

Afterword: What is framed in the Framework Documents?

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Abstract

The texts published in February 1995 by the British and Irish governments, known as the Joint Framework Documents (although only one document was properly joint), are scrutinized in this article. The documents show the extent to which both governments have learned to manage and analyse the conflict as nationally driven. They also offer the most imaginative texts produced by liberal democratic sovereign governments negotiating the future of a bi-ethnically disputed region. They are consistent with the logic of what the author calls a 'double protection' model. The suggested institutional architecture will be of interest to many other regions of the world torn by ethno-national strife.

Keywords

Northern Ireland; Framework Documents; double protection; double insurance.

Two imaginative Framework Documents were published by the British and Irish governments in February 1995 just as this special issue of *Ethnic and Racial Studies* was being finalized for publication. Fortunately, the texts did not make any of our articles redundant but rather confirmed many of their broad lines of argument. This short article provides an exegesis of the key themes and arguments in both documents before concluding with a discussion of who can consider themselves to be beneficiaries of the Framework Documents and who, if any, can consider themselves to have been framed.

The first frame

A Framework for Accountable Government in Northern Ireland was published by the British government alone. It had its origins in the suspended inter-party and inter-governmental negotiations which had broken down in 1992 (O'Leary and McGarry 1993, ch. 10). The British government had promised to put forward proposals which would

attempt to address the 'internal' or 'North-North' aspects of the deadlocked talks, in short, proposals for the internal government of Northern Ireland. Those talks, which had excluded Sinn Féin and the loyalist parties, had been deadlocked *inter alia* on the subject of internal arrangements for governing Northern Ireland. The constitutional nationalists in the SDLP had sought a collective Presidency which would have included three representatives from the British and Irish governments and the European Union [EU] respectively, as well as three elected representatives from Northern Ireland. In contrast, the two major unionist parties, the UUP and the DUP, had opposed any external interference (other than from Britain) in the government of Northern Ireland. Although they were prepared to consider 'proportionality' in the working of any new devolved assembly, unionists were not prepared to contemplate full-blooded executive power-sharing.

The publication of the British government's proposals in February 1995, nearly three years after the talks had gone into suspended animation, were striking in two respects: the entirely new and non-violent context in which they were launched, and the willingness of the British government to make institutional proposals which are a radical departure from the conventional 'Westminster model'. *A Framework for Accountable Government in Northern Ireland* was recommended to the Northern parties as 'part of a comprehensive political settlement . . . which, while respecting the diversity of the people of Ireland would enable them to work together in all areas of common interest' (my emphasis). This language, used throughout, marked a new sensitivity on the part of British drafters to Irish nationalist and republican interests. That same sensitivity, of course, is construed by many unionists as a denial of their identity. While unionists are being protected by the British government that government has defined them as part of the people of Ireland, not of the people of Britain.

The overall message of the text is that while it is open to negotiation on everything affecting the internal government of Northern Ireland the British government will readily contemplate the maximum self-government for the region consistent with Northern Ireland remaining part of the Union as long as a local majority so wish.

Separation of powers

What is distinctive, and a major departure from the Westminster model of government, is the British agreement to encourage the establishment of novel political institutions, based on separating and balancing executive, legislative and judicial powers in ways which look positively continentally European or American. They certainly do not derive from English political conventions.

Executive. First, the creation of a collective Presidency is envisaged. Called a 'panel', this collective Presidency is to be separately elected by proportional representation (presumably the method used will be the single transferable vote [STV]). This panel is to have significant powers – including the right to veto proposals made by the proposed new Assembly, to play a role in the nomination of chairs of the Assembly, to refer legislative proposals to the courts, and to be involved in public finance.

This Presidency is to operate unanimously – which gives the power of veto to any of its members. It is to consist 'probably' of three people. 'Probably' means the number is open to negotiation. If confined to three people then on present electoral strengths it would consist of one member of the UUP, one from the SDLP and one from the DUP. The proposal is, evidently, a watering-down of the SDLP's original proposal for a collective Presidency by the simple device of excluding any role for external representatives. Nevertheless, unionists are unlikely to be very happy with a proposal which will give the guaranteed northern nationalist representative a flat veto. The smaller parties, such as Sinn Féin, Alliance and others, may also not be happy with the idea of a three-person collective Presidency – from which they would be excluded on their present electoral performances. If so, they have two options: to reject any idea of a collective executive or to recommend expanding the size of the Presidency. To prevent an expanded Presidency from being unworkable they could propose that a five or seven-person Presidency would not have to operate unanimously, but rather according to a weighted majority (say 4–1 or 5–2).

