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W.S.D.
16.8.69.*

Oifig an Aire Gnóthaí Eachtracha

16 Lúnasa 1969

MEMORANDUM FOR THE INFORMATION OF THE GOVERNMENT

Bringing the Situation in the North of Ireland before the UN

1. Since our admission to the UN in 1955 our policy has been not to raise the subject of Partition formally in that organisation. The main consideration on which this policy rested were that such action would be unlikely to bring about any effective international action in support of the reunification of the country and that it would destroy the prospects for a cooperative North-South solution.
2. The question which is now to be considered is whether the developments which have taken place since 5th October, 1968, in the North have altered the situation to the extent that an approach to the UN might be based on either (1) the existence of a threat to peace and/or (2) the violation of human rights and fundamental freedoms. Such an approach would differ fundamentally from one based on self-determination in that the ending of Partition would not be an immediate or essential condition of its fulfilment.
3. The Purposes of the UN set out in Article 1 of the Charter embrace each of the three grounds referred to above, namely (1) threat to peace, (2) self-determination of peoples and (3) human rights. While it might be possible to make out a case based on any one of these three in relation to the situation in the North of Ireland the treatment of such a case by the UN will vary from one to another. Thus the appropriate UN Organ for dealing with (1) might be the Security Council and for (2) and (3) the General Assembly, while between (2) and (3) a fundamental distinction might have to be made as to whether the issue in

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dispute was essentially international or within the domestic jurisdiction of a Member State. In practice therefore we would be virtually compelled to concentrate on only one of the three and to prepare our whole strategy in accordance with the considerations known to be relevant for that one ~~to the exclusion of others.~~

4. The choice ^{to be} made in regard to the Charter Purpose ^{to be} ~~to rely on~~ will go far to determine which Organ of the UN to approach and in what manner. There are five main Organs to be considered:-

- 1) General Assembly
- 2) Security Council
- 3) Secretary General
- 4) International Court of Justice
- 5) Economic and Social Council

Without going into details it may be stated that it would be possible to bring an item such as "the situation in the North of Ireland" before any one of these five Organs. The procedure would be in brief as follows:

(1) General Assembly Articles 34 and 35 of the Charter entitle ~~any~~ ^{to} Member of the UN ~~may~~ bring any dispute or situation "which might lead to international friction or give rise to a dispute" to the attention of the Security Council or of the General Assembly. The rules of procedure for the General Assembly permit any Member to propose items as follows:

(a) Regular Sessions. The Provisional Agenda shall include all items proposed by any Member at least 60 days before the opening of the Session.

(b) Supplementary items for the Provisional Agenda may be requested by any Member at least 30 days before the date fixed for the opening of a Regular Session by any Member.

(c) Additional items proposed for inclusion in the Agenda less than 30 days before the opening of a Regular Session

or during a Regular Session may be placed on the Agenda if the General Assembly so decides by a majority of the Members present and voting. No additional items may be considered until 7 days have elapsed since it was placed on the Agenda unless the General Assembly, by a $\frac{2}{3}$ majority of the Members present and voting decides otherwise, and until ^{the General} a Committee has reported upon the question concerned.

- (d) A Special Session or an Emergency Special Session of the General Assembly may be requested by any Member to be convened within 15 days and 24 hours respectively of the receipt by the Secretary General of a request for such a Session from the Security Council or from a majority of UN Members.
- (e) At both Regular and Special Sessions all items proposed for inclusion in the Agenda have to be accompanied by an Explanatory Memorandum and, if possible, by basic documents or by a draft Resolution.
- (f) At both Regular and Special Sessions the General Assembly decides the approval of the Provisional Agenda ^{and} ~~into~~ supplementary lists and may amend or delete items by a majority of Members present and voting. A General Committee is set up to recommend action in regard to the Provisional Agenda and any debate on its recommendations is limited to three speakers in favour and three against the inclusion of an item.
- (g) Consideration of Agenda items which have to be adopted may be referred to one of the main Committees of the General Assembly or may be dealt with directly in the Plenary Body.
In the case of political items involving

