



# **UNIONISM RESTATED**

**An Analysis of the Ulster Unionist Party's  
'Statement of Aims'**

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# Foreword

On Friday 10 November 1995 the Ulster Unionist Executive, as the first step in a reassessment of policy, adopted a Statement of Aims. In this publication Dermot Nesbitt discusses and analyses some of the points in that statement. Dermot's discussion of course ranges more widely than the statement of party policy and it may be that not all his comments will find favour. Nevertheless we consider this discussion a useful addition to the debate.

We hope that like Roche and Birnie's excellent book, *An Economics Lesson for Irish Nationalists and Republicans*, this will be regarded as making a significant contribution to thinking on this subject.

In particular I would commend to the reader the conclusions drawn from the examination of the financial relationships between Stormont and Westminster. I do not think that anyone will seriously suggest that the economic unity of the Kingdom should be disturbed. Maintaining the economic unity of the Kingdom then has implications for the scope of legislative devolution.

I found it strange that during the inter-party talks of 1992 there was no discussion of what would be the appropriate range of legislative devolution for a future Northern Ireland Assembly. The participants merely assumed that the matters listed as transferred in the NI Constitution Act 1973 would be transferred to the future Assembly. Yet the 1973 Act list was based on the list in the 1920 Act. Since 1920, indeed since 1973, the world has changed. Social security legislation in Northern Ireland has long been identical with that for the rest of the United Kingdom. Social security administration is now largely integrated. Benefit payments now come from Newcastle on Tyne. Why then maintain the fiction of a power for separate legislation. Commercial law is now largely determined by Europe, why then the need to devolve such legislation to Belfast. We need a complete rethink on this subject. We need to ask ourselves just what matters we would want to have devolved. Yet the Bourbons of Stormont castle on this, as on other matters, refuse to think.

Other political parties are also blind on this matter. If the economic unity of the Kingdom is maintained, then the major policy decisions on virtually all matters will be made in London. For there can be few major changes in policy without financial implications. This is why the focus of Stormont was in fact largely administrative. This is why a future Assembly will be largely, although not necessarily exclusively, administrative. The implication of this is that all the NI parties should be anxious to have their voice heard at Westminster. Yet this dimension seems absent from their minds. This naturally leads on to the British Isles dimension. The reality which Irish nationalists and their soul-mates in the Northern Ireland Office try to conceal and evade is that the British Isles is the natural social and economic unit. Its political unity has been fractured by Irish nationalism, but any co-operation that seeks to rise above national boundaries should be based on that natural unity and not try to introduce further artificiality by trying to separate Northern Ireland from its natural, as well as constitutional, unit. In truth the second and third strands of the so-called three strands that are supposed to be the separate elements of any talks process cannot be divided.

There are only two strands. The governance of Northern Ireland within the United Kingdom, which involves both the local institutions within Northern Ireland as well as national institutions elsewhere in the Kingdom, and friendly relations throughout the British Isles, which include north-south interactions as well as the much more important east-west axis, are the two relevant matters.

Dermot's study is also very important for its consideration of the real European context, which extends beyond inter-regional linkages within the European Community to the protection of minority rights. This is an area where we tried to open up discussion in the 1992 inter-party talks to find that the other parties were not prepared to engage in seriously. It is too important to continue to be neglected. Of course examination of the European models for the protection of minority rights call the 1985 Anglo-Irish Agreement into question for those models have largely been developed since that Agreement and render it obsolete.

**David Trimble**  
**Leader, Ulster Unionist Party**

## **STATEMENT OF AIMS**

### **Approved by Executive Committee of Ulster Unionist Council November 1995**

#### **Government within Northern Ireland**

- 90 member Northern Ireland Assembly elected by proportional representation for a fixed 4 or 5 year term.
- The Assembly to exercise wide ranging administrative (non-legislative) responsibility by the maximum transfer of power.
- The structure of governance to be based on the Committee system, reflecting the departments of government in Northern Ireland.
- The constitutional parties to have a role at each level of responsibility in proportion to party strengths.
- When the Assembly - and other aspects of government - are seen to be clearly defined, working and stable, consideration in the UK context could be given to some devolved legislative powers to the Assembly.

#### **Parliament of the United Kingdom's Function**

- To have legislative responsibility for matters not transferred to a NI Assembly.
- A Special Standing Committee for NI to consider legislation on a basis which is equitable with the legislative procedures which operate in the rest of the UK.
- Statutory responsibility of the Secretary of State for NI to consult with the Assembly at the beginning of each parliamentary session on the legislative programme for NI for that year.
- The Select Committee for NI to monitor both the workings of government in NI and also to monitor the NI Assembly.

#### **United Kingdom/Republic of Ireland Dimension**

- To have friendly co-operative relationships within the islands on the basis of consent, mutual recognition, respect and interest.
- These relationships must preserve the political independence and territorial integrity of States which are fundamental principles of international law.
- A Council of the British Isles to be established, comprising elected representatives aimed at facilitating/enabling joint/complementary action on issues of common interest.
- Participants may include, at various levels: government ministers, national/regional elected representatives and/or local representatives.
- The Council should have a flexible structure in order to allow for the involvement of those relevant to a particular issue.

#### **European Dimension**

- The NI Assembly to seek maximum representation within Europe through the establishment of a European Office.
- Establish similar status as other regions within the EU such as observer status at Council of Ministers and representation on UK delegation where NI powers or interests are concerned.
- Establish a European Committee within the NI Assembly.

## INTRODUCTION

In 1993 Mr A. Currie, a founder member of the SDLP, spoke of the central issue within the Northern Ireland problem. He stated:

“Fundamentally the Northern Ireland conundrum is one of conflicting national identities between those who believe themselves Irish and those who believe themselves British. There are religious, social, cultural, political and other dimensions to the problem but they are only dimensions of that central issue.”<sup>1</sup>

The word ‘conundrum’ can be defined as “a riddle, a question that tests ingenuity in divining its answer.” It is this central issue which the Ulster Unionist Party’s ‘Statement of Aims’ addresses and which this booklet seeks to analyse. What of the various participants involved in this ‘conundrum’?

The initial<sup>2</sup> Unionist position in 1920 had been to reject any form of devolved government. However, the Northern Ireland parliament (Stormont) became in due course, as viewed by Unionists, a bulwark for the union - even though it was accepted by Unionists at the outset that Northern Ireland (NI) was being marginalized from mainstream politics and that some non-unionists hoped that the separate parliament would lead to a united Ireland. The subsequent Unionist view has been that Stormont was an essential element in defending the Union and that it served the province generally very well. Based on this perspective, Unionists have for many years sought the return of a Parliament which they viewed had been unfairly removed in March 1972. Those present at Stormont in March 1972 will not forget the atmosphere as many thousands of Unionists witnessed the last NI Prime Minister, the late Lord Faulkner, speaking from the balcony of Parliament Buildings, in the company of all shades of unionism, before the commencement of what was to be the last sitting of the NI Parliament.

From the time when the devolved parliament was dissolved in 1972 there has been much debate within Unionism as to the best way forward - devolution/integration; majority rule/power sharing. Such continued debate has been to the detriment of the Unionist case and it could be contested, with some justification, that since 1972 Unionism has not had a clear and focused policy, argued with consistency, conviction and clarity, to match the case as presented by Nationalists.

The Nationalist political position<sup>3</sup>, perhaps better called ‘Political Nationalist’, has been consistent and forceful. The SDLP in a policy document called ‘Facing Reality’ stated:

“... the British Government should enter into immediate discussion with the Irish Government in order to promote jointly matters of common concern to both parts of Ireland... They should also develop jointly a programme for the harmonisation of the laws and services on both sides of the border.”<sup>4</sup>

The document further stated that the ultimate policy of “an agreed Ireland” required that “all the considerable resources at the command of the British Government should be consistently and

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<sup>1</sup> Cadogan Group: ‘Blurred Vision’, 1994, page 3.

<sup>2</sup> During the debates in 1920 on the Government of Ireland Bill, Sir Edward Carson, as Unionist leader, wished that all be governed from the one (Westminster) parliament.

<sup>3</sup> This political position reflected by North/South political parties is in harmony regarding the unity of the island of Ireland unlike the Westminster view which, in comparison with Unionism, is clearly neutral regarding the union - this is an imbalance which has been to the detriment of Unionism.

<sup>4</sup> SDLP: ‘Facing Reality - Policy Document for submission to seventh Annual Conference’ 1978.

continually used to promote that policy.” Thus, in the 1970’s the Political Nationalists had a clear goal, not only in outcome but also in process, and in turn this has had an ever-widening support including the Dublin political establishment and USA politicians out of which the pan-nationalist front developed. Important events along this path included: Thatcher/Haughey summit (July 1980); Thatcher/Haughey summit (December 1980); New Ireland Forum (1984); Anglo-Irish Agreement (November 1985); Downing Street Declaration (December 1993); and Frameworks for The Future (February 1995). A careful reading of the documentation relating to these events clearly indicates an inexorable movement towards the fulfilment of the Political Nationalists’ agenda: from a Unionist perspective it has been one way - the wrong way. The high points of nationalist achievement have been the ‘Anglo-Irish Agreement’ and ‘Frameworks for the Future’ (Frameworks Document). One distinguished UK legal academic has described the Anglo-Irish Agreement as having a thrust that “is all-Ireland directed.”<sup>5</sup>

To counter such an agenda there is ranged a Westminster Government that is at best neutral, and a Unionist position that has been unclear as to how to combat the agenda of Political Nationalism. Unionists have argued that this pan-nationalist front wishes to obtain an all-island political unit rather than an accommodation within NI: Dublin wishes to have a **say** in the governing of Northern Ireland as compared with an **interest** in how it is governed. Southern politicians have focused pressure on Unionist politicians in that it is the latter which must concede their position. For example, Mr D. O’Malley has stated, “It would seem that the Unionist leadership in their present attitude would prefer to have no power than to share power.”<sup>6</sup> This aspect, that Unionists appear inflexible and negative in outlook with respect to the way forward, must be addressed. The need now is for Unionism to have a clear message and to project that message. The ‘Statement of Aims’ as presented by the Ulster Unionist Party is such a message.

The aim of this booklet is to provide an analysis to accompany the ‘Statement of Aims’. It involves considering methods of governing NI that would be both realistic and in keeping with the provision of peace, order and good government. The major elements required for good government in NI would seem to be: a fair and equitable political administration within Northern Ireland; a recognition of an ‘Irish dimension’ within the structures of government; and a recognition of the greater British Isles context (an accommodation of the London/Dublin axis). Central to any solution should be a recognition of the realities of the situation: in recognising realities the most difficult aspect to deal with is the Nationalists’ claim to a political expression of their Irish identity. Consequently, three main aspects (paralleling the ‘Statement of Aims’) will be examined: ‘Government within Northern Ireland’; ‘Parliament of the United Kingdom’s Function’; and ‘United Kingdom/Republic of Ireland Dimension’. The fourth aspect (‘European Dimension’), though important, is less contentious within the NI issue and thus will be analysed only briefly.

Unionist policy is aimed at securing and enhancing the Union. The Union will not be preserved by social disobedience or a ‘unionist’ terrorist campaign and therefore clear aims are required which should be reasonable, achievable, believable and convincing. It has not been a rarity in recent years for unionists to say: “we’re finished”; “we’ve been sold down the river”; or “you’re not worth voting for”. Yet the Union, if it is lost, will have been lost by Unionists rather than taken away by Nationalists. Unionists today need not be despondent: there is an argument to be made, a case to be won - and it can be won. The ‘Statement of Aims’ represents a clear declaration of commitment regarding the process of government: it represents the methodology for securing the Union.

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<sup>5</sup> Pally C: ‘The United Kingdom and Human Rights’, Hamlyn Trust, 1991.

<sup>6</sup> Debate in Dail, 26th July 1995.

Chapters 1 and 2 set the scene for the main arguments. In Chapter 1 it is argued that successive Westminster Governments have always wished to devolve legislative power to a NI elected body yet their rationale must be seriously challenged since it would seem that their main reason is to de-couple NI from the main body of the UK political process. Chapter 2 examines, from an historical perspective, this idea of the devolution of legislative powers to a NI body and concludes that there is no overwhelming justification for it. From this follows how NI should be governed (Chapter 3) and also the relationship with Westminster (Chapter 4). A very important part of the booklet deals with the United Kingdom/Republic of Ireland relationships (Chapters 5, 6 & 7) which pays particular attention to the aspect of 'rights' and how the International community has identified the main issues in dealing with national minorities. A final chapter (Chapter 8) looks briefly at the impact of the development of the European Union on government structures. Where appropriate the Frameworks Document is considered and at the end of each chapter there is a summary of the main arguments.

