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Conferences

Sunnyside Conference

(i) Brief

(ii) Legal Committee Report.

(iii) Tammelin's Statement, 13th March '74

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2020/1/480

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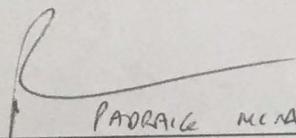
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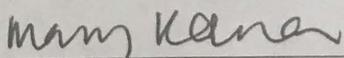


Padraig McArthur
Certifying Officer
Office of the Attorney General
Date: 26/11/15

CONSENT

I do consent to the making of this certificate.

~~I do not consent to the making of this certificate.~~
(delete as appropriate)



Consenting Officer
Department of the Taoiseach
Date: 26/11/2015

REVIEW DATE

Date not later, than which the record(s) must be reviewed (Day, Month, Year, 5 Years hence):
December, 2020



(1)

OIFIG AN ARD AIGHNE
(Attorney General's Office)
BAILE ÁTHA CLIATH
(Dublin)

1. UK. has agreed to discussions on sole Council right
play in law & order fields — 22/11/72 (p. 112)

2. Following Conference — ^{En.} ~~then~~ formal agreement after.

3. Whitaker — H. of C. "Council play useful role in
22/11/72 reserved ~~to~~ "subjects"

p. 119

Position "Full support of Republic is necessary"

4. Agreement with N.I. Executive authorities

(a) S. 12.

(b) made by each "authority" who will transfer.

(c) Measure — can give effect to agreement.



OIFIG AN AIRE POIST AGUS TELEGRAFA

OFFICE OF THE MINISTER FOR POSTS AND TELEGRAPHS

BAILE ÁTHA CLIATH I

DUBLIN I

4th Jan '74

Inclaled on File

Mr. L. Cosgrave TD
Taoiseach

Dear Taoiseach,

I have been giving some thought to the question of the All Party Committee on Irish Relations - on which as you know I am one of the Government members - and the question of possible constitutional amendment following Sunningdale.

It seems to me that the 1937 Constitution has become even more of an anachronism than it was, and even more damaging to a rational view of the national interest since the Sunningdale agreement. In particular Arts. 2 & 3 - in post-Sunningdale conditions - are a most serious threat to the political survival of the Faulkner Unionists, and hence to the whole fabric of the Sunningdale arrangements.

It was hoped that the All Party Committee might open the way to consensus on an amended constitution, which could go before the electorate with the support of all parties as in the case of the Referenda on votes at 18 and Art. 44.1.

I think there is now no hope of such a consensus being reached. All along the Fianna Fail representatives on the committee refused to commit themselves to supporting any changes in relation to Arts. 2 & 3 and their reaction to Sunningdale has been to suggest that these Articles are sacrosanct; in particular Brian Lenihan has publicly committed himself to the view that these Articles must not be changed.

It seems therefore that, either way we must go on living with the 1937 Constitution or we must seek to change it by Referendum against Fianna Fail opposition.

Either course is fraught with considerable political difficulty and danger. As you know at Sunningdale I argued - I think rightly - that those negotiations should not be linked with the question of constitutional change. I still think that we should not take any initiative in this matter without allowing adequate time to elapse after Sunningdale, and without very carefully exploring every aspect of the question.

However I have come to the conclusion that if the Sunningdale arrangements are to be sustained we will have to seek an Amendment to the Constitution, and sufficiently far in advance of the next Assembly elections in the North for the change - if secured - to register. It is true that a defeat on this issue would be damaging in a number of ways. However in relation to our broader objective - the strengthening of the moderate

wing.....

.....

wing of Unionism - to have made the effort to honour our good faith should help to improve relations. On the strictly domestic political front Fianna Fail experience shows that a defeat on a referendum is not necessarily damaging in a General Election.

I think however that we should have a very good chance indeed of carrying our constitution against Fianna Fail, and that this would have a number of positive implications. I think all of us know, from the feed back we are getting from constituencies all over the country, that Sunningdale is extremely popular, at least at present, and it is reasonable to infer that a "Sunningdale orientated" type of constitution would find a majority in its favour. Fianna Fail fighting against it, in defence of the 1937 constitution, would come more and more to look like a Party tied to the past, and unwilling to respond to the real needs of the present. Fianna Fail would also find itself fighting the election in the repellent co-operation of both wings of Sinn Fein - IRA; Blaneyites etc. I believe that for us to carry a constitution of our own designing against this kind of opposition and sweep away De Valera's constitution would carry a very clear message: That not just have we had a change of Government, but that the whole epoch of Fianna Fail domination, and Fianna Fail definition of what was national, had ended.

As I indicated above there are strong reasons for not acting precipitately on this question. At the same time there are reasons for moving with all deliberate speed, while the Sunningdale feeling is still reasonably fresh.

I would suggest something like the following programme of action : (a) You discuss the situation generally with Mr. Jack Lynch, stressing the necessity in the national interest of the survival of the moderate Unionists, and sounding Mr. Lynch on the subject of constitutional reform. I would not expect myself any positive results on this but clearly it is a procedure that has to be gone through before any move could be made. (b) Consultations with the SDLP, the object of which would be to ascertain whether they would give their political support - whether as individuals or as a party - to constitutional change, the nub of which would be to substitute an aspiration towards eventual unity by free consent for the present territorial claim. (c) A committee under the chairmanship of the Attorney General and including the Government members of the All Party Committee to be entrusted with the drafting of a new constitution. (d) The draft when prepared to be presented to the All Party Committee by the Chairman, Deputy Paddy Harte, and an effort made to obtain consensus on it with or without amendment. The effort to reach consensus to be reasonably prolonged and not to be abandoned before the close of the present year. (e) In 1975 whether consensus obtained or not a referendum to be held on a new constitution.

The above suggestions on how we might proceed are of course quite tentative at this stage. It does seem clear that we should now start thinking about a move in this direction. I think at present we are in danger of sacrificing too much to the so called bi-partisan policy, which is a bit of a myth and ought to have been exploded by the opposition's performance on Sunningdale. Perhaps we might have a word about all this when you have had time to consider it.

Yours sincerely,

Conor Cruise O'Brien



OIFIG AN AIRE POIST AGUS TELEGRAFA
OFFICE OF THE MINISTER FOR POSTS AND TELEGRAPHS

BAILE ÁTHA CLIATH I

DUBLIN I

7 Jan '74

Mr. D. Costello
Attorney General.

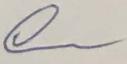
Dear Declan,

I enclose a copy of a letter I have sent to the Taoiseach about the question of possible constitutional amendment.

It seems to me that the All Party Committee doesn't look like getting anywhere, and that unless the Government members can put something before it, it will not in fact accomplish anything. Like most of the previous Government's committees, it was set up as an excuse for inaction and I don't think we should let it continue to serve that function.

I don't belong to the society for the preservation of Jack Lynch and I think that if we are going to preserve anybody it ought to be Brian Faulkner, without whom there seems to be no future for the Sunningdale arrangements. We pushed him hard, too hard. I think, on the Council of Ireland and I think it is now up to us to demonstrate, as we can do, by constitutional change, that the Council does not have the sinister implications that so many Unionists, whose support he needs, have seen in it.

Yours sincerely,


Conor Cruise O'Brien

Functions

Preferred priority list *from Dept. of Finance / Public Service*

General:

The complete list given under the heading "Executive Responsibility" in the "Summary of Possible Functions of a Council of Ireland" should be regarded simply as a wide range of possibilities from which certain choices will be made. In view of the restricted role envisaged by the Unionists for the Council, and of the views expressed by British officials at the meetings on 28-29 November, it seems desirable to short-list the items and to set out our own priorities.

The lists referred to, following, are those appearing in "Part III - Functions (outline)" of the Council of Ireland section of the brief as functions for which executive powers might be vested in the Council.

Tourism: This is mentioned in the Irish, British, SDLP and Alliance ("tourism promotion") lists. The British refer to it, together with electricity, regional development, and transport, as a matter "of substantial mutual interest". We could therefore press for its devolution. Total Government estimated expenditure in 1973/74 is Republic £9.31m (non-capital £6.55m: capital £2.76m): N.I. £2.2m. Staff transfers from the Republic would total about 6 persons (Transport and Power) costing £22,000, including overheads such as pensions liability. B.F.E. operational staff totals 410.

Electricity is mentioned in the Irish ("electricity generation and supply"), British and SDLP lists. It is worth noting that Mr Faulkner is reported in the Irish Times of 3 December as saying to James Downey that "he doubted if both sides would agree to share a nuclear plant, because this could have strategic importance". Transfer/^{of}responsibility, followed by rationalisation

/north

north and south could have significant disemployment implications for ESB staffs. Total Government expenditure 1973/74 is estimated at Republic £36m. (non-capital £1.6m; capital - £34.4m); N.I. £27.0m. Staff transfers from the Republic (Transport and Power) total about 4 persons-cost £15,000. E.S.B. operational staff is 12,000.

Animal Health and Movement and pest control: This is common to the British and Irish lists, and appears in the Alliance list in the form of "Health and hygiene regulations for livestock and plant imports". It appeared in the Government of Ireland Act 1920 among the functions proposed for the Council of Ireland (viz "railways and fisheries and the contagious diseases of animals in Ireland"). Estimated expenditure 1973/74 in Republic is £7m (non-capital - £0.4m:capital £6.6m); N.I. £4m. R.I. Government staff involved number about 800 with costs of £2m.

Fisheries: Included in the Irish and British lists and in the 1920 Act. Expenditure 1973/74 is estimated at Republic £5.22m (non-capital £2.02m: capital £3.20m.) and N.I. £0.8m. Republic staff costs 1973/74 are £0.35m, with numbers involved at 120, exclusive of BIM staff totalling 250.

Forestry: As a likely non-contentious area with existing good relations north and south and with the British Forestry Commission. Expenditure 1973/74 is estimated at: Republic £7.70m (non capital £3.7m; capital £4.0m); and N.I. £3.3m. Staff involved in Republic number 1,000 at a cost of £2.9m.

Telecommunications are referred to in the SDLP list and "Broadcasting" in the Irish list. Certain negotiations are already taking place in this area. Expenditure on broadcasting in the Republic, 1973/74, is £4.36m (non-capital £3.63m and capital £0.73m). The N.I. figure is not available. Direct P. & T. staffing and costs are negligible but R.T.E. employs over 1,500.

/Foreign

Foreign Trade Promotion has been mentioned in discussions as a possible function upon which agreement as to devolution might be reached. "Marketing" appears on the British list. Expenditure by Coras Trachtala 1973/74 is estimated at £2.25m, all non-capital; their staff number 180. Industry and Commerce staff are put at 15 and costs £0.07m. Northern figures are not available.

Miscellaneous: A number of packages could be made up from expenditures ^{as those} such/ concerned with cultural, communications and registration (or archival) services; for instance

- . art galleries/museums/libraries and so on
- . road safety/driver testing and licensing/vehicle inspection and control
- . Land Registry/Registry of Deeds/Public Records Office.

Largely, only staff costs are involved on these services. In the last mentioned category there would be a relatively large number - upwards of 370 at an expenditure of over £1m.

Regional development has come up in various forms - as an internal north/south matter and also as an EEC matter. It appears on the SDLP list and is matched on the British list by "General regional planning and development, including special studies of border areas". It is a rather generalised description and so far as direct expenditure on physical investment is concerned might not, perhaps, be pressed in view of the EEC implications for us. The term is capable of application, not only to economic investments (e.g. in industry), but to a wide range of infra-structural expenditures - roads, housing, water supplies: these latter are debatable items and inappropriate for priority listing in view of inequalities North and South. There is, however, a strong case to press for devolution of regional planning functions (see British description above) - where this is conceived as meaning that the Council should develop a physical development plan for the entire island on the lines for example of the Buchanan Report in the South and the Wilson Report in the North.

Declan.

This includes The Deputy

Gallagher's reply to the

Taoiseach's statement -

which you may find

useful.

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Please return to

Sean O'Riordan, Taoiseach's
Office.

SUNNINGDALE CONFERENCE

Roinn an Taoisigh.

9th January, 1974.

Progress Report

<u>FUNCTION</u>	<u>DEPARTMENT</u>	<u>PROGRESS TO 7/1/1974</u>	<u>PROSPECTS</u>
1. DECLARATION ON N.D.-	Foreign Affairs in consultation with other Ministers and Attorney General.	Draft agreement incorporating declaration being considered: progress depending on other items in communique.	-
2. COUNCIL OF IRELAND:			
- Institutions and Functions	Public Service in consultation with Finance and Foreign Affairs	Discussions held with Depts. *Informal exchange of views on 18/12/73 with N.I. counterparts.	First draft report on functions due by 15th January.
- Financing*	Finance in consultation with Foreign Affairs	Meeting on 20/12/73 with U.K. Treasury and Northern Ireland officials in London - exchange of views: Memoranda on hypothecation, financial implications, audit and financing of issues from Central Fund being prepared	Functions must be decided at least generally before financing can be settled: this applies also to institutions
3. LAW AND ORDER:			
- Policing:-	Justice in consultation with Foreign Affairs and Attorney General	Briefing talks on 4/1/74 with N.I. Office in London	First draft of Bill on Police Authority being examined: up to 4 months to get Bill to circulation stage.
- Complaints Procedure (Par. 16):-	" "	Being Considered.	
- Legal Commission:	Justice in consultation with Attorney General	First meeting of Legal Commission fixed for 16th January, 1973.	-
- Steps to bring to trial persons guilty of murder in N.I.:	" "	Order made 20/12/73 (1861 Act).	-
- Human rights:-	Justice in consultation with Public Service and Attorney General	For examination by Council of Ireland.	-
4. FORMAL CONFERENCE	Foreign Affairs in consultation with other Ministers and Attorney General	Progress dependent on other items. Notice will be necessary to enable secure venue to be provided.	-

*D epts. Industry and Commerce, Transport and Power, Local Government, Agriculture & Fisheries, Lands, Health, Labour and Office of Public Works.

Dub. 1/2/73

CONFIDENTIAL

ANGLO-IRISH TALKS

*Roinn an Taoisigh
December 1973*

ANGLO-IRISH TALKS.

TABLE OF CONTENTS.

I.	GENERAL SUMMARY	p 1
II.	SUMMARY OF GOVERNMENT DECISIONS.	p 6
III.	OUTCOME OF OFFICIAL TALKS WITH BRITISH 28TH AND 29TH NOVEMBER, 1973.	p 14
IV.	COUNCIL OF IRELAND -	p 24
	(1) Functions	
	(2) Structures	p 44
	(3) Financing	p 48
	(4) Main Staffing Problems.	p 56
V.	LAW AND ORDER -	
	(1) Common Law Enforcement area	p 65
	(2) Policing	p 75
	(3) Human Rights.	p 77
VI.	STATUS OF NORTHERN IRELAND.	p 82
VII.	STRASBOURG CASE.	p 88
VIII.	NORTHERN IRELAND CONSTITUTION ACT, 1973.	p 92
IX.	FINANCE	p 95
	(1) Financial impact of Northern Troubles on Republic	
	(2) British Subsidy to Northern Ireland	p 96
	(3) Cost of Equalising Public Services North and South	p 100
X.	STATISTICAL COMPARISONS BETWEEN REPUBLIC AND NORTHERN IRELAND	
	- Economic	
	- Social	
	- Demographic	
	- General.	

APPENDICES

1. STATEMENT BY SECRETARY OF STATE ON LAW AND ORDER -
19th October, 1973. p. 109

2. BRITISH DOCUMENT OF 22nd NOVEMBER, 1973, on INTER-
PARTY CONSULTATIONS. p. 111

3. SECRETARY OF STATE'S SPEECH IN NORTHERN IRELAND DEBATE
22nd November, 1973. p. 115

4. MEMBERS OF NORTHERN IRELAND EXECUTIVE DESIGNATE AND OF
POLITICAL PARTIES. p. 121

5. POLICY STATEMENTS BY NORTHERN IRELAND PARTIES.

Unionist ——— p. 127

Abrenner ——— p. 130

SDLP ——— p. 132

The material in this brief was prepared by the Departments of Finance, Foreign Affairs, Justice, the Public Service, the Taoiseach and the Attorney General.

Position Papers

CLGA + Pdlw p. 66

Status p. 82

Conf. Structure p. 44.

Function p. 43.

1. The talks will concern -

- (1) a Council of Ireland;
- (2) a common law enforcement area, policing, and human rights; and
- (3) the Status of Northern Ireland.

2. These items are arranged in an order different from the order in which they appear in paragraph 112 of the British White Paper Northern Ireland Constitutional Proposals. This may give rise to some differences at the Conference since the British are reluctant to change their order. They argue that the Unionists can only speak with frankness on a Council of Ireland when they know what we intend to do about the Status of Northern Ireland; and in fact may give more when they know our intentions on status. Our argument is the obverse of this - we may be able to meet the Unionists case on the Status of Northern Ireland only when we know what they have in mind for a Council of Ireland, and what the British commitment to a Council etc. is.

3. Similarly, the SDLP members have been saying that they will not go into the Executive unless the British and Unionists give a sufficient commitment to a Council of Ireland. This means that substantial agreement on a Council next week is essential to the formation of an Executive in the North.

4. On the question of a Council, the British have indicated that the Unionists have so far not accepted that a Council should have a Parliamentary tier. It may be that they are cautious on this because of the power and prominence it could give to the "wreckers". If, however, a Parliamentary tier is conceded, there will probably be some debate on the issue of whether it should be made up by equal numbers of representatives from North and South. (On this, the Government proposals are that it should be constituted broadly in proportion to the population of the two parts of the island). There will probably also be considerable reservations by the Unionists on the proposed decision-making and review powers of the Parliamentary tier.

5. On this, the main decision-making power in question appears to be the power to decide on the future evolution of a Council. This, it could be argued, would give the Unionists, through democratically elected members, a substantial right to control the future evolution of a Council. A Parliamentary Assembly would also provide a means by which the Government here and the Executive in the North could keep the legislatures in both parts of the island aware of what is going on, at first hand, in a Council.

6. The basic document on the functions of a Council is the Appendix to the Government decision of 4/5th September, 1973, listing a number of functions in which a Council could have an executive, harmonising, or consultative role. ^{It is in Annex I of the document in this brief on Council of Ireland - functions.} This has been given to the British and other interests. The Unionists, we understand, object strenuously to the concept of harmonisation. They may also be less than willing to accept a list of functions as long as that proposed. Estimates are that if all the executive functions listed were transferred from Government Departments, and the staff operating these functions were transferred with them, the total number of staff transfers involved would be approximately 6,000 and the total staff costs, including salaries etc. would be about £17 million.

7. The Government's basic position on the financing of a Council is that initially it should be financed by direct Government grants. This appears to be generally acceptable. The development of a Council to the point where it has "own resources" financing is, however, a point on which there may be argument. Under the relevant Government decision, this objective should be aimed at within 3 years. The British have considerable reservations on the subject of "own resources". They would, however, see no great objection to the hypothecation of a percentage of an existing tax to a Council, based on the functions which a Council would be performing. They say that they could not see a Council, at this stage in any rate, with powers of taxation, enabling it to fix the rates or incidence of a tax. Undoubtedly, the Unionists will have similar views, probably in a more extreme form.

8. In relation to common law enforcement, policing and human rights, the basic document is that handed to the British on 8th November, 1973. It is the second document in the part of this brief dealing with LAW AND ORDER. It should be borne in mind that these three topics are

PKS

linked and form a single "package", which must contain all three. Briefly the links connecting the three topics are as follows -

- (a) by giving on the common law enforcement area our Government is providing that the Gardaí will pursue, arrest and charge terrorist offenders from the North and meeting the most fundamental criticisms of the Unionists, one of which will be that, while it is proposed that the Council of Ireland should have some control over police, we are not prepared in our policing proposals to provide for full co-operation between the two forces. The validity of such criticism is very much reduced by the common law enforcement provisions;
- (b) the common law enforcement provisions, however, if they stood alone, would leave the Council of Ireland with only an all-Ireland Special Court. Should the Council also have a Court governing such an important area as human rights the position is entirely different. Consequently the provisions of the common law enforcement area proposals are linked with the Human Rights Court.

The British will probably argue on human rights that there may be areas where there is room for improvement (e.g. while there is ample protection for an individual whose rights are being violated by the Government, there is not enough protection for the individual whose rights are being violated by another individual) but this situation might be met, by, for example, agreeing at the Conference that the Council of Ireland would look at the human rights situation North and South and recommend remedies appropriate to the respective jurisdictions. The Conference might, if it were felt helpful, go so far as to agree in a declaration that both Governments would agree to embody the principles of the Human Rights Convention into their respective legislations.

9. The British have been fairly emphatic that they saw no possibility of committing themselves in any way on the achievement at any time in the future of a common form of policing for the whole of Ireland. They say that their position is as stated in the public statement of 19th October, 1973, a copy of which incorporated in the Brief. In particular, they emphasise that there is no possibility of changing the name R.U.C. It is probable that they are backing the Unionists in this stand.

10. They say, however, that if a police authority is established in the Republic it could be loosely linked with the Northern Ireland police authority under the umbrella of a Council of Ireland. The limits of the Council's connection with the authorities would be that it could simply call for reports from both authorities. The British do not envisage any change in relation to the right to appoint the police authority as long as the Secretary of State retained^s his duties and functions in regard to policing. (Subsequent discussions have, apparently, indicated that the British are not quite as rigid on the question of policing as their official attitude might lead one to expect.) Other questions in regard to complaints against the police, police training etc. are dealt with in more detail in the brief.

11. The question of the Status of Northern Ireland is also dealt with in considerable detail under that heading in the brief.

12. A further point is that the British, at official level, although they have been very helpful on the proposals put forward by us, have been more or less non-committal on their own ideas of a Council. They have preferred to take the line that if we can get agreement with the Northern interests they will see what can be done. There is apparently not any great commitment on their part to the idea of a Council. It may be worth considering in relation to this stressing in a general way^{that} the size of the British subsidies to Northern Ireland - approximately £400 million in the current financial year - are many times the net British contribution to the E.E.C., about which there is such a current of unrest in the United Kingdom at present. A further point, which needs no stressing, is the history of violence in the North - decade after decade - since the 1920s, none of which is to the British advantage in the world scene - apart altogether from its cost in lives and suffering. This is to our disadvantage also. According to very rough estimates the present Northern troubles have cost our economy

some £100-200 million since 1969 in lost receipts from tourism, a lower rate of industrial development, higher defence and Garda costs etc. The cost to public funds alone is estimated at about £23 million in that period in higher army and garda costs, etc.

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Summary of Government Decisions.

I. Arrangements for the Conference.

1. That the delegation to represent the Government at the preliminary discussions on 6th December, 1973, consist of

the Taoiseach,
the Tánaiste,
the Minister for Local Government,
the Minister for Finance,
the Minister for Foreign Affairs,
the Minister for Posts and Telegraphs,
the Minister for Justice and
the Attorney General.

(S.18966 B 28th November, 1973)

2. That the Conference have the following Agenda:

- (a) The Council of Ireland
(b) Policing, Common Law Enforcement, and Human Rights; and
(c) The Status of Northern Ireland.

(S.18966 B 26th October, 1973)

3. That the issuing of joint invitations to the Conference from the two sovereign Governments be proposed.

(S.18966 B 26th October, 1973)

4. That the British Authorities be informed that the Conference should have an agreed neutral Chairman and that the Chairman should be nominated, if possible, by agreement between the Northern Ireland parties participating in the Conference.

(S.18966 B 26th October, 1973)

5. That the Conference be not limited to a specific duration.

II. Council of Ireland

A. General Principles

1. That there must be a composite and unified approach to the organisation, powers and finance of the Council and that the most

appropriate unified approach is through a consideration of the Council's political implications.

2. That the most important political question in relation to the Council is whether it should be a body subordinate to the two Governments to which certain functions will be devolved or an embryonic all-Ireland Government to which functions at present undertaken by the public authorities in the Republic and Northern Ireland will be ceded.

3. That a positive response to this question and to the associated political demand for a Council capable of evolution with no restrictions on its development will imply that the Council possess maximum authority and flexibility at the earliest possible date.

(S.18966 B 13th November, 1973)

B. Possible Functions and Structures

1. That the Council have three possible roles, viz.

- executive authority on all-Ireland basis for certain functions;
- a harmonising role in relation to functions retained by Northern and Southern administrations;
- a general consultative role.

(S.18966 11 September, 1973).

2. That the Council be generally centred around a model with two principal institutions, viz.

- a Ministerial-Executive body which would be the highest decision-making institution;
- a Consultative Assembly involving elected representatives from North and South.

(S.18966 11th September, 1973)

3. That the Ministerial-Executive body have the following features:-

- equal representation from North and South;
- membership varying according to agenda before the Council;
- members nominated by Northern and Southern administrations;
- A core of permanent members nominated respectively by the Government and the Northern Executive to which would be added other Ministers or Executive Members according to the Agenda;
- Members not obliged to be members of the Consultative Assembly but with right to membership in addition to essential right of audience
- operating, initially at least, on basis of unanimity;
- legislation arising from decisions to remain the responsibility of Ministers and Executive members within the Oireachtas and Northern Ireland Assembly respectively;
- chairmanship rotating between North and South from meeting to meeting;
- meeting at least monthly, alternately in Northern Ireland and the Republic.

(S.18966)

4. That the Consultative Assembly have the following features;

- representation in proportion to respective populations from Dáil and Northern Assembly, with a total membership of about 60;
- members to be nominated by Parliament and Assembly, not elected in the first instance; the possibility of direct election not to be excluded;
- seats of Northern Parties outside Executive which refuse to participate in the Council to be left vacant rather than distributed among other parties of the Northern Executive;

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- have advisory and review and such decision-making powers as may be agreed;

- members to be paid. (S.18966 11th Sept., 1973.)

5. That the Consultative Assembly have the power to make decisions, on the basis of an agreed majority, about the future evolution of the Council. (S.18966 11th Sept., 1973.)

6. That the Council will be served by a Secretariat. (S.18966 11th Sept., 1973.)

7. That the Secretariat have the following features:

- permanent and full-time staff, headed by a Secretary-General with powers of initiative;

- its staff to be employed by and directly responsible to the Council. (S.18966 11th Sept., 1973.)

8. That the Council enjoy a degree of financial responsibility and that the possibility of its having its own resources be considered. (S.18966 B 11th Sept., 1973.)

9. That an Economic and Social Committee be constituted to advise the Council on any matter affecting the economic or social well being of Ireland as a whole or any of its regions. (S.18966 B 13th Nov., 1973.)

Financing.

1. That financing by own resources be introduced subject to Constitutional amendment, within three years after establishment of Council of Ireland, the timing of its introduction to be settled at ^{the} Tripartite Conference.

2. The revenue of the Council to be provided by means of grants from the two administrations pending the introduction of own resources financing.

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3. That these grants, on the basis of an annual budget, be contributed on a basis to be agreed by the Minister for Finance and Minister for Foreign Affairs, according to nature of the service involved i.e. administrative expenses such as costs of salaries, headquarters etc. should be shared equally, and the remainder should be broadly in proportion to where expenditure or benefit accrues.

4. That British subsidies to Northern Ireland continue without involving British control of the Council's activities.

(S.18966 B 28th Nov., 1973)

IV. Policing, Common Law Enforcement, and Human Rights.

1. That the achievement at the earliest possible date of a combination of a common form of policing and a common law arrangement for the whole of Ireland under the Council of Ireland is desirable.

(S.1834 26th Oct., 1973).

2. That in the initial stages of a Council of Ireland, the necessary interim arrangements for policing should be:

(a) Establishment of a police authority in the Republic.

The two police authorities, North and South, would each be responsible for their own forces, but both would be responsible to the Council - provided that the Council is an effective decision-making body or that adequate safeguards are available to ensure effective policing in the event of a deadlock; and

(b) Establishment by the Council of a complaints procedure (including the appointment of a special ombudsman for policing in respect of the two forces, with a commitment

by both administrations to implementation of his recommendations.

- (c) Arrangement by the Council of institutional cooperation between the two forces, initially, at least, in non-sensitive areas.

(S.1834 26th Oct.1973; 2nd Nov.,1973).

3. That, if the principle of the desirability of a Common form of policing is accepted and the interim proposals above are agreed, the Irish Government would agree that with a view to the provision of Common Law Enforcement arrangements a Court or Courts be established in the two jurisdictions to try specified offences in the jurisdiction of arrest, that the Judges for the Courts be nominated by the Council of Ireland and that the Court or Courts comprise an equal number from each jurisdiction with a presiding Judge appointed in a manner to be agreed.

(S.1834 26th Oct.,1973; 28th Nov.,1973).

4. That these arrangements for policing and Common Law Enforcement should, however, be linked to arrangements for the incorporation into the domestic law of both jurisdictions in Ireland of the Human Rights specified in the European Convention of Human Rights and Protocols together with other human rights, involving, for example, protection from discrimination in the areas of employment and housing, and that a Council of Ireland Court of Human Rights deal with issues arising under this head; and

(S.1834 26th Oct.,1973).

5. That the Council of Ireland should also have a harmonization role in relation to legislation relevant to the common Court or Courts. (S.1834 26th Oct.,1973).

V. Status of Northern Ireland.

1. That in determining our position on the status of Northern Ireland, we should seek to meet the minimal requirements of responsible Northern Protestant opinion; that we should have regard to opinion in the Republic which attaches importance to the claim inherent in Articles 2 and 3 of the Constitution; and that we should not commit ourselves to legal action which would be invalidated by an appeal to these Articles unless we intend to repeal them.

2. That the formulation of our position on the status of Northern Ireland be enunciated through an oral declaration by the Taoiseach on the occasion of the final agreement covering such matters as the Council of Ireland, formation of the Northern Ireland Executive, policing and common law enforcement, etc.

3. That the declaration be in the following terms:-

The Irish Government declares:

(i) that those who live on this island comprise different elements all of which contribute to the life and culture of Ireland, and that each has the right to pursue its legitimate ends by peaceful means;

(ii) That accordingly the aspirations of a majority of the people of this island to its political unity shall be pursued through reconciliation alone;

(iii) That for so long as a majority of the people of Northern Ireland wishes to maintain its present status, the Irish Government will work in friendship and cooperation with the legitimate institutions that have been established in Northern Ireland with the full consent and participation of a majority of the Northern Ireland Assembly, this majority comprising representatives elected by the votes of both communities in Northern Ireland;

(iv) That accordingly, the Irish Government has agreed to join in establishing a Council of Ireland, within which its representatives will participate equally with the Northern Ireland Executive.

(S.18966 B 13th Nov, 1973)

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Conference arrangements

It is contemplated that the Taoiseach and Prime Minister will not be present throughout the Conference but that both will be available throughout. Both will, it is expected, play a very substantive role in the work of the Conference. In these circumstances the Taoiseach could stay in the Embassy for such portions of the Conference that he did not wish to participate in - this would provide an excellent opportunity for other Ministerial participants to get away from the Conference complex to consult the Taoiseach when desired.

British participation is likely to include, in addition to the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for Northern Ireland, probably some Minister from the Home Office and the Law Office. It is not contemplated that a Treasury Minister be present. On the British side, of course, there is the factor that immediate access is possible. The British side would like to know to-day, if possible, the extent of our official delegation so as to enable accommodation arrangements to be made. They contemplate the attendance of the full Administration, including the Executive, ^{from the North} and they will be generous about the presence of advisers in view of the fact that they have no back-up Civil Servants.

While the procedure to be adopted in the course of the Conference will have to be determined thereat, it will ^{most likely} begin by general statements on behalf of each participating party. It is envisaged that, in view of the unwieldy nature of the Conference, at a given point certain subjects may be allocated to sub-groups for study. Representation of all Parties would be contemplated on all such sub-groups. 2½ days have been

allocated for the Conference but while it is desired to keep up the pressure to achieve progress we feel that an extension would likely be provided if this should prove necessary.

Agenda of Conference

We indicated the following as our Government's proposals for the agenda:-

- 1. The Council of Ireland
- 2. Policing, common law enforcement and human rights
- 3. The status of Northern Ireland

While not objecting to this, the British side commented that it is phrased differently to the relevant portion of the White Paper and is in a different order, and the Unionists might have some comment to make on this. They said that they would convey our suggestions to Ministers. It was recognised furthermore, that the Agenda could only be finally determined at the Conference itself.

