

**Dermot Nally
Papers**

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Response to points raised in connection with the Joint Declaration

7/15/12/193

Downing St Declaration

Origins of the Declaration

The Joint Declaration evolved in negotiation between the two Governments on the basis of the draft submitted by the Taoiseach to the British Government in June 1993. That original draft, also known as Hume/Adams, was endorsed by the IRA on the basis that it 'could provide the basis for lasting peace'.

Much of the text of the original draft and the Joint Declaration can be read in parallel. The wording, the language and the concepts are similar, and in many cases identical. The central para. 4 of the June document does not, any more than the Declaration, commit the British Government to being persuaders for Irish unity. They accept the role of being persuaders for an agreed Ireland. There are three essential differences between the final Joint Declaration and the original:

- a) The Joint Declaration is more broadly based and has a better community balance, and is intended to provide an acceptable democratic framework for all sections of the community
- b) The language in the Joint Declaration is more explicit, in terms of how the principles of self-determination on the one hand, and agreement and consent are to be reconciled, but the need for the

right of self-determination to be exercised concurrently was already implicit in the June document as was clearly understood. The June document also involved in para. 5 in virtually identical language a clear acceptance of the principle of consent as set out in the Anglo-Irish Agreement. Accepting the June document involved acceptance of that as a political reality.

The Four Sinn Féin Principles

1. The British Government should make the exercise of Irish national self-determination its policy objective.

Response

In the Declaration they have effectively done so. Not merely is the Irish right to self-determination recognised by the British Government explicitly for the first time, but they have expressed as their primary interest the reaching of agreement among all the people who inhabit the island, which will embrace the totality of relationships. They moreover pledge 'to encourage, facilitate and enable the achievement of such agreement over a period'. They accept that the right of self-determination may result in a united Ireland, but also reaffirm' as a binding obligation to introduce the necessary legislation to give effect to it or any other measure of agreement which the people of Ireland may themselves freely determine without external impediment'. An agreed Ireland clearly represents a form of self-determination,

which would be recognised as such by the United Nations (see Taoiseach's speech on this subject).

2. 'A Dublin Government should have the same policy objective.

Response

An agreed Ireland is the Irish Government's intermediate objective. A sovereign united Ireland by agreement and consent remains their longer-term objective.

3. 'Cooperation between the British and Dublin Government to bring about their joint purpose in the shortest possible time consistent with obtaining maximum consent to the process' —

Response

This would be the objective of a resumed deeper and wider process of negotiation, following a complete cessation of violence. The British Secretary of State said on 20 January 1994 in a speech to Trinity Graduates in London that together with the Irish Government they would seek to create 'a framework within which agreement can be reached in a reasonable time-scale'. The Irish Government share that objective. An interim settlement that would create an agreed Ireland should be possible within a reasonably short period of time. It is not useful to set an exact deadline. A long-term settlement, that would involve fundamental constitutional change, may take up to a generation.

4. 'Democracy and practicality demand that this be done in consultation and cooperation with the representatives of the Irish minority, the unionists, as well as all the other parties. In effect the beginning of a process of national reconciliation'.

Response

The Irish Government are fully committed to this. The British Government in para. 4 declares that 'Their primary interest is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island, and they will work together with the Irish Government to achieve such an agreement'.

Other Points in the letter to the Taoiseach

The Declaration clearly sets out the circumstances, in which the British jurisdiction will end, and the democratic path which can achieve that.

Para. 4 of the Declaration makes it clear that in the view of the British Government it is for the people of the island of Ireland alone to exercise their right of self-determination. They will underwrite any measure of agreement on future relationships in Ireland which the people living in Ireland as a whole may themselves freely determine without external impediment. They accept that such agreement may, as of right, take the form of agreed structures for the island as a whole, including a united Ireland achieved by peaceful means.

The British Government have not unilaterally imposed conditions on the exercise of self-determination. The condition of consent has been freely accepted by the Irish Government and all the parties in Dáil Eireann and by the SDLP, in endorsing both the Anglo-Irish Agreement and the Joint Declaration. Any test which could be devised to establish the will of the people of Ireland, including of course the Unionist people, who are fully entitled to share in Irish self-determination, would show an overwhelming majority against coercion or violence in pursuit of Irish unity or any other political cause.

