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Title:	Copy letter from Paul de Paor, Counsellor in the Political and United Nations Section of the Department of Foreign Affairs, to PJG Keating, Assistant Secretary in the same department, regarding the White Paper on 'Northern Ireland Constitutional Proposals'. The letter focuses on the legal basis for Northern Ireland being an integral part of the United Kingdom, and international strategies Ireland could adopt to combat this claim.
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Mr. Keating,

It seems to me that, when in paragraph 112 of the White Paper on "Northern Ireland Constitutional Proposals" the British speak of acceptance of the present status of Northern Ireland, etc., what they want is that we should formally accept

- (a) that Northern Ireland is an integral part of the United Kingdom and
- (b) that Northern Ireland will not cease to be ^s much without the consent of its people.

2. I assume that the British are not thinking of seeking our acceptance of the legitimacy, or even simply the fact, of the Northern Ireland State. That would be an entirely different matter. One could argue that we should be prepared to acknowledge the existence of the Northern Ireland State as a specifically Irish entity and in order to make a gesture to the majority in the North, rather on the lines of the Brandt doctrine for Germany of one nation, two States. Indeed, Ernest Blythe was arguing for that approach almost twenty years ago in "Briseadh na Teorann". At the moment, of course, the institutions of the Northern State do not exist.

3. If I am correct in thinking that the British objective is as given in the first paragraph above, it seems to me that for us to agree would mark a serious retrogression from the position obtaining under the Treaty. That instrument was, of course, entitled "Articles of Agreement ~~for~~ a Treaty between Great Britain and Ireland". Article 1 stated

"Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada ... with a Parliament having powers to make laws for the peace order and good government of Ireland ... and shall be styled and known as the Irish Free State".

4. There are several other places in the Treaty where Ireland and Great Britain are named, viz.:

- (a) Article 3 - "The representative of the Crown in Ireland"
- (b) Article 4 (the oath) - "... in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth^w of Nations."
- (c) Article 5 - "... having regard to any just claims on the part of Ireland by way of set off or counter-claim..."
- (d) Article 6 - "... the defence by sea of Great Britain and Ireland"
 - "... with a view to the undertaking by Ireland of a share in her own coastal defence."
- (e) Article 8 - "... the establishments thereof shall not exceed in size such proportion of the military establishments maintained in Great Britain as that which the population of Ireland bears to the population of Great Britain".

5. It is also of interest that one of the facilities which the Irish Free State Government was to afford, under Article 7, to His Majesty's Imperial Forces related to the harbour defences in Belfast Lough.

6. Articles 11 and 12 of the Treaty provide that the powers of the Parliament and the government of the IFS shall not be exercisable as respects Northern Ireland for one month, and that, if both Houses of the Northern Ireland Parliament present within that month an address to that effect, those powers shall no longer extend to Northern Ireland. Nowhere is there any explicit reference to Northern Ireland's remaining part of the United Kingdom.

7. The 1922 Constitution does not refer to the national territory, nor does it define the territory of the Irish Free State. However, the Constitution does make several references to the area of the jurisdiction of the Irish Free State - which, as we know, has been held here, in connection with Article 3, to be a variable area, covering initially the whole country. Moreover, the Constitution of the Irish Free State (Saorstát Eireann) Act, 1922, to which the Constitution was annexed, makes clear the objective of the restoration of Irish unity:

"Dáil Eireann sitting as a Constituent Assembly in this Provisional Parliament, acknowledging that all lawful authority comes from God to the people and in the confidence that the National life and unity of Ireland shall there^{by} be restored, hereby proclaims the establishment of The Irish Free State (otherwise called Saorstát Eireann) etc.."

The British statute (the Irish Free State Constitution Act, 1922) schedules not merely the text of the Constitution, but the whole of our Act beginning with the passage just quoted. One cannot go so far as to argue that the scheduling amounts to endorsement of the passage, but one might, I think, make the point that the British have taken note of our desire for the restoration of the unity of Ireland.

8. The point I am trying to make is that the Treaty was an agreement between Great Britain and Ireland, with provisions which made it possible for Northern Ireland to exclude itself from the jurisdiction of the Parliament and Government in Dublin.

Paragraph 113 of the White Paper says that "if and when firm agreements are reached, consideration can be given to the means by which they should be formally adopted as between sovereign states". This suggests to me that what the British have in mind is the conclusion of a bilateral agreement between the United Kingdom of Great Britain and Northern Ireland and the Twenty-six-Country Republic of Ireland by which we would accept,

not simply the exclusion of Northern Ireland from the jurisdiction of Dublin, but the status of Northern Ireland as an integral part of the United Kingdom.

9. Such acceptance by us might be regarded as complementary to the acceptance by the people of Northern Ireland in the plebiscite of that area's remaining in the United Kingdom: Britain would then have as much freedom of action vis-a-vis Northern Ireland as circumstances would permit. However, what I am concerned with are the international implications for us of our formally accepting Northern Ireland as an integral part of the United Kingdom. A new agreement with Britain explicitly acknowledging her sovereignty over the North might make it extremely difficult for us to secure a hearing in any international forum, should we wish to raise the Northern problem in the future. I wonder whether it would be prudent to assume that circumstances will never arise in which our Government might want to have recourse to the United Nations. A British attempt to prevent discussion on the North in the Security Council or the General Assembly under Article 2. 7 of the Charter would be made that much easier if they could invoke a recently concluded agreement with us accepting Northern Ireland as an integral part of the United Kingdom. It may be, too, that, as political cooperation among the Nine develops, they will acquire a role in seeking to bring about a solution of political disputes between members of the Communities: I should think that our being party to a modern agreement formally accepting Britain's sovereignty over the North would increase the difficulty for us in getting others of the Nine to use their good offices, for example, vis-a-vis Britain.

10. There may also be a defence aspect. Iceland's threat to withdraw from NATO and to evict the NATO base there must revive the consideration of alternative sites for the base. Obviously Iceland's departure from NATO would be a serious blow to the Atlantic Alliance, given the massive Soviet Northern Fleet - 150 submarines, I believe - which operates in the North Atlantic.

When an alternative to the Icelandic base was being talked about a year or so ago, the Defence Correspondent of "The Times" (London) mentioned Ballykelly as a possible, although not perhaps very likely, choice. Our Government might or might not wish to try to prevent at some future date the establishment of a NATO base in the North. As matters stand, we might hope to look to some countries of the Alliance for support (Norway and Denmark and perhaps the Netherlands) should the Government decide to oppose the base. But if we have bound ourselves by international agreement to the explicit acceptance that Northern Ireland is an integral part of the United Kingdom, I cannot see much hope of help from other countries.

11. I have no idea whether the Legal Adviser or the Anglo-Irish Political side would see any merit or usefulness in the foregoing. But, in a matter of such national importance, I feel I should at least raise the points for consideration.

Pat
11/11/1973