### **SUMMARY**

- **The central issue relates to conflicting identities.**
- **Nationalism has had for many years a clear focused policy in order to try to secure its goal.**
- **Unionism requires a clear focused policy in order to try to secure its goal; the 'Statement of Aims' represents such a policy.**

## SECTION ONE - GOVERNMENT WITHIN NORTHERN IRELAND

### CHAPTER 1

#### DEVOLUTION - THE WESTMINSTER PERSPECTIVE

Any major attempt to improve political accountability has centred on transferring legislative power. Successive Governments at Westminster have consistently proposed that a NI based elected body must have the ability to legislate. At this point, an examination of this attitude by the 'main player' may assist in explaining the reality of the NI/Westminster relationship: one cannot comment on the Government's attitude until one is reasonably clear as to what is its rationale for adopting such an attitude. For example:

"Past traditions and practice and present needs point in the direction of transferring legislative power"<sup>7</sup>

These "needs" were defined as "peace, reconciliation, stability and economic reconstruction." Also, a Government paper stated:

"Nor can the central issue of how powers should be exercised be settled by turning to political arrangements other than devolved government."<sup>8</sup>

It would appear that the people of NI need a subordinate legislative parliament. However, looking a little deeper, the rationale of successive governments has not been as simple as this. Viewed from the perspective of why NI should not have 'integration' (as compared with the above rationale of why NI should have devolved legislative power) the government stated the following:

"In considering the possibility of total integration account must be taken of the fact that the majority of parties in Northern Ireland are opposed to it, that it would represent a complete reversal of the traditions of half a century, that it would impose a substantial new legislative burden on the Westminster parliament, and that it would be unacceptable to the Republic of Ireland and would make co-operation with the Republic more difficult,"<sup>9</sup>

A further comment indicates possible conflict when one compares the official word with the spoken word of Government. The last major political initiative (prior to the 'Frameworks Document' in 1995) was in 1982, namely the Northern Ireland Assembly. During the lead-in time to the Assembly elections the Government was advocating devolved legislative government. The then Secretary of State (Mr J. Prior) stated, with reference to 'integration':

"It has its disadvantages too, because it denies us many of the advantages we could have by being a small closely knit unit on our own, making our own decisions."<sup>10</sup>

However the Government paper stated:

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<sup>7</sup> Cmnd 7950: July 1980.

<sup>8</sup> Cmnd 8541: April 1982.

<sup>9</sup> 'The Future of Northern Ireland a Paper for Discussion', HMSO, 1972.

<sup>10</sup> Prior Rt. Hon J: speaking at a conference, Ulster Polytechnic, February 1982.

“In some cases, however, such as industrial development and agricultural support, a Northern Ireland Administration would be expected to have regard to overall UK economic and fiscal policies and obligations arising from membership of the European Community.”<sup>11</sup>

In short, Mr J. Prior’s above statement was, at best, misleading. A Government that is making stringent efforts to control spending in Great Britain (GB) is not likely to allow latitude in NI. Other regions of the UK would be quick to note the development if it occurred and would subsequently be likely to seek similar freedom, or perhaps similar enactments, to buttress their own economic development policies.

The above quotations reflect the consistent attitude of government, regardless of which party was in power; it is unchanged today. Prime Minister Major has stated:

“For reasons that are unique to Northern Ireland, devolution of significant legislative and executive powers has always been a central plank of Government policy for Northern Ireland alone”<sup>12</sup>

Mindful of the Conservative Government’s clear commitment to the union of the United Kingdom, it is interesting to note that the above quotation ended with the word “alone”: this word allows them to ‘fight’ tenaciously for the unity of England, Scotland and Wales while not applying similar arguments to Northern Ireland. No explanation to justify the usage of the word “unique” was given. We could assume that it means, at the very least, the central issue (page 1) - the nationalist/minority identity. Further, Mr I. Lang (as Secretary of State for Scotland), during a debate on devolution for Scotland<sup>13</sup>, was asked what the difference was between NI and Scotland, he replied that “NI had its separate parliament for 50 years whereas Scotland is fully part of the UK by the Act of Union.” The first part of the answer is irrational - the past should not blindly dictate the future; the second part is inaccurate - Ireland was fully part of the Union under the Act of 1801.

Successive governments have not been alone in adopting the attitude of the necessity for legislative devolution. For example, following a conference on the ‘Northern Ireland Economy’ held at the Ulster Polytechnic, a ‘Document for Action’ was produced. It stated:

“Moreover, the absence of a local parliamentary forum denies politicians the close access to Ministers and civil servants...In the continued absence of such arrangements improvements in the state of the Northern Ireland economy will be inhibited.”<sup>14</sup>

It is easy for a government, in the absence of detailed arguments to the contrary, to persuade the citizens of NI that without legislative devolution ‘your lot’ will not improve. In addition, a number of leading local politicians advocated the return of legislative power to NI<sup>15</sup>

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<sup>11</sup> Cmnd 8541: April 1982.

<sup>12</sup> Major Rt. Hon. J: ‘Foreword by the Prime Minister’, Frameworks for the Future, February 1995.

<sup>13</sup> ‘Sunday with Adam Boulton’, Sky News, 14th May 1995.

<sup>14</sup> ‘Unemployment: Recommendations for Action within a Strategy for Economic Development’, Ulster Polytechnic, 1982.

<sup>15</sup> Leading politicians in the 1970’s & 1980’s (none is currently active in politics).

“It would be improper and highly dangerous to our case for any party member to suggest or volunteer or hint at any deviation from or amendment to the main principles of our scheme... and these do not include administrative devolution, a single elected regional council as an upper tier of local government or total integration.”

“The number one policy in our books is the return of a devolved government to Northern Ireland. Yes indeed, we are looking for the big stake here. We must insist that the devolved government that was taken away from us several years ago be given back to us.”

“The obvious alternative is a strong devolved government based on the principles of democracy and majority rule. Such a development would be a hammer blow to the morale of the IRA.”

A brief summary of the above rationale as to why successive governments advocate that there should be legislative devolution for NI (with brief comments) is as follows.

1. Revive past traditions and practices - just because something happened in the past is not a justifiable reason to resurrect it.
2. Needs of NI - successive governments have not been able to demonstrate that legislative power is a prerequisite to secure ‘needs’ as defined by government.
3. Majority of parties give their support - it is now for other parties to comment; the Ulster Unionist Party has by its ‘Statement of Aims’ presented a revised view.
4. Beneficial for effective local decision making - see Chapter 2
5. New legislative burden at Westminster - see Chapter 4.
6. Unacceptable to the Republic of Ireland - not valid: their concern, like any European Union State, should not be on the **process** of government but on the **impact** of government on citizens’ needs.

The Prime Minister (page 10) referred to the rationale as “**unique**”. A definition of unique is as follows: “being the only one of its kind, having no like or equal”. The Council of Europe in referring to national minorities (the central issue) agreed the following:

“... the national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability.”<sup>16</sup>

Looking at the present situation in Europe, never mind worldwide, it is difficult to conclude how the Prime Minister could describe the NI situation as “unique”. Indeed, overall if one was to judge successive governments’ motive (using their attitudes above to assist in this judgement) one wonders as to the extent of commitment to preserve the Union. At no time has a clear logical argument been put forward by government as to why legislative devolution is a requirement for political progress. Unionists are left with no alternative but to conclude that the real (and hidden) rationale is, as it has always been, to decouple NI from the main body of the UK political process and in turn enable a NI Assembly to legislate for the transfer of administrative functions to an all-Ireland body. Both governments view NI as unique and thus, in their opinion, a unique (or novel) solution is required. Resulting from the above, it is necessary to examine in more detail the form of devolution appropriate to NI.

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<sup>16</sup> Heads of State within Council of Europe, Vienna Summit, October 1993.

### **SUMMARY**

- **Successive Westminster Governments have had, as a central plank of policy, the devolution of legislative power to a NI elected body.**
- **The policy of devolution of legislative power has been supported by other interest groups including NI politicians.**
- **The rationale given for such a policy has not been fully explained or justified.**
- **There is strong evidence to conclude that successive Governments' true rationale is to decouple NI from the main body of the UK political process.**

## CHAPTER 2

### DEVOLUTION - THE APPROPRIATE FORM

From 1921 until 1972 NI had a separate parliament and Government at Stormont which was subordinate to the Westminster parliament and Government. Stormont was prorogued in March 1972 and since then NI has been governed directly from Westminster with only a modicum of local government and local political accountability.

Since 1972, 'Devolution/Integration' has been a debated (and divisive) issue within Unionism. In reality these words lack precision. Any form of government below the Westminster level is devolved government. Equally, within certain parameters, there is no one unique form of government called 'Integration'. Essentially the difference between the two views, when used in political debate, refers to whether or not an elected body at Stormont should or should not have the authority to make (some of) its own laws as Stormont had between 1921 and 1972. A necessary concomitant to this would be a consideration of the legislative process at Westminster for NI business (Chapter 4). It could be added that the 'pure' form of 'Integration' refers to the idea of 'mainland' parties organising, contesting and winning elections in NI and thus this part of the UK having a clear active part on the national political scene.

This chapter will therefore examine the narrow issue - the desirability/necessity or otherwise of a NI elected body which is subordinate to the sovereign parliament **having the authority to legislate**. An examination of the historical financial relationship between Stormont and Westminster will facilitate forming a view on the relationship between a subordinate legislature and the sovereign body within a unitary state.

#### **Stormont/Westminster Financial Relationship**

In 1801 the Act of Union between Britain and Ireland was designed to create a cohesive fiscal and economic unit. The result was that there was no necessity to set local expenditure against local taxation any more than for Scotland, Wales or England. However, once self-government for Ireland was considered, this system needed revising, as the main theme of the Irish Home Rule Bills was to create a self-sufficient financial unit. Estimates of the financial position in Ireland as a self-financing unit were devised<sup>17</sup> and it was estimated that there would be a financial surplus of income over expenditure of £5.7m and £1.9m for the Republic of Ireland (RoI) and NI respectively.

The predicted surplus for NI became in reality a deficit and the Government of Ireland Act (1920) gave no guarantee that Stormont would have the finance available to provide services comparable with GB. Stormont, wishing to implement the same benefits as in GB, incurred greater control from Westminster. For example, in 1925 there were special arrangements to ensure greater parity with GB as regards unemployment benefits. However, this resulted in Westminster exercising greater control in that the Treasury could investigate the administration of unemployment finance and no money could be spent on any new items without first informing the Treasury.

This trend of greater control by the Treasury continued after the Second World War. Professor T. Wilson, referring to this control, stated:

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<sup>17</sup> 'Government of Ireland Bill; Further Memorandum on Financial Provisions', Cmd 707, 1920.

“The treasury control was tight, especially for new items of expenditure. It may well have been as tight as Treasury control over the Scottish Office”<sup>18</sup>

The executive arm of government was de facto not necessarily accountable to the electorate for actions taken. When Mr W. Craig (Minister of Home Affairs, Stormont Government) was accused of closing police stations in the 1960's, his reply was as follows:

“I nor the parliament had much choice in the matter and that, faced with the inevitable decisions on closures, we were guided by the Inspector-General and his senior officers. The review was actually started by my predecessor, but, on receiving the report, in the absence of additional funds from the Treasury, after much consultation I and the Parliament agreed to the proposals.... Like many other things, the Treasury curtailed the discretion of Ministers in the expenditure of public moneys and dictated the priorities of Expenditure”<sup>19</sup>

The problem of creating a self-financing unit within the UK had already been referred to at the time of devolution for Ireland. Lord Chambers reported to a conference on devolution for the rest of the UK. He stated:

“We need not labour this all important consideration further than to say that we dismiss the equally facile, but infinitely more fatal, plan of leaving each nationality with revenue assumed to arise within its borders”<sup>20</sup>

With respect to Ireland, could this conclusion not also apply? Sir E. Carson, writing in 1912, stated:

“The effect of recent social legislation such as old age pensions, labour exchanges and sickness and unemployment insurance has been to confer on Ireland benefits much greater in value than the Irish contribution in respect of the new taxation imposed. In consequence of this change the present Irish revenue falls short of the expenditure incurred for Irish purposes in Ireland.”<sup>21</sup>

The logic which prevailed when considering devolution within GB did not extend to devolution in Ireland. In addition, was the financial implication of legislative devolution (the self-financing aspect) detrimental to Northern Ireland's needs? In 1923 an arbitration committee, under the Chairmanship of Lord Colwyn, was appointed to arbitrate between Stormont and Westminster. Stormont's position was clear as indicated in a Stormont debate:

“We have gone on the assumption that on all matters of social welfare we should be entitled to the same benefits as in Great Britain; that local autonomy did not necessarily imply any lower social status”<sup>22</sup>

Professor R. J. Lawrence referring to this period concluded:

“The (Colwyn) committee did not, however, allow that Ulster should necessarily enjoy the same standard of services as Britain or that she should create services that

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<sup>18</sup> Wilson T: 'Devolution and Public Finance', The Three Banks Review, No. 112, December 1976.

