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Comments on British Proposals for an Elective Process (Rev.1)

General Remarks

The British side circulated the attached paper titled "*A possible Framework for Inclusive Negotiations on a Political Accommodation which would address all relevant Relationships*" at the Liaison Group on 30 January 1996. While the following comments on that paper are necessarily predicated on a willingness to engage in discussion on an elected process, they should not be taken as indicating support for such a process.

It might be noted that the paper does not raise the question of how decisions would be taken in any negotiations; a point raised in earlier British papers. This could be because the British feel that this thorny question cannot be resolved at this stage. Alternatively they may envisage that this is a matter to be handled separately within each of the Strands.

It should be noted that paragraphs 15 and 16 refer to Strands One and Two operating by "agreed procedural rules", whereas there is no such reference to such rules in paragraph 17 dealing with strand Three. Obviously, in Strand Three, agreement can only be by unanimous agreement between the two Governments. Paragraph 9, fifth indent, suggests that any decision taken by the elected representatives meeting in plenary on the final outcome of negotiations should be by weighted majority.

The entire question of how decisions will be taken requires clarification.

Specific Comments

The text if the British paper appears in italics and is followed by comments in regular script.

Introduction

1. *The Joint Communiqué of 28 November 1995 committed the two Governments to engage in and to facilitate intensive discussions about the "structure and format of all-party negotiations..., including whether and how an elected body could play a part". This paper is intended to assist that process.*

Comment: No problem.

2. *The International Body commented that, "A broadly acceptable elective process, with an appropriate mandate and within the three-strand structure, could contribute to the building of confidence" and in his Statement to the House of Commons on 24 January the Prime Minister explained why HMG "believe that such an elective process offers a viable alternative direct route to the confidence necessary to bring about all-party negotiations".*

Comment: This is a statement of fact, although the quotation from the report of the International Body is not quite verbatim.

3. This paper describes a possible framework for political negotiations consistent with the objectives of the two Governments as expressed in paragraph 3 of the Joint Communiqué of 28 November 1995. It illustrates how fresh elections in Northern Ireland might be used in the establishment of such a framework, in a way which might meet the objectives of all the Northern Ireland political parties and of each of the two Governments.

Comment: None.

Key Criteria

4. An acceptable basis for further talks should give due weight to each of the three interlocking strands of discussion and to the role of the two Governments. It should be such as to provide a basis for substantive negotiations to start as soon as possible.

Comment: It is not enough to say negotiations should start as soon as possible. They should begin automatically, within a fixed period following elections. It should also be made clear that equal weight will be given to each of the three strands.

An Election in Northern Ireland

5. There could be an election in Northern Ireland to select 90 representatives and to provide an electoral basis for the participation of Northern Ireland political representatives in substantive political negotiations on all the relevant relationships.

Comment: OK, but this paragraph could usefully spell out the 'relevant relations' as set out in paragraph 14.

6. The mandate of these elected representatives might be time-limited, perhaps to twelve months from the date of the election, but capable of extension in specified circumstances.

Comment: This seems alright. A one year deadline would give the necessary impetus to negotiations. It would be sensible to allow for the possibility of extending the mandate for negotiations, but would the same provision be necessary for any parallel forum?

7. It is not envisaged that there would be an executive or legislative institution.

Comment: This is an essential reassurance that elections will not lead to a return to an equivalent of the Stormont Parliament.

8. *The election might take place using PR (STV) on the basis of the current five member constituencies or on some other proportional basis (e.g. Province-wide list system). The objective would be to produce as inclusive an outcome as possible compatible with democratic principles.*

Comment: There are compelling technical arguments in favour of list system. The SDLP are believed to favour such a system. However, Trimble is strongly opposed to it, as it is thought likely to favour the DUP, which, he fears, would trade on Paisley's personal popularity. There are also objections arising from the difficulty of establishing public confidence in Northern Ireland in a new electoral system.

If elections are to be constituency-based, they will, almost certainly, have to be based on the Westminster constituencies. Any attempt to amalgamate existing constituencies would virtually require a new Boundary Commission. There is also an argument for having 5 members constituencies, as a lower number would militate against candidates from smaller parties.

9. *As the Prime Minister said in the House of Commons on 24 January, the election could be used to*

- *determine which parties would participate in the Talks*

Comment: OK, subject to arrangements to ensure that minority parties (ie. the PUP and UDP) have a place at the negotiating table.

