

An Irish peace with honour

Brendan O'Leary
says that Ulster's
two communities
can be protected
without having to
concede shared
sovereignty

AS THE excitement over the IRA ceasefire announcement subsides, the British and Irish governments must immerse themselves in the task of formulating a framework document for discussion by Northern Ireland's political parties. The importance of the document can hardly be overstated; yet the obstacles it must negotiate are huge. Here, based on my forthcoming book, is a summary of the framework, underpinned by a system of 'double protection' for the two northern Irish communities.

Simple majority consent on sovereignty

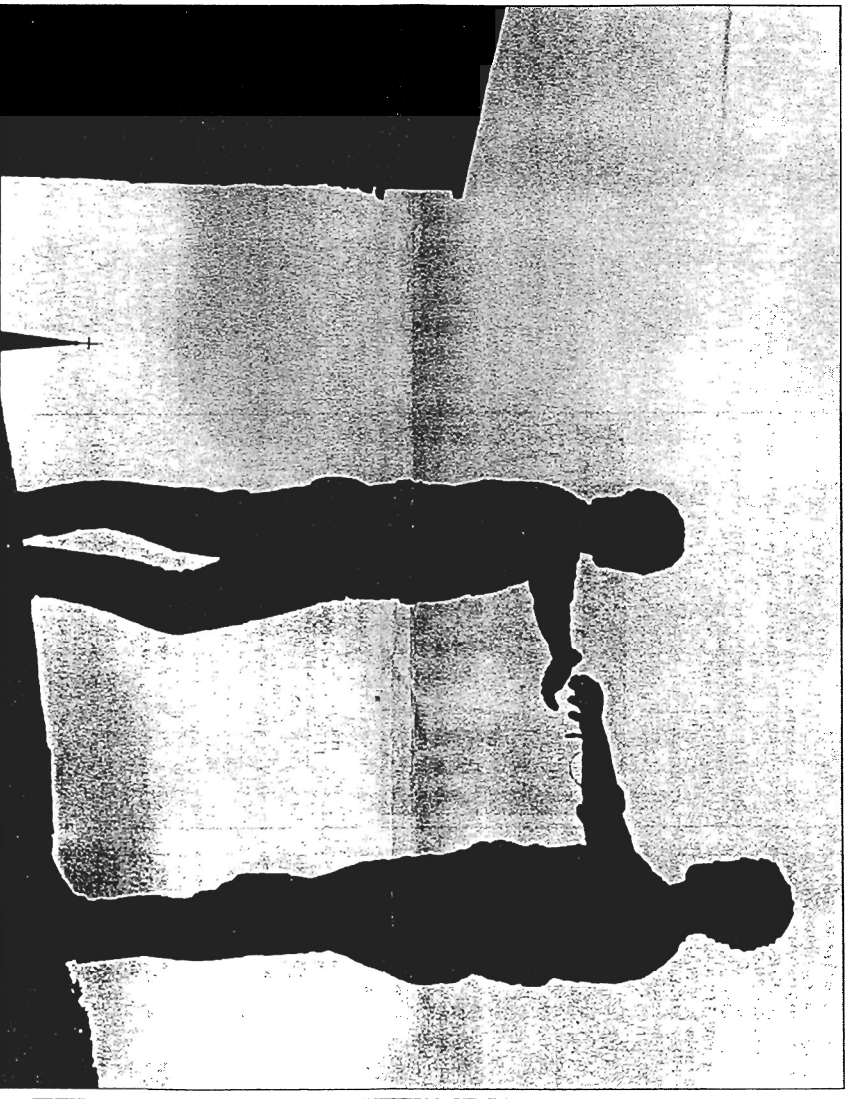
Any feasible framework for resolving conflict has to be consistent with the Anglo-Irish Agreement and the Joint Declaration for Peace. It must therefore guarantee that Northern Ireland remains within the United Kingdom as long as a majority of its population so wishes, and it must firmly establish that the creation of a united Ireland will occur if and when a majority in Northern Ireland so desires. This principle offers Unionists their present guarantee while assuring nationalists that they can achieve their long-term goal constitutionally.

This requirement can be met by the two governments agreeing that Section 75 of the Government of Ireland Act 1920 should be modified so that Westminster's sovereignty over Northern Ireland is clearly conditional upon the consent of a majority of the people of Northern Ireland to remain within the UK. It will also need to be agreed that the Irish government will organise a referendum proposing modification of Articles 2 and 3 of its Constitution to make the possibility of a unified Ireland conditional upon the consent of a majority in Northern Ireland. However, any Irish government that wishes to carry such a referendum, and to reassure northern nationalists that Dublin is not about to wash its hands of its responsibilities, must ensure that the following four changes will be guaranteed by the British government.

Proportionality and power-sharing

The two governments must agree that any devolved assembly, to be elected for a fixed term and must be based upon proportional representation. Proportionality rules must be used to elect the assembly (single transferable vote is the obvious system); to establish its committee structures and chairs (according to a rule that is fair to small parties too); and to elect the executive.