Assembly. A new ninety-member Assembly is also recommended. Why ninety? Answer: Northern Ireland is now to have eighteen seats in the Westminster parliament and the districts for the Assembly will be based on these seats, and each will return five members. So the equation is $18 \times 5 = 90$. Using the electoral system STV in five-member constituencies will produce very proportional outcomes, fair to small parties, like Sinn Féin and the Alliance. However, elsewhere in the text it is apparent that the precise electoral rules to be used for the Assembly are open to negotiation.

The Assembly will not be a restoration of the Stormont parliament in which simple majority rule prevailed (O'Leary and McGarry 1993, chs 3–4). Nor will it be a replica of the Sunningdale arrangements of 1973–74, contrary to much misinformed commentary. Provisions for 'weighted majorities' for controversial legislation will prevent simple majority dominance, as will the presidential veto. The Assembly will not be able to bring down the separately elected collective Presidency. Moreover, to operate the Assembly will not require any formal coalition arrangements between any of the parties. Instead, what is envisaged is a carve-up of committees and committee chairs in accord-

ance with party strengths. It is an attempt to create proportional representation institutions which provide strong incentives to politicians to work together but without obliging them formally to create grand coalitions.

The principal task of the committees is to oversee the work of the Northern Ireland departments (which presently would mean six major committees). However, at least three other committees are envisaged (general purposes, business, and community relations) and, in the long run, a police committee is also flagged. Assume there will be ten committees. How might a carve-up work? The nomination of all chairs has to be agreed by the Presidency and supported by a weighted majority in the Assembly, and has to be broadly proportional. Assume that party strengths after an election are as follows:

Party	Sinn Féin	SDLP	Alliance	UUP	DUP	Others
Seats	11	23	7	31	15	3

Below I illustrate the impact of two mechanical rules applied to this outcome. The first is that used in the European Parliament, the *d'Hondt*, while the second, usually fairer to small parties, is called *Sainte-Laguë*, and a variation of it is used in Scandinavian democracies. (Rules like these are necessary because human beings do not come in fractions and we therefore need procedures to achieve rough proportionality.)

Rule 1: *d'Hondt*. Committee chairs are allocated to the parties in the order of the numbers in brackets. The total number of chairs going to each party is indicated in italics.

divisors	Sinn Fein	SDLP	Alliance	UUP	DUP	Others
1	11(6)	23(2)	7(10)	31(1)	15(4)	3
2	5.5	11.5(5)		15.5(4)	7.5(9)	
3		7.7(8)		10.3(7)		
TOTAL	<i>1</i>	<i>3</i>	<i>1</i>	<i>3</i>	<i>2</i>	<i>0</i>

Rule 2: *Sainte-Laguë*. Under this rule committee chairs are also allocated to the parties in the order of the numbers in brackets. The total number of chairs going to each party is in italics.

divisors	Sinn Fein	SDLP	Alliance	UUP	DUP	Others
1	11(4)	23(2)	7(7)	31(1)	15(3)	3
3	3.75	7.7(6)	1.4	10.3(5)	5(9)	
5		4.2(10)		6.2(8)	3	
TOTAL	<i>1</i>	<i>3</i>	<i>1</i>	<i>3</i>	<i>2</i>	<i>0</i>

Under both rules the UUP and DUP would not get an overall majority

of chairs. The major difference under the second rule is that Sinn Féin and the Alliance Party get the right to choose their chair higher up the allocation. In general, the second rule is best for small parties, so that the Alliance, Sinn Féin (and even the DUP) should prefer it to *d'Hondt* (which should be favoured by the two largest parties). If the parties do get into negotiations about which mechanical rules should be used to apply proportionality principles we can therefore anticipate interesting alliances.

