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DRAFTSECRET

PROPOSAL FOR A NEGOTIATING
BODY TO BREAK THE TALKS DEADLOCK IN
NORTHERN IRELAND

1. There is an impasse on the question of decommissioning, and, in a related way, on the lack of meaningful political dialogue between either Government and the full range of political parties in Northern Ireland. There is an urgent need to find a way forward in the light of growing concern about the future of the peace process. There is a need to respond to Sinn Féin's call for a date/timeframe to be indicated for the commencement of all-party talks. This response must, importantly, be consistent with Unionist active participation in the talks process from the start.

2. We are confronted with a range of fundamental, strategic policy issues on Northern Ireland which need to be resolved if we are to make real progress on the substance of a settlement.

3. This document identifies these strategic issues and proposes the establishment of an **elected negotiating body in Northern Ireland - which would be required to deal with all three Strands** - as a way forward. Together with the separate proposals on decommissioning - the International Commission - and wider security issues, it points a way out of the current impasse. The proposal, which would have to be 'sold' to the SDLP and Sinn Féin and then agreed with the British Government, would constitute the response to Sinn Féin's call for a date to be fixed for

the commencement of all-party negotiations. It would also be consistent with Unionist participation in these negotiations. It is envisaged that the **Anglo-Irish Agreement would continue to remain in place** unless and until it was transcended by new arrangements, covering all three Strands, on foot of an agreed settlement.

Incentives For Unionists

4. The underlying assumption of the Framework Document is that Unionists can be persuaded to buy into proposals on the lines of those contained in it. This assumption is based essentially on the following four factors:

UUP and DUP acceptance, through the 26 March 1991 Statement, of the three-strand approach to a settlement. That included inter alia the principle that 'nothing will be finally agreed in any strand until everything is agreed in the talks as a whole';

UUP and generally Loyalist paramilitary acceptance of the principles set out in the Joint Declaration of 15 December 1993;

The Framework Document is consistent with both the 26 March 1991 Statement and the Joint Declaration and the proposals contained therein are generally in line with those adumbrated in the course of the 1992 roundtable talks;

Finally, that the transformed situation since the IRA and Loyalist ceasefires would greatly enhance the climate and popular desire for

inclusive all-party talks on a settlement. Such talks, it was assumed, would generally be based on and seek to build upon the varying degrees of political agreement achieved since 26 March 1991.

Between March 1991 and the publication of the Framework Document, the assumption of both Governments would appear to have been that Unionists would be willing to accept North/South bodies in exchange primarily for (1) a Devolved Assembly; (2) change to Articles 2 and 3; and; (3) a new East/West relationship which would transcend the Anglo-Irish Agreement. Of those three, only the Devolved Assembly has been a real practical constant since the fall of Stormont. However, as matters presently stand, the question must be asked as to whether we are not being naive in assuming that, at the end of the day, Unionists will be willing to accept North/South bodies because they need devolution so badly? Where is the overwhelming demand for devolution coming from?

5. Arthur Aughey, in the recent edition of "NI Brief" published in the House of Commons, challenges the assumption that there is such a demand:

"Ministers and officials continue to believe that unionists are prepared to pay a high price for the return of devolved powers to Belfast. They aren't. The SDLP as we know has "no ideological commitment" to devolution. Sinn Fein opposes it. The new political class in the voluntary and community sectors don't need it either, for they already

have influence on quangos as well as direct access to officials. Only the Alliance party has been an unequivocal supporter".

6. If Mr. Aughey is right and if devolution is not a sufficient incentive or lever to get Unionists to agree to North/South bodies, what other incentive is there on offer? Is it just the threat of renewed violence? Or is it the threat that, at the end of the day, the British will get tired and pull out and leave Unionists on their own?

7. There are both negative and positive levers on Unionist participation in talks/negotiations. The list of negative levers (pushing Unionists towards talks) includes:
 - * the Joint Framework Document (as a stimulus to Unionists to come up with their own ideas).
 - * the prospect of the continued - and perhaps strengthened - operation of the Anglo-Irish Agreement.
 - * the prospect of Joint Sovereignty.
 - * the possibility of economic penalties e.g.. the reduction - or withdrawal - of the British subsidy to Northern Ireland.
 - * the prospect of British withdrawal from Northern Ireland.
 - * the possibility of a resumption of violence in the absence of real political progress
 - * all-party consensus in the U.K.
 - * all-party consensus in the Republic.