<sup>19</sup> Craig W: 'Letters to the Editor', The News Letter, 13th December 1979.

<sup>20</sup> Cmnd 692: 1920.

<sup>21</sup> Rosenbaum S (Ed.): 'Against Home Rule' Frederick Warne & Co., London 1912.

<sup>22</sup> H C Deb. (NI), 6, C 531.

had no counterpart there.... Between the wars public provision in general fell below British Standards.... not because the Ulsterman was conservative, but because his government was chronically short of money.”<sup>23</sup>

Even though much catching up was needed in public services, public sector expenditure per head in NI moved ahead of that in Wales only in 1969/70 and of Scotland in 1972/73. During the 1970's much of the shortfall required in public service provision was eliminated although the Treasury published a survey<sup>24</sup> which indicated with respect to need (need being defined as the spending necessary to obtain the same policies and standards as are followed in England) that NI was still behind in 1976-77 in public expenditure in some areas as compared with England. There were major injections of funds into areas such as housing, roads and education and by 1980 most of the 'catch up' (as it was referred to) had occurred. Today, public sector expenditure per head of the population is higher than in GB and the level of service is often in excess of accepted UK standards.

This aspect of apparent pseudo-legislative autonomy, due to financial constraint has not been the sole preserve of NI. The Kilbrandon Commission (the last major Commission charged with the task of considering devolved legislative/regional parliaments throughout GB) referring to federal systems of government, stated:

“Provincial governments, in order to discharge their constitutional functions in the ways now demanded by their electorates, tend to require more money than is available to them from sources provided under the constitution. They are therefore compelled to turn to the Federal government for a re-allocation of revenues or for direct financial help from federal funds. Not infrequently federal help reaches them in a way which undermines their independence.”<sup>25</sup>

Overall, the reliance on subvention from Westminster curtailed freedom and the financial resources, in particular pre-1945, were at a level lower than would have been expected in a unified financial system which related spending to need. It is clear that the NI financial system, as operated in practice, was not beneficial for devolved legislative powers. The financial relationship discouraged departures from policies adopted in GB whereas the essence of devolution should be to increase the opportunities for differing regional policies.

Those who would strongly advocate a subordinate legislative parliament at Stormont are therefore faced with a dilemma. To have effective devolved legislative powers necessitates 'freedom' and to have 'freedom' necessitates financial independence; but for citizens in NI to have the same standards of living as those in GB necessitates financial dependence upon Westminster. It is difficult to rationalise why a type of government that has in the past demonstrated a lack of gain for its citizens, should be unreservedly supported; it is even more difficult to rationalise a situation where severance from UK citizenship is advocated which would lead to an even greater uncertainty surrounding financial provision. Financially, the most secure option for the people of NI is to remain within the legal and financial jurisdiction of the UK. To illustrate the above, one important aspect of government policy is considered - economic policy.

## **Economic Development**

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<sup>23</sup> Lawrence R J: 'The Government of Northern Ireland', Clarendon Press, 1965.

<sup>24</sup> H M Treasury: 'Needs Assessment Study Report', December 1979.

<sup>25</sup> Cmnd 5460: 1973, page 155.

Economic recovery is often cited as the main political problem facing developed countries. Indeed it is this aspect that has been cited as a main reason why it would be beneficial for NI to have devolved legislative powers.

Stormont was closed in March 1972 yet unemployment (a good benchmark to judge economic well-being) in December 1973 was, at 27,000, the lowest for that month since 1945 and the fall in unemployment for the year from 1972 to 1973 was 22%<sup>26</sup>. In addition new jobs promoted by public sector policy increased sharply in 1973 from what had been a steady decline in the previous five years<sup>27</sup>. A simplistic comment may be that the cessation of the legislative body at Stormont seemed to have, at worst, no negative effect on economic policy. The true position is that unemployment traditionally follows much the same pattern as in the rest of the UK, although in NI it is more severe than elsewhere.

If one makes a comparison<sup>28</sup> between NI legislation and GB legislation, with respect to economic development, one doubts the benefit of legislative devolution. Stormont legislation was generally similar to that in GB although there were exceptions. In 1945 Stormont followed the lead given by Westminster in advance factory legislation (a much favoured tool of regional policy). However, in the 1950's Stormont was ahead of Westminster as regards types of grants available to industry but, because of overall economic conditions, this was generally a weak period in regional development and thus it was also NI's worst period for attracting investment. In the 1960's, during a strong period of regional development throughout the whole of the UK, the difference in legislation between Stormont and Westminster was more of degree than kind.

### The Small Business Sector

Among politicians and the business community there has always been an awareness of the importance of the small business sector. For example:

“We need a completely new economic strategy that is based on the reality that we have today, and that must be based on the promotion of small and medium sized industries.”<sup>29</sup>

“Small business is going to be the engine of economic growth and job creation in the new era of peace”<sup>30</sup>

A recent survey<sup>31</sup> has indicated that the three main problems (in rank order) encountered by the small business sector are as follows: (i) cash flow/payments/debtors - the management of working capital; (ii) government regulations and paper work; and (iii) lack of skilled/trained employees. None of the fifteen problems mentioned in the survey could be solved by a legislative forum as compared with any other type of forum. The survey indicated that the lack of skilled/trained employees was the most commonly cited problem among manufacturing firms while the management of working capital was more often found to be a problem within tradeable service businesses. Some of these problems have

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<sup>26</sup> ‘Northern Ireland Economic Report on 1973’, HMSO, 1974.

<sup>27</sup> ‘Social and Economic Trends in Northern Ireland, Number 2’, HMSO, 1976.

<sup>28</sup> Nesbitt D: ‘The Union Which Way for the Economy?’, Council For The Union Conference, Stormont Hotel, June 1982.

<sup>29</sup> Hume J: UTV debate on the NI economy, 28th May 1982.

<sup>30</sup> McGinn G: (Chief Executive, Bank of Ireland) News Letter, 26th October 1995.

<sup>31</sup> NISBI and The NI Economic Research Centre in association with William Fitch & Co: ‘Northern Ireland Small Business Survey’ Vol. 4 No 2, 1995.

been enduring: it has been stated that “deficiencies are more likely to be found in the control of financial matters than in technical expertise.”<sup>32</sup> Much play was made in the 1980’s of the ‘Loan Guarantee Scheme’ whereby the Government was able to underwrite 80% of a loan that had been issued by a bank. However, prior to Government initiating such a scheme, the Welsh Development Agency, in conjunction with National Westminster Bank (subsequently extended to involve Barclays and Lloyds) developed a similar scheme. It would seem that the problems of the small business sector (and possible remedies) are not caused (nor aided) by aspects related to legislative power.

The Northern Ireland Economic Council (NIEC) has made tentative comments regarding the relationship between economic development and structures for governance.<sup>33</sup> In referring to the Frameworks Document, NIEC states that these proposed changes in the way NI is governed could be improved.

“However it could be argued that the proposed changes could be improved upon from an economic point of view by giving the Assembly some taxation powers. It is often argued that effective and accountable government requires that spending and tax decisions should be made at the same time by the same persons.”

The NIEC recognises that within the UK economic union it might be difficult to effect radical changes, however they add, “local legislators could be given some discretion over taxation at the margin” which would enable tax incentives to be given to industry. The Labour Party’s proposals<sup>34</sup> for devolution in Scotland would allow for similar tax flexibility at the margin (ability to vary income tax - up or down - by 3p). Such a scenario - different tax rates throughout the various regions of the UK - may possibly have a very marginal effect. A more probable scenario would be that the various regions would be competing with each other and thus there would be ramifications for the whole UK taxation system. It is thus unlikely there would be much impact in practice. However, more importantly, NIEC examined briefly successful industrial policy in Europe and concluded:

“Of particular note is the observation from other more successful regions that government or its agencies are rarely seen as having an important role in the direct provision of financial assistance to individual companies, especially with regard to capital grants. Rather the role of government is one where it takes an active and wide-ranging role in promoting and creating an economic environment and infrastructure conducive to industrial development”

The aim of this sub-section is to illustrate simply that the success or otherwise of economic regional regeneration is not dependent upon a region having the ability to legislate in its own right. The undoubted contribution that a newly (agreed) functioning elected forum would create that would be beneficial to the local NI economy would be a manifestation that the cease-fire has been translated into permanent peace and stability. It is the last mentioned aspect which the commercial sector wants to see secured before the commitment to invest in the economy will materialise fully.

### **The Essential Elements required for Devolution**

The essential elements that should be present in the political process to allow for regional diversity are, firstly: where necessary, different legislation as a result of the recognition of a need for such

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<sup>32</sup> Midland Bank Review, 1970.

<sup>33</sup> NIEC: ‘The Economic Implications of Peace and Political Stability for NI’ No. 4, June 1995.

<sup>34</sup> Scottish Labour: ‘A Parliament for Scotland - Labour’s Plan’ 1995.

legislation and, secondly: effective decentralised decision-making. As regards the first element, the Kilbrandon Commission concluded:

“A separate Northern Ireland Legislature would not of course be essential to meet the province’s special legislative needs”<sup>35</sup>

Also, effective decentralised decision making does not need, as a prerequisite, decentralised legislative power. The ‘economic boom’ of the 1960’s has been cited by some Unionists as a clear indication of the benefits of a subordinate parliament. At that time, when industrialists located their businesses in NI they would have experienced great ease in getting in touch with responsible officials as well as the speed with which they could obtain administrative decisions - effective decentralised decision making. When Stormont’s Minister of Commerce ‘toured the world’ in the 1960’s seeking industry to locate in NI the main advantage was not that he represented a legislature, but that he had the authority to make decisions regarding grants, factory space, services etc. The Minister operated under similar enactments as in GB and any difference was brought about because of need, not because NI had a separate legislature. Political persuasion is required to get a ‘need’ recognised and this persuasion process, to operate at its best, necessitates a region to speak with one voice, preferably through one elected forum; however this forum need not be a legislature.

With the passage of time, reflection and careful analysis, the Stormont parliament can be seen to have had many beneficial characteristics as a local and focused political forum, which provided effective and efficient decentralised decision making. To the local constituent it did not have the remoteness that was associated with Westminster. However, the view that its ability to legislate for NI was at all times an advantage must be seriously challenged: on occasions legislation in NI was ahead of GB, on other occasions it lagged behind GB. From a historical perspective, the case that Stormont’s powers of independent law making were advantageous overall to NI is not proven. In addition, there was a financial disadvantage: NI was treated as a separate fiscal unit and while the principle of parity with GB regarding public sector financial expenditure was accepted by the 1940’s, not until the very late 1970’s did full parity of expenditure occur. This parity must be maintained. Any proposed form of legislative devolution must be examined very carefully in the light of past experience.

## **Wider Perspectives**

Firstly, as already noted many Unionist politicians have consistently argued that the Stormont parliament was a bulwark against a united Ireland - it was necessary to secure the union. There is however another perspective which asserts that the thrust of the previous sentence turns reality on its head. Namely, it was **because** a devolved parliament was created, and Unionists were thus denied equality within the UK, that the parliament was forever required to be **vigilant** in securing the union. In addition the ‘body politic’ focused on Nationalist/Unionist perspectives and a permanent political minority was also created. This resulted in the perpetuation of divisiveness within NI rather than the healing of wounds, the widening of the unionist base and the broadening of the mind of active politicians. Unionists, with the benefit of hindsight, should accept that this latter perspective is more in tune with reality.

Secondly, this chapter of the analysis would seem to lead to the conclusion that there are no advantages to legislative devolution. This is **not** the case: Unionists are not opposed to legislative devolution if the conditions are correct. For example, there are areas of legislation relating to

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<sup>35</sup> Cmnd 5460: 1973.

environmental health, pollution, administration of civil justice etc. where, because there is unlikely to be a financial implication, there should be no impediment to regional legislative differences.

