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THE ESTABLISHMENT OF THE NORTH/SOUTH MINISTERIAL COUNCIL AND THE NORTH-SOUTH BODIES

Tim O’Connor
THE ESTABLISHMENT OF THE NORTH/SOUTH MINISTERIAL COUNCIL AND THE NORTH-SOUTH BODIES

Tim O’Connor

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This paper sets out the background to the new North-South institutional architecture contained in the Belfast/Good Friday Agreement—the negotiations themselves and the outcome. Given that much of the detail remained to be further worked out after Good Friday, it recounts the talks held in the Autumn of 1998 and in early 1999, culminating in the agreement between the two governments establishing the implementation bodies, signed in Dublin Castle on 8 March 1999. The paper outlines the main elements of that agreement, including the nature of the functions and structure of each of the implementation bodies, together with the common arrangements that were to apply all of them.

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Tim O’Connor is Joint Secretary of the North/South Ministerial Council, Armagh. A graduate of St Patrick’s College Maynooth, he served in the Irish Department of Foreign Affairs, including postings in Bonn and Washington, and terms as Director of the Africa Section, Director of Human Rights Unit, and Deputy Secretary General of the Forum for Peace and Reconciliation (1994-96). He was part of the Irish Government delegation in the negotiations which led to the Good Friday Agreement.
INTRODUCTION

The Taoiseach has recently made clear the importance and priority the Irish Government attaches to North-South cooperation and to the work of the North-South bodies (Ahern, B, 2005). He himself played a strongly instrumental role in the negotiation of the Belfast/Good Friday Agreement, which provides the framework basis for the bodies, and subsequently also in the Agreement between the British and Irish governments of March 1999 establishing the bodies.

My job in this paper is to outline in a little more detail what those agreements contain in terms of the North/South Ministerial Council and the bodies and I begin by sketching out my own locus in all of this. Prior to becoming Southern Joint Secretary of the NSMC on its inception on 2 December 1999, I was part of the Irish Government back-room team working in support of the Taoiseach and the Irish Government ministerial team involved in the talks which led to the Belfast/Good Friday Agreement of 10 April 1998 and the Agreement establishing the implementation bodies of 8 March 1999.

Given the need to respect the integrity of the negotiations, it would not be appropriate for me to speak in detail about how the various outcomes came to be, and I will be confining myself to broad outline terms in that regard. Within those constraints, I do hope that that outline will be of some value and interest to those seeking a better understanding of the North-South arrangements that emerged from these agreements. I also acknowledge that the perspective I am giving is that of the Irish Government position; no doubt others involved from other delegations might have a different recall or have a different perception of the same issue. No doubt the principles of academic openness will allow for a broad canvas in that regard.

Finally, in terms of my opening comments, I will take the story to the coming into force of the North-South institutions on 2 December 1999 and my colleague Dr Peter Smyth will discuss later developments (see Smyth, 2005).

THE HISTORICAL AND POLITICAL CONTEXT

Like many elements of Irish history, picking the point at where you begin the story of North-South relations on the island is in itself a tricky enough proposition. Do you measure it in hundreds of years or in decades? I will opt for a relatively recent timeline—essentially the Autumn of 1997, when full-scale negotiations began in Castle Buildings at Stormont on what was to lead some months later to the signing of the
Good Friday Agreement. But before doing that, we do need to give ourselves a very quick reminder of the background to the issue of North-South relations during the years since partition.

I heard John Coakley and his colleague, Dr Liam O'Dowd, recently describe the period 1925-65 as the Cold War years in terms of relations between the two parts of the island (Coakley and O'Dowd, 2004). I thought that that was a graphic phrase and a timely reminder of the reality from which we have come. There was brief thaw in the mid-1960s with the O'Neill-Lemass dialogue, but things quickly iced over again some years later with the onset of the Troubles.

The first serious attempt to negotiate an end to the Troubles came in the Autumn of 1973 with the Sunningdale talks. Although they led to agreement initially and the setting up of the power-sharing executive in January 1974, by May 1974 all had collapsed again. It is as well to remind ourselves that a large part of the reason for the collapse of Sunningdale was disagreement on the North-South axis and the failure to be able implement the Council of Ireland element of the agreement.

