



An Chartlann Náisiúnta National Archives

Reference Code: 2021/50/50

Creator(s): Department of Foreign Affairs

Accession Conditions: Open

Copyright: National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Referendum

Mr Peter Greene (Franchise Section, Department of the Environment) telephoned to enquire about current thinking on the likelihood of a referendum before all-party negotiations. His section and the Attorney-General's Office have been doing some work on drafting a possible Bill but are reluctant to devote too much more time to the exercise if it seems unnecessary.

I replied that at present a dual referendum as proposed by Mr Hume, while it had not been definitively ruled out, did not seem to have strong or widespread support. I explained British plans for electoral legislation, which would include a provision for the holding of referendums in connection with the negotiations. I suggested that it would be prudent to be in a position to move swiftly if required, but repeated that my best estimate was that a referendum before elections was unlikely. It was of course envisaged that there would be a referendum in both jurisdictions on the outcome of negotiations - in our case, whether this would be purely a constitutional referendum of the normal sort remained to be determined.


Rory Montgomery
28 March 1996

cc Second Secretary, Mr Cooney



OIFIG AN ARD AIGHNE
(Attorney General's Office)
BAILE ATHA CLIATH 2
(Dublin 2)

23rd February, 1996.

Frank Murray, Esq.,
Secretary to the Government,
Office of An Taoiseach,
Government Buildings,
Upper Merrion Street,
Dublin 2.

Re: Referendum Proposal

Dear Secretary,

This is in the nature of an impromptu early warning notice.

The suggestion that a Referendum may be held North and South is being publicly canvassed at the moment. While we have machinery for voting on Constitutional Amendments and even for referring pieces of legislation to the people, we do not appear to have any legislation for the conduct of what is in effect an opinion poll. Were this proposal to become real, it would require urgent legislation.

While it is probably not my place to do so, it occurs to me that consideration should possibly be given to asking the Department of the Environment to conduct some urgent contingent work on preparing heads or exploring the legislative options in relation to the proposal.

Yours sincerely,


Dermot Gleeson, S.C.,
Attorney General.



Roinn an Taoisigh
Department of the Taoiseach

23 February, 1996.

Mr. Dermot Gleeson, S.C.,
Attorney General.

Re: Referendum Proposal

Dear Attorney,

Thank you for your letter of today's date re. the above.

I have been in touch with the Franchise Section of the Department of the Environment today and you will be glad to hear that they have already given some consideration to this matter in advance of our enquiries.

I enclose a copy of a preliminary briefing note received which is self-explanatory. It would be most desirable that the matter be raised at Government as soon as it is feasible to do so. I am passing a copy of these papers to the Taoiseach for his information.

You may also wish to know that Foreign Affairs are pursuing with the British the question of the legislative basis for a referendum in Northern Ireland. It seems, subject to confirmation, that fresh legislation would be required in their case also.

Yours sincerely,

Frank Murray,
Secretary to the Government.

P. 02

6793258

23-FEB-96 FRI 16:23

Note Re. Referendum/Plebiscite on Peace Process

Concise Oxford Dictionary

- Referendum - referring of political question to electorate for direct decision by general vote
- Plebiscite - Direct vote of all electors of State on important public question e.g. change in constitution; public expression of community's opinion with or without binding force

1. The Constitution provides for holding referenda (amendment of constitution and ordinary). Article 47.2.1 of the Constitution refers to the holding of a referendum other than to amend the Constitution. As there has never been an 'ordinary' referendum, there is nothing to guide one as to the circumstances in which this procedure should be used. Article 47.2.1 refers to 'every proposal other than a proposal to amend the Constitution'. 'Proposal' could relate to any matter.

The Attorney General's advice should be sought whether the Referendum Act, 1994 could be used as the long title refers only to referenda to amend the Constitution and references of Bills under Article 27 which is not appropriate in this case.

2. It is presumed that a Bill would be required to provide that a statement in relation to the proposal which is the subject of the referendum would be prescribed for the information of voters by resolution of each House of the Oireachtas as is set out in section 23 of the Referendum Act, 1994. The relevant provisions relating to the holding of a referendum in the Referendum Act, 1994 and/or Electoral Act 1992 could be incorporated in such a Bill.

Under a referendum per Article 47 of the Constitution, every citizen entitled to vote at an election for members of Dail Eireann would have a right to vote (this would exclude UK citizens and other non-Nationals living here).

