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Council of Ireland

1. This memorandum is an attempt to put forward outline proposals for a "Council of Ireland" which would serve as an institutional link between North and South. It is not comprehensive. There are many unknown and doubtful factors in the situation and it is difficult to envisage all the possibilities at the present stage. [ The draft is being prepared some weeks after the British White Paper but well before serious "politicking" has begun for the elections to the new Assembly and before any details are known as to the constitution of its executive ].

2. Why do we want a Council?

The first basic question is why we want to see a Council established - that is, what overall purpose will it serve? It is preferable to be clear on this from the outset. Proposals for structures or functions can then be assessed by reference to whether or not they are likely to meet this underlying aim.

3. At least three basic aims for a Council of Ireland could be envisaged;

- (a) To provide for harmonious common action in certain limited matters where the interests of North and South overlap - solely in order to promote these interests more efficiently and rationally. Examples frequently suggested are Railways, common fisheries and tourism.
- (b) To act as a symbolic North-South link sufficient to induce the bulk of the minority in the North to accept, work and live for the moment under new political structures which are now to be created in the area; and sufficient in consequence to allow Dublin to accept the new settlement.
- (c) To involve the common interests of North and South in pragmatic projects of mutual benefit - preferably projects with an in-built probability of growth - to such an extent as to encourage and accustom them to working together over a period; and in this way to promote reconciliation and set both parts of the island on a converging path without necessarily specifying the ultimate shape or timetable for possible unity between them.

These aims are not mutually exclusive. Each in turn comprehends and goes beyond, those listed above it.

4. Those in Northern Ireland who want to maintain the British link but also accept the idea of a Council of Ireland (usually on certain conditions) profess to see its aim as limited to (a) above. (c) above represents the position of the previous Government here - and the present Government to the extent to which it is on record: that is, the aim of movement towards unity remains but the emphasis is now on the process rather than the result. The Council is seen as essentially an openended means of working towards an indeterminate form of



unity by consent over an unspecified period.

5. What of (b) above? This clearly an aim which it would be difficult to accept openly here - assuming that there is still a real (though perhaps not urgent or specific) aspiration towards unity among a substantial number of the minority in the North. To admit explicitly that the North/South link was merely symbolic would, in this case, be to destroy its effect as a symbol. (b) therefore is better seen, not as an overt aim which we could admit to, but rather as a tacit assessment of the real effect of what we might settle for if (c) could not be achieved. (b) is probably indeed also tacitly accepted as the real purpose of a Council by some Unionists who profess publicly to see its role as limited to (a).
6. (b) above in practice would be simply a Council of type (a) with some additional and non-specific references to "further growth and development by agreement" written in. It would probably also be allowed to act as a "talking shop" on a whole range of matters beyond those where it would have specific functions. The idea would be that its wide ranging power of discussion and its ability to assume additional functions by agreement would be enough, if assessed optimistically, to compensate, in the eyes of the minority and of Dublin for its lack of substantial functions at the outset.
7. Could we settle for this if necessary? Perhaps. Certainly if the minority in the North appeared willing to accept this, we should not rule it out as unacceptable to us, if this is really all that can be achieved at the present time. If conceivably, the North were to settle down now gradually under a new, reformed administration with full redress of grievances; if we continue in the South with our own process of change; and if even a "talking shop" North/South link were now to come into existence and begin to function, there are real possibilities that movement could come from this over the next fifteen to twenty years. Over that period economic and social differences between North and South may diminish or disappear under the harmonising influence of E. E. C. membership. In that situation, without the constant aggravation<sup>of</sup> Community relations arising from minority grievances and majority reaction to the expression of those grievances, the experience of "talking" could lead to a gradual abatement of present hardline unionist attitudes and to movement towards political reconciliation - perhaps even towards unity on some basis.
8. This is not merely wishful thinking though one must allow of course for genuine feelings of loyalty to the British connections<sup>f</sup> as another important



factor. Insofar however as the division of Ireland derived from the Unionist wish to isolate their community defensively in a "laager" under their own control, we have argued that it is out of joint with the times and with the present realities. It has been rationalised nevertheless over the past 50 years in virtue of the apparent threat posed by the alienated minority in the North and by attitudes and policies in the South. On the supposition (optimistic though it is) that an equitable administration could now be set up in the North; that it was accepted and worked by both majority and minority; and that the Government here genuinely accepted the new settlement, we could hope that this defensiveness would diminish and that the objective logic of the situation would eventually prevail over fears which would then be so clearly without a rational justification.