Thirdly, the ‘financial implication’ regarding devolution requires clarification. It is not enough to say that financial freedom or otherwise from Westminster will determine the ability of a NI Assembly to be flexible. German Lander (regional bodies) raise little of their own funds yet they are one of the most powerful regional tiers in Europe. On the other hand, a regional government may raise most of its own money but be told by central government precisely what can be done with it. The true flexibility of regional government vis-à-vis central government has more to do with the way power is devolved and the attitude of the region’s citizens than with the narrow issue of finance alone. The funding provided to NI is based upon socio/economic standards in GB and so long as NI people wish for similar standards then the freedom for NI to be different by the usage of a legislative forum will be curtailed. This suggests that in reality little was (and would be) gained from legislative devolution because of the implication of parity between Stormont and Westminster. The Kilbrandon Commission summarised this situation as follows:

“Northern Ireland was not financially independent, and the application, at the choice of the Northern Ireland Government, of the parity principle on which the financial relationship with the United Kingdom was based had the inevitable consequence that much of the legislation passed by the Northern Ireland Parliament differed only in minor respects, if at all, from comparable legislation at Westminster. Where policies did differ and there were financial implications, they differed only with the agreement of the United Kingdom Government”<sup>36</sup>

In the 1920’s when devolution was considered for GB there was little or no support for such devolution. The question was addressed again in the 1970’s via the Kilbrandon Commission with no positive outcome. Should a future Westminster Government consider regional devolution within the UK as a whole, when such very important relationships as finance between the ‘centre’ and the regions would be fully considered, the Ulster Unionist Party would be happy to be involved. In particular, if the Labour party wins the next general election it is (at present) committed to establishing devolution for Scotland and Wales within one year. More generally, the procedures for governing within the UK may at times require changing, but such changes should be within an overall UK setting formulated on similar basic principles.

In any event, with the possible creation of a new NI Assembly, it may be worth considering the transfer of some legislative power to the Assembly after a period of operation as an administrative body and the new institutions (and the corresponding political relationships within the islands) would be seen to be clearly defined, working and stable.

The Ulster Unionist Party recognises that there is some merit in a regional legislative body; however, in the context of this and the previous chapter, the following reasons would justify not supporting, on balance, a separate devolved legislature for NI as a prerequisite for devolution: (i) the impact of the financial dimension and parity of standards; and (ii) the implied hidden rationale - decouple NI from mainstream UK politics - adopted by successive governments. There is another totally separate aspect. Today much legislation affecting our daily lives within the UK comes directly from the European Union’s (EU) Directives and Regulations which gives even less reason for seeking a devolved legislative parliament for NI (Chapter 8). Also, the aspect of securing different legislation for a region of the UK requires consideration (Chapter 4)

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<sup>36</sup> Cmnd 5460: October 1973, Page 167.

Overall, four questions should be asked by anyone seeking to make long term progress regarding the form of government for NI. They could be viewed as ‘litmus test’ questions.

1. Would NI’s citizens accept higher taxes or lower standards of services, if that was the price to be paid for effective legislative devolution (or indeed any form of settlement)?
2. Would H M Treasury permit the financial freedom (given the high level of financial support to NI with subsequent ramifications for overall UK policy) that would be a prerequisite for a proper devolved legislature?
3. If regional individualism can be accommodated by a process whereby a region has: a mechanism for seeking appropriate (different) legislation; a choice in its priorities; and an ability to allocate funds to each sector; is local legislative power necessary for this process to occur?
4. Would a particular proposal for governmental structures within NI be likely to result in a lessening of the Nationalist/Unionist divide?

If the answer to any one of the above four questions is “No”, then one must question the whole rationale of the devolution process from 1920 to now. There are some aspects of ‘life’ (such as house prices, income tax, mortgage rates, pensions etc.) that are of such a nature that a subordinate legislative body would have little or no impact. As regards the remaining aspects (such as education, housing policy, economic policy etc.) a regional administration could have much influence. However, for the exercise of such influence the power to legislate is not a prerequisite.

### **SUMMARY**

- **Historically, the reasons for non-devolution of legislative powers to other regions of the UK were not applied to NI.**
- **Westminster did not heed the desire for no devolution at Stormont.**
- **Westminster exercised much control over Stormont because of financial dependency and because Stormont wished for parity of standards.**
- **Historically, NI suffered financially because of devolved legislative power.**
- **The financial position of NI denied an essential principle of devolved legislative power - the opportunity for regional diversity.**
- **Financially, the most secure option for the citizens of NI is to remain within the legal & financial jurisdiction of the UK.**
- **There is no clear evidence to justify the argument that legislative power is a necessity for economic well being.**
- **A separate subordinate legislative body for a region is not required in order to have effective decentralised decision making**

- **Where there are no financial implications, a devolved legislature can satisfy a regional need.**
- **Devolved government, as operated in NI, was in the long term divisive.**
- **Unionists would consider proposals for legislative devolution after any new institutions of government were seen to be clearly defined, working and stable.**

## CHAPTER 3

### GOVERNMENT WITHIN NORTHERN IRELAND

The first chapter indicated that successive Westminster Governments should be doubted as to their stated motives for consistently advocating devolved legislative government for NI. In chapter 2 it was shown that the balance of the argument would clearly indicate that the needs of NI can be adequately catered for by a system of government other than devolved legislative government. In short, what is undoubtedly required for NI is a strong administrative decision making body; the power to legislate may be an asset but it is certainly not a prerequisite for such a body to be successful. This chapter will examine, and comment upon, the Government's latest proposals for devolution - the Frameworks Document. This will be followed by a brief examination of the Labour Party's proposals for devolution for Scotland and Wales. In the light of these aspects the proposals for NI by the Ulster Unionist Party will be considered.

#### Frameworks for the Future

The latest Government proposal for devolution in NI<sup>37</sup> entitled, 'A Framework for Accountable Government in Northern Ireland' specifically looks at all the relevant relationships "within NI, including between any new institutions there and the Westminster Parliament." This proposal is to be viewed "as part of a comprehensive political settlement embracing relationships within NI, between NI and the Republic of Ireland, and between the two Governments." It is described as "not a blueprint" but what the Governments<sup>38</sup> concerned "strongly commend to the parties." While the Ulster Unionist Party does not accept the overall intention behind the Government's proposals since it does not present a basis for negotiation compatible with the maintenance of the Union, there are nevertheless aspects of the proposals which, taken on their own, should be acceptable to Unionists. Namely, the new institutions should be: based on democratic principles; widely acceptable and providing an equitable role for both sections of the community; workable; avoid any entrenchment of the main community division; provide all constitutional political parties with the opportunity to achieve a role at each level of responsibility; and function effectively, efficiently and decisively. Also, the elected Assembly would be constituted in a similar manner to previous assemblies. There are further aspects however, which require careful consideration.

(i) Stability: Regarding stability, there are two specific elements that give cause for concern. Firstly, while the institutions are to be "stable" and "durable" they are nevertheless to be "capable of development in response to changing political realities, with the agreement of all concerned." This has an inherent potential for instability and uncertainty, notwithstanding that agreement of all is required.

Yet an essential element to any proposal, as expressed by the Government, is the requirement for stability: no initiative will succeed unless it is perceived as stable. One may ask perceived by whom? Certainly those citizens who believe the union should remain (whether they are members of a Unionist party, unionist by inclination, or merely happy to accept the status quo) will wish for stability. However, by those who wish for an island of Ireland united as one political unit, could any

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<sup>37</sup> There are two parts to the document: relationships within NI; and relationships within Ireland and between the two Governments.

<sup>38</sup> Some aspects within the proposals represent the views of both London and Dublin: according to the 'Frameworks Document', proposals related to NI are made solely by London.

initiative be viewed as anything other than interim that does not lead to their ultimate goal? To the latter any initiative must be dynamic and thus cannot be perceived by the former as stable.

Secondly, there is an imbalance within the relationships: the NI/GB aspect is to be “established within a defined relationship” whereas the new NI institutions have to be “competent to manage any relationship between NI/RoI developed in political talks.” Several questions could be asked. For example, who defines the NI/GB relationship? Can such a relationship be discussed by the parties (with Government) before being defined? - If not, one could safely assume that the defined relationship will be a minimum and limited relationship. Regarding the “any relationship” with the South, to which political talks does the quotation refer? Are they the talks that the Government wishes to have now and thus the end product may be any relationship but would it then be a defined relationship? Does the government intend that further talks could occur in (say) one or five years, for example, and then a further redefining of the NI/RoI relationship? Perhaps the redefining will be a ‘creeping process’ - the worst form of instability: an environment where it would be virtually impossible to build up trust and relationships. For those politicians and citizens who wish stability, the ground is not very fertile for it to take root. But then, this seems to be one of the characteristics of the whole document - it is destabilising

(ii) Concept of ‘Trust’: The government, in considering a new Assembly for NI has proposed an elaborate “system of detailed checks and balances”, much of which is proposed to be undertaken by a Panel. One such proposal is that the Panel could refer proposed legislation for consideration as to whether or not it is discriminatory. However, to guard against unfair discriminatory situations much has already been put in place by government. In addition to the Fair Employment Commission and the Standing Advisory Commission on Human Rights<sup>39</sup> (as two examples) the Government introduced PAFT (Policy Appraisal and Fair Treatment Guidelines) in January 1994. This new development had been preceded by ‘equal opportunity proofing’ of government policy and legislation. NI has procedures to protect against unfair discrimination that match any other member State of the EU.

Overall, the ‘trust’ aspect of government is completely lacking since the Government feels the necessity to provide so many checks and balances. In the event of agreement being reached regarding devolution, there would be without doubt a commitment to make the Assembly work. However, in the unlikely event of the Assembly breaking down on community lines the Panel (whose membership is likely to be a reflection of the NI community) would be of little help since it would probably follow the Assembly. A Group of senior NI academics wrote as follows regarding these proposals:

“These infinitely complex proposals are supposed to ensure the fair government of only one and half million people. They presuppose a community of malign children, needing the constant oversight of benign governesses from London and Dublin. They institutionalise community divisions and make it impossible for difficult decisions to be taken. They can have no merit as an effective mechanism of regional government.”<sup>40</sup>

(iii) The Panel: A separate Panel is proposed, “probably of three people elected within NI, to complement the working of the Assembly.” The Panel, which would be financed independently by the Secretary of State and reach decisions by a unanimous vote, “could be elected from a single NI constituency by a system of proportional representation”: it is described as a “complement”, namely

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<sup>39</sup> SACHR’s remit is to advise on the adequacy and effectiveness of the law and its application in preventing discrimination on the ground of religious belief and political opinion in NI.

<sup>40</sup> Cadogan Group: ‘Lost Accord’, June 1995.

the Panel is required to make the Assembly complete. This last mentioned quality attaching to the Panel will now be examined.

There is confusion within the document as to the work which the Panel will undertake. For example, in one section of the document reference is made to the fact that the panel “could” nominate Committee chairmanships while in another section the word “would” is used. No positive comment can be made on this Panel: a brief summary of its functions (with brief comments) is as follows.

1. Nominate Chairmanships of Assembly Committees - this should be the Assembly’s responsibility which would help break down community barriers.

2. Deal with aspects of legislation - this should be dealt with by either the Assembly or a Standing Committee at Westminster (see Chapter 4).

3. Liaise with the Secretary of State on overall level of public expenditure - this should be dealt with by the Chairman, or a subcommittee, of the Finance committee or a Chairmen’s Committee.

4. Arbitrate on public expenditure allocation disputes between departments - since the Panel is part of the Assembly, its previous actions may be considered by an Assembly committee to have created the dispute, thus making it difficult to arbitrate regarding a body of which it is an integral part.

5. Approve or advise regarding public appointments - this function could equally well be carried out by a committee of the Assembly.

6. Representational and promotional role regarding economic development - this function should be the responsibility of the Chairman of the committee responsible for economic matters.

The creation of such a Panel - and other checks and balances - indicates that the Government either has little trust in NI politicians or it has designed a deadlock system to enable (or require) decisions to be made elsewhere.

### **The Labour Party’s Proposals for Scotland and Wales**

The present Conservative government has no proposals for devolution in other parts of the UK. Indeed it is fervently opposed to devolution as envisaged by the Labour party. As indicated previously, the Prime Minister in his introductory comments on the proposals for devolution in NI used the word “alone” (see page 10). The Labour party has adopted a bipartisan approach to NI and endorses the present Government’s proposals: it further states that should it win the next General Election it will continue, in broad terms, with the strategy as currently operated by the Conservative Government. Therefore, the only present source for likely additional opinions regarding devolution within the UK are to be found in the Labour Party’s proposals for Scotland and Wales. These will now be examined briefly.

The Labour party has produced two documents<sup>41</sup> regarding devolution. As well as a parliament for Scotland, with tax raising powers, the proposals represent “an ambitious and comprehensive package of constitutional reform which will include a Welsh Assembly, decentralisation in England, a Freedom of Information Act, a Bill of Rights and Reform of the House of Lords.” Labour argues that decentralisation “has been a huge success story” in Europe and the same is wished for Britain. Also, “it will strengthen the UK because it will bring power closer to the people where it belongs.” The

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<sup>41</sup> ‘A Parliament for Scotland - Labour’s Plan’ and ‘Shaping the Vision - A Report on the Powers and Structure of the Welsh Assembly’: 1995.

