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CITIZENS' INQUIRY - THE OPSAHL REPORT ON NORTHERN IRELAND

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THE OPSAHL COMMISSION : A CITIZENS' INQUIRY :
REPORT ON NORTHERN IRELAND AND RECOMMENDATIONS

This report, launched in Belfast on 9 June 1993, is headlined "A Citizens' Inquiry" - partly in order to distinguish it from any kind of official status - which it does not have - but mainly in recognition of the extraordinary outpouring of comment, suggestions and ideas that came from a great variety of people in Northern Ireland - from the ghettos, from business, trade unions, from academia and so on. The Commission worked on their ideas - contained both in written submissions and expressed at oral hearings and sometimes privately - so this report starting from chapter 11 is their voice.

In the first third of the volume the Commissioners have, on their own responsibility, distilled from these sources their own analyses and their own recommendations for which they alone are responsible. These cover issues of politics and the constitution, law, justice and security, economic and social concerns and culture, religion, identity and education.

There was some concern expressed, both publicly and privately, about the setting up of the Opsahl Commission. Some took the view that we were unlikely to do much harm but could certainly do no good. Others felt that the Opsahl Commission was or would be the captive of one or other political tendency. Some feared that it would encroach on the preserves of elected representatives. My answer to these fears and criticisms - which were and are perfectly legitimate - is that the result - "A Citizens' Inquiry" - must speak for itself. For one thing, we were not captured by anybody. Our recommendations do not reflect the preferred views of any political party that I know of. We have listened and

reported - and promptly thereafter, on 10 June, dissolved ourselves : so we threaten no established order nor have wished ^{to} so. In parenthesis, since the Opsahl Commission no longer exists, no one speaks for it or in its name. Only its published volume remains and only the contents thereof are authentic.

Speaking, therefore, for myself I welcome this opportunity to address this distinguished audience of active politicians on a subject with which you must wrestle and in a way which is very different from the proceedings of the Opsahl Commission. The best I can do to be helpful, perhaps, is to explore with you the reasoning behind the Commission's recommendations - especially those on politics and the Constitution and not overlooking the (20) other recommendations - and to comment on some of the more important reactions to them.

Let me begin with the recommendation on the legal recognition of Irish nationalism in Northern Ireland as this is, perhaps, the key recommendation of the Report. Essentially, this recommendation was anticipated, indeed inspired, by a number of people and publications. For example, the 2nd Report of the Standing Advisory Commission on Human Rights in Northern Ireland, prepared in 1990 under the chairmanship of Sir Oliver Napier, pointed out that "the recognition and accommodation of the two traditions in Northern Ireland form a significant element in Article 5 of the Anglo Irish Agreement" and that "this provides some general protection in the field of international law." But it adds that "the Agreement cannot in itself provide firm assurance that the terms of Article 5 will actually be adhered to in particular matters". It concludes that "there are, therefore, strong arguments for the incorporation of a general provision in a revised Northern Ireland Constitution Act to

guarantee not only that there is no direct or indirect discrimination on the grounds of religious belief or political opinion but also that members of both communities or traditions are entitled to equality of treatment or esteem". We had also a specific submission on this subject and we also noted that it is consistent with the expressed views of the S.D.L.P. (Mr John Hume).

This idea, then is swelling up from the people of Northern Ireland. The Opsahl recommendation gives it form and focus and does not underestimate the quality of the change of attitude it requires on the part of the United Kingdom and of the Unionist community. But, and I emphasise this, it does not change the constitutional status of Northern Ireland, it does not affect the Union : but it does recognise a shift in the perceived character of Northern Ireland from being what it patently is not - a wholly Unionist state - to what it increasingly clearly is, a region shared by Unionism and Irish Nationalism.

Profound consequences flow from this - and I think it right to be frank as to my personal view on this point. The United Kingdom exercises sovereignty in Northern Ireland : the Irish Government has influence there. These very different concepts - sovereignty and influence - require to be brought into harmony with each other for neither government can bring peace and reconciliation to the people of Northern Ireland without the wholehearted cooperation of the other. It would be foolish for London to put forward a solution for Northern Ireland without consulting Dublin - and that means taking Dublin's views fully into account : it would be futile for Dublin to think it can resolve the problem by some action of its own, e.g. tampering with the Irish Constitution in vacuo.