self-determination, the most likely Committees are the First (Political and Security), the Special Political and the Fourth (Trusteeship and Non-Self-Governing Territories). In the case of human rights items the most likely Committee is the Third (Social, Humanitarian and Cultural). There is also the possibility that before passing on an item the General Assembly or one of its Committees may decide to call for further studies of the question by the Secretariat, the Specialised Agencies or some other UN Body. Questions of self-determination, for example, are normally considered by the Committee of 24 set up to deal with the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, while similar questions involving Trust Territories are dealt with by the Trusteeship Council. In general it may be said that the adoption of any resolution by the General Assembly is the result of detailed and often protracted negotiations and bargainings between the various Member States and blocs of Member States. It should also be noted that no General Assembly resolution, whatever its wording or the support it receives, has any mandatory or binding power to back it up other than moral force.

(2) Security Council The Provisional Rules of Procedure require the President to call a meeting of the Security Council if "a dispute or situation" is brought to its attention under Article 35. Other procedures also exist for bringing matters before the Council but all of them share the characteristic that the issue involved is regarded in some sense as a threat to peace. The involvement of the Security Council may thus be brought fairly readily in any matter which can be presented as having an aspect deemed to be threatening to the maintenance of peace, but it should be noted that in many cases such involvement may mean nothing more than

formal seizure of the question by the Council. Refusal of such formal seizure is rare and in practice the operation of the Veto in the Security Council is confined to items which have already been admitted for discussion to its Agenda rather than to the admission of such items in the first place. (the Veto right of the five permanent Members of the Security Council applies in theory to matters of ^{substance} ~~systems~~ rather than of procedure but since the border line between the two categories has never been satisfactorily defined the possibility of the so-called "double Veto" whereby the preliminary question of discussion as well as the ^{substance} ~~subsistence~~ of the item might be blocked must be taken into account).

(3) Secretary General According to the Charter the functions of the Secretary General are limited to such activities as bringing matters to the attention of the Security Council (Article 99) and convoking Special Sessions of the General Assembly (Article 20). In practice however the occupant of the office of Secretary General has developed considerable powers to implement and interpret UN decisions by other Organs (as in the Congo), to suggest possible lines of solution (as in Vietnam) and to appoint observers (as in Nigeria) in situations where the UN has an uncertain role to play or is not formally involved at all.

(4) International Court of Justice The essential requirement for involvement of the Court is the existence of a legal dispute which ~~for~~ the parties concerned are prepared to submit to its jurisdiction. It seems however that the successful settlement of disputes dealt with in this way has in practice been confined to very minor matters. In more important disputes no action by the Court has been possible for a variety of reasons. ^{Having} to do both with the Court's ^{own} ~~an~~ interpretation of its jurisdiction and with the reluctance of parties to the disputes to comply with its findings.

(5) Economic and Social Council Unlike the four other main

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Organs of the UN mentioned above the Economic and Social Council would not be appropriate for dealing in any form with political matters involving the right of self-determination. Its activities, and those of the Commission on Human Rights which is subordinate to it, are confined to more general questions involving human rights and fundamental freedoms, and attempts to raise what are considered to be primarily political issues in ECOSOC are resisted (e.g. an attempt by the USSR to bring up "the treatment of Arabs in Israeli-held territory" in 1967). The subject of discrimination (including political discrimination) in the North of Ireland might be brought before ECOSOC but only if it were presented in the context of an item such as "The Situation in ^{the} ~~Northern~~ ^{of} Ireland" rather than "The Question of Partition". The prime concern would thus have to be with human rights in the North even though the possibility would be seen of exercising these human rights when won for the purpose of local self-determination within the Six Counties. The expectation would be that once ECOSOC and the General Assembly had become seized of the question of the Situation in the North of Ireland they would be capable of pursuing it through all its human rights aspects back to its ultimate political root cause, which would then become an appropriate subject for treatment by the UN in the context of local self-determination.

