

COVERING
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S H LAWTON SMITH - CPL
24 APRIL 1989

PS/Sir K Bloomfield - B
Mr Burns - B
Mr A W Stephens - M
Mr Miles - B
Mr Spence - B
Mr Wood - B
Mr Kirk
Mr Blackwell - B
Mr J McConnell - B
Mr Daniell - B
Mr Masefield - B



POLITICAL DEVELOPMENT GROUP
NEXT MEETING: 2 MAY 1989, 10.00

1. This note confirms the date and time of the next PDG meeting as Tuesday 2 May at 10.00 in the video conferencing rooms. The rooms have been booked until 13.00.
2. An agenda will be circulated shortly. One item will be covered by Mr Thomas' paper on "Political Development: Next Steps", which I attach.
3. I would be grateful to receive any other papers, and know of any apologies for absence, as soon as possible.

(SIGNED)

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24 April 1989
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PDG/

POLITICAL DEVELOPMENT GROUP
Political Progress: Next Steps

1. At the last meeting of PDG I was invited to prepare a paper discussing what the next steps might be to seek political progress after the Mawhinney Round. It is attached.

2. In its analysis of the options, and elsewhere, it draws on earlier papers prepared in the Office. Accordingly, readers with a sense of *deja vu* are not deceived.

3. I hope the paper will at least serve as a basis for discussion, which is its intended purpose. In preparing it I have been very conscious of two limiting factors:

(i) First, because the Mawhinney Round is intended to be an exploration, a discussion of the next steps should logically follow that exploration. Not only is the Mawhinney Round still in progress, but the feedback from the talks which have so far taken place is less than complete;

(ii) In practice almost everything turns on the views of Ministers: certainly those of the Secretary of State (of the day) and, on some options, on those of his Cabinet colleagues.

4. For analytical purposes it may be helpful to draw a somewhat crude distinction between the options which might be misnamed as follows:

(a) Improved Direct Rule (or doing nothing): more specifically, not taking active steps to stimulate progress to or towards devolution; acknowledging that direct rule must continue for some period; indicating willingness at all times to facilitate political dialogue and progress towards devolution; and considering other possible reforms for example to make direct rule more accountable, or to explore the scope at local and regional level for other accountable institutions;

(b) Consensual Devolution: that is, attempting (continued) dialogue with and between the Parties. The Mawhinney Round should show how far this is likely to be possible or fruitful. A crucial factor remains the apparent inability of the Unionists to join such a process, at least openly, without some concessions on the Agreement/Conference/Secretariat (the 'Duisburg Riddle').

(c) The 'imposed solution model' Some four years on from the signing of the Anglo-Irish Agreement, with convincing signs that the political stalemate will continue (PAB may offer a more optimistic view), Ministers, and other political commentators, are likely to see increasing attraction in the 'imposed solution'; that is, a procedure where the Government does its

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best to calculate the devolved system of government most likely to have general appeal and legislates for it accordingly. (This might not in fact be all that 'imposed': one idea would be to seek validation for the scheme through a referendum, on the view that the voice of the people might effectively free political leaders from the various constraints of the past.)

5. Much turns on Ministers' perception of how damaging the local political vacuum is. If it is acceptable Ministers may return to the 'do nothing' position. But if the continuation of the political stalemate is seen as seriously damaging (and remediable) they are likely to veer between options (b) and (c). The conventional wisdom, which clearly has much merit, is greatly to prefer (b) on the basis that a system imposed over the heads of local political leaders is unlikely to be sustained. However, we may reach (may indeed be reaching) the point where substantial sections of local political opinion would actually welcome a degree of imposition. Nonetheless, Ministers are likely to conclude that this is a proper way forward only if satisfied that the option (b) route is effectively closed. The problem with the Mawhinney Round (again PAB may offer a different assessment) is that because it was launched without any attempt by the UK Government to meet the Unionists' need for some movement on the Agreement, it has not had a proper chance to assess the viability of developing a solution through dialogue with and between the local parties.

6. Underlying this is the assessment that what the Mawhinney Round demonstrates is

(a) there is real prospect of progress to or towards devolution on the 'consensual' route, though dialogue with and between the parties. While success cannot be guaranteed there is wide interest in it, and a measure of agreement at least on what the elements of a settlement might be;

(b) progress cannot however be made without, in some way, answering the Duisburg Riddle by devising some means of unpainting the Unionists from the corner in which they find themselves.

