

ARTICLES 2 & 3 AND CONSENT

1. There are two objectives:

(i) to secure, in the JD, a formal statement of the conditional commitment to reform Articles 2 & 3 in the event of an overall accommodation;

(ii) to secure some specifics about this reform. British proposals tabled in Dublin mention two candidates: first withdrawing the claim of right to Northern Ireland; second acknowledging the principle of freely given consent. (Our proposed amendment to paragraph 5 also introduced the notion that it would be wrong to seek a united Ireland unless [save on the basis that] a majority of the people of Northern Ireland freely consented.)

2. A contingent commitment to remove the "claim of right" will be difficult for the Irish side, though it would be an enormous prize, even as a contingent commitment. The Irish side (especially its Fianna Fail component) are probably hoping that, even if they are driven to reform Articles 2 and 3, they can retain the claim but gloss it by saying it will be implemented only with consent. Most of the parties in the Dail would accept or advocate replacing the claim with an aspiration. (The Irish non-paper, leaked in the Irish Press, envisages a non-amendment: ie adjusting Articles 2 and 3 to reflect fully the principle of consent as defined in the AIA. The Supreme Court has already found the AIA and Constitution compatible.)

3. The points on Articles 2 and 3 and on consent, which arise in paragraphs 5 and 7, could be brought together in this way:

"The Taoiseach confirms that, in the event of an overall accommodation being agreed, the Irish government will put forward and support proposals for a change in the Irish Constitution [withdrawing] [whereby] the claim of right to Northern Ireland [is no longer exerted]; so that it fully reflects the principle of consent by [acknowledging that it would be wrong to seek to establish a united Ireland save on the basis that a majority of the people of Northern Ireland freely wished for and consent to it.] [confirming that the establishment of a united Ireland should only be sought on the basis that a majority of the people of Northern Ireland freely wished for and consented to it.]"

4. The best outcome might be this:

"The Taoiseach confirms that, in the event of an overall accommodation being agreed, the Irish government will put forward and support proposals for a change in the Irish Constitution [withdrawing the claim of right to Northern Ireland; so that it] [OR (probably easier for the Irish side) replacing the claim of right to Northern Ireland by an aspiration to a united Ireland which] fully reflects the principle of consent by confirming that the establishment of a united Ireland should only be sought on the basis that a majority of the people of Northern Ireland freely wished for and consented to it."