

ANNEX 2

STRAND 2

ULSTER UNIONIST PARTY SUBMISSION

7 JULY, 1992.

The Rt Hon Jim Molyneaux, MP.  
Councillor Ken Maginnis, MP.  
Councillor Jim Nicholson, MEP  
Dr. Christopher McGimpsey.

## Opening Statement

### A Relationship between Northern Ireland and the Irish Republic.

It is hardly an exaggeration to say that relationships between Belfast and Dublin have historically been poor, and at times openly hostile. Unionists and Nationalists must accept their part in the breakdown of a relationship which should, on the face of it, be warm, friendly and mutually beneficial. We would not, however, accept that the antagonisms have been solely or mainly created in Belfast.

Ireland is a small island, and all parts of it are easily accessible to all sections of the population. Yet there exists an alarming ignorance amongst our respective peoples as to the aspirations and on-going ambitions of the two distinct and equally legitimate entities on the island.

A lack of understanding and empathy is apparent, not only on an Ireland-wide basis, but more particularly within the Province of Ulster itself. This gulf, reinforced by religious bigotry and tribal suspicions lies at the heart of Ireland's difficulties and provides a dynamic for violence, which has tragically proved self-sustaining for over 100 years.

Perhaps the best demonstration of this division is shown by recent polls which indicate that 75% of the population of the Irish Republic has never set foot in that part of Ireland which

it apparently wishes to annex and subsume. This figure is staggering when one considers the size of the island, and also the highly fruitful relationships which have been built up between the Republic and the rest of the United Kingdom.

As a direct corollary of this, a large section of the population of Northern Ireland views the Irish Republic with fear and distrust.

Such mutual ignorance and suspicion between Nationalists and Unionists is the tragedy of Ireland, and it is largely to this area that Strand 2 should direct its attention. Identification of common interest and a mutual understanding of each other's position is a necessary prerequisite to political progress and co-operation between the United Kingdom and the Irish Republic.

The historic breakdown in relationships can best be overcome by establishing a modus vivendi for the future which would facilitate contact between Belfast and Dublin and would anticipate close, mutually beneficial and sympathetic contacts - literally doing business together.

This area will be expanded under a paper entitled "The Way Forward - facilities for agreement and areas for joint action". It can be argued that the absence of such contacts has, in the past, enormously contributed to the antagonisms and petty animosities which have all too often been translated into violence and sectarianism.

Matters which could easily have been resolved have been allowed to fester and have become a catalyst for hostility and on occasions murder. On one level the two traditions are sadly too familiar with each other; on a higher level ignorance is profound, and this basic lack of knowledge and understanding must be addressed.

This all-too-often allows myth to overcome reality. Recently, there has been deliberate misrepresentation over the effect that any change in Articles 2 and 3 of the Irish Constitution would have on the right of Northern Ireland Nationalists to acquire Irish Passports. Such scare-mongering is palpable nonsense. The removal of Articles 2 and 3 would have no more effect on the 1956 Citizenship Act than it would have the capacity to annul the terms of the Foyle Fisheries Act.

Notwithstanding the statements contained in various SDLP documents, presented during Strand 1, which refer to "parity of esteem", the political reality of Irish Nationalism is one which denies legitimacy to the Irish Unionist tradition. The rhetoric belies the reality. For example, during one of the plenary sessions last summer, an SDLP delegate stated:-

"If you wish to see the Irish identity, just look across the table. We (the SDLP) are the Irish identity".

The position of the Ulster Unionist Party is that Irish Nationalists represent an Irish identity. There is another Irish identity which Nationalists in both Northern Ireland and the Irish Republic

appear incapable of understanding since it has not been defined exclusively by them.

For Nationalists the real problem is their inability to accept the legitimacy of the Irish Unionist identity. Their question to us is invariably, "What or who do you think you are?"

In the overwhelming majority of cases in Northern Ireland the answer is, "British". Those Irishmen and women living in the north-eastern corner of the island, who hold themselves to be British and who are determined to remain British, are entitled to the same esteem as Irish Nationalists in either jurisdiction.

It is no exaggeration to state that for Unionists the primary objective is the maintenance of the Union. This is translated into a determination to keep Northern Ireland out of a United Ireland, and a distrust for any proposals which can be construed as weakening the Union. The concept of an independent Ulster, which from time to time has attracted some support in Northern Ireland, is similarly objectionable.

The Union with Great Britain is a Union in the hearts and minds of the Unionist people, and is something which we cannot change, even if we wanted to. This feeling of Britishness is so deeply ingrained as to be almost genetically encoded. It is not a device or artifice which has been imposed on an unsuspecting people; neither is it something Unionists wish to impose on those who have different political aspirations. But for Unionists

their basic political heritage is their Britishness.