5. It appears that of the five Organs referred to above, numbers (3), (4) and (5) might not be appropriate at the present stage. The Secretary General has indicated that there is no action which he can take with regard to the situation in the North of Ireland and this must be taken to mean that he is not prepared on his own initiative to undertake such actions as the appointment of Observers or fact-finding Missions ^{unless persuaded otherwise}. This, of course, does not exclude the possibility that he might play a most valuable role once he had been given some indication of the feelings of the UN on the subject but a pre-condition would seem to be the adoption of a Resolution by either the General Assembly or the Security Council. With regard to the International Court of Justice, the main difficulty resides in the probability that the British would

to be their principal standing on the 1925 Agreement and we could not afford in any circumstances to have the validity of this Agreement made the determining factor in the UN approach to the question. And finally, the Economic and Social Council has just adjourned its 47th Session in Geneva and will not be meeting again (apart from a short formal Session in New York for a few days in November) until May, 1970. Even though Ireland is at present a Member of ECOSOC the delay which would be entailed in approaching it as well as the unsuitability of the forum it offers for any political matters would effectively rule it out for present purposes.

6. As between the General Assembly and the Security Council at present indications are that our chances would be better with the former. The Provisional Rule of Procedure of the Security Council requires an affirmative vote of 9 out of the 15 Members for the adoption of an Agenda item and our present estimate suggests that the maximum affirmative vote to be expected in our case would be 8, including at least 2 doubtfuls. (the 8 are: Spain, Algeria, Hungary, Nepal, Pakistan, Senegal, USSR and Zambia). The other 7 Members of the Security Council are: China, Columbia, Finland, France, Paraguay, Great Britain and U.S.A. Ireland would have no right to participate in the discussion about the ^{placing} adoption of such an item on the Security Council Agenda and only if it were to be admitted to debate would we be invited to participate, without vote, in the subsequent discussion. In the General Assembly on the other hand we would be able to participate in debates ^{at} ~~in~~ all stages and would still be able to hold in reserve the possibility of eventual recourse to the Security Council.

7. Presentation to the General Assembly would require, as already indicated, an Explanatory Memorandum in support of the inclusion of the item on the Agenda in order to ensure the widest possible measure of support for the adoption of this item on the Agenda as well as to retain as much latitude and flexibility as possible for subsequent procedural and drafting work. It would seem to be

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desirable that this Memorandum should be couched in general and restrained language. Emphasis might be given to the aspect of the acceleration of violations of human rights and fundamental freedoms within the past year in order to bring out the very dangerous and critical developments which have made it necessary for Ireland to take the question before the UN. Whether the existence of a "threat to peace" in the UN and international sense should be asserted would be a matter for determination in the light of current developments but tactically it might be inadvisable to include in the Memorandum any references to the right of self-determination or similar political concepts. The most appropriate title for the item would seem to be "The Situation in the North of Ireland" which has the advantages of avoiding the use of "provocative" terms such as 'Six Counties' as well as making it more difficult for the British to argue that under Article 2.7 of the Charter, the UN had no right to intervene in matters "which are essentially within the domestic jurisdiction of any State". This would not preclude our spokesman in the course of debate from relating the present crisis in the North to the root cause from which it springs, namely, the unnatural division of our country and urging the resolution of that problem.

8. If a decision in principle were to be taken to seek to have an item of this kind placed on the General Assembly Agenda it would be necessary as a next step to canvas support as widely as possible amongst other UN Members. At the present stage no estimate can be forthcoming but an important element in obtaining maximum support would be the preparation at an appropriate stage of an acceptable draft Resolution.

9. While the General Assembly seems to be the most profitable course, this does not exclude the question of raising with the

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Security Council the question of a Peace-keeping Force although such action has practically no prospect of success, if for no other reason because of the British attitude and the fact that Britain has a veto. The ^{main} ~~sole~~ value of such an approach would be the attempt to ventilate ^{the question} in that forum and the attendant ^{publicity} ~~possibility~~.