

Conflict Transformation Papers

Volume 5

Understanding the New Political Structures

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Conflict Transformation Papers

Building Peace Through Partnership is a conflict transformation programme being developed by LINC Resource Centre in partnership with a number of community-based initiatives that are committed to constructive dialogue between individuals and groups as a means of facilitating conflict transformation at grass roots level.

It is our intention to publish a series of papers on issues raised at community level which project participants believe are relevant to the conflict transformation process.

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Introduction

No issue has divided the Unionist community more during the past six years than the Belfast Agreement. Both the Agreement, and the political institutions established by it, has been a source of bitter division and controversy between the main unionist parties and these divisions have impacted at community level – to the extent that many families have been divided.

Many of us who endorsed the Agreement in April 1998 have had reason to regret our decision. The implementation process has failed miserably to deliver the stability of local government that we had hoped for, and the conflict transformation process that we believed would be endorsed and supported by the new political institutions has been left floundering.

Perhaps more importantly, ordinary people living in the marginalised communities that are so often the focal point for interface conflict and violence have seldom had an opportunity to examine for themselves the political structures and institutions that had their origin in the Belfast Agreement. They have simply witnessed the bitter controversy being waged between the major political parties and the failure of the institutions to provide stability and underpin the peace process.

This booklet carried three papers by David Murphy of the Carrickfergus Mediation Resource Centre in which he examines the political institutions that arose out of Strands 1, 2 and 3 of the Belfast Agreement. These papers formed the basis for discussions amongst a group of working class loyalists who had been asking “Why have the new political institutions failed to deliver stable government or to underpin the community peace process”?

In Paper One, Murphy seeks to examine some of the structural failures inherent in the institutions established under Strand 1 of the Belfast Agreement. A key problem is the fact that there is no clear evidence of collective responsibility within the Executive Council. The Northern Ireland Executive was an involuntary coalition without a common manifesto resulting in a lack of ideological cohesion. Furthermore, the Executive was a government without an opposition and generally unaccountable to either the departmental scrutinising Committees or the wider Assembly.

Murphy turns in Paper Two to look at the North-South institutions established under Strand 2 of the Agreement. While flagging up Unionist concerns about the North-South institutions he nevertheless concludes that the legacy of Strand 2 for Unionists is that the institutions have established a precedent in relationships between the Republic of Ireland and Northern Ireland and that Unionists need to ensure that the dynamic created by these institutions leads to creative relationships within both the island of Ireland and the wider European Union. The alternative, suggests Murphy, is an Anglo-Irish Agreement Mark II which would be used by both governments as a tool for conflict management and which would undermine positive north-south relations.

Paper Three looks at the East-West institutions established under Strand 3 of the Agreement. After examining the workings of the British-Irish Council and the British-Irish Intergovernmental Council, Murphy proceeds to examine the concept of federalism. He believes that the Blairite Labour Government is pursuing constitutional reforms aimed at changing the whole political structure of the United Kingdom by

replacing the concept of parliamentary sovereignty, which has been the dominating characteristic of the British constitution, with a form of federalism. This could ultimately lead to a British-Irish confederation within Europe.

While these papers show Murphy to be strongly pro-European and pro-federalist, positions with which I have some sympathy, they were written primarily to provoke discussion and community level. Consequently they are not representative of any particular political constituency or of the *Building Peace through Partnership* development team.

Billy Mitchell

Series Editor

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Paper 1

The Northern Ireland Executive

David Murphy

Introduction

The year of 2004 is a key year in the troubled constitutional history of Northern Ireland. Under scrutiny is the architecture of the Good Friday Agreement GFA. The GFA is the fourth development in the devolution of executive and legislative powers to Northern Ireland. ⁽¹⁾ This paper deals with Strand 1 of the institutions established by the GFA and therefore examines issues relevant to the internal arrangements for devolution within Northern Ireland and will look specifically at some of the problems associated with the political institutions established to deliver devolved government. I will carry out a political autopsy of the internal arrangements and subsequently present a diagnosis of the causes of crisis from a structural point of view. This will be complimented by an examination of electoral options for the Northern Ireland polity that may emerge in the course of a review of the GFA. Changes in the structure of the assembly are linked to developments in the electoral system. Structural and electoral changes are therefore related. The DUP has presented options in various policy papers and in the review it will be interesting to observe if they place plans on the table for the replacement of STV. ⁽²⁾

Against the landscape of a new political geography especially within Unionism the review is a milestone in the constitutional history of Northern Ireland since 1921. The review will be utilised by some political actors as a stage upon which to force a re-negotiation of the GFA. However the phantom of decommissioning in a similar manner to Banquo in Macbeth will haunt the review.

The Structural Failures of the Executive Council and Statutory Committees:

The period 1998-2004 was a test period for the construction of stable devolution as envisaged in the GFA. This period illustrates the limitations of an Executive dominated assembly based upon the concept of consociationalism. ⁽³⁾ The GFA presents a model of executive authority that is delivered through a coalition known as the Executive Committee (EC). ⁽⁴⁾ The EC emerged therefore as the government of Northern Ireland and the GFA envisaged that decisions would be reached collectively. The EC developed a programme for government in June 2000 and agreement was reached on an interim, 'Agenda for Government'. In October 2000 the draft Programme for Government was published and the EC identified its unique form of mission statement. ⁽⁵⁾ This was the first collective act carried out by the EC in their role as the Government of Northern Ireland. The crisis over decommissioning however ultimately led to the resignation of the First Minister, David Trimble on the 7th July 2001 and consequently collective government ceased. The effectiveness of the EC was also subverted by the suspension of the assembly from February to May 2000 and the two day suspensions in 2001. The issues of Republican intelligence gathering, further suspension and polarised elections have damaged the process and credibility of devolution as envisaged through the arrangements in strand one of the GFA.

An important criticism directed at the EC is that it had no collective responsibility which is a seminal principle of effective and stable cabinet government. ⁽⁶⁾ Within the Westminster model of government, collective responsibility obliges ministers to, 'sing

off the same hymn sheet'. This is based on the pretext that ministers are personally responsible to Parliament for policy or administrative failures. Within the EC model of cabinet government there was no substantial evidence of collective responsibility. It is important to reflect that this was due to the design of the EC which was an involuntary coalition. In the model of British cabinet government, one party with a manifesto dominates or where a coalition emerges a common policy directive is negotiated as happened during the Second World War between Attlee and Churchill. A set of common aims underpinned by a degree of unity therefore act as a foundation for the construction of effective cabinet coalition government. The EC model in comparison was composed of ministers assigned to the executive by their own political parties. The EC consequently emerged into a system similar to the choreography of a ballet directed by the UUP and SDLP.

The second problem associated with the EC centres on the lack of ideological cohesion as Republican and Unionist parties disagreed on issues such as decommissioning, policing and justice. Devolution in Ulster therefore evolved into an involuntary coalition with the participants in conflict over peace issues yet ironically co-operating over some social and economic issues. This intrinsic confusion in the EC first institutionalised the Unionist / Nationalist split and secondly produced a diarchy or government by two parties. Such a situation stimulated frustration within the Unionist community perpetuating electoral gains by the Democratic Unionist Party and Sinn Fein.