If that assessment is accepted by the Secretary of State, the initial outcome of the Mawhinney Round might be for him to report that conclusion, with the suggested remedy, to the Prime Minister and other colleagues.

7. A final, if obvious, point: we should not forget the Great Britain dimension to this. While there is little room to doubt the resolution of this administration, wider public and (non-Conservative) political opinion may require some reassurance that some purposeful enterprise is under way: an enterprise moreover in which there is local leadership playing a constructive

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POLITICAL DEVELOPMENT: NEXT STEPS

1. This paper considers what, if any, steps the Government should take to stimulate or facilitate political progress in the light of the recent round of exploratory talks with local politicians, opinion formers and other distinguished people (the 'Mawhinney Round').
2. The natural starting point is an assessment of the outcome of that reconnaissance. [It is difficult to summarise what proved to be a wide ranging and serious set of meetings and contacts.] Among the key points are these:
 - (i) almost all of those consulted saw the need for political progress and the desirability of talks between the political parties. And there is some understanding that talks can only come about on a basis which is seen to be fair to both sides;
 - (ii) almost all of those concerned talked about the desirability of progress towards a devolved Government, and virtually no other options were mentioned;
 - (iii) there was general acknowledgement of the need for an Irish dimension; not surprisingly there are differing views on the desirable outcome, and a lack of very specific ideas;
 - (iv) the Unionists' insistence on the suspension of the Agreement before talks can begin remains an important preliminary obstacle.
 - (v) there is a greater appreciation of the need for the different political interests to engage in dialogue with each other to ensure mutual understanding. (The Round challenged the assumption that the players already knew what the others thought.)
3. There remains considerable interest in devolution: in the sense of devolving administrative, probably legislative, powers to an institution operating at provincial level. Naturally there are varying degrees of commitment, with some of the Nationalist side seeing cross-border relations as pre-eminent, and some Unionists hankering for 'integration'. Similarly there are also different ideas about the form it should take; though even on that there is common ground on some of the major principles: for example, that the rights and aspirations of the minority must be recognised and safeguarded. But it also seems clear that the differences of view are not so small nor the desire for devolution so great, that the demand for devolution is irresistible, or that local parties left to themselves will arrive at agreed solutions. The obstacle to starting the talks - the Unionists wish for the Agreement to be suspended - remains a substantial difficulty. Meanwhile direct rule is there; it works; and it is broadly speaking acceptable, within Northern Ireland and, so far, Great Britain.

4. Perhaps the crucial judgement for the Government now lies in deciding:

(i) whether it is right, at this time, to continue the pursuit of devolution or, without abandoning that long term objective;

(ii) to turn to other ways of developing the political and constitutional process.

This paper looks at these in turn; though it should be noted that pursuing devolution would not in principle be incompatible with making other changes at the same time, for example, to adjust local authority powers.

Devolution

5. The arguments for seeking devolution have long been clear and remain valid. Nonetheless they may be worth recalling briefly:

(i) The Government is interested in delivering good Government to Northern Ireland. In principle the involvement of local people should be conducive to that aim, in offering better, more sensitive and more acceptable Government for the Province;

(ii) Northern Ireland's different social, economic, cultural, historical and geographic circumstances require separate decisions in many matters, and a separate decision taking structure supported by separate legislative provisions (preferably by a body that is locally elected and locally responsible).

(iii) In the absence of a devolved provincial Government, and with local authorities emasculated by the transfer of many functions to central agencies, there is an over-concentration of power in central Government, large gaps in local political involvement, and an absence of effective Parliamentary oversight either at Westminster or locally.

(iv) Among other things this leads to an increasing impoverishment of the local political cadre.

(v) Apart from direct rule, devolution is the only system which has much real chance of proving acceptable to both Nationalist and Unionist communities;

(vi) the operation of a devolved Government, on a basis acceptable to both communities, offers the best prospect for getting those two communities to work together, thereby encouraging peace, stability and reconciliation.

6. Although there are varying degrees of commitment to devolution, the case for it is not under great challenge in principle. The question is less whether devolution, on terms enjoying support from both communities, is desirable. Rather, the questions concern:

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- (a) whether the prospect of success are sufficient to justify a further effort now (or at least in the near future) and, if so;
- (b) how we should proceed.

