

A tale of two 'Treaty' documents

"Paper never refused ink"

When researching the so-called 'Treaty' there was something that struck me as odd - the existence of two different documents purporting to be what was signed on 6th December 1921. Each appears promiscuously in many publications and articles by media commentators as the same 'Anglo Irish Treaty.' How come?

One is headed "~~PROPOSED~~ ARTICLES OF AGREEMENT" with the word "Proposed" crossed through and bearing the signatures of the witnesses who signed it at 2.15 am that morning in Downing St. This document is held by the Irish National Archives in Dublin. (Reference: 2002/5/1)

This is clearly, in itself, a valid document from any legal point of view but in no sense a Treaty and does not claim to be one. The word "Treaty" appears nowhere in the document as it had not appeared in any draft discussed hitherto between the two negotiating teams. Instead, it referred to itself as an 'instrument.' As the many drafts were discussed line by line for weeks by the two teams and their top lawyers its omission was hardly an accident. It simply was not a Treaty but exactly *what it says on the tin*, "(Proposed) Articles of Agreement." In other words it was at best, work in progress towards a Treaty as with all previous drafts. That was how Birkenhead justified it in the House of Lords on 23 July.

It is the original and unique document signed "*on the spot*" that morning by members of the two negotiating teams.

How come then that there is another document that purports to be the same "Treaty" and held in the British Archives but which was created later and differs in several respects from this document – but crucially headed a 'Treaty'?

This other document is called a "Treaty between Great Britain and Ireland." In this version there are three extra British signatures, who were not witnesses on the original, and one Irish signatory, Eamon Duggan, is literally a cut and paste job gummed on to the document. Also the paragraphs of the original document are re-formatted, badly and hastily typed with many typos, 10 in the first page, and is about the shabbiest document ever produced by any government and supposed to be a Treaty! The two columns of signatories at the end are now on opposite sides of the page to the earlier document. So it is clearly a different document and with these anomalies that make it not a valid legal document at all – never mind a Treaty! (Reference: TNA/ DO 118/51)

How did this happen?

Duggan and Duffy did not happen to be at the actual signing in Downing St. for the early morning signing on 6/12/1921. Dermot O'Hegarty brought what was signed to Hans Place and Duggan and Duffy signed it there. Then it was sent post haste to Dublin with Duggan accompanied by Desmond Fitzgerald. That is why it ended up in the Irish Archives.

An IRB veteran, Dan McCarthy, takes up the story. *"The true facts of the matter are that immediately the Treaty was signed, Eamon Duggan and Desmond Fitzgerald left for Ireland by the morning Mail taking the copy of the Treaty with them. Later in the day Mr. Jones, Lloyd George's Private Secretary, called at Hans Place and asked for another signed copy of the Treaty. Whether that copy was to be used as the British Copy of the Treaty or as a second British Copy for the purposes of photographic record, I cannot say. Griffith was just going to sign the copy per pro Duggan when I remembered that I had a copy of his signature in the house which was a copy of a Special Programme of Celebrations which was held in the Albert Hall. I mentioned this fact to Arthur Griffith and suggested to him the pasting of the signature on the copy and both he and Mr. Jones agreed. There was obviously no intention to deceive anybody. The fact that Mr. Duggan's signature was pasted down on a copy of the Treaty could not interfere with its validity."*

(Witness Statement 0722 Daniel McCarthy BMH)

McCarthy seems oblivious to the fact that there was no *signed copy of a Treaty*. There was a signed copy of Articles of Agreement and Jones was looking for a new document to be signed that could claim to be a Treaty by having the word added to a new document.

In other words, a 'Treaty' document was to created after the signing of the 'Treaty'!

Requesting a new list of extra British signatures was a ruse to get a new document signed again by all and adding the names of new members of the Cabinet – who were not witnesses to the original signing – and also served the political purpose of the Government in showing to the public and Parliament that all the crucial Cabinet members were united on this agreement.

The three extra signatures, Laming Worthington-Evans, Secretary of State for War, Hamar Greenwood, Chief Secretary for Ireland, and Gordon Hewart, Attorney General were later sent to Dublin and now appear with the Irish archival version of the original Articles of Agreement as an extra, detached torn sheet, unnumbered, differently coloured and with different staple markings to the genuine version – clearly a separate document that should not be part of the Irish copy of the original Articles of Agreement. It is seriously misleading to have recreated both documents as one in the Irish Archives. It simply does not belong there, it is an extraneous document, flouting its provenance, and that is simply a sacrilege in archival terms. The Irish Archives should rectify this – very easily done - and preserve this uniquely important, original document as it was and as it should remain.

