister declared that "they desire to see no territorial changes that do not accord with the freely expressed wishes of the people concerned". This principle became part of the post-war order.

The UN Charter in Article 1 aims "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". Over the years, various UN instruments containing the principle were all primarily directed at the process of decolonisation.

Those who quote Article 1 of the United Nations Charter in support of Irish self-determination often tend to forget Article 2, which states that "all members should settle their international disputes by peaceful means", a principle to which Ireland was already committed by Article 29 of its Constitution. Unlike the colonies in Africa and elsewhere at the time of their independence, Irish self-determination involves an already sovereign Irish State, which is a member of the UN and directly bound by its Charter.

Signatories to the CSCE Helsinki Final Act also promise to respect "each other's right to freely choose and develop its political, social, economic and cultural systems". "They consider that their frontiers can be changed in accordance with international law", but they commit themselves to refrain from the threat or use of force against the territorial integrity of any State, a principle also reflected in the UN Charter. The Helsinki Final Act also says flatly: "No consideration may be invoked to serve to warrant resort to the threat or use of force". Negotiation, conciliation or other peaceful means of choice must be used to settle disputes.

The United Nations in a Declaration on Principles of International Law in 1960 defines the different forms self-determination can take. The UN state that:

"the establishment of a sovereign and independent State, the free association or integration with an independent State, or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people".

The first mode, the establishment of a sovereign and independent State, applied to Ireland in 1921, even though it was an incomplete reflection of the right to self-determination. The second and third modes are what are relevant today. Either a united Ireland, with the free consent of a majority of the people of Northern Ireland, or any other form of agreement between the people of Ireland North and South, can constitute an act of self-determination. The right to establish a united Ireland by consent, freely and concurrently expressed by the people of Ireland North and South, is expressly recognised by the British Government in the Joint Declaration. They also pledge to work for peace, stability and reconciliation established by agreement, and to enable agreement to be achieved. Self-determination does not have to take the form of unity or independence. It can be expressed by the endorsement North and South of any comprehensive settlement that would constitute an agreed Ireland.

Another general principle frequently enunciated with regard to the operation of self-determination in the post-war era is that, where there is any suggestion of transferring sovereignty from one State to another, the consent of the inhabitants would be required to validate such a change. This is on the grounds that governments derive all their just powers from the consent of the governed. Although because of the Irish Constitution, Articles 2 and 3, the situation may be regarded more as one of overlapping claims to sovereignty, from other points of view, if a united Ireland were to be brought about by agreement, the British would be bound to give the necessary legislative effect to this exercise of the right of self-determination.

Ireland is one of about half a dozen countries that have been partitioned in the course of this century. Germany, Cyprus, Yemen, China, Korea are the most relevant examples for Ireland today, of how self-determination would operate.

The Federal Republic of Germany always regarded partition as wrong, and never wavered in its commitment to the goal of self-determination, written into its Constitution. According to their Supreme Court, the West German State had 'a constitutional obligation' to work for German reunification, even though theoretically a united Germany had never ceased to exist. The German example, particularly

between 1970 and 1990, shows that the existence of 'a constitutional obligation' or 'imperative' can be entirely compatible with peaceful, good neighbourly relations. Whereas Adenauer sought to pressurize the Soviet Union into German reunification, the Ostpolitik of Willy Brandt promoted change successfully and directly by dismantling barriers and building up trust. In the Treaties of the 1970s, West Germany pledged itself unequivocally to renounce the threat or use of force, without repudiating its political goals or legal position.

In 1990, in implementation of the right of self-determination of the German people, the two German Parliaments ratified a unification treaty on the basis of the existing West German Constitution, though there was an alternative legal route instead to adopt an entirely new Constitution.

The relevant Article 23, which allowed the accession of other German territories, was revoked the day before German unity. Similar alternatives exist in Ireland. The Constitution provides in Article 15.2.2 for the recognition of subordinate legislatures. But in recent years the Government's view has tended to be that in the event of a united Ireland an entirely new Constitution would be necessary. Certainly, in any such situation Article 3 would have no more relevance and could be revoked. However, the Joint Declaration also sets out other situations short of that, where, in the event of an overall settlement which contained a balanced constitutional accommodation, constitutional change would also take place here.

In Cyprus, where partition is regarded as wrong by the international community, uninhibited exercise of the right to self-determination by a simple majority would have meant 'enosis' or union with Greece, which would be totally unacceptable to the Turkish Cypriot community. It is now accepted by both Greek and Turkish Cypriots that the majority cannot unilaterally determine the constitutional status of Cyprus, and that it must remain a sovereign independent State. The restoration of effective unity depends on agreement through negotiation.

Yemen, which was divided by the British imperial power earlier this century, was united in 1990 by the concurrent vote of its two legislatures.

The most interesting parallel is Korea, which was effectively partitioned by the Soviet Union, following liberation from Japanese occupation in 1945. Over the last 10 years, South Korea has acknowledged that, although Korea was wrongly partitioned against the will of the Korean people, and although partition was meant only to be temporary, the two States have grown apart in an atmosphere of confrontation and hostility. In 1982, President Chun recognised that unity should

not be sought by violent means. He said that 'unification must be accomplished on the principle of national self-determination and through democratic and peaceful procedures that reflect the free will of the entire people'. He suggested the two sides negotiate a draft constitution for a united Korea, and make it into law 'through free democratic referendums held throughout the peninsula'. This is precisely the same as the concurrent self-determination procedure envisaged in the Joint Declaration. His successor President Roh in 1968 stated 'the pursuit of mutual respect and prosperity is a requisite process we must go through in order to build the relationship of trust necessary for the nation's reunification'.

