

JOINT DECLARATION INITIATIVE

1. The attached text (JD.14B) marks British proposed additions (underlined) and omissions on the text which was on the table in Dublin (JD.14). It also marks, underlined with a broken line, additions proposed in Dublin by the Irish side.

2. Ultimate British objectives, none of which should be surrendered at official level, are:

- (i) to reach agreement on a text, provided that can be done without compromising essential positions.  
(This can be expressed negatively: to reach agreement on a text, unless breakdown is on an issue or issues which would leave the Irish Government as being generally perceived as being intransigent.)
- (ii) to include an explicit reference to the constitutional guarantee (there is already a muted reference in paragraph 2 to a "commitment to promote co-operation... on the basis of... the guarantees which each Government has given")
- (iii) to ensure that the reference to self-determination (which the British side has agreed should appear) is in acceptable terms
- (iv) to secure a forward and specific reference to the Irish side's conditional commitment to reform Articles 2 and 3 (JD.14 includes, in paragraph 7, an indication in the most general terms that constitutional change may be contemplated)

(v) to secure a more forward and explicit reference to the need for the consent of the people of Northern Ireland to the establishment of a united Ireland. (The reference in paragraph 7 to the right of self-determination being achieved and exercised "with the agreement and consent of a majority of the people of Northern Ireland" has the wrong flavour; and the opening of paragraph 7 is Anglo-Irish Agreement language, compromised because Northern Ireland's present status is "carefully not defined".)

(vi) to remove the references to the establishment of a permanent Irish Convention.

Note: (a) One of our proposed amendments to paragraph 4 links the constitutional guarantee and self-determination, but they could be separated;

(b) points (iv) and (v) have not been linked, but could be.

3. The new Irish proposals tabled in Dublin comprise:

(i) The introduction, in paragraph 2, of the words: "Beginning now, and over the coming generation" should be resisted. It is poisonous: it is too long a period to achieve a working political accommodation; but wrong if it implies a deadline for Irish unity.

(ii) Additional words at the beginning of paragraph 7: a reference to Article 1(c) can be accepted provided it is appropriately and accurately formulated, and avoids the concept of persuasion. (The British version did contain a reference to the commitment in Article 1(c) of the AIA: in paragraph 2(c)(iii))

The text in detail

Paragraph 2

4. As already noted, the Irish proposal should be resisted.
5. The British proposal was made at the instigation of Mr Molyneaux. It is not essential, though it is not clear that the Irish side could sustain an objection, given its closeness to the language of the Talks process and the Statement of 26 March 1991.

Paragraph 4

6. The points in the opening sentence are desirable, but not essential. (But if they are surrendered we need to re-introduce somewhere else in the text a reference to the "United Kingdom" because the final text must include a reference to that at some point.) The first passage concerning the democratic wishes of the people as to their constitutional status was suggested by Mr Molyneaux. What is the Irish side objection? As to the expansion of the no selfish interest formula, it is relevant that Ministers have used in speeches the language in JD.14: "no self strategic or economic interest in Northern Ireland", on the basis that much weight is carried by the word "selfish".
7. It should be possible to reach an accommodation in respect of the other minor changes proposed to paragraph 4:

(a) "process of reaching"

(b) removal of "independent" (especially as we can concede a reference to Article 1(c) elsewhere)

(c) removal of collectively in the penultimate sentence.

8. The most important issue is the formulation of the sentence about self-determination which, in the proposed British sentence, also includes the constitutional guarantee.

Points to make

- We are ready to use words recognising Irish self-determination, but only if it is clear that it is done in a way consistent with the constitutional guarantee
- this is the heart of the Declaration and alone gives the Provisionals cover to stop, if indeed that is what they want
- the elements would then all be in the Declaration:
  - no selfish interest etc.
  - self-determination
  - Article 1(c)
  - commitment (second sentence of paragraph 4) to work to achieve agreement among all the people who inhabit the island
  - agreement to meet Sinn Fein within 3 months if there is a demonstrated end to violence.
- Unless and until some of our other amendments are accepted (Articles 2 and 3; consent). There is no comparably risky move for the Irish side in the JD.

9. Annex A suggests some tradeable language.

10. The constitutional guarantee could be elsewhere, though still in paragraph 4, but it must be included somewhere in the Joint Declaration. It may be possible to regard this as conceded since the Prime Minister made it unequivocally clear that it is a sine qua non. (And it is already in paragraph 2, though in muted terms.)

