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2004/21/467

SECRET

Meeting between the Minister for Foreign Affairs, Dr. FitzGerald, and the Secretary of State for Northern Ireland, Mr. Whitelaw, in London on 9th June, 1973.

The following were present at the meeting held at the Embassy, ~~and~~ which extended for two hours from 10.20 a.m. approximately:-

The Minister for Foreign Affairs, Dr. FitzGerald,  
Dr. Donal O'Sullivan, Ambassador, London,  
Mr. C.V. Whelan, Minister-Counsellor, London.

The Secretary of State for Northern Ireland, Mr. Whitelaw,  
Mr. P.J. Woodfield, Deputy Secretary, Northern Ireland Office,  
Mr. T.C. Platt, Private Secretary to the Secretary of State,

Mr. W.K.K. White, Head of Republic of Ireland Department of F.C.O.

The Minister opened the discussion by referring to the meeting of officials which had taken place on Thursday, 7th June and said that as a number of matters in the N.I. Constitution Bill had been clarified on that occasion, the details, in certain instances, need not be discussed but he would like to come back to some of the points that came up on that occasion such as the Westminster constituencies and he referred to a number of other items such as postal voting, cross-Border cooperation and damage from road cratering. However, as a start, he would like to refer to the question of discrimination.

Discrimination Referring to Section 4(5) and to the function of the Judicial Committee of the Privy Council in the matter of discriminatory legislation, the Minister enquired as to the position about discriminatory

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-2-

features of legislation which may not be apparent at the time the legislation was approved. He remarked that under our own constitutional procedures, some Bills which did not appear at the time to have any unconstitutional features were later found to be repugnant to the Constitution, and thus invalid. There was, presumably, a similar possibility of invalid legislation being enacted in Northern Ireland. The Secretary of State agreed that this possibility existed but said that there were, in his opinion, sufficient safeguards built into the Constitution Bill. He was quite sure that the proposed Measures would be very carefully examined by his officials and legal people; inevitably, they will go through draft Measures with a fine tooth-comb. The Westminster Parliament will also be able to examine those Measures with sensitive features. The Secretary of State will be answerable to the Parliament in Westminster in regard to Measures coming before the Northern Ireland Assembly and, in view of the interest that had been developed in Northern Ireland at Westminster, it was very hard to see legislation with any hint of discrimination getting through, even though he agreed that there was, in theory, a problem such as that proposed by the Minister.

Mr. Woodfield drew attention to Section 17 (1) which provides that any piece of legislation shall be void to the extent that it contains any discriminatory feature. The Minister said that, if he got the implication right, this provision could be invoked in the courts against discriminatory legislation. Agreeing, the Secretary of State said that there

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- 3 -

was one further safeguard, namely, a broadly-based Executive. It would be very difficult to get any Measure with discriminatory features through an Executive based upon power-sharing. He summed up the position by saying that there were "very many nets" in which the possibility of discriminatory provisions could be caught.

The Minister said that he was glad to know that ultimately there would be judicial determination. If the matter could be tested judicially after legislation is passed, he was prepared to accept that what was proposed was fair enough. The Secretary of State further added that more had been included in this Bill against discrimination than in the Race Relations legislation in Britain. The Minister, summing up, said that he could assume then that, as in the 1920 Act, discriminatory legislation can be shown to be invalid by a judicial decision. He stressed the point that laws that may not be discriminatory in themselves can be used in a discriminatory way. The Secretary of State agreed, and confirmed that an ultimate judicial determination was provided.

Balance in the  
Consultative  
Committees

Referring to Section 25 (5) of the Bill, the Minister said that he would like some clarification of the phrase "provision for seeking that the balance of parties in the Assembly is, so far as practicable, reflected in the membership of the Consultative Committees taken as a whole". He said that he could understand Consultative Committees being formed on

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- 4 -

the basis that the balance of parties would be reflected either in the membership of the Committees as a whole or in the membership of each Committee "so far as practicable". He wondered whether the words "taken as a whole" were necessary in addition to, as distinct from as an alternative to, "so far as practicable". Could one or other phrase be omitted?

Mr. Woodfield referred to the difficulties in having the balance of parties reflected in each Committee, owing to the possibility of there being a number of very small parties and also because some parties may wish to concentrate on specific subjects. He suggested that parties would wish in their own interests to be able to develop whatever representation on the Committees as they would feel appropriate for them.

Pressed by the Minister on the point, the Secretary of State agreed to look at the question although he did not think that there would be any real difficulty. In his view, if the rest of the Assembly structure works, this will work too. He would like to leave the Assembly as much flexibility as possible. He did not wish to tie them in too much with regulations because this would give people like Paisley and Craig an opportunity to "play games" and hold up completely the operation of the Assembly. The Minister remarked that we were naturally worried about such instances where the Bill appeared to depart from the White Paper. The Secretary of State assured him that there was no intention of this kind in this instance,

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- 5 -

merely a concern to avert a possibility of "tiresome games" on the part of certain people who would wish to wreck the possibility of the Assembly developing regular procedures.