- *give each party which achieved representation a fresh electoral mandate, testing the extent of their democratic support in current circumstances*

Comment: OK.

- *provide a pool of representatives from which party delegations in the Talks could be drawn*

Comment: OK. It need not necessarily be the case that the same delegates negotiate for the parties on all issues. The parties could use their elected representatives in a flexible way within the different strands and working groups, so as to ensure that all representatives were, in some way, directly involved in the negotiations.

- *provide a means of "indexing" the strength of the parties' delegation in the talks process.*

Comment: The parties had equal sized delegations in 1991/92 and it would be advisable to follow that precedent as it would be less likely to encourage any attempt to take decisions by weighted voting.

It is possible, nevertheless, that the larger parties, including the SDLP, would seek to ensure that the level of electoral support of the parties is reflected in the size of their delegation at the negotiations. If this is agreed - and it was at the Forum for Peace and Reconciliation - it would be necessary to establish how delegations would be weighted. In such circumstances, there may be case for a banding system which, while allowing for weighting, would have a bias in favour of smaller parties.

- ***provide an initial mechanism for testing the outcome of any Talks process for widespread acceptability within Northern Ireland.***

Comment: See paragraph 22.

- 10. It is for consideration whether the elected representatives could be convened from time to time to be briefed upon, or to discuss, aspects of government in Northern Ireland or issues which have arisen in the Talks.***

Comment: We should reject any notion of matters being put to an elected body for approval during negotiation. This could end up meaning that every element of agreement would have to be 'majority-proofed'. It might be preferable, if it is necessary to find a way of occupying those delegates who might find themselves supernumerary to negotiations, for the plenary to engage in Forum-type work, as suggested by Workers' Party. It could also conceivably carry out enquiries as suggested by Trimble. But no negotiating and no voting. However, some in the SDLP fear that the unionists would seek to turn a forum into a sort of "Grand Committee for Northern Ireland"

A Negotiating framework

- 11. The negotiations might best take place between relatively small party and Government delegations, of perhaps up to 6 people, working intensively in relevant configurations, seeking to achieve the highest possible level of agreement.***

Comment: This seems alright in principle, but it could present a problem for the Government, given the likelihood that it will wish to be represented in a three-party configuration. It might be worthwhile to look for a maximum delegation size of 8 people, at least for the two Governments. If not, we could have problems with our delegation size.

- 12. The party delegations would of course be free to keep their elected representatives and other party colleagues fully briefed.***

Comment: This seems alright, as long as confidentiality is observed, where necessary.

- 13. Arrangements might be made for political parties which do not have an adequate electoral mandate to be associated with the negotiating process in some way. Opportunities***

could be provided for non-political organisations to make presentations to the negotiating teams.

Comment: Relevant political parties, such as the loyalist parties, who could fail to maintain an electoral mandate must be fully associated with the negotiating process. Those who have been part of the conflict should be part of the solution. This would best be achieved by allowing them a place at the negotiating table.

Perhaps this could be done by giving any party involved in the preparatory talks which does not obtain a mandate in an election, observer status at the negotiations. Observers could be given two seats at the table, with full right to intervene in discussions. However, the formal agreement of parties with observer status would not be required to any decision taken in the negotiations. (In practice, it is unlikely that any decision would be taken in the face of opposition from the one of the loyalist parties.)

Receiving representations from non-political organisations could be a useful way of occupying those elected representatives not involved in negotiations. (Although, see paragraph 10.)

14. *In general the negotiating structure would be consistent with that envisaged in Mr. Brooke's statement of 26 March 1991. The main strands of discussion would focus on the three sets of interlocking relationships: those within Northern Ireland, including the relationship between any new institutions there and the Westminster Parliament; relationships among the people of the island of Ireland; and the relationship between the two Governments. As before, it would be open to any participant to raise any matter they considered relevant, including constitutional issues.*

Comment: The maintenance of three-stranded negotiating structure should be an absolute requirement for the Government.

15. *Issues to do with the first of those strands of discussion could be considered by the party delegations and the British Government delegation.*

- *discussions might take place on the basis of an agreed agenda and in appropriate formations.*
- *they would be chaired by the British Government operating agreed procedural rules.*

Comment: This seems alright, although the question of how decisions would be arrived at needs to be addressed. It would also be important to avoid months being wasted in wrangling over rules of procedure.

