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Appendix 2

Inter-Departmental Unit on Northern Ireland

Discussion Paper No. 4

Negotiated Independence for Northern Ireland

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INTER-DEPARTMENTAL UNIT ON NORTHERN IRELAND

POLICY ON NORTHERN IRELAND

DISCUSSION PAPER NO. 4

Negotiated Independence for Northern Ireland
(Study carried out pursuant to Government
decision of 18 July 1974)

A. DEFINITION

1.1. Interpretation

1.1.1. Negotiated independence is interpreted as meaning the establishment of an independent State of Northern Ireland comprising the full six-county area by agreement between the British Government and representatives of Northern Ireland to whom sovereign power could be transferred.

1.2. Forms of negotiated independence

1.2.1. Negotiated independence could come about in a number of different ways and could assume different forms. It may be useful to consider two significantly different models as illustrative of the differing implications of different forms in which a negotiated independence might come about.

1.2.2. The first of these models assumes that independence comes about with the agreement of the major parties concerned, including substantial majorities of both communities in Northern Ireland and of the British and Irish Governments. The essential assumption of this model is that there would be a wholehearted commitment on the part of all these parties to ensure that the system worked.

1.2.3. The second model assumes that the British having taken a decision to disengage from Northern Ireland would negotiate a transfer of power to a Northern Ireland government regardless of the position of the representatives of the minority or of the Irish Government. In such a contingency it is likely that power would be transferred to a government of loyalists with guarantees on paper for the minority. In this model the attitude of the minority towards the arrangement would, depending on the nature of the arrangement and the circumstances at the time, range from indifference to active outright opposition. Indifference could derive from feelings of impotence in the face of a solution ^{which} would have appeared inevitable at the time while opposition would derive from feelings of apprehension and distrust of the guarantees of their position.

1.2.4. Either model could develop in positive or negative directions. The first could maintain the basic agreement between the parties or there could be a more or less rapid alienation of the minority and a progressive flouting of the guarantees on the part of the majority. Such a situation would be likely to be reached at a relatively early stage in the development of the second model although there is a possibility that the majority would come to see the wisdom of satisfying minority demands.

1.16. Capital and investment

1.16.1. Northern Ireland enjoys a free flow of capital with both the Republic and Britain. The continuance of this arrangement may well be a matter for negotiation in relation to an independent Northern Ireland's membership of the EEC. An independent State might want to retain power to restrict outward capital flows although it is likely that it would pursue a liberal régime in relation to capital flows unless there was evidence of a flight of capital. This is because it would depend heavily on capital inflows, as in the past (e.g. 50% of manufacturing firms employing 500 or more workers are controlled from outside Northern Ireland).

1.16.2. The dominant influences on Northern Ireland's development since the war have been the decline of traditional industry and the expansion of new industry. With the exception of the relatively large shipbuilding industry, it is possible that the decline in traditional industries has run its course. Hence foreign investment is likely to be a dominant influence in the future as well (whether or not independence comes about) although indigenous enterprises could certainly have some influence on the economic evolution of the State. Apart from civil order and EEC membership, the main determinant of future foreign investment in the new State would be the economic policy it pursues, in particular the incentives it is able to offer.

1.17. Economic policy of an independent Northern Ireland

1.17.1. It is questionable whether independence would enable Northern Ireland to make greater economic progress than before. While it may have suffered in the past from British policies adopted for purely internal British reasons, its economic unity with Britain has made it an attractive area for investment. At all times since the war it has enjoyed a substantial net inflow of public capital from Britain and it has been in a position to offer industrial incentives which at times were more attractive than those on offer in development areas of Britain. British agricultural policy has also been favourable to Northern Ireland. Thus, in general, we do not consider that British economic policies have restricted economic progress in Northern Ireland. The operation of an "independent" economic policy by a new State would be unlikely to give rise to significant new economic benefits.