A structural issue of concern in the relationship between the EC and the assembly was that of the accountability of ministerial decisions. The structure of the EC may have created circumstances in which decisions could have been taken quickly however this was to the detriment of the role envisaged of committees and the assembly chamber. It was this characteristic of seemingly unaccountable ministers that acted as a catalyst for the development of an executive dominant rather than legislative focused assembly. Against this back drop of failure it is therefore necessary to reform the EC and move towards a voluntary form of government. A key element in such a process is the role of committees to share and shape responsibility for delivering accountable devolution. The model of voluntary government within the context of Northern Ireland has been influenced by the experiences of the 1975 Constitutional Convention and Assembly of (1982-86).⁽⁷⁾ Constitutional experience therefore points to the significance of effective committees in a model of devolution suitable for Ulster.

The prime source of legislative authority was apparent to the observer when the assembly met in plenary form. The daily work of the assembly was carried out however in a system of committees.⁽⁸⁾ These emerged as working groups of assembly members and were established to address the business of the house. The GFA envisaged a key role for 'Statutory Committees', in the administration and development of the devolutionary process. The basic concept behind the committee system was that they would work in partnership with each of their respective departments and ministers.⁽⁹⁾ Membership of committees was further decided with recourse to the d' Hondt electoral system and consequently the aim was to ensure that representation was based on party seats within the assembly. The process of appointment to the Chairs and Deputy Chairs of the respective statutory committees was therefore designed to ensure that they were not drawn from the same party as the relevant minister.

The 'Statutory Committees', had a pivotal role in the constitutional architecture of the GFA. Their role was to advise and assist departments in the formulation of policy and in theory to hold the minister to account. Committees therefore had the core

responsibility to scrutinise their respective civil service departments and had the power to initiate legislation. This policy nexus or connection between the assembly and executive however did not reach its full potential. It is the power and capacity to initiate and challenge legislation which is the key to developing a viable power-sharing model. In the Northern assembly there was no formal political opposition to the EC. This role of challenging and scrutinising the EC therefore fell to the committees. The conflict between the health committee and minister Bairbe de Brun over the location of maternity services is one example of where a minister pushed forward regardless of the wishes of the health committee⁽¹⁰⁾ The Minister's decision was made against the advice of the majority of health committee members and essentially broke the spirit of the GFA. In comparison the relationship between the minister and respective statutory committee was more focused and effective when faced by the Foot and Mouth crisis of 2001. In this case Brid Rodgers, Minister for Agriculture, met weekly with the Agriculture and Rural Development Committee.

The statutory assembly committees have been criticised for withholding information and meeting in secret. Alternatively committees have benefited from communication with similar bodies in the Scottish and Welsh Parliaments. The assembly has debated and passed various legislative acts. For example in the 2000-01 sessions the assembly passed eleven primary bills and debated issues ranging from flags, abortion and transport. By 2004 however faced with a review of the GFA the role and power of committees to hold ministers to account and initiate legislation is a key issue for Unionist parties such as the DUP. The coercive and consociational construction of the Executive Committee matched to seemingly powerless statutory committees have led to a lack of public faith within Unionism. This can only be addressed effectively by reforming the design of the assembly and consequently changing the legislation associated with strand one of the GFA. Participant democracy implies a committee style and voluntary coalition cabinet government elected through an assembly. Participant democracy is also based on fair representation and in the next part of this paper I will focus on the issue of electoral systems. This could emerge as an issue in the review if parties want the STV electoral system changed to re-mould electoral geography.

A Critique of electoral systems that could replace or supplement STV in the Ulster Context

The issue of electoral systems for the divided region of Northern Ireland has always been contentious since the civil rights period. I will start this section by examining the d'Hondt system and then will take the reader through a short survey of various electoral systems that shape politics. The d'Hondt system emerged through a compromise between the UUP, who argued for administrative devolution with committee chairs allocated by the system and the SDLP. They argued for cabinet government and power sharing. The outcome was a power-sharing executive with posts distributed by the d'Hondt system.

An electoral system which is comparable to the d'Hondt system is found in Switzerland. Here an electoral formula is utilised regarding the allocation of the seven seats for the Federal Council. In the Swiss context the parliament gets to vote for the seven council members and they are not party appointees. Secondly, Switzerland is an example of a political system where the power resides in the twenty- six Cantons and three thousand communes. In comparison the d'Hondt system which emerged from the Good Friday Agreement contributed to developing a quasi-presidential diarchy between the SDLP and the UUP. The First and Second Ministers, elected by the parallel consent procedure

developed presidential characteristics and subsequently could not be removed until the next election.

Unlike Prime Ministers or Presidents, neither the First nor Second Minister appointed the other ministers to the Executive Committee. Ministerial posts were allocated to parties in proportion to their electoral mandates in the Assembly with recourse to d'Hondt. The constitutional architecture had the design of empowering political moderates within the Nationalist and Unionist blocs, underpinned by the d'Hondt mechanism.

By February 2004 political mandates have significantly changed and therefore the electoral system deployed to elect the Executive Committee, and the Assembly is an issue which will be pushed on to the agenda for the review, especially by the DUP.

The STV electoral system for the 108 member Assembly expanded the number of seats per electoral constituency from five to six. Debate on electoral change would however be a long process and would involve boundary change. An option to replace the current electoral arrangements is that of the alternative vote system. This uses single member constituencies, the voter marking a candidate with a 1 against their first choice and so on with second, third etc. preferences for as far as the voter wishes to go.

The first preferences are counted and if a candidate exceeds 50% of the votes he is deemed elected. If no one reaches 50% the candidate with fewest first preference votes is eliminated and his preferences distributed and so on till a candidate reaches 50%.

Australia has used this system for its lower chamber, the House of Representatives.

Within the Northern Ireland context Wilford and Wilson advocate single member constituencies where candidates would have to secure a majority of the votes cast. ⁽¹¹⁾

Yet another system different from the Alternative Vote (AV) and Single Transferable Vote (STV) electoral systems is the Party List (PL) system. List systems have the potential to return candidates who reflect the broadest possible spectrum of public performance.

In the case of Israel they are based on a national character and multi-member constituencies.

The PL system requires a party to produce a list of candidates, each list showing the names in descending order of preference as selected by the political party. Seats are subsequently allocated to each party according to the total proportion of votes secured. The "closed list" system used in Spain and Israel directs the voter to give their preference to a party only. The "flexible System", used in Belgium, the "open list" used in Finland and the "free list" used in Switzerland are all variants of this electoral arrangement.

Party List Systems have contributed in various states to the evaluation of coalition governments. In Turkey parties need 10% of the national vote to secure a position in the national parliament because the state operates a "cut off" variant of the PL system. A further characteristic of the Turkish system is that extra seats are given to the party which achieves the largest mandate. This "up-loaded" system was constructed to exclude small extremist parties from political power and discourage coalition governments. PL systems can further enable more women to enter political life. This point has been addressed by the Women's Alliance Movement in Iceland where women have broken the glass ceiling of politics. Finally the PL system draws on the party's list for a replacement when required in the case of a by-election.

A final electoral system to note is that of the Additional Member System (AM) which was used in West Germany. One advantage of the AM system is that it uses single member constituencies and therefore maintains a relationship between elector and member. The AM system basically uses party lists and STV with two votes cast for party and candidate.

Changes in the electoral system will have an impact on the size of the Assembly, the nature of any devolved government and legitimacy of administration within Northern Ireland.

Further issues which could be included in a review are the following. First, the removal of the requirement for communal registration which would replace the Unionist/Nationalist split with a simple secular weighted majority arrangement.

