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A new approach to the Northern Ireland problem?

Introduction

1. This paper is an attempt to suggest a new approach to the problem of Northern Ireland. The views put forward are personal and they do not commit the Department of Foreign Affairs.
2. At the present time there is a strong public mood in favour of a resumption of talks and the Taoiseach and the Tánaiste in recent speeches have continually stressed their interest in dialogue. It is now clear however that there will be no resumption of talks involving the Northern Ireland parties before the local elections on 19 May; The prospects for a return to the table by the Unionists after that, to judge by recent statements by Molyneaux, Paisley and others, are not great.
3. Even if all parties were to return to the table after the election, it must seem unlikely to anyone familiar with the talks of last year, that a resumption where those talks left off, would be successful or that a real settlement of the Northern Ireland problem would emerge piecemeal, as the British seem to hope, from further confrontation of all viewpoints around the table.
4. For this reason it seems necessary to think now about a new approach. This paper argues for a joint initiative by the two Governments which will set the basic framework for a settlement and yet allow scope for negotiation by all the constitutional parties on structures to be established within that framework.
5. The paper argues further that the experience of twenty years has shown that, while both identities in Northern Ireland must be allowed full expression, it is simply not possible to build stable institutions and a settlement on the basis of competing "agendas" resting on opposing constitutional positions. Instead it argues for the negotiation of a new, agreed status for Northern Ireland - probably, though perhaps not necessarily, for a specified time period. This would in effect, establish an agreed "Constitution of Northern Ireland", comprising both constitutional and institutional elements, which would be given formal constitutional endorsement, by Parliament and/or referendum, in all three jurisdictions.

6. Such a new approach could emerge from an Anglo-Irish summit meeting - which might be held perhaps as early as June when the difficulty of getting talks on the 1992 basis under way has become evident. The idea should not be broached initially with the Secretary of State however, since he is more likely to want to work within existing parameters than to consider fundamentally new ideas.

7. If the basic idea is thought worth pursuing it would need to be worked on further in internal discussion. It should then be presented to the Prime Minister as a new approach which would require further detailed discussion between the two Governments on the constitutional aspect; which would still allow scope for negotiation after that with the Northern Ireland parties on institutional issues; which could, at best, if handled carefully, become a basis for a cessation of violence; and which could bring a settlement of a problem to which at present there appears to be no solution.

8. In putting the case for a new approach to Northern Ireland in more detail, it is necessary - briefly and without dwelling too much on history - to situate the Northern Ireland problem in the historical context which has determined its particular character; and then to consider other current approaches to see whether any of them offers real hope of a settlement.
9. Accordingly, this paper is divided into the following sections:
- A. Historical background (par 10-26)
- B. Previous approaches since 1920/21 (par 27-71)
1. 1920/21 to 1972
 2. Sunningdale 1973
 3. "Totality of relations" 1980
 4. Anglo-Irish Agreement 1985
 5. Conclusions to be drawn from 1973 and 1985
- C. Other approaches now proposed (par 72-121)
1. The recent talks process
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- D. Proposal for a new approach (par 122-135)
1. The argument for a new approach
 2. Proposal
 3. Conclusion

Annex - sample draft of an agreement

The views offered are necessarily set out at some length in view of the complexity of the issue. The core of the proposal is contained in Section D which can be read on its own in isolation from the rest of the text.

A. Historical Background

10. The present problem of Northern Ireland is best understood as an unsolved residue of the "Irish Question" of the late 19th and early 20th centuries. It is necessary, therefore, without dwelling on it unduly, to look briefly at the historical background in order to understand the present situation.
11. For several centuries Irish history has turned on the interaction of two issues: the relationship between communities in Ireland; and the relationship between Britain and Ireland. This interaction is still at the heart of the Northern Ireland problem today.
12. A century ago, Gladstone recognised that Pitt's Union of 1801 could not be the definitive settlement of the relationship between the two islands. Over the century since then there have, broadly speaking, been three possible "agendas", in the sense of three ways in which the linked issues of relations within Ireland and relations between the two islands might have been sorted out. Each agenda would have required a majority so to conciliate a disaffected minority that it would not seek to separate but would settle for an accommodation within a larger unit.

(1) Home Rule Agenda

13. A first such agenda, or set of possibilities, was Home Rule, which sought to accommodate Irish nationalism by giving a united Ireland local autonomy within the United Kingdom.
14. Though Parnell accepted it at the time, it may be doubted whether in the event the Irish nationalist majority would have been content with Home Rule as a definitive settlement of the relationship between the two islands. But this was never put to the test. The Unionist minority in the island, fearing that they would be subordinated to the Catholic majority in an internally autonomous Ireland, resisted with the strong support of the British Conservative Party; and successive British Governments proved unwilling or unable to push through Home Rule settlement until it was already too late.

15. In 1920, Lloyd George's Government did push through the Government of Ireland Act, which partitioned Ireland and gave what was in effect Home Rule to each part. For Nationalist Ireland however the time for a Home Rule settlement had long since gone - even if it had not involved partition. Already by the end of the First World War, Irish nationalism had set itself definitively on a new course for independence.

(2) Irish Nationalist Agenda

16. In opting for independence, Irish nationalism in its turn, faced a second agenda. Home Rule had foundered because of the determined opposition of the Unionist minority in Ireland. That minority - in large part at least - had now been accommodated separately through the creation of Northern Ireland where they were a local majority. Could they at this point be induced or pressed to give up that status, just achieved, and take their place instead as a minority in a united Ireland which was preparing itself to settle for the qualified independence of a Dominion?

17. This second agenda was pressed explicitly by the Irish side in the Treaty negotiations on 14 October 1921. Lloyd George responded on lines which have since become familiar:

I think you will get Ulster into an Irish unit on agreed terms. We promise to stand aside and you will have not only our neutrality but our benevolent neutrality....Use persuasion and we will stand on one side. But until agreement you must allow the present arrangement to stand.

18. Although Lloyd George would not agree to 'coerce Ulster'; the Anglo-Irish Treaty of 6 December 1921 which he negotiated did, nevertheless, give formal recognition to the concept of Irish unity. It was entitled "Articles of Agreement for a Treaty between Great Britain and Ireland". Article 12 however provided that "Northern Ireland" might opt out by a vote of its newly created Parliament. The Northern Parliament did opt out immediately. The Unionist community, through their representatives, thereby formally and explicitly rejected the nationalist agenda for a united Ireland (which at that time would have been an Ireland under the Crown); and they have maintained that rejection ever since.

(3) Unionist Agenda

19. In deciding, as they did, to opt out, the Unionist majority in Northern Ireland in their turn now faced a third agenda. The border had made them a local majority. But it had also locked in with them a new and substantial Nationalist minority. Could the Unionist majority now so conciliate this new minority that they would accept what had been done and settle down within the new area so that the settlement would be a stable one ?
20. It may be argued whether Northern Nationalists would in fact have ever settled for a fair deal within Northern Ireland. Certainly the Unionist party, in government at Stormont for fifty years, with virtually unfettered control within Northern Ireland, had every opportunity to work to that end. But during all of that time, whether from insecurity or from lack of will, it did nothing to carry through on this agenda or to coopt the Nationalist minority to acceptance of the settlement.
21. It is clear today that the first of these three possible "agendas" is long since dead. There is no going back on Irish independence - though much has been, and can be, done to build on, and even to institutionalise, the special relationship between the two islands, now partners within the EC. The two other agendas however, are still very much alive - offered as competing approaches by Irish nationalism and Unionism respectively, to a definitive settlement of the future of the island.

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22. Whether or not planned as such at the time, Lloyd George's 1920/21 settlement can be seen in retrospect as an effort to disentangle the two issues - relations within Ireland and relations between the two islands. Once Unionist fears were accommodated by the creation of Northern Ireland, it then seemed possible for a British Government to allow Nationalism in the rest of the island the independence of a Dominion, though not yet the full independence which it had sought.
23. In fact this settlement did not disentangle the two issues - rather it concentrated them in a more potent form within Northern Ireland because there was an aggrieved Nationalist population there of sufficient size to maintain the nationalist agenda.

24. Each community now perceived itself as a minority: Nationalists within Northern Ireland; and Unionists in the island as a whole. Each had the fears and insecurity of a minority. All eyes focused on the border, since its consolidation or its removal would establish one or the other definitively in the minority role. The result has been that, for seventy years now, the competition between the Unionist agenda (which saw partition as definitive) and the Nationalist agenda (which looks to a united Ireland) has been acted out on the narrower ground of Northern Ireland.
25. At its best the Nationalist agenda offers Northern Unionists a generous but so far unspecified accommodation as a minority in a future united Ireland; while the Unionist agenda, in its more enlightened form over recent years, has offered Northern nationalists a fair deal as a minority in a stable Northern Ireland with "good neighbourly" relations with the South. No definitive accommodation has yet been reached between them.
26. For twenty years now, the British Government has seen itself politically as holding the ring between both agendas, insisting only on peaceful means and on the principle of majority consent as a condition for change. The Irish Government, committed historically and by the Constitution to the Nationalist agenda, has joined the British Government in political, though not in constitutional, acceptance of this principle. In the meantime, on the ground, paramilitary extremists in both communities act out the competition between the two agendas in an increasingly virulent form; and conflict between them appears to have become endemic.

