

BY MUFAX

COVERING SECRET

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18/10

c.c. Mr. Jones  
Mr. Burns

SIR FRANK COOPER

I attach a first sketch of a paper for IRN on constitutional devices which might be suggested by us to the Northern Ireland parties. It covers briefly both procedure and the substance of the proposals.

The three proposals are rather arbitrarily chosen. If we decide to put them, or something like them, forward, we shall need to work them up. The Division is giving thought to this.

The only comments I might make at this stage are:-

- a. there are other more radical solutions, such as a "Presidential-type" solution. But this might be regarded as too extreme for Northern Irish tastes.
- b. the "Council of State" solution is one variant on the two-tier proposals, some of which have been discussed by the Convention. I note that Dr. Oliver's "best buy" is one of these - he envisages "a small cabinet on strictly majority lines combined with a larger executive on proportional representation lines, each unable to function without the other". There are some pretty fundamental difficulties about the "Council of State" solution and we shall have to give it a good deal more thought.
- c. the committee-type solution is rather suspect if we want to give a new Northern Ireland government functions similar to those transferred under the 1920 or 1973 Acts. It might work in Wales where the envisaged degree of devolution is limited. I doubt whether it would stand up to the needs of central government.

We can, of course, enlarge on the procedure for a Lancaster House conference if this is required for the forthcoming IRN meeting.



D. J. TREVELYAN  
28 January, 1976.

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THE NEXT STEP

Note by the Secretary of State for Northern Ireland

1. The reconvened Convention is getting nowhere (and it has been adjourned by the Chairman). The parties dare not make concessions since they fear that this will compromise them with their supporters; without help, they are victims of their own intransigence. Only HMG can now make a significant move. It is right that we should do so. We will thereby show that everything possible has been done by us to avoid an impasse and to try to bring about that measure of agreement without which Northern Ireland cannot have its own government; and it may, in spite of everything, provide some basis for government. The historic rancours continue; but there is too a widespread desire, at least among the Northern Ireland politicians, for a return of a government within Northern Ireland. We must try to bring home to them that failure to agree now will put off indefinitely that possibility.
2. Further discussions between the parties in Northern Ireland will be of no avail. The Northern Ireland party leaders must now be left in no doubt about the gravity of the present situation and, so far as possible, the weight of public and political opinion in this country must be brought to bear on them. An outward show of bipartisanship at Westminster would deny the Northern Ireland

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parties any hope of exploiting party differences at Westminster in their own favour. These factors suggest that we should arrange for a short and decisive meeting in London at which the Prime Minister meets the party leaders, leaves them in no doubt that the alternative to agreement is indefinite direct rule and the end of the present political process in Northern Ireland and puts to them various possible constitutional proposals as a last attempt to persuade them to agree. It would be valuable if the main Opposition parties at Westminster could attend this meeting and signify that they are at one with the Government on these matters (although there are obvious difficulties about this).

3. What proposals should the Prime Minister put to the Northern Ireland parties? A starting point might be those matters on which the conclusions of HMG were made known to the Chairman in my letter to him of 14 January, subsequently published as a White Paper (Cmd. 6387). Very broadly, these matters are:-

The creation of a separate unicameral legislature.

A government with power to legislate for, and administer, a wide range of matters which could include all those transferred under the Northern Ireland Constitution Act, 1973.

Collective responsibility and the taking of an oath.

Some form of Committee system.

Progressive return of law and order.

Human rights legislation.

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4. Most, if not all of these, can now be incorporated in new proposals. But the matter upon which all discussions of the Convention has foundered has been the question of how the representatives of both the majority and minority communities can jointly participate in government. The UUUC will not have the SDLP sharing power with them; and the SDLP will settle for nothing less than a place (with real power) at the top-most table. This is the dilemma which must be solved if Northern Ireland is to have its own government again. Given some willingness to compromise, there are constitutional devices which go some way towards meeting both apparently irreconcilable points of view.

5. The annexes to this paper set out three possible constitutional settlements:-

a. An emergency government for a period of  $\frac{4}{7}$  years. This would be a ministry of all the talents and, as such, is not dissimilar from the idea put forward by Mr. Craig. It has the advantage that we could thereby accept almost completely the proposals in the UUUC report: the element of "partnership" would automatically disappear at the end of  $\frac{4}{7}$  years. We can avoid direct involvement of the Secretary of State for Northern Ireland in the process of appointing the Northern Ireland government by giving that function to someone appointed as the Queen's representative: the members of the Administration, other than the chief executive who would be the leader of the majority party, would be drawn from the assembly on a proportionate basis.

b. A "Council of State" constitution. The essence of this device would be that the Westminster pattern of government

would apply but that a Council of State would have the power in a defined category of cases to override the decisions of the Administration. Thus the majority party would form the government and take its business through the assembly by normal majority votes. It would probably be desirable to introduce, as part of the framework, some form of committee system. But a Council of State would exist, as a deus ex machina, which could intervene to prevent partial and unfair government. This would give the representatives of the minority parties a place at the highest level, together with real power, to ensure even-handed government and to prevent discrimination. At the end of the day, the Council of State would have to have power to bring about the demise of a Northern Ireland government which determinedly followed partisan policies.

c. Government by Committees. This would broadly adapt the the pattern of local government to the needs of central government. A broadly-based Committee would be responsible for each Belfast Department. The Chairmen of such Committees would be appointed in proportion to the party strengths in the Assembly. There would be a central co-ordinating committee comprising chairmen of committees. Here again, the SDLP would have a voice in government at the co-ordinating committee, or "Cabinet", level.

6. The above forms of constitution have been chosen because they demonstrate the variety of forms of government which are possible.

