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ROINN AN TAOISIGH

Uimhir.....

Northern Ireland

Taoiseach,

You asked me to give you a note on possible institutional arrangements as between North and South.

As I see it, there are two alternatives - either:-

- (1) to conceive of an organisation to carry out agreed functions on an all-Ireland basis; or
- (2) to push ahead with the development, as far as possible, of the Anglo-Irish Inter-Governmental Conference.

I think that the second course would be the better - though we may not have the choice. Whichever alternative is taken should involve a constitutional referendum. The alternative should, therefore, be permanent enough and have a profile high enough to balance whatever is done with Articles 2 and 3.

The reasons for going for option 2 are two-fold. On precedent, the attitude of Unionists to North-South co-operation has most certainly not been forthcoming; and, reflecting this, the British, on the two earlier occasions when they have considered the matter seriously - in 1920 and in 1972 and 1973 - have been inclined to propose institutions, with limited structures and even more limited powers.

The Council of Ireland, in 1920, was proposed "with a view to the eventual establishment of a Parliament for the whole of Ireland, and to bringing about harmonious action between the Parliaments and Governments of Southern Ireland and Northern Ireland.....". It was to consist of a President and 20 members from the South and 20 from the North. Its functions were, initially, to be "railways, fisheries and contagious diseases of animals".

The next serious proposal appeared in the White Paper "Northern Ireland Constitutional Proposals" published in March 1973. Then, the British said that they favoured and were prepared to facilitate the formation of a "Council of Ireland" to permit the new Northern Ireland institutions to consult and coordinate action on matters of mutual interest "such as tourism, regional development, electricity and transport."

This concept was carried into the Sunningdale Agreement which proposed a full-blown Council of Ireland. I still have the most vivid recollection of the visit to Dublin by Mr. Faulkner in early 1974 after the Northern Ireland Executive had been

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established, when he argued most trenchantly that, even though he had agreed at Sunningdale, to the establishment of a Council of Ireland, our insistence on going ahead with the proposals, at that stage, would certainly wreck the Executive, which was beginning to function, reasonably well. Even the SDLP, at that point, seemed to be withdrawing from the proposals for a full-scale "Council of Ireland", preferring to consolidate their achievements in working the power-sharing Executive. In the event, even that fell, following the Ulster Workers' strike in May 1974.

All this may seem remote; and the possibility of street action against any North/South institution, in these days, may just not seem to be on. Recollection of the extent of the protest in 1985 and early 1986 against the Anglo-Irish Agreement would, however, indicate that emotions and the possibility of street protests are by no means dead in Northern Ireland.

I would conclude, therefore, that the functions which would be proposed by the British - and Unionists - for any North-South institution, would be so limited as to make the institution itself quite a petty affair. And, even if it were established, its net effect would be to re-establish the Unionist veto in that with their majority in any likely Northern institutions, they could veto any possible development of the institution.

The second consideration is this. When the Northern Ireland constitutional arrangements were being settled in 1973, the British conceived of the powers of Government in three ways. There were, first of all "reserved" powers which Westminster kept for itself. These included defence, judicial appointments, franchise and elections, foreign affairs, and most taxation etc.. None of these powers could be exercised by the local administration in Northern Ireland. There were then a further series of "excepted" powers. These remained with Westminster but could be transferred, in time, to the Northern administration. These powers were notably in the "law and order" field and were reserved to the U.K. Government because of the security situation. They could be transferred, in time, to the Northern administration. Responsibility for all other matters was to rest with the Northern Ireland Executive.

In other words, any North/South institution, organised purely as such, would most probably only have functions of a comparative low-key nature - and many of the most sensitive issues as between Dublin and London and Dublin and Northern Ireland would be excluded from consideration. The institution would, therefore, almost by its very nature be limited in its beginning, have little or no possibility of growth - because of Westminster's continuing involvement in

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the most sensitive areas - as well as being stultified by continuing Unionist opposition through Northern Ireland Departments or administrative units.

If, however, it were possible to follow option 2 and work through the Conference, then, virtually every possibility is open. Under the Agreement, the Irish Government can put forward views and proposals on matters relating to Northern Ireland within the field of activity of the Conference, insofar as those matters are not the responsibility of a devolved administration in Northern Ireland. Matters covered by the Agreement include political matters, security and related matters, legal matters, including the administration of justice, cross-border cooperation on security, economic and social and cultural matters etc. There is not much left outside these headings on which, it is worth emphasising again, the Government have the full right and authority to put forward proposals.

