

NORTHERN IRELAND'S CONTINGENCY PLANS

Some personal suggestions.

1. This paper is being written to put some prima facie impressions which have occurred to me since the briefing session at Stormont Castle on the morning of Saturday August 10. The erratic typing, apart altogether from the content, illustrates the personal nature of the paper, though the ideas expressed are necessarily conditioned by the vow of silence on public affairs which every civil servant impliedly takes when he swears the oath of loyalty.
2. Background
Last week's press (particularly the lobby editor's piece " Ulster: Whitehall's view " in the Financial Times for Wednesday, August 6 and the first leader in the Guardian on the following day) contained reports that troops could only be used in the present situation in Northern Ireland if our constitution were suspended. There was talk of "political direction" of the military, and while it was emphasised that the United Kingdom Government would be reluctant to assume direct control in Northern Ireland the inference was that, because the disorder here was religious in origin, troops would not be used unless Whitehall was in complete control. It is now known that these reports were officially inspired.
3. The legal fallacies behind this reasoning were dealt with in the joint opinion of August 7, with which the Attorney General fully concurred. The Minister of Home Affairs indicated that he took the same view of the law. It now seems that the Home Office accept that the civil authority here has the right to requisition troops, and the Irish Times for August 9 contained some fairly explicit indication of this change, if not of view then of emphasis. This can be chalked up in our favour.
4. However, the burden of the Home Secretary's argument was on the constitutional consequences of the use of troops. A secret (but unsigned) paper produced in the Home Office argued that there would be difficulties in the way of Whitehall taking over the law and order functions of the Ministry of Home Affairs, and even the whole of that department's functions. The inference is that only a complete take-over would suffice.
5. The fact that Whitehall apparently have contingency plans for a wholesale takeover presents Northern Ireland with its greatest constitutional problem since the passing of the Government of Ireland Act. The 1921 Treaty, the setting up of the Irish Free State in 1922 and the crisis over the unissued Boundary Commission report in 1925 are lesser in degree than the suggestion that, even for a temporary period, the scheme of devolution under the 1920 Act should be suspended and that Whitehall should revert (however reluctantly) to its pre-1921 position. No Northern Ireland Cabinet has been faced with so large a question. This is a real test of statesmanship.

6. There are at least two (and probably many more) types of reaction to the disclosure of Whitehall's drastic contingency plan. One school of thought might take the view that the contingency is so remote that it should not be contemplated, and that the mere fact of such contemplation, if any hint of it should be made public, would give rise to an outcry that Ulster's constitution was being destroyed by its own guardians. Given that the Home Office is apparently satisfied with the pace of the reforms to which the Northern Ireland Government is at present committed, it could be argued that the day to day task of maintaining law and order should be continued and outbreaks of disorder dealt with as they occur. This would show the Government to be in control and to be preparing plans for reform. On this reasoning, Whitehall would be told that Stormont would have nothing to do with a hypothetical scheme, because the hypothesis seems so unlikely. It would be better to go down fighting than to submit to some possible diminution of power, especially that of dealing with law and order, which any government must have in its power if it is to survive.

7. An opposite view would be that the Whitehall plan is a contingency one and that the contingency may not be so remote as some people might think. Even a " fire brigade " action by the army, involving only one incident, might increase pressure for Whitehall intervention, in which event the only plan in the Home Office pigeon hole would be the one publicised last week. It would be better to consider other courses which might be open, to show the Home Secretary that there are other choices than the one he has appeared to embrace so wholeheartedly. Supporters of this view might point to the safeguard contained in section 1(2) of the Ireland Act 1949, which depends on the existence of a Parliament of Northern Ireland. If the system of government under the 1920 Act should cease, then, although the suspension was meant to be temporary, it might be difficult to restore the suspended institutions. A temporary suspension might be as permanent as the temporary scheme of rent restriction which was introduced in 1915 and is with us yet.

8. The following parts of this paper are being written on the basis that the second view is the better one, for the following reasons -

First, the Whitehall plan has already been made public, though it is true that it has not been headlined in the local press. If there were further public controversy, the Government could legitimately say that it was making every effort to deal with even remote possibilities which it trusted would never become realities.