Secondly, with reference to the constitutional character of Northern Ireland a debate may develop with reference to the either / or choice between the United Kingdom and a United Ireland. It is relevant at this juncture to reflect that N.I. is also linked to the process of European Integration and therefore in any new Assembly there is a need for a European Affairs Committee. Empowering the democratic autonomy of N.I. is an issue if the model of constitutional architecture, included in Strand 1 of the GFA is going to be effectively reformed.

Conclusion

This paper has explored the weak points in the constitutional architecture of Strand 1 of the GFA. The Executive Council is too unaccountable and lacks a clear collective responsibility and ideological cement. Statutory committees should have initiated legislation and consequently emerged into bodies capable of preventing departments from developing into the fiefdoms of ministers. With reference to empowering Assembly Committees, Wilford and Wilson argue that the “Freedom of Information Act” should be used effectively.⁽¹²⁾

With reference to changes in the electoral system the experience of the Scottish Parliament is instructive:⁽¹³⁾ The GFA is clearly in crisis and this paper presents more questions than answers, however I will conclude with reference to Jackson, who writes,

“But, in the end, the freshness of the Belfast Agreement and the rawness of the issues involved mean that even, the immediate future remains occluded. It will be for long unclear whether Adams’ vision of the agreement as, ‘the freedom to achieve freedom’, of Trimble’s ideal of a flexible and inclusive Union comes to be realised. It will be for long uncertain whether the agreement marks, ‘the end of history’, or whether it has only served to underline the efficacy of violent protest for future generations.”⁽¹⁴⁾

Notes to Discussion Paper On Strand One

(1) The Good Friday Agreement is implemented through the Northern Ireland Act 1998. Prior initiatives have included the following;

- The Government of Ireland Act 1920.
- Northern Ireland Act 1973.
- Northern Ireland Act 1982.

The GFA therefore has been influenced by these exercises in building devolution.

By 2004 the GFA has further been influenced by the parallel devolution structures in Wales and Scotland.

(2) Refer to the Democratic Unionist Part (DUP) Website – www.dup2win.com

They have produced two key policy documents called;

- The DUP Vision for Devolution
- Towards a New Agreement

The party argues for the following changes in Strand One arrangements;

- An assembly reduced in size from 108 – 72 members
- The number of Departments reduced to previous levels.
- The abolishment of the Civic Forum
- Economy in North / South Bodies
- Reformation of the Human Rights and Equality institutions
- Devolution of power to the Assembly itself rather than Ministers.
- Collective responsibility through a voluntary coalition government

The cabinet in their model would be subject to votes of confidence by the Assembly

(3) Consociationalism is a form of government which accommodates the diverse interests of a divided society through pluralism and power-sharing, in a coalition composed of parties representing the dominant groups in that society.

This concept is explored in the book edited by John McGarry called, “Northern Ireland and the Divided World”, Oxford Press, 2001. In this text Brendan O’Leary and Donald Horowitz provide a critique of consociational theory and modern political practice.

There are four criteria for this political model developed by Arend Lijphart.

- Cross-community executive power-sharing
- Proportionality norms
- Community autonomy and equality
- Veto rights for minorities and mutual veto rights

(4) The Executive has the following purpose as charged by the GFA

“...a forum for the discussion of, and agreement on issues which cut across the responsibilities of two or more Ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary.” Article 19 of Strand 1 of the GFA.

(5) The EC identified the following as its mission;

“To make a difference to the lives of our people, enabling them to grow as a peaceful, fair and inclusive community. We will in particular seek to work together to combat poverty and social exclusion and to improve health; to untap the creative potential of our community by investing in the education and skills of all our people; and through renewed infrastructure and innovative policies, secure the basis for a competitive sustainable economy...” (Draft Programme of Government, Published in October 2000)

(6) Refer to Wilford, R. and Wilson R. “A Route to Stability the review of the Belfast Agreement – Democratic Dialogue (www.democraticdialogue.org).

“Collective responsibility is for the most part absent and the executive has thus failed to supply the cement between otherwise mistrustful political factions. Indeed, post-agreement negotiations centring entirely on the securing two ministerial seats for Sinn Fein required the number of departments to be increased from six to 10 – , ‘chopped up government’, as one former permanent secretary describes it, with serious consequences for the ability of departments even to spend their financial allocations.” P16.

(7) The Constitutional Convention met on 8th May 1975 under the chairmanship of Sir Robert Lowry.

Craig suggested that the SDLP members could be included in a voluntary coalition for an emergency period of five years. This was rejected by other parties in the Loyalist coalition. The Convention produced a report that called for majority rule in a unicameral parliament of 78-100 members. The body was to work within the powers conferred by the Government of Ireland Act. This was similar to those powers devolved under Stormont until 1972. The UUUC also proposed a committee system to provide a form of opposition. A Bill of Rights was also included.

In 1982 an Assembly with seventy eight seats and elected on PR in the twelve Westminster constituencies was introduced by the Conservative Government. The Devolution Bill provided that the Assembly could apply to Westminster for devolved powers if seventy per cent or fifty five members backed the proposals. The bill provided that the Assembly could discuss local legislation and create scrutiny committees for each of the six Stormont Departments. This assembly was terminated on the 23rd June 1986. This is studied in Wilson and Mullin, (2001) “Agreeing to Disagree”,

(8) “The agreement specified that the statutory committees would scrutinise their associated departments, assist in the development of policy and be able to initiate legislation. They were thus intended to be powerful, multi-functional bodies with consensual working arrangements, establishing a nexus between the executive and the assembly in policy and legislative matters.” P63.

(9) The functions of the committees are set out in Article 9, Strand 1 of the GFA. These include the following;

- To consider bills and financial proposals
- To scrutinise government administration and past expenditure
- To investigate matters of public concern

(10) Refer to the text “Government and Politics of Northern Ireland” by Margery McMahon. The author writes a fair analysis of the GFA aimed at “A” level students. On page 30 –31 she examines the story of the Maternity Hospital dispute.

(11) Refer to Wilford and Wilson, “A Route to Stability”, Democratic Dialogue. Refer to p14 where they comment:- “The STV electoral system for the 108-member Northern Ireland Assembly is also not new; it was used for the 78-member 1973-4 precedent. Indeed, the expansion of the number of seats per constituency from five to six during the negotiations, at the behest of the Progressive Unionist Party and the Northern Ireland

Womens' Coalition – to try to procure seats for the unpopular 'loyalist' paramilitaries – exacerbated the basic problem. This is that STV requires candidates to secure only a minority of votes – in this case just over 14 % to reach the quota required for election.”

(12) Refer to Wilford and Wilson, “A Route to Stability”, p17 – 18 and to Gerry Hassan, Democratic Dialogue, “Scotland’s Parliament: Lessons for Northern Ireland”. (Found at the website <http://cain.ulst.ac.uk/dd/papers/scotlands-parliament.htm>)

(13) “Of the 129 members of the Scottish parliament or MSPs (21 more than for the Northern Ireland Assembly), 73 will be elected on a first-past-the-post constituency basis, with the 56 additional members drawn from party lists to achieve a broadly proportional overall outcome.” P6 of the report

(14) Refer to Jackson, Alvin (2003) Home Rule: An Irish History 1800-2000, p319.

