

CONSTITUTIONAL ISSUES (A Paper by the British and Irish Governments)

1. The two Governments accept that agreement on an overall settlement requires a balanced accommodation on the constitutional issues in relation to the special position of Northern Ireland. They recognise that there has been a fundamental absence of consensus between the two traditions in Ireland and the two communities in Northern Ireland on these issues, and that this is reflected in the differences between established British and Irish constitutional doctrines as set out in the Constitution of Ireland, on the one hand, and in British constitutional legislation, on the other hand (in particular the Government of Ireland Act, 1920, and the Northern Ireland Constitution Act, 1973).

2. On the other hand, there has, in recent years, been a growing convergence between the positions of the two Governments on many of these issues, and in particular on the questions of self-determination and consent. A measure of agreement on the status of Northern Ireland is contained in Article 1 of the Anglo-Irish Agreement, 1985, which is an international treaty registered at the United Nations. This degree of shared understanding was deepened and extended in the Joint Declaration, 1993, and in A New Framework for Agreement, 1995. Neither of these latter documents, however, has the legal standing of the Anglo-Irish Agreement.

3. In the view of the two Governments it would be necessary for an overall political agreement between them and the parties to include these elements relating to constitutional issues:

- the inclusion by the two Governments in a new British-Irish Agreement replacing the Anglo-Irish Agreement of an Article expanding upon Article 1 of the Anglo-Irish Agreement and setting out a joint position on constitutional issues, in line with the principles and commitments set out in the Joint Declaration and A New Framework for Agreement (such an Agreement would also include all other relevant aspects of an overall political agreement reached in these Talks);
- an undertaking by the Irish Government to introduce in the Oireachtas a Bill proposing amendments of the Constitution of Ireland, including of Articles 2 and 3, in line with the commitments made by it in the Joint Declaration and A New Framework for Agreement. If approved by the Oireachtas, the proposals in the Bill would be put to the people for their approval by referendum in accordance with Article 46 of the Constitution;
- an undertaking by the British Government to include in comprehensive new legislation, implementing all relevant

aspects of an overall political agreement, a section on the status of Northern Ireland, in line with the commitments made by it in the Joint Declaration and A New Framework for Agreement, repealing the Government of Ireland Act, 1920, and replacing the relevant sections of the Northern Ireland Constitution Act, 1973.

4. The changes in the Constitution of Ireland and to British constitutional legislation would, if approved, be such as to permit ratification by both Governments of the new British-Irish Agreement.
5. The Governments undertake to advise the parties, at a later point in the negotiations, of their own thinking on the terms of the constitutional section of the new British-Irish agreement and on their specific proposals for constitutional change in their respective jurisdictions. But, meanwhile, the Governments would welcome any observations which the parties may wish to make on these issues.