In the ensuing years, when under the direction of the two governments, various attempts were made to reach a new agreement, the North-South dimension was always a central—and difficult—item of the negotiations.

In November 1985, when agreement was reached by the two governments without the involvement of the parties, again North-South relations received prominence and in the shape of the new Anglo-Irish Intergovernmental Conference (AIIGC). Under the umbrella of the AIIGC, ministers from the South and the Northern Ireland Office could discuss cross-border cooperation on issues such as agriculture, tourism and so on. No new cross border bodies were established, however, along the lines of what was to emerge out of the Good Friday Agreement.

We may fast-forward to the 1994 ceasefires, which were followed by a process aimed at getting new negotiations underway between the governments and the parties. By Autumn of 1997, conditions were set to enable broad-based negotiations to get underway, under the chairmanship of Senator George Mitchell and his co-chairs, Prime Minister Holkeri and General de Chastelain.

I joined the Irish Government talks delegation at that time and worked in the backroom team under the direction of officials such as Dermot Gallagher, Paddy Teahan, Tim Dalton and Martin Mansergh in support of the Taoiseach, the Minister for Foreign Affairs, David Andrews, the Minister for Justice John O'Donoghue, and Minister of State Liz O'Donnell, who constituted the Irish ministerial team.

THE TALKS: THE NORTH-SOUTH DIMENSION

If you checked any newspaper analysis in the Autumn of 1997 as to what the major sticking points facing the negotiators in Castle Buildings were, you would find North-South cooperation right up there with consent, power-sharing, arms, policing, prisoners and so on. The reality is that eight years later this is no longer the case.
and, while sensitivities and complexities remain in certain respects, the concept of North-South cooperation to mutual benefit has attracted increasing consensus across the board.

I hope that it can be made clear why this is so. But without question, a big part of the reason had to do with the terms and architecture for a new beginning to North-South relations that were agreed on Good Friday 1998—and, of course, how those terms and that architecture have been implemented since then.

I will say a brief word about how the talks were structured. A broad agenda was agreed by the chairman, Senator George Mitchell, and his fellow-chairs with the governments and the parties. The talks process then worked its way systematically through this agenda.

The three core sets of relationships—within Northern Ireland, between North and South on the island, and between Ireland and Britain—were covered in three strands. Strand Two related to North-South relations. All of the participants submitted written papers on their positions on Strand Two, as they did on all other issues. These were then debated in plenary session. There were also bilateral and trilateral sessions involving one or both governments with a particular party.

At the turn of the 1998, the talks moved from Belfast and also included sessions in London (Lancaster House) and in Dublin (Dublin Castle). The majority of sessions were, however, held in Castle Buildings, Stormont. There, in March 1998, George Mitchell announced that he was setting a deadline of Easter within which to draw the talks to a conclusion. This would mean them finishing on Thursday, 9 April. In the event, we were to miss the deadline by one day. In those final weeks, the pace and intensity of negotiations on all of the issues quickened further. In regard to Strand Two, the issues were boiling down to a number of core questions:

- **Should there be an institutional representation of the relationship between the two parts of the island?**

  On the part of the Irish Government and the nationalist parties, the answer was yes, on both practical and symbolic grounds. Cooperation between the two parts of the island made eminent practical sense, and to be effective there had be some institutional structure by which it could be implemented. Equally, however, there was a need at a symbolic level to give institutional expression to the connection between the two parts of the island. This view was also shared by the Alliance Party. On the Unionist side, the case would have been argued that while practical cooperation to mutual benefit was acceptable, this did not require new institutions, but could best be done on an ad-hoc basis between Belfast and Dublin.

- **What should be the extent and nature of the powers of any North-South bodies?**

  Everyone will be familiar with the controversy around the Sunningdale Agreement in regard to All-Ireland bodies exercising executive powers. This was a real issue also in the talks.
• What should be the number of the bodies and what areas should they cover?

Understandably, there was a real haggle about these issues with the Nationalist side arguing for a larger number and the Unionist side a smaller one.

It is important to remind ourselves that the talks were taking place in a difficult atmosphere, where trust between the parties was not strong, where there was little or no experience of people having worked together on these issues. Moreover, the wider expectation in the media and among the public was that the talks were not going so succeed. Indeed, on the Monday before Good Friday one poll suggested that over 90% of the people of Northern Ireland expected the talks to fail.