Either of these mechanical rules produces a reasonable and workable carve-up – at least at first glance. The other checks and balances which are intended to operate within the Assembly and between the Assembly and the collective Presidency are also designed to protect the nationalist minority, and to accept unionists' insistence on proportionality without formal and artificial coalitions. In short, through 'splitting the difference' between the negotiating positions taken by the SDLP and the UUP-DUP in the last talks the British government has produced a discussible and workable proposal.

Judiciary. The biggest hole in the proposed internal arrangements is that no distinct proposals are made for the judiciary or the Northern Ireland Supreme Court. Negotiations and proposals are invited on a Bill of Rights, including individual and collective rights, but the British government declares that the protection of rights will be 'in accord with the constitutional arrangements of the United Kingdom'. Frankly, that is not good enough, and perhaps suggests a fear within the British government that a Bill of Rights for Northern Ireland might have a precedent-setting effect for Britain, as well as a fear that a Bill of Rights might outlaw or restrain the government's present emergency laws. Northern nationalists are certain to propose something better here, including proposals for appointments to judicial positions in Northern Ireland, and the explicit entrenchment of rights – the latter idea, as we shall see, appears to be proposed in the Joint Framework Document.

Other Internal Proposals

The British government is committed by virtue of the Joint Framework Document to 'rigorous impartiality' in its conduct of government in Northern Ireland and to ensuring that there will be 'parity of esteem' between the two national traditions. In this respect it is important that the RUC is not explicitly named in either document, and that discussions about winning widespread identification with a police service are left for the Inter-Governmental Conference to determine. We can safely assume that the *kibosh* (Gaelic for 'the cap of death') has been put on the name of the RUC if not on its structure.

Just as importantly the British government has publicly committed

itself to the idea that there can be no purely internal settlement for Northern Ireland. Three strands, as in the previous 1991–92 talks, must be addressed in a comprehensive settlement: North-North, North-South, and East-West relations. Previously it was understood that these three strands must be addressed separately but simultaneously, according to the formula that 'nothing is agreed until everything is agreed'. But sensitive readers have noted that the British government's phrasing on the three strands is now ambiguous: 'agreement on one part of the process would *in practice* depend on agreement on the others' (my emphasis). 'In practice' is not the same as 'in principle' and we shall have to see what is the practical significance, if any, of this choice of words.

A new framework for agreement

The second document, *A New Framework for Agreement*, packaged with the first as *Frameworks for the Future* in the British version of the texts, also had its origins in the suspended 1991–92 talks. However, unlike the first document, it was the responsibility of, and drawn up by, both governments. The drafters of the text address North-South (all Ireland) relations and East-West (British-Irish or UK-Republic) relations. Their joint efforts are a carefully drafted essay in statecraft. More eloquent and expansive in its arguments than the British document on internal arrangements, the second text delicately integrates two processes: that of the suspended three-strand talks and that of peacemaking foreshadowed in the Joint Declaration for Peace (para. 70).

The proposals are not 'a rigid blueprint' but we may infer that they are a flexible blueprint. They are 'strongly' commended to the Northern Irish political parties as a basis for negotiation (paras 8 and 58) and we must therefore assume that they will be jointly supported (and commended) by the two governments as and when such negotiations begin. Three functions of the document merit extensive consideration: first, its implicit political theory; secondly, its sketch of future North-South and East-West institutions; and finally, its problems and silences.

Political theory of double protection

The two governments stress that consent and agreement are the operative values, and that democratic methods are the means behind their proposals. The principle of self-determination is re-endorsed using the words of the Joint Declaration for Peace:

The British government recognise that it is for the people of Ireland

alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish; the Irish Government accept that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with and subject to the consent of a majority of the people of Northern Ireland (para 18).

Here the two governments endorse Irish self-determination but affirm that its exercise is to be based on the will of two majorities, and that therefore a majority in Northern Ireland will decide whether to remain within the United Kingdom or to join the Republic of Ireland. In short, majorities are to be respected.

