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**Proposal for a Commission to make recommendations  
about a new Constitution**

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**1. The case for**

It is important that the Government take early political action following the recent British initiative; otherwise the vacuum will continue to be filled by the men of violence as already appears to be the case. The setting-up of a Commission to undertake preparatory work for a new Constitution would be positive political action which would give heart to the minority in the North and would be an answer to Unionists and to those in Britain who complain that we talk about making our set-up in the Twenty-six Counties more acceptable to our people as a whole but do nothing about it. It would have the further advantage that it would appear to the public in the Twenty-Six Counties as constructive action by the Government towards our national objective of unity and would have the effect of focusing their minds towards this positive theme. It might be argued that, taking this step at the present time, would frighten the Unionists and increase the danger of a backlash. The immediate danger of a Unionist backlash seems to have passed and, if we are seriously to prepare now for the final solution of unity, preparatory work in relation to a new Constitution must begin now as even the preparatory work will take time. In any event, in regard to the potential Protestant backlash, it would be unwise to refrain from action because of it as Unionists must have continually put before them that their future is within a new Ireland, even if there were some risk involved in this.

**2. Purpose and Terms of Reference**

The broad purpose of the Commission would be to investigate and report on the kind of Constitution they would consider suitable for the Irish people as a whole, particularly in the matter of individual rights, freedoms and liberties.



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Obviously the parliamentary, governmental etc. structures of a united Ireland will depend on the nature of the eventual political settlement and, as this cannot be anticipated, the Commission could not concern itself with these aspects of the Constitution in its deliberations at this time. The terms of reference should be so worded that they would not contain an expressed reference to a united Ireland; otherwise we would be unlikely to get cooperation from Unionist political opinion in the North. Nevertheless, it would be clear that the exercise is preparatory to Irish unity. It is considered that the Commission should invite views and hear evidence, if it so wishes, from all interested persons or groups North and South. Once agreement is reached on the basic proposal and on the broad scope and nature of the Commission very careful consideration will have to be given to the precise terms of reference. As one method of meeting some of the criticisms of the present Constitution would be that a new Constitution should be in more general terms relating to fundamental issues only and silent on other issues which should, more appropriately, be dealt with by legislation from time to time, there might be something to be said for directing the terms of reference towards the preparation of a scheme or heads for a new Constitution rather than towards the preparation of a draft.

### 3. Type and size of Commission

The main choice here seems to be between a Commission representative of various shades of opinion within the country which, of its nature, would have to be very large, or a small Commission of broadly based persons selected for their expertise and experience. The former would inevitably move very slowly, find it very difficult to reach agreement, perhaps produce minority reports and, in general, reflect some of the



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rigidities in present thinking. It seems desirable, therefore, that the Commission should comprise a small number of persons in the latter category, say, not more than seven with a secretariat. The question arises as to whether it should be composed exclusively of Irishmen or whether foreigners should be included. It is felt that, as the purpose is to prepare a Constitution for the Irish people, it should be composed of Irish only or persons with close Irish associations. The members should include persons from both parts of the country and of different religious views. In the nature of things it should not include anybody who has an entrenched position which would obviously make him unsuitable e.g. one who is opposed to Irish unity. One would also exclude those whose profession might limit their freedom of action. Without wishing to suggest the individuals in question, I would mention the following as an indication of the kind of person who might be suitable:- a Constitutional lawyer from the North such as Dr. Claire Palley, Queen's University, Belfast; somebody of similar expertise from one of the Universities here; Mr. Philip O'Donoghue who is on the European Court of Human Rights; Dr. F. H. Boland, who has wide experience of the political background from this Department's point of view as well as contacts in many academic and business circles and, perhaps, a senior Judge who has not too rigid an approach to the role of the Judiciary in constitutional matters. Another type would be an Anglo-Irish personality, such as Professor Nicholas Mansergh, a Cambridge Don, who has written not unsympathetically about Irish constitutional affairs. Another name, which brings in other considerations, but might be useful presentationally from the political point of view, would be Lord O'Neill of the Maine. While the foregoing names have been mentioned to give an idea of the type of person that might be suitable if the broad approach were agreed, we

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would not wish to make specific suggestions until possible names have been examined much more closely. The question would also arise as to whether someone from a Government Department with appropriate experience should be included.

#### 4. Relationship to proposed Inter-Party Committee

In order that the proposed Commission should be free to decide its own approach to its work and to be free to report directly to the Government, it is thought that it should be quite independent of the Inter-Party Committee. Nevertheless, the Government may wish to get the initial benediction of the leaders of the Opposition and/or the Inter-Party Committee for the setting-up of the Commission so that there would be All-Party approval for its activity. It is clear that the Commission itself in taking evidence will have to get political inputs from all political shades of opinion in this island. Furthermore, the All-Party benediction would seem to be required as it is understood that the constitutional implications of Irish unity is one of the proposed terms of reference for the Inter-Party Committee.

*Amh*  
21/4/72