B.

Previous approaches over the period since 1920

27. Before considering current proposals to reconcile these two competing agendas - or at least to end the conflict between them - it is necessary to look back over the period of seventy years since partition to consider how they have developed in that time and what previous efforts have been made to accommodate them to each other.

Attitudes within Northern Ireland

28. Within Northern Ireland, partition at first may have seemed a temporary expedient to Northern Nationalists - at least until the collapse of the Boundary Commission in 1925. The Unionist community, however, now a majority in the area, was determined to hold and consolidate what it believed it had been given in 1920; and sporadic episodes of violence by Nationalists - both within Northern Ireland and across the border - were easily contained by the Unionist dominated Northern Ireland security forces.
29. But Northern Ireland from the outset had a fault line running through it. Whether from insecurity or lack of will, nothing was done to repair that fault and draw the two communities together while the opportunity offered; and it finally split along that fault line under the stresses of the civil rights demands by the newly educated minority in the late 1960s. This brought to the surface again, in the narrower area of Northern Ireland, the same interaction of two issues - community relationships in Ireland and the relationship between the two islands - which was central to the old "Irish Question" and which had not been adequately resolved in 1920/21.

Position of successive Irish Governments

30. In the early years after the Treaty, the Government of the New Irish Free State also saw partition as essentially temporary and had looked to

see it collapse with a report from the Boundary Commission favouring a substantial transfer of territory. In the event this view of what the Commission might do proved wholly misplaced.

31. In 1925, following the abandonment of the Boundary Commission, the Government of the Irish Free State reached an Agreement with the Governments of the UK and of Northern Ireland which seemed to accept partition as definitive and spoke of "good neighbourly relations". However this Tripartite Agreement, approved by a Dáil which the Fianna Fail party had not yet entered, was seen as dubious, to say the least, by successor Governments who felt that they had had no part in it and who argued that calls for a referendum on the issue had been refused by the then Government in 1925.
32. Irish Governments since the late 1920s have held firmly to the Nationalist agenda, in principle at least. They have made sporadic, but ultimately not very serious, efforts to realise that agenda through pressure and propaganda, in Britain and abroad, about the "injustice of partition" - arguing that it is illegitimate to divide a country on giving it independence and that the unit for self-determination should rightly have been the island as a whole.
33. This position was given firm but subtle expression in Articles 2 and 3 of the 1937 Constitution. That Constitution was couched as an expression of self determination by the Irish Nation. At the same time it recognised the present reality of division to the extent of limiting the jurisdiction of the institutions of Government it established to the 26 county area, pending a future reintegration of the National territory, at a time and by means which were not specified.
34. The constitutional position of the Irish State thus established and the political commitment of successive Irish Governments to the aspiration for Irish unity have been maintained up to today. But, beginning in the early 1970s, all constitutional Nationalist parties in the island North and South have come to accept and commit themselves to a political formula which acknowledges that the unity they hope for would come about only with the consent of a majority in Northern Ireland. Though accepted politically, this formula has not so far been given constitutional expression and the Constitution remains as formulated in 1937. (This point is considered further below.)

35. The Forum Report of 1984 set out this Nationalist agenda in a more detailed and coherent way than had been done at any time since the Mansion House Committee of the late 1940s, and arguably since the early 1920s. The report called for new structures which would accommodate together two sets of legitimate rights and emphasised that such a settlement must transcend the context of Northern Ireland. Its own preference was for a unitary State, achieved by agreement and consent, under political arrangements freely negotiated and agreed to by the people of the North and by the people of the South.
36. This report enjoyed all-party support in the South (notwithstanding some subsequent differences of view on the significance of particular proposals); and it also engaged constitutional Nationalists in the North through the participation of the SDLP. It remains the authoritative statement of the constitutional Nationalist agenda, emphasising as it does the legitimacy of both identities and both sets of rights; the need to reconcile them in a settlement transcending Northern Ireland; the belief that this should be done preferably in a unitary State; the willingness to discuss other possibilities; and above all, the repudiation of violence.

Position of British Government

37. What is the position of Britain, which is seen by all sides on the island of Ireland as a determining factor in the whole situation? Over the period since the 1920/21 settlement it is possible to distinguish two significantly different phases in the approach of successive British Governments to the situation in Northern Ireland.
38. For the first fifty years, all British Governments took the view that a definitive settlement of 'the Irish Question' had been reached in 1920/21. The Nationalist agenda was seen as historically dead and Northern Ireland was seen as now permanently part of the United Kingdom. It followed that any intervention or claim by the Irish Government in relation to the area was an unacceptable interference in the internal affairs of the United Kingdom.
39. A major change in approach came in 1972. In that year, after three years of turmoil in Northern Ireland, the Heath Government intervened and abolished Stormont. It did so in part because it had come to accept that a Westminster type parliamentary system which in practice resulted in permanent one-party rule was no longer tolerable; and in

part because it could no longer leave security policy, in which the British Army was now playing a central role, in the hands of a local administration.

40. Once Stormont was abolished it became necessary to see how it should be replaced. Full integration of a troublesome area was unpalatable and it would greatly aggravate and sour Anglo-Irish relations. At this point the British Government made a major conceptual shift - arguably one of the most important steps in relation to Northern Ireland taken by any British Government since 1921: it recognised in the 1972 Green Paper that what it described as 'the Irish Dimension' was an intrinsic aspect of the Northern Ireland problem which would have to have adequate expression in any new structures. Perhaps this was intended at the time as a vague, general phrase which would please the minority - and the Irish Government - without unduly alarming the majority. But the effect in practice of introducing this concept was to revalidate and re-legitimise the Irish Nationalist agenda which all British Governments had rejected for 50 years.
41. Thus, by 1973 both Governments, under the pressure of events, had modified their political positions although both still maintained their respective constitutional positions unchanged. The British Government, forced to abolish Stormont and to impose direct rule, was now looking for a new structure of Government; and it had accepted explicitly that the 'Irish Dimension' (still to be defined) must be given expression in that structure. It had also provided by legislation for a poll on the border issue and for the possibility of further polls at intervals of at least 10 years. The Irish Government for its part, had begun to accept that to campaign about 'the injustice of Partition' was to ignore the reality - the continuing rejection by the Unionist community of Irish unity and the impossibility in practice of forcing it through without their consent.

Sunningdale 1973

42. In 1973 this change in the respective positions of both Governments was enough to provide a basis for the Sunningdale Agreement. The British Government were now prepared to recognise the Nationalist agenda to the extent of declaring in the Sunningdale communiqué that if a majority of the people of Northern Ireland should indicate a wish to become part of a united Ireland they would support that wish. The Irish Government, while maintaining Articles 2 and 3 of the 1937 Constitution, were now for their part prepared to agree in practice that

there could be no change in the status of Northern Ireland until a majority of the people of Northern Ireland desired a change in that status.

43. This shift in positions on both sides did establish important common ground. But the common ground (no change in the status of Northern Ireland without the consent of a majority) was narrow and it concealed disagreement on the fundamental Constitutional issue of what is the status of Northern Ireland. So much so that the respective statements by the two Governments at Sunningdale had to be embodied in two parallel declarations rather than in a single text.
44. It was, nevertheless, possible to agree on a set of institutional structures. The central idea was to establish on such foundation as was offered by these parallel declarations, institutions with an inbuilt capacity for growth and development - both within Northern Ireland (power-sharing administration) and between North and South (Council of Ireland). Just as there had not been agreement on the existing constitutional status of Northern Ireland, so no effort was made to predetermine an end result or a constitutional future towards which these structures would grow and develop.
45. The British Government accepted that it would take no direct part in these new structures though it did retain responsibility for certain matters which were not devolved at that stage - including the important matter of security on which agreement could not be reached. It also agreed to devolve certain functions direct to a Council of Ireland (rather than through the new Northern Ireland Administration).
46. Points of particular interest in this approach from an institutional viewpoint can be summarised as follows:
 - (i) the idea of establishing structures to promote reconciliation without pre-determining an end result;
 - (ii) the concept of 'power-sharing';
 - (iii) the revival of the concept of a 'Council of Ireland' (originally in the 1920 Act) - now with executive functions;