In the course of the discussion of the Agenda the British side argued in favour of the desirability of something on item No. 3, the status of Northern Ireland, being said at an early stage of the Conference in order to encourage the Unionists to be more forthcoming on other items. It was indicated ^{in a letter} that this was a very sensitive matter which would be dealt with at Ministerial level and that it was not something which could be discussed at official level. It was clearly contemplated that there should be as detailed a communiqué as possible at the end of the Conference so that it would be quite clear what had been agreed and that Parties in their press statements afterwards would be to that extent tied down. The end result would clearly be based on a compromise and even the Parties in the North would be anxious

that the basis of the compromise should be clearly spelt out so that the balance could be seen. The British side endeavoured to establish that anything which might be said in relation to the status of Northern Ireland should also be included in the communique. We said that we could not give an assurance on this point as it would be for the Taoiseach to decide in what manner he would wish to deal with this question publicly. The British side also stressed the importance of there being no delay in any statement by the Taoiseach on this subject if it were not being included in the communique itself.

Council of Ireland

The document given to the British on 6 September 1973 setting out our ideas on the possible functions and structure of a Council of Ireland, supplemented by Government decisions subsequently taken, gave rise to no substantive objections on the part of the British except as indicated hereunder. They made it clear, however, that they could not speak for the Parties from the North. They commented:

1. that Unionists are not yet fully committed to the Consultative Assembly tier of the Council; although they implied that, after making their point on this, they will probably acquiesce. In response to a suggestion that the British document of 21 November 1973 implied commitment by all Parties to its contents, the British side made it clear that it was solely a British statement but was unlikely to include anything totally unacceptable to any of the Parties.
2. In regard to the proposal that the Ministerial Executive body should have a harmonising role in relation to functions retained by Northern and Southern Administrations, the British gave us the advice that the Unionists are highly allergic to the word "harmonising";

On functions, the British proffered the suggestion that to help presentationally vis-a-vis the Unionists it would be desirable to group some of the functions in a manner which would make them appear less intimidating to the Unionists. They emphasised the desirability of highlighting areas of activity in which there is already a measure of cooperation. In the case of electricity generation and supply they saw some problems arising because of the high capital requirements involved and because of the over-all effect it might have on their economic policy. While the British side seemed to lean to the view that the Council should study all the possibilities after it was formed we made it quite clear that there would have to be agreement at the Conference on a certain minimum number of functions for assignment ab initio with Executive responsibility.

On the question of the British Government devolving reserve powers directly to the Council the British side were not too receptive but they did not rule it out altogether. They did seem to contemplate, however, the possibility of doing this by direct devolution of a reserve function to Northern Ireland. *in the first instance*

The British seemed to attach considerable importance to their involvement in an appropriate manner in matters before the Council in which they had either a reserve function or a heavy financial interest. It was pointed out to them that, as the Council represented the Irish dimension, a basic consideration from our point of view was that the Council should at all times be a North-South one and there should not be a British presence on the Council. While recognising their interest in certain subject matters there were many possible

channels of communication on the subject. There could be London-Dublin bilateral talks, London-Belfast bilateral talks and, conceivably, there could be talks between the Council or a delegation of the Council and the British side. The British seemed to contemplate that at certain meetings the British should sit in at the Council discussions as they would not welcome a situation where the Council took a final view on a subject in which they were concerned without their being involved. It was suggested on our side that the point should be accepted that the British Government should not be represented on the Council although there would have to be provision for relations between the Council and the British Government. The British side accepted this and seemed to envisage the possibility of private or separate meetings at which a British representative could be present where finance was concerned. The British do not require that they should be appointed to membership of the Council for subjects in which they are directly involved.

*Finance &
Social Council*

They thought that our idea of an Economic and Social Council was a sensible one and likely to be acceptable.

Financing of Council

The sense of the Government decision on financing was conveyed to the British and they seemed to accept this subject to the following. They exhibited caution in relation to "own resources" for the Council. Their clear preference was that grants should be given from both sides. They seemed to interpret our concept of "own resources" as giving the power of taxation to the Council. This they would find very difficult to accept because of -

1. the implications it would have for their economic policy generally;
2. the implications for a regional distribution of authority within the United Kingdom following the Kilbrandon report;
3. there is no significant extra taxable capacity in the North;
4. even if taxing powers were given to the Council it would still be necessary for the British Exchequer to pay supplementary grants to the Council. The need for such grants would be difficult to present to British public opinion.

The British side did accept that for some time to come they will have to pump substantial sums of money into the North.

The British side seemed however fairly ready to contemplate the hypothecation of certain taxes or parts thereof in order to provide "own resources" for the Council. The British would have preferred that a specific period, such as three years, should not be spelt out for the introduction of "own resources". We, on the other hand, made it clear to them that unless a particular period were specified at the forthcoming Conference the chances of introducing them later would be much less.

Policing, Common Law Enforcement and Human Rights

The British see no possibility of committing themselves in any way on the achievement at any time in the future of a common form of policing for the whole of Ireland.

In respect of the interim arrangements, their position is:

- (a) If a Police Authority were established in the Republic it could be loosely linked with the Northern Ireland Police Authority under the umbrella of a Council of Ireland. The limits of the Council's connection with the authorities would be that it could simply call for reports from both authorities. Under no circumstance could any change be envisaged in the present statutory functions reserved to the Secretary of State in relation to the Northern Ireland Police Authority - but this did not exclude the possibility that the Council might be given a right to be consulted about appointments to the authorities. The possibility of some further step, such as that the Secretary of State should have to make appointments from a panel nominated by the Council was not accepted - but did not seem to be

rejected with the same force as the idea of a total transfer to the Council of the right of appointment;

- (b) Proposals are at present in the pipeline for the setting up in Britain of new systems for dealing with complaints against the police. While these proposals are not necessarily incompatible with ours they do not regard ours as being politically acceptable given the limited policing role envisaged for the Council under (a);
- (c) The British thought that the proposal for institutional co-operation between the police forces on both sides - presented by us as initially at least involving non-sensitive expert areas - had great scope only if it were extended to include co-operation in the really vital areas of tackling terrorism. Co-operation between the police forces, including the CID and special branches, were mentioned as obvious areas. In its present form this proposal should not even be mentioned as it would raise Unionist hackles in that it would show us as shying away from co-operation in the areas that mattered.

In general, the British see attractions in the principle of a common law enforcement proposal and they think it contains the ingredients for a possible agreement. They see, however, political and practical problems and an analysis of these suggest that, in addition to our proposal, at least two others should be considered, viz.

- trial by the ordinary Courts in the place where the person is arrested;
- send the arrested person back to the area where the crime was committed for trial by an all-Ireland Court.

The main practical problem which they see in our proposal related both to the safety of witnesses and to dealing with witnesses who were unwilling to come to court. Other problems included the differences in the rules of evidence and in criminal laws north and south. The main political problem they saw was that the Unionists would question our whole commitment to and confidence in All-Ireland institutions, including the Council of Ireland, if we did not find it possible to envisage sending persons arrested in the south back to the north for trial by an all-Ireland court.

The British view is that human rights are now better protected by legislation in Northern Ireland than they are anywhere and it is simply not necessary, nor indeed appropriate since the Convention was designed primarily with continental legal systems in mind, to incorporate the ^{European} Human Rights Convention into Northern Ireland legislation. There may, of course, be areas where there was room for improvement (e.g. while there was ample protection for an individual whose rights were being violated by the Government, there was not enough protection for the individual whose rights were being violated by another individual) but this situation might be met e.g. by agreeing at the Conference that the Council of Ireland would look at the human rights situation north and south and recommend remedies appropriate to the respective jurisdictions. The Conference might, if it were felt helpful, go so far as to agree in a declaration that both Governments would agree to embody the principles of the Human Rights Convention into their respective legislations.

The British see no particular difficulty about the suggestion that the Council should have a harmonisation role in relation to legislation relevant to the proposed all-Ireland court. For presentational purposes they thought the word "harmonisation" was not, from the Unionist point of view the best one to use.

While there was obvious British interest in the common enforcement aspects of this whole question from the point of view of putting down terrorism, there is a very substantial difference between their thinking and ours on the question of policing. General Impressions human rights and it was recognised that the matter is now one for Ministers.

While the British were fairly open and frank in the official discussions which were conducted in a very friendly atmosphere, one had the impression that they were seeking to condition us as to what might not be acceptable to the Unionists and to persuade us that we should accept whatever is the best that we can get. Even where they were prepared

to go along with what we had in mind they made it clear that in many instances it was for the Parties in the North to decide. We, on the other hand, sought to make it clear to them throughout that it was vital that next week's Conference should produce a balanced over-all package so that the achievements of last week in Belfast could become an actual reality. Without adequate progress on the other items in the package there could be no real progress on any front.

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29th November, 1973.

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COUNCIL OF IRELAND

- (i) Functions
- (ii) Structures
- (iii) Finances
- (iv) Personnel.

The attached table summarises the attitudes of the different Parties to be represented at the Conference on the structure and functions of a Council.

The main anticipated difficulties on structure relate to the Unionist view that there should be no Parliamentary Assembly; and the view of other Northern Parties that if there is one it should be comprised of members from North and South on a 50-50 basis instead of according to population as proposed by the Government.

Different views on functions are taken by the parties to the Conference. They are illustrated in the following Table.

On the question of financing the British appear to accept the possibility of hypothecating a proportion of taxes to be named to a Council. This they would regard as "own resources". They also see difficulties in having "own resources" in operation in 3 years. Our view of "own resources" is wider. The notes in this part deal in more detail with structure, functions and finances.

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I Structure of a Council

Republic	Britain	S.D.L.P.	Alliance	Unionists
1) Ministerial/ Executive 2) Assembly 3) Secretariat 4) Ec. and Soc. Council (re Court or Courts).	Broad agreement.	(1) Council of Ministers (2) Assembly (3) Secretariat (4) All Ireland (5) Econ. Affairs Committee (6) Committee of Culture and the Arts.	(1) Ministerial level (7 from each) (2) Does not object to inter-parliamentary advisory body (20 each) (3) Secretariat.	Apparently what is envisaged is a Ministerial body but with requirement for 75% vote of support in Dáil and NI Assembly on all its policy decisions.

II Membership basis and basis for Council decisions

Republic	Britain	S.D.L.P.	Alliance	Unionist
<u>Executive level</u> Equal membership North/South. How we envisage a Core of permanent members + ad hoc additions - but (as approved by Government on 11 Sept. '73) proposed to British a wholly variable membership.	No specific proposals	Equal (5 from each side) (Chair to rotate)	Equal membership N/S - 7 from Dublin Govt. - 7 from NI Executive.	Equal membership N/S and attended by reps. of Westminster. Chair to rotate (Open to Press)
<u>Assembly level</u> <u>Proportionate</u> - Total membership of about 60. Membership nominated by Dáil and NI Assembly in proportion to respective population. - paid membership.	No specific proposals	<u>Equal</u> 25 from Dáil. 25 from NI Assembly.	<u>Equal</u> - suggests 20 members each from Dáil & NI Assembly to be elected by PR.	Unanimous but 75% support in Dáil and Assembly required for policy decisions by Council. Unionists may be presumed to have agreed to HMG paper of 21/11/73 and therefore by implication accepted a Consultative Assembly - but no proposals have come from them.

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III Functions - outline

Republic	Britain	S.D.L.P.	Alliance	Unionists
<p>(1) Executive (2) Harmonising (3) General Consultative.</p>	<p>The Council should have some <u>executive</u> and <u>harmonisation</u> functions as well as a <u>consultative</u> role.</p>	<p>The Council should have <u>exclusive executive</u> functions in certain fields. It should also have the powers to <u>harmonise</u> structures, laws and services in both parts of Ireland as well as a <u>consultative</u> and <u>advisory</u> role.</p>	<p>(1) Advisory Functions on which it recommends to the two Assemblies. (2) Functions over which the Council itself would have control.</p>	<p>"..discuss matters in the social and economic sphere which require coordinated action by the Govts. of the Rep. and of N - discuss social and economic affairs with view to reaching a joint approach of regional policy with the EEC". - discuss progress in the elimination of terrorism. - may discuss means of fostering better understanding between the differing political aspirations held by the peoples of the British Isle. [Unionist reference to 75% support in Dail and Ass. for Council on "matters of policy" implies <u>some</u> executive type decisions/</p>
<p><u>Actual functions suggested</u> <u>Executive Responsibility</u> Tourism; Electricity generation and supply; Meteorological services. Lough Carlingford Administration of Animal health and</p>	<p>Public transport systems roads and motorways; airports and harbours; inland navigation; electricity.</p>	<p>exclusive executive functions to include: (1) Tourism (2) Electricity. (3) Regional Development. (4) Telecomm. (5) a major role in</p>	<p><u>Council control</u> (1) Tourism promotion (2) Existing joint inter-Government schemes. (3) Health & hygiene regulations</p>	<p>(See above)</p>

Republic	Britain	S.D.L.P.	Alliance	Unionists
<u>Executive Responsibility (Contd.)</u>				
movement and pest control; Operation of CAP; Encourage marketing of agricultural products; Administration of EC Farm Modernisation Scheme; Agricultural Research; Fisheries. Forestry; Wildlife Conservation.	Land drainage; inland waterways; fisheries, animal health and movement; pest control.	<u>the control of police in both parts of Ireland</u>	for livestock and plant imports.	
*Industrial Development and promotion abroad within defined limits; Industrial Research, Design, Patent Rights, etc.; Company/Registration; North/South trade promotion; Foreign Trade promotion. Housing; Road Construction (National routes); Combined purchasing by public bodies; Road safety, propaganda; Driver Licensing and testing; Vehicle inspection/testing; Vehicle control; traffic control measures; Cross-border projects (bridges, etc.); Water and sewerage schemes in border areas; Subject to further examination.	Industrial development; stimulation of small industries; mines and minerals; development of local resources of raw materials (e.g. steel and oil); management development; Marketing; scientific research and development; industrial design; industrial studies, consultancy services; tourism.			

Republic	Britain	S.D.L.P.	Alliance	Unionists
<u>Executive Responsibility (contd.)</u>				
Planning and Construction Research, technical standards etc.;				
Pollution Control. (Amenity development) Certain aspects of education; Scientific research and development.	Aspects of education; child welfare (including adoption); general health.			
Industrial training;				
All-Ireland Manpower and Placement Service;				
Redundancy appeal claims.				
Management development.				
Registration of births, marriages and deaths;				
Health emergency matters - ambulance services, etc.;				
Health advisory bodies;				
Health services.				
*Social Security.				
Arts Councils, Colleges of Art, Art Galleries, Museums, Public Libraries, Orchestras etc.	General regional planning and development, including special studies of border areas; social and recreational			
Establishment of Irish Law Commission.	facilities; water supply and pollution.			
Land Registry, Registry of Deeds and Public Records Office.	There are undoubtedly many matters of substantial mutual interest such as			
Red Cross.	tourism, regional			
Broadcasting.	development, electricity and			
*Will probably be changed.	transport. (Par. 110 of White Paper.)			

Republic	Britain	S.D.L.P.	Alliance	Unionists
<u>Executive Responsibility (contd.)</u>				
Control of Council of Ireland expenditure; Regional development				
<u>HARMONISING ROLE</u>				
Harbours; Public transport services.				
Elimination of obstacles to closer co-operation in agricultural matters generally.				
Joint industrial projects.				
Geological survey. Mineral and gas exploitation.				
Curriculum co-ordination; Technical education; Encourage establishment of all-Ireland professional institutes (Accountancy, etc.).				
Industrial safety, Health and welfare inspection services.				
Conciliation in labour matters.				
Harmonisation of Northern and Southern Social Welfare Schemes.				
Law reform harmonisation.				
Civil Defence.				
Harmonise postal, telephonic and telex services.				
Computer development; Data co-ordination. Public sector staff training, recruitment, etc.				

Republic	Britain	S.D.L.P.	Alliance	Unionists
<u>CONSULTATIVE ROLE</u>				
<p>Transport matters generally;</p> <p>Agricultural matters generally;</p> <p>Identification of common interests Field of industrial development*²</p> <p>Miscellaneous local government matters.</p> <p>Education matters generally.</p> <p>Labour matters generally.</p> <p>Cultural matters generally.</p> <p>Banking and credit policies;</p> <p>Economic policies;</p> <p>Taxation policies.</p> <p>EEC policies</p> <p>Planning.</p>			<p><u>Advisory Functions</u></p> <p>(a) Security (and Policing?) with immediate brief to draw up proposals for Common Law Enforcement area.</p> <p>(b) Regional and physical development.</p> <p>(c) Agricultural dev. and fishing.</p> <p>(d) Transport.</p> <p>(e) Power.</p> <p>(f) Matter relating to EEC Common policy.</p>	
<u>Common Law Enforcement Area</u>				
<p>A Police Authority should be established in the Republic;</p>	<p>Par.1(e) of HMG agreed Paper states:</p>			
<p>The two police authorities in the North and the South should be each responsible for their own forces, with both responsible to the Council of Ireland;</p>	<p>The Council should be able to play a useful role in relation to certain subjects reserved for the time being to the United Kingdom Government and on which HMG would need to be represented. How this might be done needs to be agreed between the three</p>			
<p>a complaints' procedure in respect of the two forces, including a special ombudsman for policing, should be established by the Council with a commitment by the administrations concerned that the recommendations of the ombudsman would be implemented in both jurisdictions;</p>				
<p>* Subject to further examination.</p>				

Republic	Britain	S.D.L.P.	Alliance	Unionists
<p>if the principle of the desirability of a common form of policing is accepted, a Court or Courts should be established in the two jurisdictions to try specified offences with a view to the provision of common law enforcement arrangements;</p> <p>that the Judges for the Courts should be nominated by the Council of Ireland that the Court or Courts comprise an equal number from each jurisdiction with a presiding Judge appointed in a manner to be agreed.</p> <p>These arrangements for policing and common law enforcement should, however, be linked to arrangements for the incorporation into the domestic law of both jurisdictions in Ireland of the human rights specified in the European Convention of human Rights and Protocols together with other human rights.</p>	<p>Governments concerned. Among the matters to be examined should be the concept of common law enforcement area, the question of extradition processes and what role it might play in the law and order field.</p>			
<p>FINANCING:</p> <p>1. That financing by own resources be introduced subject to Constitutional amendment, within three years after establishment of a Council of Ireland, the timing of its introduction to be settled at Tripartite Conference.</p>	<p>IV Financing of</p>	<p>a Council</p>	<p>Independently financed with its own sources of finance in addition to grants from Dublin and Belfast from time to time.</p> <p>Initially direct subvention from Dáil and NI Assembly on per capita basis (largely secretarial expenses and tourist promotion costs)</p>	<p>Jointly borne by the Dublin and Stormont Governments.</p>

Republic	Britain	S.D.L.P.	Alliance	Unionists
<p>2. The revenue of the Council to be provided by means of grants from the two administrations pending the introduction of own resources financing.</p> <p>3. That these grants, on the basis of an annual budget, be contributed on a basis to be agreed by the Minister for Finance and Minister for Foreign Affairs, according to nature of the service involved i.e. administrative expenses such as costs of salaries, headquarters etc. should be shared equally, and the remainder should be broadly in proportion to where expenditure or benefit accrues.</p> <p>4. That British subsidies to Northern Ireland continue without involving British control of the Council's activities.</p> <p>/S.18966B 28th Nov. 1973/</p>			<p><u>Then</u> the Council should produce a scheme for its own financing for consideration by both legislative bodies.</p>	

NOTES:

1. The agreement of Fianna Fail to the Government's proposals on the structure of a Council may be presumed. As regards functions, Mr. Lynch stated at Baldonnell on 17 September, 1973, that they should include security, economic matters (including E.E.C. regional policy) tourism.
2. As regards British representation on a Council, the Unionist position is that the Council "will consist of an equal number of representatives of the Government of Northern Ireland and the Republic and be attended by a representative of the Westminster Government".

Council of Ireland - Functions

1. The Government decided in September last that the Council should have three possible roles, viz:

- Executive authority on an all-Ireland basis for certain defined functions;
- a harmonising role in relation to functions retained by Northern and Southern Administrations;
- a general consultative role.

2. For details of the specific functions which the Government may cede to the Council of Ireland, please see attached Annex L. A document outlining possible roles and structures of the Council, including the detailed functions listed in the Annex hereto, was given to the British authorities on the 6th September, 1963.

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3. The Government decided at the same time that the Council should have a role in the area of policing, provided that this function in relation to Northern Ireland was devolved to it by the British Government; and that under the auspices of a Council of Ireland a common Code of Human Rights be operated by, a Court of Human Rights and a common Court system for certain offences be established. These decisions of the Government have since been expanded and clarified. Because of their importance, they are treated as a separate item in this brief and are not dealt with here; however, a role for the Council of Ireland in Policing, Common Law Enforcement and Human Rights is a most important element in our package of proposed functions.]

4. At the official level talks in Dublin on the 28th-29th November, the British side indicated substantive acceptance of our list of functions, subject to the following comments:-

Firstly, each suggested function should be examined separately.

Secondly, one had to have particular regard to the cases in which Whitehall had a direct interest, either because these functions were reserved to Westminster or because of the financing aspect.

Thirdly, they saw particular difficulties in our giving Executive functions in respect of social security and health services to the Council; some aspects of the CAP, foreign trade and certain EEC matters would also have to be looked at more closely.

Fourthly, they emphasised the desirability of highlighting areas of activity in which there is already a measure of co-operation.

Fifthly, while the British side seemed to feel that the Council should study all the possibilities after it was formed, it was made quite clear to them that there would have to be agreement at the Conference on a certain minimum number of functions with Executive responsibility for assignment ab initio to the Council.

5. At these talks the British side felt it would be necessary to devise appropriate machinery for conveying their views to the Council in regard to matters in which they had either a reserve function or a heavy financial interest. At first they talked of introducing a UK voice into the Council when British interests were involved. It was pointed out to them that a basic consideration from our viewpoint was that the Council should at all times be a North/South one; the British point of view could be heard, where necessary, through London-Dublin bilateral talks, London-Belfast bilateral talks or even, conceivably, through talks between the Council and Britain. It was suggested on our side that the British Government should not be represented on the Council, although there would have to be provision for relations between the Council and the British Government.

The British side accepted this and envisaged the possibility of private or separate meetings at which a British representative could be present where finance was concerned.

6. The Northern Parties have divergent views as to the kind and extent of functions which the Council might exercise:

- The SDLP position is close to our own in distinguishing between executive, harmonising and consultative roles for the Council. Their list of exclusive executive functions comprises tourism, electricity, regional development, telecommunications and control of police.
- The Alliance Party distinguishes between advisory functions and functions over which the Council itself would have control; the latter might comprise tourism promotion, existing joint intergovernmental schemes and health and hygiene regulations for plant and animals.
- The Unionist Party has not specifically proposed or identified executive functions for the Council. Their views are that the Council may discuss various subjects - e.g. matters in social and economic sphere which require co-ordinated action by both Governments; social and economic affairs, with a view to reaching a joint approach on regional policy with the EEC; progress in the elimination of terrorism; and means of fostering better understanding between the different political aspirations held by the peoples of the British Isles. However, their assent to the British Government agreed paper of the 21st November and their view that Dail and Assembly support for Council decisions "on all matters of policy" is necessary [Unionist document presented at Inter-Party talks in Belfast in early November] imply a degree of acceptance of some executive-type decision-making powers for the Council.

7. The British have suggested that it would help presentationally vis-a-vis the Unionists to group some of our proposed functions together in a manner which would make them appear less extensive and, therefore, less intimidating to them. A draft list which seeks to meet this requirement is attached (Annex 2). It does not attempt to list all the functions listed in Annex 1. ->

8. Since the Summary of Possible Functions of a Council of Ireland has been given in its present form to most interests concerned in the present Conference it would probably be unwise to depart from it now - certainly in the initial stages of any negotiations.

The British have also indicated reservations on certain functions in which they have a general economic interest - for example, electricity which they say could be difficult for them to hand over because of their interest in electricity prices as part of their general counter-inflation policy.

The following are some further observations by the Department of Finance on the proposed transfer of certain functions to a Council.

Energy Sector

The point has been made that the transfer of executive functions to the council would involve large scale redundancies in the E.S.B. if it was decided that the two Boards should be merged. In fact, the Fletcher Investigation Group has already found that the E.S.B. was overstaffed and stated that they would not be surprised if a detailed study would reveal that a reduction of 10% to 20% in staff were possible. (The E.S.B. have, in fact, reduced their staff by 3% over the last few years.) With regard to Bord na Móna, it is difficult to imagine a Council of Ireland having a fuel policy that would ignore the use of peat. Peat resources are, however, a wasting asset and it is expected that, at the present rate of usage, all existing bogs will be worked out by the end of the century. On that score the activities of Bord na Móna would come to an end unless the Bord got involved in new projects e.g. horticulture on cutaway bogs.

Common Agricultural Policy

The operation of CAP is listed among the areas of executive responsibility of the proposed Council but it has also been acknowledged that there is a need for a detailed study of the problems raised. Insofar as executive responsibility is defined as including policy making, the inclusion of the CAP in this category is considered inappropriate until such time as there is a change in the representation of Ireland (north and south) in the EEC Council of Ministers. Policy formulation at present is the responsibility of the Ministers in Dublin and London in their capacity as Council members. The day-to-day administration of the CAP and farm modernisation scheme is a matter that could easily be transferred to the Council. Other analogous EEC schemes e.g. farm retirement scheme (Department of Lands) and the new mountain and handicapped area scheme, when it comes into operation, could also be included.

Marketing of Agricultural Products

Executive responsibility for marketing of products rests with various Boards, North and South, and with private and co-operative enterprises. It is difficult to see how a Council of Ireland could have executive responsibility in this field. It could, however, play a very useful role in co-ordination and harmonisation of activity, not alone in marketing but also in the promotion, transport, grading and quality control and public health inspections of agricultural goods.

Industrial Development and Foreign Trade promotion

11. It is considered that the items would not be appropriate for administration by a Council of Ireland Executive without further study. In relation to industrial promotion the differing schemes of incentives and the different framework in which they are operated on both sides of the Border, as well as the competition for jobs would make it very difficult to have co-operation.

Housing and Roads Construction

A proposal to regard these as priority functions for transfer to executive responsibility to a Council of Ireland should be subject to further study of the problems involved.

Science and Technology

The proposed new Board for Science and Technology which, it is anticipated, will be in operation in about six months time will be charged with responsibility for promoting co-ordination of all scientific and technological activity within the State. It would have an interest in the following areas which have been designated as matters of executive responsibility for the proposed Council of Ireland - Industrial Research, Design, Patent Rights, Agricultural Research, Fisheries, Energy, Meteorological Services, Planning and Construction Research and Pollution Control. The Board would also be interested in mineral and gas exploration, Computer development, etc. which are areas where the Council of Ireland is seen in a harmonisation role. It is felt that co-ordination of these services on an all-Ireland basis should take into account the proposed establishment of the new Board.

Social Welfare

In addition to ^{the cost} (£3 million per annum for the State and £7 million from employers/employees) of bringing our present flat-rate social insurance benefit rates up to the level of their Northern Ireland counterparts, full harmonisation would also involve:-

(a) social insurance: introduction of wage-related pensions (we will have wage-related unemployment and disability benefit from April 1974). No estimate of cost is available but full wage-relation of all pensions would certainly cost tens of millions of pounds. The question of introducing a wage-related retirement pension scheme is under active consideration at the moment but a considerable amount of research is required before concrete proposals could be formulated. Extension of social insurance to

the self-employed (especially the farming community) would also be involved. This, of itself, should not be substantially costly as equivalent savings on the social assistance front would be expected.

(b) social assistance: complete restructuring of present services to give assistance of same scope and at same levels of British Supplementary Benefits scheme. The cost would probably be in region of £30 million p.a.

The 1969/70 figure of £143 million for full harmonisation upwards of our services is probably too high now, in view of the very substantial improvements in services provided for in the current year. It is, however, unlikely to be less than about £80 million.

There is no sign at present that member State of the EEC are prepared to agree to so far reaching a development as the EEC's Social Fund taking over the function of equalising the cost of a common social security policy.

National Parks and Monuments

~~1.~~ These are additional items which might be reconsidered.

SUMMARY OF POSSIBLE FUNCTIONS OF A COUNCIL OF IRELAND

DEPARTMENT /S CONCERNED	NATURE OF COUNCIL'S INVOLVEMENT		
	EXECUTIVE RESPONSIBILITY	HARMONISING ROLE	CONSULTATIVE ROLE
Transport and Power	Tourism Electricity generation and supply: Meteorological services.	Harbours: Public transport services	Transport matters generally.
Carlingford Lough Commissioners	Administration of Carlingford Lough.		
Agriculture and Fisheries	Animal health and movement and pest control: Operation of CAP: Encourage marketing of agricultural products: Administration of EEC Farm Modernisation Scheme: Agricultural Research: Fisheries.	Elimination of obstacles to closer co-operation in agricultural matters generally.	Agricultural matters generally.
Lands	Forestry: Wildlife Conservation.		
Industry and Commerce	Industrial Development promotion abroad within defined limits: Industrial Research, Design, Patent Rights, etc: Company Registration: North/South trade promotion: Foreign trade promotion.	Joint industrial projects. Geological survey. Mineral and gas exploitation.	Identification of common interests field of industrial development.

40

DEPARTMENT /S
CONCERNED

NATURE OF COUNCIL'S INVOLVEMENT

DEPARTMENT /S CONCERNED	NATURE OF COUNCIL'S INVOLVEMENT		
	EXECUTIVE RESPONSIBILITY	HARMONISING ROLE	CONSULTATIVE ROLE
Local Government	Housing; Road Construction; Combined purchasing by public bodies Road safety propaganda; Driver licencing and testing; Vehicle inspection/testing; Vehicle control; Traffic control measures; Cross-border projects (bridges, etc.); Water and Sewerage schemes in border areas; Planning and Construction Research, technical standards, etc.		Miscellaneous local government matters
Local Government (and certain other Departments)	Pollution Control.		
Education	Certain aspects of education; Scientific research and development.	Curriculum co-ordination; Technical education; Encourage establishment of all-Ireland professional institutes (Accountancy, etc.);	Education matters generally.
Labour	Industrial training; All-Ireland Manpower and Placement Service; Redundancy appeal claims. Management development.	Industrial safety, health and welfare inspection services; Conciliation in labour matters.	Labour matters generally.

47

DEPARTMENT/S CONCERNED	NATURE OF COUNCIL'S INVOLVEMENT		
	EXECUTIVE RESPONSIBILITY	HARMONISING ROLE	CONSULTATIVE ROLE
Health	Registration of births, marriages and deaths; Health emergency matters - ambulance services etc. Health advisory bodies; Health services. ∅		
Social Welfare	Social Security. ∅	Harmonisation of Northern and Southern Social Welfare Schemes	
Taoiseach's Department of Education	Arts Council, Colleges of Art, Art Galleries, Museums, Public Libraries, Orchestras, etc.		Cultural matters generally
Justice Industry and Commerce	Establishment of Irish Law Commission.	Law reform harmonisation	
Justice*	Land Registry, Registry of Deeds and Public Records Office		
Defence	Red Cross	Civil Defence	
Posts and Telegraphs	Broadcasting	Harmonise postal, telephonic and telex services.	
Finance	Control of Council of Ireland expenditure; Regional development	Computer development; Data co-ordination, Public sector staff training, recruitment, etc.	Banking and credit policies; Economic policies; Taxation policies; EEC policies Planning
General	∅ Presently being reconsidered by the Government		

* Policing Human Rights and Law Enforcement are covered by Par. 3 of the text.