The Opsahl Commission saw this legal recognition of Irish Nationalism in Northern Ireland as a *sine qua non* precedent to the creation of any Northern Ireland government- a creation which it regarded as essential to meet the strongly expressed wish of the Northern Ireland population across the board to have a political authority immediately responsive to them. They are fed up, and made this abundantly clear to us, with quango government allied to a semi-detached NIO. It has considered that the nationalist community will not accept any form of Unionist government again - and that such a government will not be imposed on it. In parenthesis I draw your attention to a phrase in the Copenhagen Summit Communique of 21/22 June, "Membership (of the European Union) requires that the candidate country has achieved stability of institutions guaranteeing ... respect for and protection of minorities ..."; both Prime Minister and Taoiseach seem bound by their sponsorship of this statement - and not merely externally.

It follows - and the above is what inspired the recommendation on future government - that a regional government of Northern Ireland should be put in place, based on the principle that "each community has an equal voice in making and executing the laws or a veto on their execution, and equally shared administrative authority". This could not be more lapidary and may be taken literally as it is not qualified. It is drawn from the 19th Century work of John C. Calhoun on concurrent majority in which compromise is the key quality rather than forced acquiescence.

One commentator has suggested that the Opsahl "Commission's concept of equality" seems to me to involve an undesirable institutionalisation of the division of the two communities which it should surely be our aim to heal when the violence ends". Au

contraire : the 1920/22 settlement instituted, or at least, confirmed the Unionist/Nationalist division; and the Westminster model of majority government could do no other than attempt to consolidate and perpetuate it - with the results that we know. In my view Northern Ireland will not be healed nor will violence end unless and until both communities have reason to respect each other. So long as inequality of authority persists that will not happen.

As to the criticism that the Opsahl recommendations on the future government of Northern Ireland implies an internal and, therefore, unacceptable solution : if it were simply internal that could well be the case. But a proposal that insists on legislation at Westminster to recognise the legitimacy in Northern Ireland of Irish nationalism and further insists that Northern Ireland and its governance are the property equally of the Unionist and Nationalist communities is no simple internal solution by any realistic standards. I confess to being puzzled by the apparent discrepancy between the SDLP position - expressed by Mr Hume in his speech to the First Plenary Session of Strand 1 of the currently suspended talks that "Strand One is about our relationship - the relationship between Unionist and Nationalist in Northern Ireland" - and that of the Irish Government expressed in a position paper submitted to the talks dated 29 September 1992 and published in the Irish Times on 11 November 1992 which stated inter alia that new institutions emerging from Strand Two " must enshrine an explicit acknowledgement of the need to cater equally for the problems of identity and allegiance of the Nationalist community in Northern Ireland which cannot be addressed in internal structures" (my underlining). I earnestly hope that the alternative method put forward by the Opsahl Commission will be studied as a way out of this apparent dilemma. I am fortified in this hope by what the Minister for Justice, Mrs Geoghegan-Quinn said at the Carlingford Conference in 24 June : 'A lasting accommodation will rest on new

structures to match the three sets of relationships that are the basis for the talks process. It will involve internal arrangements in Northern Ireland that rest on the support of both communities It will rest on a partnership that precludes the politics of majority - minority ever again...."

And that cuts both ways. Unionists are entitled in the view of the **Opsahl Commission**, to the same guarantee as Nationalists that their community will not be governed against its will by the other, historically and actually, rival community.

As to the positions taken by the Unionist Parties on the **Opsahl** recommendation, they vary, but not very much, ranging from the D.U.P. position that they are "utterly repugnant" and "the total negation of democracy and majority rights through the setting of 50/50 rule" to the U.U.P. position that they are "whole unrealistic" and that "to accord 50 % of seats in government to Nationalists would be a complete negation of democracy and the will of the people" to the Alliance Party position that they are "dangerously naive" and are not a framework for peace but a recipe for the Balkanisation of Northern Ireland."