16. Issues to do with relationships among the people of the island of Ireland could be considered by all the party and Government delegations.

- *discussions might take place on the basis of an agreed agenda and in appropriate formations*
- *they might be chaired by an independent Chairman operating agreed procedural rules.*

Comment: OK, although we might also consider the possibility of the two Governments co-chairing meetings. The possibility of drawn out arguments over procedure also arises in relation to Strand Two.

17. Issues to do with the relationship between the two Governments could be considered by the two Governments

- *there should be full opportunities for all the party delegations, whether collectively or individually, to express their views on these issue to the two Governments; and arrangements made to keep them fully briefed on the process of discussions between the two Governments.*

Comment: OK, in as far as it goes. However, consideration might be given to whether the Government should seek the right to be formally briefed on developments in the Strand One negotiations. While the Government has not sought, within the negotiations, to pursue its right under the terms of the Anglo-Irish Agreement to put forward views and proposals on matters relating to the internal relationships within Northern Ireland, it might nevertheless seek some arrangement whereby it might be informed of progress in the Strand One negotiations. If this proves to be problematical within the structure of the negotiations, it should certainly be pursued within the framework of the Intergovernmental Conference.

18. All these sets of discussions, which would have independent standing, could commence simultaneously and proceed in parallel.

Comment: All sets of discussions should, rather than could, commence simultaneously and proceed in parallel.

19. It is for consideration whether the negotiations might take place on the basis of a rule that, while nothing could be finally agreed in any single set of relationships until agreement was reached in the negotiations as a whole, it would be possible to reach contingent agreement on individual aspects.

Comment: We should be wary about even the slightest slippage from the principle that nothing is agreed until everything is agreed. However, it would be difficult to envisage any decommissioning during negotiations if this rule cannot be

relaxed. Perhaps we should require that any departure can only take place on the basis of unanimity.

20. *The participants might also commit themselves to maintaining confidentiality and undertake to participate actively and in good faith.*

Comment: It might be considered whether we should go further and require that those standing for election have an obligation to participate in negotiations if elected. It would be difficult to legally compel parties to attend negotiations, not least because the UK has no register of political parties.

Venue

21. *All the negotiations involving the party delegations could take place in [the purpose-built accommodation in] Belfast, or elsewhere by agreement. The two Governments could meet wherever was mutually convenient.*

Comment: Why not Strand One in Belfast, Strand Two in Belfast and Dublin, and Strand Three at the mutual convenience of Governments.

Validation

22. *Once agreement had been reached in all three sets of discussions the outcome could be presented to the elected representatives as an initial mechanism for testing whether it was likely to command widespread acceptability within Northern Ireland.*

Comment: There are three problems with this proposal:

- a) why is it necessary, given that the Governments are agreed that any agreement should go to referendum in Northern Ireland;
- b) a successful outcome to negotiations will be more likely if "backbenchers", who have not been involved in the necessary compromise of the negotiations, are not given the opportunity to reject it, or send it back; and
- c) requiring the entire three-stranded agreement to be approved by a Northern Ireland elected body before it is submitted to the national parliaments privileges the internal strand.

The Prime Minister has already outlined his 'triple-lock' of parties, parliaments and people. A further controversial lock is not required.

23. *Thereafter the outcome would need to be submitted for democratic ratification through referendums in the two parts of Ireland and endorsed by Parliament and the Dáil before it could be implemented.*

Comment: Already agreed.

Other Considerations

24. Primary legislation at Westminster would be needed to enable such elections to take place. In view of the importance of the issue, HM Government and the main Opposition parties have made clear that they would facilitate the earliest possible passage of such legislation.

Comment: A speedy passage of the necessary legislation will be essential if elections are to be accepted by the nationalist parties as a door to negotiations.

25. It is argued that an election would be polarising and divisive but it could equally be said that an election would only reflect, rather than create or exacerbate, such divisions; and that the proposed context would encourage a responsible approach.

Comment: This paragraph does not belong in a descriptive document of this sort.

26. As to concern that an election in Northern Ireland might appear to pre-empt the outcome of negotiations, the Talks process has all along envisaged the involvement of Northern Ireland political representatives: the proposal merely creates a more direct link with the electorate.

Comment: Like the previous paragraph, this enters into a debate which should be avoided in a document such as this.



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