Paper 2

North-South Ministerial Council

David Murphy

Introduction:

The relationship between the Republic of Ireland and Northern Ireland has been an issue of contention between Republicanism and Loyalism since 1921. The phrase, Council of Ireland has raised the spectre of an imposed United Ireland through stealth to Loyalists. ⁽¹⁾ In comparison the phrase Council of Ireland, falls short of the vision of an executive all Ireland body as detailed by Republicans. ⁽²⁾ This paper will explore the role and work of the North / South Ministerial Council established in Strand II of the Good Friday Agreement GFA. ⁽³⁾

The Creation and Structure of the NSMC:

The North South Ministerial Council (NSMC) was established on Thursday 2nd December 1999 as part of the comprehensive agreement reached in multi-party negotiations in Belfast on 10th April 1998. This agreement between two European States stipulates that the North / South Ministerial Council will bring together those with executive responsibilities in Northern Ireland and the Irish Republic. The core purpose of the relationship is to develop a co-operation, consultation and action within the island of Ireland. The European dimension and other international models influenced the constitutional architecture of the NSMC. ⁽⁴⁾ Matters of mutual interest are to be worked on by the jurisdictions on all Ireland and cross-border basis. The work of the NSMC is supported by a Joint Secretariat located in Armagh, which is staffed by personnel from the Office of the First and Deputy First Minister and the Irish Civil Service. ⁽⁵⁾

The NSMC is therefore essentially an international organisation and a co-operation body linked into various political relationships or dynamics including cross border, north / south and European. It is first moulded by the constitutional experiences of building power sharing within the unique context of conflict transformation in Ulster. Sunningdale and the Anglo-Irish Agreement are prior examples of developing action upon the problematic issue of creating effective and non-threatening relations. ⁽⁶⁾ Secondly the model of the NSMC is linked to the process of European integration and political co-operation between member states. The structure of the NSMC is therefore based on joint problem solving and shared strategic planning. The work of the NSMC covers twelve sectors and six have North / South bodies. The other six sectors operate through existing agencies in each respective jurisdiction. ⁽⁷⁾ The six matters are identified as areas of co-operation and include, transport agriculture, education, health, environment and tourism. The NSMC has the following management structure, which was designed to co-ordinate actions across various areas as identified in the GFA. The NSMC had the first level of management centred upon a plenary format. This was to meet twice a year with the First Minister, Deputy First Minister, the Taoiseach and government ministers from both administrations in attendance. The NSMC further had two secondary levels of management and subsequently met in sectoral and institutional formats. ⁽⁸⁾ The agenda for all meetings of the NSMC was agreed by both administrations in advance. The specific outcomes of the NSMC have included the establishment of two companies to develop trade and tourism, Inter-Trade and Tourism

Ireland. With reference to other -achievements the NSMC has developed a joint exercise promotion campaign and comparative research on mortality.

Nationalists were concerned that if the Assembly could outlast the NSMC it would provide incentives for Unionists to undermine the latter. In comparison Unionists were worried that the NSMC would evolve into an unaccountable body that could operate independently of the Assembly and ultimately to a Nationalist agenda. The NSMC has therefore produced suspicion in various quarters of Unionism and frustration in others. The Assembly and the NSMC were made mutually interdependent and consequently one could not function without the other.

This arrangement was intended to prevent Unionists from destroying the NSMC while retaining the Assembly and Nationalists from destroying the Assembly and securing the NSMC. The focus of power relationships was therefore on developing a Strand II that linked into the institutions created by the GFA. The NSMC was intended to function in a like manner to the Council of Ministers in the European Union. Ministers were to have discretion to reach decisions but ultimately remained accountable to their respective legislatures as noted in paragraph two of Strand II.

The scope of the various North / South institutions was open-ended and this emerged as a key concern for some Unionist Parties. It is important to further note that there was no provision for a North / South joint parliamentary forum however the Northern Ireland Assembly were asked to consider developing such a forum. This is outlined in paragraph 18 of Strand II, in which the vision of a joint parliamentary forum is presented for consideration. This is a ghost from the Sunningdale period and should be laid to rest. The consultative forum proposed in paragraph 19 is another aspirational north / south forum. These bodies simply distract attention from enabling the development of practical north / south co-operation. To hard line unionists they are evidence that Strand II is an apparent pathway to a united Ireland in the future. To Republicans they offer the hope of the creation of all Ireland executive bodies. In this case therefore such ambiguity is not helpful in building a viable relationship between Northern Ireland and the Republic of Ireland in the new century.

Political Analysis of the NSMC:

In the origins of the NSMC a debate developed regarding the source of authority from which the NSMC drew political and constitutional legitimacy. Unionists wanted the NSMC established by the Northern Ireland Assembly and the Irish Oireachtas. In comparison Nationalists wanted the NSMC established from the Oireachtas and Westminster to emphasise its autonomy from the Northern Ireland Assembly. The GFA aimed to essentially divide this difference between Unionist and Nationalist parties. This issue will I feel emerge in the course of a review of Strand II issues.

In the working of the NSMC a process of societal, attitudinal and political integration has developed since 1999. ⁽⁹⁾ To some Unionists this has led to an agenda dominated by strategic and economic interests of the Dublin government. To other Unionists the NSMC has replaced the Anglo Irish Agreement and therefore made more accountable the role of the Irish Foreign Affairs department in the affairs of Ulster. The truth is some where in between however in the relationships created by the NSMC is important to reflect on the following The Irish Republic has the resources of a nations state within the European Union that it can utilise as member of the NSMC. In comparison the Northern Ireland Assembly is a region of Britain and cannot call on such wide resources without support from Westminster. A simple picture therefore emerges of a big brother Irish

input and little brother Ulster input. Time will tell if this relationship is a benevolent or dangerous arrangement for the Unionist community.

Fractures in the North / South relationship emerged with various suspensions and political stalemate over decommissioning and spying activities from the Provisionals.

With suspension in February 2000 the work of the NSMC was also consequently suspended, as institutions were mutually interdependent. The NSMC secretariat used this period for internal work until the first suspension was lifted. From May to October 2000 the work of the NSMC developed along the lines as envisaged by the GFA. In October 2000 a crisis emerged when the First Minister, David Trimble, banned Sinn Fein Ministers from attending cross-border meetings due to conflict over the lack of progress in Provisional Irish Republican Army decommissioning. The First Minister argued that he had the authority to prevent Sinn Fein ministers from attending NSMC meetings. In response Sinn Fein contested the legality of the ban and subsequently the Belfast High Court, in January 2001 declared the ban illegal. The Deputy First Minister Seamus Mallon and the Irish Foreign Affairs Minister, Brian Cowen, were also unhappy with the ban and pointed out their frustrations to the media.

In autumn 2001 the ban on SF ministers was lifted and in October the High Court threw out David Trimble's appeal surrounding the ban on Sinn Fein ministers attending NSMC meetings. This experience has impacted negatively upon the confidence that Unionists have in the NSMC and this is a further issue for negotiation in the review. Key questions emerge surrounding the power of the FM and independence of a minister surrounding their role in NSMC meetings. One way to address this issue may be the creation of a European Development Committee at Stormont with part of its remit being to monitor and hold accountable the NSMC. Through the creation of such an assembly committee Strand I would be intrinsically linked to Strand II with a clear channel of accountability to a future assembly. This process would require the reformation of paragraph 17 of Strand II of the GFA. This paragraph could be amended thus, "The Council in partnership with the Assembly European Committee will consider the European Dimension of relevant matters..."

This committee could develop into a strong body between the assembly and ministers involved in the management of the NSMC. Such a committee could also ensure that rates of cross border development progressed at an even pace and not to the long-term political detriment of Ulster. The European select committee would consequently aim to safeguard the long-term strategic and economic future of Northern Ireland within the EU context. As a policy option to square the circle between the positions of the DUP and Sinn Fein it could provide a lever to role out an accountable yet comprehensive Strand II. This however is an optimistic view given the static positions in the current review and issues surrounding paramilitary activity in communities.