Failure to recognise this is a fundamental and enduring mistake of Irish Nationalism.

Failure to recognise that those who support or desire the continuance of the Union will never consent to a United Ireland is also a fundamental and enduring mistake of Irish Nationalism.

Furthermore, failure to recognise that those who support and desire the continuance of the Union will never consent to any process or settlement which would precipitate movement towards a United Ireland, is similarly a fundamental error.

While IRA terrorism has provoked deep distrust, the overwhelming majority of Unionists are not, by definition, hostile to the Irish Republic or its citizens. Neither are they hostile to fellow-citizens within Northern Ireland who have a peaceful aspiration to a United Ireland. They are simply British and intend to remain British.

Britishness is at the heart of Unionist philosophy...the feeling of belonging; the feeling of sharing with our fellow-citizens in Great Britain in great national events; of being part of something larger than simply the six counties in the north-eastern corner of our island. It is a shared psychological bond; a shared emotional bond....common bonds of history and of shared adversities, shared triumphs and shared sacrifices.

It is such a commitment which has led thousands of Irish men and women to vote consistently since the 1880s for pro-Union parties. While the rest of the Irish people chose a Gaelic, Nationalist and independent Ireland, Unionists showed a clear preference for continued membership of a modern, pluralist and liberal democracy which consisted of four nationalities, three linguistic groupings, many ethnic minorities and a multitude of religious denominations.

Britishness, in its best form, seeks to manifest a tolerance and respect for different cultures: pluralistic and exhibiting a common decency it does not seek to interfere with the faith, creed or aspiration of any individual or group. Where either fear, distrust or ignorance causes us to fall short of this ideal we know we must seek appropriate means to overcome our deficiencies.

The British presence in Ireland is not merely the 12,000 regular troops stationed in Northern Ireland in support of the Civil Power. Neither is it simply the Secretary of State and the Administration at Stormont.

The real long-term British presence in Ireland is the one million plus Irish Unionists who live in the north-east of the island and who continue to demonstrate, through the ballot box, their wish to remain within the United Kingdom. While these are mainly members or supporters of the Ulster Unionist and other unionist parties, they are not exclusively so, nor are they exclusively Protestant.

Because of this deep and fundamental principle of belonging, unity by consent, either now or in the foreseeable future, is not forthcoming.

Unionists have the right to say YES to a 32 county state... but they also have the right to say NO. Their position is secured by virtue of the overwhelming democratic majority in Northern Ireland and reinforced by constitutional Nationalists' apparent profession to "unity only by consent". If Northern Ireland was set up, as Nationalists allege, on the basis of a sectarian head count, then so, by the same definition, was the Irish Free State.

The so-called guarantee to Unionists by the Westminster Parliament is simply an acceptance of reality. A vote in Westminster to expel Northern Ireland from the Kingdom could not stop those who support the Union from feeling as they do, nor would it convince Unionists of the desirability of Irish unity.

For those who support the Union and desire its continuance there is no contradiction in being Irish and British - just as there is no contradiction in being Scottish and British, Welsh and British or English and British. These points were alluded to in the Ulster Unionist Party's submission of 28 June 1991 (pages 9-10).

Many of us are proud to be Irish, and will always hold ourselves so to be. But we are equally proud to be British and will always feel similarly committed to that sense of identity.



Many people in Ireland, and some elsewhere, appear to hold to the belief that to be a true Irishman or woman, one must be Roman Catholic, Gaelic and ruled from Dublin. Irish Unionists are the personification of the illegitimacy of such a narrow definition.

Ireland does not have, nor does it need, a common or united culture, theology or political allegiance. Over the past 70 years, as the Irish Republic has progressed as an independent state, it has moved in political, social, economic and cultural terms further apart from all the people of Northern Ireland. Eamon De Valera recognised in his 1937 Constitution that the Irish Free State effectively stopped at the frontier with Northern Ireland.

While the territorial claim enshrined in Articles 2 and 3 was inserted in order to placate the most militant elements within Irish Nationalism at that time, they embodied the irredentist attitudes implicit in Irish nationalism. The Irish Supreme Court tried to soften their meaning in 1977 (The Criminal Law (Jurisdiction) Bill), but through the interpretation as recently as 1990 (McGimpsey v Ireland) these Articles have clearly assumed a more aggressive and irredentist significance.