The flaw is, of course, that the Unionists are not part of the Conference arrangements. That, however, is a matter of their own choice. It could be argued that the more the Conference is seen to involve itself in administrative matters in Northern Ireland, the more the temptation will be for the Unionists to become involved; and the more open and inviting that prospect can be made for them, the better. If they were to come within the Conference arrangements - whether the Conference continues to be called or constituted as such or in some other form - then the circle in Northern Ireland and as between North and South would be complete.

There would be cohesive administrative arrangements, supported by both Governments, covering all aspects of policy - and not the limited areas feasible under any likely "institutional" arrangement. In other words, the people of Northern Ireland could, if arrangements were appropriately made, participate, with the help of both governments in discussions on the future of the Internal Market, as it affects them, agriculture in the EC, the Structural Funds etc. - all subjects likely to be outside their scope in a purely North/South or local Northern administration (since Britain will retain full control, in any conceivable circumstances, of foreign affairs and relations with the European Community.)

They could also, in such arrangements, find themselves with a voice on security, which, again, they could never achieve for the foreseeable future in a purely local arrangement. (The British will never give responsibility for security to a local administration so long as that security involves the use of the British Army.) Security has always been among the most serious preoccupations of Unionism.

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A third advantage, for them, would be that they would have the support of a continuing British presence to guarantee their rights. This presence would, of course, have to be modified by the counter guarantee that the British have no continuing strategic, economic or political interest in remaining in Northern Ireland and will get out as soon as North and South agree.

Again, they would have a voice in how affairs are administered here. This could be a delicate issue but to the extent that Unionists are involved in Southern affairs, they are becoming part of an all-Ireland structure. Possibly, as of now, they have no interest in any such involvement but over time, and with developments in the European Community, especially on the Internal Market, it is not unlikely that such an involvement could be attractive. It could be sweetened by the possibility of an input from them on such things as Irish policies in Europe, tourism, a coordinated transport policy for the entire island - covering roads, railways, ports, and airports, common administration of health and welfare schemes, particularly in the border areas, common planning of infrastructural works in drainage and possibly even a common judicial system and the common promotion of industrial investment on an all-Ireland basis.

A number of these areas are of particular sensitivity because of the effect of the violence of the last generation. We do not wish to have tourists think they are coming to a bomber's playground when they visit the South: investors are not known for their love of the stray mortar or bullet. But if the scenario could be sold in such a way as to persuade the men of violence that this was the way forward, then there would be hope.

Institutional Proposals

If, however, it is not possible to form an organisation based on the Conference, however transformed, and involving the Unionists, it may be necessary to proceed along the lines of an organisation agreed on a purely North/South basis.

Again, because such an institution is expected to balance change in Articles 2 and 3, it would be necessary to incorporate it in an international agreement or some other constitutionally binding document. There is no point in having an institution which could disappear as soon as or if Articles 2 and 3 are modified.

Next, the institution should function on an all-Ireland basis with, initially at least, the chairmanship rotating as between North and South.

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Functions to be transferred to the institution could be agreed as between North and South, perhaps, on the basis of the study done in the early 1970s of the functions of the "Council of Ireland". That study isolated functions in a large number of areas involving, as far as I can recollect about 21,000 civil servants here which could be transferred.

The institution should be answerable to a Council composed of, say, equal numbers of members from the legislatures North and South, which would debate their reports, audit their accounts etc. in the same way as the Dáil here exercises responsibility over the executive arm of Government.

The importance of the institution would be measured by the importance of the functions transferred to it. Initially, at least, these could, perhaps, be tourism, transport, regional planning and development, agriculture and coordination of industrial research.

It would be for consideration whether responsibility for security should also be transferred: this could be a large attraction for the Unionists and would give the idea of a one-island State a great deal of cohesion.

If the idea of an institution of this sort were to go ahead, then the arrangements for the transfer of functions etc. could be worked out in more detail, with the organisation experts in Finance, with an input from Foreign Affairs.



Dermot Nally,
10 March, 1993.