1.17.2. It has sometimes been argued that Northern Ireland workers would rise to the challenge of having to do without the British subvention by greatly increasing productivity and output. While some increase may be possible we would not attribute much significance to the argument.

1.17.3. The economic policy of an independent Northern Ireland which was a member of the EEC would be constrained by general Community policies. It is unlikely that the Community would wish to permit many derogations from these policies. Thus, agricultural policy would have to be pursued within the framework of the Community's Common Agricultural Policy; protection through tariffs and quotas would be ruled out as an instrument for the development of industry (although a Northern administration would scarcely favour a policy of protection which invites its own reprisals); incentives to industry would probably be constrained by the Community's rules on state aids which are currently being worked out in their application to peripheral areas of the Community; fiscal and monetary policies might be constrained to a greater or lesser extent.

1.17.4. One instrument which a Northern administration might be free to use, at least until the Community approaches its declared objective of economic and monetary union, would be a variation in the parity of

efforts to deal with the situation within the framework of the United Kingdom had manifestly failed. In the Governmental discussions, it has never been explicitly ruled out as have, for instance, integration and majority rule within the United Kingdom.

1.4.3. It is also possible that, given a British willingness to withdraw, the primary impulse could come from the people of Northern Ireland. Britain has already committed itself to respect the wishes of the majority in Northern Ireland regarding the position of Northern Ireland as part of the United Kingdom. Hence disengagement could come about because of a demand to that effect on the part of a substantial majority whether or not that majority included the minority community.

1.4.4. In our view there are considerable difficulties in the way of a solution on the lines of the first model (as defined at 1.2.2. above). The loyalist population would favour or accept a British withdrawal only if they were convinced that the alternative would result in an intolerable situation (such as a British enforcement of power-sharing in government with a minority which continued to aspire to a united Ireland). It is possible that if the minority community for different reasons were also willing to accept a British withdrawal, there could be a willingness on the part of the loyalists to offer strong guarantees to them. These might include firm international guarantees (including the involvement of the Republic), a share in decision-making at the highest level, an enforceable Bill of Rights and effective United Nations involvement and a measure of regional autonomy or cantonal system. While acceptance of such conditions may at first sight appear unlikely, it is at least conceivable that in a situation where the loyalists actively desire independence and where the more reasonable and realistic of them are in the ascendant, they may offer such terms to the minority in order to secure their commitment to the new State. It is, however, difficult to imagine that the minority, in view of their past experiences, would place much faith in any guarantees which might be offered to them short of these. If agreement were, in fact, reached between representatives of the majority of each community, it is likely that there would continue to be an underlying suspicion on both sides which would place the survival of the basic contract between the communities in doubt for some time.

1.4.5. Any intimation of British withdrawal particularly in the absence of universal support for such a move within Northern Ireland seems more likely to lead to an attempt on the part of each community to consolidate territorial control by local majorities probably leading to large-scale intercommunal violence. Such a situation could lead to a form of independence on the lines of the first model allowing for regional autonomy within the new State. It is considered more likely, however, that it would lead to a State on the lines of the second model and much more likely still that the outcome would be repartition.

1.4.6. A form of negotiated independence on the lines of the first model would probably be opposed by elements of the Provisional IRA both on the grounds mentioned in paragraph 1.4.4. and on grounds that the solution was one within the six-county framework. If, however, as the model assumes, the solution had the wholehearted approval of a substantial majority of the minority community, it would probably be difficult for them to mount an effective campaign aimed at subverting it. In addition some ideologically motivated Republicans would accept that the solution meant "breaking the connection with England".

There could then be a definitive shift in emphasis within the movement which would direct its energies to work for its political objectives, particularly when the focus for its previous military campaigns had removed itself from the scene.

On the other hand, a solution on the lines of the second model would probably lead to a surge in the strength of the Provisional IRA. The mitigating factors which would operate in the case of the first model would not apply. The solution would be seen as "British-imposed"

ATTITUDES TO NEGOTIATED INDEPENDENCE

1.3. Support for Proposal

1.3.1. It is not the first policy preference of either the British or Irish Governments or of any political party in these islands to seek independence for Northern Ireland.