- (iv) acceptance by the British Government that it would not participate but would leave the Council to be operated by North and South;
 - (v) the concept of devolution of some functions direct to the Council;
 - (vi) the inability to come up with a solution to the issue of how security should be handled in the new schema.
47. Sunningdale was essentially a creative effort between the two Governments, the SDLP, and the more liberal element of the Unionist party to build structures to promote reconciliation and cooperation without seeking agreement at this stage on either the Constitutional base on which they would rest or the eventual future towards which they might evolve. It failed for a variety of reasons. These included:
- (a) the decision to hold the Conference in two separate phases (of which only phase one ever took place) rather than completing all stages of the negotiations before any outcome was announced.
 - (b) the announcement at the end of Phase 1 that there would be a 'Council of Ireland' before any details of its structure had been worked out. Unionist fears focused on this as yet empty concept and were not moderated by any sense of what the Council would actually be in practice;
 - (c) the fact that the Irish Government in early 1974 felt itself blocked by the Boland case from stressing the significance of its declaration about the need for consent ('there could be no change in the status of Northern Ireland until a majority of the people of Northern Ireland desired a change in that status') - a step which would have given political succour to the Faulkner Government;
 - (d) the fact that the then Attorney General felt it necessary in order to win the Boland case to stress that nothing really new had been done. This in effect drained the declaration of any political impact it might have had so far as the Unionist community were concerned;
 - (e) the calling of an election in the UK as a whole in February 1974. This in effect invited the Northern Ireland electorate to

make a judgement on the Sunningdale Agreement when it was at its most vulnerable and before its structures were fully in place;

- (f) The fact that the election led to a change of Government;
 - (g) The failure of the new Government in May 1974 to face down the opposition to the Agreement on the streets by the Ulster Workers Council.
48. Overall, Sunningdale was a well intentioned effort to maintain two agendas - Nationalist and Unionist - in balance and to substitute process for definition. It can be argued that in more favourable circumstances and with greater resolution on the part of the British Government it might have succeeded. It is more plausible, however, to suggest that its essential weakness was precisely that the effort to maintain two agendas in balance, which is to say in competition, was not compatible with getting under way a process designed to promote reconciliation with no definition as to ultimate outcome.

"Totality of Relations" 1980

49. After the collapse of Sunningdale it took another six years and several failed efforts at an 'internal solution' before the two Governments again began to address the issue together in 1980. A new conceptual approach to the Northern Ireland issue emerged from the Haughey/Thatcher meetings in that year - the idea of the 'totality of relationships'. This concept which was of importance later although it did not immediately take shape in the form of an Agreement.
50. What was significant about this approach was that where Sunningdale had placed all the emphasis on relations between the communities in the island of Ireland, it focused instead on the other aspect of the problem - the relationship between the two islands. Unlike Sunningdale, which was essentially built on a North/South axis, the idea in 1980 was to develop the East/West (Dublin/London) relationship so that it could become a solid framework within which the other relationships could ultimately be handled. 'Joint Studies' were commissioned and when the reports were received in 1981 this East/West approach was given effect through the establishment of an Anglo-Irish Intergovernmental Council. This was important as an idea but in practice it was simply an umbrella title to cover all future Anglo-Irish Meetings at Ministerial level.

51. In the event a general turbulence in Anglo-Irish relations in the early 1980s (the hunger-strikes and the Falklands issue) meant that little progress was made with this approach at the time. It did nevertheless provide a concept and a broad framework within which a new effort to resolve the problem could be situated in the mid 1980s.

Anglo-Irish Agreement 1985

52. This new effort to resolve the Northern Ireland problem through a formal agreement between the two Governments was the Anglo-Irish Agreement of 1985. It was negotiated by the two Governments over the year and a half which followed publication in May 1984 of the Report of the New Ireland Forum.
53. The Unionists in Northern Ireland rejected the Forum Report and thereby again explicitly rejected the second (Nationalist) agenda identified above as they had done on every previous occasion since 1886. The Report, however, as a liberal presentation of the second (Nationalist) agenda did evoke in response from liberal elements on the Unionist side a more reasonable formulation of their own third agenda (maintenance of the Union but fair play for Nationalists) than had previously been offered ("The Way Forward" published by the OUP).
54. In 1983/4 the British and Irish Governments, meeting in private, opened the negotiations which were to lead to the Anglo-Irish Agreement. For a time both Governments considered the possibility of an Agreement which would involve constitutional change on the Irish side. But by mutual agreement both sides moved away from this possibility.
55. It proved possible, nevertheless, as it had not been at Sunningdale - for both Governments to commit themselves in 1985 to a single text to under-pin the institutions to be established under the Agreement (Article 1). But they could do this only because of a 'creative ambiguity' accepted tacitly by both sides. In slightly awkward phrasing Article 1 'affirmed 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'. But again there was no definition of that status and indeed no underlying agreement on what it is. Article 2 stipulated that 'there is no derogation from the sovereignty of either the United Kingdom Government or the Irish Government'. In principle,

therefore, both 'constitutional claims' - the second and third 'agendas' mentioned above - remained as before, in competition.

56. Several points are worth noting in the phrasing of Article 1 since each helped in its way to create the ambiguity which made it possible for the Irish as well as the British Government to accept the text. *First* was the use of the weaker word 'affirm' instead of, for example 'declared'. *Second*, the text used the predictive form 'would' rather than the normative 'could'. *Third*, was the omission of any definition of 'the status of Northern Ireland' - the text does *not* say, for example, "the status of Northern Ireland as part of the United Kingdom". *Fourth*, was the deliberate use of the phrase "would only come about" (rather than the grammatically more correct phrase "would come about only"). This phrase was used because it had already been used in the 1980 Haughey-Thatcher Summit communique and it was, therefore, thought less likely to encounter objection.
57. These ambiguities allowed the British Government to enter into the Agreement while maintaining its legal stance that Northern Ireland is part of the United Kingdom; and the Irish Government at the same time to retain its position of full respect for Articles 2 and 3 of the Irish Constitution. In consequence two separate versions of the Agreement using different titles for the two Governments had to be printed in London and Dublin respectively.
58. In a phrase current at the time, both Governments 'had come to this Agreement with different title deeds'. At the level of officials at least it was accepted that agreement had been reached only on the future conditions for change and not on the present status of Northern Ireland. Mrs. Thatcher can hardly have been unaware of this distinction - though it was glossed over in her public statements and perhaps also in presentation to her by her officials of the significance of the Agreement.
59. In the course of the negotiations, the Irish side had certainly tended to stress the aspirational rather than the legally assertive aspects of Articles 2 and 3. The meaning of Articles 2 and 3 has since been further defined, however, in the McGimpsey case where the Supreme Court stated that they amount to a 'constitutional imperative'. This phrase was not further defined by the Court; nor, apart from the ordinary English meaning of the words, is there elsewhere any legal or constitutional definition of their effect. For some on the British side, however, this new definition has the effect of 'hardening' the meaning of Articles 2 and 3 and draining them of the subtlety which the Irish

side had pointed to in 1985 - to an extent which leads them to question whether it would be possible now to reach agreement on a text with the 'creative ambiguity' of that negotiated in 1985.

Are there conclusions to be drawn ?

60. The Anglo-Irish Agreement of 1985 marked the second occasion since it abolished Stormont in 1972 that the British and Irish Governments, accepting Northern Ireland as the central unresolved issue in Anglo-Irish relations, had joined in a major initiative to address it.
61. Sunningdale had concentrated on internal and North/South institutions (power-sharing, devolution and a North/South Council of Ireland with strong executive functions) with an inbuilt capacity for growth. No effort was made to determine towards what constitutional future they might evolve.
62. The 1985 Agreement concentrated on the East/West rather than on North/South dimension (although its focus was of course on the governance of Northern Ireland). It provided through the Conference, for regular input by the Irish Government into the British Government's operation of Direct Rule. This gave the Irish Government an institutionalised role as surrogate voice for Northern Nationalists until such time as they might be in a position to speak for themselves within a devolved partnership administration in Northern Ireland.
63. Neither agreement succeeded: Sunningdale failed; and the Anglo-Irish Agreement of 1985, while it is successful as a mechanism for conflict resolution between the two Governments, has not succeeded as a mechanism for resolving conflicts on the ground within Northern Ireland. In the case of both these major initiatives, it can be said that the degree of understanding which the two Governments had achieved on the constitutional issue proved in the event to be too narrow a base on which to build solid institutions for cooperation which would involve, and gain the full acceptance of, both communities within Northern Ireland.
64. In particular, in both 1973/74 and from 1985 to date the Unionist community has exercised an effective veto which proved sufficiently strong in practice in one case to pull down, and in the other to frustrate, the new agreement. That community have always seen the Union as their bulwark and protection against possible domination and absorption by the Irish majority; and, as they see it, so long as the Irish

Government and Irish Nationalism maintain a constitutional position which is incompatible with *de jure* acceptance of the status of Northern Ireland within the United Kingdom, then so long must they be presumed to have hidden motives in their approach to any institutions to promote cooperation.