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given agreement. The framework of each is set out in the annexes. There are many constitutional devices of one kind and another which might be added to them as optional extras and we can stress to the Northern Ireland parties that the Government is prepared to be flexible. A good deal of work would be required on each of them before they could be given legislative flesh. No constitutional device - and certainly not those proposed in the annex - is proof against a total unwillingness of participants in government to continue to work together; and if a "government" of Northern Ireland, whatever form it takes, collapses irremediably, then there will be no alternative to resumed direct rule and possibly the end of any prospect of a government within Northern Ireland. This sanction is, therefore, behind all the constitutional devices set out in the annexes.

7. I invite the comments of my colleagues on the procedure proposed and on the proposed constitutional devices which might be put to the Northern Ireland parties. If we are to intervene, the sooner we do so the better so as to avoid further hardening in the situation.

M.R.

Northern Ireland Office  
Great George Street

28 January, 1976.

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ANNEX A

AN "EMERGENCY" GOVERNMENT FOR  $\frac{1}{4}$  YEARS

This might incorporate the following features:-

1. The government would be a "voluntary" coalition broadly reflecting party strengths within the legislature.
2. Following an election, the chief executive, who would be the leader of the majority party, would be appointed by the Queen's representative.
3. The Administration would not take up office unless it has achieved a  $\frac{1}{3}$  vote of confidence in the legislature. It would continue in office until such time as a vote of no confidence achieves more than  $\frac{2}{3}$  support.
4. At the end of  $\frac{1}{4}$  years, the provisions for a "voluntary" coalition would lapse. The arrangements for government within Northern Ireland would then revert to majority rule, following a fresh election.
5. The "Committee" proposals in the Convention report would be an obligatory feature of the arrangements both during the period of the "voluntary" coalition and subsequently.

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ANNEX B

A "COUNCIL OF STATE" CONSTITUTION

This might incorporate the following features:-

1. The pattern of government would follow that of Westminster. The administration would be formed by the majority party and business would pass through the legislature by means of majority votes. The members of the Administration would be "Ministers" in charge of Departments.
2. Following an election, the appointment of the chief executive would fall to the Queen's representative in Northern Ireland. The "Cabinet" would be formed by the chief executive.
3. There would be a "Council of State" at which the Queen's representative (or if we wish to keep the Crown out of Northern Ireland politics, an eminent person) takes the chair. The other members, who would be appointed by the Queen, would be chosen to represent the majority and minority community.
4. The role of the Council of State would be to ensure impartial and even-handed government. Certain matters would be "excepted" (i.e. they can only be dealt with at Westminster) and in consequence outside the competence of the Northern Ireland government. But it would be for the Council of State to satisfy itself that the legislation properly undertaken by the Northern Ireland legislature and to recommend accordingly to the Queen.

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5. The Council of State would also have the function, on its own volition or on the recommendation of the Parliamentary Commissioner or other similar body, to investigate any allegations of discriminatory or other partial action by the government. Proved instances would be drawn to the attention of the Northern Ireland government.

6. Where the Northern Ireland government refuses to take suitable remedial action, it would place its own continued existence in jeopardy.

7. The legislature should have a fixed term of office.

A "COMMITTEE" SYSTEM

This might incorporate the following features:-

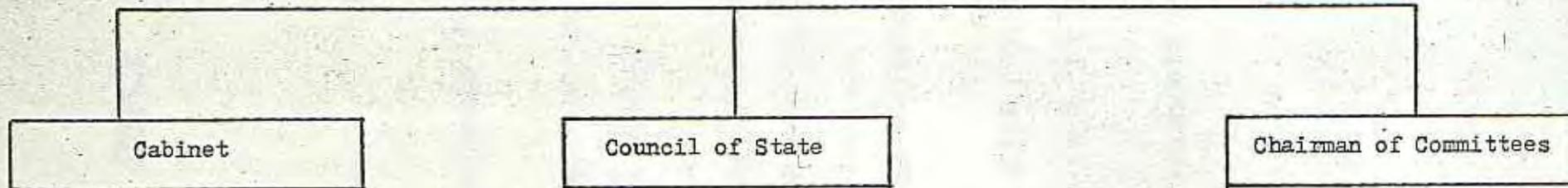
1. Each Belfast Department would be run by an executive committee.
2. Membership of the committees would be drawn from the legislature and would be representative of party strengths there.
3. The Chairmanship of the Committees would be on the basis of party strengths in the legislature. We could also possibly use the procedure to be adopted in Wales of "business leaders". These could be of a different political persuasion from the chairman.
4. There would be a Co-ordinating committee which should consist of the chairmen of the departmental executive committees.
5. The Chairman of the co-ordinating committee should be the leader of the majority party in the legislature.

NIC 150

H. Blackburn

BRIEF SUMMARY/ALLIANCE SUGGESTION

Governor - Privy Council?



(1) Appointed by majority leader (FM)

(2) Functions

(a) All 'external' relations - London  
Dublin - EEC

(b) Allocation of financial resources

(c) Approval of all government  
legislation

(3) Subject to majority support  
in parliament

(1) Nominated by Parliament  
on PR and appointed by  
Governor for life of  
parliament

(2) Executive functions - Human  
Rights - Internal Security

(3) No legislative powers

(4) Decisions by weighted  
majority

(1) Elected by Parliament by PR

(2) Administrative and Executive  
functions over their departments

(3) Removal by two-thirds majority  
+ one of parliament

Notes:

Members of Cabinet could also be Members of Council of State and Dept. Chairmen

Chairmen of Committees of minority parties could be Members of Council of State.

Alliance Party

8/2/76