1.3.2. Some individual leaders in loyalist parties and para-military organisations favour independence (whether negotiated or unilaterally declared in the context of a British disengagement or in the face of alternative settlements such as union with the Republic which would be intolerable to them). To others independence is a second, third or 1st preference where their earlier preferences (for devolved government at Stormont under Westminster, continued direct rule or integration) are incapable of realisation after the Constitutional Convention fails (as is widely expected) to find a solution.

1.3.3. Every major loyalist politician has, over the past year, indicated either in public or in private that he would favour independence in certain circumstances. The more moderate UUUC politicians would prefer a negotiated independence but there are clear indications that within the UUUC there are elements who would be prepared to seize independence if necessary. Much loyalist opinion would favour independence before union with the Republic.

1.3.4. There is evidence of a greater degree of cohesion among the larger loyalist para-military groups in recent weeks. Some para-military leaders have indicated privately that in their opinion independence, whether negotiated or unilaterally seized, is the almost certain outcome of the present political impasse. In the latter contingency and in the case of the second model, they would at a minimum support the loyalist politicians in such a contingency and provide a strong back-up to the RUC and the UDR while attempting to establish their own authority within the new State. Their success in the UWC strike has confirmed their confidence in their ability to act.

1.3.5. The political argument for independence, as put by Mr. Taylor, Mr. Glen Barr and others is, briefly, that the British and Irish aspirations of the majority and minority communities respectively could, in an independent Northern Ireland, be subsumed into a common loyalty to Ulster. The current tribal basis of Northern Ireland political parties would thereby be removed by the surrender of external aspirations on both sides. This would permit the emergence of normal non-sectarian political groupings divided on a left-right axis.

1.3.6. Economic arguments in support of the viability of an independent Northern Ireland based on favourable political assumptions including EEC membership have been presented by John Simpson of Queen's University, Belfast, and others.

1.4. Possible circumstances leading to negotiated independence

1.4.1. A presupposition basic to any form of negotiated independence is that pressures in Britain to disengage from Northern Ireland will, at some stage, become irresistible. Given a basic British willingness to disengage, the primary impulse for withdrawal could come either from Britain or from Northern Ireland.

1.4.2. There already exists a vocal group of Labour MPs who argue the case for British disengagement but their strength appears to have remained fairly constant in the past few years. It is, however, possible that increased Army casualties, an increasing financial burden on an economically depressed Britain in maintaining the status quo in Northern Ireland or a renewed bombing campaign in British cities or a combination of such factors could lead to compelling pressures in Britain for disengagement, particularly if all political and military

within the six-county framework and the loyalist government would take the place of the departed British as a focus for military activity on an increased scale probably with a wider degree of support within the minority community. The State, then, could only hope to survive by assuming a repressive character.

1.5. Legal and constitutional aspects

1.5.1. The current recognition of the de facto status of Northern Ireland as within the United Kingdom would be superseded by the emergence of an independent Northern State. It would then be necessary for the Irish Government to adopt an attitude to the new State.

1.5.2. We considered whether the Government would be debarred from giving formal recognition to an independent State of Northern Ireland having regard to the provisions of Articles 2 and 3 of the Constitution. We have been legally advised that any positive move to insert something into our domestic law recognising an independent Northern Ireland would be so debarred.

1.5.3. Because of the controversy about Articles 2 and 3 in the past an independent Northern Ireland however constituted, would demand that the Republic take a clear position with regard to its status. In addition, domestic interest in the development would make it necessary to take a public position on the question. That position would depend on the circumstances at the time and on the Government's evaluation of the likely course of development of the new State.