The Mawhinney Round has, perhaps inevitably, produced no definite answer to (a). An important prior question is whether talks can indeed be initiated, with all parties involved, without movement on the AIA (the Duisburg Riddle). The Mawhinney Round has not disclosed a clear way through this. It remains true both that there is widespread support for devolution, and that achieving it on terms commanding general acceptance will be difficult for both political and technical reasons.

7. On (b) there are clearly many options. They include the following:

(a) the Government could attempt to impose a devolved settlement on the parties. Although that approach has its advocates within Northern Ireland and elsewhere it would make sense only if we were confident that there is a workable solution, to which the parties would respond when it was offered, but which will elude them unless the Government takes a strong lead. Did the Mawhinney Round find evidence that this might be the case?

(b) A milder form of this idea would be for the Government to devise a particular scheme or proposition and present it to the electorate over the heads of the established politicians by means of a referendum. The hope would be that the electorate would prove more accommodating than their political leaders, or would in effect help to release their leaders from the chains of earlier commitments, with the result that the politicians would be brought to operate the system envisaged. This approach might work if it were clear that the majority of political and other opinion was in reality anxious for devolution, and likely to accept the particular variant the Government devised, but needed in effect help from the Government/electorate to acknowledge that. How confident are we that Government could identify an appropriate scheme? And that, when presented to the electorate, it would secure approval leading local politicians to cooperate?

(c) A yet milder form of an interventionist approach would be for the Government to publish a scheme - setting out the extent of powers to be devolved, the mechanisms through which they would be discharged, and the provisions for participation by minority representatives - presenting it as a form of devolved Government that the Government judges to be most likely to provide efficient administration and to prove acceptable to both communities. The Government could indicate a wish to legislate to give effect to the scheme if there were a favourable response in Northern Ireland. (The exercise could of course be made less indicative by publishing a number of options, perhaps in a Green

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Paper.) This approach would have merit if it seemed that the presentation, in some more or less authoritative form by Government, of a scheme would provide sufficient focus to enable the various players to reach the agreement that at present eludes them. Does the outcome of the Mawhinney Round provide evidence that this may be the case?

(d) The Government could convene a round table conference to work out a scheme for devolution with the parties. While no one could guarantee the success of such an exercise, Government would presumably hesitate about embarking on it without some reasonable prospect of constructive progress being made. Can we have such confidence, in the light of the Mawhinney Round? Can we even be sure that the main players would accept an invitation to attend? (While the Unionists may still require some movement on the Agreement, can we guarantee that SDLP would attend if the agenda were confined to Governmental arrangements within Northern Ireland and the Republic were not represented?)

(e) The Government could publish a paper, which did not expressly invite a response, setting out its own analysis of the situation in the light of the Mawhinney Round, its hopes and intentions for the future and its specific plans for the delivery of good Government in the absence of early progress to or towards devolution. Such a document would presumably include any proposal the Government had on other relevant matters such as its approach to the Anglo-Irish Agreement; improvements to direct rule; changes to the powers, functions and operations of local authorities and/or executive boards.

(f) The Government could provide for fresh elections to the Northern Ireland Assembly. Apart from its advisory and consultative functions (considered further in paragraphs 10 and 11 below) this could again be a mechanism for the local parties, including Sinn Fein if it succeeded in the elections and chose to take part, to consider proposals for devolution. Under the Northern Ireland Act 1982 the Assembly may submit proposals for the general or partial suspension of direct rule if they have the support of 70 per cent of the members of the Assembly or, if the Secretary of State had notified the Assembly that he is satisfied the substance of the proposals is likely to command widespread acceptance throughout the community, if they have the support of a simple majority. In some ways this amounts to a more formalised means of providing for inter-Party talks, or a constitutional Convention, though with the important difference that the Assembly would have other constitutional functions. The 1982-86 Convention was, at various times, boycotted by parties on both sides of the communal divide. Ministers would presumably not wish to re-establish it without clear evidence that it would function effectively, either in its advisory role or as a step towards devolution. There is little sign of interest in re-establishing the Assembly, perhaps because of this previous experience or perhaps because, in itself, it does not go far towards meeting the aspirations of any of the parties. In the Mawhinney Round few of those involved mentioned

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the Assembly. In view of that, can we be confident that there would be sufficient support for and cooperation in a renewed assembly to justify taking the necessary steps to re-establish it?