43

Proposed Executive Functions of a Council of Ireland

1. Cultural - Art Galleries and Councils, Museums, Public Libraries, Research and Development etc., Orchestras, Art Councils etc. *J.M. R.I.*
2. Registration and Archives - economic, social, legal, statistical, historical, etc.
3. Communications - Broadcasting -
4. Agricultural Services - Animal Health and Movement, Joint Marketing, Research, Operation of CAP, Forestry and Wildlife, etc. *Fisheries*
5. Social Services - Health emergency matters, health advisory bodies, Red Cross etc. *Spork*
6. Industrial and Economic Services - Training, Manpower and Placement, Management Development; promotion of tourism, industrial development and foreign trade abroad; North/South trade; electricity generation, etc. *Tourism: (93 & 11) 1/2*
7. Environment and Development Services - Major Roads, ancillary road services, regional development (including cross-border areas), pollution - especially marine pollution, housing, planning and construction etc. *delet*
8. Miscellaneous Services - Meteorology, Carlingford Lough, Irish Law Commission etc.

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Council of Ireland - Structures

1. The following are the Government's decisions in relation to the structures of the Council of Ireland:

- 1. The Council should be generally centred around a model with two principal institutions, viz.
 - a Ministerial-Executive body which would be the highest decision-making institution;
 - a Consultative Assembly involving elected representatives from North and South.

2. The Ministerial-Executive body should have the following features:-

- equal representation from North and South;
- members nominated by Northern and Southern administrations;
- a core of permanent members nominated respectively by the Government and the Northern Executive to which would be added other Ministers or Executive Members according to the Agenda;
- Members who are not obliged to be members of the Consultative Assembly but who have a right to membership in that body, in addition to essential right of audience;
- operating, initially at least, on basis of unanimity;
- legislation arising from its decisions to remain the responsibility of Ministers and Executive members within the Oireachtas and Northern Ireland Assembly respectively;
- chairmanship rotating between North and South from meeting to meeting;
- meeting at least monthly, alternately in Northern Ireland and the Republic.

3. The Consultative ^{Advisory} Assembly should have the following features;

- representation on a proportional basis from Dail and Northern Assembly, with a total membership of about 60;

45

9

- members to be nominated by Parliament and Assembly, not elected in the first instance, the possibility of direct election not to be excluded;
 - seats of Northern Parties outside Executive which refuse to participate in the Council to be left vacant rather than distributed among other parties of the Northern Executive;
 - have advisory and review and such decision-making powers as may be agreed;
 - members to be paid.
4. The Consultative Assembly should have the power to make decisions, on the basis of an agreed majority, about the future evolution of the Council.
5. The Council should be served by a Secretariat.
6. The Secretariat have the following features:
- permanent and full-time staff, headed by a Secretary-General with powers of initiative;
 - its staff to be employed by and directly responsible to the Council.
7. An Economic and Social Committee should be constituted to advise the Council on any matter affecting the economic or social wellbeing of Ireland as a whole or any of its regions.

British reactions

2. At the official-level talks in Dublin on the 28th-29th November, 1973, the document of the 6th September which contained the substance of most of the above decisions gave rise to no substantive objections on the part of the British except as indicated hereunder. They made it clear, however, that they could not speak for the Parties from the North. They commented:

1. that Unionists are not yet fully committed to the Consultative Assembly tier of the Council; although

they implied that, after making their point on this, the Unionists will probably acquiesce.

2. With regard to the suggestion that the Parliamentary body have a representation on a proportional basis from the Dail and Northern Assembly the British indicated that all Parties in the North would prefer a 50-50 representation. In regard to the suggestion that the Parliamentary body should have advisory, review and such decision-making powers as may be agreed, the British thought that the decision-making portion of this would be difficult for the Unionists.
3. The suggestion that the Consultative Assembly should have the power to make decisions on the basis of an agreed majority about the future evolution of the Council would, in the British view, be a question on which the Unionists would be very wary indeed.
4. While agreeing to our ideas about the Secretariat, the British raised the question about interim loans of staff to get the Council under way until such time as the Secretary-General had been appointed and he had recruited his own organisation.

Belfast Agreement

3. The British agreed statement of the 21st November, 1973, (the "Belfast Agreement") covered the following points in relation to the Council's structures:

- (a) its bipartite nature ("though arrangements will be necessary to safeguard HMG's interests in the area of finance and other reserved subjects");
- (b) a two-tier structure, the second being advisory and consultative;
- (c) operating at government level on the basis of unanimity.

In response to a suggestion at the official-level talks of the 28th-29th November that the British document of the 21st November implied commitment by all the Northern Parties to its content, the British side made it clear that it was solely a British statement but was unlikely to include anything totally unacceptable to any of the Parties.

Probable Unionist Views

4. It may, therefore, be expected that the chief opposition to our proposals on the structures of the Council will come from

representatives of the Unionist Party and that they will make the following points:

- they have never proposed a Consultative Assembly (although this agreement to the HMG statement of the 21st November implies acceptance of it);
- apart from proposing that decisions of the Council be unanimous, they have also held that "the Council will require a 75% vote of support in the Dail and the Northern Ireland Assembly on all matters of policy".
- they will react most strongly to the fact that decisions about the future evolution of the Council will be made, on the basis of an agreed majority, in the Consultative Assembly, where their strength will be about 5 - 8 seats out of a total of 60. ["Agreed majority" has been explained as that which will ensure that the consent of a majority of the Northern representation in the Consultative Assembly (e.g. 11 out of 20, or 51 out of 60 in the whole Assembly) will be necessary for further evolution.]

An answer to these points is that

- (1) a Consultative Assembly composed of elected representative with powers of decision on the evolution of a Council is one of the best guarantees that a Council would not evolve in a way that was unacceptable to the Unionists; and
- (2) a Consultative Assembly would ensure effective liaison between a Council and the legislative authority in both North and South.

48

COUNCIL OF IRELAND

Financing

The text of the Government decision of 28/11/73 on financing a Council of Ireland is set out below:-

- (1) that financing by own resources* should be introduced, subject to Constitutional amendment, within three years following the establishment of the Council, the timing for its introduction to be settled at the Tripartite Conference;
- (2) that, during the initial period following the establishment of the Council, the revenue of the Council should be provided by means of grants from the two administrations North and South;
- (3) that, pending the introduction of own resources financing, the Council's revenue, from grants, North and South, should, on the basis of an annual budget, be contributed on a basis to be agreed between the Minister for Finance and Minister for Foreign Affairs, according to the nature of the service involved, i.e. administrative expenses such as costs of salaries, headquarters etc. should be shared equally, and the remainder should be financed broadly in proportion to where the expenditure or benefit accrues; and
- (4) that British subsidies to Northern Ireland should continue without involving any British control of the Council's activities.

*The own resources system to be adopted should be one involving a rate of taxation such that the contribution from the Republic would be designed to cover approximately the cost of the Council expenditure in the territory of the Republic, any excess of expenditure in Northern Ireland being met by the British subsidy.

RESERVED

This decision followed on two Memoranda submitted by the Minister for Finance (1/11/73 and 20/11/73) and two Memoranda by the Minister for Foreign Affairs (2 and 21/11/73). A number of matters raised in these Memoranda are worth reiterating as background to the present Government decision.

The Foreign Affairs Memorandum of 2/11/73 distinguished two possibilities for a Council of Ireland:

- (1) that it be a sub-ordinate body:
- (2) that it be a superior body.

If it were decided that the Council be a subordinate body then its financing should be proportionate to existing expenditure on merged services north and south for the year 1974/75, and subsequently financing should be divided as follows:

- (a) Administrative costs 50-50,
- (b) cost of expenditure abroad to be allocated according to the benefits of such expenditure to the two economies,
- (c) cost of expenditure within the Island to be allocated according to the estimated expenditure in each area.

If it were decided that the Council of Ireland should be a superior body then it would have to have its own resources and this could be done in either of two ways or by a combination of both as follows:

- (a) Hypothecation of revenue as suggested by the British.
- (b) by having its own taxing powers. The own resources system suggested would be one involving a rate of taxation such that the contribution from the Republic could be designed to cover approximately the cost of the Council expenditure in the territory of the Republic, any excess of expenditure in Northern Ireland being met by the British subsidy.

Pending the establishment of an own resources system the expenditure of the Council would be financed by grants, the contribution from the Republic to be designed to cover approximately the cost of the Council expenditure in the territory of the Republic, any excess of expenditure in Northern Ireland being met by the British subsidy.

A paramount consideration in working out these formulae would be to keep the British subsidy within a Northern Ireland area so that Britain would not be seen either to be subsidising the Republic or to be exercising financial control over the activities of a Council of Ireland within the area of the Republic.

Regarding criteria for expenditure the Memorandum envisaged that the Council, while initially dividing its expenditure between North and South in proportion to the present levels of this expenditure, would ultimately have to spend according to need regardless of the border and this would require the evolution of objective criteria, but this would be sometime in the future.

The Finance Memoranda did not rule out an own resources system in the future and pointed out that meanwhile there was a choice between voted and non-voted grants by the Northern and Southern (and possibly British) authorities. If a voted grant system was adopted this would be subject to annual review by the Dáil and this might be felt to be too much of a constraint on the operations of the Council. If however, the expenditure was non-voted (from the Central Funds) then it would not be reviewed annually and would be looked at approximately every five years as is the case with our contribution to the EEC Budget. This might be felt to be giving the Council a freer hand while not relinquishing Parliamentary control over its activities.

In relation to own resources the Department of Finance Memoranda pointed out that there were very few options open for new taxation, that the question of hypothecating revenue could be made difficult by the differences in the taxation base and rates North and South;

there was of course the possibility of the Council taking over the provision of services which generate their own revenue but this was unlikely to happen for some time.

The views of the main Northern Parties on the financing of a Council do not appear to have been worked out in detail. The Alliance have said that initial financing should be by direct subvention from Dáil and Assembly on a per capita basis. The SDLP say that it is essential that the Council should be independently financed and have its own sources of finance in addition to grants from the Dublin Government and the Executive. And the Unionists say that the costs of operating a Council should be borne jointly by the "Dublin and Stormont Governments."

Following is an extract from the Summary report (prepared in D/Foreign Affairs) on the discussions with British officials on 28/29 December:-

"Financing of Council

The sense of the Government decision on financing was conveyed to the British and they seemed to accept this subject to the following. They exhibited caution in relation to "own resources" for the Council. Their clear preference was that grants should be given from both sides. They seemed to interpret our concept of "own resources" as giving the power of taxation to the Council. This they would find very difficult to accept because of -

1. the implications it would have for their economic policy generally;
2. the implications for a regional distribution of authority within the United Kingdom following the Kilbrandon report;
3. there is no significant extra taxable capacity in the North;
4. even if taxing powers were given to the Council it would still be necessary for the British Exchequer to pay supplementary grants to the Council. The need for such grants would be difficult to present to British public opinion.

The British side did accept that for some time to come they will have to pump substantial sums of money into the North.

The British side seemed however fairly ready to contemplate the hypothecation of certain taxes or parts thereof in order to provide "own resources" for the Council. The British would have preferred that a specific period, such as three years, should not be spelt out for the introduction of "own resources". We, on the other hand made it clear to them that unless a particular period were specified at the forthcoming Conference the chances of introducing them later would be much less."

Other matters

The Department of Finance Memoranda also raised a number of other points, the main ones being that there should be provision in the Document setting up the Council for a Finance Officer who would be responsible for framing budgets etc., and that provision should also be made for the audit of the Council's expenditure, possibly by the Comptrollers and Auditors General both North and South reporting to the Council and/or the two Parliaments.

The question of a tripartite Exchequer Board which might apportion the financing of the Council's expenditure has not been raised at the official level talks. We are opposed to any formal British involvement at this level and would prefer such British control of expenditure or financing as might ultimately be involved to be exercised through the Northern Ireland parties to the Council. This would not preclude matters being raised in private discussions between the Irish and British sides e.g. Department of Finance and the Treasury.

Estimated expenditure from Current and Capital annual budgets
on functions listed, 1973/74.

53

This table is confined to Central Government expenditure.
The apportionment of total expenditure as between Central
Government and Local Authorities may distort comparisons
between North and South.

£m.

Function	Republic Total	N.I.*	UK subsidy*	Republic	
				Current	Capital
	(1)	(2)	(3)	(4)	(5)
Tourism;	9.31	2.2		6.55	2.76
Electricity generation and supply;	35.96	27.0		1.55	34.41
Meteorological services.	0.85	n.a.		0.85	-
Administration of Carlingford Lough.	n.a.	n.a.			
Animal health and movement and pest control	7.02	4.0		0.42	6.60
Operation of CAP		n.a.			
Marketing of agricultural products		n.a.	(2.3)		
Administration of EEC Farm Modernisation Scheme	1.60	n.a.		1.60	-
Agricultural Research	4.04	3.4		3.99	0.05
Fisheries	5.22	0.8		2.02	3.20
Forestry	7.70	3.3		3.70	4.00
Wildlife Conservation	0.11	n.a.		0.11	-
Industrial Development Promotion abroad within defined limits	2.42	0.1		2.42	-
Industrial Research, Design	2.00	0.1		2.00	-
Patent Rights, etc.	0.15	n.a.		0.15	-
Company Registration	n.a.	n.a.			
North/South trade promotion	n.a.	n.a.			
Foreign trade promotion(CTT)	2.25	n.a.		2.25	-
Housing	70.68	56.0		9.53	61.15
Road Construction	13.58	26.0		13.58	-
Combined purchasing by public bodies	0.03	n.a.		0.03	-
Road safety propaganda		0.1			
Driver licencing and testing) Vehicle inspection/testing)		0.6			
Vehicle control	n.a.	n.a.			
Traffic control measures		n.a.			
Cross-border projects (birdges, etc.)		n.a.			
Water and sewerage schemes in border areas		n.a.			
Planning and Construction Research, technical standards, etc.	0.35	n.a.		0.35	-

	£m.			Republic		
	Republic Total	N.I.*	UK subsidy*	Current	Capital	
Pollution Control	0.12	0.3		0.02	0.10	
Certain aspects of education	n.a.	n.a.				
Scientific research and development	0.53	n.a.		0.53	-	
Industrial training	} 3.30	} 13.2		} 2.80	} 0.50	
All-Ireland Manpower and Placement Service						
Redundancy appeal claims			0.03			
Management development			0.45			
Registration of births, marriages and deaths	0.06	0.1		0.06	-	
Health emergency matters - ambulance services, etc.	n.a.)					
Health advisory bodies	0.05)	98.7	(24)	0.05	-	
Health services(a)	84.40)			84.40	-	
Social Security(a)	141.16	61.5)	(50) + 24	141.16	-	
Arts Councils, Colleges of Art, Art Galleries, Museums, Public Libraries, Orchestras, etc.)	1.53	5.3		1.50	0.03	
Establishment of Irish Law Commission	n.a.	n.a.		0.79	-	
Land Registry, Registry of Deeds and Public Records Office	0.79	0.4		0.04	-	
Red Cross	0.04	n.a.		3.63	0.73	
Broadcasting	4.36	n.a.				
Control of Council of Ireland expenditure	n.a.	n.a.				
Regional development	n.a.	n.a.				
	400.09	319.9	(763) + 24.0	286.41	113.68	

(a) The sums attributed to N.I. health and social security services cannot be definitively apportioned: desirably they should be taken together.

UK SUBSIDY

The UK subsidy included above is divided into two types of payment

- 1) Payments which are included in the NI figures in column 2. These are indicated by brackets = (£-)
- 2) Payments which are in addition to the NI figures in column 2. These are indicated by a plus sign = +£-

There is a further substantial sum of grant-in-aid and regional employment premiums which enter into general NI exchequer expenditure but which are not included in the table as they cannot be allocated to any of the functions involved.

The UK subsidy may, therefore, be shown as follows in the context of the table:

1. Items identifiable in Table

National Insurance Funds	+ 24.0
Social Services	(50.0)
Health Services	(24.0)
Remoteness Grant	(2.3)

2. Other items

Regional Employment Premiums	10.8
Agricultural Subsidies	27.5
Grant-in-Aid	137.0

TOTAL:	275.6
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Main Staffing Problems in connection with the
Establishment of a Council of Ireland

Chief Executive

The chief executive of the Council (possibly to be designated Director-General or some such word) would presumably be appointed by the Council. There would clearly have to be agreement amongst the members of the Council and it is not envisaged that the Chief Executive could be appointed any other way.

Secretariat

The method of staffing of the Secretariat will to a large extent depend on basic way in which the Council of Ireland will operate. If it operates on the basis of providing policy directives on broad areas of common interest and allow the execution of these to be performed by existing Offices and Departments (or some amalgamation of existing offices) then the Secretariat need not necessarily be very large.

The question of providing for separate Departments in the Secretariat is also related to the precise rôle envisaged for the Secretariat. If its function is to develop policy alone then it would hardly be necessary to establish separate Departments formally. These would only be justifiable if the Secretariat had significant executive or operational functions.

Provision of Staff

A small Secretariat would be easiest to staff and initially at all events it would be most efficient and economical to second staff from the Irish Public Service and the Public Service of Northern Ireland. It is difficult to see where staff trained in public service work with experience of preparing legislation, dealing with public committees and other similar matters could elsewhere be found.

If there is to be direct recruitment which would slow matters a possibility would be to get the Civil Service Commission and its North of Ireland counterpart to do the recruiting jointly. Because of the strong criticism of Northern Ireland appointments over the last half century it is imperative that any method of selection must be seen to be fair and impartial from the start.

It could be envisaged that the very senior posts in the Secretariat could be filled by the Council (or perhaps some type of Personnel Committee of the Council or even of the Assembly) in consultation with the chief executive. Such appointments should ideally be kept to the minimum.

A point of considerable importance in relation to staffing is the location of the Council's Offices. If the location is to be a smallish provincial town in Northern Ireland there might be considerable difficulty in getting staff to transfer from both Dublin and Belfast. In relation to decentralisation of branches of Government Departments to Athlone and Castlebar the principle of voluntary transfers has been fully accepted. The unsettled situation in Northern Ireland might well deter many Irish civil servants from volunteering to transfer. This factor would however apply also even if there were direct recruitment. Transfers would clearly involve provision of housing and possibly local amenity development.

Terms of appointment, tenure and pay of Secretariat staff.

If staff are seconded they might retain their existing tenure. There would probably be no problem regarding things like working hours and such matters which would be rather similar in both administrations. Pay is a different matter and must assume a significant position in the context of a Council of Ireland. This is all the more so because co-ordination and harmonisation will be

the keynote of the transfer of various functions. Hitherto the State has taken the line in pay negotiations that rates of pay applied outside the jurisdiction should not be regarded as relevant. Developments on the EEC front are already causing some anxiety and difficulties could be increased and accelerated by the Council of Ireland concept which will clearly bring U.K. rates of pay - in the areas where they are higher - within the scope of domestic pay negotiations. The great burden of public service pay and its dominating position in the annual Budget together with the need to take all steps to reduce inflation postulates the exercise of the greatest caution in this area. Any formal linking of the police administrations North and South would involve close cooperation between the Northern Ireland Police Federation and the Gardaí Representative Body with the ultimate aim the establishment of identical rates of pay and conditions of service. The practical effect of this would be to generate pressure from both sides of the border for an extension of the more favourable features of the pay and conditions of each force to the other.

The following note estimates in some detail the numbers of staff and the staff costs involved in a decision to transfer all the executive functions listed in the Appendix to the Government decision of 4/5 September, 1973, on Possible Functions and Structures of a Council of Ireland.

The staff numbers total about 5,909, say 6000.

The staff costs come to about £16,700,000 a year, say £17,000,000.

ESTIMATES OF NUMBERS OF STAFF WHO WOULD BE TRANSFERRED FROM CENTRAL GOVERNMENT DEPARTMENTS AND OF THE COSTS INVOLVED IF THE EXECUTIVE FUNCTIONS MENTIONED IN GOVERNMENT DECISION OF 4/5TH SEPTEMBER, 1973, WERE TRANSFERRED TO A COUNCIL OF IRELAND.

(Costs have been increased by 1/3rd for overheads - pensions, services etc.)

<u>Function</u>	<u>Staff Numbers</u>	<u>Staff Costs</u>	<u>Notes</u>
<u>TRANSPORT AND POWER</u>		£	
Tourism	6	22,000	At operational level, Bord Failte employs 410.
Electricity Generation and Supply	4	15,000	At operational level, ESB employ 12,000. Bord na Mona employing over 5,000 is also involved.
Meteorological Services	314	1,000,000	
Carlingford Lough Commissioners	Not significant. In any event it now appears that the Commissioners are a Northern Ireland institution.		
SUBTOTALS	324	£1,037,000	
<u>AGRICULTURE AND FISHERIES</u>			
Animal Health Control	800	2,000,000	
Operation of C.A.P. and Farm Modernisation Scheme.	710	1,800,000	C.A.P., EEC farm modernisation schemes and the farm schemes of the Department are inter-related. The Agricultural Advisory Service, operated at count level and employing 700 at a cost of over £2.5 million, might also be involved.

<u>Function</u>	<u>Staff Numbers.</u>	<u>Staff Costs</u>	<u>Notes</u>
Encouragement of Agricultural Marketing.	10 (notional)	£ 30,000 (notional)	Marketing encouragement mainly involve statutory Boards e.g. Bord Bainne, Bord Gráin, Pigs and Bacon Commission - employing about 300.
Agricultural Research	400	1,000,000	Covers mainly Veterinary and seed research. The Agricultural Institute employing 1,145 is also involved.
Fisheries	120	350,000	Bord Iascaigh Mhara employing 250 is also involved.
SUBTOTALS	2,080	£5,150,000	
<u>LANDS</u>			
Forestry	1,000	2,900,000	
Wildlife Conservation - included in Forestry - not large.			
SUBTOTALS	1,000	£2,900,000	
<u>INDUSTRY AND COMMERCE</u>			
Industrial Development	2 (notional)	6,000 (notional)	Mainly involves IIRS employing 350 and Kilkenny Design Workshop.
Patent Rights	70	200,000	Costs largely recouped in fees charged.
Company Registration	15	40,000	
Foreign Trade Promotion	15	70,000	Mainly involves Córas Tráchtála employing 180.
SUBTOTALS	104	£322,000	

<u>Function</u>	<u>Staff Numbers</u>	<u>Staff Costs</u>	<u>Notes</u>
<u>LOCAL GOVERNMENT</u>			
Housing	300	1,050,000	Also involves local authorities with large numbers engaged on housing, and National Building Agency employing 40.
Road Construction	100	400,000	Also involves local authorities who give considerable employment on road construction especially in rural areas.
Combined Purchasing by Public Bodies	15	50,000	
Road Safety Propaganda	10 (estimate)	30,000	
Driver licensing and testing	120	300,000	Also involves local authority staff in relation to issue of licences.
Vehicle Inspection and testing	30 (estimate)	60,000 (estimate)	
Vehicle Control	included in Vehicle Inspection etc.		
Traffic Control etc.	do.		
Cross Border Projects	-	-	Mainly a local authority function.
Water and Sewerage Schemes in Border Areas.	-	-	Mainly a local authority function.
Planning and Construction	-	-	Mainly involves An Foras Forbartha which employs about 180 at a cost of £600,000.
Pollution Control	5 (estimate)	15,000	This is a new function with possibilities of great expansion.
	<hr/> 580	<hr/> £1,905,000	

<u>Function</u>	<u>Staff Numbers</u>	<u>Staff Costs</u>	<u>Notes</u>
<u>HEALTH</u>			
Registration of Births, Marriages and Deaths.	33	70,000	
Health Emergency Matters	-	-	A question of co- operation between cross-border health authorities.
Health Advisory Bodies	5	20,000	Mainly concerns bodies which advise Minister for Health such as National Health Council etc.
Health Services	300	1,000,000	This would mean the transfer of most of the Department of Health. It would also involve the Health Authorities and Hospitals who now spend well over £100 million a year
SUBTOTALS		800 (approx.) £1,090,000	
<u>SOCIAL WELFARE</u>			
Social Security	800 (approx.)	2,500,000 (approx.)	The main costs involved would be the £33 million contribution to the Social Insurance Fund which would be substantially increased under harmonization with Northern Ireland.
SUBTOTALS	800	£2,500,000	
<u>TAOISEACH/EDUCATION</u>			
Arts Council	-	-	Only a few employees in Arts Council.
College of Art	1 (estimate)	400,000 (estimate)	Now financed by Grant of £137,000.
National Museum	32	90,000	
National Library	47	120,000	
National Gallery	47	110,000	
SUBTOTALS	127	£224,000	

<u>Function</u>	<u>Staff Numbers</u>	<u>Staff Costs</u>	<u>Notes</u>
<u>EDUCATION</u>			
Certain aspects of Education			This has not been developed by the Department of Education.
Scientific Research and Development	-	-	Apart from the Institute for Industrial Research and Standards and the Agricultural Institute, already referred to, this mainly involves the Universities. The National Science Council under Department of Finance could also be considered.
<u>LABOUR</u>			
Industrial Training	1 (estimate)	4,000	Mainly carried out by ANCO which costs £3 million p.a. and employs 717 and by CERT which costs £225,000 p.a. and employs 22.
Manpower and Placement Service	170	500,000	
Redundancy Appeals	7	32,000	Also involves a part-time 24 member board.
Management Development	1 (estimate)	4,000	Mainly involves Irish Management Institute which is a private body although State assisted to the extent of £300,000 p.a. plus capital assistance.
SUBTOTALS	<hr/> 179	<hr/> £540,000	

<u>Function</u>	<u>Staff Numbers</u>	<u>Staff Costs</u>	<u>Notes.</u>
		£	
<u>JUSTICE</u>			
Establishment of Irish Land Commission	-	-	A proposed new body.
Land Registry and Registry of Deeds	370	1,000,000	Most of basic staff costs recovered through fees (£655,000).
SUBTOTALS	370	£1,000,000	
<u>DEFENCE</u>			
Red Cross	1 (estimate)	4,000	The Irish Red Cross Society is in receipt of a grant of £37,000 p.a.
SUBTOTALS	1	£4,000	
<u>POSTS AND TELEGRAPHS</u>			
Broadcasting	2	8,000 (estimate)	The body primarily involved is R.T.E. which employs over 1,500 and receives a grant of the net receipts for licence fees - approx. £4 million.
SUBTOTALS	2	£8,000	
<u>FINANCE</u>			
Control of Council of Ireland Expenditure	-	-	Depends on volume of functions devolved to the Council,
Regional Development	4	20,000	Other Departments would also be involved.
SUBTOTALS	4	20,000	
GRAND TOTALS	<u>5,909</u>	<u>£16,700,000</u>	

All the figures in this document are provisional estimates, subject to verification. They do, however, reflect orders of magnitude.

65
STRICTLY CONFIDENTIAL

Common Law Enforcement, Policing and Human Rights

The first paper in this part is a copy of a document handed to the British on 8th November, 1973.

Introduction. Three separate papers on these three topics are included in this section. It should be borne in mind however that the three topics are linked together and form a single 'package' which must contain all three. The existence of any one of the three is entirely dependent on the existence of the other two. Briefly the links connecting the three topics are as follows -

- (a) By giving the Common Law Enforcement Area our Government is providing that the Gárdaí will pursue, arrest and charge terrorist offenders from the North and meeting the most fundamental criticisms of the Unionists, one of which will be that, while it is proposed that the Council of Ireland should have some control over police, we are not prepared in our policing proposals to provide for full co-operation between the two forces. The validity of such criticism is very much reduced by the Common Law Enforcement provisions.
- (b) The Common Law Enforcement provisions however, if they stood alone, would leave the Council of Ireland with only an All-Ireland Special Court. Should the Council also have a Court governing such an important area as Human Rights the position is entirely different. Consequently the provisions of the Common Law Enforcement Area proposals are linked with the Human Rights Court.

Handed to Britain on 8/11/73

Policing, Common Law Enforcement and Related Matters

66

1. Especially in view of the security problem, the achievement at the earliest possible date of a combination of a common form of policing and common law enforcement arrangements for the whole of Ireland under the Council of Ireland is desirable
2. The Irish Government recognises that, in the initial stages of a Council of Ireland, interim arrangements for policing will be necessary and that these should be as follows:-
 - (a) a Police Authority be established in the Republic; that the two police authorities in the north and the south would each be responsible for their own forces, but both would be responsible to the Council of Ireland - ~~(provided that the Council is an effective decision making body)~~ that adequate safeguards are available to ensure effective policing in the event of deadlock;
 - (b) a complaints' procedure in respect of the two Forces, including a special ombudsman for policing, be established by the Council with a commitment by the administrations concerned that the recommendations of the ombudsman would be implemented in both jurisdictions; and
 - (c) the Council arrange for institutional cooperation between the two Forces, initially at least in non-sensitive expert areas.
3. If the principle of the desirability of a common form of policing is accepted and the interim proposals above are agreed the Irish Government would agree that with

a view to the provision of common law enforcement arrangements a Court or Courts be established in the two jurisdictions to try specified offences, that the Judges for these Courts be nominated by the Council of Ireland and that the Court or Courts comprise an equal number from each jurisdiction with a presiding Judge appointed in a manner to be agreed;

4. These arrangements for policing and common law enforcement should, however, be linked to arrangements for the incorporation into the domestic law of both jurisdictions in Ireland of the human rights specified in the European Convention of Human Rights and Protocols together with other human rights, involving, for example, protection from discrimination in the areas of employment and housing and that a Council of Ireland Court of Human Rights deal with issues arising under this head; and
5. The Council of Ireland should also have a harmonisation role in relation to legislation relevant to the proposed common Court or Courts.

STRICTLY CONFIDENTIAL

68

Common law enforcement area.

Government's proposals.

1. Paragraph 112 of the White Paper referred to a conference which would discuss, inter alia, "the provision of a firm basis for concerted Governmental and community action against terrorist organisations".
2. It is clear that the basis for present Unionist demands for changes in existing laws arises from the fact that persons accused of very serious crime are, apparently, permitted asylum in the Republic. It can be made clear at the conference that the Irish Government is equally convinced of the desirability of apprehending and punishing law-breakers and are equally desirous of overcoming illegal organisations. It can, however, be further suggested that the proposals made by the Irish Government would be (a) more generally acceptable (b) equally effective as those suggested by the Unionists (and considered in Annex A hereto). Furthermore, they have the advantage of not requiring a constitutional amendment.
3. The Irish Government has proposed; "A court or courts ... (to) be established in the two jurisdictions to try specified offences, that the judges of these courts be nominated by the Council of Ireland and that the court or courts comprise an equal number for each jurisdiction with the presiding judge appointed in a manner to be agreed."
4. The basic idea is that there should be a court for the whole island to enforce the criminal law against political subversives, whatever part of the island the offence was committed in, the trial to take place where the offender was arrested. The venue for the trial could be anywhere within the State when sitting here and anywhere in the North when sitting there. A permanent seat in both areas would be desirable.
5. Certain types of offences would be listed as scheduled offences (as in the Offences against the State Act at the present time) Certification as to which particular offences would have to be tried before the court would be required so that all listed offences would not go before the Court (so as to avoid the court having to deal with ordinary criminals).
6. Certification would be necessary, in any event, since the persons tried before the court would be denied their

constitutional right to trial by jury. In effect, the courts would have to be "special courts" within the meaning of Article 38 of the Constitution, their justification being that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. The constitutional right to trial by jury would be excluded from such courts (see Article 38 sub-paragraph 5).

7. The court would, therefore, not be a permanent court but would exist only so long as the ordinary courts with juries would not be able to deal with the problem of politically motivated crime.
8. Article 38 permits the creation of "special courts". Article 34 provides that justice is to be administered in courts established by law by judges appointed in the manner provided by this Constitution. It follows that if an amendment of the Constitution is to be avoided that the judges of the court must be appointed in the manner provided for under the Constitution, i.e. by the President on the advice of the Government. Accordingly the Council of Ireland could "nominate" the judge to the All Ireland court but the judge would have to be "appointed" in the manner provided by the Constitution. This would involve legislation which would provide for the appointment to the special court of judges from Northern Ireland or of persons qualified to be appointed judges there.
9. The court could consist of either five members or three members. The president of the court could be chosen by lot or alternatively the president could be a judge from the jurisdiction in which the trial is taking place.
10. While appeals from decisions of the Court could be to the normal appeal courts in each jurisdiction it appears undesirable in principle that this should be the procedure. Ideally the Council should have both a court and an appeal court, each being, in effect, a 'whole-island' of Ireland Court, and it would appear to be a wrong concept that an appeal from a 'whole-island' Court would lie to a 'part-island' Court. To exclude entirely here the possibility of a final resort to the Supreme Court on points of law would need an amendment of the Constitution.
11. Persons found guilty would undergo their sentence in the jurisdiction where they were sentenced. However, sentence could be served elsewhere by consent if such were provided for by law.
12. The difficulty of dealing with unwilling witnesses could be

overcome in the following way;

- (a) To enforce witness summonses here without giving access to the Courts would be in breach of the provisions laid down by the Supreme Court in the Quinn case. However, a right to apply to the High Court within, say, 14 days for an order that the summons need not be obeyed because of bona fide fear for life or liberty would meet this objection.
- (b) Alternatively, to apply penalties here for refusal to go to Northern Ireland would probably be in breach of the principles laid down in the Quinn case.
- (c) To allow the court to sit, for example in Northern Ireland, to hear witnesses while sitting here for the main trial would require complicated immunities to the accused when brought to be present at the hearing of evidence, as well as practical security problems.