It has been said that Ireland can only be united in a way which ensures that Unionists do not have to sacrifice their principles. However the most important principle to which Unionists adhere is simply that they remain in Northern Ireland as citizens of

the United Kingdom, in peace and amity with their fellow-citizens and without threat to, or domination over, anyone with different aspirations. The Union is inviolate - to countenance an independent 32 county Irish Republic is for Unionists, by definition, impossible.

If that can be accepted, then all matters pertaining to a working arrangement are open for discussion and we will consider any reasonable and workable suggestions.

In approaching this Strand of the talks the Unionist criteria for success is that any arrangement must....

- (a) further the cause of peace
- (b) be sustainable on the basis of mutual trust and respect
- (c) fall within accepted international norms

Any arrangement must attract the consent of the overwhelming majority of the people of Northern Ireland. This can only be accomplished by addressing and resolving, within Strand 1, the democratic deficit which exists in the Province under Direct Rule. It will necessitate, within that Strand, the establishment of structures and institutions of government which are open, responsive and answerable to the electorate. Furthermore the replacement of the neo-colonialist Anglo-Irish Agreement with a treaty which addresses the totality of relationships within our islands is absolutely crucial.

The recent history of failed settlements demonstrates clearly that Unionist involvement is an obvious prerequisite for the achievement of peace, stability and reconciliation.

At Sunningdale, and at Hillsborough, the two Governments appeared to believe that the greater number of the people of Northern Ireland could be ignored and disregarded. Or, as one participant so prosaically put it in 1985, "We must lance the Unionist boil" and, "We must face down the Unionists".

But Unionists have shown that they will not be faced down and have continued to demand with ever increasing vigour, a restoration of democracy to Northern Ireland, and an end to secret and arbitrary rule by the ministerial conference and Maryfield Secretariat.

We consider that the historic breakdown in North-South relations can best be addressed through the establishment of

- (a) A benevolent, liberal and pluralistic democracy in Northern Ireland in which both communities share; which disadvantages neither and which fully protects all individuals and groups.
- (b) An Inter-Irish Relations Committee, to facilitate business between Belfast and Dublin administrations, in which the two could co-operate, as equals, to achieve social and economic benefits for the Irish people as a whole. It would further form an integral part of a larger body, details of which will be tabled during Strand 3 discussions.

It would be foolish to understate the difficulties which we

now seek to address, for they are very great, but we are certain that the advantages which can be obtained for all our peoples are a prize for which it is worthwhile taking a risk.

Our goals are peace and justice. We desire an end of violence, to sectarian and religious bigotry and to mutual suspicion throughout Ireland. We pursue a political stability which can provide social and economic progress that will exclude no one. We seek to establish working relationships both between Northern Ireland and the Irish Republic and between the Irish Republic and the United Kingdom, to which everyone can contribute and which threaten no one.

We recall the tripartite agreement in 1925 which provided for joint meetings between the Government of the Irish Free State and the Northern Ireland Government. Meetings took place under this provision but, regrettably, they ended at the insistence of the Irish Government.

In short, we aspire to carry out the work which realistically should have been done seventy years ago. The failure to do this was a sin which has been visited on each generation ever since.

During the course of discussions we will tender a number of papers on subjects which we regard as critical to progress. While some of these might be considered contentious, they are matters which cannot be ignored if we are to follow the criterion that "all things are on the table".

We will, in due course submit papers on the historical and political background to the present breakdown in relationships.

The ideal Nationalist solution was, and is, a united thirty two county independent Irish Republic. The ideal Unionist solution was, and is, a united thirty two county Ireland fully integrated within the United Kingdom. Both have proved mutually exclusive; both have proved impossible to achieve. Both are literally pipedreams.

Unionists have always held firm to the belief that Ireland should be part of the United Kingdom, that all parts of the Kingdom should be treated equally and that no region should suffer unfairly in any respect.

Unionists accept that failure, in the past, to provide acceptable and equitable government for all parts of the United Kingdom provided a genuine desire by some within Ireland for separation. Nationalists must equally recognise that Unionists did not, and do not, accept that the Kingdom cannot provide, within its framework, a satisfactory government for all its constituent parts and for all its citizens, whatever their aspiration.

We will refer to papers on comparative studies on the social and economic progress made by both parts of Ireland in general since 1921, and in particular comparison will be made between two Ulster counties....one ruled from Dublin and the other from Belfast.

We do not and will never accept that Northern Ireland can give up its right to self-determination. The constitutional future for Northern Ireland is entirely a matter for the people of Northern Ireland and must be fully respected by the Irish Government. This position is based on international law and we will illustrate the legitimacy of our position in more detailed form, by the submission of a document entitled 'Self Determination and Sovereign Equality'.