9. It may be said that this would mean reverting to a Council of Ireland of the 1920 type which failed to achieve anything in its time. It is true that one could point to structural and functional defects in that Council. But the most basic reason for its "failure" was that it never came into existence. One can say of course that the outline of the Council as laid down was not sufficiently attractive in the abstract to outweigh other considerations and make the actual setting up of the Council seem worthwhile to the potential participants (particularly Dublin). But who knows what gradual processes of reconciliation it might have set in motion if it had existed even as nothing but a "talking shop" through the whole period since the mid-twenties?

10. If the above analysis is correct we may summarise the position as follows insofar as the fundamental purpose of a Council is concerned:

- (i) Those Unionists willing to accept a Council profess to see its basic aim as (a) above
- (ii) They probably tacitly also see its function as (b)
- (iii) Our aim so far has been (c). We will presumably continue to press for this.
- (iv) We should not however dismiss (b) above as useless, if this is all that can ~~be~~ really be achieved at present.

11. Maximum - (strong Council) Minimum - (weak Council) positions

The three basic aims envisaged above for a Council suggest that as regards structure and functions there is a whole range of possibilities lying between the two following extremes:-



- (1) a "weak" link with substantial responsibilities confined at most to harmonising the interests of both parts of the island in some limited areas where they overlap but with power to "discuss" many other matters of interest on a "talking shop" basis.
- (2) A strong Council with real functions - perhaps even exclusive functions - in matters of substance which would give it not just a "potential", but an in-built dynamism, for growth.

12. How far Unionists might acquiesce reluctantly in something more than (1) is for consideration. An important question will be towards which end of the range present British thinking really tends. [It appears at present to favour (1).] The British attitude, though important, will probably not be decisive, however if Britain maintains the tendency shown in the White Paper to "put it up to" politicians in the North, and eventually in North and South, to work out an agreement among themselves. In any case to win Britain to a strong Council would not be enough, if the main body of Unionist opinion remained implacably opposed.

13. This paper, having suggested above that even a Council on the lines of (1) could be of some value, assumes that (2) remains our aim and seeks to put forward ideas for a Council tending towards that end of the range.

14. Before considering the structure or functions of a Council, it is necessary to mention several general points to be kept in mind:

- (i) It would be relatively easy to suggest theoretical details - size, structure, number of meetings etc. - for a Council the basic aim of which had been genuinely accepted as desirable in principle by all the participants. At present however the will to build something with real growth potential, as distinct from a static, minimum-type link, is probably all on our side. Unionist agreement to work a Council seems essential, whatever kind of executive emerges in the North. But at present some unionists (in the most inclusive sense) reject the very idea of a Council; and those who accept it seem to think of it as limited to (1) in par. 11 above. Our problem is how to work out proposals for a Council which will in practice tend towards (2), while winning even grudging agreement from those who either object to a Council of any kind, or want to see it limited to (1) at most.
- (ii) We do not know exactly as yet with whom we will be dealing on the Northern side, since we do not know what the likely composition of the new Assembly will be, or how exactly the new, power-sharing executive will be constituted. The Northern participation will presumably be diluted, in the sense that it will not be wholly Unionist. Nevertheless, it is realistic to expect that Unionism will remain a strong force. Since it is Unionists in the main who will be distrustful of a Council, and a Council simply could not work as we want it to (as a means of reconciliation) without them, this memorandum considers where relevant what may be needed to persuade Unionists to participate although it is likely that the Northern



participation in any Council will not be homogenously Unionist.

- (iii) If, as suggested, our aim still tends towards a "strong" Council then we are in effect talking about an embryo institution which we hope will develop towards unity in Ireland - however distant, and on whatever basis. We must, <sup>some of</sup> if we are in earnest, accept the consequences and be ready to commit our interests to <sup>it's</sup> the Council of Ireland and not merely the Council of Northern Ireland. There may be risks and costs involved. But we should not allow vested interests here to prevail against the granting to the Council of substantial functions, sufficient to nourish it into life.
- (iv) Difficulties arise in regard to a Council which is to be a bridge between a sovereign Government (Dublin) on the one hand, and a local Assembly (Belfast) with fairly limited powers on the other. These are inherent to a situation which is virtually without precedent - though we may perhaps ease them somewhat on our side, by a certain generosity of approach where issues involving sovereignty are involved.
- (v) Some of the foregoing points emphasise the difficulties of formulating proposals of the right kind. They might be summarised by noting that in trying to work out political institutions to provide a basis for accommodation and, ideally, convergence, between North and South, we will be attempting a task which has defeated several previous generations - arguably since 1886 - and which a previous Council of Ireland, for whatever reasons, was unable to achieve.

#### 15. Westminster participation?

On what basis should the Council be constituted? (i) Dublin/Belfast/Westminster or (ii) North/South only? Each has advantages and disadvantages.