13. The Court could determine its own Rules of Procedure in both jurisdictions. If necessary, the laws of evidence could be harmonised. The method of achieving the right to try persons here for an offence committed in Northern Ireland remains to be settled in detail. A possible method would be to schedule certain offences - murder, explosives, firearms, malicious damage etc. on the lines used in the Offences Against the State Acts - in Northern Ireland as being offences here when committed in Northern Ireland. Many such offences would be offences against laws which are identical, North and South - e.g. Offences Against the Person Act, 1861, Malicious Damage Act, 1861, Explosive Substances Act, 1883. Others would be offences against Northern Ireland Statutes which differ in some degree from the laws in force here. The former create no problem: the latter can be dealt with as follows:-

- (a) The particular section of the Northern Ireland Statute could be set out in the schedule;
- (b) If considered desirable, absolute uniformity of laws could also be achieved North and South.

In effect, our legislation would provide as follows:-

Any person who commits an offence set out in Schedule 1 of this Act in Northern Ireland shall be guilty of an offence in this State and shall, on conviction, be liable to ...

To prevent every such crime even when there was no terrorist element involved from going before the All-Ireland Court, cases would go before that Court only when the Attorney General North or South, certified that the particular case was inappropriate for trial before the ordinary criminal courts, as happens now in regard to the Special Courts.

7

14. While as at present proposed the Courts, while having a jurisdiction in both parts of Ireland would not have this jurisdiction conferred on it by the Council of Ireland but by the Oireachtas and the Northern Executive. This arrangement would not require amendment of our Constitution, but it should not be overlooked that ideally the Courts should be given their 'whole-island' jurisdiction by the Council of Ireland and this could be brought about by suitable amendment of the Constitution.

Extradition - Common Law Enforcement Area.

Unionist proposal.

1. The Unionists have suggested (see annex 4 to Green Paper) that either the "extradition treaty" (sic) should be re-negotiated or the British Isles made a common law enforcement area. The latter would be preferable. A warrant issued in Belfast would be executed in Dublin in the same way as it would be in Sheffield."

2. It would be possible to alter the present extradition law by;
 - (a) dropping the present exemption for political offences in relation to extradition to the North;
 - (b) excluding from present exemptions specified offences, for example murder, manslaughter etc.
 - (c) define "terrorist activities" and make them special offences outside the scope of the present exemption.

3. The above suggestions would run counter to the principles habitually contained in extradition agreements, including the European Convention on Extradition.

4. The "common law enforcement area" envisages (1) that a warrant for arrest issued in Northern Ireland would be handed to the Garda authorities, (2) that an arrest would be effected in pursuance of the warrant and (3) that there may or may not be a necessity to "back" the warrant and (4) the arrested person would be delivered to the security forces in Northern Ireland. This proposal would be unconstitutional as a result of the decision in the Quinn case (1965 I.R. 70) which, in effect, decided that there is a constitutional right to apply to the High Court conferred on every person who wishes to challenge the legality of his detention.

5. It might be possible to get over the constitutional difficulty by providing that an arrested person should first be brought before the District Court which would order that he be deliver

to the Northern authorities if the warrants were in order unless an application for habeas corpus was brought within a specified time. The only ground for such an order would be the invalidity of the warrant. There will, however, be serious practical difficulties. The Act would be certain to be subject to constitutional challenge, habeas corpus applications (and appeals) all of which will cause long delays with the person charged probably on bail.

6. The Unionist proposal for the amendment of the Extradition Act and the creation of a common law enforcement area (meaning thereby the automatic backing of warrants) would raise very considerable political objections from large sections of the population on both sides of the Border.

Mr. Bradford's proposal.

7. Mr. Bradford suggested (see Irish Independent 7.9.1973);

- (1) A free access zone on either side of the Border for the R.U.C. and Gardai.
- (2) A completely new extradition agreement between Britain and the Republic.
- (3) Overall direction of the R.U.C. to a committee of the Assembly.
- (4) Progressive review of the cases of all political prisoners.
- (5) A two-tier Council of Ireland.
- (6) Recognition by the Republic of the status of Northern Ireland.

8. Mr. Bradford's proposal in relation to a common Border corridor was supported by the New Ulster Movement in its submission in September 1973 to Mr. Whitelaw.

9. The legal objections to Mr. Bradford's proposals are as follows;

- (a) If the R.U.C. were to take persons out of the jurisdiction without giving persons full access to the Courts here, such a legal system would be unconstitutional (see Quinn case).
- (b) The R.U.C. operating in this State would be enforcing Northern Ireland law. This would be unlawful and unconstitutional as only the Oireacht can make law in this State. Accordingly it would be necessary to pass a law permitting the R.U.C.

so to act. Such a law would in effect make the R.U.C. a police force in this part of the country. It is very unlikely that such a law would be constitutional unless an "organ of State" in this country had control over the operation of the R.U.C. here.

10. The Bradford proposals would, therefore, involve an amendment of the Constitution. In addition it is clear that there would be considerable political objection to them.

11. A practical objection to the Bradford proposal for a border zone is that it would, in some ways, create three borders.

TRIPARTITE CONFERENCE

POLICING

CONFIDENTIAL

Government decision

The Government have decided that

"Especially in view of the security problem, the achievement at the earliest possible date of a common form of policing for the whole of Ireland under the Council of Ireland is desirable. However, the Government recognise that, in the initial stages of a Council of Ireland, interim arrangements will be necessary. The Government will, therefore, strongly urge on the United Kingdom Government that it agree to work towards a common form of policing and that, in the meantime, it agree that

- (a) the Garda Síochána and the Royal Ulster Constabulary account annually to the Council,
- (b) on specific matters, the Garda Síochána and the Royal Ulster Constabulary report at the request of the Council,
- (c) a complaints' procedure in respect of the two Forces, including a special ombudsman for police-affairs, be established by the Council with a commitment by the administrations concerned that the recommendations of the ombudsman would be implemented in both jurisdictions and
- (d) that the Council arrange for institutional cooperation between the two Forces, initially at least in non-sensitive expert areas."

[S.1834 26/10/72]

The above should be read in the light of the following decision:

- (1) that a Police Authority should be established in the Republic; and
- (2) that the two Police authorities, North and South, would each be responsible for its own force, but that both would be responsible to the Council of Ireland - provided that the Council is an effective decision-making body or that adequate safeguards are available to ensure effective policing in the event of deadlock in the Council.

[S.1834 2/11/73]

The fundamental thinking behind this concept is that the Council of Ireland must have some part in the control of police in Northern Ireland. Consequently, it must also have some part in the control of the Garda force.

The structure of the two forces must be considered to see how the Governments specific proposals, and the ideas underlying them, could be most effectively advanced.

Basically the Garda Síochána is regulated as follows:

- (a) The fundamental Government control has been given to the Minister for Justice under the Ministers and Secretaries Act, 1924.
- (b) The general direction and control of the force has been given to the Commissioner subject to the regulatory power reserved to the Minister for Justice.
- (c) The onus of keeping the force in existence and of supplying it with equipment etc. remains vested in the Minister for Justice.
- (d) The onus of providing and maintaining barracks and real property is vested in the Board of Works.

Basically the R.U.C. is regulated as follows:-

- (a) The function of providing the force, regulating its strength and equipping it is vested in the Police Authority which is appointed by the Secretary of State.
- (b) The general direction and control of the force is vested in the Chief Constable subject to regulations by the Secretary of State.
- (c) The appointment to and removal from senior posts is vested in the Police Authority subject to the approval of the Ministry.

Position paper given to British on 8/11/73

1. Especially in view of the security problem, the achievement at the earliest possible date of a combination of a common form of policing and common law enforcement arrangements for the whole of Ireland under the Council of Ireland is desirable.
2. The Irish Government recognises that, in the initial stages of a Council of Ireland, interim arrangements for policing will be necessary and that these should be as follows:-
 - (a) a Police Authority be established in the Republic; that the two police authorities in the north and the south would each be responsible for their own forces, but both would be responsible to the Council of Ireland - provided that the Council is an effective decision making body or that adequate safeguards are available to ensure effective policing in the event of deadlock;
 - (b) a complaints' procedure in respect of the two Forces, including a special ombudsman for policing, be established by the Council with a commitment by the administrations concerned that the recommendations of the ombudsman would be implemented in both jurisdictions; and

- (c) the Council arrange for institutional cooperation between the two Forces, initially at least in non-sensitive expert areas.
- 3. If the principle of the desirability of a common form of policing is accepted and the interim proposals above are agreed the Irish Government would agree (to the establishment of an all-Ireland Court or Courts).

British reaction at official level

They see no possibility of committing themselves in any way on the achievement at any time in the future of a common form of policing for the whole of Ireland.

In respect of the interim arrangements, their position is:

- (a) If a Police Authority were established in the Republic it could be loosely linked with the Northern Ireland Police Authority under the umbrella of a Council of Ireland. The limits of the Council's connection with the authorities would be that it could simply call for reports from both authorities. Under no circumstances could any change be envisaged in relation to the right to appoint the police authority as long as the Secretary of State retained his duties and functions in regard to policing. They agreed however that this position - even as their law regarding the Secretary of State's responsibilities now stood - did not preclude the possibility that the Council might be given a right to be consulted about appointments to the authorities. They felt that this was probably the maximum consistent with the present responsibilities of the Secretary of State and did not think that, without a basic change in those responsibilities, he could agree even to bind himself to make appointments from a panel nominated by the Council but on that point they seem to be less emphatic.

Note: Subsequent discussions between the Minister for Foreign Affairs, and the Secretary of State indicate that the British attitude is, in fact, less rigid than as stated at official level and that they will, at least, be prepared to discuss the question of appointments by the Council.

- (b) Proposals are at present in the pipeline for the setting up in Britain of new systems for dealing with complaints against the police. While these proposals are not necessarily incompatible with ours they do not regard ours as being politically acceptable given the limited policing role envisaged for the Council under (a);
- (c) The British thought that the proposal for institutional co-operation between the police forces on both sides - presented by us as initially at least involving non-sensitive expert areas - had great scope only if it were extended to include co-operation in the really vital areas of tackling terrorism. Co-operation between the police forces, including the CID and special branches, were mentioned as obvious areas. In its present form this proposal should not even be mentioned as it would raise Unionist hackles in that it would show us as shying away from co-operation in the areas that mattered.

(1) Both Governments would, by legislation, make Section 1 of the Convention part of the domestic law of the Republic and Northern Ireland (i.e. the Articles defining human rights and freedoms) and the provisions of the 1st Protocol dated 16th March 1966 (dealing with rights to possessions, education and free elections) and 4th Protocol, dated 16th November 1967 (dealing with liberty of movement).

(11) An All-Ireland Court of Human Rights would be established. It would comprise the Judges from the High Court of the Republic and the Republic and two Judges from the High Court of Court of Appeal in Northern Ireland. The four Judges would be appointed by the Council and to defend the interests of Ireland's would be represented by the Council of State in both instances.

(12) The Court would have jurisdiction over all matters of human rights in Northern Ireland and would be empowered to issue orders and awards of damages in respect of breaches of human rights.

STRICTLY CONFIDENTIAL

Tri-partite Conference;

All-Ireland Court of Human Rights

- (1) The Government has proposed arrangements -

"for the incorporation into the domestic law of both jurisdictions in Ireland of the human rights specified in the European Convention of Human Rights and Protocols together with other human rights, involving, for example, protection from discrimination in the areas of employment and housing and that a Council of Ireland Court of Human Rights deal with issues arising under this head".

- (2) The following matters arise in relation to these proposals;

- (i) Both Governments would, by legislation, make Section 1 of the Convention part of the domestic law of the Republic and Northern Ireland (i.e. the Articles defining human rights and freedoms) and the provisions of the 1st Protocol dated 20th March 1952 (dealing with rights to possessions, education, and free elections) and 4th Protocol, dated 16th November 1967 (dealing with liberty of movement).

- (iii) An All-Ireland Court of Human Rights would be established. It would comprise two Judges from the High Court or the Supreme Court of the Republic and two Judges from the High Court or Court of Appeal in Northern Ireland. The four Judges would appoint a President of the Court and in default of agreement the President would be nominated by the Court of Human Rights in Strasbourg.

- (iv) The Court would have jurisdiction to hear complaints of breaches of human rights legislation in whatever part of the island the breach is alleged to have occurred. Whilst a right of action for, say, assault would still exist and could still be tried

in the ordinary courts, a claim relating to a breach of the human rights legislation (i.e. against the executive alleging its breach) could only be heard by the Court. An individual could still apply direct to the Commission in Strasbourg if this course was preferred alleging a breach of the Convention. It could, however, be provided by Protocol to the Convention that for both Member States of the Council of Europe (i.e. the United Kingdom and Ireland) that a claim before the All-Ireland Court of Human Rights would comply with the requirements to exhaust domestic remedies in the whole island.

- (v) The Court would be jointly financed by the two Governments on a fifty-fifty basis.
 - (vi) The All-Ireland Court would not be a Court within the meaning of Article 34 of the Constitution. It would, however, be a body duly authorised by law to exercise limited functions of a judicial nature in matters other than criminal matters.
 - (vii) There would be created an office of "Defender of Human Rights" who would be available to give advice to applicants who wished to apply to the joint Court. Such an office would not preclude an applicant seeking private legal advice but would make available expert advice on the procedures of the joint Court and on the rights under the Convention. It would also have the effect of reducing the number of inadmissible claims as the Defender of Human Rights would only institute proceedings where he considered a claim lay.
 - (viii) The United Kingdom Government has made a Declaration under Article 25 of the Convention recognising the competence of the Commission to receive individual petitions. This Declaration will expire on 31st January next. The United Kingdom Government should be requested to agree to renewing its Declaration for an unlimited period in relation to Northern Ireland.
- (3) If the proposals of the Irish Government were accepted the result would be the creation of procedures which would be of potential benefit to everybody living in the two jurisdictions of this island. It must be recognised, however, that in addition political benefits would result. The creation of an all-Ireland Court linked to the Council would help to build confidence amongst members of the minority community of Northern Ireland in the political institutions which are being created. At the same time the creation of such a Court should not raise objections from members of the majority community (otherwise than from those who will in any event oppose the Council).

The problems adverted to by the British Officials at the meeting of November 28th-29th should be noted here. They are set out at page 8 of the report of the Secretary, Department of Foreign Affairs, and the main political problem which these Officials saw was that the Unionists would question our whole commitment to a confidence in All-Ireland institutions, including, of course, the Council of Ireland, if we did not find it possible to envisage sending persons arrested in the South back to the North for trial before an All-Ireland Court. A very real answer to this from a legal point of view is that irrespective of constitutional changes we have a firm decision of our Supreme Court that to send a person out of the jurisdiction of the Courts without giving him access to the Courts - by way of habeas corpus e.g. - is a breach of fundamental law. Habeas corpus with the inevitable appeal when refused would inevitably result in delays of months or more during which the accused would probably be on bail.

- (4) Prior to the publication of the Green Paper (October 1972) There had been discussion about the possibility of enacting a Bill of Rights in Northern Ireland. Such a Bill was suggested by the Unionist Party at the Darlington Conference in September 1972 (see page 35 of Green Paper) and by the Alliance Party at the same Conference (see page 61 of Green Paper). The S.D.L.P. recommended that the European Convention be made part of the domestic law of Northern Ireland (see page 79 of Green Paper). In the Green Paper the United Kingdom Government stated - "there is a wide body of opinion that a Bill of Rights should be enacted in Northern Ireland. There is much to commend this suggestion". A change of mind has obviously occurred. Although the White Paper (Part 4) was headed "A Charter of Human Rights", in effect the United Kingdom Government declined to accept the idea that a Bill of Rights should be enacted. Instead it outlined the "comprehensive provisions" which in its view would "constitute a charter of human rights for Northern Ireland". It then listed such matters as the creation of the Commissioner for Complaints, the fair employment code in the public sector, the report of the Working Party on job discrimination in the private sector. Part III of the Northern Ireland Constitution Act 1973 contained provisions entitled the "Prevention of Religious and Political Discrimination". It provided against discrimination in legislation and by public authorities, and established a Standing Advisory Commission on Human Rights. The title of this body is slightly misleading as its functions are to advise only in the field of discriminatory legislation and not in human rights generally.

- (5) At the meeting of officials in Dublin on 28th and 29th November the United Kingdom delegation expressed the view that there was enough legislation in Northern Ireland dealing with human rights and that it was not necessary to legislate for disputes between executive and citizens. It is, however, clear that neither the White Paper or the Constitution Act dealt adequately with the question of human rights and in particular made no provision for the protection of rights such as are protected by Article 3 of the European Convention. If the U.K. point that human rights as between individuals is of much greater importance is accepted, then a comprehensive Bill of Rights could be enacted North and South, and the jurisdiction to enforce it given to the proposed Court.

Status of Northern IrelandI Our Position

In relation to the question of how best to react to the British and Unionist requests that we in some way "recognise" or accept the present status of Northern Ireland, the Government has decided that:-

1. In determining our position on the status of Northern Ireland; we should seek to meet the minimal requirements of responsible Northern Protestant opinion: that we should have regard to opinion in the Republic which attaches importance to the claim inherent in Articles 2 and 3 of the Constitution; and that we should not commit ourselves to legal action which would be invalidated by an appeal to these Articles unless we intend to repeal them.
2. The formulation of our position on the status of Northern Ireland be enunciated through an oral declaration by the Taoiseach on the occasion of the final agreement covering such matters as the Council of Ireland, formation of the Northern Ireland Executive policing and common law enforcement, etc.
3. The declaration should be in the following terms:-
The ~~Irish~~ ^{of the Republic of Ireland} Government declares:
 - (i) That those who live on this island comprise different elements all of which contribute to the life and culture of Ireland, and that each has the right to pursue its legitimate ends by peaceful means;
 - (ii) That accordingly the aspirations of a majority

of the people of this island to its political unity shall be pursued through reconciliation alone;

(iii) That for so long as ^{by} a majority, ^{of} the people of Northern Ireland [~~wish to~~] maintain its present status, the ~~Irish~~ Government will work in friendship and cooperation with the [~~legitimate~~] institutions that have been established in Northern Ireland with the full consent and participation of a majority comprising representatives elected by the votes of both communities in Northern Ireland.

*of the Republic
Irish*

Section of

(Irish)

of the Republic

(iv) That accordingly, the ~~Irish~~ Government has agreed to join in establishing a Council of Ireland, within which ~~its~~ representatives will participate ~~equally~~ with the Northern Ireland Executive ~~and~~ *Irish*

*of the Irish Gov.
is that*

II Unionist Position

In a document circulated at the Conservative Party Conference on the 11th October which dealt, inter alia, with the Council of Ireland, Mr. Faulkner used the term "acceptance" rather than "recognition" by the South of the North's right "South determination". He said:-

"In our opinion the task of securing a stable and lasting political settlement in Northern Ireland can be made significantly easier by the cooperation of the Government and people of Southern Ireland. However, to give any

system that may prove acceptable to the majority of Unionist and Nationalist minded people in Northern Ireland, a good chance of success will require several major contributions from the South.

The first contribution which must be made is the acceptance by the South of the right of the people of the North to self-determination. The obvious advantages - of calming the fears of the Northern majority and of isolating those who believe in physical force - would be enormous. In reality this means asking Southern politicians to translate their verbal commitments to the idea that force will not be allowed to bring about a United Ireland into political and constitutional action".

The above statement represents a relatively mild expression of Unionist thinking on the question of the status of Northern Ireland. It is noteworthy that, in a Unionist document on the Council of Ireland of early November, it was proposed that the Tripartite Conference must achieve agreement on:-

- (i) The ending of the constitutional claim to the territory of Northern Ireland by the Republic.
- (ii) Recognition of the present constitutional status of Northern Ireland by a treaty between the Westminster and Dublin Governments.
- (iii) A recognition that only by the democratically expressed will of the Northern Ireland people voting in a Border Poll will that constitutional status be altered.

III British Position

The British White Paper of March 1973 listed acceptance of the status of Northern Ireland as the first objective to be achieved by the forthcoming Conference. The wording of the objective was:-

"The acceptance of the present status of Northern Ireland, and of the possibility - which would have to be compatible with the principle of consent - of subsequent change in that status".

At the official level talks in Dublin on the 28-29th November, we again told the British that our Government's proposals for the Agenda were:-

- (i) The Council of Ireland.
- (ii) Policing, common law enforcement and human rights.
- (iii) The Status of Northern Ireland.

While not objecting to this the British side commented that it was phrased differently to the relevant proportion of the White Paper and was in a different order, and that the Unionists might have some comment to make on this.

At these talks, the British side also argued in favour of the desirability of our saying something on the status of Northern Ireland at an early stage of the Conference in order to encourage the Unionists to be more forthcoming on other items. They endeavoured to establish that anything which might be said in relation to the status of Northern Ireland should also be included in the communique. They also stressed the importance of there being no delay in any statement by the Taoiseach on this subject if it were not included in the communique itself.

STRICTLY CONFIDENTIAL

"Recognition" issue.

Legal aspects

1. As a matter of international law the dispute concerning the Six Counties is a territorial one - the Irish State in its Constitution claiming that its territory includes the area of the Six Counties, the United Kingdom claiming that it is within its jurisdiction. The question of "recognition", therefore, is not whether the Irish Government will "recognise" the Northern Ireland Assembly or the "Northern Ireland Executive" or "Northern Ireland" ("Northern Ireland" has no international status) or the United Kingdom Government (it is already recognised) but whether the jurisdictional claim asserted in the Constitution will be abandoned and the territorial boundary of the United Kingdom "recognised".

2. Unionist spokesmen have from time to time suggested that their position on this controversy should be met by an amendment to Articles 2 and 3 of the Constitution. In a more sophisticated way the claim has been made by the Unionist Party in its election manifesto (see page 10) in the following way. It requires the "acceptance by the Republic of the right of the people of Northern Ireland to self-determination" and it aims at a solemn and binding agreement between the three Governments.

3. An acceptance of the concept that a majority of the Six Counties could decide to remain in or out of the national territory as it wished would involve, by implication, the acceptance of the fact that the Six Counties were not part of the national territory. This is because a majority in any specified area of a "national territory" have not the right to secede. By acknowledging that right there is an implied acknowledgment that the Six Counties is not part of the "national territory".

4. If the Government entered into a "solemn and binding" agreement acknowledging the "right of the people of Northern Ireland to self-determination" such an agreement would be contrary to the declaration of the area of the national territory contained in Article 2 of the Constitution. Article 28, sub-article 2 provides that the executive power of the State shall be exercised by the Government "subject to the provisions of this Constitution". In entering into a "solemn and binding agreement" such as is suggested by the Unionists there would be an exercise of the executive power of the State by the Government. An agreement such as

is contemplated by the Unionist Party would therefore run a very serious risk of being declared unconstitutional.

5. The position taken up by the United Kingdom Government in this matter is different to that taken up by the Unionist Party. As indicated in its White Paper, the United Kingdom Government may request "the acceptance of the present status of Northern Ireland" linking such request with the possibility - which would have to be compatible with the principle of consent, of subsequent change in that status.

6. It would obviously be desirable to avoid the use of the exact words suggested in the White Paper in order to avoid any suggestion that an act of the Government (either by means of a declaration or by means of an international agreement) was unconstitutional. The challenge to the constitutionality of such an act, however, might well be successfully defeated. It could be suggested that the "acceptance" of the "status" of Northern Ireland implied the de facto acceptance of the situation and that no formal "recognition" to the validity of the situation had been granted by such "acceptance". Accordingly it could be suggested that such an act was not contrary to Article 2 of the Constitution.

7. If the Irish Government declared its willingness to accept and work with the institutions created in Northern Ireland by the Northern Ireland Constitution Act and made agreements with the executive authorities of the Northern Ireland Assembly this State would, in law, be recognising "de facto" the existence of Northern Ireland and the jurisdiction of its executive authorities to enter into agreements. Such declaration and agreement would not be unconstitutional.

8. The "declaration" on page 16 of the memorandum of the Department of Foreign Affairs dated 9th November 1973 amounts to an "acceptance" by the Irish Government of the present position by which the majority of the people of Northern Ireland wishes to maintain "its present status" and a declaration that the Irish Government would work in friendship and co-operation with the institutions in Northern Ireland. Such a declaration would not be unconstitutional. If pressed, the Government could agree to the declaration forming part of the recital to a final act of the Conference or an agreement. In order to avoid any risk, however, it would be preferable to maintain the position that the matters referred to on page 16 of the memorandum should form the subject matter of a declaration rather than an agreement.

* As in paragraph 3 of preceding note. (P. 82)

88

STRASBOURG CASE

The note subsequent to this note lists the outstanding claims in this case.

At its October 1973 hearing, the Commission decided:-

- (a) to proceed "in any event and without delay" with the establishment of the facts of the case, and
- (b) to invite the parties to a meeting with representatives of the Commission "to discuss all the issues between the Governments with a view to reaching a settlement of these issues on the basis of respect for the Commission".

"As a first step" in relation to (a), oral evidence is being taken in Strasbourg from 26th November to 1st December from about 23 witnesses, 12 of whom were victims of alleged breaches of Article 3 between August, 1971 and January, 1972. The others are mainly medical witnesses relating to the twelve cases, including two psychiatrists, Professors Daly of UCC and Bastiaans of Leyden University in the Netherlands, who are including in their evidence an assessment of the effects of methods of interrogation, especially the methods used in relation to persons in respect of whose treatment complaints have been made. In relation to (b), a meeting was held in Paris on 15 November at which three representatives of the Commission met officials from Ireland and Britain "in order as far as possible to define the outstanding issues and to relate to those issues such views as the respondent Government (i.e. the British Government) may have to put forward as a basis for a friendly settlement." No progress was made at that meeting primarily because the British side made no proposals but confined themselves to saying that the political and legislative changes which had taken place in Northern Ireland since 1971 in themselves provided a basis for a settlement of the case. In a subsequent private conversation between the Agents of the two Governments there were however some indications on the British side of a willingness to consider taking further measures with a view to achieving friendly settlement, including incorporation in domestic law of the human rights specified in the Convention. At the end of the meeting the representatives of the Commission said they would continue to be at the disposal of the Parties for further meetings, if suggested. A letter dated 23/11/78 has since been received from the Commission inquiring whether the Government wish to avail of this offer.

Department of Foreign Affairs

30th November, 1973.

Tripartite Conference

STRICTLY CONFIDENTIAL

re: Strasbourg Case

1. The Tripartite Conference is likely to take place on the 5th, 6th and 7th December. The Strasbourg Case is due to be resumed on the 12th December (for the purpose of hearing legal argument on Article 3). It is to be anticipated that considerable pressure will be put on at the talks either to settle the Strasbourg Case or adjourn the December hearings.

2. The outstanding claims in existence in the Strasbourg Case are, briefly, as follows:-
 - (a) A claim under article 1 that the U.K. Government failed to secure the rights and freedoms set out in Section 1 of the Convention and in particular, sections 3, 5 and 6, and 14.
 - (b) A claim that the activities of the security forces in Northern Ireland, particularly in connection with interrogation, amounted to "torture or inhuman or degrading treatment" and were consequently in breach of article 3 of the Convention.
 - (c) A claim that the form of detention without trial in Northern Ireland is in breach of Articles 5 and of the Convention in that it exceeded the measures required by the exigencies of the situation in Northern Ireland.
 - (d) A claim that the detention without trial of persons in Northern Ireland was carried out entirely (up to recently) and almost entirely at the present time, against the minority, on the basis that they were believed to be terrorists and not at all (although recently to a small degree) against the majority notwithstanding the extent of majority violence, terrorism and intimidation.

3. The following should be noted in respect of these claims:-
 - (a) The claim under Article 1. is of a legal nature, and involves interpretation of the Convention. It probably will be left for decision by the Court.
 - (b) The claim under Article 3 is based, first of all, on the "five techniques" and then on the brutality and ill-treatment resorted to. The "five techniques" ended after the Compton and Parker reports and an undertaking was given before Parliament that they

would not be re-introduced without coming back to Parliament. The brutalities seem to have been reduced until at the present time there are very few complaints.

- (c) The Special Powers Act, 1922, which was an exceptionally Draconian measure, was in force when the claim under Articles 5 and 6 were made. It has since been repealed and detention is now governed by the Emergency Provisions Act, 1973.
 - (d) The discriminatory use of internment has altered to a slight extent. Until early this year no loyalist terrorist was interned : now some 45 are detained as against some 600 nationalists.
4. If there is no settlement of the case it is to be borne in mind that the outcome is likely to be as follows:-
- (a) The proceedings will be lengthy. It would be unreal to expect a final determination before mid 1975.
 - (b) It is difficult to forecast the result of the claim under Article 1.
 - (c) The "five techniques" will be condemned as in breach of Article 3. Some subsequent brutalities will probably also be condemned. These findings might well not include awards of compensation to the victims since they can - and many have - make claims under Northern Ireland law.
 - (d) The Special Powers Act, 1922 will, in its more Draconian aspects, be condemned : the Emergency Provisions act will be held not to be in breach.
 - (e) The one-sided internment may be held to be in breach of Article 3.
5. It is possible to see a settlement of the Case containing all or some of the following elements;
- (a) an agreement to make the Convention part of the domestic law of the whole island and to establish a Court of Human Rights to hear complaints of breaches of the Convention; this would meet the claim under Article 1 and under Article 14.
 - (b) an undertaking by the U.K. Government to the Commission not to re-introduce the "five techniques"; this would partly meet the claim under Article 3.
 - (c) an agreement to permit the Court referred to at (a) to hear claims for compensation from victims of the five techniques and claims for damages for alleged breaches of the Convention at the discretion of an injured party;

- (d) an undertaking by the U.K. Government to the Commission not to re-introduce the Special Powers Act and Regulations; this would meet the claim under articles 5 and 6.
- (e) an All-Ireland Court to deal with terrorist type offences should lead to making detention without trial unnecessary, thus further meeting the claim under Articles 5 and 6.

6. The possible outcomes of the Tripartite Conference are as follows;

- (a) A mutually satisfactory agreement which would deal with internment and human rights legislation (on the lines of 2 (a) above). In such an event the pressures to settle the case would be very extreme. It is suggested that a settlement should include at least some of the other elements in 2.
- (b) An agreement might be reached which did not contain any of the elements referred to at 2. It would then be suggested that because a political settlement had been arrived at the Strasbourg Case should be settled. If in fact the settlement did not include any of the elements referred to at 2, the settlement would, in effect, be a withdrawal of the Case. It is suggested that no settlement should be reached (notwithstanding an agreement envisaged in this sub-paragraph) unless some of the elements referred to at 2 were agreed.
- (c) The forthcoming talks might not result in an agreement, but may result in an adjournment after progress had been made. In such circumstances there would be considerable pressure to adjourn the December hearings. Rather than adjourn the hearings (it being publicly known they are to take place) it might be possible to agree that procedural matters only relating to the future witnesses to be taken could be discussed. This procedure would avoid possible divisions being created as a result of submissions on Article 3.
- (d) A breakdown of talks. In such circumstances the Strasbourg Case would continue.