65. A second factor in the lack of full success of either initiative was the continuation of violence by the IRA. This aggravated Unionist opposition and ensured that it would not dissipate over time as it might have done if either of the two Agreements had gradually brought peace to Northern Ireland.
66. Two conclusions may be drawn from this. *First*, any new effort to resolve the problem must provide a greater degree of reassurance and guarantee to the Unionist community against being dragged into a united Ireland than was available to them either at Sunningdale or in the Anglo-Irish Agreement.
67. On both occasions they had a continuing constitutional guarantee from the British side and a new political assurance from the Irish side (no change without consent of a majority). But the latter appeared to them to be contradicted by the maintenance of the Irish constitutional position (Articles 2 and 3) and, even more perhaps, by the fact that the Irish side did not believe that it could face its electorate to ask them to change that position.
68. It may now be necessary for the Irish side to go the whole way to put a constitutional as well as a political "floor" of some kind under the fears of the Unionist community. This in turn should make it possible for the Unionists to accept more substantial institutions for cooperation and reconciliation than they have hitherto been willing to contemplate because now they would have what they have never had previously - an Irish constitutional guarantee against those institutions being used as a mechanism to slide them into a united Ireland against their will.
69. *Second*, reflection on Sunningdale and on the 1985 Agreement would suggest that, to a greater extent than was done in either case, thought must be given in devising any settlement both to how to handle security and to how the occasion and the opportunity can be used to induce, or at least provide a pretext for, the IRA to cease violence.

70. At first sight this second requirement would seem to go directly counter to the first. Is there not a danger that any proposal to write into the Irish constitution as a replacement for Articles 2 and 3 some kind of "guarantee" to meet Unionist fears will simply inflame the situation for the minority and induce the IRA to continue rather than to lay down their arms ?
71. This is a serious dilemma which must be faced in any new attempt to reach a settlement: without constitutional certainty the Unionists will frustrate any settlement; but if Unionists are given that certainty, the Nationalist side will reject it and generate enough violence to ensure that it will not work. The argument developed in the later stages of this paper is that the only way through the dilemma is to work for a "time-bound" settlement which is given full constitutional status. This would give the Unionists their constitutional guarantee for a specified time, with the possibility of renewal subject to a further test of opinion after that period; and it would allow Nationalists to feel that their aspiration has not been definitively closed off.

C

Other approaches now proposed

72. As this review of the period of seventy years since Northern Ireland was established shows there has been a period of nearly fifty years in which the British Government saw the Unionist agenda as definitively established while the Irish Government held, in principle at least, to the Nationalist agenda in face of 'the wrong of partition'; and a period of some twenty years since Sunningdale where both Governments, while preserving their respective constitutional positions, have acknowledged a legitimacy in practice for each of the two competing agendas and accepted that the wishes of a majority in Northern Ireland would be the determining factor.

The recent talks

73. Over the past two years or so, in face of the flat Unionist rejection of the Anglo-Irish Agreement and a continuation of violence, a new approach to a settlement has begun to take shape. This involved the two Governments and the four Constitutional parties in talks which, taken as a whole, amount to a kind of round table on Northern Ireland - and indeed, insofar as the aspirations of Irish Nationalism are concerned, on the future of Ireland as a whole. The concept of three relationships which have to be given adequate expression has provided a useful framework for this dialogue. But beyond this there is little specific definition so far of the structure of a possible settlement.
74. The British idea seems to be that some structures will emerge, piecemeal from the talks process itself; and they profess to be ready to give effect to almost anything which the other participants can agree on. A fundamental question, however, will be what constitutional foundation will underlie any agreement that may be reached?
75. On each of the two previous occasions referred to above - at Sunningdale in 1973 and again in the Anglo-Irish Agreement of 1985 - the belief was that structures and institutions would promote the

cooperation and ultimately reconciliation between those who held to the two competing agendas. But because the constitutional positions asserted by the two Governments remained incompatible, Unionists viewed any such institutions with deep suspicion as mechanisms designed to operate with a ratchet effect to deliver them into a united Ireland. Political assurances that this would not happen without consent were insufficient - even when these were given solemn form in Article 1 of an international agreement in 1985.

76. In the talks last year it came to be accepted that any new agreement must involve constitutional change on the part of the Irish State. The Unionists demanded this as a condition - sometimes even a pre-condition - for the new agreement which they require if they are to come back into the political process; and the Irish Government did not reject the idea though it limited itself to "could" rather than "would" in speaking of change.
77. In these talks, for the first time since Stormont was abolished, the British Government placed themselves on the side of the Unionists on the issue of constitutional change. They have, of course, always held to the position that Northern Ireland remains part of the UK unless and until a majority of its people wish otherwise; and they would always have wished to see the Irish Government move to change Articles 2 and 3 of the Irish Constitution. But at no time since 1972, until now have they made such a change a condition of an agreement.
78. They say now that they are merely pointing to the realities of the situation - that Unionists will not sign up to any new agreement without an unambiguous statement of the status of Northern Ireland as part of the United Kingdom. They know, however, that this could not be given by any Irish Government without a change in Articles 2 and 3 of our Constitution; and they accept that their purely 'pragmatic' position amounts to seeking such a change.
79. How has the Irish Government reacted so far to this? The approach of the Irish side in the Stormont Talks last Autumn was not fully worked out in detail. In outline, however, it was based on the idea that we could compensate for and balance the removal of Articles 2 and 3 of the Constitution by persuading the British Government to make a declaration of encouragement for Irish unity. (The Unionists always spoke flatly of 'removal of territorial claim'; and we on our side did not get around to considering whether there were other possibilities such as modifying Articles 2 and 3 or adding a new provision.)

80. Such a declaration, it was felt, would give standing and validity to the Nationalist agenda, even if it were now to be deprived of the support of Articles 2 and 3. The declaration would be included in a new agreement where it was hoped that it would be complemented by new structures within Northern Ireland giving "parity of esteem" to Nationalists and by a strong North/South body with an executive role. What exactly an executive role would mean, or how far we would ourselves be willing to cede functions to such a body, remained to be defined. There would also presumably be a residual role for an Anglo-Irish Intergovernmental Conference but we did not develop this point to any extent.
81. There are several difficulties about this scenario insofar as it involves balancing the removal of Articles 2 and 3 with a new British declaration. One is that we have no evidence so far that the British are at all likely to go anything like as far in such a declaration as we would think necessary. They say to us constantly - at the level of the Secretary of State and at that of the Prime Minister - that they will remain 'neutral' but cannot 'join the ranks of the persuaders' (thus repeating, in very similar terms, what Lloyd George said to Griffith and Collins during the Treaty negotiations). It may be possible to persuade them to go further but it is hard to see them go as far as we believe would be necessary to balance the removal of Articles 2 and 3.
82. A second question is whether if we could get the British to make a declaration expressing encouragement for Irish unity (on condition of consent), that would be at all enough (even with a strong North/South institution) to set against the definitive removal of Articles 2 and 3 of the Constitution. Could such a package be 'sold' in a referendum and would it earn sufficient support from the Northern minority to permit it to pass? This is a matter for political judgement. But there must be some danger that, when it got right down to facing the issue, an Irish Government would be reluctant to go to the test of a referendum on so limited a package.
83. A third question is how, if such a package were being sold to Nationalists North and South as representing progress towards eventual Irish unity of sufficient significance to warrant abandonment of Articles 2 and 3, it could be sold, at the same time, to Unionists as something well short of this and not something which should arouse any fear on their part. Even if it might prove possible in the event to do this there is the difficulty that at the negotiation stage the Unionists would be very wary, because of this, about accepting the kind of strong North/South institution which we think will be necessary to bring Northern Nationalists into any new Agreement.