Northern Ireland  
Departments

The Minister expressed concern at the proposed powers for the Assembly to adjust Departments. He assumed that the Secretary of State would be able to intervene but he wondered whether he could effectively intervene if it were proposed to amalgamate several Departments with the net effect that a Department which was not under Unionist control could be merged with one in that situation. Presumably, this could not be legally described as "discrimination". What powers were there to prevent such a possibility? Mr. Woodfield said that any such amalgamation could only come about by Measures and the Secretary of State's powers would then come into operation. However,

on the Minister's enquiry as to what powers these might be, the Secretary of State conceded that he would be bound to submit a Measure of the Assembly for approval unless it was clearly invalid under the terms of the Bill. However, under Section 8, the Secretary of State appoints the Heads of the Departments and could certainly refuse to appoint the Head of an amalgamated Department, if he were not prepared to accept the reasons for the amalgamation. He stressed at the same time that he was much more bothered about the possibility of too many people in the Executive rather than too few. This possibility might not exist initially but later on there might be efforts to bring more people

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- 6 -

on to the Executive and he would not like to see too large an Executive.

In general *he* pointed out that the formation of Departments would have to satisfy the principles of power-sharing and that the veto on appointments would be the operative procedure to ensure that Departments would not be organised on a sectarian basis. The Minister enquired whether this meant that the Secretary of State would decide who gets each Department and the reply from the Secretary of State was "in the end, yes - if it really came down to an argument that could not be resolved within the Executive". The Minister pointed out that the Bill was not explicit on this but the Secretary of State said that if the Executive could agree to get together for a start then they should be able to agree on the distribution of Departments. If the Chief Executive came to the Secretary of State and said "we cannot agree", then it would be up to the Secretary of State to find an "escape hatch" in the argument and in the end he must decide. He stressed again that the Chief Executive and the other members of the Executive must be appointed by the Secretary of State and that this was a more important sanction. He concluded on this point by saying that he could not imagine a discriminatory amalgamation of Departments taking place on the basis of the transferred subjects in the Bill. The Minister referred, however, to the Executive member who would Head the Department of Finance and said that it seemed to him that "whoever holds Finance runs the province".

The Secretary of State, however, asserted that H.M. Treasury would effectively hold the purse strings. In response to the Minister's remark that he could not see how the Secretary of State could legally veto an amalgamation, Mr. Whitelaw said that the ultimate sanction lay in the appointment of the men to do the job.

The Executive  
Authority and  
Collective  
Responsibility

The Minister referred to the definition of Northern Ireland Executive authorities in Section 7(6) and the omission in this definition of the Northern Ireland Executive as such. Did this mean that the Executive would not have collective responsibility? The Secretary of State accepted that this was an important point. The great catch was that if the members do not want to act collectively, then they won't. However, it will be up to the Executive to decide what Measures are to be put before the Assembly, in what order they are to be presented and what they should contain. This implied collective decision making. However, the Minister said that under the terms of the Bill, he could see them each deciding separately about such matters within the competence of their own departments, and enquired where was provision made for collective responsibility? The Secretary of State said that the Chief Executive would have the power to decide on the legislative programme. Somebody has to control the Assembly and what has to come before it and this was the role of the Chief Executive who was also to be the Leader of the Assembly. He said that only

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- 8 -

the Executive could promote legislation .

The Minister said that under the Bill, the Executive seemed to have no function in this respect. The Secretary of State, however, referred to Section 8(2) (which reads: "The Chief Executive member shall preside over the Executive and act as Leader of the Assembly"). It was a fact that in the Westminster Parliament similar functions were not set out in legislation. The Minister, however, said that in the Northern Ireland situation there would be trouble if the functions of the Chief Executive as Leader of the Assembly were not set out clearly. Under the Bill, he could be merely "the man who reads the prayer", since his powers and functions are not laid down anywhere.

Within the Executive, the Chief Executive member would seem to have no power other than presiding. Would he have a casting vote, or indeed would the Executive engage in a vote? The authority of the Executive seemed to him to be a matter of "bits and pieces". It was very hard to see how it would be able to function. Under the Bill, the Executive need take no action since it had no defined function. There was no provision as to how it would take decisions, or indeed, whether it would take any decisions. Of course, he added, it may well suit the minority (perhaps even more than the majority) if the Executive had no real power. To this the Secretary of State replied that it was up to the Executive (as well as the Assembly) to settle its own procedures under Section 2(1). If the Secretary of State is not satisfied with the

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- 9 -

way in which the Executive is formed, if he feels that they are not agreed as to the way they will work, then he has the power of veto.