The main features of this Act, which came into force in July 1973, are as follows:-

- it provides that Northern Ireland remains part of the UK and will not cease to be part of the UK without the consent of the majority of the people of Northern Ireland voting in a poll which shall take place every ten years. The poll held in March 1973 resulted in 57% of the electorate voting in favour of the union with the UK. The next poll will not be held earlier than March 1983;
- it provides for a Northern Ireland Assembly and Executive which will have responsibility for transferred matters as soon as the Secretary of State has decided that an Executive can be formed which, having regard to the support it commands in the Assembly and to the electorate on which that support was based, is likely to be widely accepted throughout the community. These transferred matters have not yet been defined but it is expected that if the forthcoming conference reaches satisfactory conclusions, the Secretary of State will shortly thereafter prepare an order-in-council transferring to the Northern Ireland Executive responsibility in the areas for which portfolios have been assigned (e.g. Commerce, Housing, Planning and Local Government, Agriculture, etc.);
- transferred matters cannot include "excepted matters" which mainly relate to the crown, UK parliament, international relations, defence, the appointment ^{and} removal of Northern Ireland judges and Northern Ireland elections;
- initially, transferred matters cannot include "reserved matters" but there are provisions under which matters initially reserved may become transferred. The minimum

* A full list of the excepted matters is appended.

reserved matters include police and general security questions, criminal law, foreign trade, natural resources of the foreshore and the seabed and subsoil and postal and communication services including broadcasting;

- the Northern Ireland Secretary of State, members of the Northern Ireland Executive, members of the Northern Ireland Administration and Northern Ireland Departments may consult on or enter into any agreements or arrangements with any authority of the Republic of Ireland in respect of any transferred matter";

- the British Treasury is given the power to determine what proportion of UK taxes - including those hitherto payable direct to the Northern Ireland Government - are properly attributable to Northern Ireland. The Treasury may direct that there shall be deducted from this proportion a sum by way of contribution towards the expenses falling on the UK in respect of excepted and reserved matters - which include defence. In general, the Act gives the UK Government considerable financial leverage vis-a-vis the Northern Ireland Executive.

1. The Crown, including the succession to the Crown and a regency, but not—
- 25 (a) functions of Northern Ireland executive authorities or functions in relation to Northern Ireland of any Minister of the Crown;
- (b) property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
- 30 (c) foreshore or the sea bed or subsoil or their natural resources so far as vested in Her Majesty in right of the Crown.
2. The Parliament of the United Kingdom; parliamentary elections, including the franchise; disqualifications for membership of
- 35 that Parliament.
3. International relations, including treaties, the making of peace or war and neutrality, and matters connected therewith but not—
- (a) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;
- 40 (b) the exercise of legislative powers so far as required for giving effect to any agreement or arrangement made under section 12 of this Act;

SCH. 2
1972 c. 68.

- (c) the exercise of legislative powers for any of the purposes mentioned in section 2(2)(a) or (b) of the European Communities Act 1972 or for purposes similar to those of any of sections 5 to 12 of, or any paragraph of Schedule 4 to, that Act. 5
4. The armed forces of the Crown but not any matter within paragraph 3 of Schedule 3 to this Act.
5. Dignities and titles of honour.
6. Treason and treason felony but not powers of arrest or criminal procedure in respect thereof. 10
7. Nationality; immigration; aliens as such.
8. Taxes for the time being levied under any law applying to the United Kingdom as a whole, existing Northern Ireland taxes and taxes substantially of the same character as any of those taxes. 15
- In this paragraph "existing Northern Ireland taxes" means any of the following taxes levied in Northern Ireland before the appointed day, that is to say, estate duty, stamp duty, general betting duty, pool betting duty, duty on gaming machine licences and duty on licences in respect of mechanically-propelled vehicles.
9. The appointment and removal of judges of the Supreme Court of Judicature of Northern Ireland, county court judges, recorders, resident magistrates, justices of the peace, members of juvenile court panels, coroners, the Chief and other National Insurance Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland. 25
10. The appointment and office of the Director and deputy Director of Public Prosecutions for Northern Ireland.
11. Elections, including the franchise, in respect of the Northern Ireland Assembly and local authorities. 30
12. Coinage, legal tender and bank notes.
13. The National Savings Bank.
14. Special powers and other provisions for dealing with terrorism or subversion.
15. Without prejudice to paragraphs 10 and 11 above, any matter for which provision is made by the Northern Ireland Assembly Act 1973 or this Act but not—
- 1973 c. 17.
- (a) matters in respect of which it is stated by this Act that provision may be made by Measure; or
- (b) matters specified in Schedule 3 to this Act; 40
- and this paragraph shall not be taken to apply to any matter by reason only that provision is made in respect of it by an Order in Council under section 6(4) or (5), 38 or 39 of this Act.

95

FINANCIAL IMPACT OF NORTHERN TROUBLES ON REPUBLIC.

Estimates of cost have been attempted at two levels

- (1) extra public expenditure directly attributable to Northern troubles; and
- (2) loss to the economy as a whole - in terms of overall GNP.

The first method of calculation offered the firmest base. The main elements are Garda Síochána, Army and Compensation for damage to property. ~~and~~ Estimated costs under these headings for the period to 31st March, 1973 are:

	£m.
Gardaí	6.0
Army	15.0
Compensation	2.0
	<hr/>
	23.0
	<hr/>

As to the second method, the shortfall in GNP is an attempt at a snap estimate of the effects of a falling off in growth as a whole (as compared with the trend ten years ago). This calculation subsumes, without individual identification, ^{effects} such as impact on investment and tourism and export "losses". The shortfall is very tentatively assessed at £130 million for the period to 31st December, 1972. Speaking in broad terms, one might talk of overall losses to the economy in terms of £100-200 million pounds.

United Kingdom Subsidy to Northern Ireland

The subsidy is divided into three broad categories:

- (a) actual payments from the UK Exchequer to Northern Ireland,
- (b) notional or imputed elements, and
- (c) loans

UK Exchequer Subsidy to Northern Ireland 1973/74

	<u>£m</u>	<u>£m</u>
<u>Actual Payments</u>		
National Insurance Fund	24.0	
Social Services	50.0	
Health Services	24.0	
Agricultural Subsidies	27.5	
Remoteness Grant	2.3	
Regional Employment Premiums	10.8	
Grant in Aid	137.0	
Total		275.6
<u>Notional Payments</u>		
Imperial Services (net)	119.0	
Customs and Excise Subsidy	16.0	
Total		135.0
<u>Loans</u>		
	100.0	100.0

		510.6

Notes on the Preceding Table

(a) Actual Payments

National Insurance, Industrial Injuries and Redundancy Funds

Contributions and benefits are identical as between Great Britain and Northern Ireland. Financial adjustments are made each year in order to equalise the reserves per contributor in the separate Funds: although the arrangement is reciprocal, the net payment has been in favour of Northern Ireland.

Social Services Payment

Under the 1971 Finance Act up to the whole cost of family allowances, supplementary benefits and some other social service benefits may be paid to the Northern Ireland Exchequer by the United Kingdom.

Health Services Agreement

This provides that 90 per cent of the amount by which the cost of health services in Northern Ireland exceeds two per cent of the total United Kingdom cost is paid from the United Kingdom Consolidated Fund into the Northern Ireland Exchequer.

Agricultural Subsidies

British agricultural subsidies are paid directly to Northern Ireland farmers and do not pass through the Northern Ireland Exchequer. This estimate was obtained privately from the Northern Ireland Ministry of Finance by Professor Norman Gibson, it is not clear to what extent either CAP membership or increased agricultural prices were allowed for in the estimate. It may be expected to decline both in actual and relative importance as a result of EEC membership. The figures exclude milk subsidies received by Northern Ireland farmers through the inter-producer milk fund transfer arrangements as no government payments are involved. The amounts concerned were in 1972/73: £5.6 million and in 1973/74: £9.5 million.

Remoteness Grant

The UK Ministry of Agriculture, Fisheries and Food provides the Northern Ireland Exchequer with money to pay a grant to Northern Ireland farmers in compensation for their remoteness from the main United Kingdom markets. These payments are cited in official statistics as payments under the Agriculture Act, 1957; non-official references usually prefer to term them Remoteness Grants.

Regional Employment Premiums

Up to the whole of the cost incurred by the Northern Ireland

98

Government in paying Regional Employment Premiums may be met by the United Kingdom. These are due to be phased out in 1974 but there is considerable pressure both in Britain and Northern Ireland to retain an incentive of this type.

Grant in aid

This is a new component in the direct payments package and has increased dramatically from its first appearance (£60m) in 1972/73 to the present level of £137 million. Originally associated with the British Governments "economic package" of July 1972, it has now become a general payment topping up total Northern Ireland Exchequer revenue. We have no indication of how this will be spent nor can we obtain such from published sources. The grant in aid may be seen as a payment to avert a shortfall of revenue in Northern Ireland. ~~The causes of such a shortfall are complex reflecting both the economic and political difficulties faced by the province. The implications of such a shortfall without the grant in aid would be a cutback or delay in the provision of services which could be spread across the board or confined to one sphere of activity only. This cutback would not necessarily correspond to projects financed by the grant in aid (if there are such) or initiated due to the availability of such funds.~~

Under the financial arrangements set out in the Northern Ireland Constitution Act 1973 the grant in aid element will become increasingly important. Under the new financial arrangements, the revenue required to meet the cost of ~~involved~~ ^{services} will be met from monies arising locally, "supplemented, if necessary, by an annual sum voted to the Secretary of State for Northern Ireland for that purpose". (White Paper on Northern Ireland Constitutional Proposals). This annual sum will replace the payments made under the Finance Acts, 1967 and 1971. Some payments will continue to be made in the traditional manner, the Agricultural Remoteness Grant, the National Insurance, Industrial Injuries and Redundancy Payments Funds and the arrangements for Capital loans from National Loans Fund. The Constitution Act 1973 gives some details of the manner in which the grant in aid will be paid: "The Secretary of State may from time to time pay out of moneys provided by Parliament into the Consolidated Fund of Northern Ireland such sums by way of grant as he may with the consent of the Treasury determine and may, in connection with any such payment, impose such conditions as he may with the like consent determine". No further information on the administration of the grant in aid is available.

(b) Notional Payments

Customs and Excise Subsidy

The calculation of Northern Ireland's share of UK Customs and Excise revenue on the basis of the relative populations of the two areas gives a higher figure than a calculation based on the amount of UK customs and excise revenue actually collected in Northern Ireland. The figures in the table represent the difference between a Northern Ireland share based on relative populations and one based on relative personal disposable

/incomes.

99

incomes. The calculation is extremely tenuous but estimates of this subsidy have been included in the table in view of its apparent size.

Imperial Services

These are notional and are not quantified in official publications. Originally a fixed proportion (related to relative taxable capacity) of whatever amount, these services actually cost each year, the basis of assessment has gone through a series of changes. The effect of these changes has been to reduce the amount actually paid to nominal proportions. The estimate of £19.0 million has been arrived at by allocating the cost of the services by reference to the populations of the two countries. The actual value of the Imperial Services to the Northern Ireland economy, as distinct from the financial cost of the services at present provided by Britain, is probably less than the estimate in this table even allowing for military contracts and their multiplier effects. The Imperial services are:

- National Debt Charges
- National Debt Commissioners
- Naval military and airforce expenditure
- Civil List and Royal Family
- United Kingdom Parliament
- Foreign Commonwealth and Colonial Services
- Trade with any place outside the United Kingdom
- Royal Mint
- Expenditure in connection with any other Government as the Joint Exchequer Board may determine to be Imperial Expenditure after deducting any sums received otherwise than by way of taxation which the Joint Exchequer Board may determine to be Imperial Receipts.

(c). Loans

The Northern Ireland Exchequer also gets loans from Westminster, on which it pays "commercial" rates of interest. It is extremely unlikely that the Northern Ireland authorities would be able to raise such loans on the open market at anything like the same interest rates, if at all. The Derry Development Commission complained early this year that they were being forced to offer $\frac{1}{2}$ to $\frac{3}{4}$ % more interests on loans raised on the open market, than analogous bodies in England, despite full Westminster backing. Irish Times 27.1.1973. Loans for 1972/73 amounted to £90 million and are expected to be about £100 million in 1973/74.

160

Cost of Equalising Public Services North and South

For the Republic much of the effort of a Council of Ireland would be concerned with the standardisation of the level of service as between both parts of the island. Generally standards here are lower than in the North in housing, social welfare, health and education. The more, therefore, a Council develops its planning function in these areas the greater the pressure will be on any government here to provide funds for the development of these services.

The amounts involved are considerable. Equalisation of the range and level of social services was estimated some years ago to cost £72 million. The figure is somewhat lower now as a result of the 1973 Budget but is still substantial. Equalisation of health services would probably cost £34m. In road construction, the Northern community spend two to four times - depending on the method of calculation - as much per head of the population as we do. Their total output of houses per 1,000 of the population was for many years almost twice the level in this part of the country - despite the fact that, on most objective measures of housing quality, their basic stock is, if anything, better. A matter of growing concern will be the different tax levels in the two parts of the country, with lower rates of VAT and lower income tax in the North. This can, for example, make the cost of living lower in the North than here, affect the ability of industries to compete e.g. a road freight contractor who has to buy dearer vehicles and pay higher road tax south of the border, as well as affecting the desire of, say, managerial and other staff to live here because of the considerable lower amounts of income tax they would pay in the North. The following estimates refer to 1970 or thereabouts.

Northern Ireland can sustain this high level of service with a lower level tax because of "parity" agreements and the subsidies flowing into the country from the United Kingdom, the amount and purpose of which are shown in another role in this brief.

102

This fact will not, however, do much, in practice, to ease the pressure on this part of the country for equalisation of service in whatever functions are given to a Council - though it may help in any argument with the United Kingdom for comparatively generous financial treatment of a Council, if it is to be viable.

Two approaches have been used in an effort to cost alignment: the first was a simple equating of expenditure per head of population in both areas, broken down by the function of the expenditure; the second involved getting individual Government Departments to make estimates in their own fields of responsibility. The per capita approach suggested a figure in the region of £280m. and the Department's estimates some £260m. The two figures are not strictly comparable, however, due to the different way in which they have been compiled. The main reservations attaching to individual Departments estimates are footnoted in table 2.

Both approaches represent general orders of magnitude but they serve as a cross-check on each other and highlight certain discrepancies which can be further investigated.

In the case of the Departmental estimates the results are based partly on comparison of similar schemes North and South where such exist, partly on equating overall unit costs, and partly on the basis of fairly large assumptions about the cost of new schemes. In some cases the assumptions have had to be so broad that they determine the result for a large part.

The per capita analysis is not very reliable particularly in sectors where expenditure is not directly proportionate to overall population size but it does provide a useful means of showing up discrepancies. In the case of Industry, for example,

the IDA suggest that the additional cost of raising our grant levels to those prevailing in Northern Ireland would be £96m, over ten years. The Department of Industry and Commerce suggest that this estimate is far too high. However, it could be argued that the general level of the investment incentive packages tends to equate between the Republic and Northern Ireland, under the pressure of competition to attract industry. In this case, the cost of alignment post 1974 would be quite small. The per capita expenditure method would then be shown to produce a considerable overestimate as (i) the industrial sector is considerably larger proportionate to population in Northern Ireland, (ii) the exports profits tax relief incentive does not appear as Government expenditure in the Republic, although it could be held to be a real change on the exchequer in terms of taxation foregone, (iii) the UK Regional Employment Premium is paid to Northern Ireland firms but this is supposed to be phased out in 1974 and (iv) there is greater provision of advance factories in Northern Ireland.

In the results below all costs refer to those falling on the Exchequer.

Table I Cost of alignment by expenditure function
(per capita)

A study was made in this Department to estimate the extra expenditure necessary in the Republic at Northern Ireland rates per capita in 1969/70. Expenditure was analysed by function -

Expenditure function		Necessary expenditure in Republic at N.I. rates per capita (£m)	Actual expenditure Republic (£m)	Extra expenditure in Republic necessary at N.I. rates (£m)
Economic	Agriculture, Forestry and Fisheries	78.9	86.1	-7.2
	Industry	124.4	31.5	92.9
	Transport and Communications (including roads)	48.8	75.1	-26.3
	Energy	29.5	20.3	9.2
	Other economic	-	15.5	-15.5
	Total economic	281.6	228.5	53.1
Social	Housing	63.4	45.1	18.3
	Health	104.0	55.9	48.1
	Social security and welfare	212.9	100.7	112.2
	Educational	123.3	71.7	52.2
	Other social	33.3	15.6	17.7
	Total social	537.0	288.4	248.6
Central Government	Public debt	39.1	56.2	-17.1
	Other general government services	51.4	58.1	-6.7
	Total central government	90.8	114.3	-23.7
Overall total for all expenditure functions		909.6	631.2	278.4

Table 2 : Cost of Alignment estimated by individual Departments

Department	Cost as estimated in reply to Finance query (£m '70)
Education	30
Health	34
Labour	10
Social Welfare	72
Agriculture and Fisheries	55
Local Government	57
TOTAL	258

Notes on entries (including updated references where available).

Department of Education

The Departments costing did not allow for Capital costs arising from reducing the pupil-teacher ratio. No more recent costing available.

Department of Health

More recent material from the Department suggests that extension of hospital services and maternity services to all would be more or less financed by abolition of the present ceiling for health contributions.

Department of Labour

More than half this cost would be Capital (£5.7m) and non-recurring.

Department of Social Welfare

These estimates are based on very tentative assumptions about the cost of introducing new services. Since they were prepared there have been major changes in social welfare systems and benefits in both regions and additional information has been requested from Social Welfare.

Department of Agriculture and Fisheries

The £55m. in the table refers to pre-EEC entry. Under EEC conditions gap would be around £10-15m at most.

Department of Local Government

Quantification in this sector is extremely difficult due partly to the capital nature of much of the expenditure. The table entry of £57m excludes roads and the derating of agricultural land and generally represents the annualisation of a 6 year programme.

The annual cost of derating agricultural land is estimated at £13m for 1971/2 and that of aligning annual expenditure on roads (excluding any backlog) at £12m, making £25m for these two items. Add to this £55m for an updated estimate of the £57m in the table, and this gives a total of £80m. for 1971/72.

Department of Industry and Commerce.

This has been discussed earlier. No estimate is included in the table.

NORTHERN IRELAND AND REPUBLIC

STATISTICAL COMPARISONS.

Item	Date	Unit	Republic	Northern Ireland.
<u>ECONOMIC:</u>				
Gross Domestic Product	1971	£m.	1596	947
Gross domestic product per capita	1971	£	531	620
Government Expenditure (current)	1971/2	£m.	542	460
Government Expenditure (capital)	1971/2	£m.	127	182
Government Expenditure as % of G.D.P.	1971/2	%	41.9	67.58
Taxation Revenue	1971/2	£m.	460	312
" " as % of G.D.P.	1971/2	%	29	33
Public Debt Service	1971/2	£m.	+65	29*
Public Debt service as % of tax revenue		%	+14	9*
<u>TAXATION ON INCOME</u>				
Married couple with 2 children under 11 years:-	current	£		
on income of £1500			117.60	*115.50
" " " £2500			423.85	415.50
" " " £4000			‡978.25	865.50
<u>SOCIAL:</u>				
(1) <u>Income maintenance</u>				
Old Age Pensions:- Qualifying age	current	years of age	69	65
Contributory:				
Single	current	£	7.20	7-75
Married	"	"	11.85	12.50
Old Age Pensions - Non-Contributory				
Single	current	£	6.15 (over 80 = 6-65)	8.15 householder 6.60 non-householder

† Does not include £35m. for Sinking Funds etc., which, if taken into account would result in the Public Debt Service expressed as a percentage of Taxation Revenue being 22%.

* Public Service Debt for Northern Ireland based on payment of interest on (a) NI Central Gov. raised debts and (b) advances from UK Government.

‡ Includes recoupment of Social Welfare payment for 2nd child - no allowance is paid under Social Welfare for 1st child.

‡ Includes recoupment of £29.40 of Social Welfare payment for children.

<u>Item</u>	<u>Date</u>	<u>Unit</u>	<u>Republic</u>	<u>Northern Ireland.</u>
(1) <u>Income Maintenance</u>				
(Contd.)				
Old Age Pension - Non-Contributory Married	current	£	12.30/ ^{if} only husband qualifies 5.157	12.85
No. in receipt of OAP:- Contributory		thousand	91(current)	162(Dec. 1971)
Non-Contributory		"	130(current)	11(Dec. 1971)
(2) <u>Education</u>				
Secondary Schools:-				
Attendance in 11-14 age group	Feb. '72	No.	116,202	98,522
Attendance as percentage of age cohort			48.82	83.37
Attendance in 15-18 age group			101,660	34,824
" as percentage of age cohort			46.45	33.53
Higher Education:-				
Attendance	(1969)	No.	23,142	8,825
Attendance as percentage of age cohort			3.2	2.5
(3) <u>Health</u>				
General and mental hospital beds	-	per.thou. of pop.	10.6	11.5
.Life expectancy at birth	-	years	males 68.6 females 72.9	males 67.97 females 73.45
<u>DEMOGRAPHIC:</u>				
Population	1971	thousand	2971	1527
" projected	1980	"	3275(1981)	1598
	1990	"	3794(1991)	1721
Birth rate		per.thou. aver.pop.	21.3	20.7
Marriage rate		"	6.5	8.1
Death rate		"	11.2	10.6

<u>Item</u>	<u>Date</u>	<u>Unit</u>	<u>Republic</u>	<u>Northern Ireland.</u>
<u>GENERAL:</u>				
Land Area		Sq.mls.	27,136	5,452
Principal Towns				
Dublin		thousand	680	
Cork			134	
Belfast	1971			360
Londonderry	1971			52

STATEMENT BY THE SECRETARY OF STATE ON LAW AND ORDER - 19th October 1973.

The Northern Ireland Constitution Act 1973 provides that, after devolution, law and order and police matters will be reserved to Westminster for the time being. This means that the Secretary of State for Northern Ireland will be accountable to Parliament at Westminster for these matters.

The White Paper on Northern Ireland Constitutional Proposals made it clear that Northern Ireland must be involved in matters which are of great concern to its people and which require a high degree of public co-operation and goodwill. In particular, the White Paper provided that a Northern Ireland Executive would act as an Advisory Committee to the Secretary of State on all reserved matters; and that there should be democratic participation in restoring to all parts of Northern Ireland the full benefits of a normal police service.

The Government's aims are to ensure the ending of politically motivated violence from whatever source; to ensure that there is effective policing throughout Northern Ireland so that the Army can be progressively withdrawn from its present role; and to bring about a situation in which public support for the police and identification with it are essential parts of effective policing. No single set of proposals is likely to achieve these aims overnight - time will be necessary. The full co-operation of the Government of the Republic is essential in this task.

As the Prime Minister has already made clear, the RUC will continue to provide the police service for Northern Ireland. Much has already been done to reorganise it. More is needed to expand the RUC and its Reserves in order to provide that policing becomes effective throughout Northern Ireland and to enable elected representatives to play a part in local policing. The Government will welcome any constructive suggestions to these ends and a group under the Minister of State, Mr van Straubense, is now at work.

The Government intends to reconstitute the Police Authority to introduce into it a number of elected representatives from the Assembly. District Liaison Committees with elected representatives will be set up and proposals will be put to District Councils shortly. The Government also propose to introduce new procedures for dealing with complaints against the police involving an independent element; those concerned will be fully consulted.

The Government believe that the Government of the Republic can make a significant contribution to the permanent ending of politically motivated violence. This is why this problem was identified in the White Paper as one of the points for discussion at a Tripartite Conference. The Government is in favour of such discussions, including the concept of a common law enforcement area and the question of extradition processes. A study has been put in hand of these questions. Normal policing must remain the responsibility of respective Governments. The Government will be ready to discuss such problems, and the role that a Council of Ireland could play in solving them, with a Northern Ireland Executive and the Government of the Republic.

22/8/73

IN CONFIDENCE
INTER-PARTY CONSULTATIONS

COUNCIL OF IRELAND

1. HMG reaffirms the position stated in the White Paper that it favours, and will facilitate, the formation of a Council of Ireland. It is prepared to agree to the following propositions which will have to be discussed with the Government of the Republic as part of the agenda of a meeting to discuss the formation of such a Council:-

- (A) There is a general wish that a Council of Ireland should be confined to the north and south of Ireland. This is acceptable to HMG as regards devolved subjects, though arrangements will be necessary to safeguard HMG's interests in the area of finance and other reserved subjects:
- (B) As to structure, the Council should consist not only of representatives of the Government of the Republic and of the Northern Ireland Executive but also, on a separate advisory and consultative level, of representatives from the parties in the Dail and the Northern Ireland Assembly. The Council should have its own Secretariat:
- (C) The Council should have some executive and harmonisation functions as well as a consultative role:
- (D) The Council at government level should operate on the basis of unanimity:
- (E) The Council should be able to play a useful role in relation to certain subjects reserved for the time being

/to

IN CONFIDENCE

to the United Kingdom Government and on which HMG would need to be represented. How this might be done needs to be agreed between the three Governments concerned. Among the matters to be examined should be the concept of a common law enforcement area, the question of extradition processes and what role it might play in the law and order field.

TRIPARTITE CONFERENCE

2. Once an undertaking has been reached on the formation of a Northern Ireland Executive designate HMG proposes to invite those persons who will be members of that Executive, together with representatives of the Government of the Republic, to a conference to discuss a Council of Ireland. The Secretary of State for Northern Ireland will also invite the leaders of those parties who indicate that they are not prepared to participate in an Executive to discuss their views with him so that these will be known at the time of the Conference. It will be necessary thereafter to hold a formal Conference between HMG, the Government of the Republic and the Northern Ireland Executive on the matters previously discussed and invitations would be issued by HMG to this Conference as soon as appropriate.

LAW AND ORDER

3. HMG has made clear that the RUC will continue to provide the police service for Northern Ireland. The Government has also stated that its aim is to achieve the ending of politically motivated violence from whatever source: to ensure that there is effective policing throughout Northern Ireland so that the Army

13

IN CONFIDENCE

can be progressively withdrawn from its present role: and to bring about a situation in which public support for the police and identification with it are essential parts of effective policing. No single set of proposals is likely to achieve these aims overnight - time will be necessary. The full cooperation of the Government of the Republic is essential in this task. HMG sees the possibilities for advances in the whole law and order field by arrangements made under paragraph 1(B) above.

DETENTION

4. HMG reaffirm that they will bring detention for all sections of the community to an end as soon as the security situation permits and as part of their wish to bring about a lasting peace. The political progress made in recent weeks, and the desire of the overwhelming majority of people in Northern Ireland for peace, bring hope that, once the new Northern Ireland institutions have been established, the men of violence will be increasingly isolated and rejected and the security position further improved.

5. The Government wishes to see progress not only in the security situation but also in parallel with it a progressive reduction in the number of persons detained. As an earnest of this, the Secretary of State hopes to be able to bring into use his statutory powers of selective release. It is his intention, if the security situation permits, to do so in time for a number of detainees to be released before Christmas. Those released may be required to give a suitable undertaking about their future conduct.

6. Continued progress will obviously depend upon further improvement in the situation generally. In the meantime, the procedures

/for

114

IN CONFIDENCE

for review provided by the Northern Ireland (Emergency Provisions) Act 1973 have already led to some releases. These reviews will continue. Further efforts will continue to be made to bring persons suspected of terrorist offences before the Courts.

7. It is the Secretary of State's intention to consider compassionate cases on a wider basis than hitherto, and to work towards a more generous granting of temporary release for compassionate reasons.

8. Other preparatory measures being considered include the recruitment of more social workers to help with the administration of all these arrangements and the introduction of various training schemes.

ECONOMIC AND SOCIAL PROGRAMME

9. HMG has taken note of the economic and social aims agreed by delegations. While the Government's position must be reserved as to the financial or other support it would be prepared to give to any particular element of the programme, it is the firm intention of HMG to afford significant assistance to Northern Ireland in its economic and social rehabilitation.

TIMING

10. The aim would be to hold the consultations on a Council of Ireland in the first week of December. In the event of the necessary clear understanding, the appropriate steps would then be taken to request Parliament at Westminster to approve the order for the devolution of powers to the Northern Ireland Executive and Assembly during December and for this to take effect as soon as possible. The formal conference would then take place as soon as appropriate thereafter.

IN CONFIDENCE

22 November 1973

THIS AFTERNOON I INTEND TO SET OUT IN DETAIL TO THE HOUSE THE RESULTS OF RECENT POLITICAL DEVELOPMENTS AND DISCUSSIONS. IT IS HOWEVER IMPORTANT TO SEE THESE IN THE CORRECT PERSPECTIVE OF THE GENERAL SITUATION OF NORTHERN IRELAND. SERIOUS ACTS OF VIOLENCE CONTINUE NOR ARE THOSE CONFINED TO ANY ONE GROUP OF TERRORISTS OR CRIMINALS. OUR PRIMARY TASK THEREFORE MUST BE TO ERADICATE VIOLENCE FROM THE COMMUNITY AND OF COURSE THE REASONS BEHIND IT. THE ERADICATION OF VIOLENCE IS A MAJOR TASK FOR OUR SECURITY FORCES—POLICE AND ARMY. THEIR ACHIEVEMENT IN THE PURSUIT OF TERRORISTS AND CRIMINALS AND IN THE DETECTION OF CRIME ARE VERY IMPRESSIVE BUT NO ONE SHOULD BE UNDER ANY DELUSIONS, STILL MORE HAS TO BE DONE. IN THIS WORK OUR SECURITY FORCES DESERVE ALL THE SUPPORT THAT CAN BE GIVEN TO THEM, CERTAINLY THEIR BEARING AND MORALE IS BEYOND PRAISE. BUT JUST AS IT IS TRUE THAT POLITICAL ACTIONS CANNOT CURE VIOLENCE SO IT IS EQUALLY CERTAIN THAT WE OWE IT TO OUR SECURITY FORCES TO PROVIDE THE BEST FOUNDATIONS FOR THEIR WORK. THAT WAS THE PURPOSE OF THE CONSTITUTION ACT PASSED WITH THE OVERWHELMING SUPPORT OF THIS HOUSE AND WHICH PROVIDES THE BASIS OF WHAT I HAVE TO SAY THIS AFTERNOON.

NOW THAT THE FIRST STAGE OF THE CONSULTATIONS LEADING TO THE ESTABLISHMENT OF DEVOLVED GOVERNMENT IN NORTHERN IRELAND HAVE BEEN BROUGHT TO A CONCLUSION, IT IS RIGHT THAT I SHOULD REPORT TO THE HOUSE THE NATURE OF THE AGREEMENTS WHICH HAVE SO FAR BEEN REACHED. THE HOUSE SHOULD BE THE FIRST TO KNOW THE FULL NATURE OF THESE AGREEMENTS AND I AM GRATEFUL TO THE NORTHERN IRELAND PARTIES CONCERNED FOR REFRAINING FROM COMMENT UNTIL I HAVE THE OPPORTUNITY THIS AFTERNOON TO DISCLOSE THE DETAILS OF THOSE AGREEMENTS. OVER THE LAST SEVEN WEEKS, I HAVE HAD A SERIES OF INTENSIVE DISCUSSIONS IN NORTHERN IRELAND WITH THE ALLIANCE PARTY, THE SDLP AND THE ULSTER UNIONIST PARTY.

~~77~~ THE NORTHERN IRELAND LABOUR PARTY WHILE SUPPORTING THIS PRINCIPLE OF THE CONSTITUTION ACT, AGREED THAT I SHOULD CONFIRM MY SUBSTANTIVE DISCUSSION TO THEIR 3 PARTIES. ALL THE OTHER PARTIES IN THE NORTHERN IRELAND ASSEMBLY HAD PREVIOUS MADE IT KNOWN TO MYSELF, THE PRIME MINISTER AND TO ME IN DISCUSSIONS THAT THEY WERE NOT PREPARED TO PARTICIPATE IN AN EXECUTIVE. THE THREE PARTIES WITH WHOM I HAVE BEEN IN DISCUSSION WERE, HOWEVER, PREPARED TO OPERATE THE NORTHERN IRELAND CONSTITUTION ACT AND HAD INDICATED THEIR WILLINGNESS TO SEARCH FOR A BASIS ON WHICH AN EXECUTIVE MIGHT BE FORMED WITHIN THE PROVISIONS OF THAT ACT. I AM GRATEFUL FOR THE FOREBEARANCE OF THE HOUSE IN ACCEPTING THAT IT WAS ESSENTIAL THAT THESE TALKS SHOULD BE CONDUCTED ON THE BASIS OF CONFIDENTIALITY AND I SHOULD ALSO LIKE TO PAY TRIBUTE TO THE SPIRIT IN WHICH THE PARTY LEADERS AND THE DELEGATIONS HELD TO THEIR INITIAL AGREEMENT THAT CONFIDENTIALITY SHOULD BE MAINTAINED. IT IS NOW MY DUTY TO GIVE THE HOUSE AN ACCOUNT OF THE TALKS AND OF THEIR CONCLUSION.