Secondly, even if the Home Secretary is satisfied with the pace of reform, Northern Ireland's position would be even stronger if the pace of reform were quickened and seen to be quickened. The Derry Commission, the Parliamentary Commissioner and the draft points scheme for housing allocations are only half what has been promised. Revoking Special Powers regulations which the police do not consider necessary, changing the local government franchise (with an Order in Council provision for lowering the

- 3 -

voting age), establishing a Community Relations Commission, lowering the age of majority generally (especially since it will now be lowered in Great Britain on January 1, 1970) - all these are measures which will help the Northern Ireland Government's position, and the sooner they are carried into effect the better that position will be. Some of these measures are ready, and others could be prepared quickly. If necessary, draft clauses could be published as White Papers pending the introduction of bills when Parliament resumes.

Thirdly, there is no ~~chance~~^{sense} in going down fighting when there is no hope of winning the fight. Westminster has the final say, and if it chooses to speak in the Home Secretary's tones, no amount of talking will counter these tones. The backlash for the United Kingdom/Government would be fierce, but that is a matter for their political judgment. Without a Government and Parliament of Northern Ireland, what voice would Northern Ireland have?

Fourthly, the argument about the safeguard provided by section 1(2) of the Ireland Act is a strong one. "Back to Westminster" used to be regarded as the first step on the road to Dublin. However paradoxical this view may be (in the light of the Unionist arguments against Home Rule), the cry would undoubtedly be raised again.

Fifthly, it would be better to have ~~some~~ some alternative to the Whitehall plan than none at all. Even if a suggested scheme does not result in any modification of the Whitehall proposals, it might at the very least postpone the operation of those proposals.

Sixthly, a refusal to produce any alternative would be regarded as a confession of defeat by Stormont and consequently as a victory for Whitehall. Failure to consider other possibilities would not be guarding the Constitution, it would be letting it go by default.

Seventhly, Whitehall can " speak softly and carry a big stick ". We have no big stick - and not much of a small one. We should therefore speak as loudly, firmly and positively as we can.

A coalition government ?

9. Before turning to various possibilities, there is one course which might be considered. Northern Ireland's wartime coalition government was constructed by bringing into the Cabinet a Labour member. If circumstances, both in Parliament and outside, where a coalition government proved a possible alternative to civil war, it should be considered very seriously and not as an absurd possibility. There is one Nationalist member of the Commons who might be given Ministerial office, and another who might make a parliamentary secretary, and a Labour member might be included in the government. Rather than let the company go into liquidation in the face of a takeover bid, the board of directors might be strengthened by including some of the shareholders, even if they have previously been critical at general meetings.

Other possibilities

10. But there are other steps which might be taken to show the Government's determination. One of these would be to look favourably on the proposal put to the Minister of Home Affairs last week by the New Ulster Movement for the setting up of a voluntary "peace force". A movement of this kind might usefully absorb the activities of those who turned out last week on the streets of the Shankill Road (in some cases co-operating with groups of ~~xxx~~ an opposing faith) as well as those who marshal parades or paint peace slogans in the Bogside. To be successful such a movement would have to be broadly based (to avoid any suggestion of sectarianism) and the initiative should preferably be taken up by other groups than the body which put forward the proposal. Also, if some element of public service were involved (say by helping to paint out offensive slogans, or assisting the victims of actual or "voluntary " evictions) this would reduce the vigilante element and the movement a more positive aspect. Eventually something like the former C Specials might emerge. This ~~is~~ is something which the Government should ~~sp~~ encourage rather than sponsor, lest people be deterred from joining something which they might fear would turn into something like the B Specials.

11. Another possibility is more militant and therefore more dangerous. Careful consideration might be given (if, indeed , it has not been done already) to the use of firearms by the R.U.C. Since 1836 the North of Ireland has always had an armed police force. There is therefore some difference in fact , though not in law , between troops being used to assist unarmed English police, and the army coming to the aid of the armed R.U.C. True, police shots might have a chain reaction, but at least they would be fired by policemen and not by soldiers. If it would avoid the requisitioning of military assistance (thus possibly bringing the Whitehall plan~~s~~ for the suspension of the 1920 Act into force, this course merits the closest attention.