Conclusion

To build positive relations between the North and South the NSMC has various positive elements such as joint-problem solving, unique initiatives and pulling of resources. However there are inherent power in-balances within the relationship. A nation state shares responsibility in the council with a region of Britain. Further the role of ministers to develop the remit of the NSMC seemingly independently of the assembly and according to party interest is a matter of concern. In the course of the review if it survives pressures from circumstances on the outside Progressive Unionists should argue the following points. First, there should be no extension of the areas associated

with the NSMC. Secondly, there should be no move towards an all Ireland parliamentary forum. Thirdly, the point made in the GFA paragraph 2 of Strand II, that states, “participation in the council to be one of the essential responsibilities attaching to relevant posts in the two administrations”, should be changed with the word essential being taken out.

Finally that there should be a European select committee established in any future model of devolution that will monitor and hold to account ministers involved in the NSMC. These measures will stabilise the work of the NSMC and re-focus the council within the new political circumstances that have arisen in Unionism.

For Unionists the issue of developing practical north / south relations will not go away in any review of the GFA leading to a new agreement. The accountability and range of areas of co-operation are further issues for reflection and development. A dynamic has unfolded since 1999 in this field. For constitutional Nationalists and the Republican Movement the vision of comprehensive and executive North / South bodies is a seminal element in their political model for a stable island of Ireland within the European Union.

The legacy of Strand II for Unionists however is that the NSMC model has established a precedent in relationships between the Republic of Ireland and Northern Ireland. It is a challenge to Unionism to ensure that the dynamic leads to creative relationships within the island and European Union. The example of the Nordic Council is instructive in this area of relationships.

The alternative if negotiations fail could be a new Anglo-Irish Agreement deployed as a tool of conflict management. This would not develop positive relations between the North and South.

This paper leads on from the previous paper on Strand I of the GFA. For Unionism Strand II has consequently dangers and opportunities for peace building. This paper will subsequently be followed by a work on Strand III that will examine the issues of devolution and federalism. The linking thread in all these papers is that of relationships and power-balances between regions, ethnic communities and nation states. The key to building a stable peace in Northern Ireland is therefore essentially similar to walking a tight rope.

Notes to Discussion Paper on Strand II

(1) The Sunningdale Conference was intended to establish the, ‘Irish Dimension’, to the power-sharing settlement developed in 1973-74.

A council was proposed that would take decisions by unanimous vote. The agreement further envisaged a Consultative Assembly with an advisory role. The Assembly would have sixty members – thirty from the Dail and thirty from the Northern Ireland Assembly. Members of each Parliament on PR would elect them. The Council of Ireland was to have a wide range of functions, including the study of the impact of EC membership, development of resources, co-operative ventures in trade and industry, electricity, tourism, roads, transport, public health, sport, culture and arts. The UWC Strike of May 1974 ended the Executive and Sunningdale experiment. The NSMC of 1999 has striking similarities in areas to the Sunningdale accord.

(2) In Sinn Fein's agenda for the review of the GFA presented on 28th January 2004; Under the heading, "Expansion of the All Ireland Commitments", the following policy points are made:-

- Expansion of the all Ireland areas of co-operation and implementation bodies. The review is an opportunity to identify additional areas for co-operation and implementation.
- Establishment of the all Ireland inter-parliamentary forum.
- Establishment of the all Ireland consultative forum.

In comparison, the DUP policy document, "Towards a New Agreement", the party sets out its stall regarding all-Ireland implementation bodies:- "Any relationship with the Republic of Ireland should be fully accountable to elected representatives in the Assembly." This issue is explored in Chapter 5, 6 and 7 of the DUP policy document, "Towards a New Agreement."

(3) Strand II sets out the role and powers of the NSMC within the constitutional architecture of the GFA. There are 19 paragraphs with an annex. The role of the council is presented in paragraph 5. In paragraph 13 the point is made that the NSMC and Assembly are mutually inter-dependent.

For a comprehensive study of the Belfast Agreement refer to the text:- "The Belfast Agreement: A Practical Legal Analysis", Austen Morgan (2000).

(4) For example the Nordic Council was formed in 1952 and is a forum for inter-parliamentary operation. This council has 87 members, representing five countries and three autonomous territories. The members of the council are members of national parliaments and are nominated by their respective parliaments. They are elected by the Parliament. There is the body is led by a Presidium that arranges sessions for selected issues.

The Nordic Council's Secretariat is co-located in Copenhagen and in various national delegations. Five countries are full members: Denmark, Finland, Iceland, Norway and Sweden. Three autonomous areas have observers' rights to participate - the Faroe Islands and Greenland under Denmark and the Aland Islands under Finland.

This model of co-operation is channelled through two organisations.

- The Nordic Council of Ministers – Composed of members of national governments.
- The Nordic Council – Composed of national parliaments.

Refer to the Website <http://www.norden.org>

(5) A key resource to understand the day-to-day work of the NSMC is the annual report of the organisation. Refer to the website www.northsouthministerialcouncil.org

(6) The large demonstrations against the Anglo-Irish Agreement illustrate the emotional opposition that Unionism has with reference to unaccountable North / South relationships.

In the face of a complete breakdown in the review and apparent stalemate in the delivery of devolution the two governments may be forced to act. Although wanting the GFA to be the solution to the Ulster conflict they may be forced to engage in a conflict management exercise to govern. This could lead to a new type of Anglo-Irish Agreement with an Irish Dimension built around the NSMC. Effectively in this scenario direct rule would continue until negotiations between parties produced a result. The Irish dimension would continue and the NSMC structure would unfold despite Unionist protests.

(7) Six North / South Implementation Bodies came into being on 2nd December 1999. They include the following:- Waterways Ireland; The food Safety Promotion Board; The trade and Business Development Board; The Special EU Programmes Body; The North / South Language Body; and The Foyle, Carlingford and Irish Lights Commission

The six matters identified as, “Areas of Co-operation”, include Transport; Agriculture; Education; Health; Environment and Tourism. Refer to the Website <http://www.northernireland.gov.uk>

(8) The NSMC met before suspension more frequently in sectoral format with ministers of the relevant sectors or departments attending. By December 2000 a total of 21 sectoral meetings had taken place.

(9) There are three types of integration in line with geo-political theory. These are societal, attitudinal and political integration.

Societal integration: This is the process whereby the regional societies are becoming increasingly inter-connected through networks.

Attitudinal integration: This is the process whereby the people of the region develop increasingly favourable attitudes towards their regional partners. An emphasis is placed on the joint management of regional problems.

Political integration: This is the process whereby the public authorities in the region increasingly manage national problems through joint processes.

This approach underpins the development of the Nordic Council which I believe underpins the work and vision of the NSMC.

Refer to: Desmond Rea (1982) Political Co-operation in Divided Societies, p284.

Paper 3

The British Irish Council

David Murphy

Introduction

This paper will explore the structure and impact of the British Irish Council (BIC) as created in the Belfast or Good Friday Agreement GFA. It will subsequently examine the related subjects of federalism and the constitutional changes initiated by the Blair Labour administration. Finally the paper will conclude with a critique of the role that the BIC could play in constructing a future federal British Isles within the European Union context. The federal or unitary state constitutional debate has been around since the days of Gladstone in the nineteenth century. It is a crucial debate for the evolution of British democracy in the new millennium.