Paragraph 5

11. The British side has proposed two relatively minor amendments: "new" in the first sentence; "subject to" in the second.

12. The main proposal is that the "Taoiseach should acknowledge 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." It is closely related to the proposal for a more forward commitment on Articles 2 and 3. Those are discussed in Annex B. The consent point would also be dealt with in the new opening to paragraph 7 discussed in paragraphs 13 and 14 below.

Paragraph 7

13. The Irish side's proposed new opening to paragraph 7 will not do. Apart from the pedantic point that it mis-describes the AIA, the substantive point is that it introduces persuasion: neither the concept nor the language of persuasion is in the Agreement. This passage provides another point where the Irish side might be brought to agree a more formal acknowledgement of consent. The formula in JD.14 that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland is AIA language, and as such doubly flawed (intentionally so as to make it compatible with the Irish constitution):

- status is undefined (the UK is mentioned nowhere in JD.14)

- "would" means that the sentence is no more than a recognition of a reality, not a statement of principle.

14. A possible reformulation of the opening of this paragraph might be this:

"Both Governments affirm that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support legislation to give effect to that wish; acknowledge that this is not the present wish of such a majority; and agree that it would be wrong to seek to establish a united Ireland save on the basis that such a majority freely wished for and consented to it. The Taoiseach believes that this statement should relieve the continuing uncertainties and misgivings..."

The first two limbs of this formulation reflect the AIA; the third is an advance on it and would nail down what the Irish side imply but never quite say. It would be a considerable reassurance to the Unionists, and would formally dissociate the Irish Government from the "armed struggle".

15. The British side has also proposed a major change at the end of paragraph 7 concerning Articles 2 and 3. This is discussed in Annex B.

#### Paragraph 9

16. The British proposal to add a reference to "the Northern Ireland constitutional parties through the Talks process" is Molyneaux-inspired and highly desirable. It is not essential.

#### Paragraph 10 and 11

17. We should continue to press the removal of these paragraphs; though the Prime Minister acknowledged in Dublin the reality that the Irish Government could announce and establish a permanent Irish Convention unilaterally. In any

event HMG would have no role in respect of it. (Accordingly the analogy the Taoiseach sought to draw with the Convention established in Northern Ireland is bogus.)

British new paragraph 10

18. The introduction of this paragraph renders unnecessary the need for an Irish Convention, because Sinn Fein could meet HMG (and the Irish Government?) within 3 months of a demonstrated end to violence. We want it included in any event. It formalises what is now known to have been said to the Provisionals privately in the message despatched on 5 November.

... and accordingly agree that it is for the people of the island of Ireland alone, [on this basis,] [for the sake of unity and concurrently given consent, North and South,] to exercise their right of self-determination [to bring about a united Ireland, if that is their wish]."

ii) the constitutional guarantee is better here, but it could go elsewhere, though it should be para 4;

iii) "separately" could be traded for "respectively" provided the constitutional guarantee is in the text elsewhere;

iv) the Irish side can be frightened by considering expanding the reference to the guarantee with the words in square brackets;

v) the last 2 sets of square brackets will make the sentence much closer to JDI's.

SELF-DETERMINATIONAlternative Language

"The British government [reaffirm Northern Ireland's statutory constitutional guarantee;] agree that the people of the island of Ireland, North and South [separately] [respectively] should be free, without coercion or violence, to determine whether a united Ireland should be established; and accordingly agree that it is for the people of the island of Ireland alone, [on this basis,] [on the basis of freely and concurrently given consent, North and South,] to exercise their right of self-determination [to bring about a united Ireland, if that is their wish]."

Note

- i) the constitutional guarantee is better here, but it could go elsewhere, though it should be para 4;
- ii) "separately" could be traded for "respectively" (provided the constitutional guarantee is in the text somewhere);
- iii) the Irish side can be frightened by canvassing expanding the reference to the guarantee with the words in square brackets;
- iv) the last 2 sets of square brackets will make the sentence much closer to JD14.



Provided the constitutional guarantee is elsewhere in the text we could negotiate down to this:

"The British government agree that the people of the island of Ireland, North and South respectively, should be free, without coercion or violence, to determine whether a united Ireland should be established; and accordingly agree that it is for the people of the island of Ireland alone, on the basis of freely and concurrently given consent, North and South, to exercise their right of self-determination to bring about a united Ireland, if that is their wish."

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."