Choices other than complete suspension

12. The most vital question seems to be to authorise the immediate consideration of what could be done to alter the machinery of government to avoid amendment of the 1920 Act. The Whitehall plan is sweeping and drastic; it should not be beyond the wit of man to suggest an number of steps which might be taken before it is necessary to wipe out the Government of Northern Ireland altogether. The suggestions which follow are hastily constructed but may serve as bases for discussion. They are set out in ascending order of importance. If they were offered to the Home Secretary one at a time some tactical advantage might be secured, but this also ~~is~~ a matter for discussion.

13. First, an official of the Home Office might come to Belfast to act as liaison officer. This could be offered as a (belated) quid pro quo for our liaison officer in the Home Office. Our first representative there was described as persona gratissima and a suitable appointee could be equally welcome here. His main function would be to give the Home Secretary his

- 5 -

assessment of the situation, but his function would be advisory rather than executive. He could be brought into consultation up to Ministerial level, but not into the Cabinet, save in exceptional circumstances. This might bring about some change in the Home Office views if they were based on their own reports from their man on the spot as well as on communications from the Northern Ireland Government.

14. Secondly, if it were felt that more than one such official were needed, a small team might be sent from Whitehall. For example, there might be a man in the Ministry of Home Affairs as well as in Cabinet Offices. By distributing their reporting functions, and by being brought into consultation, they could build up a detailed picture for the eyes of the Home Office.

15. Thirdly, if Whitehall wanted to put this arrangement on a more formal basis, an argument could be mounted on section 75 of the 1920 Act for reviving the post of Imperial Secretary which existed here in the early 1920's. (It would be helpful to have some information from the archives about the activities of Sir Ernest Clark and Sir Stephen Tallents, ~~and~~ the authority under which they worked and to whom they reported.) The reasoning would be that the United Kingdom Parliament retains legislative sovereignty over Northern Ireland (as both the Lord Chancellor and Lord Stenham stressed in the House of Lords last autumn) but that the United Kingdom Government must have executive responsibility for not using that power, and be accountable to the Westminster Parliament accordingly. This would give a "colour of right" or a "rest of title" to the revival of the office. The Secretary would have access to Permanent Secretaries and to Ministers; his staff could be attached to departments here, and matters likely to give rise to disorder could be discussed with them. Under this scheme decisions of Northern Ireland Ministers would be taken by them with the foreknowledge of the Home Secretary.

16. Fourthly, Ministers might consider a scheme under which if, say, their views on the banning of a procession conflicted with those of the Imperial Secretary and the Home Secretary, they could reconsider the matter and act on his view, on the strict understanding that their accounts to the Northern Ireland Parliament could be explained in this way. This is not so much a veto as shifting of responsibility to the Home Secretary for advising on the exercise of Northern Ireland's powers. (At all costs the idea of giving the Governor further powers should be resisted; there is little or no legal justification for it, for most executive matters are now regulated by legislation; and the revival of something like the Lord Lieutenant, without making him a political appointee, would be worse than any form of government inflicted on Ireland since the time of Henry the Second.)

Fifthly,
17. If it became difficult or impossible for the Government to get reform legislation through the Northern Ireland Parliament, Westminster might be asked to legislate directly, with a pre-appointed day provision so that the matter might be dealt with by Northern Ireland legislation when the time was opportune. This is an extension of the present arrangement, for emergency use.

18. Sixthly, some form of advisory attachment of English ~~police~~ police officials to the higher ranks of the R.U.C. might be considered. There would be problems of confidence and morale, but the matter should not be overlooked.

19. Seventhly, the arguments in the Home Office paper against severing the law and order function from the rest of the Government's functions should be scrutinised, to see whether there is any way in which such a separation could be made. The problem is one of distribution of power between London and Belfast and should not be incapable of some solution more acceptable to Minister than complete suspension of the 1920 Act. There would be less of prestige and responsibility, but that is surely better than loss of existence.

20. Eighthly, if a ~~broader~~ ^{broader} division of functions than that between law and order and the rest could be devised, it might ward off suspension of the 1920 Act. The line might be difficult to draw but should not be impossible. It is worth examining, however great the problems seem to be. Better alive and kicking, however feebly, than dead and not able to give a kick from beyond the grave.

21. As counsel say at the end of their opinions, noting further occurs to me at the moment. In the unlikely event of my obtaining further inspiration, perhaps I may take the liberty of inflicting ~~the~~ it on the recipients of this paper.

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