Labour party argues that the administrative framework is in place (The Scottish/Welsh Offices and agencies responsible to them) but what is lacking is democratic accountability.

Both elected bodies would receive funding based on a guaranteed equalisation/need basis and in turn would have wide-ranging powers. In both cases the Secretaries of State for Scotland and Wales would be retained. The major difference between the Scottish and Welsh devolution proposals is that the former would have the power to legislate and have tax raising powers (see page 17 for comment on this issue). In the proposals for Scotland no mention is made as to how the parliament would be structured or on what basis would power be exercised? However, regarding Welsh devolution the following comments are made.

“Whilst the detailed working practices of the Assembly will ultimately be a matter for the members of the Assembly themselves to determine, during the consultation a strong desire was expressed that it should depart from the Westminster model of Cabinet government, and adopt a more consensual approach based upon the best practices of local government.

Much of the work of the Assembly is likely to take place in committees responsible for overseeing the work of the Welsh Office and its Quangos”

This form (and procedures) for government - commonly called Administrative Devolution - which build upon the practices of local government have at various times<sup>42</sup> been advocated by the Ulster Unionist Party. To adopt a consensual and inclusive form of governance is all the more important for NI given its background. Indeed part of the difficulty over the past 25 years, in trying to reach a political settlement, was the inability to agree on the composition of the ‘Cabinet’ or ‘Executive’ - power sharing or majority rule. Politicians, in striving for a legislature were at the same time seeking that aspect of government, a Cabinet, whose composition could not be agreed. The Kilbrandon Commission made reference to this aspect of government. It stated:

“Where major policy making and legislation is being devolved the committee system would not in our view be appropriate and the Ministerial system is needed to ensure the rapid and efficient crystallisation of policy and the promotion of the legislation necessary to give effect to it.”<sup>43</sup>

### **The Unionist Viewpoint**

The Ulster Unionist Party in its ‘Statement of Aims’ regarding government within NI recognises that any local forum must be inclusive. To this end a NI Assembly with administrative powers should be established which allows all constitutional parties to have an operational role at each level of responsibility. A committee system would operate and membership would be in proportion to party strengths within the Assembly. Executive power should reside within these committees which are in turn accountable to the Assembly. This would be an inclusive form of governing in that all constitutional parties would be actively involved in the workings of government and thus have an allegiance to the institutions of government: the divisiveness of the past should be eliminated. The Government’s current proposals for an Assembly within NI are unworkable: instability rather than stability would be created.

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<sup>42</sup> For example: ‘The Way Forward’, 1987.

<sup>43</sup> Cmnd 5460: 1973, page 244.

In addition, the ending of divisiveness is aided by the recognition of identities within NI. The Ulster Unionist Party wishes to develop appropriate conditions which would enable all citizens to express, preserve and develop their identity. Diversity is best accommodated within the UK since political allegiance is based on loyalty to a State and not a narrow view of loyalty to a culture or group as is the wish of Irish Nationalism through the creation of an all-Ireland State. Today there are people of Hungarian nationality living in Slovakia, yet holding Slovakian citizenship. In like manner, and in much less traumatic circumstances, it is not mutually exclusive to be of Irish nationality and hold British citizenship as a resident of the UK.

### **SUMMARY**

- **Many aspects of the Government's devolution proposals are acceptable including all constitutional parties having a role at each level of responsibility.**
- **Reservations regarding these proposals include: stability; trust; the Panel.**
- **The form of the Labour Party's proposals for Welsh devolution would be of benefit to NI - administrative devolution with power being exercised through committees of the Assembly.**
- **Suggested response to the Government's proposals: no Panel and the Assembly should be an administrative body for NI.**

## **SECTION TWO - PARLIAMENT OF THE UNITED KINGDOM'S FUNCTION.**

### **CHAPTER 4**

#### **PARLIAMENT OF THE UNITED KINGDOM'S FUNCTION**

The present NI/Westminster relationship has been known as 'Direct Rule'. As the description implies, the citizens of NI are ruled in a very direct manner with little local accountability in the legislative and administrative process (the reasons for having this form of 'colonial' government have been well documented elsewhere). Chapter 2 addressed the administrative aspect. This chapter will address how the legislative aspect may be improved. In July 1993, when the NI Standing Committee met for the first time in two years, all the NI MPs present agreed that the procedures for dealing with NI legislation were inadequate<sup>44</sup>. Firstly, what are the parameters involved in the workings of Westminster?

It is Government that governs; this may not sound a very profound statement. However, one should not have false expectations as to the role of Parliament (as compared with Government and the Cabinet). Parliament's function is primarily to scrutinise Government and to consider and amend primary legislation. It is this last mentioned function where legislation applicable solely to NI obtains even less scrutiny. The law making process related to NI is by way of Order in Council. This involves: very limited debate (usually late in the evening); no provision for amendment during the parliamentary stages (either accept or reject); and inadequate technical scrutiny. It is this process that is accepted as inadequate by all.

In Chapter 1 it was stated (among other reasons) that successive Westminster Governments wished legislative power to be transferred to Stormont in order to ensure that the legislative burden at Westminster was not increased: this aspect requires consideration. The argument presented in this booklet, for various reasons, is that a NI Assembly should be primarily an administrative body: it follows that the legislative function should reside at Westminster. Can these opposing views be resolved? In the event that most of the legislative function remains at Westminster, what possible options could be implemented?

1. The present system of Order in Council could be allowed to continue. As already indicated it is a poor system for considering legislation, viewed as unacceptable by all and was, when introduced expected to be temporary.
2. The existing Standing Committee for NI could be used much more frequently to consider Orders in Council at their *proposal* stage *before* draft Orders are laid before parliament. In this way suggestions for changes to an Order could be made and could be acted upon by Government before it is laid before Parliament. The Standing Advisory Commission on Human Rights referred to this aspect as follows:

"The Secretary of State should ensure that all non-parity NI Orders in Council have a proposal stage and should adequately consult with all interested parties."<sup>45</sup>

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<sup>44</sup> There was disagreement as to the method of solution to this problem.

<sup>45</sup> SACHR: 'Report for 1992-1993' London HMSO July 1993.

3. The above Standing Committee could be given the powers of a Select Committee while it is considering draft Orders in Council. This would enable the Committee to summon witnesses in order to assist in its deliberations. It should mean that the consideration of a draft order would be enhanced and subsequently any proposed change would be better as a result of this procedure. A Committee acting under these powers would be called a Special Standing Committee.

4. The Order in Council procedure could be abolished and the legislative process for NI conducted in the same manner, by Bill, as for the rest of the UK. Bills would pass through their various stages within the parliamentary process and be subject to amendment. It is this procedure that could potentially encroach most on Parliament's time. However it would be procedurally possible for this to be avoided as most stages could be taken in Committee. Professor Brigid Hadfield has suggested:

“...it could be achieved with minimal encroachment upon the time available to the floor of the House... (resulting in)...only a formal Second Reading and Third Reading on the floor of the House.”<sup>46</sup>

5. It would be possible to have a combination of the third and fourth procedure. A Standing Committee could be given Select Committee status for the purpose of considering Bills. This would be a Special Standing Committee which could consider Bills and be able to summon witnesses to give advice on aspects related to the proposed legislation that is to be considered.

If the legislative process is to be by Order in Council (suggestions 1 to 3) this would have minimal effect on time required in the House. Also, implementation of the remaining suggestions could include procedures that would also have little impact on the House's time<sup>47</sup>. The last mentioned suggestion is the best method for the scrutiny of legislation. In any event Select Committee status should be implemented hence the Ulster Unionist Party advocates a Special Standing Committee be used for considering legislation relevant to NI. How does the above compare with the government's latest proposal?

### **Frameworks for the Future**

Much legislative power would reside within NI. The Panel (pages 23/24) has a potentially important role in this legislative process: “the assembly would be the legislature in respect of transferred matters in NI, subject to the powers and role of the panel” and legislative powers are anticipated to be in excess of the powers that were transferred to Stormont in 1973. However, since the rationale of Chapter 3 raises doubts as to the necessity of having the Panel and doubts have also been expressed concerning the benefits to NI of a devolved legislature (Chapters 1 & 2), would it therefore not be better that all legislative matters are dealt with at Westminster? The simple answer is “yes.” Further, close co-operation could exist between the NI Assembly and the Special Standing Committee regarding the legislative programme in addition to the Secretary of State consulting with the Assembly.

The all-inclusive point from the previous paragraph is that it seems sensible to have legislative matters pertaining to NI dealt with at Westminster. Were all matters regarding the legislative process to be dealt with in NI except such matters as “Crown, Foreign affairs and defence”, as envisaged in the Government's proposals, it would leave little business to be done by NI MP's. These MP's are not part of the party structure at Westminster and cannot aspire to government, thus they should be

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<sup>46</sup> Hadfield B: ‘Committees of the House of Commons and Northern Ireland Affairs’, NI Legal Quarterly, Vol. 32 No 3 Autumn 1981.

<sup>47</sup> In addition, there are now new ‘fast track’ procedures for non-controversial legislation.

given a worthwhile role in the affairs of the part of the UK from which they sought and obtained a mandate: the NI MPs would be more involved and informed regarding the legislative process. In short, with respect to activities within NI, they should be much more than a conduit for their citizens' complaints.

Regarding the overall governance of NI, the aim should be to give wide ranging executive/administrative functions to the Assembly (through appropriate primary legislation from which the Assembly would derive its power - similar to that envisaged for Welsh devolution). With regard to the monitoring of the workings of government this should continue to be carried out, as at present, by the NI Select Committee. It would seem logical to extend this Committee's monitoring role to include the workings of the NI Assembly: it could perhaps request that the Assembly furnish a report at least once per year. This reflects the reality that Westminster is responsible for NI affairs and it is comparable with the procedures for governing other parts of the UK; it reflects the old maxim of fairness to all citizens. This last aspect is reflected in a new Convention from the Council of Europe<sup>48</sup> as follows:

“The parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to a majority. In this respect, they shall pay due account of specific conditions of persons belonging to national minorities”

The above quotation refers to an undertaking that there should be equality in political life among all persons within a State. NI citizens are denied equality of citizenship within the legislative process at Westminster as compared with fellow citizens in England, Scotland and Wales. (A fuller analysis of this Convention is carried out on page 36 under the heading 'Protection of Rights') Also, the Standing Advisory Commission on Human Rights (SACHR)<sup>49</sup> recommended that:

“...proposed legislation under consideration by Westminster which affects NI should be enacted by procedures which are equitable with the legislative procedures which operate in the rest of the UK.”

If the majority community could see by the mechanisms of government that their UK citizenship was not being denied in any way, and was in line with international agreements, this would go a long way to reassure Unionists and in turn make the reconciliation process easier.

## **SUMMARY**

- **Present procedures for considering NI legislation at Westminster involve the minimum of normal parliamentary scrutiny.**
- **There are various ways that could be implemented to improve the procedures that successive Governments have not pursued.**

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<sup>48</sup> Council of Europe: 'Framework Convention for the Protection of National Minorities', Strasbourg, 1995.

<sup>49</sup> SACHR: 'Report for 1992-93' London, HMSO, July 1993.

- **NI MP's should be given a worthwhile role at Westminster regarding the affairs of that part of the UK from which they sought a mandate.**
- **The Select Committee for NI should be retained with an increased function of monitoring a NI Assembly.**
- **A new Special Standing Committee should be established which would enable thorough consideration of proposed NI legislation.**
- **Without improvement, the people of NI are denied equality of citizenship which is considered to be a denial of human rights.**

## **SECTION THREE - UNITED KINGDOM/REPUBLIC OF IRELAND DIMENSION**

### **CHAPTER 5**

#### **LONDON/DUBLIN RELATIONSHIPS**

This chapter will examine the latest Governments' proposals, contained in the Frameworks Document, regarding relationships between the UK and Ireland: the London/Dublin dimension. To even the casual reader it would become very obvious that only the briefest attention was paid by both governments to this dimension. It would seem to have been, on purpose, virtually excluded.

The Frameworks Document refers to "how relations in the island of Ireland, and between these islands might be based on co-operation and agreement to the mutual advantage of all." The document further states that in trying to create institutions and structures within the island of Ireland the following was also relevant:

"The two Governments recognised that such structures would include institutional recognition of the special links that exist between the peoples of Britain and Ireland as part of the totality of relationships, while taking account of newly forged links with the rest of Europe."