1.5.4. It is possible that there would be general domestic support for a State on the lines of the first model which had the wholehearted agreement of a substantial majority of the minority community within Northern Ireland and, by definition, of the Irish Government. Steps could then be taken to hold a referendum in appropriate terms on the Articles in question. This would be unlikely in the case of a solution on the lines of the second model in which case a definition of our attitude would probably be withheld until the course of development of the new State became clear. If there were grounds for hope that the guarantees for the minority were likely to hold, it is possible that recognition on a de facto basis might be extended if such a step were judged likely to assist in strengthening the efficacy of the guarantees. A negative evaluation of the probable course of development of the new State would probably mean that any form of recognition would be withheld.

1.5.5. De jure recognition of an independent Northern Ireland would thus be possible only by removal or amendment of Articles 2 and 3 of the Constitution, possible only in the context of realisation of the first model. Such recognition would entail renunciation of a claim to a united Ireland. It may be necessary to frame any such recognition in such a way as to retain the option to resume the claim in the event of a negative course of development of the new State.

1.5.6. De facto recognition would allow us to deal with the government of the new State without prejudice to an ultimate aspiration to a united Ireland which we could continue to pursue as appropriate.

In either case there need be no break in continuity with the present policy in regard to unity which is that unity, if it is to come, should come by consent.

C. GUARANTEES

1.6. Guarantees for the minority

1.6.1. The first model presented in this paper presupposes the agreement of a substantial majority of the minority community in

Northern Ireland to an independent State. This agreement would not be forthcoming unless the constitution of the new State provided convincing guarantees for the minority. The Irish Government would also need to be satisfied as to their adequacy since to a large extent its attitude to the new State would be determined by their nature. The difficulties in reaching agreement on adequate guarantees have been mentioned at 1.4.4. above.

1.6.2. Examples of internal safeguards for minorities provided in a small number of other countries are given in the British Green Paper "Government of Northern Ireland: A Society Divided". These included the "blocking mechanism" in Belgium, under which three-quarters or either the Dutch or French language groups in Parliament can refer back to the Council of Ministers any proposed legislation which they consider harmful to relations between the communities, and the device of a "weighted" majority where more than two-thirds or more than three-quarters of the votes, in place of a simple majority, could be required in the legislature or in a referendum, before protected rights could be changed or abolished. The Green Paper suggested, however, that such safeguards work best where they are the outward and visible sign of a will to avoid the exploitation of divisions. It also concluded that such safeguards can never be adequate to provide that genuine sense of participation by both communities which is needed in Northern Ireland. These conclusions seem valid and pertinent to a possible independent Northern Ireland.

1.6.3. Accordingly, and in line with policy hitherto, both we and the minority would presumably seek entrenched power-sharing in government. We might seek to have entrenched provisions in the new constitution on the lines suggested in 1.4.4. Other areas in which safeguards would be required include guarantees against discrimination in public and private employment, (including patterns of discrimination and possibly a measure of discrimination in favour of the minority in certain areas) the franchise, elections, constituency boundaries, the allocation of public housing and of public contracts, and the flow of capital and of labour. It may be mentioned that in the 1960 Constitution of Cyprus, each community's representatives had a right to veto any law passed by the legislature. However, it was found that this made legislation practically unworkable.

1.6.4. There is need for further studies of situations throughout the world where guarantees have been provided for minorities. While circumstances elsewhere are never fully analogous with the situation in Northern Ireland, information on guarantees which appear to have operated successfully elsewhere may have a relevance and possible application particularly in the case of the first model. A knowledge of circumstances in which guarantees did not have the desired effect would be useful in recognising the pitfalls inherent in them particularly in regard to a settlement on the lines of the second model.

1.7. Guarantees for the majority

1.7.1. Some loyalist leaders envisage that agreement on an independent Northern Ireland should also include guarantees for the majority community against invasion or armed attack from the Republic. In the case of the emergence of a State on the lines of the first model, we would probably consent to such guarantees but there would be need for a clause which linked them firmly to the guarantees for the minority and allowed us freedom of action in the event that those guarantees broke down. Our agreement to guarantees in the case of the second model would be less likely to be given and their nature would depend on our evaluation of the likely course of development of the State.