The Minister was concerned at the assumption that the Chief Executive, as Leader of the Assembly, may have concentrated in him the power to determine legislation. This was a very big power for one man in the Northern Ireland situation and could only be regarded as acceptable if it was exercised in a collective manner. The Secretary of State agreed that the power to promote legislation must be based on collective decisions but he suggested that the transferred matters were not divisive matters, to which the Minister responded by saying that everything in the North had the possibility of being divisive. He wondered whether a corporate existence for the Executive could be thus built while it was in power. The Secretary of State said that, frankly, they were trying to create an artificial situation in the power-sharing proposals. As regards a vote in the Executive, if this were provided for they would probably use it on all occasions and this would be disastrous for the minority since it would be "moonshine" to imagine that the Executive would not always have a Protestant majority.

The Minister then enquired as to who would speak for Northern Ireland and who would sign the necessary agreements in the Council of Ireland

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-10-

situation. Would it be the Chief Executive?

Since the Executive is not an authority, who would represent the North in a Council of Ireland with authority to make and to sign agreements? Would each member of the Executive make his own decisions and sign his own documents?

Mr. Woodfield said that the intention of Section 12(1) was that each Head of Department would sign agreements relating to his Department's functions. The Minister, however, said that there would have to be one principal authority to deal with as we could not be dealing simultaneously with different people on the same matters. The Secretary of State suggested that in this case it would be the Chief Executive but the Minister pointed out that no legal power had been given to the Chief Executive in the Bill to act for Northern Ireland as a whole. Under the Bill, he presides at Executive meetings and acts as Leader of the Assembly but he can't sign on behalf of the Executive as a whole. There was, of course, the question as to whether we would prefer an Executive with a corporate existence but the question as he saw it was whether the Executive is a legal entity. Of course, the Secretary of State might be the person to sign agreements but on this point he did not think that Mr. Whitelaw would wish to have such a role. Concluding on this question of collective responsibility, the Secretary of State said that as the matter had been raised, he would look into it. They would see what could be done without making the matter worse.

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- 11 -

Functions of N.I.  
Departments.

The Minister enquired why Northern Ireland Departments were given powers to sign agreements and indeed why they were defined as executive authorities in Section 7(6). He saw no reason why the Departments should be executive authorities in addition to Heads of those Departments. The Secretary of State said he knew there was an answer and Mr. Woodfield said that this had been raised at the meeting of officials when an answer had been given. (The reason given on that occasion was that this would enable functions now exercised e.g. by Northern Ireland Ministries to be transferred to Northern Ireland Departments under Section 39). The Secretary of State promised that they would obtain the answer to the Minister's query as to why it was necessary for the Departments to be made executive authorities in addition to their Heads.

Role of the  
Department of  
Finance

Returning to the question of collective responsibility, the Minister said that, in his view, since the Head of the Department of Finance can veto the legislation under the Bill he would, in effect have concentrated in him all effective power. He said that such a man could have extraordinary powers in a situation where there was no legal provision for collective responsibility, despite the overall control of the Whitehall Treasury. He pointed out that if the executive member in charge of the Department of Finance did not want to give money, H.M. Treasury could not make him do so - but could only stop giving money he wished to

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- 12 -

provide. The Secretary of State referred to the traditional policy of parallelism in Social Services, etc. which would limit the area over which the Head of the Department of Finance could exercise such a negative power, but the Minister stressed again the importance of the fact that under the Bill the Minister of Finance would be able to say no to any proposal of the executive involving expenditure, by any Department. In his view the concentration of such power in one member of the Executive would militate against the development of collective responsibility. In the Republic there were, he believed, constitutional provisions regarding collective responsibility and this convention is well established in the British system, without such a specific enactment, but he could not see how collective responsibility could evolve in the North without some specific provisions especially in view of the unique power of the Head of the Department of Finance. The Secretary of State agreed that this was an important point. The Minister said that he also had a political point to make in this respect. The minority cannot be expected to accept that both the Chief Executive and the Head of the Department of Finance will be unionists. On the assumption that the Chief Executive is a unionist, the Executive member in charge of the Department of Finance has to be a member of the minority. In these circumstances one could see the unionists might object to a member of the minority holding a position as powerful as that now provided for. The Secretary of State agreed

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- 13 -

to look further into this question, remarking that there are some problems which are easier to pose than to answer!