We will reason, therein, that the 1937 Irish Constitution with its claim to our territory and people contained within the Preamble and within Articles 2 and 3 is illegitimate in international law and remains an obstacle to progress.

The background to these articles is well known. In effect they illegally constituted a repudiation by Mr De Valera of the legitimacy of the recognition of Northern Ireland contained in the Treaty (Confirmation of Amending Agreement) Act 1925. Article I of the schedule of that Act was in the following terms:

"The powers conferred (by the 1921 treaty in relation to the Boundary Commission) are hereby resolved and the extent of Northern Ireland for the purposes of the Government of Ireland Act 1921 and of the said Articles of Agreement shall be such as was fixed by sub-section (2) of section 1 of that Act".

The text of the Act spoke of,

"The British Government and the Government of the Irish Free State, being united in amity in this undertaking with the Government of Northern Ireland, and being resolved mutually to aid one another in a spirit of neighbourly comradeship...".

This Act was endorsed by the three Parliaments within the British Isles and was registered by the Government of the Irish Free State with the League of Nations - a body of which Mr De Valera was later to become a distinguished President.

The Act has never formally been repealed and the agreement it enshrines is still valid in international law. It, with the 1921 act is in fact the legal basis for the very existence of an Irish State separate from the United Kingdom. We do not accept that the illegitimate repudiation of the 1925 agreement can be taken to indicate that arbitrary abrogation by one contracting party to an international agreement invalidates that agreement. The enduring wrong created by the 1937 Constitution must be made right.

The relevant provisions are:-

#### Preamble

In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,

We, the people of Eire,

Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial,

Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,

And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,

Do hereby adopt, enact, and give to ourselves this Constitution.

## THE NATION

### Article 2

The national territory consists of the whole island of Ireland, its islands and the territorial seas.

### Article 3

Pending the re-integration of the national territory, and without prejudice to the right of the parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by the parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.

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The interpretation of these provisions was given by the Supreme Court in the Criminal Law (Jurisdiction) Bill (1977). It asserted the Right of the Nation as distinct from the Right of the State:-

"One of the theories held in 1937 by a substantial number of citizens was that a Nation, as distinct from a State,



had rights: that the Irish people living in what is now called the Republic of Ireland and in Northern Ireland together formed the Irish nation; that a nation has a right to unity of territory in some form, be it as a unitary or federal state; and that the Government of Ireland Act 1920 though legally binding, was a violation of that national right to unity which was superior to positive law".

Thus, the people of Northern Ireland were effectively, within the law of the Irish Republic, denied the inalienable right to self-determination.

These provisions were further defined in *McGimpsey V Ireland* (1990) by the Supreme Court. Articles 2 and 3, when read with the Preamble, were deemed to mean that,

"The reintegration of the national territory is a constitutional imperative"

and a claim of Legal Right to the territory of Northern Ireland. This leads one to the conclusion that in Irish Law:-

- (i) the recognition afforded by the Irish Government to Northern Ireland is (and can only be) that of de facto acknowledgement.
- (ii) the reference to Article 3 by the Supreme Court in this case means that none of the multi-national agreements to which the Irish Republic is a party concerning International frontiers (such as the Helsinki Final Act of CSCE), can, as a matter of domestic law, override the provisions of Articles 2 & 3.

In fact the Helsinki assurances given by the Irish Government are, as a matter of Irish constitutional law, entirely worthless as far as the legal status of Northern Ireland is concerned.

In this regard, the assurances given by the Irish Government under the Anglo Irish Agreement are, and were clearly known to be, entirely worthless.

This point was confirmed in the McGimpsey case when their senior counsel Mr Hugh O'Flaherty, S.C., now Mr Justice O'Flaherty of the Supreme Court Bench, quoted Article 1a. of the Anglo-Irish Agreement....that the two Governments:-

"affirm 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".

Mr Owen Fitzsimons, S.C. representing the Irish Government and instructed by the Chief State Solicitor, was scathing in his response:-

"Now, Mr. O'Flaherty referred to Article 1, my Lord, headed The Status of Northern Ireland. When one reads that Article, one looks at the status of Northern Ireland, it is not defined at all. It is carefully not defined, my Lord, carefully not defined".

In practice the four Ministers sitting opposite are under no obligation to act in good faith nor to behave honourably towards Unionists whom they meet here today. Their Constitution, as

interpreted by the Supreme Court, places an obligation upon them to seek to destroy Northern Ireland. How are we to overcome such an impediment to progress?