3. If the Government decide on a plebiscite, the procedures set out in the Plebiscite (Draft Constitution) Act, 1937 could be used. A Bill would be required, which in most respects would be the same as the Bill referred to in paragraph 2. It would be a matter for the Government to decide on what electors would be entitled to vote e.g. only citizens or every person on the register of electors including UK citizens and all non-Nationals living here.

4. The Referendum Act 1994 provides that a polling day for a referendum shall not be less than 30 days and not more than 90 days after the date of a Ministerial Order appointing a polling day which follows after the relevant Bill has been passed or otherwise approved by both Houses of the Oireachtas. For logistical reasons, a minimum 30 days is necessary.

to Mr. Gleeson
for
h7

9th

27 February, 1996.

Mr. Dermot Gleeson, S.C.,
Attorney General.

Re: Referendum Proposal

Dear Attorney,

I enclose a copy of a note which I received from the Minister for the Environment at today's Government meeting. This is by way of a "Supplementary Note" to what I forwarded to you on Friday last.

At the time of writing we await developments on the broader front ie whether and, if so, what form of "referendum" may be needed.

There was no discussion of the matter at Government today.

Yours sincerely,

FRANK MURRAY

Frank Murray,
Secretary to the Government.

M. Corbett
27
27/96

icc
Secretary Dublin
W S. Howe

Referendum on Peace Process

Minister

In my absence from the office on Friday last, the Secretary to the Government was in touch with Franchise Section seeking a note on the mechanics of holding a referendum in the context of developments on the peace process. I attach a copy of the note which the section sent to Mr. Murray on Friday last. It appears from papers since received from the Department of the Taoiseach that the Franchise Section note may have been passed on to the Attorney General and to the Taoiseach with a view to possible discussion at a Government meeting.

I do not think that the position in relation to a possible referendum, as set out in the Franchise Section note is correct. It seems to me that the Constitution provides only for two specific kinds of referendum - a referendum on a bill to amend the Constitution and a referendum in which the people are asked to approve the enactment of a particular piece of legislation.

In dealing with the referendum, Article 47 does cover a referendum on a proposal "other than a proposal to amend the Constitution" but the subsequent words of the relevant sub-article seem to me to make it clear that what is in question is a referendum on the question of whether a particular bill should become law. The fact that the Referendum Act 1994, following the earlier legislation of 1942, provides only for a Constitutional referendum and a referendum on a bill referred to the people under Article 27, seems to me to support the foregoing view.

If I am right in this interpretation of Article 47 of the Constitution, the question then arises as to whether something called a "referendum" could be held in relation to a proposal other than those expressly provided for in the Constitution. The Attorney General's office would be able to advise on this. Even if a new form of "referendum" could not be held, the difficulty could be got over by providing in law for a plebiscite or for a form of poll called by some other name.

One way or another, special legislation would be needed to authorise the holding of the poll, to set out the question or questions to be put before the people and to apply, as appropriate, provisions of the referendum legislation in relation to voting arrangements, the counting of votes, ascertaining the result, etc.

If the Government wish to have tentative arrangements worked out for a possible "referendum", the best course would seem to be for senior officials of this Department, the Department of the Taoiseach and the Attorney General's office to get together quickly to clarify the legal and constitutional situation and to work out, in broad outline, a set of options which could be considered by the Government. I will be happy to arrange (or participate in) such discussions, if this course is considered appropriate.

B.D.
Brendan O'Donoghue
Secretary

27/2/96

Thank you for your information
BH

D/S.

*For Consideration
by A/S.*

REFERENDUM PROPOSAL

GENERAL

1. There is no legislation available for such a proposal; a simple Bill would presumably be enacted North and South to provide for a Poll on a single day.
2. The Poll would provide a focus, a date, an event that will fill something of a vacuum at the moment. Well meaning people of many persuasions could devote their energies in the directions of the Poll, rather than fulminating against various aspects of Government action or inaction.
3. The Poll would again starkly state the absence of any mandate for the IRA. This could have important long term effects and would lend further legitimacy to the Government's current tough stance.
4. It would also, because it would be an all-Ireland Poll conducted on a single day, provide certain resonances which would be comforting for Nationalists.
5. The precise formulation of the questions (see below) should be checked by professional question posers, such as Jack Jones of MRBI.

THE QUESTIONS

This is an area of great delicacy, but the following questions are possible; further thought needs to be given to alternatives.