There are 37 pages and 95 paragraphs in the Frameworks Document yet only one paragraph (5 lines) refers directly to links between Dublin and London: these links are so special they are barely visible in the document! In the document the section entitled "East-West Structures" refers not to any special links regarding Dublin and London but mostly to the role that Dublin and London have with respect to "reconciliation amongst the people of the island of Ireland" and "the Irish Government's recognised concern and role in relation to NI."

For example (with respect to the island of Ireland): the proposed Intergovernmental Conference "will be a framework for consultation and co-ordination between both Governments and the new North/South institutions"; and, for example (with respect to the Irish Government's role in NI), "it will be for the Governments to consider ways ... for enhancing community identification with policing."

Also in this East/West section, and as agreed by the two Governments, the following:

"In the event that devolved institutions in NI ceased to operate ... other arrangements would be made to implement the commitment to promote co-operation at all levels between the people, North and South, representing both traditions in Ireland."

To Unionists, this could be viewed as a thinly disguised threat: work the arrangements as we have proposed or else we will find other means for implementing the same North/South (N/S) principles. This is against a backcloth that the new Intergovernmental Conference will be the "principal instrument for an intensification of co-operation ... between both governments with particular reference to.... a wide range of issues concerned with NI and with the relations between the two parts of the island of Ireland." If such a form of government were to be established it would not bode well for Unionism.

Regarding the 'true' East/West relationship, the 'five line' aspect is as follows:

“ Both Governments believe that there should also be provision in the Agreement for developing co-operation between the two Governments and both islands on a range of “East-West” issues and bilateral matters of mutual interest not covered by other specific arrangements, either through the Anglo-Irish Intergovernmental Council, the Conference or otherwise”

It is a rather brief and bland statement; there is no mention of phrases such as “intensification of the co-operation”, “dynamic” etc. that were used with respect to the two parts of the island of Ireland. With a little imagination one could identify areas of co-operation that would be possible and even beneficial: a British/Irish Fisheries Commission<sup>50</sup> and an Irish Seas Environmental Commission (we share the same waters); harmonisation of health care/safety at work/trade union law (there is great mobility of the Irish workforce between the two islands - GB has provided the major destination for RoI emigrants); the Welsh language has more public recognition/usage in Wales than Gaelic does in either part of the island of Ireland - why not a British/Irish Celtic Society?

There is more in common between the two main islands than there is between any part of the islands and the rest of Europe. In addition to the above, we use the same first language, are joint heirs to a rich Anglo-Irish culture, share many customs and practices, are accessed by the same media, drive on the same side of the road and have a similar climate which impacts upon many aspects of life. The British/Irish Isles - *British Isles Dimension* - is a cohesive unit within Europe. Perhaps instead of a 'New Ireland' as the basis for a political unit (as the SDLP indicates) we need a 'New Islands' unit. It may be possible to create a new economic/social unit of the islands that is equally beneficial to all citizens; the economies of scale within a unit of 60 million people will always be greater than those within a unit of 5 million. In any event, possible developments within the EU may result in Dublin's best interests being served by closer links with the UK rather than by the real possibility of absorption into a German-led core of central European integration.

The main non-political argument against the above may be that there is already much harmony since both countries are within the EU. If that is the situation, then the same argument could be used with respect to the island of Ireland. One cannot have it both ways. If harmony would be beneficial within the island of Ireland it should be equally beneficial for all the islands: if no harmonisation process is required among all the islands then none should be necessary for the island of Ireland.

Mr J. Hume (of the SDLP) invokes the EU dimension within his political philosophy. He wrote as follows:

“The European Union is the greatest testament to the resolution of conflict... Europeans are engaged in a level of co-operation so intense that it has blurred the traditional bounds of sovereignty and notions of territorial integrity.”<sup>51</sup>

If there is need for this co-operation to be extended then a more logical extension would be its extension within the British Isles dimension and not, as suggested by Mr. Hume, only within the island of Ireland. To compare the dynamic dimensions that have operated, and continue to operate, among the States of the EU with the political concept of a 'New Ireland' is quite simply flawed logic. Mr. Hume is confusing (perhaps on purpose) the natural situation of co-operation among equally-

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<sup>50</sup> the word 'Commission' is used here to refer to a body entrusted with a specific task but does not imply any particular type of membership, procedures for accountability etc.

<sup>51</sup> Hume J: Belfast Telegraph, 27th October 1994.

sovereign States with the narrow view that the island of Ireland should be one political unit or that two equally-sovereign States should enter an agreement regarding the governance of one part of those States.

### **SUMMARY**

- **Little consideration given within the Frameworks Document to genuine London/Dublin relations.**
- **Concentration of the London/Dublin relationship by both governments relates primarily to the island of Ireland in order to further buttress the ‘all Ireland’ policy.**
- **There is more commonality within the British/Irish Isles than between any part of the islands and the rest of Europe.**
- **Co-operation within the British/Irish Isles (mindful of EU influence) should give rise to beneficial linkages.**

## CHAPTER 6

### BELFAST/DUBLIN RELATIONSHIPS

This aspect of the totality of relationships has been the most difficult to reconcile. It was described (page 6) as a question that tests ingenuity in divining its answer. In this wider context, Unionists believe that the overall accommodation should be found within the context of UK citizenship for the people of NI and the reality of politics reflecting State frontiers. Nationalists believe however that the overall accommodation should be within the island of Ireland context ultimately leading to Ireland becoming one political unit.

Mr J. Hume has written the following:

“Unionists who fume about the SDLP and Joint Authority are simply trying to distract from the nub reality that they reject the concept of dual legitimacy. Without dual legitimacy there can be no parity of esteem, no equality - and without equality there can be no agreement.”<sup>52</sup>

From a Unionist perspective, the legitimacy of Irish Nationalism is not rejected in the sense that Irish Nationalists are entitled to wish for a United Ireland, though Unionists do not accept the validity of the Nationalist argument. The “nub reality” of the problem is the extent to which this Nationalist aspiration is to be given expression within the structures of government for NI. There is a perspective that such an accommodation is unobtainable between the two traditions’ stated positions on this issue. In an interview after the cease-fire in 1994, Sinn Fein President Mr G Adams was asked how can the two competing claims to sovereignty in NI ever be reconciled? His answer was as follows:

“ They can’t be reconciled. One can only take up a democratic position. The democratic position has to be that the people of Ireland have a right to govern themselves”<sup>53</sup>

#### Frameworks for the Future

Against this background consideration will now be given to the latest Government proposal for N/S relationships, entitled ‘A New Framework for Agreement’. It is described as “A shared understanding between British and Irish Governments to assist discussion and negotiation involving the Northern Ireland parties.” Both Governments “believe it sets out a realistic and balanced framework for agreement which could be achieved, with flexibility and goodwill on all sides” and thus they “strongly commend it to the parties, the people in the island of Ireland and more widely.”

There is one interesting small point. The document states that both Governments “acknowledge that in NI, unlike the situation which prevails elsewhere throughout both islands, there is a fundamental absence of consensus about constitutional issues.” Have they forgotten about the Scottish Nationalists and their percentage poll within Scotland? This is another example of their particular interpretation of the meaning of the word ‘unique’.

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<sup>52</sup> Hume J: Belfast Telegraph, 23rd August 1994.

<sup>53</sup> English R: ‘The Idea of The Union’ Belcouver Press, 1995, page 137.

Overall, from the viewpoint of Unionism, there is very little positive that can be said about the Governments' suggestions regarding N/S relationships. The challenge to Unionists is that, in pointing up these negative aspects of the Frameworks Document, they are not seen as uncompromising and negative in overall outlook. One of the document's guiding principles indicates starkly the difficulty that Unionists have in accepting it. It is as follows (the underlining is not in the document):

“...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 NI parity of esteem and treatment, including equality of opportunity and advantage”

Unionists could easily accept all of the above statement except for both Governments' *interpretation* (through the proposed N/S body) placed on the underlined portion. This is one aspect that Unionists will not accept. The principal vehicle by which this underlined expression is to be realised is through the proposed N/S body bringing together the “Heads of Department representing the Irish Government and the new democratic institutions in NI to discharge or oversee delegated executive, harmonising or consultative functions... Both Governments envisage that all decisions within the body would be by agreement between the two sides.” The N/S body would be subject to regular scrutiny.

The overall terms of reference for the N/S body would be authorised by legislation passed in the two sovereign Parliaments. This legislation “should provide for a clear institutional identity and purpose for the N/S body ... and also establish the body's terms of reference, legal status and arrangements for political, legal, administrative and financial accountability.” This last quotation indicates clearly that the N/S body is to embody the principles of all-Ireland administration. A **legal entity** that has clearly defined **political legal administrative** and **financial accountability** that will discharge **executive functions** with respect to services for the **island of Ireland** cannot be described by any other term than all-Ireland administration. The proposals provide that the British Government would impose **no limits** on the **nature** and **extent** of these **functions**. Both Governments **expect** that the N/S body will have **significant responsibilities** and **meaningful functions**. Throughout the document there is an expectation that both functions and level of responsibility will be expected to increase continually. There may be subsidiary bodies created at a level below the N/S body. It is envisaged that the N/S body could liaise directly with the Westminster Government on NI matters that impact upon responsibilities which the Westminster Government still has with respect to NI; Westminster Government representatives may also be in attendance at meetings of the N/S body. The traditional democratic relationship of accountability between the governed and those who govern is rendered redundant.

One can accept that for any of the above to happen requires agreement among all participating parties (including Unionists). However, when considering the merits of any new proposal one cannot make a judgement in its favour simply because it requires one's approval. A proposal is judged on the basis of the 'what if' situation, namely a judgement is made on any proposal in an 'up and running' context. To make clear the principle underlying the last sentence: when purchasing a car the decision is made on how the car performs, not on the fact that the purchase will only take place by agreement between the buyer and seller. The apparent lack of understanding by both Governments regarding this point is to be regretted. In short, it is an absolute irrelevancy that at regular intervals throughout the Frameworks Document, agreement by all parties is stated as if to make the proposals somehow acceptable to Unionists. In addition, the proposals allow for the possibility of break down of the NI Assembly - there would then be no representatives to participate in the N/S body. Direct Rule would

be reintroduced in NI and “other arrangements” would occur “to ensure that the co-operation that had been developed through the N/S body be maintained.”

The principal reason why Unionists cannot accept the above proposals is that the Governments, in looking for suggestions for institutions of government, have treated both Nationalism and Unionism as equal. This is a fundamental flaw in principle. The Governments’ proposals state that “their aim is to overcome the legacy of division by reconciling the rights of both traditions in the fullest and most equitable manner.” To be equitable means to be fair and just which may, or may not, mean equal - yet the Governments have interpreted ‘equity’ to mean ‘equal’. For example, they write in an equal manner regarding Unionists not accepting a United Ireland and Nationalists not accepting NI within the UK. Each viewpoint has equal legitimacy as a viewpoint but legally they are entirely different. NI as part of the UK is the legal position accepted by international law whereas the status of the united Ireland viewpoint is that of a legitimate right to wish for a change in NI’s legal position. This introduces aspects regarding ‘rights’ and ‘obligations’.

### **Protection of Rights**

In December 1948 a Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations. This historic document recognised that respect for the inalienable rights of the individual was the foundation of freedom, justice and peace. If a person was not to be compelled to have recourse to rebellion against tyranny and oppression, human rights had to be protected by the rule of law. In short, the protection of human rights is the ultimate test by which any document produced by governments is to be judged.

Both Governments acknowledge the need for “comprehensive protection and guarantee of fundamental human rights”, specifically “the systematic and effective protection of common specified civil, political, social and cultural rights.... having regard to each Government’s overall responsibilities including its international obligations.” The Frameworks Document further states:

“The Government believe that there would also be strong support for the propositions that each individual and community in NI has the right to define their own identity; that that right and identity should be respected; and that any new political institutions should be such as to give expression to the identity and validity of each main tradition”

The above statements by the two Governments makes their position very clear. However, they are only two States within a very wide and diverse international community. Their statements (regarding human rights) and their suggestions for institutions of government (based on their attitude to human rights) must be considered against this international opinion before any judgement can be made.

(i) Brief History: Following the decision by the United Nations, the Council of Europe was formed in May 1949 with a crucial objective to work for the “maintenance and further realisation of human rights and fundamental freedoms.” A convention (treaty) on human rights was drafted and agreed and its name is now well known - ‘The European Convention on Human Rights’<sup>54</sup>. It is important to note that this Convention is international law and thus participating States are obliged to enact what is contained in the Convention. In the case of Westminster, this could be by either primary or delegated legislation. For the first time effective regional enforcement machinery was set up to

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<sup>54</sup> There is also ‘The European Social Charter’ - it protects such aspects as; the right to work, strike, and form trade unions.

protect human rights. Undertakings were secured from member states not only to accept certain duties but also to recognise that individuals have rights under international law. Any individual (or group) may lodge a complaint against a member state within whose jurisdiction the alleged human right violation occurred and seek a judgement. The Council of Europe presently contains 38 member states; both Ireland and the UK are members.

