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ROINN GNÓTHAÍ EACHTRACHA
DEPARTMENT OF EXTERNAL AFFAIRS

BAILE ÁTHA CLIATH 2
DUBLIN 2

CONFIDENTIAL

8 Nollaig, 1967.

Dear Ó Nualláin,

I send herewith for the Taoiseach a confidential memorandum on the subject of the Constitutional and Political Issues relating to Northern Ireland which he requested me to supply.

Yours sincerely,

Angus McEwen

An Dr. N. S. Ó Nualláin,
Rúnaí,
Roinn an Taoisigh.

Confidential

Northern Ireland
(Constitutional and Political Issues)

Constitutional Position

The effective Constitution is the Government of Ireland Act 1920 (as amended) which reserves to the British Government the powers to determine taxation, issue coinage, control the military establishment and conduct foreign relations.

The Ireland Act 1949 declared that Northern Ireland remains part of the United Kingdom and that no part thereof shall cease to be part of the United Kingdom without the consent of the Parliament of Northern Ireland.

"Recognition"

Since Northern Ireland is not, and does not claim to be, a sovereign state the question of extending formal recognition cannot arise.

The British claim to sovereignty over Northern Ireland has been accepted on a de facto basis for dealing with particular problems but it conflicts with Article 2 of our Constitution and cannot be accorded de jure recognition.

We have often been urged to "recognise" Northern Ireland's constitution as a sure step towards better relations between the two parts of the country. There are two objections to doing so. The first is that international law does not provide for it. In international law recognition is extended only to political entities which possess an independent, international personality. The second is that the intent is to impose politically unacceptable terms, acceptance of Partition and abandonment of the aim of reunification.

Nomenclature

The constitutional name of the Six Counties is "Northern Ireland".

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In the past our non-recognition of the status of that constitution and our claim to national unity was emphasised by referring to the area as the "Six North-Eastern Counties" or the "Six Counties".

The name "Six Counties" is offensive to the Northern Ireland authorities and would be inappropriate in talks aimed at co-operation. No directive has been issued by the Government in the matter but the use of "Northern Ireland" is not discouraged.

So long as the Northern authorities do not use our constitutional name a case could be made for the use of "the North", or "the North of Ireland" in place of their constitutional name but we do not advocate making an issue of this.

The question of the appropriate terms to use in joint publicity literature on tourism was solved by an agreement to head the map of the country with "Ireland"; to write "Northern Ireland" over the Six Counties; and to show the Border with a footnote to state that it indicates the "customs boundary between the United Kingdom of Great Britain and Northern Ireland and the rest of the country which is an independent sovereign state".

North-South talks

The Lemass-O'Neill talks in January 1965 concerned the possibilities for maximum co-operation in practical matters of mutual interest without sacrifice of principle on either side and did not imply approval of the constitutional status of the Northern Ireland Government and could not be considered as constituting recognition in that sense.

Constitutional and political questions were excluded from the scope of the talks. Subsequent talks at Ministerial level have all excluded these issues.

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Formal links with North

A motion at the recent Fianna Fáil Árd-Fheis suggested the establishment of formal links between the Governments in Dublin and Belfast. The establishment of formal links would give rise to serious questions of "recognition". While the establishment of a tourist office or a branch office of a semi-State body would not normally involve such a problem, formal links immediately raise the question of the status of the individual and to whom he would be accredited. Neither Northern Ireland nor the Northern Ireland Government exist as a separate entity in international law and we have never formally recognised that Government de jure as governing the Six Counties as a subsidiary government within the United Kingdom - although we have, of course dealt with it on a de facto basis to deal with specific problems. The establishment of an Irish Consul in Belfast, accredited to Her Britannic Majesty, would formally recognise Northern Ireland as part of a foreign country. On an informal basis there could, perhaps, be some sort of representation e.g. a personal representative of the Taoiseach or some sort of "agent". There would seem to be little advantage in this and there are objections to it. Contacts and co-operation at Ministerial and official level between the two Governments are adequate and an "agent" stationed in Belfast would probably be the focal point for demonstrations by extreme elements on both sides in the North. Furthermore, in view of the delicacy of the relations, he could do little without direct guidance from Dublin. While some Nationalist elements in the North might conceivably see advantage in such a person as evidence of our continued interest the use made of the individual by the Nationalists could be a source of embarrassment to the Government and, in any event, any such value would probably be outweighed by the objections already mentioned.