A further broad point to remember in terms of the North-South issues is that all aspects of the talks were inter-connected and the basic rubric was that nothing was agreed until everything was agreed. Moreover, one of the trade-offs in play was between Strand Two and the changes to articles 2 and 3 of the Irish constitution—the rationale being that if the Irish Government were to propose to the people the foregoing of the constitutional imperative to secure a United Ireland on an unqualified basis, there had to be a countervailing expression of the connection between the two parts of the island in Strand Two.

So, the stage was set for the closing phase of the talks in March-April 1998. By the beginning of April, the talks were in continuous session and long days and nights were spent in the now very familiar surroundings of Castle Buildings. On Monday, 6 April, George Mitchell distributed to the parties his first draft of a comprehensive agreement. This had extensive North-South elements, and included an institutional framework for North-South relations. I don’t think I am breeching confidentiality by saying that the reaction was a mixed one! You can read further accounts in regard to that reaction in a number of books on the Agreement, including one by George Mitchell himself. Suffice it to say that over the coming days, modifications were made to the draft, including the North-South elements.

**BELFAST/GOOD FRIDAY AGREEMENT: NORTH-SOUTH PROVISIONS**

The main elements agreed on Good Friday 1998 in regard to Strand Two may be briefly set out, as follows.

• There would be an institutional relationship—the North/South Ministerial Council (NSMC)

• All decisions would be by agreement

• Each side would be in a position to take decisions in the NSMC within the defined authority of those attending, through the arrangements in place for coordination of executive functions within each jurisdiction (on the Northern side, this was in practice to mean that all delegations at NSMC meetings would be cross-community in their make-up)
• The NSMC would cover at least 12 subject areas, covering two categories of at least six areas each, as follows:
  matters where existing bodies will be the appropriate mechanisms for cooperation in each jurisdiction; and
  matters where the cooperation will take place through agreed implementation bodies on a cross-border or all-island level

• The precise areas in question were to be identified and agreed by means of a work programme to be undertaken by the NSMC in its transitional form, and this process was to be completed by 31 October 1998; areas might include matters in the list set out in an annex to this part of the Agreement.

Following completion of the work programme, paragraph 10 of Strand Two indicated that the two governments were to make the necessary legislative and other enabling preparations to ensure, as an absolute commitment, that these bodies would function at the time of the inception of the British-Irish Agreement (the latter was part of the Good Friday Agreement package and contained commitments by the two governments to deliver on the various elements of the Multi-Party Negotiations Agreement which fell to them). The background to that latter point was that it was a political requirement of the overall deal that all institutional elements—Strands One, Two and Three—should come into being at the same time.

All of this constituted part of the compromise struck to enable agreement to happen on Good Friday 1998. The Nationalist side settled for an outcome on North-South arrangements which, while it had the frame agreed, required a good deal of further negotiations on the detail. In return, the Unionist side agreed effectively that none of the other sets of institutions (including Strand One) would come into being until the North-South arrangements were ready. It was an honourable outcome to difficult negotiations.

DEVELOPING THE FRAMEWORK

As we know, the Good Friday Agreement as a whole was ratified by the people of the island in simultaneous referenda North and South on 22 May 1998. Once that was done, the way was clear to proceed with the work of identifying and agreeing areas of cooperation as set out in Strand Two.

North-South work programme, Autumn 1998

One complication that arose relatively quickly was the fact that no shadow NSMC was formed in the time frame anticipated. The Northern Assembly was duly elected in June 1998, met in shadow form on 1 July and elected David Trimble as First Minister designate and Seamus Mallon as Deputy First Minister designate. But because of continuing difficulties in finding agreement on conditions for proceeding with the formal bringing into being of the institutions, no shadow executive was formed, and therefore no shadow NSMC could be formed to carry out the work programme envisaged in paragraph 8 of Strand Two.
In the event, the work programme in question was effectively taken forward on an ad-hoc basis through discussions between two governments and parties—in other words, a parallel exercise to what would have happened if there had been a shadow NSMC, and which had the same net effect in practice. The format for this exercise was that the two governments developed ideas for the matters to be covered by the new implementation bodies and those to be covered by existing mechanisms. This was done following intensive consultation with government departments in both jurisdictions. These ideas were then put to the parties, who, of course, were also developing proposals of their own.