Positive levers (pulling Unionists towards talks) include:

- * constitutional change on offer in the Republic.
- * the prospect of lasting peace (particularly, security in Border areas) and with it, increased prosperity arising from increased tourism, trade and investment.
- * the benign engagement of the US Administration and Irish America, in terms for example of investment.
- * the possibility of participation by Sinn Fein in negotiations, which in turn might pressurise Unionists to come on board.

8. Identifying these incentives is of itself not enough. Unless and until we have analysed the true nature of these levers or pressures on Unionists to our own satisfaction, it is unlikely that we will apply the appropriate pressure in the appropriate way.

WHEN DO WE EXPECT UNIONISTS TO TALK?

9. Against the background of these strategic issues, the immediate question which we need to consider is when - based on current policies - do we realistically expect unionists, if ever, to be ready to engage in serious dialogue with the Irish Government and with Nationalists around the issues in the Framework Document?
10. Brian Feeney of the Irish News in Belfast has written:

"it will be 1997 (after both British general and Northern Ireland local Government elections) before Unionists begin to talk about the future. But when they do, they know it will be about the shape as described in the Framework".

11. If this is true, we need to give careful consideration to its implications for the peace process. What evidence is there that Sinn Fein and the IRA will be able to hold in the men of violence for two years while waiting for the Unionists to talk? Such a lengthy delay could be very damaging, if Mr. Feeney's assumption is correct. It also has implications for the present Irish Government's term of office. Having completed the Framework Document, this Government will be expected to put something in place based on it. Mr. Feeney's scenario for talks would make this very difficult.
12. As a related point, we also need to consider the implications for the peace process of the current uncertainties surrounding the UUP leadership.

WHY NOT JUST SET A DEADLINE FOR ALL PARTY TALKS?

13. Sinn Fein would prefer that the Governments would simply set a date for all party talks - leaving chairs empty for Unionists if Unionists fail to turn up. This is superficially attractive, but dangerous. The Unionists could simply boycott such talks and this in turn could trigger Loyalist violence. The Unionists would focus on Sinn Fein's failure to decommission, as justifying this. Even if the Unionists decided to

participate in talks at a later stage, the fact that talks had gone ahead in their absence would hardly be conducive to their entering into the talks process in a positive frame of mind - in effect, their sense of ownership of the process would have been diminished. The Unionists would, on the other hand, find it much more difficult to boycott an elected body, especially as they have proposed just such a body themselves. The fact that the proposal for such a body reflected their own thinking would give Unionists the sense of ownership in the talks process, which is critical to its success.

A NEW APPROACH

14. All of the above seems to lead towards a conclusion that we should aim at some form of interim arrangement which will show political progress.
15. Already there is some degree of support for this sort of approach in Unionist opinion. Robert McCartney MP. recently wrote:

"Northern Ireland's politicians should declare a moratorium on the constitutional issues. They should concentrate on the here and now and upon a present solution geared to what is best for the whole community in cultural and socio- economic terms".

He added:

"the rhetoric of union and unity must be at least temporarily silenced, and an equilibrium established in which trust and mutual confidence can begin to grow".

16. There is a similar approach in the Ulster Unionist Party policy document "A Practical Approach to Problem-Solving in Northern Ireland". This document places the emphasis on the process towards a solution, rather than on the ideal solution itself. It proposed an intensive talks process with a limit of six months.

17. It argued that, rather than attempting to sketch out a particular solution, the Framework Document should have concentrated on providing:
 - a a concise definition of the problems which were already identified at the 1992 Talks;
 - b a grouping of these problems in categories for resolution, and
 - c a detailed formula for dealing with each group of problems.

These were then to be examined in the proposed six months process.

18. Again, the DUP "Formula for Political Progress" proposes the establishment of an elected Northern Ireland Convention which " would be charged with considering issues relevant to all three Strands and would be empowered to consult with HMG in relation to matters relevant to all three strands and with the Government of the Irish Republic, where appropriate, in relation to Strands 2 and 3".