The Imbalance in  
the N.I. Civil  
Service

Referring to Section 19, the Minister said that, for historical reasons - not necessarily in every case the fault of previous administrations - the minority was scarcely represented in the senior levels of the N.I. Civil Service. If the provisions against discrimination in Section 19 were to be regarded as making illegal a specific programme of recruitment of Catholics to the Northern Ireland public services to redress the existing imbalance, then it would take about thirty years to bring about a fair balance in the Service. It seemed to him that this provision would, in fact, make it illegal to put the matter right. He referred to figures which we had been given based upon an analysis in 1968, which showed that there were virtually no Catholics in the higher levels of the Civil Service in the North. The Secretary of State said that the position was now better, they had made it better. But it was a problem which was not easy to solve, it could not be done overnight. There was indeed a dilemma arising out of Section 19. Under that Section a Protestant could complain if a job were given to a Catholic who might be regarded as a less qualified person for the position. The question was how to get around this. He had recently come across the same problem himself with the Ombudsman when he had considered deliberately trying to appoint to a post a person who was less qualified for the post than another, and realised that



- 1 4 -

if he did so he could be taken before the Ombudsman. The Minister stressed that this was becoming once more a very sensitive issue in the North and had been raised strongly with us. He did not think that it was possible to make a start on redressing the imbalance by actually making it illegal to do so!

The Secretary of State referred to the Working Party report on discrimination in the private sector which he described as a very good report that had been drawn up and agreed to by both employers and trade unionists. He said that the public authorities must be brought into line as well as the private sector. He wondered whether the situation would be any better without section 19. He promised that the situation of imbalance would be improved. Already in the lower reaches there had been progress and as these people move up there would be some levelling out. A good deal of the trouble arose from the fact that not enough applicants were coming from the Catholic community. He had spoken to Bishop Philbin about this. He had been told that there were no Catholics, for example, in the higher grades of the Department of Agriculture. They were organising some people to go around to the Catholic schools to encourage school-leavers to apply for positions in the Department of Agriculture and indeed in other Departments. Unfortunately, many Catholics preferred to go into business or the professions rather than enter the Civil Service.

The Minister suggested that some candidates might feel intimidated, but the Secretary of State

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-15-

did not agree. He said that his people had gone into this and found that the really bad area was that of the local authorities and the Area Boards. Unfortunately, as ~~the~~ result of the establishment of an interim staff commission, he was at present locked in by certain pledges on job distribution which he could not go back on. He remarked that in local authority employment also Catholics were reluctant to go forward, e.g. for certain posts of road surveyors no applications had been received from Catholics. He said that he would be seeing again shortly "that great advocate" in this field, Seamus O'Hara.

The Minister said that he did not doubt the position could right itself over the next 30 to 35 years. However, the minority were not easily prepared to accept such a pace of change. Civil Service reform was a major issue for them. The existence of such a great disparity at the top was very hard to accept. He insisted that some steps would have to be taken over the next two or three years to develop a necessary balance. This may well involve bringing people in from outside the Service. The Secretary of State said that this would mean retiring people prematurely and the Minister said he was aware of this but believed that if a new regime in the North was to start, this would be necessary. The Secretary of State said they would see what was humanly possible but could not envisage the position improving so soon, without retiring people. The Minister accepted this and said he believed the inevitability for such premature retirements

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- 16 -

should be faced, on full pay if necessary. He himself could see no solution short of that. If action is not taken rapidly in this area, the whole effort in the North will break down. The Secretary of State agreed to examine the Minister's point and said that he would see what could be done.

### Oaths

The Minister could not see the reason for the provision about the possibility of new oaths (Section 21). The Secretary of State initially misunderstood the point of the Minister's enquiry and, assuming that he was referring to the oath set out in Schedule 4 for members of the Executive, declared that he would like to take full credit for his position on oaths. He had abolished them in the case of the Civil Service, local councils, etc., and could not do much more. The oath set out in Schedule 4 was a very simple one and had the great advantage of "trumping the Unionist card", since the Unionists particularly Mr. Faulkner had been saying they would not share power with persons whose "primary aim" was to break up the Constitution. This oath would provide evidence that all members of the Executive had sworn to uphold the laws of Northern Ireland as a primary requirement for Executive membership.

The Minister pointed out he was not quarrelling at all with the oath in Schedule 4 but he was concerned with the provision to introduce new oaths, referred to in Section 21(2). The Secretary of State expressed surprise that any new oath should be contemplated. He thought that he had stopped all new oaths. The Minister suggested that this particular sub-section should be deleted and

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- 17 -

the Secretary of State said he would see what could be ~~done~~ in this case.

#### Human Rights

The Minister said that he was concerned to find there was no reference to the European Convention on Human Rights in the Bill and when Mr. Woodfield referred to Section 23(3) as following the principles of that Convention, the Minister remarked that this was really a "letout". Before one came to the exceptions from the Convention, one should set out the positive provisions of the Convention. The Secretary of State said that if one were to add up all the provisions of the Bill against discrimination and other relevant features, one would find very substantial measures of human rights. He believed that although the European Convention was not written into the Bill, they were doing as much, if not more, than what the Convention contained.