16. The former would be technically simpler in that the two responsible sovereign authorities would be involved and the pressure of Westminster as dominant partner would ensure that the junior partner, Belfast, could not "stonewall". But it would not meet so well the basic aim which we have tended to see a Council as fulfilling - that of encouraging both parts of Ireland to learn to work together so well that Britain could eventually "phase out" of Ireland entirely. It would also be in reality an "Anglo-Irish Council" (which the Alliance party has advocated).

As such, it would give - or seem to give - Britain some substantial de jure role in relation to the affairs of this part of the country. We would probably see this as objectionable; and it would certainly arouse the ire of (and perhaps attract increased support for) Sinn Fein (Cardiner Place) and their sympathisers, who have long warned that a "federal" solution which would bring the South into a federation of the British Isles, is being considered.

17. A North/South only Council ( (ii) above) on the other hand raises considerable technical difficulties. It is hard to recall any precedent for this kind of



"penny-farthing" link between a sovereign government, and a limited and subordinate assembly which is to remain, de facto, part of another sovereign country for the foreseeable future (pace Articles 2 and 3 of our Constitution). The difficulties of putting forward detailed proposals now on this basis are increased because no one knows exactly what powers will be devolved to Belfast in the event. Nevertheless, it remains that, with these difficulties overcome, a North/South structure would be the one most worth having as a means of bringing those who are to be reconciled together directly.

18. Such a Council certainly seems to be what most people envisage in discussing a "Council of Ireland". And the British too are ready to think on these lines. The White Paper had already implied this in saying (par. 110):

"The constitutional proposals would permit the new Northern Ireland institutions to consult and co-ordinate action through a Council of Ireland." (emphasis added).

Mr. Heath recently confirmed this explicitly while noting that some arrangement would have to be made to allow for Westminster's overall responsibility. Speaking in the House of Commons on 28 March 1973, he said:

"Secondly, if representatives of the North and the South both prefer that the United Kingdom Government should not participate directly in any joint institutions, we should not object. But a number of important functions of Government, including security, will be reserved to the United Kingdom Government.

The United Kingdom Government have responsibility for our obligations as a member of the European Community, as well as for finance provided from United Kingdom sources. If the Council of Ireland wished to exert a practical influence on these policies, arrangements would have to be made for the United Kingdom Government to be associated closely with its work in these respects."

*regular*  
Perhaps an arrangement for meetings at Government level between the Irish and British Governments, should be envisaged, for the satisfaction of decisions on such points.  
- Hansard, Vol. 853, No. 87 Col. 1330  
19. Direct devolution?

One approach we might try to get the British to adopt, <sup>however</sup> which would meet this difficulty in part and also encourage growth of the Council, would be to try to have certain functions "devolved" by Westminster direct to the Council to be exercised by the Council exclusively rather than to the new Assembly/Executive in Belfast to be exercised by it through the Council. If necessary, an arrangement might be made for Westminster to endorse Council decisions. Provision might be made for devolution of further powers to the Council by Westminster after at intervals of say 5 years. Or Britain might at least be



induced to accept the idea in principle.

20. This approach of "direct devolution" would of course require that the Government here on its side should also devolve certain functions to the Council. Perhaps we had better say "exercise certain functions through the Council" in order to avoid possible constitutional difficulties noted below.

21. In general, the more the Council itself as such is given direct and exclusive jurisdiction in certain matters (subject to confirmation if necessary by both Governments) the less the problem of the sovereign Government/dependent administration relationship. The emphasis will then be on the "bridge" itself as a single entity with powers in its own right (albeit by devolution) rather than on the disparity and disproportion between the Government "structures" on which it rests on either "bank". The possibility of exercising real powers in certain additional matters through the Council direct as compared with the limited powers they will have through the New Northern Assembly, could also give Unionist politicians an inducement to develop and work the Council since that would be their only means of access to power in those additional areas. In addition of course, devolution direct to the Council of at least some powers not available to the Assembly, would add to the status of the former without adding to the latter. This would be desirable from our point of view, - if we do indeed see the Council as an institution of the "new Ireland" in embryo.

22. If the foregoing is generally accepted, three conclusions may be noted here in summary form:

- (i) A Council without direct Westminster involvement would be preferable, though it does give rise to many difficulties.
- (ii) Such a Council would be acceptable to the British - subject to some additional arrangements; indeed it seems to be what they, and most of those who discuss a "Council of Ireland", have in mind.
- (iii) It would be in our interest to see some powers devolved direct to the Council rather than via the Assembly; there might also be provision for further devolution to the Council later. There could be an arrangement for confirmation of Council decisions by the sovereign governments as necessary. (This last point is discussed further with other constitutional issues, below).

