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Talks Secretariat
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MR THOMAS

CONSTITUTIONAL STATUS, SELF-DETERMINATION AND MAJORITY CONSENT TO CHANGE

1. In the absence of any political development activity over the next 6 weeks or so, I ^{thought} through it might be a kindness to provide colleagues with an alternative but related mental stimulus by exposing for wider comments some of my doubts about the Government's position on the constitutional status of Northern Ireland.

2. The legal position (Section 1, NICA 1973) is that Northern Ireland shall not cease to be a part of the UK without the consent of a majority of the people who live there. This is a sound and defensible position which, as Dr Alderdice pointed out on 1 July, says nothing about what would happen if a majority of the people of Northern Ireland were to consent to Northern Ireland ceasing to be a part of the UK. However, on several more or less formal occasions over the past 20 years (notably Sunningdale, the Thatcher/Haughey summit of 1981 and the Anglo-Irish Agreement) British Governments have said that if a simple majority of the people of Northern Ireland wished for and formally consented to the creation of a united Ireland they would respect that wish and support legislation to give effect to it. This element of the Government's position seems to me to be impractical, inconsistent and unlikely to remove the sources of political instability.

Related Issues

3. The situation is compounded by the difficulty which any Irish Government has in acknowledging the present status of Northern

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Ireland as a part of the UK and by the particular difficulty which a Fianna Fail Government has in accepting the principle that the achievement of Irish unity should depend on securing the support of a majority of the people of Northern Ireland. Hence the significance of "would" not "will" in Article 1(a) of the Agreement, making it a statement of political reality not a statement of principle. Even the statement of the principle of consent in the report of the New Ireland Forum (Chapter 5.2(3)) was ambiguous enough to be consistent with the Republican line that it is the people of Ireland as a whole who should determine the constitutional future of the island as a whole.

4. I personally regard it as important that these ambiguities in the Irish position should be cleared up. Formal Irish acceptance of the principle of majority consent to change would itself help to remove a considerable amount of Unionist paranoia. However, this minute does not attempt to tackle either of those two issues. I want to concentrate on the question of the size and nature of the majority required to achieve a change in the constitutional status of Northern Ireland.

In favour of the present position

5. The Government certainly derives a number of advantages from its declared readiness to contemplate a united Ireland if a simple majority of the people of Northern Ireland were to consent to it. It undermines the simplistic Republican argument that Britain is an occupying power; it appears consistent with the general principle of self-determination; it constitutes a significant recognition of the Irish identity of the minority community in Northern Ireland. It is also consistent with the views of the two main Opposition parties at Westminster and all the main parties in the Dail. Unionist spokesmen also often acknowledge the validity of this position: during the recent talks Dr Paisley, Mr Molyneaux and Mr McCrea all specifically accepted that the principle of self-determination meant that if a majority of the people of Northern Ireland wanted to join a united Ireland their wishes should be respected (though other comments - see below - rather contradicted their apparent acceptance of the situation).

Impracticality

6. However, in practical terms it is difficult to envisage Northern Ireland ceasing to be a part of the United Kingdom and joining the Republic on the basis of a simple majority plus one of the population. On one view, if Irish unity on this basis became inevitable the Unionist would recognise the realities of the situation and negotiate a good deal (during the process of which they would be surprised at how generous the Irish Government was prepared to be); a new pluralist all - Ireland constitution would be drawn up; and the overall package would win the consent or at least the acquiescence of the entire community in Northern Ireland. Fine if it works out. It seems to me equally possible that as the point of balance approaches the constitutional issue would become even more acute, the two parts of the community might draw even further apart, loyalist support for independence or repartition would grow and (at the extreme) attempts might be made to prevent the balance tipping in favour of a united Ireland by driving nationalist out of Northern Ireland, or even by taking direct action to keep the numbers down. All this would be mirrored on the Republican side.

7. If it came to the crunch, I doubt whether HMG would be able (or willing?) to enforce Irish unity against the wishes of, say, 750,000 Unionists. It would be necessary to think very carefully about the likely reactions of the RUC, the UDR (or 2RIR), the Northern Ireland Civil Service, the business community etc. We might even need to consider the possibility of a second Curragh mutiny. I wonder whether any Irish Government would be prepared to accept imposed Irish unity against the wishes of the great bulk of the Unionist community.