The Minister pointed out that the White Paper had virtually promised that the provisions of the Convention would be written into the Bill. The Secretary of State referred again to the provisions against discrimination in both public and private sectors but the Minister pointed out that safeguards against discrimination were only one aspect of human rights. There were many things in the European Convention which were not included in the Bill and he said that he had expected that the European Convention would be written into the Bill as a separate schedule. Mr. Woodfield referred to many matters involving human rights which were not transferred matters under the Bill

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- 18 -

and the Secretary of State confirmed that some of the human rights questions involved would relate to reserved or excepted matters. He promised to look into this question as raised by the Minister.

Referring again to Section 23(3), the Minister expressed concern about the limitation of anti-discrimination provisions implied in the phrases "national security", "public safety" and "public order". He was worried about the possible justification of houses not being allocated to Catholics, as a result perhaps of this "public order" limitation of discrimination. The very areas referred to in the limiting phrases quoted were those that had caused most concern to the minority. Mr. Woodfield pointed out that the justification for any exemption could be tested before a Court. The Minister responded that this would be a help but would not be a great reassurance to Catholics who had already suffered much discrimination in these areas, which were precisely those that they were most concerned about. He said that there were serious grounds for such concern and when it was remarked by Mr. White that housing discrimination worked both ways the Minister said that it had primarily been employed against the minority. He agreed that the distinction between U.K. "national" security and Northern Ireland security, implicit in the limiting phrases in question, was a good one. But he stressed that the problem was a most worrying one, a real problem for the minority. The Secretary of State responded by saying that he accepted the Minister's points and would look into the matter further.

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- 19 -

Westminster  
Constituencies  
for the Assembly

The Minister queried the necessity for writing

in the Westminster constituencies in the Bill.

Mr. Woodfield said that if new constituencies were to be established, this would mean another Bill, half as long again. The Secretary of State said that he believed that there would have to be another electoral Bill before long. Under the present Bill, elections, including the franchise, in respect of <sup>the</sup> Northern Ireland Assembly and the local authorities were included among the excepted matters, so that the Westminster Parliament would have to look at the question in the future whether they liked it or not. Apart from the controversial nature of such constituency boundaries, the whole question of devolution would be coming up in the context of the Kilbrandon Committee report on the future of Scotland and Wales. The first problem, however, was to get the present Bill through Parliament by the end of July and this could be complicated by lengthy provisions about constituency boundaries. The Minister suggested that the Boundary Commission referred to in the Bill in connection with the Westminster constituencies could be given the additional power of looking into this question of constituencies for the Assembly and that only an additional line in the Bill would be necessary for this purpose. He was concerned that the Westminster constituencies were being tied in totally to the present Bill. The Secretary of State said that he would like to see how it would work out. They would be looking at the results of both the local elections and the Assembly elections in this respect. It may well be that large multi-member constituencies

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- 20 -

would be the best because there was a better chance for the election of moderate candidates. Such moderates had got in at the end of the count in various local election areas and, indeed, he was glad to see that the Alliance Party had done well in Derry - he wondered how they would ~~not~~ behave in holding the balance there. The Minister agreed with much of this and said he had an open mind as to the optimum size of constituencies in the present Northern Ireland context but again stressed that the Boundary Commission might be given the power to look at the question and the Secretary of State agreed to look into this suggestion.

Police Reform The Minister said that the majority of decent Catholics would like desperately to see the return of proper policing in their areas.

At this point, the Secretary of State intervened to say that in general he was delighted to discuss details of the Bill and of policy in the North but he would be concerned if it got out that he had discussed such details and, even more, that he had agreed to amend the Bill at the Minister's request. The Minister suggested that it should merely be said that he was seeking clarification of aspects of the Bill. The Secretary of State readily agreed, remarking that he did not wish Paisley to say that he was a "lackey of the Dublin Government". The Minister said that he understood Mr. Whitelaw's concern and assured him that there would be no problem. If necessary, he would say that he found the clarification "very helpful". To this the

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- 21 -

Secretary of State replied that he was not sure!  
(He implied that the use of the term "very helpful" might not be too helpful in relation to Mr. Paisley).

Continuing on the question of police, the Minister wondered whether Mr Whitelaw had any suggestions as to how local policing could be reintroduced.

The Secretary of State said they were examining the situation to see how it developed "on the ground". On police reform in general, he was in rather a cleft stick at least until the Assembly elections were out of the way. The police issue was becoming quite a big one for Paisley who had referred to the fact that the R.U.C. were not now being paid danger money. With the aid of the military police, he thought the RUC were getting back to regular policing in certain areas (including some parts of Andersonstown) but it would be disingenuous of him to say that this was happening everywhere. The Minister said that proper policing was not taking place where it should be occurring and the Secretary of State agreed that in areas such as Ballymurphy the situation was not good. It was better on the fringes of the Bogside but there was apparently no progress in the Creggan. The real problem, however, was in Belfast where the sectarian areas were crowded together. For the present he must stick solidly with the R.U.C. "until he had more freedom of manoeuvre". He said that they had to involve the new local councils with police committees in their own areas.