84. It has to be said frankly, that, for these reasons, our strategy in last year's talks, such as it was, was not very well judged since it cannot even be said with confidence that if the Government had got what it appeared to want in the negotiations, it would have been prepared to go to a referendum for the change to Articles 2 and 3, which the Unionists had made a necessary condition for any new agreement. To negotiate for an outcome which one cannot be sure one will accept if it is achieved is, to say the least, a somewhat dubious approach.
85. The weakness of this strategy was obscured by the fact that argument turned on whether the Irish Government was ready to say that it "would", or only that it "could", change the Constitution if a suitable package emerged. Once it had become accepted, as it was, that there would be no new agreement without constitutional change, then the real issue was what not whether the Irish Government "could" or "would" go to the people for such a change but what kind of package they would need to achieve in order to do so.
86. A further point which helped to obscure the inherent weakness of the Irish side's approach was the fact that the SDLP maintained the demands with which they had come out of Strand 1. These demands (for externally appointed Commissioners, separation of legislature and executive and institutions structured on the EC model), fairly or not, were considered by a number of other participants to be pitched at too high a level to be achievable; and some saw them privately as more in the nature of a "marker" to stake out the ground for a suitable "Irish Dimension" which the Irish Government would press for in Strand 2.
87. The combination of an SDLP position pitched at such a high level and an Irish Government position which was not fully developed but which had the inherent weakness that it might not be seen in the event as sufficient even if it were to be achieved in full, was not conducive to an effective negotiation from a Nationalist viewpoint. Furthermore, the central issue of what security/policing arrangements would underpin any settlement which troubled Seamus Mallen was not addressed on the Nationalist side.
88. On the Unionist side, the emphasis throughout on the removal of the "territorial claim" and the development thereafter of "good neighbourly relations" through modest committee or other contact structures, showed no real understanding of the fact that the fault line which is the source of the conflict runs right through Northern Ireland and not between North and South. The Alliance Party in its proposals showed

no greater understanding of the depth of the problem. Both were essentially focussed on the Unionist agenda identified in the early part of this paper: explicit acceptance by all concerned of Northern Ireland as part of the United Kingdom; a measure of devolution to local political institutions in Northern Ireland with a greater degree of partnership than Stormont; and good relations growing over time between Belfast and Dublin.

89. The British Government side for its part maintained a position which it saw as one of benevolent neutrality; not ready to "join the ranks of the persuaders"; ready, it said, to implement virtually anything on which all other participants could agree; but with "no blue-print of its own". It emphasised that "new institutions must be negotiated by those who will have to work them" and that they "could not be imposed". It showed no real awareness of the fact that the position adopted by the British Government is at any particular time, the central issue for everybody in Northern Ireland. All other political positions are determined in relation to it. It must help to set the framework for a settlement; and whether it wishes to or not it cannot simply stand aside and wait for an agreement between the parties to emerge, as it were on an empty site.
90. As this description of the respective positions shows, while the talks were important in breaking the ground, the prospects that a real settlement of the Northern Ireland conflict will emerge if the talks simply resume where they broke off last November are not very great. The British Government may be tempted to think that failing wider agreement, a "lowest common denominator" of agreement on some limited form of devolution, with a modest North/South institution offers some hope of progress. Apart from the lack of appetite for this approach on the Nationalist side, limited devolution, and a lowest common denominator approach in general have an inherent weakness in that they seek to mobilise the present general popular wish for a settlement of some kind behind a weak and fragile structure which will topple and fall under the onslaught which would undoubtedly be directed against it at the outset by the IRA. The number of opportunities to organise a settlement of this long-standing problem is limited and this present opportunity should not be wasted on an effort which of its nature is unlikely to address the problem in depth.
91. Apart from this of course, there is no certainty that it will be possible to get these talks going again. Indeed there are many indications - not all of them due to political competition between the parties in the lead-up to the local elections - which suggest that it will not be possible.

92. If a resumption of the talks process in the same formation offers little hope, where then do we turn in the effort to find a basis for a settlement ?
93. There are two other approaches spoken of at present which need to be considered. They are:
- (a) negotiating through present confidential channels to achieve a basis for a cessation of violence by the IRA; and
 - (b) intensification of the working of the Anglo-Irish Agreement.

Negotiating for a cessation of violence by the IRA

94. It is clear that there are now voices within the IRA speaking in favour of a cessation of violence if a suitable basis can be found which gives them some sense of having achieved something over twenty-five years and which, therefore, does not constitute in their eyes a 'surrender'. There have been various lines of contact - indirect and informal - through which this message appears to be coming and some well meaning efforts to work out a declaration or statement on the basis of which arms would be laid down.
95. It appears that there would have to be two important elements at least in any such declaration:
- (1) some development by the British Government of statements already made by Mr. Brooke and by Sir Patrick Mayhew to the effect that Britain no longer has any direct strategic, political or economic interest in remaining in Northern Ireland. At its strongest this might take the form of a declaration of encouragement of some kind for Irish unity; and
 - (2) some commitment by the Irish Government to a kind of pan-Nationalist agenda on which to campaign (presumably by peaceful methods) for Irish unity.

96. The argument in favour of this approach is based on the idea that a cessation of violence by the IRA would radically alter the situation in Northern Ireland and, in effect, make everything possible. Loyalist violence is seen as essentially 'reactive'; and the assumption is that it would largely cease once the IRA laid down their arms.
97. This must be a matter of judgement but it seems to me to be far too optimistic an assumption - especially if account is taken of the kind of terms which the IRA seem to require for a cessation of violence. If paramilitary violence on each side is indeed the expression in virulent forms of the fears and emotions of each community, is it at all likely that Loyalist violence will drop away in a situation where the British Government has made a relatively strong declaration of encouragement of Irish unity and the Irish Government has signed up to some kind of common front (albeit a pacific one) with Sinn Fein and the IRA ?
98. Furthermore, there is the fundamental difficulty about the approach suggested, that it does not address in any way the question of what kind of structures or settlement proposals would be put in place after a cessation of violence. Even if an end of violence were a kind of magic solvent which made all things possible there would still be a considerable danger of violence erupting again when an effort was made to put structures in place.
99. Even if a considerable part of the IRA should cease violence, it is likely that a rump would remain who would continue to use violent means. This would mean that any political structures put in place after a cessation of violence would have to be strong enough to withstand all of the effects in both communities of a continuation of violence by a minority/rump, which would probably be matched by some 'reactive' violence from within the Loyalist community even if a majority of Loyalists were also to lay down their arms.
100. Such a scenario - political structures, as yet unspecified, being put in place against a background of deep suspicion by Unionists of a new 'pan-Nationalist front' and of a British declaration of encouragement for unity, to a drum beat of violence from one or both communities (albeit at a reduced level) - is not a very hopeful one.
101. All of this is not to underestimate the importance of a cessation of violence. It would indeed have a very considerable effect on the situation. The point argued here is rather that on its own, as an effort

to deal first with one aspect of the problem before turning to the other aspects, it simply will not work. And there is a further danger that the effort to achieve it, insofar as it involves some kind of common cause with those now engaged in violence, could compromise Irish nationalism in general and the position of the Irish Government in particular. How is the Irish Government to maintain its present positive but critical partnership with the British Government if it joins with Sinn Fein and others in a much more militant - albeit peaceful - "campaign against partition" ?

102. Nevertheless, risky as they may be in some respects, the informal and 'unauthorised' channels of contact should be kept open. Any settlement package must be so designed, and include such new thinking, that it could, if properly handled, provide a pretext at least for a war-weary IRA to lay down their arms; and it should be accompanied by a range of incentives (the prospect of prison releases et.) which would encourage them to do so. But there should be a very great wariness about going too far in isolation down the road outlined here. It would be dangerous; and it is unlikely to work. Only a package which seeks to deal simultaneously with all of the main elements of the problem is now likely to bring peace.

Intensification of the working of the Anglo-Irish Agreement

103. Another approach sometimes advocated is that, in the absence of a successful outcome to the three strand talks, the two Governments should publicly and explicitly intensify the working of the Anglo-Irish Agreement.
104. The idea underlying this approach would be to press ahead more vigorously towards ending the alienation of the minority, which was the main purpose of the Agreement; and at the same time, to put the Unionists who reject the Agreement, under greater pressure to negotiate to achieve a new and better Agreement.
105. What is usually envisaged when this approach is spoken of is a conscious and deliberate stepping up by both Governments of the operation of the Agreement without any implication that it has not been properly implemented to date. In his recent Irish Times article, however, Mr. Michael Lillis was critical of the operation of the Agreement by the Irish Government in recent years; and he spoke of

the need to put forward 'a hundred proposals' in all areas covered by the Agreement.

106. On the latter issue of how the Agreement has been implemented in recent years, it must be said that there is no reason to suppose that there are a substantial number of proposals which could have been put forward but were not. Most of the more obvious proposals were put forward in the early years of the Agreement and were either acted on, or flatly rejected, by the British side. It is simply not true that there is still a range of further proposals which were not advanced through lack of will, or through an inactive approach to the working of the Agreement and which could now be put forward.
107. If there were indeed a range of such proposals it would still remain necessary to persuade the British side somehow to implement them; and they would be unwilling to take aboard any radical proposals - assuming we could advance them - which in their view would enrage the Unionists.
108. It is, of course, desirable to continue to implement the Agreement fully and indeed to look for new proposals and to press the British side to implement them. But it must be acknowledged, privately, at this stage, that the Agreement, while it is a vital 'conflict resolution mechanism' insofar as relations between the two Governments are concerned, is simply not a 'conflict resolution mechanism' insofar as the two communities within Northern Ireland are concerned.
109. It is clear enough now that any settlement proposals which are to work must at least be acquiesced in by both communities; and that each community by clearly withholding its consent to settlement structures can exercise a veto. The Unionists have done this now for eight years in relation to the Anglo-Irish Agreement; and, important as it has been and is, it cannot work as a means to achieve a genuine settlement so long as they do so.