(g) The Government could conclude (whether or not it announced) that there is at present nothing more it can usefully do to facilitate devolution. It could take the position that while it had a continued interest in and commitment to devolution for the moment it is for the parties themselves to identify a way ahead (in effect our position before 14 February). Does the evidence of the Mawhinney Round suggest that this is, at present, the best that can be done? Even if that is right, is it agreed that it would be difficult to revert to that hands off posture without taking at least some other steps indicating commitment to political development, for example on the lines of (e) above?

(h) The Government could attempt to launch talks which addressed at one and the same time a possible new or modified Anglo-Irish Agreement; devolution within Northern Ireland; the relationship between the devolved Government and the Republic and Great Britain respectively; and possible methods of securing popular acceptance of any resulting arrangements (for example by, among other things, seeking validation through referenda). One aim of this approach would be to overcome the 'Duisburg Riddle' by enabling the Unionists to enter such talks on the basis that they were to 'negotiate away' the AIA. Other participants would no doubt stress different aspects. The Republic (and Mr Hume) might see the main objective as being the pursuit of a re-definition of relationships between Unionists and others on the island of Ireland. The UK might see the main objective as the securing of devolution, on a basis widely acceptable throughout the community; seeing this, and the development of businesslike Governmental arrangements involving both communities as the key to all the other relationships. This approach has obvious risks and difficulties which are both political and technical (eg in that an exercise on this scale with many participants and a comprehensive agenda would be difficult to manage, with a high risk of breakdown). Does the evidence of the Mawhinney Round suggest that an approach of this kind would be fruitful, and that the timing for it is now right? If not, is there any better prospect for solving the Duisburg Riddle, on the assumption it is agreed that this remains, even after the Mawhinney Round, a significant obstacle to making progress on political developments?

(i) Another approach, which would also have among its objects overcoming the Duisburg Riddle, would be to encourage the parties to agree on an agenda for substantive talks, before agreeing in principle to participate in them. This would require the Government to indicate informally that if an agenda could be agreed, with realistic prospects of progress, some suspension of the Conference (or other face-saving formula) would be engineered. In practice the Government might play a forward part in helping the parties to identify and agree on the agenda

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issues. This approach would require some delicate footwork by the Government, to be sure that it (and in practice the Irish Government) did not make a concession in principle for nothing. Does the evidence of the Mawhinney Round suggest that this is a useful and viable approach?

Political progress other than through devolution

8. While devolution remains the Government's preferred route to which it is publicly committed, and to the support of which the Republic is also committed through the Anglo-Irish Agreement, it may be necessary to look to more modest means of stimulating, or enabling, political development. Indeed a number of the options under this heading are entirely compatible with the pursuit of devolution - in the sense of devolved government Province-wide - and some may be desirable in their own right, even if it becomes clear that there are good prospects for devolution in that sense. Nonetheless the significance of these measures, and the political and other attention they will attract, will vary greatly depending on whether or not progress towards devolution is evident.

9. The first set of possibilities might loosely be bracketed together as improving the operation of direct rule. The first possibility would be to propose changes designed to enhance the Parliamentary accountability of the Northern Ireland Office and the Northern Ireland Departments. Given the pressure on Parliamentary time, the absence of a local legislature, and the availability of the Order in Council procedures for legislation, it is clear that there is a gap in 'Parliamentary' oversight of both legislation and executive action. It is arguable, however, that this gap is more theoretical than real. In practice Northern Ireland matters attract a substantial amount of attention, not only within the Cabinet, but also within the press and Parliament. Nor is the pressure from local politicians to remedy this shortcoming in existing arrangements urged with much strength or conviction.

10. A number of options for improving Parliamentary oversight have been identified including:

(i) increasing the proportion of Northern Ireland legislation which takes the Bill form, either by extending GB Bills to Northern Ireland or by having separate Northern Ireland Bills. Associated with the latter is the idea of devising procedures to remove the Second Reading of Northern Ireland Bills in Committee, whether a Second Reading Committee or a Northern Ireland grand committee;

(ii) reactivating the Northern Ireland Committee, and perhaps giving it greater powers;

(iii) establishing a Select Committee on Northern Ireland matters to carry out the scrutiny function in relation to Northern Ireland at present carried out by its subject Select Committees;

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(iv) re-establishing the Northern Ireland Assembly which, whatever its other shortcomings, did make a significant contribution to consultation on Proposals for draft Orders.