**PROPOSAL FOR AN ELECTED NEGOTIATING BODY ON
NORTHERN IRELAND.**

19. Drawing on these ideas, it is proposed that an elected negotiating body should be established in Northern Ireland to develop proposals for the future of Northern Ireland. The proposals could draw on the Joint Declaration, the Framework Documents and the outcome of the 1992 Talks. They would have to cover the three strands which are the key to any settlement viz. internal, North/South and East West. Elections might be held in October, 1995 and the body could be given a time-limit of one year to develop its proposals for approval by the Irish and British Governments (a tentative critical path to an agreed settlement is set down in the Annex). The proposal would be announced jointly by the two Governments at a specially convened summit meeting between the Taoiseach and the British Prime Minister.

BASIS ON WHICH PROPOSAL COULD BE SOLD

20. On the face of it, the proposal for a Negotiating Body could give rise to various objections on the part of both SDLP/Sinn Féin and the Unionists. With regard to the SDLP and Sinn Féin, a very hard sell would indeed be required to convince them that elections within Northern Ireland to a Negotiating Body would not be resonant of, or a prelude to, an internal solution. Their starting position would be that they would not entertain any approach that downgrades the Irish dimension or that makes progress on it contingent on developments in the Northern Ireland

internal relationship. As far as Unionists are concerned, the possibility exists that the DUP and the more hard-line elements within the UUP could present the Elections to the Body as a rejectionist referendum on the Joint Framework Document.

21. However, the proposal could be sold to the SDLP/Sinn Féin on the following basis:
- (a) that the Negotiating body would be required to address all three Strands and the principle that nothing is agreed until everything is agreed would be maintained;
 - (b) that the formation of a Negotiating Body would put Sinn Fein and Unionists in the same room without immediate decommissioning. This could be interpreted by Sinn Fein as responding to their insistence that, prior to the ceasefire, decommissioning had never been made a precondition for all-party talks;
 - (c) that Sinn Féin would be participating on the basis of their electoral mandate, and on equal terms with all the other parties. This, again, is a condition on which Sinn Féin have insisted throughout;
 - (d) that the present artificial distinction between "exploratory" and "substantive" talks would be overcome. The election of people to the Negotiating Body would leap over that distinction;

- (e) that the idea that people might be elected to a body whose mandate would be political talks would get over the problem of acceptability of Sinn Fein to Unionists. If Sinn Féin take their seats in the Negotiating Body, Unionists would have no option but to talk to them. The only way Unionists could avoid this would be to abstain from the Negotiating Body themselves, or not to offer candidates. But, as the Unionists have themselves proposed a consultative process which has similarities to the present proposal, not offering candidates would be a rather difficult option for them;

- (f) (against the objection that the SDLP has not participated in any Northern Ireland Assembly since 1974), that the negotiating Body was being recommended by both the Irish and British Governments.

22. From the Unionists' point of view, there would be the following attractions in the idea of a Negotiating Body;

- (a) It would draw on their own thinking, thereby giving them a sense of ownership in the process.

- (b) By stating that the objectives could be limited, rather than comprehensive, one could reassure Unionists about the "one-way escalator towards a united Ireland" problem which causes them so much concern. The Irish and British Governments could state that the proposed arrangements in the Framework Document represent

the totality of what should be attempted for the foreseeable future and that the system contained therein should be retained indefinitely, unless or until people in Northern Ireland themselves decide that they want to change it. In other words, the initiation of any new referendum to move to change the status of Northern Ireland would have to come from the people of Northern Ireland themselves, as well as having to be approved by the two Governments. This would give Unionists that added sense of security and permanence which they need if they are to be persuaded to make the maximum concessions that must be made to Nationalists within Northern Ireland.

- (c) For both the UUP and the DUP, direct elections to a Negotiating Body would help to strengthen their sense of security in entering settlement negotiations which would include Sinn Féin, as well as giving them a mandate to do so.