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A push for Irish unity ?

110. There is one other view of the Northern Ireland situation to consider. This is the idea that there has been a gradual attrition of the Unionist position over the years - most significantly by the abolition of Stormont, more recently by the Anglo-Irish Agreement. Is it not possible - even likely - that with present demographic changes which show a Catholic Nationalist population now well over 40%, and with the prospect of some All-Ireland institutions emerging from talks, Unionists can be pressured or persuaded over some relevant time period into a united Ireland ? or if not into a united Ireland, then at least into "an agreed Ireland" which is usually thought of, on the Nationalist side, as something not dissimilar.
111. This view is grossly overoptimistic in present circumstances. The truth is that the experience of the past twenty five years of violence has reinforced for the majority community in Northern Ireland their long-standing aversion to Irish unity. That aversion is very deep-seated; it goes back at least to 1886 - indeed much beyond that; and it is based on a sense of identity as a distinct community which Irish nationalism has consistently underestimated.
112. A sense of community identity is not easy to define. Various elements go to make it up - shared traditions and perhaps religious beliefs; a common 'origin myth' - that is a heroic story of dangers and trials which the group has withstood in the past; a sense of continuity through time and a sympathetic identification with the wrongs and triumphs of earlier generations. Especially perhaps a sense of threat from a neighbouring community. All of these are elements which, taken together, establish a sense that "we" are a community with a common history and a common future.
113. These elements which go to make a separate identity are all strongly present in the Irish Nationalist tradition which has formed around a common origin myth ('our ancestors the Celts') which established an identity to which later groups of invaders who settled in Ireland are seen as having been assimilated over time. It includes an heroic story of dangers withstood in common (referred to explicitly in the Preamble to the Constitution); and it was shaped and heroically articulated by the 1916 Proclamation.
114. It is true that the Nationalist ethos embodied in our State also incorporates 'Republican' concepts going back to Tone. But these

ideas are to a large degree aspirational in that they enunciate an aim rather than describing a present reality.

115. The Unionist tradition too has its origin myth; its epic of dangers from hostile neighbours and trials withstood by the community over time; its annual reenactment of these events which makes them live for each new generation; and most potent of all, its strong religious component which validates the tradition and the community's story and gives it a Providential and almost a Biblical basis.
116. We in the Nationalist tradition habitually discount and under-estimate the strength of this sense of identity on the Unionist side and we find it difficult to accept that it is at least as strong as our own. We need perhaps to realise that a history of sustained opposition to the idea of joining with the Irish majority in any kind of autonomous polity in Ireland which extends at least from 1886 to the present day must require some deeper explanation than the playing of "The Orange Card" by Randolph Churchill in 1886.
117. Apart from the question of direct Unionist opposition to Irish unity at present, it is also necessary to consider whether the Irish State, with political structures and institutions which have grown and developed over seventy years, is really ready at this point to "melt down" and recast those institutions to the extent that would be necessary to accommodate a Unionist community of one million with a very different ethos? especially if, as is likely, that Unionist community were at best, to be sullen and reluctant in their acceptance of some kind of unity?
118. Are we willing to change the flag and the anthem; to change the ethos and outlook of our Defence Forces and the Gardai; to re-write our Constitution, reorganise our politics and our legislation; and above all to give full weight in the ethos and outlook of the new united Ireland to the Unionist sense of Britishness and their attachment to the Crown?
119. The immediate answer of course is yes - everything would be possible for us in such a new situation with a united Ireland in prospect. New energies would be released and a heavy weight lifted from the island as a whole.

120. This could be the case in an ideal world where the Unionist and Nationalist communities on the island reached out to each other "in heroic and generous brotherhood" (to quote Thomas Francis Meagher on the symbolism of the tricolour which he devised). But that is unlikely to be the reality. The Unionist population, at very best, would be sullen and resentful. There would very probably be armed resistance and terrorism from Loyalist paramilitaries to face. Would the new polity have the strength, the energy, the cohesion and determination, and the resources to do this, perhaps over a long haul ?
121. All in all it has to be accepted that to base a policy now on an expectation of attrition of the Unionist position to a degree which would make a united Ireland a serious prospect in any proximate future would be unrealistic. It underestimates both the Unionist resistance and the probable reluctance of the population of this State to re-cast all of its institutions and live in a new and very uncertain situation.

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The case for a new approach

122. Is there any way forward in Northern Ireland? The case for the new approach which this paper advocates can be summarised in a series of propositions:

- (1) The complexities of Irish and of Anglo-Irish history have left two identities or traditions in the island of Ireland. Since 1920/21, the issue between them, which made the old "Irish Question" so complex, has been concentrated on the narrower ground of Northern Ireland. Each sees itself as potentially a minority and fears that it may be forced to accept that status definitively in any final settlement.
- (2) For more than one hundred years the Unionist community have refused adamantly to accept the Nationalist agenda which would leave them a minority in a united Ireland. Nothing in recent experience suggests that they are now any more ready to do so.
- (3) For more than seventy years, the Nationalist community have proved unwilling to accept their status as a minority in Northern Ireland as definitive. Nothing in recent experience suggests that they are any more ready today to accept as adequate a Unionist agenda which would, in effect, confirm them in that position.
- (4) Over twenty years - in 1973 and in 1985 - the two Governments have made two separate efforts, through careful ambiguity, to construct a settlement which focussed on building institutions while leaving the two competing agendas open and allowing both Governments to maintain their very different constitutional positions intact.
- (5) One such effort failed; the other, while it is a successful mechanism for dialogue between the Governments, has not succeeded in eight years in

resolving conflict between the communities. There is no reason to think that another effort to construct institutions on the narrow and unstable ground between two competing constitutional positions would be any more successful.

- (6) Both communities in Northern Ireland can generate and sustain para-military violence. Each too has now demonstrated that it has a political veto which it can use to pull down or frustrate a structure which it does not accept: Stormont was abolished; Sunningdale failed; and the Anglo-Irish Agreement has been frustrated in its aim of bringing peace and reconciliation.
- (7) Working the Anglo-Irish Agreement is important so far as the two Governments and the Northern minority are concerned. But the Unionist community will continue to reject it. Experience has shown that if a settlement is not such that the two communities, as well as the two Governments, can be brought to acquiesce in it, it simply will not work as a basis for a genuine settlement of the conflict.
- (8) Talking with the IRA may be helpful since it could help to bring an end to violence. But it is also risky; and it cannot, in isolation, provide a basis for a settlement. At this point, any approach which is to have any hope of success must address all aspects of the problem *simultaneously*.
- (9) The Unionist community will not sign on to any agreement unless there is a constitutional change on the part of the Irish State. This could only be done by way of a referendum in this jurisdiction. No Irish Government is likely to embark on such a politically uncertain course unless it can count on the support, or at least the acquiescence, of the elected leadership of the Northern minority.
- (10) This in turn cannot be secured without a very substantial "package". But it is difficult to envisage any package - whatever declarations or institutional arrangements it may contain - which would be substantial enough from the viewpoint of the Northern minority to weigh against the

definitive acceptance by the Irish State that Northern Ireland is part of the United Kingdom.

- (11) Even if a package can be devised which would be acceptable to the SDLP, an approach on these lines would not be compatible with a strategy of getting a fair wind for the new settlement by simultaneously inducing the IRA to lay down their arms. It is more likely that this approach would stimulate them to continue and perhaps gain them new support - particularly if an effort was made through tough security measures to impose a settlement on these lines.
123. In brief: if we want an agreement; if any agreement will require Unionist and Nationalist endorsement; if the Unionists will not sign up unless we change the Constitution; if we cannot change the Constitution without the support of Northern nationalists; and if changing the Constitution so as to accept that Northern Ireland is definitively part of the United Kingdom is unlikely to be acceptable to the more moderate Nationalists, and likely to increase support for the more extreme among them - then there is no real prospect that an approach on the lines pursued so far will be successful.

A new approach ? - a proposal

124. It seems to me that the only feasible approach now is for the two Governments who between them exercise constitutional jurisdiction throughout the whole of these islands, to announce their intention of negotiating a new agreed constitutional status for Northern Ireland for a specified and reasonably substantial time period ahead. This would be set out in Article 1 of a new Agreement and it would be written into our Constitution by referendum here, endorsed by referendum in Northern Ireland and endorsed in Britain by legislation.
125. This would be the first agreed statement of the status of Northern Ireland since partition (with the possible exception of the 1925 Agreement). If it were embedded in a new Agreement and complemented by new structures and institutions (internal, North/South, Bill of Rights etc.), it would have the effect of establishing Northern Ireland, for a specified time, not as independent,

but as an area with a distinctive, treaty-based constitutional status and institutions agreed and ratified by all concerned.