Council of Ireland

The question of establishing a Council of Ireland was referred to by Captain O'Neill in a RTE interview on the 18th February 1965. He said that he did not think that the climate of opinion was right for setting up such a Council and that it would be better to concentrate on Government discussions for the present.

The Ireland (Confirmation of Agreement) Act 1925 in which the British Government repealed the provisions for a Council of Ireland in the Government of Ireland Act, 1920, also provided that the Governments of the Irish Free State and Northern Ireland "shall meet together as and when necessary" to consider matters of common interest.

Irish Parliamentary Union

It was suggested in November 1965 that members of the Oireachtas and Stormont should get together and learn one another's problems.

While it is very desirable that frequent and informal talks between Dáil deputies and Northern M.P's should be facilitated, it might be going too far too fast to formalise them in this way. For some time to come relations with the North will be delicate and sensitive and whether all parliamentarians could be relied on to bring the necessary degree of circumspection, tact and prudence to bear on the problems might be open to doubt. For the present, questions of cooperation should be left to the two Governments and their officials and consolidation of these contacts is the most prudent policy - informal contacts between Dáil deputies and Northern M.P's being of course facilitated.

Tripartite Parliamentary Union

The question of having a tripartite parliamentary group involving Westminster, Stormont and the Oireachtas is open

to the political objection that it might well have the effect of raising the status of Stormont to the level of the sovereign Parliaments of the Oireachtas and Westminster.

The British-Irish Parliamentary group exists in Westminster and corresponding Irish-British group exists in the Oireachtas. Northern Ireland M.P's at Westminster attend British-Irish group.

Discrimination

Discrimination in Northern Ireland is not sanctioned by legislation and is in fact forbidden by the Government of Ireland Act, 1920. It is in the exercise of powers conferred by Northern Ireland legislation that it takes place and especially at the local level. Its existence is admitted by the Northern leaders who claim that they are doing their best to end it and that some of the responsibility rests with the minority.

The main regions in which religious discrimination is practised are local elections, employment and housing. Health (Mater Hospital) and Education (Voluntary Schools) are areas where the Catholic Church is treated the same as other religious denominations but because of discrimination in local authorities it wishes to avoid surrendering any of its rights as a teaching Church to such local bodies.

The issues in all these cases are emotionally charged and have a high political content and would be outside the scope of North-South talks for that reason.

British Government's Responsibility for Discrimination

Section 75 of the 1920 Government of Ireland Act provides that notwithstanding the establishment of the Northern Ireland Parliament or anything else in the Act itself the "supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all present matters and things in Ireland and any part thereof".

However, a long established constitutional convention at Westminster has ensured that Stormont's power to legislate is not, in practice, diminished or over-ruled by Westminster and has even tended to stifle discussion thereon.

Moves have been made in recent years by the Campaign for Democracy in Ulster and by the Republican Labour Party in Northern Ireland to have Westminster examine discrimination and other malpractices in the Six Counties or to set up a Royal Commission of Investigation into the working of the Government of Ireland Act, 1920. We have avoided direct involvement in these moves.

The Campaign for Social Justice in Northern Ireland has sought legal remedies in the High Court in Northern Ireland for alleged discrimination against the Northern Ireland Government and other authorities in the North and has sought our support for bringing a case to the European Court on Human Rights. We support the aims of this Campaign but the question of open association with it is a matter of some delicacy and has been avoided.

Acceptable solution for Partition

The previous Taoiseach has indicated that he would regard as an honourable solution of this national problem, an arrangement on the lines of the proposal put forward on behalf of Dáil Éireann prior to the Treaty negotiations of 1921 and repeated on many occasions since, involving, subject to safeguards, the confirmation of the position of the Northern Ireland legislature with its existing powers within an all-Ireland constitution, for so long as the people of the north-eastern counties might desire it.

Scope of Memorandum

This Memorandum deals only in summary form with the

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constitutional and political issues affecting Northern Ireland which were specifically excluded from the scope of the North-South talks and on which the Minister for External Affairs has the responsibility of advising the Taoiseach.

Because of our constitutional position in relation to the North and to avoid promoting the notion of a foreign status for the Six Counties, it has been the general practice of the Department of External Affairs not to come unnecessarily to the fore publicly in dealings with the Northern authorities where the "home" departments may appropriately handle the matter even though the Department of External Affairs may have a direct interest in such activities as the Department concerned with the political problem of Partition.

Department of External Affairs

8th December, 1967.