Were the Irish delegates made aware of the implications of this new document? It appears not. McCarthy certainly saw no difference and it seems that to him any agreement could be called a Treaty as it did to Desmond FitzGerald as we will see later. How many others felt like that? After the gruelling hours earlier that morning they were not likely to have been in a mood for any revisiting of the discussion and debates and the request for extra signatories may have seemed innocuous. They may have overlooked the new heading if they were even made aware of it at all which seems very unlikely indeed as it would surely, at least, have *‘raised eyebrows’* being clearly an addition to what they had already signed. Barton would certainly have protested (see below) and he is by far the most honest and graphic source on that infamous scene at 2.15 am on 6/12/1921.

Arthur Griffith in a note to de Valera on the earlier, final negotiations that morning described the state of mind they were in: *“things were so strenuous and exhausting that the sequence of conversation is not in many cases clear in my mind today.”* That may indicate the exhausted state of mind they may also have been in later that day after the long intense negotiations. In any case, the British got the Irish signatures to a new document that had the word ‘Treaty’ in the heading and that was crucial for them.

But did the Irish realise this? In the first private session of the Dáil debate Michael Collins said: *“...the final document, which the Delegation of Plenipotentiaries did not sign as a treaty, but did sign on the understanding that each signatory would recommend it to the Dáil for acceptance.”* (Dáil Éireann, Private session, 14 December 1921.)

It appears therefore that Collins, at least, was unaware that he had actually signed a ‘Treaty’ originally and it’s unclear if he realised the implications of the second one he had signed.

The issue of the second ‘Treaty’ became a public interest topic briefly in 1944 when Rev. William P. Hackett, gave a lecture on the subject of *"Literary Forgeries and Hoaxes"* at the Melbourne Public Library and made an issue of the Duggan *‘cut and paste’* signature which raised the legality of the ‘Treaty’ itself and the resulting interest provided more information on the provenance of both documents.

The Irish Times felt obliged, naturally, to defend the ‘Treaty’ and interviewed a number of people in the course of which it described Robert Barton, a signatory, as: *"at the time of the Treaty a representative of the Provisional Government"* which is farcical as there was no such Government then in existence and not a single person had ever voted for such a government.

Barton is quoted as saying that:

“It is inaccurate to state that this was a Treaty. The document signed at 2 a.m. in No. 10 Downing Street, on the morning of December 6th, 1921, bore the caption: ‘Articles of Agreement’, nothing more.” (Irish Times, 11/10/1944)

As a signatory he should surely know!

Desmond Fitzgerald was interviewed: *"I brought the Irish copy of the Treaty back to Dublin, and Duggan was with me, but I can't recall whether or not he made any mention of the pasting-on of his signature. It is quite possible that Duggan was not present to sign, for there was a lot of coming and going right up to the time when the documents were signed"* (ibid.) Naturally Duggan would be unaware of the pasting on of his name at this point as it was done at Hans Place after he had left for Dublin.

Mr. Fitzgerald went on to say that both documents for signature were styled: "Articles of Agreement", and that, the moment they were signed, they constituted a Treaty. "The following day the word, 'Treaty', was added to the British copy", he said, "but by that time I was on the way to Dublin with the Irish copy, which, of course, could not have the word added. But it was, and is, definitely a Treaty. In my opinion the absence of Duggan's signature on one or both copies would not for one moment invalidate it." (ibid) (Emphasis added). Although Fitzgerald seems to have got his days mixed up this again shows clearly that a second document with the addition of a "Treaty" heading was prepared after the original signing early that morning of 6th December and he seems somewhat surprised but pleased. He seems to have an attitude like Dan McCarthy that any agreement could be called a Treaty.

And to help muddy the waters the *Irish Times* published another list of signatories in their report that day which is different again to the two existing lists. A glance will show that this *Irish Times* version - the self proclaimed journal of record - is a concoction, a crude attempt to merge the signatories of the two documents, with the new long British list of signatories now on the right hand side and Duggan's pasted on signature thereby disappears on the left.

So we have three different such lists in archives.