126. Such a statement of status should adequately and comprehensively describe all of the realities of Northern Ireland and provide adequate recognition and accommodation for both identities. Its basic, foundational elements should be worked out in the first instance and in broad outline by the two Governments. These should then be complemented by institutional arrangements which all of the parties would be invited to join in negotiating. It should have the effect of establishing Northern Ireland as an entity of a particular character to be governed for a specified period under a particular "Constitution" set out in a detailed agreement (ideas such as that of making it a distinctive territory governed under the Crown by its own choice for a specified period or even the concept of a "corpus separatum" envisaged for Jerusalem in the late 1940s might be looked at ?)
127. The net effect of this approach would be explicitly to put both the Unionist and Nationalist agendas into cold storage for a particular period rather than trying to build a settlement which leaves them in open competition; and to substitute instead a carefully worked out pact creating a new and agreed status for Northern Ireland. This pact would be expressed to last for a period of say two generations with a possibility of renewal if necessary; it would be given full constitutional endorsement by referenda North and South and by new legislation in Britain; and it would be written in positive terms to the Irish Constitution as a replacement for Articles 2 and 3.
128. There would also be constitutional change on the British side - in the sense that the Agreement (unlike the 1985 Agreement) would be approved by Act of Parliament, which would substitute the agreed statement on 'status' for the existing 'guarantee' (now contained in Section 1 of the Northern Ireland Constitution Act 1973). Thus both countries through their respective constitutional mechanisms would have provided a guarantee for the settlement (and for the Unionist community) in exactly similar terms.

Conclusion

129. The central idea of this paper is for the negotiation of a new agreement to establish a "Constitution for Northern Ireland" - since yet another agreement based on "creative ambiguity" as between the two agendas is simply not feasible. This "Constitution" would adequately reflect all the complex reality of Northern Ireland including the conditions for future change; it would contain both "constitutional" elements (initially worked out between the two Governments) and "institutional" elements (worked out between all the parties to the talks), linked integrally in a single agreement; it would be endorsed in referenda North and South and embedded in the Irish Constitution and in British legislation; and it would supersede the Anglo-Irish Agreement to the extent that, and for so long as, it operated. It would be explicitly provided that if it should cease to operate, or if it did not come into effect, then the 1985 Agreement would come back into operation.
130. It may not be absolutely essential to this concept, but it seems, to say the least, very desirable, that this whole arrangement should be stated to be for a specific (and substantial) period of years (with the possibility of renewal for a further, specified period). This seems to me to be the only way to avoid having any settlement appear to each of the two communities in Northern Ireland to be a "zero-sum game" - that is an outcome where either the Nationalist or the Unionist agenda is the definitive winner, an outcome which the "losers" would continue to resist.
131. The idea of a time provision would have many advantages. It may be said that it would create uncertainty. On the contrary, it could give the Unionists certainty for a fifty year period, where none exists at present. They would now have the assurance that the Irish Constitution, amended by the electorate in a referendum (together with an international agreement and British legislation) guaranteed the new arrangement. This in turn should allow them to accept a somewhat 'stronger' North/South institution than they would otherwise contemplate since they need not fear that it would deliver them, unwillingly, into Irish unity.
132. The Unionists need not fear that they would be thrown to the wolves at the end of that period. Such a 'time-bound' agreement could provide in some form for a further consultation of the Irish people North and

South when the period had elapsed, with a view either to securing their approval for some new settlement then to be determined; or to prolonging for a further specified time, the arrangements now to be established.

133. It could also be easier, perhaps, to sell such a time-bound settlement to Nationalists. Instead of a simple and contentious deletion of Articles 2 and 3 which could symbolise for them the end of their aspiration, they would have a new positive statement of all the realities of Northern Ireland, including the validity of their aspiration, embedded in our Constitution and (for the first time) in British legislation. Realisation of that aspiration would indeed be deferred for a fifty year period, (which may now be no more than realistic in any case) but they could hope to work over that time for its realisation; and they could look to the beneficial effect of a stronger North/South institution in easing suspicions.

Sample of draft agreement

134. Attached to this paper is a first rough draft of such an Agreement which is intended simply to show that the idea is possible. The following points in particular may be noted:
- (a) The draft concentrates on the constitutional aspects which are primarily a matter for the two Governments. It notes the institutional elements which would have to be in the Agreement but deliberately leaves them as matters to be negotiated in detail by all of the parties. (Some of the work done in Strand 1 of last year's negotiations would be helpful here).
 - (b) The draft provides that the new Agreement would supersede the Anglo-Irish Agreement but only to the extent that it actually comes into operation and is worked by the parties. It envisages the Anglo-Irish Agreement as a fall-back or safety net in case the new Agreement does not win endorsement in referenda or in case it is not worked by the parties. (There would also perhaps have to be a residual role for the Anglo-Irish Intergovernmental Conference in dealing with matters which remain the responsibility of the two Governments).

- (c) The draft contains separate declarations by the British and the Irish Governments respectively and a longer declaration by all of the parties. These require further work. They have been drafted as an attempt to arrive at a text which could both be acceptable to all of the signatories and at the same time, (if accompanied by some other supporting measures in relation to prison releases etc.) provide a basis on which the IRA might be induced to lay down their arms.

135. The idea of an approach on these general lines would, no doubt, require a good deal of further work. Arguments in its favour have been put forward here. No doubt there are arguments against which should also be considered. If however it is decided, as it may well be, not to take this approach, then the question still remains - where do we go from here ?

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~~Confidential~~

20 April 1993

A new approach to the Northern Ireland problem?Introduction

1. This paper is an attempt to suggest a new approach to the problem of Northern Ireland. The views put forward are personal and they do not commit the Department of Foreign Affairs.
2. At the present time there is a strong public mood in favour of a resumption of talks and the Taoiseach and the Tánaiste in recent speeches have continually stressed their interest in dialogue. It is now clear however that there will be no resumption of talks involving the Northern Ireland parties before the local elections on 19 May; The prospects for a return to the table by the Unionists after that, to judge by recent statements by Molyneux, Paisley and others, are not great.
3. Even if all parties were to return to the table after the election, it must seem unlikely to anyone familiar with the talks of last year, that a resumption where those talks left off, would be successful or that a real settlement of the Northern Ireland problem would emerge piecemeal, as the British seem to hope, from further confrontation of all viewpoints around the table.
4. For this reason it seems necessary to think now about a new approach. This paper argues for a joint initiative by the two Governments which will set the basic framework for a settlement and yet allow scope for negotiation by all the constitutional parties on structures to be established within that framework.
5. The paper argues further that the experience of twenty years has shown that, while both identities in Northern Ireland must be allowed full expression, it is simply not possible to build stable institutions and a settlement on the basis of competing "agendas" resting on opposing constitutional positions. Instead it argues for the negotiation of a new, agreed status for Northern Ireland - probably, though perhaps not necessarily, for a specified time period. This would in effect, establish an agreed "Constitution of Northern Ireland", comprising both constitutional and institutional elements, which would be given formal constitutional endorsement, by Parliament and/or referendum, in all three jurisdictions.

6. Such a new approach could emerge from an Anglo-Irish summit meeting - which might be held perhaps as early as June when the difficulty of getting talks on the 1992 basis under way has become evident. The idea should not be broached initially with the Secretary of State however, since he is more likely to want to work within existing parameters than to consider fundamentally new ideas.

7. If the basic idea is thought worth pursuing it would need to be worked on further in internal discussion. It should then be presented to the Prime Minister as a new approach which would require further detailed discussion between the two Governments on the constitutional aspect; which would still allow scope for negotiation after that with the Northern Ireland parties on institutional issues; which could, at best, if handled carefully, become a basis for a cessation of violence; and which could bring a settlement of a problem to which at present there appears to be no solution.

The case for a new approach

1. Is there any way forward in Northern Ireland? The case for the new approach which this paper advocates can be summarised in a series of propositions:
 - (1) The complexities of Irish and of Anglo-Irish history have left two identities or traditions in the island of Ireland. Since 1920/21, the issue between them, which made the old "Irish Question" so complex, has been concentrated on the narrower ground of Northern Ireland. Each sees itself as potentially a minority and fears that it may be forced to accept that status definitively in any final settlement.
 - (2) For more than one hundred years the Unionist community have refused adamantly to accept the Nationalist agenda which would leave them a minority in a united Ireland. Nothing in recent experience suggests that they are now any more ready to do so.
 - (3) For more than seventy years, the Nationalist community have proved unwilling to accept their status as a minority in Northern Ireland as definitive. Nothing in recent experience suggests that they are any more ready today to accept as adequate a Unionist agenda which would, in effect, confirm them in that position.
 - (4) Over twenty years - in 1973 and in 1985 - the two Governments have made two separate efforts, through careful ambiguity, to construct a settlement which focussed on building institutions while leaving the two competing agendas open and allowing both Governments to maintain their very different constitutional positions intact.
 - (5) One such effort failed; the other, while it is a successful mechanism for dialogue between the Governments, has not succeeded in eight years in

resolving conflict between the communities. There is no reason to think that another effort to construct institutions on the narrow and unstable ground between two competing constitutional positions would be any more successful.

