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Issues Paper

Strand 1: Institutions within Northern Ireland

General Background

1. A primary objective for many, if not all, of the Unionists likely to participate in the forthcoming negotiations will be the restoration of some form of devolved government within Northern Ireland. Straightforward integration with the rest of the United Kingdom appears to remain the objective of Robert McCartney, and of the rump of the Conservative Party in Northern Ireland, but while it retains an allure for many within the UUP (less so the DUP) there is a general recognition that it is not achievable. Nevertheless, tensions on the issue are still apparent within mainstream Unionism; the UUP's Statement of Aims (November 1995) was largely Molyneaux-ish in the modesty of its objectives in this regard, though certain internal contradictions were apparent. The assertion that "what David Trimble really wants is to be Prime Minister of Northern Ireland" is not incontestable.
2. Most nationalists, too, while firm that there can be no internal settlement or return to Stormont-style majoritarianism, appear to accept the inevitability of devolved institutions within Northern Ireland. Sinn Féin's starting point, as set out at the Forum in its debate on the subject, will probably be that in a united Ireland government throughout the island will have to be more decentralised and locally accountable, but that there should be no distinct structures within the six counties of Northern Ireland. However, in that debate, their spokesman acknowledged, following stiff questioning by the SDLP, that if in the course of negotiations Sinn Féin could be convinced that specific institutions had merit as a concession and reassurance to the Unionist community they could be examined as a possibility for a transitional, limited period. Within nationalism there may be differences between those who would cede a minimum of power to new institutions and those who see advantages in creating more effective structures.
3. The "third strand" parties - Alliance, Democratic Left, Workers' Party - and several

commentators/public figures (eg George Quigley, Robin Wilson) tend to favour strong institutions with extensive powers, on the general basis that responsibility is likely to make political leaders responsible.

1991/2 Negotiations

4. During the 1991/2 negotiations, substantial consensus emerged between the parties on the general criteria to be met by new institutions. With regard to specific structures, both Unionist parties and Alliance favoured the creation of an Assembly with a strong committee system. Alliance proposed a power-sharing Executive selected from within the Assembly by the Secretary of State: both the UUP and the DUP suggested that the Assembly committees, which in their composition would be proportionate to strengths within the Assembly, and the chairs of which would be allocated on the same basis, would themselves discharge executive functions. The UUP, unlike the DUP, did not favour the immediate devolution of legislative functions. The SDLP, however, suggested a separation of legislative and executive powers: an Assembly would be complemented by a six-member Executive Commission, of which three members would be directly elected by proportional representation from within Northern Ireland, and three would be appointed by the British and Irish Governments and the EU Commission (reflecting Northern Ireland's main external relationships).

5. A sub-committee of Strand 1, chaired by British Minister of State Hanley, produced a report (10 June 1996) setting out a compromise arrangement, albeit one heavily skewed in the Unionist direction: while executive powers would be exercised by Assembly committees and their chairmen, a three-person Panel, directly elected from within Northern Ireland and acting by consensus, would exercise important consultative, monitoring, referral and representational functions. Weighted majorities (the level was not agreed) would be required within the Assembly and its committees in voting on contentious legislation, standing orders, appointment to key offices within the Assembly.

Attached to the report were several annexes on various technical but important issues,

such as financial arrangements and the division of responsibility between Departments, chairmen and their committees. Most of these were not extensively discussed.

6. The SDLP placed a reserve upon the adoption of the sub-committee's report, which it did not subsequently lift. Unionist and other critics alleged, then and subsequently, that the party leader had rowed back from positions he had permitted the party's negotiators to adopt. The SDLP in reply pointed to the "nothing is agreed" principle and the need for them to ensure that Strand 2 and Strand 3 arrangements adequately reflected the totality of external relationships. The Talks then moved on to Strand 2 and did not revisit Strand 1.

Framework Document

7. Paragraph 10 of *A New Framework for Agreement* set out as one of the four guiding principles for the two governments' co-operation in search of agreement "*that any new political arrangements must be based on full respect for, and protection and expression of, the rights and identities of both traditions in Ireland and even-handedly afford both communities in Northern Ireland parity of esteem and treatment, including equality of opportunity and advantage.*" Paragraph 13 (a) described one of the interlocking and mutually supporting institutions across the three strands as being "*structures within Northern Ireland...- to enable elected representatives in Northern Ireland to exercise shared administrative and legislative control over all those matters that can be agreed across both communities and which can most effectively and appropriately be dealt with at that level.*"
8. Paragraph 22 confirmed the necessity of cross-community support for such institutions and the support of the two Governments for cross-community consensus in relation to decisions affecting the basic rights and fundamental interests of both communities "*for example on the lines adumbrated in Strand 1 discussions in the 1992 round-table talks*". Paragraph 23, while recognising the interest of the two Governments in the principles and overall context for new structures, stated that the structures themselves

would most effectively be negotiated in direct dialogue with the relevant political parties.