(ii) Minority Rights: The rights of minorities have been the essence of the long-running problem in NI: it is these rights that the two Governments addressed when considering proposals for progress. In October 1993 the Heads of Government of the member States of the Council of Europe pledged legal and political action to protect national minorities. In the 1990's (following the demise of the USSR) this became increasingly important for stability in Europe. The Heads declared that "the rights of persons belonging to national minorities" have to be protected "within the rule of law, respecting the territorial integrity and the national sovereignty of States"<sup>55</sup> and they instructed that a framework Convention (hereinafter called Convention) be drawn up to establish the principles on which the protection of national minorities would rest. This Convention was adopted by the Ministers of the Council of Europe in November 1994 and it indicates (and Unionists subscribe to such views) that:

"... a pluralist genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop their identity."<sup>56</sup>

The Convention refers to fundamental principles which are "to be respected and the obligations which flow from them in order to ensure the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities." The Convention also repeated the 1993 statement that there is to be respect for "the territorial integrity and national sovereignty of States." With regard to these fundamental principles the Convention set out four important provisions regarding interpretation, which were called "specific principles." Two related to the Convention: not limiting any other human rights agreement; and conforming to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. The remaining two are as follows:

"Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States."

Article 20 points up a very important principle: minorities (and majorities) have rights but they also have obligations. The fundamental principles allow for the following: freedom of peaceful assembly, association, expression, thought, and religion; access to the media for national minorities in order to

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<sup>55</sup> Heads of State within Council of Europe, Vienna Summit, October 1993.

<sup>56</sup> Council of Europe: 'Framework Convention for the Protection of National Minorities', Feb. 1995

promote tolerance and permit cultural pluralism; usage of personal names in the minority language; the right to display minority language signs of a private nature visible to the public; the right to use freely and without interference his or her minority language, in private and in public, orally and in writing; the right to display traditional names such as street names in the minority language where there is sufficient demand for such indicators; governments should take steps in the field of education to foster knowledge of the culture, history, language and religion of their national minorities and of the majority; persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments. There is also the provision for co-operation among the member States as follows:

“The parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.”

The Convention also encourages member States, where relevant, to take measures to encourage transfrontier co-operation. This type of development should be “in conformity with the principles of good neighbourliness, friendly relations and co-operation between states.”

What is the present status of this Convention? Such international agreements are normally drawn up as the result of a long period of discussion and compromise. Finally, when the representatives of the participating states reach the point of agreement the text is adopted formally (which was done in November 1994) and in turn opened for signature (which was done in February 1995). To date the Convention has thirty-one signatories (including Ireland and UK). However, when a State representative signs the Convention it does not mean that a Government/State is bound by the Convention. It further needs to be *ratified* by each State (it would be natural that a Government which carried out negotiations with another sovereign government would wish its national parliament to endorse its action). When twelve States have ratified the Convention it will come into force and then only for those States that have ratified the Convention: to date four States have ratified the Convention. The Convention may, at a later date, be added as a protocol to the European Convention on Human Rights and only then would individuals have right of recourse to the European Court for non implementation of the Convention by a participating State. This last part is extremely politically sensitive and the outcome may be that there will not be a protocol.

There has been difficulty in making progress with this Convention: no definition of a ‘national minority’ is given - it would be difficult to agree such a definition; normally only five States need ratify a Convention before it comes into force - this Convention needs twelve States; considered opinion is that agreements of this kind cannot be denounced by any one state (mutual promises can only be mutually dissolved) - Article 31 of this Convention allows any signatory to the Convention to denounce it. However, the Convention represents the first attempt to create multinational legal obligations from political commitments regarding national minorities. There have been previous statements regarding national minorities (for example the United Nations in 1979, referring to agreements regarding national minorities, stated that there should be “mutual respect for the principles of the sovereignty and territorial integrity of states concerned and non-interference in their internal affairs”<sup>57</sup>) but there were no legal obligations regarding enforcement.

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<sup>57</sup> Capotorti Report: United Nations, 1979.

The above is a reflection of the difficult nature that the participating States have had in formulating this Convention. The initial refusal to recognise the existence of national minorities, the concern that groups rather than individuals would gain rights under the Convention, the concern about minority language rights, have all been problems which have had to be overcome in the discussion process. In general difficulties arose not because the Convention did not go far enough but because it was thought by some of the States to go too far in protecting national minorities.

On page 36 of this booklet it was stated that comments would be made on the Governments' 'statements regarding human rights' and 'suggestions for institutions of government'. Regarding the former, nowhere in the thirty-seven pages Frameworks Document (published on 22nd February 1995) does it contain any wording or phrase relating to the territorial integrity and political independence of States. Yet the Convention on National Minorities (agreed by the Council of Ministers, including Ireland and UK, on 14th November 1994) refers to this aspect as a fundamental principle of international law. How can it be that there is such a glaring omission? Perhaps the two Governments hold the view that previous mutually agreed positions overrule any other consideration? Perhaps they have no intention of ratifying the National Minority Convention since they do not view the Convention as relevant (they may have 'signed up' in November 1994 but, contrary to general international opinion, Dublin and London may think the Convention does not go far enough) hence they need not worry about the issue? Perhaps they believe that the Frameworks Document does not breach international law or international agreements to which they have already formally committed themselves, thus there is no need to mention something that has not been broken? Perhaps they have simply turned a blind eye to the National Minority Convention? Perhaps, since both governments have been able to ignore such statements about the integrity of borders in the past, and got away with it, they believe they will be able to do so again? Perhaps they believe that the Unionist community will be lulled into accepting a fudged (and progressive) settlement, buttressed by a 'yes' referendum - the last point giving such an agreement legitimacy even though the agreement may contravene the Convention on National Minorities? Perhaps.... who knows? Sometimes the Unionist community can be forgiven for thinking that both governments display at times a large measure of duplicity when they deal with matters relating to NI.

Regarding the Governments' suggested institutions; the comments on page 35 (that they wish to create all Ireland administration) would clearly seem to be in breach of the "political independence of states." The two Governments will no doubt argue that the territorial integrity of each state is still preserved for they use such statements in the Frameworks Document that, "each Government will be responsible.... within its own jurisdiction". If challenged, Westminster could state that it is the sovereign authority regarding NI and thus it makes the decisions, and this in law is correct. However, to be required to consult a foreign state which has a "recognised concern and role in NI" and to "make determined efforts to resolve any differences between the two Governments" is **not** a State acting with political independence. These last quotations are both in The Anglo Irish Agreement (1985) and repeated again in the Frameworks Document. Finally, comment has already been made on page 29 regarding NI not having effective political equality and so no further comment need be made here.

Overall, the Convention on National Minorities refers to such minorities being able to "express, preserve and develop their identity". The Ulster Unionist Party supports this principle but disagrees fundamentally with the extent of the expression as stated in the Frameworks Document. This view has always been held by the Ulster Unionist Party: its position is now reinforced by the international community who are exploring methods, and laying down principles, for handling the sensitive issues of national minorities. The reality would seem to be that the Governments' proposal for a N/S body not only offends Unionists by the extent of the "expression" but will also be insufficient to satisfy the

aspirations of those who wish for a United Ireland - hence the need to describe the process as “dynamic” in order to satisfy the Nationalist aspiration. **It is unworkable.**

Notwithstanding all of the above, there have been no economic (or other) arguments to justify the suggestions contained in the Governments’ Frameworks Document other than a brief mention of “the achievement of economies of scale”. The only justification for the proposal is political. A valid perspective may be that no such arguments were made because none exists, while at the same time there are arguments to the contrary, as has been clearly illustrated in recent publications<sup>58</sup>. Part of the thrust of these publications is that there has been, is now and will continue to be much economic activity within the island of Ireland but one doubts the necessity for political institutions to sustain or enhance such activity.

(iii) Cross border co-operation in practice: Following the end of the First World War, the Treaty of Versailles resulted in the re-drawing of many European boundaries and States often found that they had ethnic minorities of considerable size within their borders. These minorities were everywhere suspect - Hungarians in Transylvania, Slovakia and Serbia and France’s relationship with the newly acquired Alsace are two examples. There was a further upheaval at the end of the Second World War. This was not very fertile ground for the development of co-operation and neighbourliness in Europe as is the position today. The key factor was the development of the European Economic Community (EEC), now called the European Union (EU), from the early 1950’s.

Other developments have included the Madrid Outline Convention (1980) adopted by the Council of Europe. This enabled participating States to agree to promote crossborder co-operation including the right of local and regional authorities to make arrangements with their neighbouring foreign opposite numbers. Also regions were increasing in importance - a reaction against ‘faceless’ bureaucrats and ‘distant’ State Capitals. The European Commission has been promoting crossborder co-operation through its INTERREG scheme. The outcome has been much inter-regional co-operation: for example, four Swiss cantons (regional forums) formed one unit in 1982 with French and Italian regions in order to promote co-operation within their overall geographical area. Finally the Maastricht Treaty (1993) established a Committee of the Regions; though at present advisory, it may one day form a second chamber of the European Parliament. Against this background the Tyrol region (bridging Austria and Italy) was a major problem. Following the Treaty of Versailles the South Tyrol region (86% Germanic origin) was transferred to Italy from Austria; this was again endorsed after the Second World War. It has been a very sensitive issue between Austria and Italy with events (including terrorism) being similar to the NI situation. How has it been resolved?

Though both Austria and the German community within South Tyrol at the time viewed the arrangement as only temporary, by 1955 the border between Austria and Italy was internationally agreed and has not subsequently been considered as negotiable. In 1946, because Italy had treated South Tyrolese badly for the previous 25 years, it was agreed that Austria and Italy should reach a settlement as to how the province of South Tyrol was to be treated as a unit within Italy: devolution was granted to the province in 1948. After very restrictive application of this devolution by Italy, which led to terrorism, a much wider and more flexible form of devolution was granted in 1972, coming completely into effect in 1992. The German community in South Tyrol had thus now achieved full parity of esteem with the Italian community within a framework of self-government established in line with accepted principles of government in other parts of Italy. Austria then gave a declaration that the dispute between the two countries over South Tyrol was at an end. In addition, in

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<sup>58</sup> Cadogan Group: (i) ‘Cross Purposes - Principles of a Settlement in Northern Ireland’ 1995; and (ii) ‘Lost Accord - The 1995 Frameworks and the Search for a settlement in NI’ 1995: Roche P & Birnie E: ‘An Economics Lesson for Irish Nationalists and Republicans’ Ulster Unionist Information Institute, 1995.

line with the growing regionalism concept in Europe and within the Madrid Convention, Italy and Austria signed a crossborder agreement in January 1993 enabling regions such as South Tyrol and North Tyrol (part of Austria) to enter co-operative agreements. Already there is much hope that close co-operation will develop. What lessons can be learnt for NI? Austria ensured that there was good government and equitable treatment of the German community but did not have a say in governing South Tyrol nor was there any dynamic ‘machine’ to lead to an eventual re-unification of South Tyrol with North Tyrol in Austria (the territorial integrity of borders was not challenged); any co-operation that may now develop between South and North Tyrol will be for the regions to agree - there is no document (unlike NI) which states that both Austria and Italy expect to see “significant responsibilities, including meaningful functions at executive level” to occur between the two areas of the Tyrol. If such development were to occur it would not lead to South Tyrol becoming part of Austria. The lessons for NI are clear.

The real challenge however to Unionists is not to be seen as uncompromising and negative in overall outlook: the method of expression of the Irish dimension is that which Unionists reject as unacceptable. The principles behind the process of reconciliation for the South Tyrol should also apply to NI. Unionists are thus obligated to propose an alternative which would at the same time allow for the nationalist identity and reflect reality not only within Ireland but also the reality of the British/Irish Isles as discussed in chapter 5.

### **SUMMARY**

- **Unionists accept the legitimacy of the wish/aspiration of Irish Nationalists for a united Ireland but do not accept the validity of their case.**
- **Unionists support a pluralist democratic society which respects the ethnic, cultural, linguistic and religious identity of minorities.**
- **Unionists wish to develop appropriate conditions enabling minorities to express, preserve and develop their identity.**
- **Unionists believe that in protecting minorities (and majorities) the political independence of States must be preserved.**
- **Unionists believe that the new N/S body proposed by the two Governments does not preserve the political independence of States which is a fundamental principle of international law.**

## CHAPTER 7

### UNITED KINGDOM/REPUBLIC OF IRELAND DIMENSION

Unionists require that there is a replacement to the Anglo-Irish Agreement and its related institutions. This agreement involves only the two governments dealing with matters that relate primarily to NI. It is not an agreement that deals with the broad dimension of UK/RoI matters. In spirit and in practice the Anglo-Irish agreement is in contravention of international law. To Nationalists, however, it represents progress towards their ultimate goal. Following from the discussion contained in the previous two chapters can an honourable settlement and compromise be reached regarding this conundrum?