23. The proposal for a Negotiating Body has the following additional advantages:

- (a) The election of a Negotiating Body would bring other politicians to the fore within Northern Ireland, thereby weakening the potential veto on progress by one or two individuals;
- (b) The holding of elections could force a resolution of the current uncertainties surrounding the UUP Leadership;

- (c) There would be a further advantage in this proposal for some sort of electoral mechanism for getting Unionists and Sinn Féin around the same table. At the moment Unionist politicians have power, but they have no responsibility. If things go wrong, they can say that they warned that things would go wrong. They are in a position where they can, at the same time, deny any responsibility for the lack of progress. That is something that they can simply say is the responsibility of "Government";

History shows that politicians are only creative when they are under pressure. Politicians are also only willing to make concessions to the point of view of other people, when they have to. The Unionists are under no pressure. If the Government was to take up the Unionists' own proposal for a consultative Assembly, that would put them under some measure of pressure to deliver a solution. If this body was to be in place while the peace still holds, all those elected to it would be under pressure from their electorate to act within it, in a fashion designed to keep that peace process going;

- (d) The election of people to a Negotiating Body would also force Sinn Féin to clarify the remaining doubts about their commitment to peace and the principle of consent. In the course of an election campaign it would be very difficult for them not to make it clear that their commitment to peace was permanent;

- (e) Finally, the strongest argument for devolution to Northern Ireland (and it is emphasised that this is not what is being proposed in this paper) is that it is a way of forcing people within Northern Ireland to work together. It is their unwillingness to work together that has caused the problem. By setting up an elected negotiating body one might achieve the same effect.

THE TERMS OF REFERENCE

24. Clear Terms of Reference for the Body from the outset, balanced between the two traditions and fair to both, would help to reduce the prospect of minimalist approaches being adopted by the two main Unionist parties. The Terms of Reference for the Convention should reflect those areas in which political consensus within Northern Ireland have emerged in recent years. Thus, the following should be specified:

26 March 1991 Statement. The substantial key elements should be included - principally the Three Strand approach to a solution; and the principle that 'nothing is agreed in any strand until everything is agreed in the Talks as a whole'.

The Joint Declaration. It would be counterproductive to itemise its principles in the Terms of Reference since neither Sinn Féin nor the DUP have supported the Declaration. However, it should be identified as a base document to be taken into account by the Negotiating Body in reaching its conclusions.

The Joint Framework Document. Notwithstanding Unionist political rejection of the Document as a basis for Talks, the Terms of Reference must refer to it as the shared and most informed understanding of the two sovereign Governments on the possible outlines of a settlement. The widespread popular and political support which the Document secured both North and South as well as internationally cannot be ignored.

However, its status as a mechanism to give focus to negotiations could be stressed, together with a reiteration of the two Governments' position that it is not to be imposed.

Charter/Covenant of Rights. There would appear to be a strong case that the Negotiating Body should consider the development of a Charter/Covenant of Rights. The need for such a Charter or Covenant is widely acknowledged across the entire political spectrum within Northern Ireland. Equally important is the fact that paragraph 5 of the Declaration on civil rights and religious liberties was written, apart from some minor presentational amendments, by the Loyalist political representatives. Those rights are given fuller expression in paragraphs 50 to 53 of the Framework Document. Thus, the development of a Charter/Covenant of Rights should be specified in the Terms of Reference.

The Internal Relationship. It must be made very clear in the Terms of Reference that a purely internal approach to a settlement is not the *raison d'être* of the Body. Specifying the centrality of the three interdependent strands would help to do that. However, there is a strong case to be made for explicitly adding that an internal solution is not being sought. Without that, it could be taken as certain that both the SDLP and Sinn Féin would not partake in the Body.

Issues to be Addressed in tandem with/subsequent to Deliberations of Negotiating Body

25. The Body would deal with all three relationships but there are aspects to the Strands Two and Three deliberations which would have to feed into Governmental considerations or could only be dealt with at Governmental level either in tandem with, or subsequent to, the deliberations of the Negotiating Body. The key issues arising in that context are (1) Constitutional issues; (2) Bill of Rights; (3) North/South structures; (4) a new East/West arrangement.

The Terms of Reference would have to provide that position papers would be provided by the two Governments on request on any aspect of the four key issues identified above. There would also seem to be much merit in ensuring that Government representatives - both political and official - would be afforded the facility to answer directly to the Body on any aspect of the position papers presented. Something akin to this would help to ensure that discussions on such matters would be conducted in the most informed manner possible. We must be alert to the reality that many matters - relating for example to a Charter of Rights and the Constitution - would be external to all of the Northern Ireland parties' ambit of competence or expertise.