External guarantees

1.8.1. Any guarantees either for the minority or for the majority would probably lack credibility unless supported by additional external guarantees. It has been noted above that we would have a strong interest in ensuring that the position of the minority should be protected. Britain may also be willing to assume the role of guarantor either singly in respect of aspects of the arrangement or together with the Republic in respect of others. Any British financial involvement with the new State (examined at 1.14. below) would give her particular strength as a guarantor. Her military credibility would depend to a considerable extent on the circumstances of withdrawal and on internal British attitudes to Ireland generally at the time.

1.8.2. In addition, there may be a role for the United Nations as an impartial guarantor. The implications of a military role for the United Nations as a peace-keeping force have been studied in Discussion Paper No. 2. It appears unlikely that a United Nations military presence could be secured as part of the agreement establishing the new State.

Any agreement will require to be registered with the United Nations. The agreement could contain a proviso that a floating of the guarantees for the minority would constitute a threat to international peace within the meaning of Article 39 of the Charter and attract sanctions similar to those currently in operation against Rhodesia.

While trusteeship status is not compatible with independence there may be scope for United Nations involvement in some of the more sensitive areas of administration of the new State.

D. EEC ASPECTS

1.9. Attitudes to the EEC

1.9.1. Interest in the referendum campaign on the United Kingdom's membership was comparatively low in Northern Ireland and was overshadowed by the debate on the future of the Province. Broadly speaking, the parties in the former Assembly who participated in the Executive favoured continued membership (SDLP, Alliance, UPNI and NILP) while the UUUC was opposed as were both Official and Provisional Sinn Féin. There were individuals in all parties who took a position opposed to the majority of their party colleagues or were uncommitted. There was a low poll (47%) with a small majority (52%) in favour of continued membership.

1.9.2. While businessmen tended to favour continued membership and trade unions to oppose, the economic case for or against continued membership did not figure largely in the thinking of the parties (with the possible exception of the Alliance Party and the UPNI). The SDLP believe that the further development of the Community can only soften the effects of the border. They therefore took the view that British withdrawal would increase the economic and political differences between both parts of the island.

1.9.3. The reasons for opposition in the UUUC to membership ranged from the religious factors adduced by the DUP to fears of the consequences of a further dilution of sovereignty if the Communities develop politically. For instance, restrictions on persons who are not "Northern Ireland workers" taking up employment in Northern Ireland affect mainly workers from the Republic. These and similar voting restrictions cannot be expected to continue indefinitely in a developing Community.

1.9.4. The question of Northern Ireland's membership as an independent State is a separate issue and may be considered in respect of each model. An independent Northern Ireland would not automatically succeed to membership of the Communities but would have to negotiate terms.

1.10. Application for membership

1.10.1. The economic interests of an independent Northern Ireland of either model would appear to be best served by continued membership of the Community in order to maintain the present free flow of goods, labour and capital between it and Britain. In recent years, 84-87% of Northern Ireland's exports have gone to or through Britain and 73-75% of its imports have come from or through Britain. At worst, exclusion from the Community, given continued British membership, would have severe economic effects since it could mean the creation of a tariff barrier with Britain, a loss in the area's attractiveness for new industry, the closing down of many existing industries which would find it uneconomical to continue and the loss of benefits from the CAP and from the Regional and Social Funds.

1.10.2. In these circumstances, it is likely that an independent Northern Ireland on the lines of the first model would seek membership of the Community. Agreement on the part of the minority at the establishment of the State would probably not be forthcoming unless this were the case since, among other reasons, the minority would regard continued membership as one of the essential guarantees of its position at least in the long term. The agreement of the Irish and British Governments to the settlement would mean that these Governments would strongly support the new State's application. In such circumstances, favourable terms might be forthcoming particularly since the emergence of an independent Northern Ireland may receive widespread welcome throughout the Community as likely to remove an area of tension within the Community where the alternative course of resisting the grant of favourable terms could contribute to the collapse of the internal agreement within Northern Ireland. However, it seems more likely that the Community might offer at least initially another form of link such as an association agreement or a trade agreement on favourable terms.