Obviously it is extremely difficult for people brought up in the Westminster system of majority government to open their minds to the **Opsahl** suggestion that the system is not appropriate to a fundamentally divided society as it results, and can only result, in the majority community coercing the minority. It seems hardly necessary to point out that that precisely was the nature of Stormont rule - and that that was inevitably so. The refusal, for the time being in these first reactions, of consideration of this by any of the Unionist parties is not unexpected even it is not helpful. Time and a growing realisation that Stormont cannot

and will not be restored may help to prise open the necessary debate on this issue. It is not enough that Unionism, to a significant extent, has now reached the point that Brian Faulkner reached but could not sustain in the Sunningdale Agreement. Twenty years have passed since then and the enlightenment of Western governments to the human and civil rights both of individuals and of communities has proceeded beyond the point where there could be a reversion to majority rule in Northern Ireland with all its internal and external consequences. The naivety lies in believing otherwise.

Much has been written about the consequences of demographic change in Northern Ireland. I recall reading the last tome of Toynbee's "History of the World" several decades ago in which he let himself loose on the proposition that English speaking North America would one day witness the hegemony of Quebec because of its highly prolific French-speaking inhabitants as compared with the more restrained WASPs. Well, that never happened: and I suspect that demographic change in Northern Ireland will be neither as rapid as prophesied nor have the effects attributed to it. Nevertheless, better now for everyone to seek new forms of cohabitation than to do so later under goodness knows what pressures might exist down the road. Above all Unionists should not overlook that Opsahl recommends that no change should take place in the constitutional status of Northern Ireland without the consent of a Northern Ireland government in which both communities have equal say and as well the consent of the people of Northern Ireland.

All these points need detailed examination. This can, of course, be done in future sessions of the currently suspended talks - if and when they resume. They can also be discussed directly between government and political parties if that is their preference. In so

far as the talks may have run into the sands they may, in any event, need an injection of new material. Alternatively, the Opsahl Commission recommends that the British government, in consultation with the Irish Government should set up a special Commission to put forward views and recommendations. These should be the basis for further consultation with the political parties and, if necessary, for direct consultation with the people of Northern Ireland. It should, I think, be common ground here that the governments are entitled to the cooperation of the political parties in such an exercise as they bear the costs, direct and indirect, of Northern Ireland and its troubles.

Much comment has been made about the Opsahl recommendation concerning contact with Sinn Fein. A careful reading of the report will show that it does not recommend that Sinn Fein be brought unconditionally into the constitutional process. It does recommend that informal ways be found to test its commitment to the constitutional process and that the British government - either directly or through intermediaries - open discussions with Sinn Fein with a view to persuading the IRA first to move towards a de-escalation in the level of violence and eventually to a cease-fire.

By concentrating, as I have done, on the more political recommendations I have, perforce, left inadequate time to discuss the many other recommendations. In the field of law, justice and security, we comment on different forms as well as methods of policing, on the enactment of a Bill of Rights, on improving the fairness and accountability of the criminal justice system in relation, for example, to the Diplock Courts, the inquest process and the introduction of a charge of manslaughter involving the intentional use of lethal force. On the economy we propose that the creation of an appropriate cross-border economic institution

be an immediate priority of the Irish Government and any new Northern Ireland government set up in accordance with the recommendation on that central subject. On society, we attach a great deal of importance to the recommendation on women in politics - in this respect we were highly impressed by the responsibilities for family and society in Northern Ireland undertaken by women without anything like adequate appreciation.

On religion we make it clear that the Churches have a major contribution to make - to ease tensions and that self-examination is not the least part of that contribution. And - in education, we suggest that setting up "shared schools" as part of the process of ecumenism could usefully follow the example already set in place by the English hierarchy. On history and culture let me assure you that the reference in our final recommendation to a common Irish history course does not mean a banalised or bowdlerised version of history - it means rather that both sides, or more if there are more, of a common history should be presented.