This whole problem was desperately difficult, as the policing question was "an article of faith"



-22-

with both communities. If a solution could be found in Belfast, however, it could be found elsewhere. He repeated that he was on a hook for the moment, as he hoped the Minister would recognise, but at the same time they were making as much effort as possible to restore local policing with the help of the military police. He quoted a well-known phrase saying "the R.U.C. is the best police force we have got" and claimed that they had done well recently. The detention rate was remarkable, charges had been brought against 694 people already this year and there had been considerable detection of recent murders. He mentioned that three out of four recent murders (he was reliably informed) were not sectarian but inter-factional.

In reply to the Minister's enquiry about a report that day concerning a mutiny with the U.D.A., the Secretary of State called this "monkey business". He said a racket had been going on. Like the I.R.A., the U.D.A. were getting money from top people, some of them had been doing too well on it and were probably trying to cover their tracks. Nobody was quite sure what is going on but he, Mr. Whitelaw, was certainly not going to detain [REDACTED] before the Assembly elections. It would be very foolish of him to detain a candidate from any side during the elections. The U.D.A. report was not to be taken too seriously, it was a mere internal matter.

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-23-

Returning to the question of police protection, the Secretary of State asked what did people really want; would they be satisfied with the change of uniform? He remarked that Superintendent Lagan in Derry, a Catholic, was highly popular among his own community but one Bogside resident had put it: "we love to see him in the Bogside - but in civilian clothes, not in his uniform".

The Minister said that changes must be made in the police force. This could involve changing the name as well as the uniform, and breaking it up into a number of local forces. He then brought up the question of complaints that the U.D.R. had been outside polling stations in Catholic areas during the local elections and it was said that the local people would have preferred the British Army. The Secretary of State said that this was a perfectly fair complaint which he would look into. He would also be considering further the whole question of police reform.

Border  
Co-operation

The Minister referred to reports in Irish newspapers during the week to the effect that compensation would be forthcoming - for damage resulting from the cratering of border roads. In this context, Mr. White said that the position, so far as he was aware, was that the people in the South should send their claims to the Ministry of Home Affairs in the North or apply to the courts there. The Secretary of State said he would look into this question of compensation which the Minister said had caused much irritation in Border areas.

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-24-

The Secretary of State then said that the British Government were extremely grateful for the Border cooperation which had been received and he would like to express, on their behalf, thanks to the Irish Prime Minister for what had been done in this sphere. The Minister acknowledged Mr. Whitelaw's remarks on this point and then referred to the situation in the Crossmaglen area, where it was not clear whether the trouble arose on the northern or on the southern side. The Secretary of State said that there had been tremendous improvement in the Donegal/Newry area but Crossmaglen was really "a devil": so many soldiers had been killed in that area that the question was being asked whether there was much point in sending them there if they were going to be blown up. There was also still a problem in the Lifford area but it was much better. He said that cooperation in these areas depended very much on relations between "the chaps on the ground". In some cases, there were better relations than in others and this was an aspect of a situation that could not be easily controlled from the top. He said his people would have to go back to the Army once more and he suggested to the Minister that he might discuss the question on his side with the Minister for Defence. The problems in the areas concerned could be followed up through the usual channels for which they were very grateful. So far as their men were concerned, a major question was that of landmines from which wires were said to lead across the Border.

The Minister said that representations had been

-25-

received from local minority politicians in the Crossmaglen area regarding intimidation in the course of local elections although other reports suggested voluntary absenteeism. Mr. White suggested that the people in the area might be just against any government. It was known to the Army as the worst area. The Minister referred to reports about road blocks being set up. Mr. White said that he understood that on the Northern side a carefully arranged road block with photographers present had been established for twenty minutes between patrols. The Secretary of State said that the whole question would be further examined, on the lines which he mentioned, to see what could be done.

The Minister then raised the matter of the recent crossing of the Border near Clones by a British Army unit. He said that he had been wakened at 4 a.m. and following consultation with the Minister for Justice and the British Ambassador, and inability to get in touch again with the Minister for Justice, he had telephoned the local police authorities in Clones. On the basis of the version of the incident given by the officer in charge of the British unit he had indicated the wish, of the momentarily uncontactable Minister for Justice, to release the men. Subsequently, information received did not confirm that version of the incident. We would find it difficult to arrange such a release in future in view of the inconsistency of the version given by the British authorities concerned. The Secretary of State said that he had got "hot under the collar" when he read about the incident on his arrival in Belfast. But he understood

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-26-

that the unit had just read its maps wrong.