Each government proposes to change its respective constitutional legislation (the UK's Government of Ireland Act of 1920 (as amended) and Articles 2 and 3 of the Irish Constitution) to reflect this agreement, but will do so only as part of a broader settlement. That broader settlement is, however, intended to block majoritarianism and to protect minorities in three ways:

1. First, the proposed internal arrangements discussed above, provide northern nationalists with the capacity to block majority dominance – either through the veto powers built in to the proposed collective Presidency, or through the weighted majority provisions for the working of the Assembly.
2. Secondly, the establishment of a Charter or Covenant of Rights in both parts of Ireland, proposed at the end of the document, would provide what I have called in the introductory article of this issue a form of 'double protection'. Entrenching fundamental human rights and collective (national, religious and linguistic) rights which equally protect the current minority, northern nationalists, and any future minority, such as unionists in a unified Ireland, would protect both national traditions from majoritarian tyranny.
3. Thirdly, the proposed North-South and East-West institutions are designed to satisfy the current minority's aspirations by establishing a significant Irish dimension alongside the maintenance of the Union, and to give them over-arching protection through a revived Inter-Governmental Conference.

North-South institutions or the body with no name

A new North-South 'body' is proposed. The two governments deliberately avoided naming it 'A Council of Ireland' or anything else which might antagonize unionists. It is envisaged that it would operate by

agreement between representatives from Northern Ireland and the Republic, and would have a range of functions bilaterally overseen by committee chairs in the Northern Ireland Assembly and by Ministers from Dáil Éireann. The body could discharge or oversee executive, harmonizing or consultative functions which the two governments would initially delegate, but which could be supplemented by agreement between the North and the South, and the body would have the right to propose its own expansion.

The two governments fall short of specifying exactly what functions they have in mind, but clearly they anticipate the delegation of European Union matters, especially those of a 'cross-border or island-wide' nature (para. 26), and in the text they 'illustrate' virtually every conceivable aspect of public policy – apart from foreign affairs and security. As regards the functions devolved to Northern Ireland, the British government declares that it has 'no limits' of its own to impose on the nature of the functions which could be delegated to a North-South body – which clearly leaves it open to the unionists to propose whatever limits they deem fit. However, the North-South body is to be established and maintained by the two sovereign parliaments (Westminster and the Oireachtas), not by the Northern Irish assembly.

So what is the nature of the North-South body? It might be simultaneously three things, rather like the mystery of the Christian Trinity:

1. An embryonic all-Ireland confederal-federal level of government (as nationalists hope);
2. A set of inter-governmental arrangements between sovereign states dedicated to rational functional cooperation between neighbours (an idea which most unionists can accept); and
3. An embryonic Euro-federal level of government within and across the island.

As with the Trinity, the North-South body may have the advantage that believers can choose which of the three aspects they most wish to worship. However, profound disputes are likely to arise in negotiations as to which of the three aspects is to be predominant.

East-West structures

Under a new agreement the two governments propose that the standing Inter-Governmental Conference established by the Anglo-Irish Agreement of 1985 will be maintained, though it will not discuss matters devolved to Northern Ireland – except where the continuing responsibilities of the Secretary of State for Northern Ireland are involved (paras 44–5). This passage may be significant because judicial matters, which are not technically within the Secretary of State's brief, may not be open to the Inter-Governmental Conference, though clearly

all aspects of security will (at least as long as this function is not devolved).

The Inter-Governmental Conference will 'promote, support and underwrite' the anticipated broader agreement. If it is not redundant the verb to underwrite must mean to 'sign and accept liability for'. What is clear is that the two governments, as with the existing conference, will seek to arrive at a common position, but where that is not possible they will agree a procedure 'to resolve the differences between them' (para. 46). This passage appears to indicate *either* an agreement to establish a procedure within the Conference to resolve differences *or*, more strikingly, a British willingness to accept mediation and even arbitration if it is in dispute with the Irish government. Whichever it is, it signals an important change in the status quo: it goes beyond the commitment to make determined efforts to resolve differences entrenched in the Anglo-Irish Agreement, and looks very close to shared sovereignty.

Paragraph 47 of the text is the one which has occasioned most unionist anxiety. It provides a default mechanism: if the internal arrangements in the North ceased to operate the British government 'would' implement the commitment 'to promote co-operation at all levels' across the island which it made in the Joint Declaration for Peace; and it would ensure that the cooperation developed in the North-South body would be preserved. The relevant text has at least two meanings. It may simply be proposing an agreed default mechanism which unionists are invited to accept or to negotiate away. It may, however, additionally spell a latent threat to unionists: the Joint Declaration for Peace, which preceded and facilitated the IRA's cessation of violence, committed the British government to develop North-South institutions come what may, and since that is so, unionists are being told that they might as well start negotiating about them in their own interests or all-Ireland political architecture will be built which they cannot destroy.