- (6) Both communities in Northern Ireland can generate and sustain para-military violence. Each too has now demonstrated that it has a political veto which it can use to pull down or frustrate a structure which it does not accept: Stormont was abolished; Sunningdale failed; and the Anglo-Irish Agreement has been frustrated in its aim of bringing peace and reconciliation.
- (7) Working the Anglo-Irish Agreement is important so far as the two Governments and the Northern minority are concerned. But the Unionist community will continue to reject it. Experience has shown that if a settlement is not such that the two communities, as well as the two Governments, can be brought to acquiesce in it, it simply will not work as a basis for a genuine settlement of the conflict.
- (8) Talking with the IRA may be helpful since it could help to bring an end to violence. But it is also risky; and it cannot, in isolation, provide a basis for a settlement. At this point, any approach which is to have any hope of success must address all aspects of the problem simultaneously.
- (9) The Unionist community will not sign on to any agreement unless there is a constitutional change on the part of the Irish State. This could only be done by way of a referendum in this jurisdiction. No Irish Government is likely to embark on such a politically uncertain course unless it can count on the support, or at least the acquiescence, of the elected leadership of the Northern minority.
- (10) This in turn cannot be secured without a very substantial "package". But it is difficult to envisage any package - whatever declarations or institutional arrangements it may contain - which would be substantial enough from the viewpoint of the Northern minority to weigh against the

definitive acceptance by the Irish State that Northern Ireland is part of the United Kingdom.

- (11) Even if a package can be devised which would be acceptable to the SDLP, an approach on these lines would not be compatible with a strategy of getting a fair wind for the new settlement by simultaneously inducing the IRA to lay down their arms. It is more likely that this approach would stimulate them to continue and perhaps gain them new support - particularly if an effort was made through tough security measures to impose a settlement on these lines.

2. In brief: if we want an agreement; if any agreement will require Unionist and Nationalist endorsement; if the Unionists will not sign up unless we change the Constitution; if we cannot change the Constitution without the support of Northern nationalists; and if changing the Constitution so as to accept that Northern Ireland is definitively part of the United Kingdom is unlikely to be acceptable to the more moderate Nationalists, and likely to increase support for the more extreme among them - then there is no real prospect that an approach on the lines pursued so far will be successful.

A new approach ? - a proposal

3. It seems to me that the only feasible approach now is for the two Governments who between them exercise constitutional jurisdiction throughout the whole of these islands, to announce their intention of negotiating a new agreed constitutional status for Northern Ireland for a specified and reasonably substantial time period ahead. This would be set out in Article 1 of a new Agreement and it would be written into our Constitution by referendum here, endorsed by referendum in Northern Ireland and endorsed in Britain by legislation.
4. This would be the first agreed statement of the status of Northern Ireland since partition (with the possible exception of the 1925 Agreement). If it were embedded in a new Agreement and complemented by new structures and institutions (internal, North/South, Bill of Rights etc.), it would have the effect of establishing Northern Ireland, for a specified time, not as independent,

but as an area with a distinctive, treaty-based constitutional status and institutions agreed and ratified by all concerned.

5. Such a statement of status should adequately and comprehensively describe all of the realities of Northern Ireland and provide adequate recognition and accommodation for both identities. Its basic, foundational elements should be worked out in the first instance and in broad outline by the two Governments. These should then be complemented by institutional arrangements which all of the parties would be invited to join in negotiating. It should have the effect of establishing Northern Ireland as an entity of a particular character to be governed for a specified period under a particular "Constitution" set out in a detailed agreement (ideas such as that of making it a distinctive territory governed under the Crown by its own choice for a specified period or even the concept of a "corpus separatum" envisaged for Jerusalem in the late 1940s might be looked at ?)
6. The net effect of this approach would be explicitly to put both the Unionist and Nationalist agendas into cold storage for a particular period rather than trying to build a settlement which leaves them in open competition; and to substitute instead a carefully worked out pact creating a new and agreed status for Northern Ireland. This pact would be expressed to last for a period of say two generations with a possibility of renewal if necessary; it would be given full constitutional endorsement by referenda North and South and by new legislation in Britain; and it would be written in positive terms to the Irish Constitution as a replacement for Articles 2 and 3.
7. There would also be constitutional change on the British side - in the sense that the Agreement (unlike the 1985 Agreement) would be approved by Act of Parliament, which would substitute the agreed statement on 'status' for the existing 'guarantee' (now contained in Section I of the Northern Ireland Constitution Act 1973). Thus both countries through their respective constitutional mechanisms would have provided a guarantee for the settlement (and for the Unionist community) in exactly similar terms.

Conclusion

8. The central idea of this paper is for the negotiation of a new agreement to establish a "Constitution for Northern Ireland" - since yet another agreement based on "creative ambiguity" as between the two agendas is simply not feasible. This "Constitution" would adequately reflect all the complex reality of Northern Ireland including the conditions for future change; it would contain both "constitutional" elements (initially worked out between the two Governments) and "institutional" elements (worked out between all the parties to the talks), linked integrally in a single agreement; it would be endorsed in referenda North and South and embedded in the Irish Constitution and in British legislation; and it would supersede the Anglo-Irish Agreement to the extent that, and for so long as, it operated. It would be explicitly provided that if it should cease to operate, or if it did not come into effect, then the 1985 Agreement would come back into operation.
9. It may not be absolutely essential to this concept, but it seems, to say the least, very desirable, that this whole arrangement should be stated to be for a specific (and substantial) period of years (with the possibility of renewal for a further, specified period). This seems to me to be the only way to avoid having any settlement appear to each of the two communities in Northern Ireland to be a "zero-sum game" - that is an outcome where either the Nationalist or the Unionist agenda is the definitive winner, an outcome which the "losers" would continue to resist.
10. The idea of a time provision would have many advantages. It may be said that it would create uncertainty. On the contrary, it could give the Unionists certainty for a fifty year period, where none exists at present. They would now have the assurance that the Irish Constitution, amended by the electorate in a referendum (together with an international agreement and British legislation) guaranteed the new arrangement. This in turn should allow them to accept a somewhat 'stronger' North/South institution than they would otherwise contemplate since they need not fear that it would deliver them, unwillingly, into Irish unity.
11. The Unionists need not fear that they would be thrown to the wolves at the end of that period. Such a 'time-bound' agreement could provide in some form for a further consultation of the Irish people North and

South when the period had elapsed, with a view either to securing their approval for some new settlement then to be determined; or to prolonging for a further specified time, the arrangements now to be established.

12. It could also be easier, perhaps, to sell such a time-bound settlement to Nationalists. Instead of a simple and contentious deletion of Articles 2 and 3 which could symbolise for them the end of their aspiration, they would have a new positive statement of all the realities of Northern Ireland, including the validity of their aspiration, embedded in our Constitution and (for the first time) in British legislation. Realisation of that aspiration would indeed be deferred for a fifty year period, (which may now be no more than realistic in any case) but they could hope to work over that time for its realisation; and they could look to the beneficial effect of a stronger North/South institution in easing suspicions.

Sample of draft agreement

13. Attached to this paper is a first rough draft of such an Agreement which is intended simply to show that the idea is possible. The following points in particular may be noted:
- (a) The draft concentrates on the constitutional aspects which are primarily a matter for the two Governments. It notes the institutional elements which would have to be in the Agreement but deliberately leaves them as matters to be negotiated in detail by all of the parties. (Some of the work done in Strand 1 of last year's negotiations would be helpful here).
 - (b) The draft provides that the new Agreement would supersede the Anglo-Irish Agreement but only to the extent that it actually comes into operation and is worked by the parties. It envisages the Anglo-Irish Agreement as a fall-back or safety net in case the new Agreement does not win endorsement in referenda or in case it is not worked by the parties. (There would also perhaps have to be a residual role for the Anglo-Irish Intergovernmental Conference in dealing with matters which remain the responsibility of the two Governments).

- (c) The draft contains separate declarations by the British and the Irish Governments respectively and a longer declaration by all of the parties. These require further work. They have been drafted as an attempt to arrive at a text which could both be acceptable to all of the signatories and at the same time, (if accompanied by some other supporting measures in relation to prison releases etc.) provide a basis on which the IRA might be induced to lay down their arms.
14. The idea of an approach on these general lines would, no doubt, require a good deal of further work. Arguments in its favour have been put forward here. No doubt there are arguments against which should also be considered. If however it is decided, as it may well be, not to take this approach, then the question still remains - where do we go from here ?