This paper is composed against a changing political landscape within the context of the British Isles and the European Union. In 2004 the constitutional landscape of Britain has entered a season characterised by devolution to the regions, multi-level governance and the impact of membership of the European Union upon parliamentary sovereignty. This is an evolving dynamic and it is too early to reflect if these constitutional changes pioneered by New Labour will facilitate a summer or winter season for British democracy. The Irish question is related to this process of constitutional landscaping and relationship building. Northern Ireland must not be considered as a place apart but rather should be recognised by policy makers as a pivotal block in this process of creating new political relationships and dimensions within the British Isles. Strand III of the GFA has produced a potential catalyst for significant constitutional developments within the entire British Isles at the beginning of a new millennium that is characterised by global economics and terrorism. With the role of the traditional nation state under review it therefore makes sense that the policy maker should evaluate a federal arrangement between Scotland, Wales, England and the island of Ireland. Such a new constitutional framework could be to the long-term strategic and economic advantage of all the citizens who live within the above territories. This paper will subsequently explore these points in more depth.

The BIC was included in the GFA at the request of Unionists to balance the North South Ministerial Council (NSMC), created under Strand II. The vision, role and structure of the BIC is described in paragraph one of the GFA where a broad mission statement is presented.

“A British-Irish Council (BIC) will be established under a new British-Irish Agreement to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands.” ⁽¹⁾

The BIC therefore has the task of exchanging information, discussing and consulting body members with reference to matters of mutual interest and concern. The body operates by consensus and has the aim of working towards the attainment of agreement between members. ⁽²⁾ The BIC has developed work in areas such as the knowledge economy, environment, drugs misuse, social inclusion, tourism, transport, telemedicine and minority languages. ⁽³⁾ Membership of the BIC is composed of representatives from the Irish and British national state governments. Representatives also attend from the

various regional assemblies located in Scotland, Wales, Jersey, Guernsey, Isle of Man and Northern Ireland. The model of the BIC is flexible and therefore individual members have the option of not participating in common policy and action areas based on their discretion. ⁽⁴⁾ The BIC has been designed to operate as a multi-lateral institution and members have the option of developing bilateral arrangements. ⁽⁵⁾ Strand III further encourages the development of inter-parliamentary links based around the British-Irish Inter-Parliamentary Body. This was created in 1990 as an inter-parliamentary forum between the Irish and British parliaments. In February 2001 the body expanded membership to include representatives of the BIC. In response to the vision and dynamic of the BIC the Irish State established consulates general in Cardiff and Edinburgh.

The inaugural summit meeting of the BIC took place in Lancaster House on the 17th of December and was chaired by Tony Blair. ⁽⁶⁾ Bertie Ahern the Irish Taoiseach made the point that the BIC was part of a new institutional architecture, which widened the relationships beyond Anglo-Irish.

To share the workload and operate strategically members of the BIC decided to concentrate on particular areas. For example the Isle of Man decided to concentrate on health with a focus on telemedicine. The UK choose the environment and developed joint working relationships with Scotland, Ireland and the Isle of Man with reference to the radioactive waste produced by Sellafield.

It is significant to note that when a member of the BIC takes the lead in an issue they have the responsibility for taking it forward. The BIC is supported by its own secretariat which is provided by the Irish and British Governments. This is staffed by British and Irish officials and is based close to the centre of power. In Britain the BIC secretariat is located in the Office of the Deputy Prime Minister. In Ireland the BIC secretariat is situated in the Department of Foreign Affairs. The two governments meet the costs of the BIC, however members do provide financial support as required in sectoral areas.

The BIC is structured to meet in various formats to ensure operational effectiveness and a coherent policy approach. By 2004 the BIC has met four times at summit level, in London December 1999, in Dublin in November 2001, in Jersey in June 2002 and in Scotland in November 2002. The GFA in Strand III, paragraph three directs that,

“The BIC will meet in different formats: at summit level, twice per year; in specific sectoral formats on a regular basis, with each side represented by the appropriate Minister; in an appropriate format to consider cross-sectoral matters.”

By 2004 there have been six Ministerial meetings with communiqués issued. ⁽⁷⁾

The work of the BIC has been affected by the various suspensions that frustrated the delivery of devolution in Northern Ireland. Progress has been made upon sectoral issues. However in comparison to the NSMC progress has been slow. This could be due to the time it is taking for the devolved assemblies in Wales and Scotland to consolidate and build their structures. A further cause of slow progress could be associated with a fear within Nationalism / Republicanism that a comprehensive BIC could ultimately take away power from the NSMC. Despite the slow development of the BIC it does not take away from the inherent potential that this body has for developing an innovative structure for federal relationships. We will now examine the second body established by Strand III, the British Irish Inter-governmental Conference (BIIC).

Strand III further includes a body called the British-Irish Intergovernmental Conference (BIIC) with a supporting secretariat. This body is presented in nine paragraphs in Strand III and involves the bilateral relationship of the British and Irish governments. These two governments have developed a long policy relationship over the decades with reference to the management of the Ulster conflict. The BIIC has replaced the previous Anglo-Irish Agreement of 1985. Paragraph one in Strand III, specifically dealing with the BIIC, makes the point that the body will subsume the Anglo-Irish Intergovernmental Council and Intergovernmental Conference established in 1985. The BIIC has developed a range of issues for bilateral co-operation, based around matters of mutual interest. This body does not compromise British or Irish sovereignty. It builds on the political problem solving and conflict management relationship that has developed over the decades since the Anglo-Irish Agreement. This body addresses two core policy areas related to matters of mutual concern and non-devolved issues. Paragraph five of Strand III deals with non-devolved issues and states,

“In recognition of the Irish Government’s special interest in Northern Ireland and of the extent to which issues of mutual concern arise in relation to Northern Ireland, there will be regular and frequent meetings of the conference concerned with non-devolved Northern Ireland matters, on which the Irish Government may put forward views and proposals. These meetings to be co-chaired by the Minister of Foreign Affairs and the Secretary of State for Northern Ireland would also deal with all-island and cross-border co-operation on non-devolved issues.”

This paragraph does not imply joint authority or shared sovereignty. Representatives from the Northern Ireland Assembly can become involved in this bilateral relationship. The inaugural meeting of the BIIC occurred on 17th December 1999, in Downing Street and followed the inaugural meeting of the BIC at Lancaster House. The BIIC meeting was chaired jointly by the two premiers, Tony Blair and Bertie Ahern. The British Prime Minister was supported by the secretary of state. Three ministers accompanied the Taoiseach. The First and Deputy First Ministers represented the devolved Stormont administration. The BIIC is therefore different in emphasis from its predecessor the Anglo-Irish Intergovernmental Conference. The devolved Northern Ireland administration is involved in the operations of the BIIC. Secondly the BIIC has a focus not simply upon Northern Ireland but upon bilateral issues of mutual interest to the British and Irish governments. The suspension of the BIIC is not expressly provided for in the GFA and meetings are not dependent upon the attendance of Northern Ireland representatives who essentially do not have the power to block decisions. This body therefore can be understood as a partnership between two unitary nation states within the European Union. It creates a regional dynamic that is to the mutual advantage of the two nation states that share the physical territory of the British Isles. The body therefore essentially recognises the unique relationship moulded by history that exists between Ireland and Britain. The BIIC can further be assessed as a conflict management instrument deployed to facilitate political development and security within Northern Ireland. It can further be interpreted as an inter-governmental body that acts as a political rein on the process of devolution to the regions. In a similar manner to a chariot racer in the Roman arena who had to rein in his horses, the two governments have created the BIIC as their policy chariot. The devolved assemblies are the horses in this metaphor.