176

THROUGHOUT I HAVE HAD THREE OBJECTIVES IN MIND. THE FIRST IS THAT ANY AGREEMENT REACHED MUST BE WITHIN THE TERMS OF THE CONSTITUTION ACT AND THE PARTIES CONCERNED AGREED FROM THE OUTSET THAT THE TALKS SHOULD BE ON THIS BASIS. THIS REQUIRES ME IN DUE COURSE TO BRING BEFORE PARLIAMENT THE DRAFT OF AN ORDER IN COUNCIL DEVOLVING POWERS TO THE EXECUTIVE AND ASSEMBLY. TO DO SO, TWO REQUIREMENTS MUST BE FULFILLED. FIRST, THE NORTHERN IRELAND ASSEMBLY MUST HAVE MADE SATISFACTORY PROVISION BY ITS STANDING ORDERS IN ACCORDANCE WITH SECTION 25 OF THE ACT WHICH LAYS DOWN CERTAIN ESSENTIALS AND PROCEDURE.

THE FIRST STATUTORY REQUIREMENT HAS BEEN MET IN THAT THE STANDING ORDERS OF THE NORTHERN IRELAND ASSEMBLY HAVE NOW BEEN PASSED, AND I AM SATISFIED THAT THEY CONFORM WITH THE REQUIREMENTS OF SECTION 21 (A) OF THE CONSTITUTION ACT. SOME OF THE STANDING ORDERS WERE THE SUBJECT OF DEBATE AND DISAGREEMENT, BUT I AM ONLY REQUIRED IN CONSIDERING THE STANDING ORDERS TO SATISFY MYSELF THAT THEY CONTAIN THE PROVISIONS SPECIFIED IN THE ACT.

SECOND, THERE IS A REQUIREMENT "THAT A NORTHERN IRELAND EXECUTIVE CAN BE FORMED WHICH, HAVING REGARD TO THE SUPPORT IT COMMANDS IN THE ASSEMBLY AND TO THE ELECTORATE ON WHICH THAT SUPPORT IS BASED, IS LIKELY TO BE WIDELY ACCEPTED THROUGHOUT THE COMMUNITY". CLEARLY THERE MUST BE A LARGE MEASURE OF AGREEMENT BETWEEN THE PARTIES ON MAJOR POLICY ISSUES, THOSE PARTIES HAVING MADE KNOWN THEIR POSITION, MUST DECLARE THEIR WILLINGNESS TO WORK TOGETHER AND TO BRING ABOUT THE PRACTICAL ARRANGEMENTS NECESSARY FOR THAT PURPOSE. AN AIM OF MY TALKS WAS, THEREFORE, TO USE MY BEST ENDEAVOURS TO BRING ABOUT THE MAXIMUM POSSIBLE MEASURE OF AGREEMENT BETWEEN THE PARTIES. THIRD -AND MOST IMPORTANT -H M G HAVE TO KEEP IN MIND THEIR CONTINUING RESPONSIBILITY TO THIS HOUSE, IF THE DEVOLUTION ORDER IS TO BE MADE, FOR THOSE MATTERS IN NORTHERN IRELAND WHICH CONTINUE, FOR THE TIME BEING AT LEAST, TO BE RESERVED TO WESTMINSTER.

ONE OF OUR PURPOSES IN DIVIDING RESPONSIBILITY FOR GOVERNMENT AND ADMINISTRATION IN NORTHERN IRELAND BETWEEN THE ASSEMBLY AND EXECUTIVE ON THE ONE HAND, AND PARLIAMENT HERE AND HER MAJESTY'S GOVERNMENT ON THE OTHER, WAS TO REDUCE AS FAR AS POSSIBLE THE NUMBER OF CONTENTIOUS ISSUES WHICH MIGHT MAKE IT DIFFICULT FOR THE PARTIES IN NORTHERN IRELAND TO REACH AGREEMENT. I AM GLAD TO SAY THAT WE HAVE MADE A GOOD START IN ACHIEVING THIS OBJECT. ALL THREE PARTIES HAVE REACHED AGREEMENT ON A STATEMENT OF AIMS AND POLICIES IN THE SOCIAL AND ECONOMIC SPHERE. THIS ACHIEVEMENT SHOULD NOT BE UNDERRATED BECAUSE THERE ARE BIG DIFFERENCES OF APPROACH AND PHILOSOPHY ON SOME OF THESE MATTERS BETWEEN THE PARTIES IN NORTHERN IRELAND JUST AS THERE ARE BETWEEN THE PARTIES IN THIS HOUSE. BUT AS I SAY, THESE DIFFERENCES HAVE BEEN RESOLVED BY GOOD SENSE, A SPIRIT OF COMPROMISE AND A WILLINGNESS TO PUT THE WELFARE AND PROSPERITY OF ALL THE PEOPLE OF NORTHERN IRELAND IN THE FOREFRONT. HER MAJESTY'S GOVERNMENT HAVE TAKEN NOTE OF THESE ECONOMIC AND SOCIAL AIMS AND, WHILE OUR POSITION MUST BE RESERVED AS TO THE FINANCIAL OR OTHER SUPPORT WHICH WE WILL BE PREPARED TO GIVE TO ANY PARTICULAR ELEMENT OF THE PROGRAMME, IT IS THE FIRM INTENTION OF HMG TO AFFORD SIGNIFICANT ASSISTANCE TO NORTHERN IRELAND IN ITS ECONOMIC AND SOCIAL REHABILITATION.

117

IT WAS THIS WILLINGNESS TO REACH AGREEMENT THAT CREATED A SITUATION AT THE BEGINNING OF THIS WEEK IN WHICH IT WAS POSSIBLE FOR THE PARTIES TO CONSIDER BOTH WITH ME AND AMONG THEMSELVES THE POSSIBILITY OF AGREEING TO FORM AN EXECUTIVE. IT HAS ALWAYS BEEN UNDERSTOOD AMONG THE PARTIES THAT IT WOULD BE IN NO-ONE'S INTEREST TO FORM AN EXECUTIVE UNTIL THERE IS AN AGREEMENT ON ALL THE ISSUES UNDER DISCUSSION. THE MAJOR MATTER OUTSTANDING IS THE COUNCIL OF IRELAND WHICH OF COURSE INVOLVES THE GOVERNMENT OF THE REPUBLIC OF IRELAND AND WE HOPE SOON THAT THOSE PARTIES WHICH HAVE SIGNIFIED THEIR WILLINGNESS TO SERVE IN THE NORTHERN IRELAND EXECUTIVE WILL MEET WITH REPRESENTATIVES OF HMG AND THE REPUBLIC OF IRELAND TO DISCUSS HOW A COUNCIL OF IRELAND MIGHT BE SET UP. I WILL SAY MORE ON THIS LATER. THE INTENTION IS THAT THIS PRELIMINARY CONFERENCE WILL LEAD TO THE FORMAL APPOINTMENT OF A NORTHERN IRELAND EXECUTIVE AND, SUBJECT TO THE APPROVAL OF PARLIAMENT, TO THE DEVOLUTION OF FULL POWERS TO THAT EXECUTIVE AND TO THE NORTHERN IRELAND ASSEMBLY. THE COMPOSITION AND NATURE OF SUCH AN EXECUTIVE HAS NOW BEEN AGREED. I REMINDED THE HOUSE EARLIER OF THE NATURE OF THE SUPPORT WHICH THE ACT MAKEUXA PRE-REQUISITE TO SECTION OF THE ACT IT IS THE RESPONSIBILITY FOR THE SECRETARY OF STATE TO APPOINT PERSONS TO HOLD OFFICE UNDER THE NEW STRUCTURE. UNDER SECTION 8 OF THE CONSTITUTION ACT THE SECRETARY OF STATE IS RESTRICTED TO TWELVE SUCH APPOINTMENTS, NOT ALL OF WHICH HAVE TO BE WITHIN THE EXECUTIVE. WHEN WE CAME TO THE DISCUSSIONS, WE FOUND THIS PARTICULAR PROVISION SOMEWHAT RESTRICTIVE. THERE IS NO INTENTION ON MY PART OR ON THE PART OF THE PARTIES CONCERNED TO INCREASE THE SIZE OF THE EXECUTIVE. ON THE CONTRARY, IT IS THAT THE EXECUTIVE SHOULD BE CONFINED BOTH NOW AND FOR THE FUTURE TO ELEVEN PERSONS. BOTH IF THIS IS SO, THERE NEEDS TO BE SOME FLEXIBILITY IN MAKING ADDITIONAL APPOINTMENTS OUTSIDE THE EXECUTIVE AND THE AGREEMENT WHICH HAS BEEN REACHED WILL - IF THIS HOUSE AGREES SINCE FURTHER LEGISLATION WILL BE REQUIRED - INVOLVE AN EXECUTIVE OF ELEVEN AND AN ADMINISTRATION OF FIFTEEN. THE EXECUTIVE WILL COMPRISE SIX MEMBER OF THE ULSTER UNIONIST PARTY, FOUR OF THE SDLP AND ONE OF THE ALLIANCE PARTY. MR BRIAN FAULKNER IS THE CHIEF EXECUTIVE DESIGNATE AND MR FITT WILL BE THE DEPUTY CHIEF EXECUTIVE OFFICER DESIGNATE. MR OLIVER NAPIER WILL BE THE LEGAL MEMBER AND IN CHARGE OF THE OFFICE OF LAW REFORM. MAY I CONGRATULATE THEM ON THESE APPOINTMENTS.

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THE FURTHER ALLOCATION IS AS FOLLOWS:

HEAD D/F	U
HEAD OF D/C	SDLP
HEAD OF D/H	
AND S S	SDLP
HEAD OF D/H	
L G AND	
PLANNING	SDLP
HEAD OF D/E	U
HEAD OF D/A	U
HEAD OF ED	U
DEPARTMENT OF	
INF SER	U
CHIEF WHIP	U
OFFICE OF	
MANPOWER SER	A
OFFICE OF	
COMM REL.	SDLP
OFFICE OF	
THE EX PLANNING	
AND CO-ORD	SDLP

THE LEADERS OF THE PARTIES WILL NOMINATE THOSE WHOM THEY PROPOSE WILL BE APPOINTED TO THESE POSTS.

THERE WILL IN ADDITION BE A DEPUTY CHIEF WHIP OUTSIDE THE ADMINISTRATION WHO WILL BE A N ASSEMBLY MEMBER OF THE ALLIANCE PARTY..

NEXT I COME TO THE COUNCIL OF IRELAND . IN THE WHITE PAPER WHICH THE GOVERNMENT PUBLISHED IN MARCH THIS YEAR, WE SAID THAT THE UNITED KINGDOM FAVOURED AND WAS PREPARED TO FACILITATE THE FORMATION OF SUCH A BODY. WE ALSO POINTED OUT THAT, IF A COUNCIL OF IRELAND WAS TO BE MORE THAN A MERE STATUTORY CONCEPT AND BECOME A USEFUL WORKING MECHANISM IN NORTH/SOUGH RELATIONS, IT MUST OPERATE WITH THE CONSENT OF BOTH MAJORITY AND MINORITY OPINION IN NORTHERN IRELAND WHO HAVE A RIGHT TO PRIOR CONSULTATION AND INVOLVEMENT IN THE PROCESS OF DETERMINING ITS FORM, FUNCTIONS AND PROCEDURE. BECAUSE AGREEMENT IN NORTHERN IRELAND ITSELF IS A NECESSARY PRECONDITION TO A SUCCESSFUL COUNCIL OF IRELAND, HMG HAS UP TO NOW REFRAINED FROM EXPRESSING A VIEW ON THE FORM A COUNCIL MIGHT TAKE. ~~XX~~ BUT IN THE LIGHT OF DISCUSSION WHICH I HAVE HAD, IT SEEMS TO ME NOW TO BE HELPFUL TO SAY T// WHAT PROPOSITIONS ABOUT A COUNCIL OF IRELAND WE WOULD BE PREPARED TO AGREE ~~AND~~ TO ~~AND~~ SUPPORT IN DISCUSSIONS WITH THE GOVERNMENT OF THE REPUBLIC WHICH MUST SHORTLY BE UNDERTAKEN.

Council

IT HAS BECOME CLEAR IN MY TALKS THAT THERE IS A GENERAL WISH THAT A COUNCIL OF IRELAND SHOULD BE CONFINED TO REPRESENTATIVES OF THE NORTH AND SOUTH OF IRELAND - THAT IS TO SAY THAT THERE SHOULD BE NO REPRESENTATIVES OF THE UK GOVERNMENT ON THE COUNCIL. THIS IS ACCEPTABLE TO HMG AS REGARDS DEVOLVED SUBJECTS, ALTHOUGH ARRANGEMENTS WILL BE NECESSARY TO SAFEGUARD HMG'S INTERESTS IN THE AREAS OF FINANCE AND OTHER ~~Z~~ RESERVED SUBJECTS.

AS TO STRUCTURE, HMG THINKS THAT THE COUNCIL SHOULD CONSIST NOT ONLY OF REPRESENTATIVES OF THE GOVERNMENT OF THE REPUBLIC AND OF THE NORTHERN IRELAND EXECUTIVE - THAT IS, AT GOVERNMENTAL LEVEL - BUT ALSO, ON A SEPARATE ADVISORY AND CONSULTATIVE LEVEL, OF REPRESENTATIVES FROM THE PARTIES FROM THE DAIL (DOYLE) AND THE NORTHERN IRELAND ASSEMBLY. WE ALSO THINK THAT THE COUNCIL SHOULD HAVE ITS OWN SECRETARIAT.

IN ORDER THAT DECISIONS OF THE COUNCIL SHOULD CARRY THE GREATEST POSSIBLE DEGREE OF SUPPORT AMONG THE POEPL OF THE NORTH AND THE SOUTH WE THINK THAT ITS DECISIONS AT GOVERNMENTAL LEVEL SHOULD BE TAKEN ON A BASIS OF UNANIMITY.

179

IN ADDITION TO THOSE FUNCTIONS OPERATING IN THE AREA OF SUBJECTS WHICH WILL BE DEVOLVED TO AN EXECUTIVE, WE THINK THAT THE COUNCIL SHOULD BE ABLE TO PLAY A USEFUL ROLE IN RELATION TO CERTAIN SUBJECTS RESERVED FOR THE TIME BEING TO THE UK GOVERNMENT. IF THIS WERE TO HAPPEN, HMG WOULD, OF COURSE, NEED TO BE REPRESENTED ON THE COUNCIL, AT LEAST WHEN THESE SUBJECTS WERE UNDER DISCUSSION. WHAT OUR ROLE SHOULD BE AND HOW UK INTERESTS SHOULD BE REPRESENTED IS A MATTER WHICH NEEDS TO BE AGREED, BUT THERE IS A SCOPE HERE WHICH CAN BRING GREAT ADVANTAGE TO BOTH NORTH AND SOUTH, PARTICULARLY IN THE VITAL AREA OF SECURITY. THERE HAS BEEN INTRODUCED IN THE TALKS THE IMAGINATIVE AND IMPORTANT CONCEPT OF A COMMON LAW ENFORCEMENT AREA, AND WE THINK THAT THERE SHOULD BE DISCUSSIONS ON THIS AND ON THE QUESTION OF EXTRADITION PROCESSES AND WHAT ROLE THE COUNCIL MIGHT PLAY IN THE LAW AND ORDER FIELD. IT WOULD BE A CLEAR ADVANTAGE TO ALL SIDES IF ADVANCES CAN BE MADE IN THE LAW AND ORDER FIELD WHICH WILL BRING TO BEAR ALL THE RESOURCES OF THE NORTH AND THE SOUTH TO DEAL WITH THE PROBLEM OF TERRORISM AND IF IMAGINATIVE ARRANGEMENTS CAN BE MADE BOTH OF A JUDICIAL AND ORGANISATIONAL KIND.

NOW I MUST TURN TO WHAT IS BEING CALLED A TRIPARTITE CONFERENCE. IF WE ARE TO MAKE THE ADVANCES ON A COUNCIL OF IRELAND TO WHICH I HAVE REFERRED, IT IS ESSENTIAL THAT THERE SHOULD NOW BE URGENT DISCUSSIONS BETWEEN REPRESENTATIVES OF THE GOVERNMENT OF IRELAND AND THOSE PERSONS WHO WILL BE MEMBERS OF THE NORTHERN IRELAND EXECUTIVE. THIS CONFERENCE WILL BE HELD AS SOON AS POSSIBLE, AND WILL, I HOPE, REACH A CLEAR UNDERSTANDING. I ALSO INTEND TO INVITE // INVITE THE LEADERS OF THOSE PARTIES IN THE NORTHERN IRELAND ASSEMBLY ■ NORTHERN IRELAND ASSEMBLY WHO HAVE INDICATED THAT THEY ARE NOT PREPARED TO PARTICIPATE IN AN EXECUTIVE TO DISCUSS THEIR VIEWS ON A COUNCIL OF IRELAND WITH ME SO THESE WILL BE KNOWN AT THE TIME OF A CONFERENCE. IT WILL BE NECESSARY THEREAFTER TO HOLD A FORMAL CONFERENCE BETWEEN HMG, THE GOVERNMENT OF THE REPUBLIC AND THE NORTHERN IRELAND EXECUTIVE, WHICH WILL HAVE BEEN APPOINTED BY THEN.

MY TALKS WITH THE PARTIES ALSO COVERED OTHER MATTERS WHICH ARE OF INTEREST TO THE PEOPLE OF NORTHERN IRELAND.

AS FAR AS POLICING IS CONCERNED, HMG HAS MADE CLEAR THAT THE RUC WILL CONTINUE TO PROVIDE THE POLICE SERVICE FOR NORTHERN IRELAND. THE GOVERNMENT HAS ALSO STATED THAT ITS AIM IS TO ACHIEVE THE ENDING OF POLITICALLY MOTIVATED VIOLENCE FROM WHATEVER SOURCE, TO ENSURE THAT THERE IS EFFECTIVE POLICING ~~XXXX~~ THROUGHOUT NORTHERN IRELAND SO THAT THE ARMY CAN BE PROGRESSIVELY WITHDRAWN FROM ITS PRESENT ROLE, AND TO BRING ABOUT A SITUATION IN WHICH PUBLIC SUPPORT FOR THE POLICE AND IDENTIFICATION WITH IT ARE ESSENTIAL PARTS OF EFFECTIVE POLICING. NO SINGLE SET OF PROPOSALS IS LIKELY TO ACHIEVE THESE AIMS OVERNIGHT - TIME WILL BE NECESSARY. THE FULL COOPERATION OF THE GOVERNMENT OF THE REPUBLIC IS ESSENTIAL IN THIS TASK.

Policing

ANOTHER OF THESE MATTERS WAS DETENTION IN THE SUMMER OF THIS YEAR, PARLIAMENT PASSED THE NORTHERN IRELAND (EMERGENCY PROVISIONS) ACT WHICH, AS THE HOUSE WILL REMEMBER, WAS BASED ON THE RECOMMENDATIONS OF THE COMMITTEE UNDER LORD DIPLOCK AND ALSO HAD AS MEMBERS PROFESSOR SIR RUPERT CROSS, MR GEORGE WOODCOCK AND SIR KENNETH YOUNGER. THESE PROVISIONS ARE SUBJECT TO ANNUAL REVIEW. IT IS UNDER THE PROVISIONS OF THAT ACT THAT PEOPLE ARE DETAINED IN NORTHERN IRELAND BY INDEPENDENT COMMISSIONERS. I HAVE DURING THE TALKS REAFFIRMED H M G 'S FIRM VIEW THAT THEY WILL BRING DETENTION FOR ALL SECTIONS OF THE COMMUNITY TO AN END AS SOON AS THE SECURITY SITUATION PERMITS AND AS PART OF THEIR WISH TO BRING ABOUT A LASTING PEACE. THE VERY REAL POLITICAL PROGRESS MADE IN RECENT WEEKS, AND THE DESIRE OF THE OVERWHELMING MAJORITY OF PEOPLE IN NORTHERN IRELAND FOR PEACE, BRING HOPE THAT THE MEN OF VIOLENCE WILL BE INCREASINGLY ISOLATED AND REJECTED AND THE SECURITY SITUATION FURTHER IMPROVED. THE EMERGENCY PROVISIONS ACT VESTS IN THE SECRETARY OF STATE EXECUTIVE POWER TO RELEASE DETAINEES, AND IT IS MY WISH TO SEE PROGRESS NOT ONLY IN A SECURITY SITUATION BUT ALSO IN PARALLEL WITH IT A PROGRESSIVE REDUCTION IN THE NUMBER OF PERSONS DETAINED. AS AN EARNEST OF THIS, I HOPE TO BE ABLE TO BRING INTO USE MY STATUTORY POWERS OF SELECTIVE RELEASE. IF THE SECURITY SITUATION PERMITS, I INTEND TO DO SO IN TIME FOR A NUMBER OF DETAINEES TO BE RELEASED BEFORE CHRISTMAS. THOSE RELEASED MAY BE REQUIRED TO GIVE A SUITABLE UNDERTAKING ABOUT THEIR FUTURE CONDUCT. BUT I MUST EMPHASISE THAT EXECUTIVE DECISIONS ON RELEASES MUST DEPEND ON THE SECURITY SITUATION. CONTINUED PROGRESS WILL THEREFORE OBVIOUSLY DEPEND ON FURTHER IMPROVEMENTS IN THE SECURITY SITUATION GENERALLY. IN THE MEANTIME, THE PROCEDURES FOR REVIEW PROVIDED BY THE NORTHERN IRELAND (EMERGENCY PROVISIONS) ACT 1973 HAVE ALREADY LED TO SOME RELEASES. THESE REVIEWS WILL CONTINUE. I SHOULD ALSO STRESS THAT EVERYTHING POSSIBLE IS BEING DONE TO BRING PERSONS SUSPECTED OF TERRORIST OFFENCES BEFORE THE COURTS RATHER THAN TO DETAIN THEM UNDER THE EMERGENCY PROVISIONS ACT. I HAVE ALSO UNDERTAKEN TO CONSIDER COMPASSIONATE CASES ON A WIDER BASIS THAN HITHERTO, AND OTHER PREPARATORY MEASURES ARE IN HAND INCLUDING THE RECRUITMENT OF MORE SOCIAL WORKERS TO HELP WITH THE ADMINISTRATION OF ALL THESE ARRANGEMENTS AND THE INTRODUCTION OF VARIOUS TRAINING SCHEMES.

I WOULD LIKE TO THANK THE HON MEMBER FOR LEEDS SOUTH AND THE HON MEMBER FOR SALFORD EAST FOR THE UNDERSTANDING, HELP AND PROPERLY CONSTRUCTIVE CRITICISM WHICH THEY HAVE GIVEN TO ME. BUT LET US ALL BE QUITE CLEAR THIS IS NOT A TIME FOR SELF-CONGRATULATION. WE HAVE SET OUT UPON A VERY DIFFICULT OPERATION. THERE ARE THOSE IN THIS HOUSE AND OUTSIDE WHO ARE CONVINCED THAT WE SHALL FAIL AND INDEED ARE DETERMINED THAT WE SHOULD DO SO. THEY ARE CLEARLY ENTITLED TO PURSUE THEIR AIMS BY CONSTITUTIONAL MEANS BUT DO NOT LET THEM BLUR THE LINE BETWEEN THAT AND FORCE.

WE HAVE MADE A START, I BELIEVE A GOOD START. I APPLAUD THE STATESMANSHIP OF THOSE WHO, DESPITE THEIR DIFFERENCES OF THE PAST, ARE NOW TURNING TO WORK TOGETHER FOR THE FUTURE GOOD OF THEIR COMMUNITY. THERE ARE MANY PEOPLE IN NORTHERN IRELAND, IN THE REST OF THE UNITED KINGDOM AND INDEED THROUGHOUT THE WORLD WHO WILL WISH THEM EVERY SUCCESS.

END OF STATEMENTTTTT
 V22/11/73

APPENDIX 4

MEMBERS OF NORTHERN IRELAND EXECUTIVE DESIGNATE and
POLITICAL PARTIES.

(2)

The Members of the Executive Designate are:-

UNIONIST:

Chief Executive	Mr. Brian Faulkner;
Finance	Mr. Herbert Firk;
Environment	Mr. Roy Bradford;
Education	Mr. Basil McIvor;
Agriculture	Mr. Leslie Norrell;
Information	Mr. John Baxter.

S.D.L.P.

Deputy Chief Executive	Mr. Gerry Fitt;
Commerce,	Mr. John Hume;
Local Government (Housing and Planning)	Mr. Austin Currie;
Health and Social Services,	Mr. Paddy Devlin.

ALLIANCE:

Law Reform	Mr. Oliver Napier.
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The five non-voting seats in the Northern Administration
are now

Chief Whip,	Major Lloyd Hall Thompson (Unionist);
Manpower,	Mr. Bob Cooper (Alliance);
Deputy Chief Whip,	Mr. Basil Glass (Alliance);
Community Relations,	Mr. Ivan Cooper (S.D.L.P.);
Economic and Planning Co-ordination,	Mr. Eddie McGrady (S.D.L.P.);

UNIONIST

(Ulster Unionist Council)

3 Glengall Street
Belfast 12

Tel. 46254

(22)

LEADER

Mr. Brian Faulkner

SECRETARY

Mr. J. O. Baillie

CHIEF WHIP

John Brooke

PARLIAMENTARY PARTY

(O.U.)

J. Baxter (Antrim N.)
P. McLachlan (Antrim S.)
N. Minford (Antrim S.)
J. Strange (Armagh)

Dr. N. Agnew (Belfast E.)
R. Bradford (Belfast N.)
J. Cardwell (Belfast E.)
Major Hall Thompson (Belfast N.)
W. Morgan (Belfast N.)
H. Elder (Belfast S.)
H. Kirk (Belfast S.)
R. Magee (Belfast S.)
B. McIvor (Belfast S.)
W.S. Brownlow (Down N.)
R. Campbell (Down N.)
R. Broadhurst (Down S.)
D. Pollock (Mid-Ulster)
B. Faulkner (Down S.)
J. Brooke (Down N.)
~~H. Whitten (Armagh)~~

(U.)

Mrs. Ann Dickson (Antrim S.)

UNPLEDGED UNIONIST

4 Mullinure Park
Armagh

Tel. Armagh 2409 or 3721

[As the Unpledged Unionists have not published any address as their Party Headquarters, the above, which is Mr. J. Taylor's private address might be used.]

CHAIRMAN

Mr. Harry West

LEADER

Mr. J. Taylor

SECRETARY

Mr. Austin Ardill

PARLIAMENTARY PARTY

- J. Taylor (Fermanagh-S. Tyrone)
- F. Millar (Belfast N.)
- J. Laird (Belfast W.)
- Mrs. S. Conn (Derry),
- W. Douglas (Derry)
- L. Morrell (Derry)
- J. Kilfedder (Down N.)
- H. Heslip (Down S.)
- H. West (Fermanagh-S. Tyrone)
- W. Thompson (Mid-Ulster)
- A. Ardill (Antrim S.)
- H. Whitten (Armagh)

H.D.J.P.

20 College Square North
Belfast 1

(24)

Tel. 26525

CHAIRMAN

Eddie McGrady

LEADER

Gerry Fitt M.P.

DEPUTY LEADER

John Hume

GENERAL SECRETARY

John Duffy

CHIEF WHIP

Paddy Devlin

PARLIAMENTARY PARTY

John O'Hagan (Antrim N.)
Vincent McCloskey (Antrim S.)
S. Mallon (Armagh)
H. News (Armagh)
P. O'Hanlon (Armagh)
P. Devlin (Belfast N.)
D. Gillespie (Belfast W.)
M. Canavan (Derry)
H. Logue (Derry)
John Hume (Derry)
F. Feeley (Down S.)
P. O'Donoghue (Down S.)
A. Currie (Fermanagh-S. Tyrone)
T. Daly (Fermanagh-S. Tyrone)
I. Cooper (Mid-Ulster)
A. Larkin (Mid-Ulster)
P. Duffy (Mid-Ulster)
Gerry Fitt (Belfast N.)
Eddie McGrady (Down S.)

ALLIANCE

6 Cromwell Road
Belfast 7
Tel. 24274

125

LEADER

Oliver Napier

DEPUTY LEADER
& CHIEF WHIP

Bob Cooper

TREASURER

Mrs. Joan Tomlin

PARLIAMENTARY PARTY

H. Wilson (Antrim N.)
Dr. D. Crothers (Antrim S.)
J. Ferguson (Belfast N.)
B. Glass (Belfast S.)
Lord Dunleath (Down N.)
B. McConnell (Down N.)
Oliver Napier (Belfast E.)
B. Cooper (Belfast W.)

4.

N.I.L.P.

1-5 Cheviot Avenue
Belfast BT4 3AG
Tel. 655620

ACTING CHAIRMAN

B. Garrett

LEADER

Vivian Simpson

PARTY ORGANISER

Erskine Holmes

PARLIAMENTARY PARTY

David Bleakley (Belfast E.)

SECRETARY

Mr. Douglas McIlloodon

NATIONALIST PARTY

26 Beechwood Avenue
Derry

LEADER

Eddie McAteer

PARLIAMENTARY PARTY

No Parliamentary representation

LIBERAL PARTY

48 Rosemary Park
Bangor
Co. Down

LEADER

Berkley Farr

SECRETARY

Cecil Ball

PARLIAMENTARY PARTY

No Parliamentary representation

V.U.P.P.

9 Hawthornden Road
Belfast BT43JU

CHAIRMAN

Mr. Ernest Baird

(27)

LEADER

Mr. W. Craig

SECRETARY/WHIP

Professor Kennedy Lindsay

PARLIAMENTARY PARTY

Professor K. Lindsay (Antrim S.)
Dr. T.D. Carson (Armagh)
Mrs. J. Coulter (Belfast W.)
A. Barr (Derry)
C. Harvey (Down S.)
J. Dunlop (Mid-Ulster)
W. Craig (Antrim N.)
E. Baird (Fermanagh-S. Tyrone)

D.U.P.

356 Ravenhill Road
Belfast BT68GL

LEADER

Rev. Ian Paisley M.P.

DEPUTY LEADER

Rev. William Beattie

PARTY WHIPS

John McQuade, James Craig

PARLIAMENTARY PARTY

Dr. Hutchinson (Armagh)
Mrs. Eileen Paisley (Belfast E.)
E. Burns (Belfast S.)
C. Poots (Down N.)
Rev. Ian Paisley (Antrim N.)
Rev. W. Beattie (Antrim S.)
John McQuade (Belfast N.)
James Craig (Antrim N.)

Appendix 5

COUNCIL OF IRELAND - UNIONIST PROPOSALS

128

Purpose:

We believe that all the people of Ireland have a common interest in the achievement and maintenance of peace, the provision of arrangements whereby no part of the British Isles can provide a haven for terrorists, the co-ordination of Government activities on many social and economic matters, and the promotion of mutual understanding and tolerance between the different Irish traditions. We, therefore, propose that a Council of Ireland shall be set up to assist in achieving these objectives.

Procedure:

We propose that a tripartite conference of representatives of the Westminster, Dublin, and Belfast governments should take place in Northern Ireland to discuss the structures and powers of a Council of Ireland and to determine whether an adequate foundation for progress can be agreed upon. This meeting would take place after a Northern Ireland Executive had been agreed upon, appointed, and had held its first meeting to agree on a common approach at the conference.