Ambiguities, problematic silences and the hereafter

The two documents contain enormous food for political thought and indigestion, but they are the most far-reaching and intelligent texts yet produced by the two governments, and one must be hopeful that they will lead to fruitful negotiations. However, this brief analysis of the texts must terminate by pointing to three awkward silences.

First, the two texts are vague, and arguably inconsistent, in their commitments on rights, law and the judiciary. The internal northern institutions and the Inter-Governmental Conference would appear to have no formal capacity to consider judicial appointments, or even the working of the judicial system. This will not do. Any significant re-

invention of Northern Ireland, especially one built around the idea of providing identical protection or rights, North and South, requires explicit proposals to protect the same human and collective rights, and arguably to establish the same final court or courts of appeal (two potential European avenues already exist). In this way effective third-party intervention would be institutionalized and a fully operative model of double protection provided.

Secondly, apart from the ultimate prospect of referenda and constitutional legislation in the two sovereign parliaments, the two texts are silent about methods for agreeing the proposed agreement. Must we assume that the reference to the March 1991 terms of reference which preceded the 1991-92 talks re-commits the two governments to doing nothing until everything is agreed? If so, every party, including Sinn Féin (when it is eventually brought to the negotiating table), will have a veto, and negotiations will move at the pace of the slowest negotiator. That is a recipe for stagnation. The alternative to consensus-building is proceeding on the basis of 'sufficient agreement', as the South African constitutional negotiators did, but who is to decide when there is sufficient agreement?

Finally, and understandably, the texts are silent about what happens if there are no negotiations, or no negotiations which produce an agreement which can be sold in two referenda. However, we can make reasonable inferences from this silence. If there is no resumption of war there will also be no return to the status quo ante. What would emerge instead would be 'direct rule with green guidance'; a British commitment to 'rigorous impartiality' and 'parity of esteem' in the conduct of public policy; renewed inter-governmental cooperation (including mediation procedures to resolve differences between Dublin and London); and the incorporation of elected northern nationalists into all quasi-governmental organizations, including North-South quasi-governmental organizations. Such direct rule with green guidance would continue until a new set of cross-community negotiations delivered a balanced constitutional settlement, or, alternatively, until demographic and electoral changes established a united Ireland.

Cui bono?

Is anybody framed by the Framework Documents? Some have felt that they were, while others have condemned it as irrelevant. The UUP leader, James Molyneaux, had deluded himself into believing that the British government would not go so far towards proposing institutions to appease Irish nationalists, north or south, and has, in consequence, jeopardized his leadership. The DUP leader, Ian Paisley, has felt vindicated: the British government is, in his view, organizing a surrender to the IRA. Hard-line republicans, by contrast, claimed that the IRA's

cease-fire had delivered nothing, not even a guarantee of Sinn Féin's presence at the negotiating tables. The SDLP and the Alliance Party are exceptional in being willing to negotiate on the terms of the Documents. Thus far, the two major unionist parties and Sinn Féin are not. They say they want to negotiate, but with their own agendas. This, of course, sounds rather familiar.

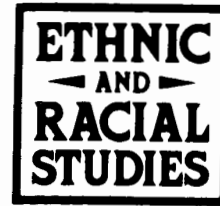
The Northern Irish public has been muted and nuanced in its response. So, significantly, have been the paramilitaries. Unprecedented numbers of the public have asked for and read the texts in detail. Softer voices can be heard emanating from people with reputations for being uncompromising republican or loyalists rocks. No one can say, of course, whether the texts will turn a cold peace into a resolved conflict, but no one doubts that the politics of Northern Ireland will never be the same again. At worst there is new and calmer stalemate. At best, there is hope for something rather extraordinary. For the chroniclers and analysts of this bleak conflict it will be an unexpected bonus if the Framework Documents prove that apparently zero-sum ethno-national conflicts can be converted to positive-sum games through, amongst other things, sensitive institutional design. In a good film all the characters are properly in the frame: so it is with good constitutions and good negotiating texts. Some of the pain caused in the last quarter of a century will certainly be more bearable if, as a result of these texts, the construction of an agreed Ireland becomes a benign model of conflict-resolution for others.

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