Proportionality rules alone will not be enough to ensure the consent of northern nationalists to any new constitutional order because, for the present at least, that would still mean simple majority rule by Unionists — one of the major political causes of conflict in the Stormont years.



Londonerry's 'Peace Statute': it is possible to create institutional protection without violating the principle of consent. Photograph: Brian Harris

Therefore power-sharing will also be required, though it need not apply to everything. The assembly could be prevented from bringing down the executive. It elects — as is the practice in Switzerland, which has a political system built on power-sharing. The executive could be required to proceed by consensus in specified areas of policy; and committee chairs, who would come from different parties, could have limited policy-initiating autonomy.

The two governments must agree that the more power devolved to Northern Ireland the better, including the management of finances and security. At the limit the Northern Ireland Office and the post of Secretary of State for Northern Ireland should be abolished and their functions carried out by the new executive and committee chairs — the Foreign Secretary, the Home Secretary and the Attorney-General could carry out British responsibilities in the inter-governmental conference.

Parity of esteem and settlement

Any new settlement which is consistent with the Joint Declaration for Peace requires the two major national communities in Northern Ireland to enjoy full parity of esteem and treatment. To this end a Bill of Rights will be necessary to protect collective cultural rights as well as individual human rights. This Bill of Rights must be interpreted by a Northern Ireland Supreme Court, the decisions of which may in turn be adjudicated upon at the European Court in Strasbourg.

The two governments must spell out the implications of equality and parity of esteem for the two major traditions. In the legal and security spheres these will entail important symbolic changes: for example, a Northern Ireland Police Service rather than the Royal

Ulster Constabulary, and a Northern Ireland Judicial Commission, rather than Crown Courts. They must also entail changes in the curriculum and composition of the police and senior judiciary. Economically they involve a renewed commitment to fair employment, including affirmative action where necessary, and the testing of all public policy by its implications for equality and parity of esteem.

Culturally they involve a continuing commitment to equal provision for all kinds of primary and secondary education (including both integrated and denominational schools). The cultural institutions of both national traditions must also be equally protected or equally unused — so where it is fitting, both or no national anthems should be played, and where it is fitting, both the British monarch and the Irish president should be invited to ceremonial functions.

British, Irish and European dimensions

It should be made plain that institutional British and Irish dimensions will survive any future transformation in the status of Northern Ireland. The inter-governmental conference established by the Anglo-Irish Agreement must remain, albeit with refined scope and functions. The inter-parliamentary tier of the Agreement must be expanded to include Northern Ireland Assembly members as well as representatives from Westminster and Dáil Éireann.

The most urgent priority here is to establish Irish-England cross-border co-operation and British-Irish co-operation, especially in policy functions affected by the European Union. A rolling series of cross-border agencies should be set up, in some cases modelled on the Euro experience; eg, commissioners should be appointed by their respective jurisdictions for fixed periods to carry out technocratic tasks.

In some cases these commissions should be UK-Republic bodies; in others, Northern Irish-Republic agencies will make more sense.

Double protection and double insurance

Finally, the two governments must establish mechanisms for protecting any agreed constitutional settlement. The most obvious step here is to give the inter-governmental conference power to safeguard and guarantee the constitutional settlement, so each community will be reassured if its respective nation-state. Each government in the inter-governmental conference should be empowered, after legal remedies have been exhausted, with the right to veto any law or measure of public policy in Northern Ireland which it deems fundamentally to threaten national, religious or human rights.

Through this mechanism, northern nationalists can be confident that there will be no return to the Stormont nightmare. It will be observed by some that Unionists will see this as an intrusion by the Irish government in the affairs of Northern Ireland and therefore tantamount to joint sovereignty. The answer to this objection is threefold: first, this double protection mechanism does not positively involve either the British or Irish states in directly governing Northern Ireland, but provides a check against a possible internal abuse of power within Northern Ireland; second, this mechanism must apply to both communities (eg protecting Unionists against a perverse legal verdict), and, finally, this double protection mechanism, to be balanced, must be institutionalised so that it would survive any change in the sovereignty of Northern Ireland. In short, the British government must have the same role in protecting the British community

if and when Northern Ireland became part of a federal Ireland as that which the Irish government should have now with respect to Northern nationalists as long as Northern Ireland remains part of the United Kingdom.

The double protection mechanism might be further entrenched. It could be constitutionally established that whatever arrangements were now agreed for the governance of Northern Ireland would continue to apply if and when Northern Ireland voted to join a federal Ireland. The entire constitutional package would be transferable, apart from the fact that the two governmental protectors of the constitutional arrangements would change places (one would now be sovereign, whereas the other would be a background protector of its national community).

These five ideas are consistent with the thinking that delivered the Anglo-Irish Agreement and the Joint Declaration for Peace. They offer a constructive way forward. While not representing shared sovereignty, they achieve the same practical consequence — permanent institutional protections for both national communities — and they can do so without violating the principle of consent. They improve upon the status quo for northern nationalists while reassuring Unionists that, if and when they become a minority, they will receive the same protections to which northern nationalists should now be entitled.

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Explaining Northern Ireland by John McCarty and Brendan O'Leary, will be published by Basil Blackwell later this year.