The Minister said that the story given just didn't add up. The unit first went through the Republic to a man's house on the Border. In fact, the Border runs through this house. This man had been in trouble in the North before and the unit had tried to get into his house by means of a road in the Republic. They then went on to Clones but the story they gave of this route was not compatible with the fact that they had gone to the house on the Border. The Secretary of State said that he would have this matter taken up with the Battalion Commander, if the facts were sent on to him. Mr. White said he assumed that the usual formal report would have been sent in by the Commander. The Minister pointed out, however, that the Army Officer's story did not hang together. There was no reference in it to calling at the house on the Border. Moreover the unit claimed to have been on a road block patrol but had with them only one weak torch and no other appropriate equipment for such a duty. His message from the Minister for Justice was: "If you get a satisfactory explanation, release the men". Since he had passed on this instruction to release, he now felt that he had been "had". He could arrange for a report to be sent to the British side. The Secretary of State promised to talk to the G.O.C. and Mr. White of the F.C.O. also promised action to ascertain the true facts.

#### Postal Voting

The Minister expressed concern about the limitation of facilities for postal voting for the Assembly. Responding, the Secretary of State first of all

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-27-

stated that a certain story concerning the alleged effort of the Lord Chief Justice to vote by post in the local elections was a fabrication. He said that there was a practical problem behind the rules for postal voting. The problem was that the local elections and the Assembly were so close together that the electoral machinery was not available to enable separate postal voting lists to be set up. Therefore, they had to say: "If you want the Assembly postal vote, you must apply also for a postal vote in the local elections". (Those who had used the postal voting in the Border Poll were automatically included in the list for the two later polls). They had publicised this requirement and would like to help but there was this practical problem about the lack of a full electoral machinery. He said that they had not received a great measure of complaints. The Minister said that we had been getting complaints from (1) those who didn't know about the requirements at all and (2) those who, as a result of local elections, wished to obtain, because of intimidation at the local elections, postal votes for the Assembly. This situation was most acute in places like Crossmaglen and Andersonstown where the Provos had intimidated and stopped people going to the polls. There were complaints that the Army didn't come out to protect voters in the Andersonstown area. The Secretary of State expressed doubt about this latter complaint but said that he would step up Army protection for the Assembly elections. The Minister, emphasising the point, drew attention to the low vote in Andersonstown. He also referred to the taking of photographs by British soliders outside two polling stations. The Secretary of State said that there

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-28-

had been one photographer involved, belonging to the Third Paras., and the incident took place in the Ardoyne. The camera had been removed from him and the film destroyed. Mr. Paddy Devlin who had made the complaint was satisfied in this regard. The Minister pressed for some extension of the Assembly postal vote for people in Crossmaglen and Andersonstown. Would the Secretary of State look at the position in those two areas? Mr. Whitelaw in reply said that he would.

Before proceeding to a general discussion of the political situation the Minister referred to representations he had received concerning the setting up of a community development office in the North-West area around Derry. (These representations had come from the Department of Psychiatry in U.C.D. through Dr. Ivor Brown). The Secretary of State said that he was aware of the proposal and was also concerned about the need for similar help in Shantalla where the I.R.A. had gained ground. He promised to look into the possibility of furthering these two proposals.

General Political  
Situation

The Minister asked Mr. Whitelaw how he felt the situation was evolving in the North on both the Unionist side and with the SDLP. The Secretary of State said that he thought the SDLP had done "jolly well" in the local elections. He believed that they had done every bit as well as they had hoped and even slightly better. They should do even better in the Assembly Election.

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- 29 -

One might wonder whether this was good or not, to the extent that the support they would receive would be at the expense of the Alliance. Unfortunately, the Unionists had given their second and later preferences to the hard-line candidates rather than to the Alliance. The Catholics might well take note of this, particularly those who had given their second preferences to the Alliance in the local elections, and might vote only for their own. Certain tendencies in that direction could be seen already. As to the likely composition of the Assembly, he thought that the SDLP would get from 10 to 15 seats. The Minister remarked that they had been talking over-optimistically of 18 to 25. The Secretary of State said he was prepared to go as far as 12 to 15 as a reasonable figure for the SDLP. The Alliance would get, perhaps, 10 seats. This might give anything from 25 to 28 to a SDLP-Alliance grouping. The official Unionists were expected to get 25 to 30 seats. He was afraid that the Paisley-Craig group would get quite a considerable number. The Minister queried the latter possibility and said that they had not done that well in the local elections to which Mr. Whitelaw responded that the so-called official Unionists were themselves "a very mixed bunch". As for the Assembly candidates, Faulkner was not sure where he was, despite the insistence on a loyalty pledge. He did not think the pledge meant very much. Some who had taken the pledge had already shown themselves untrustworthy. In his view, the major concern was that the SDLP must not get on to the hook of "we won't serve with Faulkner". This also applied to the