8. At the very least I suggest there could be significant instability, concern about the security situation as the balance of opinion swings towards Irish unity and in the aftermath of any change of sovereignty and concern about the economic prospects of a united Ireland. This might begin imperceptibly several years ahead of the moment of balance being reached. The experience of Hong Kong suggests that there might be a flight of capital, a loss of investor

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confidence and a significant amount of emigration (by full UK passport holders) especially from among the groups most likely to exercise a moderating influence and capable of contributing to the economic life of Northern Ireland.

9. This all sounds fairly dire but I do not think it is completely unrealistic. I remember Austin Currie referring to the "rabbit theory of Irish unity" and commenting that although he would continue to take pleasure in maintaining the higher Catholic birth rate he did not wish to be around when the moment of balance arrived.

Inconsistency

10. The commitment to Irish unity on the basis of a simple majority is also inconsistent with the general guiding principle of Government policy regarding new political institutions for Northern Ireland, that these should be widely acceptable throughout the community. The Unionists have a fair point when they draw the contrast between requiring 70% support for new institutions of government (NI Act 1982) and 50% support for Irish unity. It is in fact more than a debating point. If, for the reasons set out above, it is accepted that Irish unity on the basis of simple majority consent is likely to prove impracticable that might lead to the conclusion that the only satisfactory basis for Irish unity would be one which commanded the support of both parts of the community in Northern Ireland. Interestingly, John Hume said several times during the plenary sessions of the recent talks that "you" (the Unionist parties) or "your people" had the security of knowing that there would be no change in the constitutional status of Northern Ireland without "your consent". This was never picked up: it would be interesting to probe SDLP views on this point.

11. In fact the current modern nationalist rhetoric about the need to provide full political, cultural and symbolic expression of the two identities within any new Ireland could be directly applied against the proposition that straightforward Irish unity should be enforced on the basis of a simple majority vote. Cardinal Daly's thoughtful analysis of the "bi-polar" nature of the Northern Ireland community and how that should be dealt with might be prayed in aid.

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John Hume's line about the need to seek a unity of hearts and minds, rather than territorial unity, almost implies a readiness to postpone territorial unity in the interests of developing the various relationships. Dr Paisley couched the point in a typically more belligerent way when he challenged the idea that a simple majority should be able to "put us into" a united Ireland for all time and contrasted this with the way in which the present wishes of a substantial majority were being ignored.

Instability

12. It seems to me at least arguable that the Government's current position does not actually contribute to political instability and that its effect might become even worse as time goes on. It could tend over time to sharpen the division between Unionists and nationalists and reduce the prospect of their working together, leading to greater polarisation within the community into two distinctive and clearly antipathetic groups. It could tend to focus attention on the border rather than encouraging people to extend the areas of practical co-operation. In doing so it ignores much of the moderate "nationalist" political agenda, which is as much - if not more - concerned with securing justice etc within Northern Ireland as it is in securing Irish unity. The Interchurch Group on Faith and Politics pamphlet "Remembering our Past: 1690 and 1916", summarised in an article in today's Irish News, brings out yet again this element in the minority community's political aspirations. We should be cautious about sticking with a position which could reduce political debate to the question, "Are you for the Union, or against?".

Alternatives

13. I suggest that it may be worth developing a more imaginative approach to the issue of sovereignty and constitutional status. It would be desirable to blur the boundaries between possible constitutional options and try to move away from a policy which envisages a 100% change of status at a single defined moment in time.

14. Assuming, as I do, that the issue will not get swamped by European confederalism, we may need to develop a model in which sovereignty would pass from one Government to the other in a series of tranches, on the basis of agreed levels of public support. Purely for illustrative purposes, one possible sequence might be:

- a. a consultative role for the Irish Government in Northern Ireland;
- b. a system of joint sovereignty over Northern Ireland, instituted when this had the support of 50% of the Northern Ireland electorate;
- c. the creation of a united Ireland (whether unitary, federal or whatever) once the proposed arrangements had the support of 75% of the Northern Ireland electorate.

This could be expected to embody a consultative role for the British Government in matters affecting Northern Ireland (or affecting British citizens in Ireland).

15. Something on these lines would not be very easy to sell to many nationalists but it is rather more consistent with nationalist rhetoric (see paragraph 11) than the present position. The main attraction of such an approach would be the probability of avoiding a "doomsday scenario". It might substantially reassure many in the majority community and reduce the salience of the border as a political issue, leaving everyone free to concentrate on "working the common ground".

Conclusion

16. This is "gleam in the eye" stuff and I shall be very interested to have others' comments on these rather haphazard thoughts and views on whether it is worth pursuing them any further.

Signed: Margo Doran (on behalf of Mr David Hill)

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