Under international law, self-determination can only be exercised concurrently in divided countries. The Taoiseach's speech to the UCD Graduates Law Society goes in to this matter in detail, and explains that the UN Charter and the CSCE, which recognise the right to self-determination, permit in no circumstances whatever the use of force to settle international disputes or change frontiers.

Major's House of Commons Statement

On 15 December 1993 Prime Minister Major said in reply to James Molyneaux:

'I can confirm to him that the joint declaration does not assert the value of achieving a united Ireland; does not assert the legitimacy of a united Ireland in the absence of majority consent; does not either commit the British Government to joining the ranks of the persuaders for a united Ireland. That is not the job of any British

Government. It does not set any timetable for a united Ireland. It does not commit the people of Northern Ireland to join a united Ireland against their wishes, and it does not establish any arrangements for joint authority'.

It has been alleged that these statements are contradictory with the Joint Declaration, and that they rule out a united Ireland and joint authority, in the manner of Mrs. Thatcher's 'Out, Out, Out' statement.

While the language and emphasis is Mr Major's own, which must surely be judged in the light of his parliamentary situation and his concern to minimise Unionist opposition and would not necessarily have been chosen by the Irish Government, there is nothing in his statement fundamentally inconsistent with the Joint Declaration. Each proposition will be examined in turn.

1. 'The Joint Declaration does not assert the value of achieving a united Ireland'

Comment: Para. 4 is formally neutral in upholding the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland'. The question of persuading the British to accept the value of a united Ireland is something the Irish Government are entitled to pursue in the talks process (the reference derives from a leaked Irish draft of a Strand III document). It does set as its goal agreement among the

people of Ireland, which many Unionists actively conscious of the preponderance of the Nationalist viewpoint on the island as a whole, even now might tend to regard as corresponding more with the Nationalist agenda. Moreover, the Declaration respects the rights and identities of both communities, which precludes any return to former patterns of Unionist domination in Northern Ireland.

2. 'Does not assert the legitimacy of a united Ireland in the absence of majority consent'.

Comment:

'The absence of majority consent' is what governs the comment. The whole of Para. 4 clearly recognises the legitimacy of a united Ireland with majority consent. Sir Patrick Mayhew confirmed this interpretation in the House of Commons on 21 January when he stated that 'to those who hope to see a sovereign and united Ireland, the Declaration gives reassurance that their aspirations, when pursued by peaceful means, are fully legitimate'.

3. 'Does not commit the British Government to joining the ranks of the persuaders for a united Ireland'

Comment

True. But they are persuaders for an agreed Ireland.

4. 'It does not set any timetable for a united Ireland.'

Comment

True. Neither did the June document.

5. 'It does not commit the people of Northern Ireland to join a united Ireland against their wishes'.

Comment

True. Same point essentially as 2.

6. 'It does not establish arrangements for joint authority',

Comment

The Declaration neither rules out nor rules in joint authority. This or any other changes in political structures on the island would clearly be a matter for negotiation.

Processes to reach an agreed Ireland

Numerous statements have been made by both Governments with regard to the objectives of the three stranded talks process, the framework for which was formally set out by the Secretary of State Peter Brooke on 26 March 1991. The leaked Strand III paper, published in the Irish Press, while not finally approved, gives some indication of the type of approach the Irish Government might adopt at the present time. The Ancram talks this autumn have kept the talks process going in a low key, while attention has been on other major political developments such as the Joint Declaration. A more high-powered approach will be adopted, once the response to the Joint Declaration is fully

clarified, and the way would be free for comprehensive negotiation to address the many practical issues of concern to the Nationalist people.

The purpose of exploratory dialogue has been set out by the Secretary of State in his Commons statement of 21 January, and he has also elaborated on the talks process. Further briefing on this process can be supplied, if required. The Irish Government will play a very active part in promoting demilitarisation on both sides of the border, and will press for the reopening of all cross-border roads, the closure and dismantling of obtrusive security installations, the removal of repressive legislation, and an early review of sentences as well as any other outstanding issues, required to clear up from a security or judicial point of view the legacy of the past 25 years.