1. Do you endorse the principle that violence has no role to play in the resolution of the political problems of Northern Ireland?
2. Do you endorse the principle that all-Party talks (to include Sinn Fein) should follow within one month of a restoration of the cessation of violence which obtained before the 9th February 1996?

Referendum

1. Speaking in the House of Commons on 12 February, John Hume proposed that a referendum be held in both parts of Ireland "by the end of this month." He said "There should be two questions. Question No. 1: "Do you totally and absolutely and unequivocally disapprove of violence for any purpose whatsoever on this island?" Question No. 2: "Do you want to see all parties brought to the table to be given [*recte: begin?*] a process of dialogue to create lasting stability?"
2. Writing in the **Belfast Telegraph** on 15 February, he said "I have suggested the holding of a referendum in which everyone, North and South, is asked two questions: Are you in favour of a total cessation of violence? Are you in favour of all-party talks?"
3. Paragraph 10 c of the Communiqué of 28 February said one purpose of the intensive consultations might be "to consider whether there might be advantage in holding a referendum in Northern Ireland with a parallel referendum held by the Irish Government in its own jurisdiction on the same day as in Northern Ireland. The purpose of such a referendum would be to mandate support for a process to create lasting stability, based on the repudiation of violence for any political purpose."

Some Considerations

4. It is clear that John Hume conceived of the referendum as (a) a two-pronged exercise, aimed both at the IRA (the question on violence) and at the unionists (the question on talks) and (b) an alternative to elections, not an add-on to them.
5. He subsequently indicated that a third question - which party do you want to represent you in all-party talks? - could perhaps be added to the first two.
6. The context in which Hume's proposal was set has altered since he first made it: there is to be an elective process, almost certainly involving an elected body of some kind, and a fixed date has been set for all-party negotiations. Much of the proposal's original purpose therefore seems to have been lost or overtaken by events.
7. At the beginning of the consultations, the SDLP declined to put forward a paper of their own. The SDLP have given us private indications that while they attach value to a two-question referendum, they would not regard it as an adequate counter-balance to a constituency-based electoral system or for an elected body - which according to some recent newspaper articles is exactly what the British Government may be thinking.
8. While the other parties have not opposed the proposal, there seems to be little positive enthusiasm for, and a degree of scepticism about, it. The only clear counter-proposal has been put by Robert McCartney, who has suggested an all-Ireland vote on whether the Irish Constitution should be amended to state explicitly that Irish unity cannot be achieved through the use of violence.
9. A strong all-Ireland vote against violence might have some value in putting additional pressure on the IRA. On the other hand, the IRA spokesman interviewed in **An Phoblacht** indicated the likely line to be taken in response, when he said a referendum

would be "a superfluous exercise with a foregone conclusion since everyone in Ireland wants peace. The disagreement is about what constitutes a just and lasting peace... [The].. right to the free exercise of sovereignty and national self-determination...cannot be diluted or legislated away."

10. There must also be some doubt about the likely turn-out in such a vote in the South - the failure of, say, 50% of the electorate to speak for peace, or dialogue, could be mischievously exploited, in a variety of directions.

Legislative/constitutional requirements in this jurisdiction

11. The preliminary advice offered to the Taoiseach's Department by the Department of the Environment and the Attorney-General was to the effect that holding what would be a plebiscite, or national opinion poll, rather than a referendum in the strict sense, would require the enactment of special legislation "to authorise the holding of the poll, to set out the question or questions to be put before the people, and to apply, as appropriate, provisions of the referendum legislation in relation to voting arrangements, the counting of the vote, ascertaining the result, etc." While there is no indication that this would be unachievable in the time available, it would presumably be a complex and expensive exercise.

Wording

12. It should be comparatively easy to draft agreed wording for the first question, on violence. The initial language used by John Hume is stronger and more unambiguous than that used in his **Belfast Telegraph** article. One similar formulation might be "**Do you oppose the use of violence to achieve any political purpose whatever in Ireland [North and South]?"**
13. The second question, while essential for balance, in Hume's scheme of things, is more problematic, in that it should evidently be as simple as possible, but at the same time to ask it in general terms is to beg questions regarding the nature and structure of talks, their purpose, participation in them (esp Sinn Féin), etc. Rather than ask whether people want all-party talks - which have, after all, been agreed - the emphasis might be on trying to mandate the negotiators to do their utmost to achieve agreement. One approach might be: "**Do you want all those taking part in the negotiations involving Northern Ireland parties and the British and Irish Governments which will begin on 10 June to make every effort to reach a balanced and comprehensive agreement which would achieve a new beginning in relationships within Northern Ireland, among the people of the island of Ireland, and between the people of these islands? "**