Over the past two years, I have been advocating and instituting closer economic and cultural co-operation between North and South, developing and preparing the ground for future agreements.

I hope I have amply demonstrated that the right to self-determination of the people of Ireland North and South concurrently, now recognized by the British Government for the first time in the Joint Declaration, is fully in conformity with present international law and practice, as it has developed over the past 70 years. The Nationalist community in Northern Ireland is not being short-changed today, even if it was in the past.

We have travelled the full distance on the central principles of self-determination and consent. The Irish Government will not breach international agreements or defy international law. The Joint Hume-Adams Statement of 24 April 1993, saying that 'the exercise of self-determination is a matter for agreement between the people of Ireland', is fully in conformity with the realities, and with the Joint Declaration, as is their statement that 'we both recognize that such a new agreement is only achievable and viable if it can earn and enjoy the allegiance of the different traditions on this island'. In the light of those public statements, it is hard to understand why the Joint Declaration should be encountering so many reservations.

The Irish peace initiative from its inception has been based on a balance between British recognition of the Irish people's right of self-determination and my acceptance, 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 the agreement and consent of the people of Northern Ireland. My account of the international theory and practice of self-determination may explain why, because it is not a straightforward matter in our particular situation, we have had to set down the principles unambiguously, in a way that does justice to the

complexities. We have always made it clear, and the Republican movement could never have been in any doubt on the matter, that there could and would be no breach of the Anglo-Irish Agreement, which clearly recognises the principle of consent.

Let us frankly acknowledge the reality that, in order to exercise the right of self-determination of the Irish people as a whole, we should recognise that the people of Northern Ireland have the right to determine by a majority whether they wish to stay with Britain or join a sovereign united or agreed Ireland.

There has been much misleading talk of a Unionist veto, not merely with regard to constitutional change, but on all political progress. With regard to a change in constitutional status, it is the consent of a majority that counts. In the Joint Declaration and outside of it, both communities have been given the same rock-solid constitutional guarantees. Cross-community support is needed since 1982 for any new Northern Ireland institutions. The positive challenge to both communities and to the people of this State is to negotiate a comprehensive new political settlement in peaceful conditions that the vast majority can accept. Neither Government will accept a veto from anyone who refuses to participate in balanced efforts to achieve an overall agreement between the people of Ireland North and South in line with the Joint Declaration.

To sum up my main points:

1. The spirit of self-determination is essentially about government with the consent of the governed;
2. However wrong partition has been, divided countries can only exercise the right of self-determination concurrently, as envisaged in the Joint Declaration;
3. Issues of sovereignty over any substantial territory ought not to be finally resolved by contending States over the heads of the inhabitants of the area in question without their consent;
4. The same international agreements, like the UN Charter and the CSCE Final Act, that enshrine the right to self-determination, also outlaw in all circumstances the use or threat of violence to change frontiers;
5. Self-determination can result in an agreed Ireland, whatever form that may take;

6. Under the Declaration, the Nationalist people of Northern Ireland have had their existing right of self-determination, which they share with the rest of the people of this island on the basis which I have set out this evening, formally recognised;
7. The context has been transformed, and the centre of gravity has now been moved to the people of Ireland themselves to work out their own agreement.

to be their own responsibility and to

Accordingly, there is not merely no moral justification, but also no coherent ideological basis, for a continuation of armed struggle to achieve collective national self-determination by the Irish people as a whole, without regard, in the last resort, to the wishes of the people of Northern Ireland. That is looking for something that is impossible, both politically and in terms of the principles of international law. The Joint Declaration, if accepted, will mean that coercion and attempted coercion are over, and that new relationships based on greater trust and respect, and the necessity for mutual co-operation can be established, if we work at them.

The situation cries out for responsible leadership, for a recognition of political realities and opportunities, and the inherent dynamic of peace. Over the past few weeks, I have explained and clarified as many matters as I can, without preempting the many issues which can only be negotiated, in the wider talks process, by parties fully committed to constitutional methods. If belief in self-determination means anything, is it not time for all Irish people to acknowledge maturely that the solution is primarily in our own hands? Should we not accept, as stated in the Declaration, and as emphasised over and over again by John Hume, that it is for those who believe in Irish unity to persuade those who do not? The British Government have said in the Peace Declaration that they will underwrite and implement any agreement the people of Ireland can reach, and will help to achieve such an agreement.

There is no way round, and no short cut through, the requirement of agreement and consent. The issue of Irish unity cannot be forced, either militarily or politically. The time is approaching, when the people of Ireland will demand clarification, on whether all paramilitary and associated political organisations have the sincere commitment to creating peace on this island that they profess. The final responsibility for that decision can be shifted on to no-one else. None of us want to see innocent Irish people North and South having to endure further violence and death without a scintilla of coherent justification.

Some time ago, the Sinn Féin leadership embarked courageously on a path destined to lead to peace. As they well know, John Hume and the SDLP and the Irish Government have sought to assist and facilitate them in reaching a positive decision, in every way we could, not least in the course of the very tough and difficult negotiations, which we conducted between June and December with the British Government. I and the Government have pursued to its logical conclusion an Irish initiative designed to enable everyone to accept peace with honour and to begin a process of demilitarisation on all sides. I would urge those who see the merits of a new direction not to falter now, not to go back on the progressive spirit of Hume-Adams, but to show the courage, which will bring the section of the community that has supported them for so long into the mainstream of Irish political life, through participation in the Forum for Peace and Reconciliation and in future all-party negotiations. This Forum will be the first North-South institution to start the process of building an environment for peace with justice and for reconciliation between both traditions, as we all set out together on the road to an agreed Ireland through the acceptance of this new dynamic.