We are sounding out on an informal basis with all our influential friends around the world the kind of support that we might expect to be put in place after acceptance of the peace declaration, with a particular concentration on disadvantaged urban areas and the border regions. Jacques Delors, the President of the EC Commission, has in a positive statement acknowledged that the achievement of peace would bring many social and economic benefits to the region, the two member States concerned, and the European Union as a whole. He has also indicated that the Commission wishes to give practical support to the peace process, and is willing to discuss with Britain and Ireland, how this can

best be done.

Working together in Europe and its institutions and in the Single Market will help to make the border more and more irrelevant, as time goes by. Tourism, transport, investment, trade and cultural relations are all immediate areas to be explored for joint participation for the benefit of all the people of Ireland. These are matters to be explored and exploited, after the Peace Declaration has been endorsed.

The Flavour of the Declaration

The Declaration arises from an Irish initiative. The first five paragraphs and the penultimate three paragraphs are primarily addressed to Nationalists. The final paragraph is addressed equally to both communities. Even the paragraphs addressed to Unionists were inserted at the initiative of the Irish Government, not of the British Government. The Taoiseach would not accept that the document has a heavy Unionist flavour. Nor has such a claim been made by any Unionist spokesman. Even those Unionists who support the Declaration have made it clear they dislike much of the language. The DUP have rejected it outright. Para. 4 in particular has a strongly Nationalist flavour. By far the greater part of the substance of the document has evolved from the original draft endorsed by John Hume and Gerry Adams. The conciliatory new paragraphs addressed to Unionists underline the importance of a process of national reconciliation. It is surely not a concession to Unionists to lay to rest many

uninformed or outdated fears concerning the attitudes of the Irish Government or the nature of society in this jurisdiction, and to assure them that as of now Nationalists who aspire to partnership with them on the island do so on the basis of respect and esteem for their tradition. Any constitutional changes would only be made on the basis of and as a result of direct negotiations with Unionists which resulted in the achievement of an overall settlement containing a balanced constitutional accommodation.

Most of the language of the Declaration in regard to rights and identities is drawn from the Forum Report and the Anglo-Irish Agreement and also from the three strand talks. Securing the rights and equality of Nationalists is a primary concern of the Irish Government, both in the Anglo-Irish Conference and in the talks process. (See the Taoiseach's Irish Association Speech). The Irish Government today are in a far stronger position to vindicate the rights of Nationalists than was the case in 1969, and has a formal standing in that regard under the Anglo-Irish Agreement.

Package for moving to the next stage of the Peace Process

The following items are on the table:

- The Joint Declaration itself, with British recognition for the first time of the Irish right of self-determination and the commitment of both Governments to work for an agreed Ireland, which may as of right

include the establishment of a sovereign united Ireland. In particular, there is a solemn British commitment to implement any agreement reached between North and South.

- The Forum for Peace and Reconciliation to be established by the Taoiseach.
- The exploratory talks promised by the British Government, leading to participation in full-scale round table negotiations.
- Acceptance of the principle of demilitarisation on all sides.

Clarification sought from the British

The degree to which the British Government are willing to engage in further clarification is primarily a matter for them.

Without infringing on the freedom of either party to engage in such communication as they see fit, it scarcely needs to be pointed out that the history of such bilateral dialogue has not been a happy one, either recently or in the 1970s. Conducted at arms length and to a large extent on a deniable basis, secret assurances and understandings, particularly if they are any way in advance of official positions, are of doubtful standing. Statements from British Government representatives to the effect that 'the final solution is union, it is going to happen anyway - Unionists will have to change. The island will be as one' are naturally intended to be a seductive assessment of the future. The pursuit of such assurances and understandings by way of

'clarification' may be of limited value, even if successful, since of their nature any such secret commitments can be denied or regarded as not binding. History has shown that the British tactic has always been one of divide and conquer. Unionists do not trust the British Government in the longer term. Commitments obtained in Intergovernmental negotiation or in an open forum can be far more easily vindicated by the Irish Government and the wider Nationalist community at home and abroad.