Rory Montgomery
14 March 1996

PST, PSS, S/S Ó hUiginn,
Councillors A-I, Section,
Messrs Teahon, Donlon,
Murray & Dalton,
Ambassadors London &
Washington, Joint Secretary



HOUSE OF COMMONS
LONDON SW1A 0AA

STATEMENT ON THE REFERENDUM PROPOSAL

Paragraph 10c of the Anglo-Irish Communique of 28 February states that the purpose of the multilateral consultations with the Northern Ireland parties commencing next Monday will be inter alia to consider a referendum in Northern Ireland in parallel with one in the south on the same day "to mandate support for a process to create lasting stability, based on the repudiation of violence for any political purpose."

The North Down MP in a statement says that this is in effect an all-Ireland plebiscite and can be regarded as the first such vote since 1918. This opportunity must not be missed of getting the Dublin Government, just this once, to put its money where its mouth is and prove that all parties there actually mean what they say regarding consent.

Mr McCartney said "This process is about taking risks for peace and doing what our Government failed previously to insist on in 1974 and 1985: a radical change to Articles 2 and 3 of the Irish Constitution to do away with the constitutional imperative to bring about Irish unity by any means possible."

"Some anodyne words in favour of peaceful resolution of disputes will not do if the pro-union people are obliged to go along with the perceived diminution of sovereignty such a referendum entails. I do not want a referendum that is declaratory but one which can actually change the atmosphere at the talks; one, which if endorsed by all the people on the island, would bind both governments and all the people to exclusively peaceful means".

"I will be pressing both our Government and that in Dublin, and the other parties to the talks, to prove their *bona fides* by agreeing to a wording that rejects Irish unity brought about by other than peaceful means; and for those words to go into the Irish Constitution."

"If passed by all the peoples of the island it would have unique constitutional and moral authority, and greatest of all, enable the Republican movement to renounce force without diminishing their political goal. Only by amending Articles 2 and 3 in this way, can the IRA accept that a greater authority than that which presently permits their use of force, has spoken."

"A unique opportunity for an amendment process that would not destabilise the south nor risk failure, now exists. A general set of remarks in favour of a cessation of violence would be valueless for the very reason that it both diminished Ulster's self determination while missing out on the only possible moment when the south could cheerfully dispense with its constitutional imperative."

29 February 1996

HOUSE OF COMMONS Tel 0171 - 219 6590 Fax 0171 - 219 0371
CONSTITUENCY OFFICE 10 Hamilton Road, Bangor BT20 4LE
Tel 01247 - 272994 Fax 01247 - 465037

OIFIG AN ARD-AIGHNE
(Office of the Attorney General)
GOVERNMENT BUILDINGS
UPPER MERRION STREET
DUBLIN 2

Telephone: 616944
Telex No: 90879
Fax No: 761806

Our Ref.

SR 25/36, 3915/96.

Your Ref

15 March, 1996.

The Secretary,
Department of the Environment,
Custom House,
Dublin 1.

ATTENTION: Peter Green

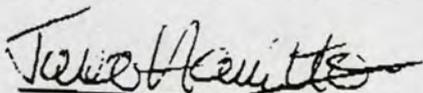
RE: Possible Referendum Bill, 1996.

I refer to my telephone conversation with Peter Green on 12 March and to a copy of a possible Referendum Bill which has been sent to me.

I have asked the Parliamentary Draftsman to have an informal look at this Bill.

It occurs to me that if this proposal goes ahead there a number of matters which would need to be looked at. The idea is to hold a Referendum in both parts of the island of Ireland. The immediate question arises whether this is to be one referendum or two referendums where the result will be aggregated. If it is to be one referendum with one returning officer for the whole island, does this have implications for the Bill? Secondly, it occurs to me that in either event it could be desirable that observers from the UK, or from Northern Ireland or international observers should have the sort of rights to visit polling stations here which election agents would normally have. This would, of course, be a matter for negotiation between ourselves and the UK authorities in relation to the arrangements for such a referendum.

You may wish to bring these comments to the attention of whatever officials are discussing this matter with their counterparts in the UK.


JAMES HAMILTON
Senior Legal Assistant
(P5L1403.962)