Was One of the Treaty Signatures Pasted On?

of the members elected to sit in the House of Commons in Southern Ireland, and if approved shall be ratified by the necessary legislation.

On behalf of the Irish Delegation
 Epz O'Connell (acting for the Delegation)
 Michael O'Connell
 Robert O'Connell
 Endorsed by S. O'Duggan
 James O'Brien - Duggan

On behalf of the British Delegation
 A. Lloyd George
 Arthur Chamberlain
 Birkenhead
 Lord Curzon
 L. Montagu
 H. Greenwood
 Gordon Hewart

December 6, 1921.

But the legal skulduggery had a real purpose – as always. This second document, the British version, was the one widely publicised in the British press on the morning of 7th December and afterwards as a Treaty agreed by the Irish Government. If such was then rejected by the Dáil it would be a propaganda coup against the Irish Government and its authority, which would discredit it in international opinion by being painted as people who could not be trusted to confirm a Treaty they had agreed.

There was nothing to be gained by the Dáil accepting just some ‘articles of agreement for a treaty’ which would mean work in progress for a Treaty and which was therefore self evidently not itself a Treaty.

Una Stack, widow of Austin says of the Articles of Agreement:

“The word ‘Treaty’ never occurred in it from beginning to end and, of course it was not a Treaty in form or otherwise. But after Duggan’s departure from London, it struck someone that the word Treaty would be useful for propaganda purposes and they saw the British about it. This is how the matter is repaired. The original document is headed “Articles of Agreement”. Now a fly leaf was put in, like the title page of a book, containing something like this: “In the matter of a Treaty between Great Britain and Ireland. Articles of Agreement”. And, on the strength of this and of the fact that in the British House of Commons it was referred to as Articles of Agreement for a “Treaty”, the attempt has been and is still being persisted in to call the abortion a Treaty.” (Witness Statement 418).

I think the ‘someone’ was undoubtedly Lloyd George’s indefatigable, all purpose gofer and fixer extraordinaire, an original ‘mover and shaker,’ Tom Jones, who would certainly have appreciated the significance of adding ‘Treaty.’

I am sure he also had the talent, inter alia, for making people believe and initiate what he wanted them to believe and initiate. He had been responsible for the clever, infamous document that Lloyd George used to break Griffith in the negotiations.

In other words he was very effective at getting things done surreptitiously and creating this ‘Treaty’ document was another perfect example of his art. Both sides all went along with this newly minted “Treaty” document and immediately *‘sang from the same hymn sheet.’*

And when Griffith introduced the debate in the Dáil on 14 December, this second document was what was used as the basis for the debate. Another job well done by Tom Jones, another coup – of which his namesake might sing that *‘It’s not unusual!’*

(Jones went on to serve more Prime Ministers as a confidant and accompanied Lloyd George to meet Hitler in 1936.)

Of course the document could not be approved by Dáil Éireann as paragraph 18 made very clear. Ratification was a weasel word introduced by Griffith to hide this awkward fact. Anybody and everybody could debate it and ratify it but only the non-existent *‘House of Commons of Southern Ireland’* could approve it. The Dáil did not exist as far as this document was concerned and had no rights according to it. The document was legally implementing the Government of Ireland Act of 1920, the third Home Rule Bill, a British Act of Parliament – not an Irish one – and abolishing the Dáil in the process.

And despite introducing the debate with a document proclaiming a Treaty, Griffith had to admit later in the debate, under pressure from TDs to consult Lloyd George as to what exactly it was they were debating, reported that *“.... he stated it was not a Treaty, and I got the official title: ‘Articles of Agreement between Ireland and Great Britain’.”* (10/1/1922)

By such duplicity and skulduggery was the ‘Treaty’ debated and ‘ratified’.

This second document in the British National Archives has an unusual condition for viewing it:

“This record can only be seen under supervision at The National Archives.”

This used to be the condition for viewing archival pornography so perhaps this “Treaty” document really qualifies as a piece of political pornography. The British archivists may have inadvertently *‘hit the nail on the head.’*

Jack Lane
with invaluable help from
Dr. Philip O’Connor

The video link for the Treaty talk on 6/12/21 is:

https://us02web.zoom.us/rec/share/8oWwZMr7dwYYi_5X7tSp3wFIWIAE2_8nZeaCS38YyqqsPiVKQQ5YNc70tDN2Stl.u1lQLWircsZiNiQX

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