11. Another set of improvements to the operation of direct rule concerning the attempt to establish machinery alongside the existing Government Departments for consultation and advice. These options would also have the merit of involving local politicians, and other distinguished people, to the extent that they were prepared to play their part. New measures could create new advisory bodies or executive roles (or both). New advisory bodies might take the form of:

(i) a new Assembly (already mentioned both as a possible route to devolution and as a means of improving 'Parliamentary' scrutiny of direct rule). The Assembly would provide a mechanism for giving advice to Government and available for consultation on matters referred to it;

(ii) a nominated advisory body with or without an elected element. This could be a body to which the Secretary of State would turn for advice on matters of his choice, including proposed legislation; or it could be given a statutory right of consultation on certain matters. Membership could include some or all of the 17 Westminster MPs;

(iii) a range of nominated consultative councils to shadow the work of the Northern Ireland Department;

(iv) an economic conference (including politicians and 'professionals'), building on the existing Economic Council;

(v) a 'security forum' for briefing/discussion on security matters.

12. Not all of these options are mutually exclusive; but purely advisory bodies, whether elected or nominated, may hold limited attraction for politicians. It may be for this reason, among others, that little support was voiced for devices of this kind in the Mawhinney Round.

13. Another option, with similar objectives of increasing the involvement of local politicians and improving devolution through such greater local involvement, is that of appointing local politicians or eminent people as junior Ministers or as Commissioners in Departments. It is however arguable that if the conditions existed for such appointments to be made and accepted it would be possible to move much further towards devolution or other Governmental arrangements.

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Local Authorities and Executive Boards

14. Another important category of options for increasing local political involvement, and enabling political development, concerns local authorities and the important administrative and executive agencies. At present, in the absence of devolved Government, powers are shared between:

- (i) the UK Government, in particular through the Northern Ireland Office and the Northern Ireland Departments;
- (ii) Province-wide executive agencies such as the Housing Executive, the Fair Employment agency;
- (iii) other executive agencies, not operating Province-wide, such as the Education and Library Boards;
- (iv) District Councils enjoying both powers of their own which are fairly limited, and important powers of nomination to executive agencies.

The constitutional structure of the executive agencies under (ii) and (iii) varies from case to case, as does the relationship respectively to the UK Government (in practice, usually, the Northern Ireland Departments) and to local authorities.

15. There is no particular magic about the present arrangements, and the disposition of powers among the various levels. Some matters clearly require examination in any event: for example, the manner in which the District Councils use their powers of nomination feature in the Final Review Communique following the review under Article 11 of the Anglo-Irish Agreement. It is also relevant that the limited nature of local authority powers were devised in response to the Macrory Report (1970) which recommended a significant diminution of local authority powers on the basis that devolved regional government at Stormont would provide for what it described as the regional functions. In practice these regional functions are now shared between the Northern Ireland Departments (eg transport) executive bodies operating Province-wide (eg housing), and executive bodies operating regionally (eg education and libraries).

16. There is a case for re-examining these arrangements whether or not progress towards a devolved provincial government seems likely. The nature of the case, and the form any changes took, is however clearly bound up with the prospects for devolution.

17. In the absence of devolution, some adjustment of these arrangements may be seen as desirable as a means of activating local political life. But, even if devolution were to seem attainable, an examination of the local authorities and executive agencies might be desirable in its own right, and in pursuit of the objective of 'good Government'. The aim might be to remedy what is, in some ways, the most striking feature of the present settlement: namely its undemocratic nature; but without abandoning fairness and widening

t. . . ambit for discriminatory government, associated with old style local authorities and not unknown with present District Councils.

18. The issues and options here are of crucial importance, perhaps especially given the impasse on devolution. They are not developed further in this paper only because another paper before PDG is devoted to them.