To secure an adequate foundation for further progress the conference must achieve agreement on -

1. the ending of the Constitutional claim to the territory of Northern Ireland by the Republic:
2. recognition of the present constitutional status of Northern Ireland by a treaty between the Westminster and Dublin Governments:
3. a recognition that only by the democratically expressed will of the Northern Ireland people voting in a Border Poll will that constitutional status be altered:
4. measures to bring to justice terrorists operating in any part of the British Isles:
5. the general structure of the Council of Ireland, and
6. general agreement on the scope of activity of the Council of Ireland.

Setting up a Council:

Following a successful conference there should be a meeting of the governments of the Republic and of Northern Ireland attended by a representative of the British Government to determine the date, place, and precise structure for the first meeting of a Council of Ireland.

Structure:

Structure:

We envisage the following for the Council -

- (a) It will consist of an equal number of representatives of the Governments of Northern Ireland and the Republic, and be attended by a representative of the Westminster Government.
- (b) Decisions must be unanimous.
- (c) The chairmanship will alternate.
- (d) Meetings will be open to the Press.

Powers:

- (a) The Council will require a 75% vote of support in the Dail and the Northern Ireland Assembly on all matters of policy.
- (b) The Council will discuss matters in the social and economic sphere which require co-ordinated action by the Governments of the Republic and of Northern Ireland.
- (c) The Council will discuss social and economic affairs with a view to reaching a joint approach of regional policy within the European Economic Community.
- (d) The Council will discuss progress in the elimination of terrorism and provide for an exchange of views on possible further measures.
- (e) The Council may discuss means of fostering better understanding between the differing political aspirations held by the peoples of the British Isles.

Finance:

The costs of the tripartite conference shall be shared equally between the Westminster and Dublin Governments. The costs of operating a Council of Ireland shall be jointly borne by the Dublin and Stormont Governments.

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Alliance Party Proposals

1. The Council of Ireland should consist of 14 Members - 7 from the N.I. Executive and 7 from the Government of the Republic.
2. We have no objection to a second tier inter-parliamentary advisory body provided that such body is equally representative of the Dail and The Assembly. We suggest 20 members from each legislative body elected by P.R.
3. The Council should have its own small but high powered secretariat under a Secretary General. This secretariat would have power to bring forward papers and projects for discussion by the Council.
4. The Council should meet alternatively in Belfast and Dublin.
5. The functions of the Council should be divided into 2 groups:-
 - (a) Advisory functions on which the Council makes recommendations to the Dail and Northern Ireland Assembly which recommendations if approved by the 2 legislative bodies are then implemented by the legislative bodies.
 - (b) Functions over which the Council would itself have control.
6. If there is agreement between the Dail, the N.I. Assembly and Westminster additional functions both advisory and executive can be transferred to the Council. We foresee no difficulties in regard to functions over which the Assembly has power to legislate. Where, however, the

See para 11

functions are "excepted" or "reserved", subject to the terms of the Constitution Act, the consent to transfer functions will be between Westminster and the Dail.

7. The immediate advisory functions which should be given to the Council are:-

- *(a) Security and policing with an immediate brief to draw up proposals for a Common Law Enforcement Area.
- (b) Regional and physical development.
- (c) Agricultural development and fishing.
- (d) Transport.
- (e) Power.
- (f) Matters relating to common E.E.C. Policy.

8. The only functions over which the Council would itself have control which should be transferred immediately are:-

- (a) Tourist promotion.
- (b) Existing joint inter-Government schemes.
- (c) Livestock, horticultural and agriculture import regulations for health and hygiene.

9. The initial financing of the Council which would largely be payment of secretariat and tourist promotion expenditure should be paid for by direct subvention from Dail and the Assembly on a per capita basis. The Council should then produce a scheme for its own financing for consideration of both legislative bodies.

10. All recommendations of the Council must be unanimous.

11. Agreements on transfer of powers and functions should be majority decisions of legislative assemblies involved.

*According to the SDLP, the original typed version put on the table by Alliance included the words "and policing". The document taken away from the meeting by the SDLP and given to me by them had the words crossed out in pen.

PROPOSALS FOR A COUNCIL OF IRELAND

132

by THE SOCIAL DEMOCRATIC AND LABOUR PARTY

PLACE

The Council of Ireland should have a permanent meeting place. We would recommend that this meeting place should be in Armagh and that there should be a permanent Headquarters which would house the Secretariat of the Council of Ireland.

INSTITUTIONS

1. Council of Ministers

A Council of Ministers should be the Chief decision making body of the Council of Ireland. Its membership should be drawn equally from the Northern Ireland Executive and from the Irish Government and there should be five representatives from each side. The Council should meet regularly and the Chairmanship should rotate.

2. An Assembly

The Assembly of the Council of Ireland should also be drawn equally from the Northern Ireland Assembly and from Dail Eireann. There should be 25 representatives from each side to constitute the Assembly. The Assembly should have powers to debate all reports placed before it from the Council of Ministers and to pass resolutions. It should also have the power to ask questions and to debate and resolve upon any issue that comes under the powers of the Council. It should have the power to form consultative Committee and to propose an increase in the powers of the Council of Ireland. Its members should be paid.

3. Secretariat

The Secretariat should be in essence the Civil Service of the Council of Ireland and it should be independent of the Civil Services North and South. Its Chief Officer should be a Secretary General and the powers of the Secretariat should be largely those of a Civil Service to initiate and formulate policy for presentation and decision to a Council of Ministers. It should also be the Body which implements the decisions of the Council of Ministers.

4. An All-Ireland Court

One of the institutions of the Council of Ireland should be a Court with Judges drawn in equal numbers from North and South and with a President appointed by the European Court of Humane rights. The functions of this Court should be initially to interpret the Laws and

/Orders

Orders passed, and made by the Council. It should also be the Court of Human Rights for the whole Country to which any citizen could appeal against any alleged infringement of Human Rights in any part of Ireland.

5. There should be an Economic Affairs Committee.

6. There should also be a Committee of Culture and the Arts.

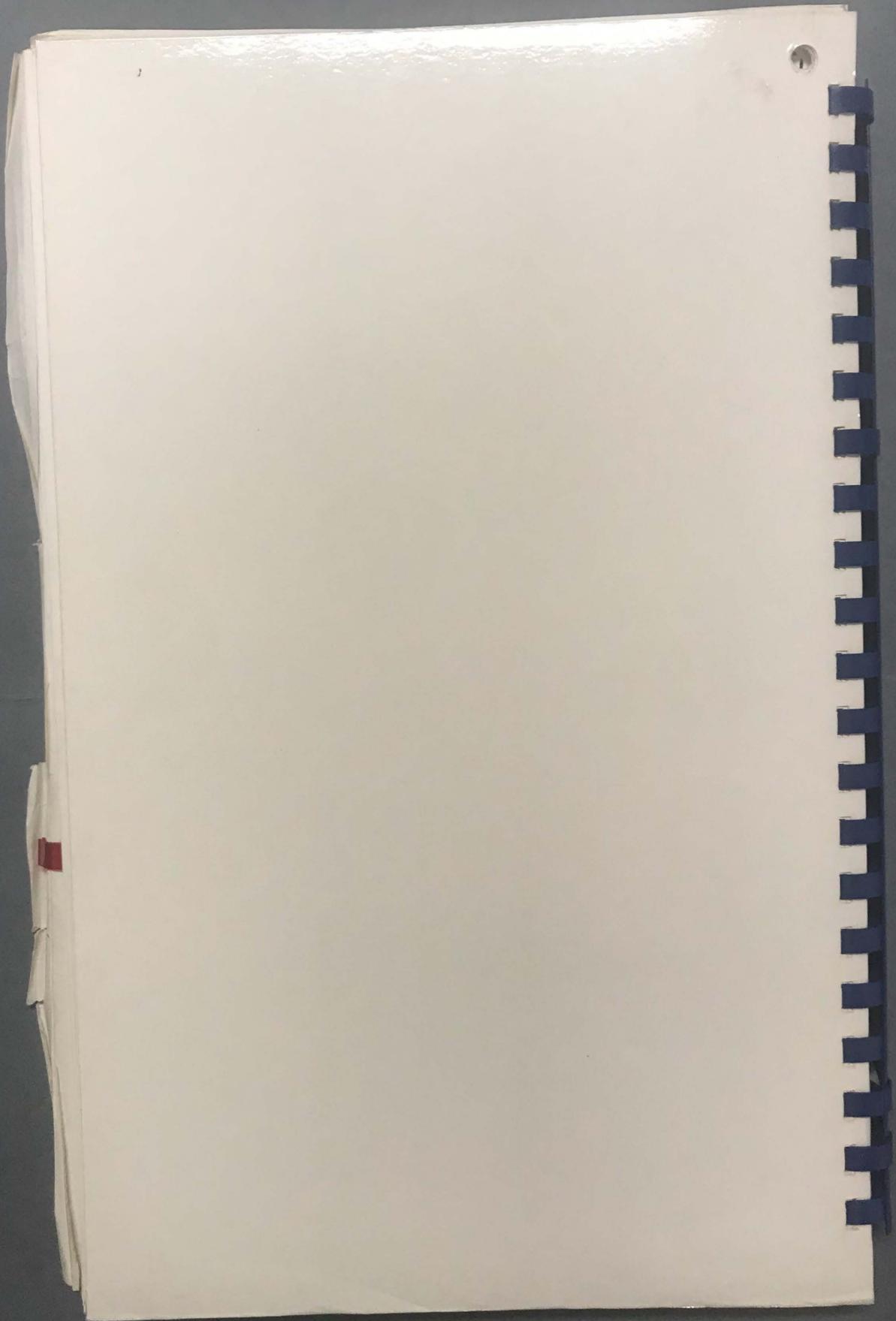
FUNCTIONS

The Council of Ireland should have exclusive Executive Functions in certain fields. It should also have the power to harmonise structures laws and services in both parts of Ireland as well as a consultative and advisory role. The power for the Council of Ireland to evolve and add to its powers by agreement should be specifically built into it and the British Government should make it clear in a Declaration that it would place no obstacles in the way of such evolution provided agreement is reached by the Council Members. The Council should exercise exclusive Executive Functions for the whole of Ireland on such matters as are of immediate common concern to both parts of the island. Some of these functions would include matters like Tourism, Electricity, Regional Development, telecommunications as well as having a major role in the control of Police in both parts of the Island. A detailed list of the exclusive Executive functions of the Council and the services that it would harmonise can be supplied later.

4. FINANCE

It is imperative that the Council of Ireland should be independently financed and have its own sources of finance in addition to Grants that it would receive from time to time from the Government on Dublin and the Northern Executive.

This is an outline of our basic proposals in relation to the creation of a Council of Ireland. This outline can be supplemented in detail at discussions.



The following statement has been issued by Mr. Lynch, Leader of the Opposition, following his meeting with the British Prime Minister

F.F. (Opp)
Sept. 1973

It was at my request I had a meeting today with Mr. Heath following his talks with the Taoiseach. I outlined my views and those of the Fianna Fail Party on the current situation in Northern Ireland, on the formation and functions of the proposed Council of Ireland indicating that we would expect these functions to include security, economic matters and tourism. On the economic side I referred to the Council's role in relation to the E.E.C. regional policy. I considered it important that the British Prime Minister should be apprised of the thinking of the Opposition. Any solution to the Northern problem to be successful must be acceptable to the people of the Republic. Since any devolution of power from the Government of Ireland to the Council of Ireland can be effected only by way of constitutional referendum the full support of the Opposition of the day will be necessary. As long as the Government are continuing the policy on Northern Ireland pursued by the Fianna Fail Government they will have our support.

I repeated to Mr. Heath my belief that the lasting peaceful solution can only be found in the context of a united Ireland and I hoped the British Government would recognise this.

6.15 p.m. 17th September, 1973.

Note on Structure and Evolution of the Council of Ireland

1. The functions to be assigned to the Council by the Oireachtas consist of functions which heretofore were assigned to various Ministers under the Ministers and Secretaries Acts, some of which may have been devolved to other bodies. In general the situation will be similar in Northern Ireland and in the United Kingdom.
2. For the most part the assignment will have to be made by Act of the Oireachtas, and, for Northern functions, by Executive Measures and/or Acts of the Westminster Government. Since these Acts and Measures could, in principle, be repealed at any time they are inappropriate as the legal foundation stone of the Council.
3. The legal foundation stone for the Council must, accordingly, be the Agreement reached between this State, the Northern Executive and the United Kingdom Government. This, being an international agreement, will be a valid and binding agreement which can be varied only by agreement between the parties.
4. As the foundation stone of the Council the Agreement should provide
 - (a) for the transfer to the Council of the functions agreed at the time of making the Agreement, and
 - (b) for the transfer of functions agreed for the future.
5. With regard to future transfers it would not be in keeping with the general philosophy behind the creation of the Council not to provide in the Agreement that each party would transfer to the Council any function which the Council requested. To do less than this would make the future role of the Council visibly dependent on the wishes of the Oireachtas, the Northern Executive and the Westminster Government.
6. The main document, at page 45, paragraph 4, sets out "The

Consultative Assembly should have the power to make decisions, on the basis of an agreed majority, about the future evolution of the Council." Whether it should be the function of the Ministerial-Executive or the Consultative Assembly or both to request the future transfer of functions makes no difference to the principle set out in paragraph 5 above. In principle it is the Council which has the power : in fact, of course, it is the Oireachtas and the Northern Executive acting through the Council rather than through their Dublin and Belfast Governments.

7. Should the principle set out in paragraph 5 above not be acceptable, the Agreement setting up the Council should provide that the Council could accept and carry out any functions transferred to it by any Government, Executive, or other authority.
8. Should the Consultative Assembly be given a function to decide on the future evolution of the Council, the majority for such decisions would have to be carefully worked out so as to allay fears, on the one hand, while on the other hand not permitting a small rump to veto any such decision making.
9. The attached document contains in brief provision for the creation and evolution of a Council along the lines set out, perhaps for use in a communiqué, with a formal draft to be made later to provide for such a Council.

1. There shall be a Council of Ireland founded by Agreement between the Governments of Ireland and of the United Kingdom and the Executive Authority of Northern Ireland (hereinafter referred to as the Parties).
2. The Council shall have the functions set out in the Schedule hereto and shall be capable of exercising such additional functions as may be given to it as hereinafter provided.
3. Each Party agrees to take such steps as may be required to transfer to the Council such of the functions set out in the Schedule hereto as are now exercised by or on behalf of that Party.
4. Each Party further agrees to transfer to the Council such further or other functions as the Ministerial Executive of the Council may from time to time request. [or, as shall have been agreed by the Parties]

Dick Scott

STRICTLY CONFIDENTIAL

LEGAL COMMITTEE JUNE 1973

16

1

GENERAL INTRODUCTORY MEMORANDUM.

1. The Attorney General's Legal Committee, set up after consideration of the memorandum to the Government from the Department of Foreign Affairs dated the 29th May consists of :-

The Attorney General.

- | | | |
|----------------|---|--|
| Mr. L. Dockery | - | Principal Solicitor, Chief State Solicitor's Office. |
| Mr. V. Grogan | - | Director, Statute Law Reform and Consolidation Office. |
| Mr. M. Hayes | - | Legal Adviser, Department of Foreign Affairs. |
| Mr. B. Kiernan | - | Legal Adviser, Department of Local Government. |
| Mr. D. Quigley | - | Attorney General's Office. |
| Mr. P. Terry | - | Assistant Secretary, Department of Justice. |

2. The Committee, having considered the memorandum from Foreign Affairs mentioned above and the minute dated 1st June 1973 from the Secretary to an Taoiseach and directions and explanations from the Attorney General, came to the conclusion that its functions, in general terms, were as follows :-

- (a) to examine the matters mentioned in the memorandum from a legal point of view and put forward suggestions as to how the various legal requirements arising from them

2

could be met, and to identify the various Constitutional and/or legislative changes which would be required,

(b) to sketch drafts for any such changes as might arise;

(c) to deal similarly with any matters to which the Government might direct the Committee's attention or which which would be raised by the Inter-Departmental Unit

This involved examination of the law as envisaged by the Northern Ireland Constitution Bill, at present before the United Kingdom Parliament, and comparing it with the law here.

3. The Committee were of the opinion that in putting forward suggestions on how the matters arising might be dealt with from the legal point of view it would be inappropriate for them to take into consideration or comment on whether any such suggestion might or might not be acceptable from a practical or a political point of view. The function of the Committee was considered to be the finding or putting forward of possible legal methods and the assessment of the practical or political aspects of them should be left entirely to those best qualified to assess them. Consequently the suggested methods put forward are not to be considered as being in any way in the nature of recommendations. Also, when different methods of meeting the same requirements a

3

put forward the Committee have commented only on the preference they see arising from legal considerations.

4. The Committee dealt with the matters that arose under the following main heads.

- (a) Constitutional changes which would be required if a Council of Ireland were to be capable of having full legislative jurisdiction conferred on it, and if the Unionist demand that our constitutional claim to Northern Ireland be removed were to be met.
- (b) The form of agreement and legislation which would be necessary for the constitution of a Council of Ireland.
- (c) Legal measures which might be considered to meet the Unionist demands for greater security from terrorist activities. (The Unionist Election Manifesto demanded either a review of the Extradition Law in the two jurisdictions so as to permit extradition of "political" offenders or that a "Common Law Enforcement Area" be set up).
- (d) Legal steps which might be taken if the Unionist demand for recognition of the status of Northern Ireland and of the Northern Majority's "Democratic right to remaining in the United Kingdom" were to be debated with a view to

7

4

5. It was the opinion of the Committee that (d) above could not be appropriately dealt with by particular drafts and that the general principles concerned should be dealt with in this general introduction. The effect of these principles on the form of the Draft measures submitted will, in the main, be self evident. Where not, the particular introduction to a particular measure will refer to it. The general principles, as the Committee saw them are as follows :-

(a) As a matter of international law the dispute concerning the Six Counties is a territorial one - the Irish State in its Constitution claiming that its territory includes the area of the Six Counties, the United Kingdom claiming it is within its jurisdiction. The question of "recognition", therefore, is not whether the Irish Government will "recognise" the Northern Ireland Assembly or "Northern Ireland" (it has no international status) or the United Kingdom Government (it is already recognised) but whether the jurisdictional claim asserted in the Constitution will be abandoned and the territorial boundary of the United Kingdom "recognised".

(b) To maintain a territorial claim in international law it is not necessary that the claim should be enshrined in a Constitution. As a matter of international law,

therefore, Articles 2 and 3 of the Constitution could be deleted without derogating from our claim. If it were desired to maintain a formal claim, this could be done by Government declaration. Any agreement with the United Kingdom to seek deletion of these Articles by a referendum could be prefaced with a preamble "recognising that the claim to unity of the whole country is a valid claim but is not in present circumstances ^{cannot} ~~possible~~ ^{be realised.}" or words to that effect.

Real

(c) As indicated in its White Paper, the British Government may request "the acceptance of the present status of Northern Ireland", linking such request with the possibility - which would have to be compatible with the principle of consent - of subsequent changes in that status (Paragraph 112).

(d) If it were desired to maintain the present territorial claim to Northern Ireland, the British request could be met as follows:

- (1) the Irish Government could declare its willingness to accept and work with the institutions created in Northern Ireland by

the Northern Ireland Constitution Act. In the making of agreements to which Executive Authorities of the Northern Ireland Assembly would be parties this State would, in law, be de facto recognising both the existence of Northern Ireland and the jurisdiction of its Executive Authorities to enter into the agreements.

- (ii) It might be suggested that "acceptance" of the "status" of Northern Ireland implied a formal "recognition" of the present territorial boundary of the United Kingdom, in that in United Kingdom law, Northern Ireland is part of the United Kingdom. It could, however, be argued that by accepting the status of Northern Ireland, the Irish Government was merely accepting the de facto situation which had been created without giving formal "recognition" to the validity of such a situation. This argument would be strengthened if Article 2

were not deleted.

Either such recognition being de facto and not de jure, should not be expressly stated in any written instrument.

(e) If Articles 2 and 3 of the Constitution are not to be deleted, it should be borne in mind that a commitment to enact legislation which might be taken to infringe Article 2 should not be undertaken. Whilst a Government declaration which could be regarded as indicating that the national territory did not include the whole island could not be challenged in the Courts, the possibility of a challenge to enabling legislation must be borne in mind. If Article 2 remains, it would not be prudent to enact any law which could be taken to imply that the national territory does not include the whole island and a commitment to introduce such legislation must be avoided as long as the deletion of Article 2 is not proposed.

(f) As to the Unionist demand that this State abandons the claim to the territory of Northern Ireland set out in Articles 2 and 3: it is no breach of International Law for one State to have and maintain a claim of right to a portion of the territory of another State and to

express such claims in its Constitution. However, if it is desired to remove the claim from the Constitution (which, as already explained, need not mean that the claim is abandoned) drafts achieving such removal are enclosed. These drafts also cope with the possibility of creating a Council of Ireland which could be given powers of government.

Sept. 12-16

See next page

(g) The Unionists request (page 10 of their Election Manifesto) "acceptance by the Republic of the right of the people of Northern Ireland to self determination". The grant or refusal of such a request is a political matter. The respective claims that Northern Ireland or the whole island are proper areas for the exercise of the democratic theory are not such as can be settled by legal principles, but the right of a State to cede a portion of its territory is valid according to such principles.

(h) If it is desired that a right of the Northern majority not to be coerced into a united Ireland, coupled with a right of the Northern minority to use all lawful means to achieve a United Ireland, might be expressed, forms by which this might be done without amendment of the Constitution are contained in the drafts

9

9.

constituting a Council of Ireland.

INTRODUCTORY MEMORANDUM TO DRAFT AMENDMENTS
OF THE CONSTITUTION.

1. The Northern Ireland Constitution Bill and the general law applying in the United Kingdom indicate what the United Kingdom are prepared to accept as what a Council of Ireland might conceivably be. Section 12 of the Bill permits a Northern Ireland Executive Authority to agree to transfer to such a Council any function given to that Authority by the Bill. Such a transfer would be a Reserved Matter (paragraph 7 of Schedule 3.) and would, in effect, require the consent of the United Kingdom Government and Parliament. The effect of the Bill is that the United Kingdom Parliament can transfer all functions of government of Northern Ireland other than excepted functions to a Council of Ireland through the Northern Ireland Executive.
 - Any excepted functions could be transferred directly under the United Kingdom Parliament's unfettered powers.
2. The position in Ireland is quite different in law as the Constitution confines the functions of making laws for this State very strictly to Oireachtas Éireann (Article 15.2.1^o) The only way in which a function of making laws for this State could be transferred to a Council of Ireland would be by "the creation or recognition of subordinate legislatures"

3. If this State is to give to a Council of Ireland law making powers which are at present restricted to Oireachtas Éireann ^{is} and/to be capable in law of reciprocating what the United Kingdom and Northern Ireland will be capable of giving to a Council of Ireland the ideal method would be to have a new Constitution making provision for such a possibility. It was not considered appropriate by the Committee in the circumstances to attempt to sketch what such a Constitution might contain.

4. If the present Constitution were to be amended it was the opinion of the Committee that amendments on the lines set out in the attached drafts (which are intended to be in substitution for the present Articles 2 and 3) would go a long way towards creating the requisite powers. Without deleting any Articles in the present Constitution the same powers could be given by inserting a provision to the same effect as the draft Article 3 (Form A) either as a new Article 3A or by inserting it as a new paragraph in the present Article 3.

The suggested new Articles are set out in alternative forms (Forms A and B). Draft Article 3 in Form B consists of the Article as in Form A with a second paragraph which...

5. The Committee was of the opinion that to attempt to select provisions of the Constitution which might require amendment if a general amendment of the nature suggested in either form of draft Article 3 were not acceptable would not be practicable in the time available and no attempt has been made to do so.

2. The Constitution also recognizes that those who share the common sense of Irishmen recognize the several elements all of which contribute to Irish life and culture and that each of these elements has the right to preserve its legitimate role by peaceful means.

3. Accordingly, it is hereby declared that the reconstruction of the city of Dublin shall be pursued through reconstruction, respecting all the distinctive points and traditions of each of these villages.

Draft Articles 2 and 3Form A.Article 2.

1. This Constitution recognises the constant desire for the restoration of the unity of Ireland, manifested in the history of its people and now re-affirmed.
2. The Constitution also recognises that those who share the common name of Irishman comprise different elements all of which contribute to Irish life and culture and that each of these elements has the right to pursue its legitimate ends by peaceful means.
3. Accordingly, it is hereby declared that the restoration of the unity of Ireland shall be pursued through reconciliation, respecting always the distinctive genius and traditions of each of those elements.

Article 3.

Nothing in this Constitution shall be invoked to invalidate laws made by or under the authority of the Parliament established by this Constitution for giving effect to the declaration in section 3 of Article 2, including laws providing for the establishment or participation in the establishment of organs or institutions and for assigning to them legislative, executive or judicial powers in pursuance of this declaration.

FORM B

Article 2.

1. This Constitution recognises the constant desire for the union of the people of Ireland in conditions of freedom justice and peace which has been manifested in the history of its people and is now re-affirmed.
2. This Constitution also recognises that those who share the common name of Irishman comprise different elements and that each of these elements has the right to pursue its legitimate ends by peaceful means.
3. Accordingly it is hereby declared that the achievement of the union of the people of Ireland must be pursued through reconciliation and with mutual respect for the distinctive genius and traditions of the different elements of the Irish nation.

Article 3.

1. Nothing in this Constitution shall be invoked to invalidate laws made by or under the authority of the Parliament established by this Constitution for giving effect to the declaration in section 3 of Article 2, including laws providing for the establishment or participation in the establishment of organs or institutions and for the assigning to them of legislative, executive or judicial powers in pursuance of that declaration.

2. Until the union of the Irish people has been achieved, the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws of the Parliament which existed prior to the adoption of this Constitution. Provision may be made by law for giving extra-territorial effect to such laws.

INTRODUCTORY MEMORANDUM TO THE AGREEMENT AND
PROVISIONS NECESSARY TO CONSTITUTE A
COUNCIL OF IRELAND

1. A Council of Ireland could most suitably be constituted by
 - (a) an agreement between the parties concerned,
followed by,
 - (b) making the agreement reached part of the domestic
law of the two areas of jurisdiction involved.

2. The first question that arises is - who should be the parties to such an agreement? Three possibilities emerged: -
 - (a) This State and the United Kingdom.
 - (b) This State and the various Northern Ireland Executive Authorities.
 - (c) This State and the United Kingdom and the Northern Ireland Executive Authorities.

3. When considering these possibilities some basic legal factors must be borne in mind:
 - (a) This State and the United Kingdom are Sovereign States, Northern Ireland is not.

(b) Under the Northern Ireland Constitution Bill, Northern Ireland will not have any collective government. While there will be a Northern Ireland Executive and a Chief Executive Member (Section 8(1)) its functions will be exercised by Executive Authorities (Heads of Departments and the Secretary of State) (Section 7(4)). They have a collective name but not a collective function or jurisdiction unless such arises from the participation of all of them.

(c) After the Assembly is set up each of these Executive Authorities will have power subject, where legislation by Measure is necessary, to transfer to the United Kingdom consent, to transfer to the Council of Ireland functions transferred under the Bill (Section 12).

4. An agreement between this State and the United Kingdom alone could, from the legal point of view, be made at any time irrespective of whether the Assembly in Northern Ireland was at that time formed or functioning. If it were formed and had functions transferred to it, and the United Kingdom wished to have any such

functions assigned to the Council of Ireland, the United Kingdom could, in the event of a refusal by the Assembly to assign such functions, achieve the desired result by recalling the transferred functions and provide for a direct transfer of the functions to the Council of Ireland. An agreement between this State and the United Kingdom, being between Sovereign States, would have a status in International Law which an agreement between this State and Executive Authorities of Northern Ireland would not have.

5. An agreement between this State and the Executive Authorities of Northern Ireland would have the following legal disadvantages:

(a) With regard to the transfer of functions to a Council of Ireland, a measure to make law of the agreement and each measure for the transfer by Northern Ireland Executive Authorities would be dependent on the agreement of the United Kingdom (section 12 and paragraph 7 of Schedule). The agreement consequently would not be with the party who had power to fulfill it.

(b) The agreement would not have the status of an international agreement and could not be justiciable before the International Court of

6. An agreement between this State and the United Kingdom and the Executive Authorities of Northern Ireland would have the following advantages in law: -

- (a) It would be an International Agreement and have full legal status as such.
- (b) It would be made between all the parties who had power to carry it into effect without any intervening act (e.g. the United Kingdom would not have to recall a function already transferred to Northern Ireland).
- (c) It would permit the United Kingdom to do what they have laid the legal foundation for in the Northern Ireland Constitution Bill, to wit to transfer functions to a Council of Ireland through the Northern Ireland Assembly, rather than directly from Westminster.

7. The Committee was of the opinion that from the legal viewpoint, the third grouping of parties, i.e. this State, the United Kingdom and the Northern Ireland Executive, would be the best. While the agreement itself should be the same irrespective of the parties involved, the title and the preamble would, of course, depend on whether the United Kingdom was a party

Efforts have been made in the attached draft Bill to cope with the three possible groupings.

8. With regard to the agreement constituting a Council of Ireland (scheduled to the draft Bill), the Committee in the Annex to the agreement have endeavoured to sketch provisions providing for two alternative structures:

(a) In Form A - a structure based generally on lines similar to the European Communities, consisting of institutions tentatively called a Ministerial Commission, a Secretariat, a Parliamentary Congress, an Economic and Social Committee and a Court.

(b) In Form B - a structure based on a Council (representative of the Oireachtas and the Northern Ireland Assembly), an Executive Committee of the Council, and a Court. This would be a structure built somewhat on the lines of the Council of Europe, with the addition of law-making powers.

In selecting titles for some of the suggested institutions the Committee were presented with the difficulty that some apt titles, such as "Assembly" and "Executive", were already appropriated to the proposed Northern Ireland institutions and to the consequent risk of confusion if they were used for institutions of the Council of Ireland.

9. In preparing the drafts the Committee was conscious of the fact that the factors to be taken into account in the constitution of a Council were not matters to be settled by them. However they considered that some form of constitution should be put forward to show how a legal agreement might look. Accordingly, the drafts are merely illustrations of forms of possible agreements and not suggestions as to what such agreements should contain.
10. Many of the provisions set out in the alternative drafts are common to both. Because of shortage of time they have not been written in twice. Certain variations in detail in the drafts will also be noticed. For convenience, these and some other matters are dealt with in explanatory footnotes.
11. If this State is to implement any agreement to give full powers of a legislative nature to a Council of Ireland it would require amendment of our Constitution.

[see page 14]

12. Article 37 of the Constitution provides that

"Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution."

In the opinion of the Committee the Court proposed in the drafts would come within that Article and not be repugnant to the Constitution. However, to remove any possibility of doubt, it might be advisable to have a law setting up such a Court referred to the Supreme Court.

13. The creation of an office of Defender of Human Rights has been set out in the drafts in conjunction with the setting up of an Irish Court of Human Rights. Such an office would have two main functions: -

- (a) to prevent a flood of vexatious cases from overwhelming the Court. This function is similar to the functions of the European Commission on Human Rights with regard to the admissibility of applications;

(b) To assist genuine applicants to have their claims properly presented before the Court when for any particular reason they were unable to obtain adequate legal assistance.

14. Provision for setting up an Irish Rights Commissioner is also made in the drafts. Such a Commissioner already exists in Northern Ireland but his powers are restricted to the investigation of malpractice in administration. A Commissioner for the whole of Ireland might be given wider powers to deal with areas of complaint not capable of being brought before the Court.

DRAFT

In the year 1972 the Government of Ireland and the Government of the United Kingdom entered into an agreement for the establishment of a Council of Ireland between the Republic of Ireland and Northern Ireland.

As it enacted etc.

Short title

1. This is the COUNCIL OF IRELAND BILL.

Confirmation of agreement

2. The agreement set out in the Schedule to this Bill is hereby confirmed and the provisions of the said Schedule, which provide for the establishment of a Council of Ireland, shall have the force of law.

(1) The power to enter into the agreement with the Government of Ireland is intended to be exercised by the Secretary of State for Northern Ireland.

(2) If it is desired to have the agreement entered into with the U.K. Government, the said Bill shall be introduced in Parliament, as well as here, and the legislation will be introduced as an Act in that House.

