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SIR FRANK COOPER

c.c. Mr. Woodfield Mr. Armstrong
 Mr. Janes Mr. Smith
 Mr. Bloomfield✓ Mr. Bourn
 Mr. Burns

I mentioned to you that I had recently held a meeting with Mr. Bloomfield and his team to discuss the next two Discussion Papers. You had previously seen these Discussion Papers as Part I and II of a three-part Discussion Paper. Mr. Bloomfield will be submitting separately the redraft of the Discussion Paper on the procedures of the Convention. I now attach a revised version of the Discussion Paper on power-sharing.

There has been extensive redrafting of the Discussion Paper on power sharing: the earlier version was in many respects different from the draft as it now appears. In particular, we have omitted the annexes dealing with foreign precedents. It seemed to us better to avoid any implication that we were attempting to deal comprehensively with constitutional devices used abroad in countries where there are community tensions - we just do not know enough to do it and even if we did, we would not want to. Instead, we have concentrated in the draft on various constitutional devices and have merely illustrated them by reference to foreign precedents. We have asked the Foreign and Commonwealth Office to look at what we say so that we do not misrepresent devices used in foreign countries.

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The second main omission in the revised draft is any reference to "integration" or "independence". The Northern Ireland Act 1974 places upon the Constitutional Convention the task of considering "what provisions for the government of Northern Ireland is likely to command the most widespread acceptance throughout the community there". This is very wide but the White Paper places a gloss on it: the implication there is that we should consider constitutional arrangements which involve some form of devolved government and in circumstances where the United Kingdom retains sufficient power to ensure that any arrangements for partnership between the communities will be observed. In theory at least, it would be possible to conceive of arrangements for power-sharing within an integration "solution" (e.g. power-sharing at lower levels of government) or power-sharing in the independence context (e.g. residual arrangements made by HMG to try to preserve power-sharing after sovereignty had been transferred). But we get here into controversial and complicated matters and we thought it better in this draft not to deal in terms with them. The draft, therefore, assumes throughout that what we are dealing with is some form of devolved government (although there comes a point when "devolved" government shades into some form of "integration" solution).

There is another fundamental point about the draft. If HMG publishes the draft as a White Paper, the implication is that

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any solution suggested in it is of its nature acceptable to HMG. To take an example, if the Constitutional Convention decided to go for a "cantonisation" solution or some form of government based on the Swedish model, we must be sure that this is acceptable to HMG. In other words, we must be careful not to be hoisted by our own petard - anything in the draft must relate to solutions to which HMG are prepared in the event to give serious consideration.

We have tried in the draft to avoid using the word "power-sharing" except in a technical sense as referring to the arrangements made under the Northern Ireland Constitution Act, 1973. What we are talking about in the draft is "government by consent" - although this term too has become somewhat tired - by which we mean any form of government which the two communities in Northern Ireland are prepared voluntarily to operate. This is a rather wider concept than power-sharing. But there is a real difficulty in choosing suitable words - our efforts to find a suitable title for the Discussion Paper is one aspect of this.

It is difficult to say what the impact of this White Paper will be and we shall have to consider very carefully the timing of publication. The Loyalists will certainly not like it and will regard it as provocative. The SDLP may give it half-hearted welcome: this is, however, far from sure since they might claim that some of the devices rehearsed in the draft show a willingness by HMG to go back on the undertakings about power-sharing. The SDLP will certainly say that power-sharing is only one part of the

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story and that we should publish a further document dealing with the other part - i.e. the Irish dimension. You will recall that the draft which you originally saw contained a Part III dealing with the Irish dimension but we have not taken the redrafting any further; there are obvious and fundamental difficulties about publishing anything on this matter. Before the Discussion Paper on power-sharing is published, we shall have to be quite clear whether we are going to resist proposals for a Discussion Paper on the Irish dimension. If not, we should now try to prepare a draft which is as unprovocative as possible - not an easy task. I gather that at the press conference on the Finance Discussion Paper Secretary of State was asked whether he intended to publish anything on the Irish dimension: he said that he did not intend to do so since this was essentially a matter for the North and South.

J. Finucane

2 October 1974

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