A Framework for Accountable Government in Northern Ireland

9. The British Government published simultaneously with *A New Framework for Agreement* its “*understanding of potentially acceptable elements for improving local accountability in Northern Ireland, as part of a comprehensive political settlement...*”. This paper drew heavily on the Strand 1 sub-committee report of 10 June 1992. It outlined the following main features of possible arrangements:

- new institutions to have “Province-wide executive responsibilities”
- a unicameral 90 member Assembly elected for a fixed term (4/5 years) by a form of PR
- a three person Panel elected by PR from a single NI constituency, acting by unanimity and with a range of consultative, monitoring, referral and representational functions;
- a system of Assembly Committees, broadly proportionate in composition to party strengths, to oversee the work of Departments. Committee chairmen would be Heads of Department.
- Committee chairmen and their deputies to be nominated as a package by the Panel and to be voted on *en bloc* by the Assembly
- legislative and executive responsibility over the “transferred” matters specified in the Northern Ireland Constitution Act (i.e largely social and economic questions). Possibility of later expansion of powers by agreement to include reserved matters (otherwise remaining with Westminster/ Secretary of State -

notably policing and justice matters). Excepted matters - defence, foreign affairs, etc.- to remain with Westminster. For discussion whether legislative responsibility [over transferred matters] to be devolved from day one or progressively thereafter.

- checks and balances to sustain cross-community confidence, in particular use of weighted majorities in full Assembly on contentious legislation, adoption of standing orders, election of speaker, nomination of committee chairmen and deputies, and generally in Committees; also use of threshold voting to allow for invocation of weighted majority provisions and for referral to Panel (which would have power to scrutinise and block legislation). Level of weighted majority could be set between 65%-75%; threshold would, correspondingly, be placed at 25%-35%.

Main Issues for Consideration

10. While reaction to the British document was less emphatic than that to the Joint Framework Document, nevertheless it has been extensively commented on. Some of the reaction may be regarded as political posturing - for instance, some of those who were prepared to accept a Panel in 1992 now oppose it. Nevertheless, numerous issues inevitably arise. Some are of a fundamental nature, while others of a technical character are nonetheless also important. Among the former are:

- **the overall shape of the arrangements:** a frequent criticism is that the arrangements proposed are excessively complex for so small a society and are likely to prove impractically elaborate, especially when linkages with Strands 2 and 3 are taken into account. Unionists suggest that the effect of this will be to paralyse internal structures and to strengthen the East/West and North/South axes. On the other hand, the SDLP formally continue (for example, at the Forum) to advance their own proposal and have not indicated a willingness to accept the British proposals.

- **institutional effectiveness:** a related argument, though one advanced more from a technocratic than a political viewpoint, is that power will be dispersed too widely within the system, and that while checks and balances are necessary in the interests of nationalist confidence the net effect of those proposed will be to render impossible co-ordinated and decisive action. The likelihood of rivalry between the Panel and Committee chairmen is cited, as is the probable absence of a collegial sense among the chairmen (despite the fact that a General Purposes committee is proposed). However, while the obvious, and simpler, alternative would be a power-sharing executive as in 1974, there seems to be a widespread view that the necessary political trust required for its creation and maintenance would not be present. The system proposed would give Panel members and Committee chairmen their own direct sources of legitimacy (popular votes - party share of seats in Assembly) without requiring formal coalition-building. On the other hand, the Panel (and, on some issues, the Committee chairmen collectively, and Committee members) will be required to find the necessary reserves of compromise to work together.

- **the nature of new institutions' powers:** should these be both legislative and executive, or purely executive? Is there scope for the "rolling" devolution of legislative competence, as signalled by the British Government? The position of the UUP, as set out in November 1995, is that new institutions should have executive powers only, as any specifically NI legislation would best be enacted through enhanced procedures at Westminster. However, the UUP also indicated an openness to the eventual devolution of some legislative powers to an Assembly once it had proved its capacity to operate smoothly. Alliance and the DUP have both sought a legislative capacity from day one.

- **the matters to be devolved:** a related question is whether there is merit in looking for the early, or indeed immediate, devolution of some or all of the "reserved" matters, notably policing and justice questions. Alliance have

12. Other issues for consideration include:

- **the Panel:** there has been considerable Unionist criticism of the relatively extensive role envisaged for the Panel in the British paper, and indeed of the concept itself. It is argued that the existence of a Panel would mean that all difficult matters would be pushed up to it from an Assembly, and that the unanimity requirement would result in inevitable deadlock - thereby leading to the invocation of the Anglo-Irish Conference. Alliance and other smaller parties have argued that the Panel should have more than three members, saying that otherwise power would be predictably concentrated in the hands of the UUP, SDLP and DUP. The precise nature of the Panel's responsibilities would also have to be clarified, as would what would happen when unanimity could not be achieved.