DELIMITATION OF REFERENDUM PACKAGE

The Terms of Reference would need to specify that the package would be put to the people in referendums, North and South, arising from the work of the Negotiating Body etc. would represent the totality of what would be attempted for the foreseeable future and that the system

contained therein would be retained indefinitely, unless or until people in Northern Ireland themselves decided that they want to change it.

In summary, the Body's Terms of Reference would emphasise (a) the three-strand approach; (b) that the outcome of the Body's deliberations would be consultative, (c) that the Body's proposals on Strands Two and Three would feed into a mechanism of intergovernmental deliberations; and (d) that the package which would be put to referendum would represent the totality of what would be attempted for the foreseeable future.

DURATION

26. The UUP policy document 'A Practical Approach to Problem-Solving in Northern Ireland' suggests an intensive talks process with a limit of six months. Notwithstanding the level of agreement achieved in the 1992 talks, we need to bear in mind that the additional presence of Sinn Féin and the two Loyalist parties is very likely to lead to a re-examination of the issues already agreed. Moreover, the multitude of interdependent issues raised in both the Joint Declaration and the Framework Document would probably lend an extra complexity to the discussions. While the duration for the Body's deliberations is of its nature a most subjective consideration, a timeframe of one year would seem realistic. This would need to be clearly set out in the Terms of Reference.

PRESENTATION OF DELIBERATIONS

27. At expiry of the one-year deadline, the final proposals of the Negotiating Body would be presented to the Irish and British Governments for their consideration and/or approval. [In the event that the Body was unable to agree the detail on all relationships, provision could be made, if so desired, that the process would automatically move into Three Strand Talks involving directly the two Governments]. The final outcome, in accordance with provisions in both the Joint Declaration and the Joint Framework Document, would be put to concurrent referendums, North and South. The package for Referendum would include agreed proposals emanating from the Negotiating Body, (and possibly, from further Three

Strand Talks perhaps on a bilateral basis, if necessary), as well as understandings reached at Intergovernmental level.

VENUE

28. It is suggested that the venue should initially be London. For Sinn Féin, this would carry resonances of the Lancaster House negotiations on former Rhodesia while for the Unionists, it would be symbolic of the centrality of the British dimension to a settlement. However, drawing on the experience of the Brooke Talks, it is likely that the SDLP and indeed Sinn Féin will seek to have some of the meetings take place in this State. In recognition of that likelihood, it would help to buy them into the idea of the Negotiating Body if meetings in this State were specifically endorsed/commended by the two Governments. Following on from that, it would be logical that some meetings would take place in Northern Ireland. The great advantage of the London/South/North venue approach is that it would be powerfully symbolic of the three-strand approach. It is likely that timeframes for each venue will be insisted upon in advance by both the SDLP and Sinn Féin.

CHAIRMANSHIP

29. The Chairperson would have to be an independent person, not drawn from the membership of the Body. It is most important that the Chairperson would be identified in the Terms of Reference. The situation, which arose in the course of the 1991/1992 Talks Process, must

be avoided where weeks of valuable time were wasted on squabbling over an acceptable Chairperson. Someone like Sir Ninian Stephen, who chaired the 1992 talks in a diplomatic and impartial way, could be given the job.

SIZE OF NEGOTIATING BODY AND LOYALIST REPRESENTATION

30. This is the most problematic area and a satisfactory resolution is centrally linked to the viability of the Body. The frame within which the Body's establishment needs to be set is that both Governments, up to and since the ceasefires, have consistently acknowledged that negotiations on a settlement would include representatives from each of the seven Northern Ireland parties - UUP, SDLP, DUP, Sinn Féin, Alliance Party, UDP and PUP. Acceptance of that makes clear that the criteria used in the 1992 talks cannot realistically be applied to the Negotiating Body.

In the 1992 talks, there were four delegations comprising ten members each (three at the table at any one time, four behind and three elsewhere in the building). Clearly, such an approach would be unworkable in this case because the SDLP and Sinn Féin would be outnumbered 2:1 even when allowing 10 members to represent the UDP and PUP together.

