

# The Framework Document

# A carefully drafted essay in statecraft

### Last week Dr Brendan O'Leary examined the British government's proposals for new Northern structures contained in the Framework Document. This week he looks at the 'flexible blueprint' of the joint Irish-British proposals

THE JOINT text of the British and Irish Governments for Agreement, a carefully drafted essay in negotiation and compromise in arguments then the internal arrangements, it judiciously integrates two processes: that of the

revised three strand talks, initiated in 1991 and ended in 1992, and that of remaining, formalised in the Joint Declaration of 1985 (para 1).

The proposals are not a rigid blueprint, but we may think that they are a flexible blueprint. They are strongly commended of the political parties of the North as a basis for legislation (paras 8 & 58), and we must therefore assume that they will be implemented by the two governments as and when such negotiations begin. Three features of the

document merit extensive consideration: first, its political theory; secondly, its structure and the Northern 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 and peaceful methods are the means of implementation. The principle of self-determination is re-emphasised using the words of the Joint Declaration:

"The British government recognises that it is for the people of Ireland alone, by agreement between the two parts respectively and without external imposition, to exercise their right to determine their future on the basis of self-determination freely and concurrently with the people of Northern Ireland, North and South, to bring about a united



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what functions they have in mind, but clearly they anticipate the delegation of responsibility to the Northern institutions. The text they illustrate, virtually every conceivable aspect of public policy apart from foreign affairs and security.

Within 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 unionists to propose whatever limits they deem fit. However, the North-South body is to be established and maintained by the two parliaments (O'Leary and McGarry, not by the Northern Assembly).

So what is the nature of the North-South body? It might be simultaneously three things, rather like the mystery of the Trinity: (1) an embryonic federal level of government across the island (as nationalists hope); (11) a set of inter-governmental arrangements between sovereign states dedicated to rational co-operation (which many unionists can accept); and (111) an embryonic European level of government across the island.

the Presidency or through the requirements for weighted majorities in the Assembly, the establishment of a Charter of Governance of Rights in both parts of Ireland would provide what I call 'double protection'. Entrenching fundamental human rights and collective rights which equally protect the current minority, northern nationalists, and any future minority, such as unionists in a unified Ireland, will protect both traditions from nationalist tyranny.

As with the Trinity it has the advantage that believers can choose which of the three aspects they most wish to worship. However, profound disputes are likely to arise about which of the three aspects is or should be dominant.

Secondly, apart from the ultimate prospect of referendums and constitutional legislation in the two parliaments, the two texts are silent about the methods for agreeing the proposed agreement. Must we assume that the 1991 talks remains the two governments to nothing being agreed? Or, as the party has a veto and other negotiations will move at the pace of the slowest negotiator.

First, the proposed interim arrangements, discussed in the northern nationalist with the capacity to veto either through the collec-

Under a new agreement the standing Inter-Governmental Conference established by the Anglo-Irish Agreement of 1985 will be maintained through it. It will not discuss matters of internal concern in Ireland — except those of the continuing responsibilities of the Secretary of State for Northern Ireland as involved (paras 44-45). This passage may be significant because judicial matters, which are not technically within the Secretary of State's brief, may not be open to Inter-Governmental Conference, though clearly all aspects of security will (at least until this function is devolved).

The two documents contain numerous good for political negotiation. They are the most far-reaching and intelligent texts yet produced by the two governments and let us hope they lead to fruitful negotiations. However, I will finish by pointing to three awkward silences.

### HOW MIGHT A CARVE UP WORK?

Brendan O'Leary apologises for sending the wrong calculations in his article last week - he can only plead basic of composition for the errors. The table illustrating the different rule should have read as follows, with the numbers in brackets representing chairs in the order in which they should be allocated:

Rule 1, D'Hondt:					
	SDLP	Alliance	UUP	DUP	Others
1	11(6)	23(2)	31(1)	15(4)	3
2	5.5	77(6)	15.5(2)	7.5(9)	
3	7.7(8)		10.3(7)		
TOTAL:	3	1	3	2	0

  

Rule 2, Sainte-Lague:					
	SDLP	Alliance	UUP	DUP	Others
1	11(4)	7(7)	31(1)	15(3)	3
2	3.75		10.3(5)	5(9)	
3	4.7(10)		6.2(8)		
TOTAL:	3	1	3	2	1

North-South institutions are designed to satisfy the current minority's aspirations by establishing a significant Irish dimension, and to give them overarching protection through the Inter-Governmental Conference.

North-South Institutions:

As we all know a new North-South body is proposed. It would operate by agreement between Northern and Southern representatives, and would have

Fortunately, the corrected tables make the point I wanted to make much better: Sinn Féin, the DUP and the Alliance Party would do better out of the Sainte-Lague rule. That is why would get different rule, the rule used in European Parliament

committed the British government to developing North-South institutions some what, may, so unionists might as well start negotiating in their own interests.

### Problematic Silences

The two documents contain numerous good for political negotiation. They are the most far-reaching and intelligent texts yet produced by the two governments and let us hope they lead to fruitful negotiations. However, I will finish 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 have no formal capacity to consider judicial appointments, or even the workings of the judicial system. Any significant reinvigoration of the judiciary would have to be done through the identical protections. North and South requires explicit proposals to protect the same human and collective rights, and arguably, a European Court of Courts as their final site (S) of appeal. In this way effective third-party intervention would be institutionalised.

Finally, and understandably, the texts are silent about what happens if there are no negotiations, and no agreement stemming from such negotiations. However, we can make two reasonable inferences. 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, and a form of consent, in the context of inter-governmental co-operation (including mediation and arbitration procedures) to resolve differences between London and Dublin) and the incorporation of elected northern nationalists into all quinquages, including North-South quinquages.

Direct rule with green guidance would do little to build a new set of cross-community negotiations delivered a balanced constitutional settlement, or alternately, until demographic and electoral changes delivered a united Ireland