Through the BIIC the two national governments have the political synergy to drive their agenda of devolution and EU Integration within the British Isles arena. The reins of the BIIC therefore keep in order the devolved institutions that have emerged in Scotland,

Wales, Northern Ireland and possibly regional bodies in England. It is important to reflect that a devolutionary process could also unfold in the Republic of Ireland where regions could advocate for regional bodies. The BIIC therefore is also a body to manage the significant constitutional changes that have impacted upon Britain and Ireland. This has created a dynamic, which could possibly lead to federalism in the decades to come.

A constitutional Nationalist, Seamus Mallon, while acting as Deputy First Minister reflected at the opening summit of the BIC in 1999:- “The BIC offers a new stage, a common platform for decentralised governments to meet the sovereign governments. This council should enhance our democratic culture, not diminish it.”

The same point can be made concerning the BIIC, which he subsequently attended later in the day. The BIIC appears to favour the agenda of the two national governments. This could ultimately be to the long-term strategic disadvantage of the devolved assemblies. This new stage could subsequently be the venue for the unfolding of two performances. A political ballet performed to the score of federalist melodies or a play dominated by the presence of two actors with a supporting chorus. The choreography however has been designed by unpredictable political and global influences. These will dictate the script and movement of the constitutional drama in the new century. The constitutional reforms initiated by the New Labour administration and the process of EU Integration impact upon the role of the BIC and BIIC. The traditional model of the British unitary state is therefore presently in a phase of evolution and re-definition. This process will impact upon the design and structure of the Irish unitary state. Possibilities consequently appear in the new century for the long-term integration of the two states in a federalist arrangement.

This paper will now examine the issue of federalism in British constitutional history and contemporary politics.

The ghosts of the Irish question, devolution and federalism have haunted the corridors of Westminster since Gladstone. Federalism involves the division of sovereignty between two or more levels of government. It is important to note that in a federal design of government each level is in theory, sovereign or supreme in its own jurisdiction. In comparison devolution involves the delegation and subsequent decentralisation of power. Devolution is different from federalism because it does not involve any transfer of sovereignty. This in the British context remains with the Westminster Parliament.

In 2004 Britain is experiencing the impact of devolution and time will tell if this will ultimately lead to a federal Britain or the end of the constitutional union of the regions which compose the United Kingdom and Northern Ireland. Parliamentary sovereignty has been the dominating characteristic of the British constitution. This principle means in practice that the authority of the Westminster Parliament is unlimited. This principle has however been impaired by Britain's membership of the European Union and the internal process of devolution to the regions and Northern Ireland. The European Communities Act (1972) turned into law the obligations arising under EC treaties. In 2004 the EC has evolved into the European Union and significant negotiations are underway to develop an EU Constitution. Britain is legally subordinate to Brussels as was illustrated in the Factortame court case. In this 1991 case the European Court of Justice successfully challenged the British Merchant Shipping Act of 1988. The British State is therefore operating within a dual constitutional framework as a member of the EU and a sovereign nation state. In the British system the Westminster Parliament is subject to constraints and it is important to reflect that political sovereignty is found in the will of the people. This point has been illustrated in 1971 when the Trade Union Act

was scrapped, 1974 when Sunningdale was removed and in the 1980s when the poll tax was reformed. Within the unitary state of Britain there has always been a tension between the sovereignty of parliament and the people.

In 2004 the principle of parliamentary sovereignty has been affected by two other significant developments. The Human Rights Act has produced a situation in which the Westminster Parliament is obliged to respond to judicial decisions surrounding a statute that is ruled to be incompatible with the European Convention.

The various referendums in Wales, Scotland and Northern Ireland have placed an emphasis upon the will and therefore sovereignty of the people. This issue links into the process of devolution that has produced new political arrangements. English MPs have lost their power to influence legislation surrounding devolved functions. This issue of representation has been called the, 'West Lothian question'. Tam Dalyell made the point that Scottish MPs can vote on education policy in England but they cannot vote on education in Scotland. These matters may be addressed by a written constitution in the future and if this came about parliamentary sovereignty would fade away into history. It is further relevant to reflect that parliamentary sovereignty is still a force that can be utilised as a tool by the Westminster government. This was illustrated when Mandelson suspended the Northern Ireland Assembly in February 2000. This will be an on-going issue as the dynamic of devolution evolves.

In 2004 in a similar situation to Gladstone, Blair is faced by the phantoms of the Irish question, devolution and federalism in his drive to modernise the British constitution.

For example, the son of a Church of Ireland clergyman, Isaac Butt, wrote a pamphlet called, "Home Government for Ireland", in 1870. A Home Government Association was subsequently formed to secure the establishment of a federal system under which the Irish parliament would look after Irish affairs. The Westminster Parliament would deal with questions affecting the Imperial Crown and Government. This innovative constitutional design, however, was rejected at the time, due to the dominance of the principle of parliamentary sovereignty in the British constitution. Ideas for constitutional change have come from the Irish question. The examples of Canada and the reconstruction of federal government in America following the civil war influenced Butt's proposals. During the period 1870-1921 two key themes developed in political thought associated with creating a federal Britain and Empire. These imaginative proposals ahead of their time were a response by political thinkers to the problems of Empire and the Home Rule question for Ireland. Faced with the autonomy of colonies such as Australia, Canada, New Zealand and South Africa the British establishment was forced to confront a change in the structure of the Empire.

The growing military power of Germany and economic muscle of America were international issues of concern in the Imperial Foreign and War Offices. Various lobby groups or think tanks emerged in the late nineteenth century to advocate the cause of Imperial Federation. This was considered by some to be a catalyst for the survival and consolidation of the Empire. In 1911 for example the Prime Minister of New Zealand proposed a federalist scheme for Imperial federation. He advocated an Imperial parliament of defence with a Lower House directly elected by the citizens of Newfoundland, Australia, New Zealand, South Africa, Canada, Britain and Ireland. The upper house was to be composed of an equal number of appointees selected by their respective governments. ⁽⁸⁾ This concept of Imperial Federalism became real in 1917 when the crisis of war forced the British parliament to create an Imperial War Cabinet.

The development of federalist ideas is therefore nothing new in the constitutional question of how to re-construct the British parliamentary system.

With reference to federalism and the Irish question the various Home Rule Bills deeply divided Britain and raised the spectre of civil war especially in 1914. Churchill contributed to the debate rumbling in the course of the volatile Third Home Rule Bill. He supported a proposal for regional legislatures in England, national legislatures in Ireland, Scotland and Wales with an overarching Imperial parliament. The Government of Ireland Act 1920 had a devolution theme, however, this was overtaken by events. In 1921 the Anglo-Irish treaty was negotiated and partition resulted. Until the late twentieth century federalism was not a political option for Britain. The concepts of parliamentary sovereignty and the unitary state sculpted the constitutional monolith until the arrival of New Labour. These debates from the past impact upon the present policies of constitutional change pursued by New Labour in the twenty first century. In a similar manner to Gladstone and Lloyd George, Blair is faced by two key strategic concerns in the new millennium. While issues associated with Empire faced Gladstone, the process of European integration and federalism faces Blair. While Lloyd George was faced by war, Blair is also struggling with the current war on Islamic fundamentalist terrorism. All three Prime Ministers have struggled with the Irish problem and have produced constitutional blueprints to bring peace to Ireland. The ideas of New Labour have therefore been moulded in part by past constitutional debates surrounding federalism and one could reflect that the ghosts of Butt, Gladstone and Lloyd George haunted the negotiations at Castle Buildings.