1.10.3. It has been noted above that we would probably support an application for membership on the part of a State of the first model. A State of the second model would be subject to the general economic logic outlined above. If it applied for membership it would probably be supported by Britain but our attitude would depend on the strength of the guarantees for the minority in the independence agreement, the attitude of responsible representatives of the minority and our evaluation of the likely course of internal development of the new State. If these factors are negative we would probably oppose the accession of the new State. In extreme circumstances we could impose a veto on any arrangement (whether accession or a trade agreement or other special provision). If the circumstances did not appear to require such extreme action, we would still have a considerable degree of influence on any arrangement negotiated. It is, however, also possible that we might deem it in the interests of the minority not to oppose the grant of favourable terms to the State.

1.10.4. A State on the lines of the second model would probably not be motivated by economic considerations alone in determining its policy towards the EEC. If it appears likely to develop on undemocratic lines, it is possible that, in addition to our opposition, there may be considerable reluctance on political grounds within the EEC to its admission. In the face of such opposition, the new State

may prefer not to attempt to proceed with an application. Even if it did, it would be likely subsequently to withdraw its application if the Community insisted on stronger guarantees for the minority or otherwise attempted to influence the political development of the State. While the Community has not so far attempted to intervene in the political affairs of members (beyond encouraging common attitudes in foreign affairs and freeing Greece's association agreement during the period of military dictatorship), it would probably be seriously concerned at the prospect of admitting a member which was likely to follow an undemocratic course of development.

1.10.5. A State on the lines of the second model would be likely to adopt a stance of hostility and confrontation vis-à-vis the Republic since the presentation of the Republic as an external threat would be calculated to strengthen cohesion among loyalists. Withdrawal from the Community could be seen as politically desirable in such a context, leading as it would to an entrenched economic barrier at the border in reinforcement of the political one.

1.11. Other arrangements short of membership

1.11.1. While the new State would have to negotiate some arrangement to govern its trade with the Community, this could take a form short of full membership. One possibility would be an association agreement leading to ultimate membership after a "probationary" period. This could include arrangements for free trade in industrial goods, special arrangements for access to the British market for Northern Ireland agricultural produce and agreement to retention of the current level of State aids to industry in Northern Ireland. These arrangements could also form part of a simple trade agreement. If the new State did not seek membership of the Community or if other members were reluctant to admit it to full membership at the outset or until a more general expansion of the Community was under way, Britain would have strong reasons - and arguments - for according favourable terms to the new State in any such agreement. If it were not a full member, Northern Ireland would be excluded from the full benefits of the CAP and the Regional and Social Funds and would have no influence on the decision-making process in Brussels. However, if it had a satisfactory British subvention and satisfactory access to markets, especially in Britain, for its exports, these disadvantages might not be very significant.

1.11.2. There would probably be a provision for regular review of an association agreement. A trade agreement could be for a fixed term or could have a clause providing for review. We could insist that any arrangement should include provision for review which could be used to put pressure on the authorities of the new State to honour any guarantees given to the minority and generally to pursue a democratic course of development.

1.12. Summary

1.12.1. To summarise, it is possible that an independent Northern Ireland of the first model would seek membership of the EEC and might obtain favourable terms although it is more likely that a form of link other than membership might be offered. A State of the second model might be less interested in EEC membership and might in certain circumstances decline to pursue the matter or meet with a rebuff from the Community. It would, however, have to seek some arrangement with the Community. In all circumstances, we would have power to influence the terms of any arrangement with a State of either model or, indeed, to veto it, and also to have the arrangement reviewed regularly.