A key problem which would need to be very carefully thought through relates to the desirability - indeed the necessity - of ensuring that the Loyalist representatives would secure an electoral mandate to participate in the Negotiating Body. At present, the UDP and PUP strengths rest not on any meaningful electoral mandate but, rather, on their unique

influence in the maintenance of peace. Marginalisation of them, even through such purely democratic means as an election, could seriously threaten a resumption of Loyalist violence. If the size of the Body is made extra large to help them secure electoral representation, the downside is that the Body could become very unwieldy, marginalise the Loyalist voice to the periphery and, indeed, at the same time, such enlargement of the Body might still not ensure Loyalist representation.

If the problem of Loyalist representation is brought through the next logical filter (that of co-opting them onto the Body), then a consequence might be some resentment from other parties such as the DUP.

Elections by proportional representation might offer a means of overcoming the problems outlined above - or at least of minimising the risks involved - by providing for the possibility for DUP transfers to the two Loyalists parties. Having regard to the importance of Loyalist representation, the size of the Negotiating Body should, in the first instance, be considered in light of discussions with the UDP and PUP. Obviously, it would be necessary to overcome likely British Government objection to using the PR system for these elections.

31. It would be worthwhile to get the advice of political scientists on how a body or assembly might be designed so that its emphasis would be on consensus building, rather than on "Government" and "Opposition".

COMMITTEES

32. Very careful thought will need to be given to what specific issues would arise in the course of the Negotiating Body's deliberations and, following on from that, how best these would be addressed.

The central issues to be addressed would be:

(1) Internal Assembly

- Responsibilities; Size; Electoral Method; Panel; Committees; Rate and Nature of Function Transfers; Default Mechanisms; Code of Practice; and North/South interlocking mechanisms.

(2) North/South Structures

- Functions; Terms of Reference; Legal underpins; Administrative arrangements; Financial accountability; EU dimension; and Oireachtas links

(3) Constitutional Issues

- Articles 2 and 3; Government of Ireland Act 1920; Ireland Acts; International Treaties - e.g. Helsinki Final Act; and Constitutional/Human Rights

(4) Charter/Covenant of Rights

- International requirements; Constitutional Law; Codes of Practice; and Institutional change to reflect equality of expression in practical and symbolic terms e.g. Oaths, Flags, etc.

The Body's consideration of these issues would transcend the internal relationship and thus, a number of analytical mechanisms may be required. Account would also need to be taken of the fact that inconclusive proposals are likely in some areas since there are many issues can only be dealt with at Governmental level. Thus, the Body's structures will probably need to incorporate more than just Committees organised on thematic grounds. Further consideration will be given to this, drawing on experience in the Brooke Talks, the 1975 Convention, Northern Ireland party position papers and so on.

CONCLUSION

33. A major effort will be required on our part to sell the proposal first to the SDLP and Sinn Fein and then to the UK Government who will have to play a major role, also assisted by the Irish Government, to the greatest possible extent, to convince the Unionists to participate . On balance the proposal would appear to offer a way forward out of the present drift, which seems to be one that is almost inevitably leading back to violence. If there is a viable alternative to this proposal, then that too should be given serious consideration.

S.H.

SH

28 July 1995

ANNEX

(Draft) Critical Path to a Settlement

<u>DATE</u>	<u>OUTCOME</u>
end-July, 1995	<ul style="list-style-type: none">- Completion of Cannes Follow-up- Movement on Prisoners in both UK and Ireland- Contact between Taoiseach and British Prime Minister
mid-September, 1995	<ul style="list-style-type: none">- Launch of Negotiating Body
October, 1995	<ul style="list-style-type: none">- Elections to Negotiating Body
29 November-2 December, 1995	<ul style="list-style-type: none">- Visit to UK and Ireland by US President
October, 1996	<ul style="list-style-type: none">- Negotiating Body presents its proposals to Irish and British Governments for approval.
1997	<ul style="list-style-type: none">- referenda in Northern Ireland and in this State on proposals put forward by Negotiating Body, as agreed by the Irish and British Governments - to take place before or after General Elections in Ireland and U.K.- Implementation of Settlement.