The Ulster Unionist Party proposes that a *Council of the British Isles* should be established with a flexible structure to enable representatives at various levels within the UK/RoI to co-operate on matters of common interest. The Council's aim would be to enable all political entities to implement individually in their own jurisdictions agreed joint or complementary policies that are genuinely mutually beneficial in social, cultural or commercial terms but not with political or constitutional aims. The implementation may arise out of studies initiated by the Council on agreed matters of mutual interest. Implementation could take a number of forms. It may be that it could be best facilitated in some situations by the formation of agencies in order to carry out specific functions, where considered appropriate and by agreement among the participants. In short, although political power would remain within the internationally recognised State boundaries recognition would be given to the political entities' common interests.

Underpinning the above proposals the following two principles should apply: matters to be considered within the totality of these relationships are not to include political or constitutional aspects; and these proposals are designed to replace the Anglo-Irish Agreement.

Regarding this proposal, it represents both a considerable British dimension and Irish dimension to any settlement plan. It would also offer a facility to help develop greater trust, understanding and co-operation: between Nationalist and Unionist politicians not only within NI but also between both parts of Ireland; and among politicians within the British/Irish Isles. It would therefore operate among politicians within the political arena.

There is however much more to life than politics and equally the Irish dimension is much more than political. Indeed some would contend that the true Irish dimension is an all-embracing cultural identity. There are all-Ireland dimensions in sporting, ecclesiastical, and professional fields. This important non-political dimension could be fostered.

All of the above could have an in-built dynamic aspect. However these developments would be within the confines of the new structures of government which would truly recognise political entities not only within Ireland but also within the British/Irish Isles and the non-political interference of one with respect to the other. In particular, given the conundrum referred to on page 6, this proposal is a genuine attempt to reconcile a dual reality - the geographical **island** of Ireland and the **political boundaries** within Ireland.

Regarding the Nationalist aspiration, there is no logic to 'geographic statehood'. To say that since Ireland is an island it should be one political unit is not unlike saying, for geographic reasons, Alaska

should be part of Canada or Portugal part of Spain and that Hawaii (being an island in the middle of the Pacific Ocean) should be independent and not an equally sharing and integral part of the USA. Throughout the world political borders both divide land and transcend water. The United Kingdom of Great Britain and Northern Ireland is a valid legal entity, founded by a process the same as that for most other States in the world and the challenge for all is to accommodate minorities within its borders. This is reality and solutions must be found based on such reality. This proposal by the Ulster Unionist Party represents a genuine attempt to seek a resolution to the long-running conflict.

### **SUMMARY**

- **Unionists require a replacement of the Anglo-Irish Agreement.**
- **The Ulster Unionist Party has made positive proposals reflecting the reality of relationships within the islands.**
- **The ‘Council of the British Isles’ reflects the totality of relationships and also allows for the dual reality (geographical and political) within the island of Ireland.**
- **There is no logic to ‘geographic statehood’ - political borders both divide land and transcend water.**

## SECTION FOUR - EUROPEAN DIMENSION

### CHAPTER 8

#### EUROPEAN DIMENSION

From a historical perspective political developments have often emanated from a partisan base, to be accepted by all only later. A new political model is then created and such developments subsequently become politically neutral within the mainstream of politics. The development of the European (Economic) Community, now the European Union (EU), could be viewed as one such development. The Conservative Government secured the UK's entry, and the Labour Party opposed it. Today the Labour Party is one of the EU's main supporters and the dissident elements are now within the Conservative Party. This chapter does not enter into this debate: it accepts that the EU is part of the wider political landscape and thus looks briefly at the parameters of the EU and the possible implications of devolution to a NI Assembly.

The rationale for the development of the EU predates its creation in the 1950's. Ideas for a closely-knit association of European States had previously found political expression in a variety of ways. For example, in 1929 the French Foreign Minister, with the backing of his German counterpart, proposed the creation of a European Union within the framework of the League of Nations. Such efforts failed to make any headway against the still dominant ideas of nationalism. It was only after the devastation of the Second World War that the stage was set for a completely fresh look at European co-operation. The 'never again' motto of renewed military conflict became the springboard for political thought and development. This new development was quite different from any other world development: the move towards the pooling of sovereignty among many Western European States. Today, since being renamed the EU in 1993 following the (Maastricht) Treaty on European Union, it involves more than free trade and includes co-operation on foreign and security policy as well as on judicial and home affairs.

The main constituent elements of the EU are the Commission; the European Parliament; the Council of Ministers (now called the Council of the European Union); the European Council; and the Court of Justice.

The **Commission** comprises twenty Commissioners nominated from each member State, each with a specific policy jurisdiction. Neil Kinnock, the former Labour party leader, has relatively recently been appointed a Commissioner. The Commission is headed by a President. Its main function is to initiate legislation: within the EU it has the sole right to this function. It also provides a Community viewpoint - as distinct from the viewpoint of an individual member State - and represents the EU externally, for example in negotiating trade matters. The **European Parliament's** major functions include advising on EU legislation and helping to prepare the budget. The Commission draws up a draft budget, which goes to the Council and thence to Parliament. Discussion takes place among these bodies but it is the Parliament that passes the budget into law. Parliament must also be consulted on legislation initiated by the Commission: its views and recommendations are passed to the Council. Finally, Parliament formally appoints the Commission and certain aspects of the EU require Parliament's approval, such as the admission of new members.

The **Council of Ministers** is the last and most important step in the decision-making process (except for the budget). In principle there is only one Council but in practice it meets in many guises. This is because each national seat at a Council meeting is filled not by the same person every time but by the

national minister with responsibility for the particular policy area under discussion. The Council has the power to reject or amend legislative proposals from the Commission, which have been considered by the Parliament: every important piece of legislation must be approved by the Council. In some cases its decisions must be unanimous - this is required when a new policy is to be initiated or when the decision goes against the wishes of the Commission - but in a number of areas, particularly economic, the Council can decide by a qualified majority vote with each member State's vote weighted according to size.

The **European Council** comprises the Heads of member States and it usually meets twice per year: these summit meetings normally attract extensive press coverage. It is this body that gives direction to the EU. It has now become the most powerful body of all and it is where the major decisions are made.

The **Court of Justice** comprises one judge from each member State and is responsible for interpreting and applying EU law. Its decisions are binding on all member States and override those of domestic courts. EU law takes two forms, Directives and Regulations. A *Directive* must be implemented via domestic law within member States either by primary or delegated legislation. A *Regulation* is enforceable immediately and thus no further legislation is required or allowed at member State level: it is as if it had been passed by each member State's legislature. EU law confers rights upon individuals, which they can invoke in their domestic courts and in such courts EU law takes priority over all other laws. A member State can be brought before the Court of Justice for failing to meet its legal obligations (over the years the Commission has brought over 500 such cases against the Government of a member State). It should be noted that delaying tactics by member States is the more likely negative reaction to EU law than outright refusal to implement it. The 1993 Maastricht Treaty enabled imposition of fines on member States for refusing to implement EU law.

The centralisation of power within the Council of Ministers and the European Council, supported by the Court of Justice's power of legal enforcement, raises a fundamental question regarding democratic accountability. Members of these two political bodies are accountable to their own national parliaments and therefore electorates, but there is no direct accountable mechanism for the two bodies within the context of the EU. This is a 'live' political issue beyond the remit of this booklet. The response from the EU to this question is contained within the principle of '*subsidiarity*'.

The principle of subsidiarity implies that decisions should be taken by the body capable of taking them that is closest to the citizens affected by the decisions. This does not mean only national parliaments but also regional and local elected bodies. It could be summarised as follows:

“The transfer to the Community of the power to legislate in a wide range of policy areas is not, however, intended to cement in place a central State with rigid structures. A united Europe can only be strong and vital if the inherent diversity of its individual countries, regions and cultures is preserved. This is the intention behind the subsidiarity principle.”<sup>59</sup>

It could be argued that this rise in the importance of regionalism within Europe is as much based on dissatisfaction with centralist nation-states as on the apparent centralisation of power within the EU. To reflect this regional dimension the 1993 Maastricht Treaty established a 'Committee of the Regions'. This committee has consultative powers only on such matters as regional development but

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<sup>59</sup> Borhardt K-D: 'European Integration', Office for official publications of the EC, 1995

it does represent the first formal recognition of the existence of regional and local government by the EU. How then should the EU impact upon structures of government in NI?

The NI region should be able to have a more direct relationship with the EU than it has at present. German Lander (regional bodies), for example, have automatic representation on the member State's delegation where their interests and responsibilities are concerned: such representation should also apply to representatives from a NI Assembly. In addition, the Assembly should work closely with representatives of the European Parliament on matters affecting NI. These and other aspects would be best focused within the Assembly by the establishment of a European Committee. Focus within the Assembly should be matched by a focal point within the EU. To this end a NI European Office should be established and it should be accountable to the Assembly: English counties such as Lancashire have opened their own European Offices in Brussels. The existing NI Centre in Europe is essentially a co-operative/private venture with no formal representative role.

In summary, it has been (and will continue to be) the case that independent States have become more inter-dependent. Economic inter-dependence and improvement in transportation have been major reasons for this development. Within this context the EU has developed to a significant level with recent emphasis being given to regions within States. In this developing context, it is essential that the NI region be represented appropriately within the various levels of the EU. The Aims of the Ulster Unionist Party include a European dimension which is intended to secure this representation.

### **SUMMARY**

- **Much power to legislate on a wide range of policy areas has moved from Westminster to the EU.**
- **The centralisation of this power has been coupled with a developing awareness of the regional dimension.**
- **To secure the full benefits of (and relevant influence on) the EU, appropriate NI governmental structures should be established.**

## CONCLUSION

This booklet's intention has been to provide a clear rationale to support the Ulster Unionist Party's 'Statement of Aims'. This rationale also endeavours to reflect both reality and the recognition that differing viewpoints must be accommodated within an all-embracing agreement as to the future structures of government of NI. One can readily accept today that territorial borders have ceased to be as important as they were in the past. However co-operation across borders, whether in the EU or in similar geographical groupings, has only succeeded where each participating member State accepts the existing internationally determined borders. Mr J Hume has spoken of the traditional bounds of sovereignty being blurred (page 32); however, borders only decrease in relevance when they are first of all recognised. All action, and perceived intention, by Nationalists has not convinced Unionists to date that the former are prepared to accept the border and to work within institutions of government which recognise the status of NI as an integral part of the UK.

For their part, Westminster must recognise that their long-standing policy of requiring the transfer of legislative power to a NI Assembly is not sustainable, given the premises upon which this policy is advocated. The thrust of policy for the good government of all citizens of NI should be the transfer of the decision-making (executive) power - currently entrusted to the 'direct rule' government ministers - to a NI Assembly. In short, the 'democratic deficit' should be ended. Paralleling this development should be the fostering of beneficial - and natural - linkages among the various levels of government within the British/Irish Isles.

Westminster has always wished to deny NI a body with administrative/executive responsibilities (i.e. non-legislative) only. Yet by its very own proposals it wishes to create an all-Ireland administrative body with "significant responsibilities and meaningful functions." The following summary indicates clearly the two Governments' intention for NI. It is to create an impression that NI is unique and then pursue a two-pronged approach: decouple the NI body from the Westminster institution and give administrative/executive responsibility (the true essence of regional government today) to an all-Ireland body. To date, the argument of power - the bomb and the bullet - has held centre stage: it is now time for the power of argument to take over. Unionism has a just and formidable argument.

### The Proposals - A Comparison

The following summary compares the Ulster Unionist Party's proposals with the Dublin and London Governments' proposals.

	<b>The Ulster Unionist Party</b>	<b>The Frameworks Document</b>
<b>Government within N. I.</b>	<u>Major/only</u> function is administrative	<u>Major</u> function is legislative
<b>Westminster's function</b>	<u>Major</u> functions are legislative and monitoring	<u>Minor</u> function is legislative
<b>Dublin/London Relationships</b>	<u>Major</u> function is co-operation on common interests	Virtually ignored
<b>Belfast/Dublin Relationships</b>	<u>Major</u> function is co-operation on common interests	<u>Major</u> function is an all-Ireland administrative body