-30-

Alliance Party. Efforts must be made to get them away from personality positions. He was going to have a private word with Gerry Fitt on this but he was not sure whether "Gerry can control the others". As regards the internment issue, there was an "uneasy improvement" in security which would be destroyed if the final 200 were let out. In his view, this would be a complete disaster. Mr. Whitelaw suggested to the Minister that efforts might be made to keep the SDLP off the internment question until after the Assembly elections. It should be possible to convince them then about the disastrous results that could occur if internment were completely ended. The Minister remarked that some would not need convincing. He saw the unpopularity of Faulkner as the major stumbling block in power-sharing. Hatred of Faulkner was such that it would be difficult to find people in either the SDLP or the Alliance to work with him. This was a real problem, especially since Faulkner seemed to be the only Unionist leader who could rally his party behind the new Constitution. Mr. Whitelaw agreed that he was in effect the only person who could keep that "motley crew" together. He went on to say that what he (Mr. Whitelaw) would be trying to say during the course of the election was (1) that allegations to the effect that the U.K. Government is trying to force the North into the South were quite ridiculous; and (2) that if we reach the 30th March, 1974, without getting a proper working Executive and Assembly, the Assembly will be dissolved and people in the United Kingdom will want their Government to look again at their policy in the North - he would

-31-

hope that this message would get over to the Unionists.

The Minister remarked that the message might also get over too well to the Provisionals. The Secretary of State said that this was a good point and he had been posed a question about it on the B.B.C. T.V. programme on which he appeared the previous evening. He had replied that there would be absolutely no change in the resolve of the British Government and people to do their duty in respect of Northern Ireland, no matter what the situation would be on the 30th March, 1974. However, there was a great deal of anxiety about the movement of public opinion in Britain. His attention had been drawn to an advertisement in the New Statesman this week calling for British withdrawal from Northern Ireland and his people were analysing the background to it, including the affiliations of the authors. The Minister still expressed concern about the statement on a 30th March dateline, to which the Secretary of State responded by saying that "we have got to concentrate the minds of the Protestants to share power. They must not be allowed just to sit there and draw their pay". The Minister again wondered whether the SDLP would share power with Faulkner as Chief Executive. The left-wing of the SDLP were flirting with a Paisley/Craig coalition. Mr. Whitelaw responded "I would really like to ask them what do they think this would mean". He said that Paisley possesses an extraordinary capacity for leaping about the whole area of policy, doing everything possible to gain power. He could see

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- 32 -

no meaningful coalition of this kind. The Minister said that, leaving Paisley aside, there was a certain attraction for some Republicans in the Taylor-Craig concept of Ulster nationalism. If a coalition of this kind developed, the minority could become hostages within a right-wing Protestant State. He was afraid that some deal of this kind might be proposed, involving the departure of the British Army. The Secretary of State said that if a proposed Executive coalition proposed the withdrawal of the British Army, he would not give his consent to the formation of such an Executive. The Minister, at the same time, wondered whether such a coalition could bypass the Bill and the Secretary of State said that British public opinion would respond to that by saying "let them get on with it". The sticking point, as he saw it, was finance and what they would have to face was the withdrawal of British money. The Minister suggested that the British public might be prepared to pay for such a solution if the Army could be withdrawn. The Secretary of State agreed that in such an eventuality the minority could get into a dangerous situation. He said to the Minister: "There is nobody better than you to stiffen them against such an eventuality. I cannot do it". If he made the attempt, some would react by "cocking a snook" at the British Government. The Minister said that, on the whole, he did not think the eventuality would arise since the official Unionists should gain enough seats to prevent the possibility. Mr. Whitelaw stressed, however,

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- 33 -

that the SDLP must be encouraged to go into an Executive with Faulkner. He was aware that some would be prepared to do so. (Later he suggested Austin Currie as one). He agreed with the Minister that there might have to be a "package deal" to be worked out following the Assembly elections.

Following the formal session, in later conversation, Mr. Whitelaw said that he envisaged the Assembly being called into session some time in August to elect a presiding officer following which it would adjourn to permit the necessary negotiations to continue for the formation of the Executive. He could not see the Assembly meeting elsewhere than in the Stormont chamber but he proposed that they should all sit facing the same way as at a public meeting rather than across the floor from each other. The Minister enquired why they should have to meet in Stormont. Were there not other places in which 78 people could meet together? Unfortunately, Mr. Whitelaw replied, the Unionists would object if they met anywhere else, and there could be security problems.

#### Press Release

At the end of the formal session, agreement was reached on the line to take with the Press. The Secretary of State repeated his concern about reaction in the Protestant community in the North and possible further exploitation by Paisley of London/Dublin contacts. Later the following statement was issued on our side, following

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-34-

consultation with Mr. K.D. McDowall, Head of the Northern Ireland Office Information Services:

There was a general exchange of views on matters of common interest relating to Northern Ireland. The Minister sought and received clarification on a number of features of the Northern Ireland Constitution Bill. The Secretary of State expressed the thanks of the British Government for the improved co-operation being received on the Border.

9 June 1973