The way forward

19. It is clear that there are many options for carrying matters forward from the Mawhinney Round. Further guidance may indeed emerge from those exploratory talks, which are not yet complete. Unless there is some dramatic and unexpected breakthrough, however, it seems unlikely that we shall be given a clear lead. In practice much is likely to turn on an essentially political judgement, and that is likely to turn in particular on an assessment of how much the absence of political progress matters, in terms not only of Northern Ireland but also of expectations in Great Britain and abroad, and of how good the prospects for progress are.

20. We may face the continuation of direct rule for a considerable period and, though that is not the Government's preferred option, that is clearly viable. Though costly and uncomfortable, it appears to be a position which can be sustained, in political and other terms, both internationally and domestically, provided it is accompanied by a posture of being willing to encourage and facilitate internal political progress.

21. Nonetheless, there are obvious risks in the present marked absence of representative political institutions, locally accountable. Much Government is conducted at one remove, with a distinct lack of effective local accountability over administration or legislation. Political life is enervated or irresponsible; and the political leadership dwindles into apathy or hysteria. Moreover, for obvious political geographical and historical reasons Northern Ireland is peculiarly apt for a substantial measure of devolution of governmental authority, whether to Province-wide institutions or those locally or regionally based. The arguments which have led successive governments to see direct rule as a temporary expedient to be replaced as soon as possible remain valid.

22. The assessment of the scope for political progress is not straightforward. On the one hand, SDLP (and in particular Humeist) rhetoric is not easy to penetrate and decode, leaving considerable uncertainty about the strength of their commitment to devolution and about the compromises they might make in pursuit of it. On the other hand, the Unionists' preoccupation with the Agreement, and their consequent boycott, has meant that disproportionate energy is devoted to alternatives to the Agreement and to the important, but essentially preliminary, issue of how they can even take part, or acknowledge they take part, in political life (the Duisburg Riddle). Leaving all else on one side, it is in any event clearly difficult technically to devise generally acceptable arrangements for government in a divided society where the minority is both substantial and homogeneous. That technical difficulty compounded

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in many ways, not least by the shared knowledge of earlier failed initiatives, and by the existence of bodies of opinion which on the one side hanker for affiliation to the Republic and on the other to integration within the United Kingdom.

23. The UK Government too is caught in the trap of the Duisburg Riddle. While it can ask itself whether it would be prepared to make some gesture to 'suspend' the Conference and the Secretariat the question is difficult to answer without a clear knowledge of the realistic prospects for political progress; and that assessment is difficult to make until the present log jam is broken so that a genuine dialogue with and between the parties can develop.

24. At some point Government may be tempted to conclude both that devolved institutions of government are necessary, and that the conventional strategy of seeking to reach this through agreement in discussion with the parties has no future. That analysis might lead to the conclusion that the next step should be to devise new governmental arrangements and to legislate accordingly. (On one view the first step would be to seek to validate such arrangements by presenting them in a referendum to the Northern Ireland public.)

25. But in a sense we are hardly justified in reaching that point yet because our collective failure to answer the Duisburg Riddle and to find a means of getting the Unionists back into political dialogue (or fully so) has meant that we have not been able, at least since 1985, to test fully how far the momentum of political dialogue with and between parties might carry.

26. Given that, in principle, devolution designed if not in agreement, but at least in discussion, with the local political leaders is better than an 'imposed solution' (even one sanctioned by referendum) there is a strong argument for seeking to unlock the Duisburg Riddle and foster political dialogue before falling back either to the perpetuation of direct rule or to the imposed solution. On this argument, the next step should be for the Government collectively to consider, against a political judgement of the likely scope for progress (a judgement which will clearly be greatly informed by the Mawhinney Round), how far they could go to meet the Unionist demand for some suspension of the Conference etc, and how far the SDLP would cooperate in any ensuing dialogue. At an early stage discussion with the Irish Government would be necessary.

27. Even if that general approach were agreed, there would remain a number of important subsidiary questions. In particular:

(i) the form any resulting talks might take, and who the participants would be. Would the Republic be represented, and would the UK Government take a part and if so would it be a leading one?

(ii) The agenda. Would it be confined to devolution within Northern Ireland or would it attempt to look more widely (as paragraph 7(h) above envisages) at the many relationships involved in the problem?

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- (iii) Should discussion be formal or informal?
- (iv) Should the UK Government start with a blank sheet of paper or go in with a clear game plan, including a sketch plan of the system of government with which we might end up?

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