The process was co-ordinated at official level on the Northern side by the Central Secretariat, which was attached to the Northern Ireland Department of Finance and Personnel, in tandem with the Northern Ireland Office and with the close involvement of other officials of the Department of Finance and Personnel. On the Southern side, co-ordination rested with the Department of Foreign Affairs, in tandem with the Department of the Taoiseach and with the close involvement of the Department of Finance and Attorney General's Office. All of this, of course, operated under the overall control and direction of the two governments and the Taoiseach and Prime Minister Blair and their lead ministers continued to be involved closely, meeting together as necessary.

The two groups of officials involved began to meet collectively during the Autumn of 1998. Around October of that year, formal contacts began with the Northern parties who, as indicated, had been working in the interim on their own ideas. In the event, the deadline of 31 October passed without agreement. However, contacts with the parties were intensifying and good progress was made through November and early December. This process included meetings involving the Taoiseach and the British Prime Minister on 2 December 1998. At that meeting, substantial agreement in principle was reached on the terms of a new Trade and Business Body and a Special EU Programmes Body.

Agreement of 18 December 1998

In the event, final agreement was reached between all sides in the early hours of 18 December 1998. The announcement was made by way of a statement in the name of First Minister designate and the Deputy First Minister designate which was announced to the media at 4am in the morning by David Trimble and Eddie McGrady (standing in for Seamus Mallon, who was indisposed). Speaking on behalf of the two governments and the parties, they announced that agreement had been reached on the identity and functions of six implementation bodies and six areas of cooperation. There were to be implementation bodies in the following six areas: inland waterways; food safety promotion; trade and business development; special EU programmes; language (two agencies, one dealing with Irish and one with Ulster Scots); and aquaculture and marine matters (again two agencies, one dealing with Lough Foyle and Carlingford Lough and the other with the functions of the Commissioners of Irish Lights). Aspects of the following were to be taken forward by existing bodies (with one exception)—education, transport, health, environment, agriculture and tourism.
The exception related to tourism. Although listed as an “area of cooperation” (the term now used for those areas where cooperation to be implemented by means of existing bodies or mechanisms), it was agreed that the tourism marketing and promotion functions for the whole island would be delegated to a new publicly owned limited company (subsequently to become known as Tourism Ireland Limited), under the direction of the NSMC.

The tourism issue was a matter of some considerable debate in the negotiations. Some felt that it would be better if tourism promotion were taken forward by way of an implementation body. Others argued that the public company route would be better. The details will be for the historians to sort out. Suffice it to say that the agreement eventually reached was that tourism marketing should be implemented by means of a new company. It did not become, therefore, an implementation body in the same way as the six designated sectors and was not included in the subsequent agreement between the two governments which formally established the bodies. Indeed, the tourism company did not come into being until almost a year after the bodies.

The agreement of 18 December 1998 also listed the functions of the implementation bodies and the aspects of the matters to be covered in the areas of cooperation (i.e. to be implemented through existing bodies).

**FORMAL AND LEGAL ASPECTS**

Paragraph 10 of Strand Two of the Agreement made clear that new implementation bodies must be ready to function at same time as Strand One (and other) bodies. While agreement on the identity and functions of the bodies was a big step forward, the situation was still well short of bodies ready to “go live”. Accordingly, under the terms of paragraph 10 of Strand Two, the two governments worked intensively through January and February 1999 to flesh out the agreement of 18 December 98 so that the six bodies had all the characteristics of public agencies and would be ready to “go live” when the time came.

After debate on the options, it was decided that the instrument for agreement between the two governments would be an international treaty, which would then be incorporated into domestic law in both jurisdictions on the island.

**Agreement establishing implementation bodies, 8 March 1999**

In line with the outcome of these discussions, an international agreement establishing the implementation bodies was signed on 8 March in Dublin Castle by Secretary of State Dr Mo Mowlam MP, and the Minister for Foreign Affairs, David Andrews TD. A brief word now on this agreement is necessary: it is essentially the charter governing the operation of the six implementation bodies.

The agreement opened with a preamble which set the context for the establishment of the bodies as being the Agreement between the two governments on 10 April 1998 and the Multi-Party Agreement of the same date. The preamble also recalled
that all the participants pledged in that they would in good faith work to ensure the success of each and every one of the arrangements set out in the Multi-Party Agreement and that all of the institutions of that agreement were inter-locking and interdependent (particularly the Assembly and NSMC). The inclusion of this reference was to underline again the inter-connectedness of the North-South to the other institutions.