It is, therefore, a matter for the present Irish Government to state clearly how it intends to make a worthwhile and binding agreement with Unionists under the auspices of these talks. Is it prepared to free itself from the constraints of the 1937 Constitution? It is incumbent upon the Government of the Irish Republic to finally demonstrate its commitment to International Law.

The position of the Irish Constitution is properly an issue for Strand 3, since it is clearly a matter relating to the Constitutional position of the United Kingdom of Great Britain and Northern Ireland and must be a matter for the two Governments to agree.

However, we serve notice now, under the rule that "nothing is agreed until everything is agreed", that we will not enter into any arrangements whilst the Republic's harsh, irredentist and uncompromising territorial claim is extant. Our position is based upon accepted principles of International law on self determination, the United Nations Charter and the Treaty of Rome.

The Irish Constitution was a child of its time, insofar as the concept of "lebensraum" was an accepted doctrine within the

Europe of the 1930s. That doctrine was, however, subsequently discredited after the horrendous sufferings of the 1940s and has certainly no place within our Europe of today as we progress toward the 21st century.

Terrorism and the rule of law provides an absolutely crucial area to be addressed. Surely we all regret the wanton waste of so many lives over the past 20 years. Use of violence to further political objectives, and the equally immoral toleration of such violence within a democracy are entirely unacceptable.

We would emphasise that the parties here today are not involved in "peace talks", because the belligerents cannot be afforded a place at the negotiating table with constitutional parties. However, we would not be engaging in the present dialogue if we did not consider that real progress can be made to bring about a peaceful state of affairs in Ireland.

The problem appears to be, how does a democracy combat internal terrorist forces and still remain a democracy?

We have practical suggestions to put forward and will do so in a more detailed form, which will address the role of security agencies throughout these islands and beyond. Comparisons will be drawn (and we will submit papers as required) between the security services and the other branches of state institutions both in Northern Ireland and the Irish Republic. These will underline our view that terrorism can be comprehensively defeated where there is a real will to do so.

For instance, it is a matter of record that the bulk of recent lethal supplies to Provisional IRA has been "imported" through the Irish Republic. Although we accept that the Garda Siochana are fully committed to enforcing the rule of law, we will expand the view that much more can be achieved.

A further paper on the international dimension of terrorism with particular reference to the United Nations' actions against Libya and Libya's response will be submitted. An issue to be addressed will be how we may set about securing full and adequate reparation for the deep suffering inflicted upon our community.

We have expressed, in Strand 1, our views on Human Rights and have submitted our proposals for a Bill of Rights for Northern Ireland. We will seek to expand upon this crucial topic in a paper which will consider community law and precedent, and the effectiveness of such measures in securing individual and community rights and freedoms. We may also wish to consider the vexed question of extradition.

When the Irish Republic's illegitimate territorial claim is removed, we will be better able to respond to the concerns of a friendly neighbour; not least because what happens in Northern Ireland can have ramifications for the whole island. But this must, logically, be a two-way process and it will be easier to do business with a neighbour who can demonstrate that he does not demand more from, than he is prepared to concede to, the relationship.

We recognise that the island of Ireland is an economically deprived region on the periphery of mainstream European Community activity. Close co-operation between Northern Ireland and the Irish Republic on a basis of equality is not only desirable, but may be crucial in creating the prosperity that all our people deserve and expect.

Notwithstanding the declared intent of Irish nationalism in Poblach na hEireann (1916) wherein it asserted,

"... equal rights and equal opportunities to all its citizens, and declare its resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all the children of the nation equally".

Yet, we note that the Irish Republic's Government under the terms of Article 1(c) of the Anglo-Irish Agreement now wishes to,

"... put forward views and proposals on the modalities of bringing about devolution in Northern Ireland, insofar as they relate to the interests of the minority community".

Consequently, it is now clear that Dublin only has a concern for the wellbeing of the so-called minority community within Northern Ireland. No new relationship can succeed if it is the intention of the Irish Republic's Government to persist along such divisive and sectarian lines.

We further acknowledge that the immoral use of violence by various paramilitary organisations in Northern Ireland has a direct effect on the safety and economic wellbeing of the citizens

of the Republic, and that the Dublin Government therefore has an obligation to facilitate stable political institutions in this portion of the United Kingdom.

Through our discussions we will seek ways of supporting such an obligation by defining a mechanism which will facilitate a permanent dialogue and permit the devolved administration in Belfast and the Dublin Government a constant and ongoing method of doing business together.

We, within the Ulster Unionist Party, anticipate that any future relationship within the island will not only be cordial and unthreatening, but will be of lasting practical benefit for all our people through close co-operation between both parts of our island. We intend to work unstintingly to that end.

End.