- **the relationship between Committee Chairmen and their Committees:** the British have proposed a Code of Practice to define the relationships between the Panel, Committee Chairmen and the Committees. One important requirement would be to ensure that Chairmen (particularly nationalist chairmen) did not become "captives" of their committees. In 1992 an annex to the sub-committee report set out certain ideas on how Chairmen might have an independent role (direct access to all officials and papers in a Department, for example). It is also proposed that committees operate by weighted majority. These issues need to be explored further.

- **election of Committee Chairmen:** the British proposal that the Panel put together a slate of candidates for the various offices, to be accepted or rejected as a package, has the merit of obliging the parties to reach agreement on a balanced and fair distribution, and might reinforce some sense of collegiality. In 1992, the preferred method appeared to be selection by the Assembly itself, using the d'Hondt system. The Unionist parties might seek to restore the primacy of the Assembly.

proposed the creation of a Department of Justice with functions in these matters. Local control over policing was supported at the Forum by Séamus Mallon and, on a personal basis, by Minister of State Currie. It might also be considered whether there would be merit in a greater degree of autonomy on fiscal matters, which are defined as excepted, and as such would currently be non-transferrable. Some economists have argued that the capacity, for example, to reduce rates of corporation tax - the corollaries of which might be the loss of an equivalent slice of the subvention, but also an entitlement to retain the fiscal benefits of increased economic activity - would give a local administration an incentive to innovate and would foster a real connection between performance and loss/rewards. There is likely, however, to be serious opposition both from the Treasury and from many Unionists -if for different reasons - to any lessening of the fiscal unity of the United Kingdom.

11. The three issues of institutional effectiveness, the nature of the powers to be exercised, and the matters to be transferred are all sub-sets of a larger question: how powerful and meaningful should devolved institutions be? Arguments in favour of a cautious approach would include the logic of building up trust and mutual confidence in small steps, and the dangers of overloading what will be experimental structures; furthermore, nationalist distrust of Unionist intentions in devolved institutions runs very deep. On the other hand, there may be merit in arguing that the discharge of serious responsibilities could foster real political leadership. There are attractions from a nationalist perspective in emphasising the distinctness of Northern Ireland from the rest of the UK, and in conferring on Irish people the maximum possible control over their own affairs. Furthermore, the development of North-South institutions would be facilitated by the existence of a relatively powerful and autonomous local administration in Northern Ireland. This matter is ultimately for the Northern parties to determine, but it may be worth exploring with Sinn Féin, the SDLP, and perhaps Alliance and some of the smaller parties.

- **weighted majority/threshold:** it is envisaged that the Assembly operate by weighted majority in appointing office-holders, adopting rules of procedure and in voting on contentious matters. In addition, it is also expected that a minority of members (over a certain threshold) would be able to trigger the weighted majority provisions or refer a matter to the Panel. In 1992 the SDLP proposed levels of 75% and 25% for the majority and the threshold; the UUP and Alliance 70%/30%; and the DUP 65%/25%. A requirement for cross-community support - as envisaged in the establishment of sufficient consensus in the negotiations themselves - might prove to be very difficult to define legislatively and to apply in a formal manner. The British also propose that weighted majorities be used in the committees: would they necessarily be at the same level?

- **the relationship between new institutions and a North/South body:** ways would have to be found of ensuring that Northern representatives were able to participate authoritatively in a North/South body - this would imply, at the minimum, coordination of the positions of chairmen through the proposed General Purposes Committee. In addition, arrangements for accountability would also be required - presumably also as an aspect of general procedures in this area (Committee scrutiny, answering of questions, etc.).

- **the relationship between new institutions and Westminster:** the UUP have advocated that relatively weak new institutions be complemented with an upgrading of legislative procedures for Northern Ireland at Westminster and a new Standing Committee, in addition to the existing select committee. This area is one mentioned in the British paper as requiring further consideration.

- **the relationship between new institutions and the EU:** this is another area which the British have signalled as requiring examination. Possible innovations might include the more regular association of NI representatives with British

delegations, and the opening of a NI regional office in Brussels.

Further Work

13. Given the formal non-participation of the Irish Government in Strand 1, and the central role of the nationalist parties in it, we might be to seek to discuss with the SDLP (In the first instance) its own current thinking on the issues sketched above, in particular on how actively it will continue to propose its own model, and on the question of the extent of new institutions' powers. We could determine in the light of these discussions whether and how further work by us would be useful.

14. Background work which could usefully be initiated in the meantime might include:
 - current state of cross-community relationships in local councils
 - financial aspects of devolved administration, including scope for fiscal powers.
 - possible relationships between new institutions and Westminster

The relationship between new institutions and the EU could be considered in the context of work on the EU aspects of North/South co-operation.

Research Unit

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