The key section of the Agreement was Annex 2 which set out how each of the six bodies would operate, and it did so under two categories: (a) how it would exercise its functions and (b) its structure. It also contained a number of sections which had common application to all bodies.

I do not intend in this paper to go into the detail of each body in terms of function and structure. There is one general principle contained in the Agreement which applies to each body and it is that, in exercising its functions, the body shall operate at all times under the direction, whether of a general or specific nature, of the NSMC. This is in essence a safeguard to make clear that ultimate authority rests with ministers. I am pleased to say that in the five and a half years of the operation of the bodies, the use of this direction in a formal way has not proved necessary, with all matters being resolved by agreement.

It is also worth noting in passing that three of the bodies have executive boards, one has an advisory board and two—Waterways Ireland and the Special EU Programmes body—have no board, and operate directly to the NSMC. The reasons for this differentiation were largely a matter of negotiation. There were differing views about the need for boards and the powers that these boards should have, and the outcome I have described is what emerged from the negotiations.

I mentioned that a set of common arrangements were to apply to all the bodies. These are listed as reporting and planning arrangements, financial arrangements, staffing arrangements, the fact that each body can determine its own procedures, arrangements in regard to ombudsmen, a code of conduct for bodies and their boards, and freedom of information and data protection provisions.

**Incorporation of the agreement into domestic legislation**

Once the Agreement establishing the implementation bodies had been signed by Secretary of State Mowlam and Minister for Foreign Affairs Andrews on Monday 8 March 1999, the next immediate step was to give it effect in domestic law in both jurisdictions in the island. Work on this had been taken forward over the previous few months by both governments in parallel with the negotiations on the agreement establishing the bodies. The respective parliamentary draughtsmen on both sides had been intimately involved in the exercise.

Essentially, the legislation giving effect to the agreement had to do two things in both jurisdictions on the island: (a) incorporate the terms of the agreement in domestic law (for example, ensuring that the bodies had all the powers they needed to exercise their functions) and (b) make the necessary consequential changes to
existing legislation (for example, in the Southern legislation provision had to be made for the dissolution of Bord na Gaeilge, which up to then had had exercised the functions now being transferred to Foras na Gaeilge).

It was a complex exercise in that both sides had to make sure that they were “paralleling” each other—by ensuring that the way that the bodies operated in domestic law was essentially the same in both jurisdictions—while at the same time taking account of the fact that differences existed in the way that each jurisdiction approached certain issues. The result was the enactment in the South of the British-Irish Agreement Act, 1999, and the adoption in Northern Ireland (through Westminster legislation) of the North/South Cooperation (Implementation Bodies) (Northern Ireland) Order 1999. In each case, the agreement establishing the bodies was annexed as a schedule to the legislation.

Both sets of legislation had a commencement clause, whereby the legislation and Agreement did not come into effect until an order so directing was made by the Taoiseach and the Secretary of State for Northern Ireland respectively (this would happen when agreement was reached on then outstanding political issues; in the event, the commencement date was 2 December 1999).

The legislation went through both parliamentary systems very quickly. Already by midnight on the day of the signing of the agreement—Monday 8 March 1999—the necessary Order was through the House of Commons and passed through the House of Lords next day. The southern bill was taken in the Dáil on Tuesday, 9 March, and passed the second stage after a three hour debate, helped by the fact that there was strong cross-party agreement in the house for the bill. It passed all stages in the Seanad on Thursday, 11 March 1999, receiving wide and strong support in that House) and was signed into law by the President shortly afterwards. As of that point, in March 1999, all technical stages in terms of bringing the bodies into being had been passed. It was to be almost a further nine months before the political conditions were agreed, thus enabling the bodies formally to come into being.

**IMPASSE ON IMPLEMENTATION**

The reason for the delay had to do with the impasse which had developed on the issues of decommissioning and securing agreement on a basis on which the institutions could be brought into being. Despite the best efforts of the Taoiseach, Prime Minister Blair and the parties, agreement was proving elusive, and in the Summer of 1999 the governments invited Senator George Mitchell to chair a review under the terms of the review section of the Belfast/Good Friday Agreement.