The Labour administration has pursued a series of constitutional reforms that have changed the political structure of Britain. This process is intrinsically linked to the concept of parliamentary sovereignty examined previously, which has been the dominating characteristic of the British unwritten constitution. The Westminster Parliament has unlimited authority however this state of affairs is currently in question due to the impact of membership of the EU and devolution to the regions. Within the confines of the contemporary process of devolution, power is retained at Westminster and therefore sovereignty is currently unaffected. Devolved functions can be called back by the mother parliament. However a process of devolution is unfolding which has created a synergy for change. The traditional definition of the British unitary state underpinned by parliamentary sovereignty is currently being re-defined by new circumstances. Contemporary Britain is apparently evolving into a quasi-federal political culture with implications for the reformation of the unwritten constitution. By 2004 a multi-layered system of government has replaced the previous centralised structure centred upon Westminster and Whitehall. In the current political environment decisions affecting British citizens are made in Hospital Trusts, devolved governments and through the EU. ⁽⁹⁾ A differentiated polity has consequently replaced the unitary state. This new arrangement therefore places an emphasis upon developing and delivering policy through different agencies at various levels of government. The BIC and BIIC are key elements in this evolving process.

To manage this process of constitutional reformation, the Labour administration has created a Directorate of Government Relations to deal with ministers, departments and the new devolved assemblies. Devolution is an evolutionary dynamic and consequently members of the Welsh assembly who want to increase their powers can link into the lessons learned by the Scottish and Northern Ireland assemblies. In the decades to come the devolved administrations will find it to their advantage to combine and thereby extract concessions from Westminster. The culmination of these developments could

lead to a federal arrangement negotiated in future decades between assemblies and the Westminster Parliament. The process could further lead to a new political dispensation in which popular sovereignty is located in the various regions of Wales, Scotland and Northern Ireland. A written constitution would be required to regulate the functions and political relationships between the national and regional political administrations. Although conjecture, it is interesting to reflect that circumstances could force an English Prime Minister to facilitate a constitutional conference in the future to reshape Britain within the European Union.

In 2004 however the British State has survived and remains legitimate due to the will of the people. The challenge for New Labour is how to accommodate diverse regional political identities within effective constitutional architecture. Strand III is instructive in this point through the creation of the BIC. Although competing for space with other bodies in government such as the BIIC and the Directorate of Government Relations, the BIC has great potential. The Irish question has always stimulated creative constitutional designs and Strand III of the GFA has sown the seeds for the growth of a new federal British Isles in the future. This however threatens the primacy of the English Westminster parliament and therefore the bastion of tradition will hold out against the assault of federalism until the ammunition runs out.

Conclusion

The symbol of Britannia was re-invented in the seventeenth century as a symbol of the British Nation and emerging Empire. The shield of parliamentary sovereignty and the helmet of a unitary state protected Britannia in the past. By 2004, however, Britannia has entered into marriages of mutual interest with Uncle Sam and the European swan. The old parliamentary symbols and traditions associated with the unwritten British constitution and unitary state are consequently gone. The BIC and BIIC are the two bodies that have been created to address the evolution of east-west relationships within the British Isles. The Irish question and the GFA are linked to New Labour's policy aims of modernising the machinery of government in Britain. The current process of devolution to the regions could evolve into a process leading towards a federal settlement in the decades to come. The BIC will be a catalyst for change and policy development between regions in Britain. This paper has assessed that this rolling dynamic is to a degree curtailed behind the scenes through the inter-governmental work of the BIIC.

The British State has changed in 2004 through the process of devolution to the regions. However, it is currently not a federalist state. Rather it appears that the British parliamentary system is evolving from a unitary state to a quasi-federal state with emerging tensions surfacing between the centre and periphery. The role of the BIC could actually produce future tensions between the regional assemblies and the Westminster parliament over policy issues. Northern Ireland, Scotland and Wales will not necessarily develop a swing towards independence; however, politicians in these jurisdictions will desire more power. Consequently the BIC may emerge as the dynamo for the subsequent development of a written constitution.

Although the BIIC was created to address issues associated with Northern Ireland the two governments also co-operate on broad policy issues. As the process of European integration unfolds the range of bilateral co-operation will probably increase between Dublin and London. This working relationship could subsequently evolve into a dynamic leading to the long-term policy integration of the two states with reference to economic, transport, technological, security and social issues. This process will unfold

against the background of a federalist European Union. Although the Irish State is not coming back into the union, it seemingly is moving towards a unique partnership with the British state through a process of policy and social integration. To facilitate a joined up approach to constitutional reform the following actions should be considered by policy makers. The British/Irish inter-parliamentary forum and the Directorate of Government Relations should be integrated into the BIC. This action would lead to the BIC including representatives from English authorities and regional development agencies. The secretariat of the BIC should be expanded with satellite offices in the capital cities of members. Non-government organisations in the voluntary sector should be able to attend and contribute to BIC meetings where appropriate. The BIC should further expand links into the British Commonwealth and develop relationships to address poverty, health, education and political education.

Policy makers should further consider the evolution of the BIIC into a more comprehensive policy body. The BIIC should evolve into the British / Irish / Regional Executive Council for the British Isles. This body could manage the process of European integration in a strategic and collective manner. This proposed body could further begin the work on planning a federalist constitutional conference to negotiate a new written constitution for the British Isles context. Until political will is different the current models of the BIC and the BIIC will remain as presented in Strand III of the GFA. This paper has presented the possibilities inherent in the design of Strand III. The future decades will show if Britain will move towards a federalist state. Alternatively the country could soldier on trying to work around a system of dissimilar patterns of devolution.

It is, finally, important to note that the Irish question has been the catalyst for constitutional change since the days of Gladstone. Strand III has the seeds for a new British Isles. However, the will from Westminster to persuade others of the advantages of a new British Isles Union has been weak.

To the Loyalists it is the unfinished business of evolving the constitutional revolution of 1689 - 1690 in the new millennium.

Notes to Discussion Paper on Strand 3

(1) Refer to: Strand III, Paragraph 1:

(2) Refer to: Strand III, Paragraph 5:

(3) Refer to: Strand III, Paragraph 5:

(4) Refer to: Strand III, Paragraph 6:

(5) Refer to: Strand III, Paragraph 10:

(6) Refer to M. McMahon (2002) Government and Politics of Northern Ireland.

Chapter 6: The British Irish Council, 52-58.

(7) Refer to the web-site of the BIC – www3.british-irishcouncil.org

(8) These points are explored comprehensively in the article by Gerard Hogan: “The United Kingdom as Quasi-Federal State”. Working paper from the Queen’s University, Ontario;

(9) Refer to Bill Coxall, (2003) Contemporary British Politics Chapters especially relevant from this text include the following:-

- Chapter 11 – The evolving British Constitution
- Chapter 17 – Devolution: The Disunited Kingdom
- Chapter 19 – The new British State: Towards Multi-level Governance

Note: The British Constitution is the product of a historical process. It is partly written but is not codified and therefore not written down in a single document. The British constitution is based on the following building blocks;

- Statute law – Law passed from Parliament
- Common Law – Law passed by the courts
- Conventions – Unwritten rules of constitutional behaviour
- Law and custom of Parliament
- Works of authority such as political books about the constitution
- European Law and the European Convention on Human Rights
- It is characterised by the constitutional monarchy, parliamentary sovereignty, representative democracy and the rule of law.