(3) If the Secretary of State is satisfied that it is expedient to do so he may, with the approval of the Secretary of State for Northern Ireland, make such arrangements as he may think fit for the purpose of giving effect to the provisions of this Bill, and he may, in connection with the arrangements so made, make such arrangements as he may think fit for the purpose of giving effect to the provisions of this Bill.

27.6.1973.

26.6.1973

Draft of

BILL

FOR

An Act *[A Measure] for giving effect to an agreement for the establishment of a Council of Ireland entered into between the Government of Ireland and *

Be it enacted etc.

Short title

1. This Act *[Measure] may be cited as the Council of Ireland Act *[Measure], 1973.

Confirmation of agreement

2. The agreement set out in the Schedule to this Act *[Measure] is hereby confirmed and the provisions of the Annex thereto, which provide for the establishment of a Council of Ireland, shall have the force of law.

* (1) The party to enter into the agreement with the Government of Ireland is intended to be an authority exercising executive authority for Northern Ireland.

(2) If it is desired to have the agreement entered into with the U.K. Government, the confirming Bills will be introduced in Westminster, as well as here, and the legislation will be described as an "Act" in both cases.

(3) If the agreement is to be entered into with an executive authority in Northern Ireland, namely, one or other of those recognised in clause 7(6) of the Northern Ireland Constitution Bill, the confirming legislation will be introduced in the Northern Ireland Assembly, and not in Westminster, and their legislation will be described as a "Measure". Such a Measure will require the consent of the Secretary of State because it deals with a "reserved matter" (N.I.C.B. Sch. 3, par. 7). Every N.I. Measure also requires confirmation by H.M. in Council.

(4) If the agreement is entered into as envisaged in (3) above, there are four possibilities as to the executive authority who might sign on behalf of N.I.:

- (i) The Secretary of State as "Her Majesty's principal officer in Northern Ireland"

- (ii) The same, in agreement with, or at the request of, the members of the Northern Ireland Executive. The Northern Ireland Executive is not, as at present visualized in the N.I. Constitution Bill, a body having collective responsibility in the same sense as the Government or the British Cabinet. If this method were to be adopted, with a view to involving the members of that Executive in the agreement the assent of all, or at least a substantial majority of them, would seem to be highly desirable.
- (iii) One or other of the above methods, but describing the Secretary of State as acting on behalf of H.M. Government as well as his principal officer in N.I.
- (iv) Any other executive authority in Northern Ireland - i.e. the Head(s) of any Department(s) in N.I. referred to in clause 7(6) of the Constitution Bill. In effect, all the members of the Northern Ireland Executive could join in the agreement.

(5) If it is desired to enter into the agreement involving the U.K. Government, the Preamble to the agreement suggested would be FORM A.

If it is to be entered into solely with Northern Ireland, the alternative FORM B is suggested.

Apart from this difference, the agreement would be the same in both cases.

(26.6.73)

SCHEDULE

FORM A

*Alternative Revised
over page*

Agreement between the Government of Ireland

and the Government of the United Kingdom and

The Government of Ireland and the Government of
the United Kingdom and

DESIROUS of improving the friendly relations existing
between the Irish and British peoples [their peoples]:
HAVING REGARD TO the different elements comprising the
Irish people all of which contribute to Irish life and
culture and each of which has the right to pursue its
legitimate ends:

CONSCIOUS that, notwithstanding this diversity, there exists
among the people of Ireland a desire for peace, harmony and
co-operation in the interest of their common welfare:

RECOGNISING that violence must not be used or advocated in
pursuit of political ends:

RESOLVED as nations committed to the ideals of the
European Communities that diversity shall not be a barrier
to amity between peoples and government having close
historical links:

CONVINCED that the fulfilment of common aims and the
achievement of uniformity in relation to matters affecting
Ireland as a whole or any of its regions will be more
readily achieved through the co-operation of political
institutions:

ACKNOWLEDGING that an institutional structure is required
to ensure effective co-operation:

DETERMINED above all to establish peace and prosperity
throughout Ireland:

HAVE AGREED AS FOLLOWS

FORM B

*Alternative
Route*

The Government of Ireland and
Resolved to provide for constitution and co-operation
in Ireland for the benefit of all its people alike:

Recognising that those who share the common name of
Irishmen comprise different elements all of which contribute
to Irish life and culture and that each of these elements
has the right to pursue its legitimate ends [by peaceful
means]:

Recognising that political institutions in Ireland must
be considered in the light of the benefits they may bring
to the people of Ireland as a whole, respecting always the
distinctive genius and traditions of each of those elements:

Abhorring the use or advocacy of violence between
Irishmen in pursuit of political ends:

Desiring accordingly to bring about harmonious
legislative and executive action and to promote effective
cooperation and uniformity in relation to matters affecting
the whole of Ireland or any of its regions:

HAVE AGREED AS FOLLOWS:

(Common form)

1. To establish a Council of Ireland in accordance with
the provisions set out in the Annex hereto;
2. To enact such Acts [and Measures] and do such other
things as may be required to give the force of law to
those provisions and to carry them into full effect.

ANNEX

The Council of Ireland.

[Two alternative structures are provided: Forms 1 and
2 attached]

Signed in duplicate the _____ day of _____, 1973.

For the Government of Ireland:

For

[For]

ANNEX

FORM 1

Provisions for

A COUNCIL OF IRELAND

Council of Ireland

- 1. (1) There shall be a Council of Ireland.
- (2) The Council of Ireland shall consist of the following institutions -
 - (a) a Ministerial Commission;
 - (b) a Secretariat;
 - (c) a Parliamentary Congress;
 - (d) an Economic and Social Committee;
 - (e) a Court;
 - (f) a Defender of Human Rights;
 - (g) a Rights Commissioner.

Ministerial Commission

2. (1) The Ministerial Commission shall consist of an equal number of members of the Government of Ireland and the Northern Ireland Executive, namely, four from each body or such greater number as these bodies may from time to time decide.

(2) An appointment to membership of the Commission may be for a particular period, a particular meeting or a particular purpose as the appointing body may decide.

(3) Decisions of the Commission may be made in accordance with Article 3.

(4) The Commission may make orders in respect of any of its functions, and may by order revoke or amend any of its orders.

(5) Every order of the Commission shall have the force of law in both jurisdictions.

Legislation

Note: "Force of law", while not strictly necessary, emphasises that the orders are a form of legislation. An order will have legal effect in each jurisdiction by virtue of its own confirming Act or Measure.

(6) The Commission shall select one of its members to preside at each of its meetings. The chairmanship shall alternate from meeting to meeting between the two jurisdictions.

(7) All questions before the Commission shall, except where otherwise provided, be decided by a simple majority of the members. The chairman shall have an original but

Ministerial
Commission

3. (1) The Commission shall have such functions as are transferred to it by any authority by which such functions would otherwise be exercisable and such other functions as are conferred on it by these provisions.

(2) A function may be transferred by the Oireachtas or the Northern Ireland Assembly subject to any condition requiring a special majority for an order of the Commission or to any other limitation on the exercise of the function.

Note:

The term "authority" is intended to correspond with the term as used in clause 12(2) of the (British) Northern Ireland Constitution Bill. It would cover, for example, the transfer of functions by local authorities, road authorities, semi-State bodies, e.g. tourism, electricity, inland fisheries, etc., provided only that any such "authorities" have the power to make such transfers under the appropriate domestic law.

The Secretariat

4. (1) The Secretariat shall consist of a Secretary General and at least four other members.

Note: There should probably be at least one member for each of two Ministers, i.e. for a Minister representing particular functions from the North, and his counterpart in the State.

(2) The Secretary-General shall be appointed by the Commission on such terms as the Commission may fix at the time of his appointment.

(3) The Secretary-General shall be the head of the Secretariat and preside at its meetings. His assent shall be required for any decision of the Secretariat.

(4) The structure of the Secretariat and the terms of employment of its members shall be in accordance with a scheme prepared by the Secretary-General and approved by the Committee. The scheme may be varied from time to time in the same manner.

(5) In drawing up a scheme, or proposals for varying a scheme, regard shall be had to the purposes for which the Council of Ireland is established and to the desirability of ensuring, so far as practicable, an equal representation of the two jurisdictions.

(6) The Secretary-General may be removed from office on the proposal of the Committee for stated reasons, by a two-thirds majority of the members of Congress.

(7) A member of the Secretariat may be removed from office by the Secretary-General with the consent of the Commission.

Functions of
Secretariat

5. (1) The Secretariat shall be responsible for formulating the policy and plans of the Council, at the request of or in consultation with the Commission and in accordance with any directions of the Commission and for initiating proposals for orders to be considered by the Commission.

(2) The Secretary-General shall be entitled to attend every meeting of the Commission, and shall attend a meeting if the Commission so requests. He shall have right of audience at any meeting.

(3) Any member of the Secretariat shall attend a meeting of the Commission if so requested by the Commission for consultation on any matter related to his duties.

Congress

6. (1) The Parliamentary Congress shall consist of an equal number of the members of the Oireachtas and the Northern Ireland Assembly designated by these bodies respectively in accordance with such procedure and for such periods as they may severally determine.

(2) Congress shall have the functions conferred on it by these provisions and such other functions as may be assigned to it by the Commission.

(3) Where a function is conferred on Congress by the Commission the function shall not be withdrawn except by the unanimous decision of the Commission.

(4) There shall be a session of Congress at least once every year.

(5) Congress shall debate in open session every report ^{presented} presented to it by any of the other institutions of the Council and may pass such resolution as it thinks fit on the report.

(6) One member, at least, of the institution concerned, nominated for the purpose by such institution, shall have right of audience during the debate on the report.

(7) Any member of Congress may table a question for answer by the Commission or the Secretariat. The question shall be included in the agenda of Congress for a day not being earlier than three days after the question has been tabled.

(8) A member of the relevant institution shall attend and answer the question and have right of audience during the discussion on his answer. A question may be answered in writing, provided the answer is circulated to the members of Congress before the question is taken, or at such later time as Congress may decide. The member shall have right of audience at such later meeting.

(9) Congress may debate and vote on such motions relating to the policy of the Council or any of the functions of any of its institutions, other than the Court, and take such decisions thereon as it thinks fit.

The Economic and Social Committee

7. (1) The Economic and Social Committee shall be constituted by a supplementary agreement between the Government of Ireland and the Northern Ireland Executive as a body to advise the Commission and the Secretariat on any matter affecting the economic or social wellbeing of Ireland as a whole or any of its regions.

(2) The Committee may on its own initiative consider any matter related to its functions and report thereon to the Commission or the Secretariat, and shall, at the request of either of those institutions, make a report on the subject-matter of the request.

(3) The Commission may publish any report prepared on its own initiative but shall not publish a report made at the request of another institution except with the consent of that institution.

The Court

8. (1) The Court shall consist of five judges, two of whom shall be nominated from time to time by the Chief Justice of each jurisdiction from among the members of the superior courts of that jurisdiction, together with a President who shall be nominated by those judges.

(2) If the person nominated as President is one of those already nominated as a judge of the Court, the Chief Justice of the relevant jurisdiction shall nominate another judge in his place.

(3) In the event of failure by the judges to nominate a President, the Commission shall request the President of the European Court of Human Rights to nominate a person to be President.

Note: Whether or not a judge of the Court should be required to cease to hold office in the domestic court is a matter for consideration. If the judges are to be permanent and whole time appointments, provision will need to be made for their terms of office and for a power of removal in exceptional cases.

Jurisdiction
of Court

9. (1) The Court shall have exclusive jurisdiction throughout the whole of Ireland in relation to such limited functions and powers of a judicial nature, in matters other than criminal matters, as are conferred on it by law, including issues arising under any convention relating to human rights which forms part of the law of both jurisdictions, or any other legislation relating to human rights which is common to both jurisdictions.

(2) The Court shall be the authentic interpreter of the orders of the Commission and any order of the Commission shall be construed by the courts of each jurisdiction in accordance with the opinion of the Court.

(3) If a question of construction of an order of the Commission arises in any matter before a domestic court, that court shall refer the question to the Court and await its opinion.

Note: The reference to "limited functions" in par. (4) is intended to bring the Court within the ambit of Art. 37 of the Constitution and avoid the necessity of an amendment of the Constitution.

The Defender
of Human Rights

10. (1) There shall be an officer of the Court who shall be known as the Defender of Human Rights.

(2) He shall be appointed by the Court on such terms as the Court may fix at the time of his appointment.

(3) His functions shall be -

- (a) to receive all applications relating to issues respecting human rights intended to be put before the Court, and to consider their admissibility and appropriate form of presentation, in consultation with the Court;
- (b) to assist generally and provide for legal aid for applicants to the Court.

Commissioner

11. There shall be a Chief Commissioner appointed by the Commission on such terms as the Commission may determine at the time of his appointment.

Council Fund

12. (1) There shall be a Council Fund which shall consist of such moneys as may be provided by grants from the Oireachtas and the Northern Ireland Assembly or in such other manner as the Government of Ireland and the Executive authorities of Northern Ireland may agree as may be provided by law.

(2) The Fund shall be administered by the Secretariat in conformity with the policy of the Government of Ireland and in accordance with the directions of the Commission.

(3) The accounts of the Fund shall be audited in the same manner as the public accounts of each jurisdiction. The auditing authorities may arrange for a joint audit.

Annual reports

13. The Commission, the Secretariat and the Economic and Social Committee shall each prepare an annual report of its operations and lay the report before the Assembly.

Staff

14. (1) The Secretariat may, subject to any directions of the Commission, employ such staff as may be required for the service of the institutions of the Council of Ireland.

(2) The numbers, grades, remuneration and conditions of employment of members of the staff shall be determined by the Secretariat subject to any directions of the Commission.

Premises

15. The Secretariat may, subject to any directions of the Executive, purchase and take on lease such land and build, equip and maintain such premises as may be required for the use of any of the institutions of the Council and may sell or lease any such land or premises no longer required for that purpose.

FORM 2

Alternative
Draft provisions

For

A Council of Ireland

Council of Ireland.

1. (1) There shall be a Council of Ireland.

(2) The Council shall consist of ~~fifty~~ delegates, one half of whom shall be designated by the Houses of the Oireachtas from among their members and Northern Ireland and the other half by the Assembly from among its members, in accordance with such procedures as they may respectively determine.

(3) The Council may by order provide for a greater number of delegates than ~~fifty~~, but an order providing or an order revoking any such order shall not have effect unless confirmed by resolutions of each House of the Oireachtas and of the Assembly.

(4) A delegate, shall, on ceasing to be a member of the body by which he was designated, shall cease to be a delegate to the Council, provided that, on the dissolution of that body, the persons who were designated by that body shall continue to be delegates until their successors are designated or six months or the re-assembly of that body, whichever first happens.

(5) The Council shall meet at least once a year

(6) The Council may meet in extraordinary session at the request of one third of its members or at the request of the Executive Committee.

(7) The Executive Committee shall present to the Council an annual general report on the work of the Council and its committees which the Council shall consider in open session.

Notes: 1. The number of delegates should allow for full and adequate representation of each political grouping.

2. It may be desirable to provide that a certain minimum of the delegates should be Ministers of State or members of the Northern Ireland Executive.

Executive
Committee

2. (1) There shall be an Executive Committee of the Council.

(2) The Executive Committee shall consist of such number of members as the Council may determine, comprising Assembly delegates and Officers delegates in equal numbers.

(3) The mode of appointment, of members, their tenure of office, the allocation of functions between them and other matters relating to the membership of Executive Committee shall be provided for by order of the Council.

(4) The Executive Committee may fix a quorum for its meetings and, subject to any order of the Council may determine its own procedure.

Note: With a Council as large as fifty, an Executive Committee is essential. If the Council is substantially smaller, the matter of an Executive might be re-considered.

Chairman and
vice-Chairman
of Council

3. (1) The Council shall elect a Chairman and vice-Chairman from among its members and prescribe their functions and tenure of office.

(2) The Chairman and vice-Chairman shall be from different designating bodies.

(3) In the absence of the Chairman and vice-Chairman the chair shall be taken by another delegate, chosen in such manner as the Council may determine.

(4) All questions in the Council shall, except where otherwise provided, be determined by a majority of the delegates present and voting other than the chairman of the meeting, who shall have a casting vote in the case of an equality of votes.

(5) The Chairman and vice-Chairman shall each hold office for one year.

(6) Successive Chairmen shall be from different designating bodies.

(7) Where the Chairman is a delegate of one such body the vice-Chairman shall be chosen from among the delegates of the other body.

(8) The Council may elect persons to fill casual vacancies. A person so elected shall be a delegate of the same designating body as his predecessor and shall hold office for the residue of the term for which his

Chairman of the Executive Committee

4. (1) The Executive Committee shall elect a Chairman from among its members.

(2) In the absence of the Chairman the members present shall appoint another member to preside at a meeting.

(3) All questions at a meeting shall, except where otherwise provided by the Council, be determined by a majority of the members present and voting and, in the case of an equality of votes, the chairman of the meeting shall have a second or casting vote.

Notes: 1. The post of Chairman of the Council is the equivalent of the Speaker or Ceann Comairle. The post of Chairman of the Executive Committee is that of Chief Executive and different considerations apply as to tenure of office.

2. Tenure of office and removal from office could be provided for by rules under Article

Functions of Council

5. (1) The Council shall have such functions as may be transferred to it by any authority by which such functions would otherwise be exercisable.

(2) An order of the Council in exercise of any transferred function or of any power assigned to it under these provisions shall have the force of law in both jurisdictions.

(3) If a function is transferred by or under the authority of the Oireachtas or the Assembly subject to condition requiring a special majority for an order of Council or to any other limitation on the exercise of function any order which does not comply with the condition or limitation shall be of no effect.

Notes: 1. The term "authority" in paragraph (1) is enough to cover local authorities (e.g. for contiguous areas), road authorities and semi-State bodies dealing, for example, with tourism, fisheries and other functions which could be conveniently exercised by the Council or joint bodies under its control.

2. "force of law": the enabling Act⁴ of the Oireachtas could give orders the force of law in the Republic and the Northern Ireland Assembly Measure would do the same for Northern Ireland. Thus, the orders, while deriving their authority from two different sources, would have the same effect.

Functions of
Executive
Committee

6. The Executive Committee shall be responsible for preparing the work of the Council and for carrying its orders and decisions into effect.

Orders of Council

7. A proposal for an order of the Council may be made by a member of the Executive Committee acting on behalf of the Committee or by any delegate other than a member of the Committee.

Legislation

3. (1) The Council may consider proposals for legislation presented to it for consideration by the Assembly or by either House of the Oireachtas and offer its advice thereon.

(2) The Council may present proposals for legislation to any such legislative body and that body shall consider the proposals and report to the Council.

(3) A copy of any such report shall be laid before the Assembly and each House of the Oireachtas.

(4) Any delegate nominated by the Council for purpose shall have right of audience in the relevant legislative body during the consideration of any such proposals although not a member of that body.

Rules of Council

9. (1) The Council may make rules for its own procedure and for the procedure of the Executive Committee.

(2) The Council may appoint other Committees, whether comprising or including delegates or otherwise and provide for their functions and procedure.

a tribunal of enquiry by the Council of the members of the Council
in which it is for the time being constituted
exercised in relation to the members.

Powers of inquiry

10. (1) The Council may make inquiries into any matters in relation to their functions, or set up a tribunal for any such purpose.

(2) The Council, or a tribunal set up by the Council, shall have for the purposes of an inquiry all the powers, rights and privileges conferred on a tribunal of enquiry by the law of the jurisdiction in which it is for the time being exercising any function in relation to the inquiry.

Money

shall

11. (1) The revenues of the Council consist of grants made by the competent authorities of each jurisdiction and such other moneys as may be provided under the law of such jurisdiction.

(2) The accounts of the Council shall be subject to audit in each jurisdiction in the same manner as public accounts are audited in that jurisdiction.

Premises

12. The Council may purchase and take on lease such land and build, equip and maintain such premises as it considers necessary for the performance of its functions and may sell or lease any such land or premises no longer required by the Council for that purpose.

Staff

13. (1) The Council may employ such staff as it considers necessary for the performance of its functions.

(2) The numbers, grades, remuneration and conditions of employment of members of the staff shall be such as the Council may determine.

NOTE: This draft should also include provision for a Court, a Defender of Human Rights and a Rights Commissioner as in Form L.

MEMORANDUM ON LAW ENFORCEMENT AND
SECURITY PROBLEMS

1. The Committee considered the matter of law enforcement raised in paragraph 112 of the British White Paper which suggests that the Government should discuss with the elected representatives of Northern Ireland how provision be made for "a firm basis for concerted governmental and community action against terrorist organisations". The Committee considered how such an objective could be met and now put forward the following for consideration.

(1). Adopt a common jurisdiction for the 72 Counties in respect of specified offences so that we could prosecute in our Courts for offences committed in the North and vice versa.

This would not be a new principle. Already many offences committed abroad, such as murder, manslaughter, bigamy and forgery, are triable here.

(a) The offences to be specified would include all crimes of violence (those involving the use or possession of firearms or explosives, arson, etc.) and, possibly, membership of unlawful organisations. The jurisdiction would apply irrespective of the residence or citizenship of the offender.

(b) Alternatively, the provision might be limited to offences committed in the North by persons resident here before the offences were committed.

(c) A further modification would be on the lines of section 33 of the Extradition Act, 1965 (which does not apply to extradition to the North or Britain). Under this section a person liable to be extradited, but for the fact that he is an Irish citizen, may be proceeded against for the offence by direction of the Attorney-General, given following a request to that effect from the country within whose territory the offence is alleged to have been committed.

Comment

A difficulty common to all three variants of this suggestion is securing the attendance in one jurisdiction of witnesses from the other. The suggestion also involves the attendance before our Courts of RUC and British Army personnel and the attendance of Gardaí and Army personnel before the Northern courts. It might be desirable to make a start in endeavouring to overcome some of the difficulty in relation to the attendance of witnesses by making a reciprocal arrangement for the service and enforcement of witness summonses throughout the 32 Counties in civil and criminal cases. Witnesses who failed to turn up in the other jurisdiction could be fined in their "home" court, but only if they had no reasonable excuse for not travelling (e.g. illness or insufficient viaticum).

(2) Extradition

- (a) Drop the present exemption for political offences altogether in relation to extradition to the North.
- (b) Exclude from the scope of the present exemption specified offences, for example, murder, manslaughter, use or possession of firearms and explosives, membership of unlawful organisations and conspiracy to commit such offences etc., irrespective of the motivation.
- (c) Define "terrorist activities" and make them special offences outside the scope of the exemption granted for political offences.
- (d) Alter the Rules of the Superior Courts so that extradition applications to the High Court, and any appeals to the Supreme Court, would be dealt with expeditiously.

Comment

All those suggestions, except (d), would run counter to one of the principles habitually contained in extradition agreements, including the European Convention on Extradition to which this country (but not the United Kingdom) is a party.

However, Part III of the Extradition Act, 1965, which provides for excluding political offenders from surrender to the North, could be amended, if required.

The suggestion at (a) would allow the surrender of every

political offender, including persons detained without trial in the North who had escaped from custody.

As to (c), it would seem to be impossible to define 'terrorist activities' in general terms.

(3) A "Common Law Enforcement Area"

A "common law enforcement area" could take different forms.

(e) The Unionist Manifesto suggests that a "warrant issued in Belfast would be executed in Dublin in the same way as it would be in Sheffield". Presumably, therefore, what is envisaged is that (i) a warrant for arrest issued in Northern Ireland would be handed to the Garda authorities, (ii) an arrest would be effected in pursuance of the warrant, (iii) there may or may not be a necessity to "back" the warrant and (iv) the arrested person would be delivered to the security forces of Northern Ireland. As a result of the decision of the Supreme Court in the Quinn case (1963 I.R.70), the utmost that could be done to meet this suggestion would be either to amend Part III of the Extradition Act, 1965, as set out in paragraph (2) (i.e. by deleting the exemption for political offences) or to enact new legislation making no exemption for political offences but providing that an arrested person must first be brought before a district justice and, that, except with his consent, he may not be delivered up to the Northern authorities for such reasonable

time as would enable him, if he so wished, to take habeas corpus proceedings.

(b) The Foyle Fisheries Area is an example of a common law enforcement area, setup in 1952 by uniform legislation passed by the Oireachtas and Stormont. Section 62 of the 1952 Act provides that if a person is apprehended in the "Foyle Area" (which includes part of the Republic and Northern Ireland) in respect of an alleged offence under the Act, a member of the Garda Siochana in whose custody he may be may deliver him into the custody of a member of the police force of Northern Ireland if the offender is resident in Northern Ireland and if the offence is an offence under the corresponding law of Northern Ireland. In view of the decision in the Quinn case, any legislation on these lines would have to contain safeguards such as those in Part III of the Extradition Act, 1965.

(c) In considering the problems of a common law enforcement area the Committee feels justified in drawing attention, in a preliminary manner, to one further aspect of it. No doubt it could be suggested by those in Northern Ireland who are pressing the case for a law enforcement area for the whole country that we should readily agree to this request in the light of our claim to jurisdiction over the whole island. It can, however, be pointed out that the enforcement of warrants is only one aspect

of law enforcement, and that the idea of a common law enforcement area raises the question of having a common police force.

The consequences of the creation of a common police force are obviously far-reaching. The subject is raised here as it appeared to be relevant to the matter we have been considering.

If it is thought desirable more detailed study can be given to it.

4. A common court to try terrorist offences

A natural development of the ideas referred to in the preceding paragraphs would be the creation of a common court to try persons charged with specified ('terrorist') crimes. Courts to try such crimes could be established in the two jurisdictions, and the judges appointed by the Council of Ireland. Such proposals would involve an amendment of the Constitution, as Article 37 would not apply to them (their jurisdiction being criminal) and they would not be courts established under Article 34. Alternatively, and without an amendment of the Constitution, reciprocal legislation could be enacted which on our side would provide for the appointment to our Special Criminal Court of judges from Northern Ireland or of persons qualified to be appointed judges there. On the Northern side, the legislation would similarly provide for setting up a Special Criminal Court and for the appointment to it

of judges from our Courts or persons qualified to be judges in our courts. For the trial of certain offences the Court would consist, say, of five members, two from each jurisdiction and the presiding judge to be appointed by them. Appeals from the Court would go to our courts of appeal. The inclusion of Northern judges in these courts for the hearing of such appeals would require their being appointed as judges by the President in the same manner as our own judges are appointed.

5. General

In the Committee's opinion there is one overriding consideration to be borne in mind when examining the various possibilities mentioned in this memorandum for co-operation with the North, particularly the possibility of extraditing "political" offenders to that area. That is that any agreement on such matters must presuppose that both parties to it are satisfied that the same basic protections for persons in custody against ill-treatment exist in both jurisdictions, together with provisions providing satisfactorily for the trial or detention without normal trial of such persons. The point is of particular relevance having regard to the proceedings at present in progress in Strasbourg. It provides an additional argument for having Section 1 of the European Convention on Human Rights made part of the law both here and in the North with (as suggested elsewhere in the Report of this Committee) a Human Rights Court, attached to the

Council of Ireland, to supervise its enforcement. It would probably be more satisfactory to have, in addition, uniform legislation in both jurisdictions on the lines of the Offences Against the State Act.

Addendum 1

Introduce legislation making it an offence under our law for anybody here

- (a) to procure - or conspire, etc., to procure, or incite - the commission of crimes of violence in the North; or
- (b) to publish statements, speeches, etc. inciting the commission of such crimes.

The provision proposed at (a) is already the law in England, as a result of judicial decisions. Even though it may be already the law here, it might be no harm to have any doubts on the matter removed by an express provision, as was done in the Firearms Act, 1971, in relation to the possession of firearms with intent to endanger life outside the State.

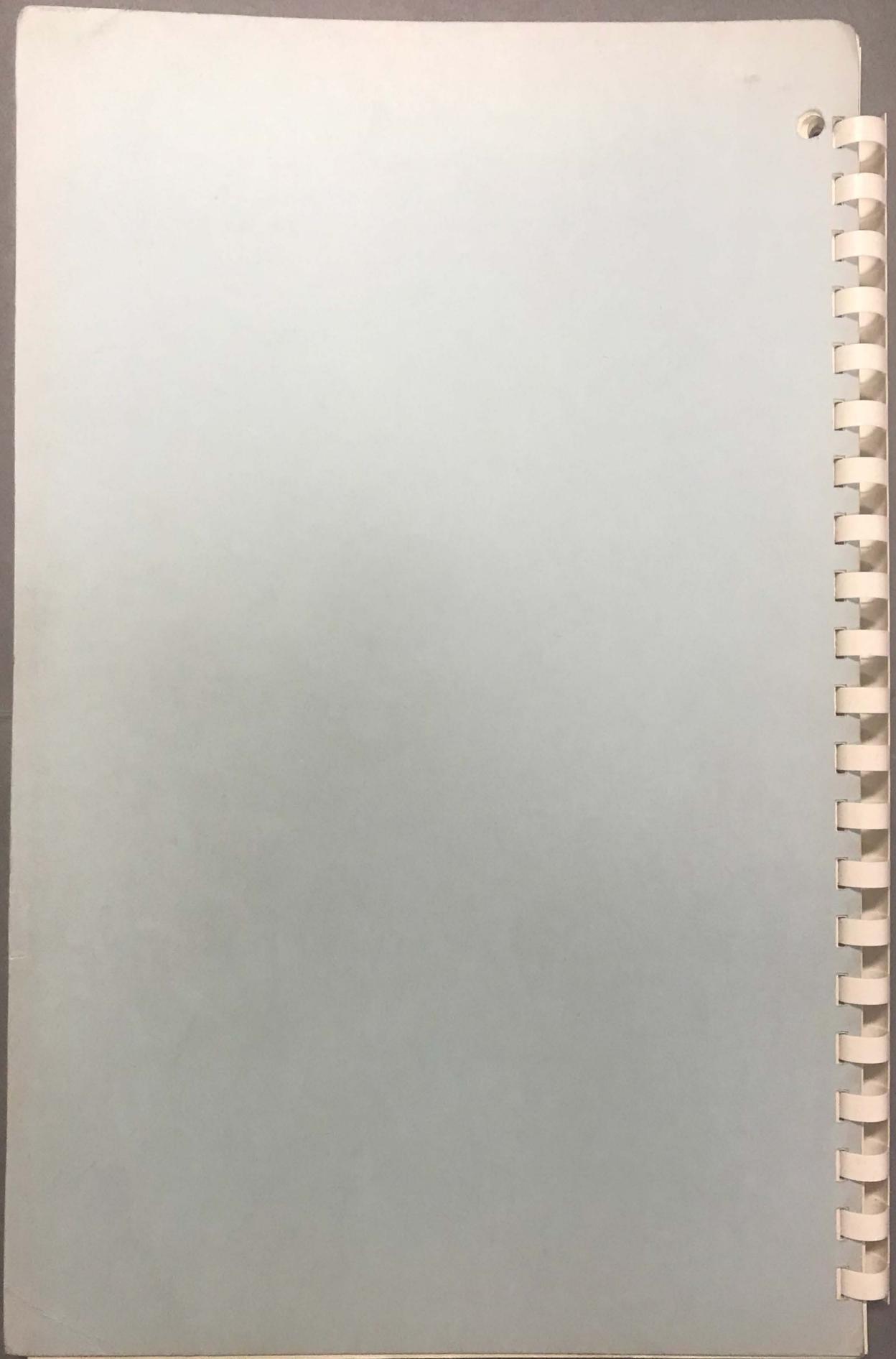
Addendum 2

The Committee was aware that the Government of Ireland Act contained provisions for the creation of an All-Ireland Court of Final Appeal. The Committee did not consider the setting up of such a Court in any great detail for the following reasons:-

(a) The Constitutional changes required to set up such a Court - which should involve the abolition of the Supreme Court here and of the Court of Appeal and the House of Lords for Northern Ireland - are in effect dealt with in the suggestions in the memoranda dealing with the setting up of other All Ireland Courts.

(b) The laws in force in 1920 were uniform in all of Ireland. This is no longer so. While this would not be an insuperable difficulty, it would require some detailed examination.

(c) It was thought that if a detailed examination of the setting up of such a Court were required, the Committee could best deal with it separately on request.



END of file