Through the Autumn of 1999, Senator Mitchell worked assiduously with the governments and the parties to effect a breakthrough. In the middle of November, he finally brokered a resolution acceptable to all sides and by the end of November, we were all set to go.
Before the North-South bodies could go live, there was one further act to be done. In order to ensure that the arrangements of paragraph 8 of Strand Two were observed in the letter as well as the spirit, a meeting of the NSMC in transitional form was held in Stormont on 1 December to formally endorse the work programme agreed by the governments and parties on 18 December 1998. In other words, the shadow NSMC retrospectively approved the identifying and agreeing of the six implementation bodies and their functions and the areas of cooperation set out in the 18 December document. It was felt that this was necessary in order to ensure the maximum level of compliance with the terms of Stand Two.

The two governments having already appointed the acting chief executives, the six implementation bodies came into being on Thursday, 2 December 1999. The boards of those bodies which have them were appointed by the first plenary meeting of the NSMC in Armagh on Monday, 13 December 1999. It did not prove possible to appoint the chairs and vice chairs at that meeting. They were subsequently confirmed at the first sectoral meeting of the NSMC in Newry on 24 January 2000. The coming into being of the tourism company, which took the title Tourism Ireland Limited, did not happen until later in 2000, following detailed negotiations between the respective tourism ministers, Sir Reg Empey and Jim McDaid.

The establishment of the Joint Secretariat is based on one sentence in Strand Two of the Belfast/Good Friday Agreement—paragraph 16 states that the NSMC is “to be supported by a standing joint Secretariat, staffed by members of the Northern Ireland Civil Service and the Irish Civil Service”. It was agreed at political level in 1999 that the joint secretariat would be located in Armagh and this was formally confirmed by the inaugural plenary meeting of the NSMC on 13 December 1999. The mandate of the secretariat is further developed in the memorandum of understanding on procedures agreed at the first plenary meeting of the NSMC on 13 December 1999.

CONCLUSION

I have tried to provide in my presentation a broad sense of the elements involved in the making of the new North-South institutional dispensation. I will now offer a couple of brief comments on the outworking of what was negotiated in 1997-99 in terms of the new North-South dispensation.

As has been made clear by the Taoiseach, and recently also by the Minister for Foreign Affairs, Mr Dermot Ahern TD, the story of North-South relations since the Belfast Agreement has been a positive one, with real benefits being delivered to both jurisdictions on the island (Ahern, B, 2005; Ahern, D, 2005). David Trimble has a telling phrase to explain why this attempt at a new North-South relationship has succeeded when others in the past had failed—in the Belfast Agreement, he said, “we got the architecture right”. I think it is a good insight.

I would also suggest that the changed political context since Good Friday—despite its stops and starts—has provided a sufficient backdrop against which cooperation...
has become possible. It goes without saying that cross-border cooperation in, say, agriculture and tourism, made as much sense in the 1950s and 1960s as it does today. The difference is that back then the political context to enable it to take place simply did not exist. Now it does.

On that basis, we have been able to proceed with the operation of the North-South bodies to the point where today, five and a half years after their inception, the six implementation bodies, together with Tourism Ireland, now employ roughly 700 people, are based in 17 locations around the island and have an annual budget this year of €170 million. More importantly, they have built a solid reputation as efficient public bodies delivering effective public services to the people of both parts of the island. For that, great credit is due to all involved—the ministers in both administrations, the boards and staff of the bodies and the officials involved North and South, and in the joint secretariat. I hope all in question will forgive me if I single out the boards for special mention. Drawn from a diverse variety of backgrounds and all parts of the island, they have made, and are making, an invaluable contribution to the effective functioning of the bodies, and they deserve our deepest thanks.

Nobody is saying that the story of the North-South bodies has been a perfect one, and that there are not many challenges still to be faced in ensuring that the new arrangements deliver on their full potential in terms of added value North and South. But a solid start has been made and now there are a whole range of beneficial activities underway where previously very little was happening. A whole new cohort of people are now involved in North-South cooperation where previously there were very few.

The challenge now is to build on the solid platform and architecture that have been created and ensure that more and more benefits are delivered to the people of both jurisdictions, and that the potential of North-South cooperation can be realised to the full.

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