### 23. General structure of the Council

A North/South Council could be structured in any one of a number of ways, both as regards participation, and as regards the number of "tiers". The following are some of the possibilities as regards membership:

- (a) Executive to executive: some or all of the executive of the new Northern Assembly meeting with their Ministerial opposite numbers



from Dublin.

- (b) Assembly to Assembly: Membership drawn by appointment or election, possibly in proportion to party strengths, from the new Assembly and the Dail and/or the Seanad.
- (c) Administration to Administration: heads of civil service Departments or selected administrators appointed for that purpose by both sides.
- (d) Local government level: representatives elected from local councils - or the General Council of County Councils and its opposite number in the North.
- (e) Appointed "board" on each side, involving perhaps individuals prominent in business, social and cultural life.
- (f) Direct, popular election of delegates on either side either to an Assembly or to an executive.

24. As regards tiers, it is possible to envisage any combination of the above, or perhaps even an abstract Council structure, which would serve as the general framework within which the nature of the membership could vary, in accordance with the matters under discussion at any one time.

25. In face of a large number of theoretical possibilities, the following general guidelines are suggested:

- (i) The Council, and the issues which its establishment raises, are essentially political, and should involve political leaders on both sides, whatever additional arrangements may be made for business, cultural and other interests to take an ancillary role.
- (ii) Since we hope for a "strong" Council, with power - and a will - to take action, it must have certain executive functions. It would be desirable but it is probably premature at this stage to envisage the Council as having its own executive - that would in effect be a fairly advanced stage on the path towards unity. Insofar as the Council is to have executive functions therefore, its "executive" will have to be drawn from the executives of North and South respectively. This would also perhaps obviate certain constitutional problems on our side adverted to below.
- (iii) Some kind of parliamentary tier or Assembly would also be desirable to facilitate exchanges and contacts between "backbench" or opposition politicians on both sides and allow for debate. If this were the only body constituting the Council however, or if Council action were dependent on its parliamentary tier, it would be merely a "talking shop" - or if not, would be too easily stultified by blocking tactics.
- (iv) It would probably be well in the early stages at least to have an "overlap" in any case between the membership of the Council's various tiers and the corresponding bodies in North and South respectively, in order to avoid setting up rivalries and to help to reduce somewhat the formidable difficulties which are already involved in getting a Council accepted and under way. Thus at the outset the executive and parliamentary tiers would be drawn from the executive and assembly in



North and South respectively. This overlap in membership would be quite compatible with the suggestion made above (par. 14 ) that certain powers might be devolved direct to, and exercised direct by, the Council, rather than via the Northern Assembly, so as to make it attractive for Northern politicians to work the Council to gain access to powers not otherwise available to them.

- (v) Direct popular election to any tier of the Council is not on at present. This again would be a fairly advanced stage on the path towards unity; and it would undoubtedly frighten off many unionists at present.
- (vi) In general, as many of the above points show, the Council structures at the outset - with the possible exception of a small secretariat - could probably not be constituted independently but would have to consist of participants from the corresponding bodies North and South coming together to act jointly in the new framework. The direct ~~Constitution~~ of Council structures would probably be theoretically more desirable from our point of view (though still difficult to "swallow"); but because of present difficulties and suspicions in regard to a Council would have to be left to a later stage.

26. In considering the Council structures in more detail, a range of options, meeting these general guidelines, is open and it is not easy to decide between them at this stage. One model worth considering however is that of the EEC - insofar as it has (i) a Council of Ministers; (ii) a Commission or administration; and (iii) a Parliamentary Assembly (whose potential is great but whose present function is largely to allow expression of views rather than to elect an executive or take executive decisions).

27. Following this "model" in very broad outline one could suggest the following skeleton structure for a Council of Ireland:

- (a) An executive on the lines of a Council of Ministers - in which, Ministers from Dublin as a group would meet, say four times a year, with their opposite numbers in the executive of the new Northern Assembly. There would be no figures in Belfast to correspond to our Ministers for Foreign Affairs, Defence, etc. so the number on each side would be, say six.
- (b) A twice yearly (or more often) Assembly of say 20 members selected from the new Belfast assembly and 20 from the Dáil (all parties in proportion) or Dáil and Seanad.
- (c) An Administration selected initially from the relevant Departments North and South - with an early transition perhaps to a small permanent Administration or Secretariat - perhaps a permanent Secretary or Secretary-General.

28. The Council of Ministers ("ministerial council", "executive council"?) i. e. (a) above would be the body with real functions in taking decisions. In such a small "Minister to Minister" body, meeting privately, and dealing with



pragmatic issues of interest to both sides, one might hope that there would be no stonewalling tactics such as could be found in a parliamentary type assembly, meeting in public.

29. The Assembly i. e. (b) above, would allow legislators from both sides to express views and get to know one another. But it would not have a chance to block real progress, however obstructive some elements in it might try to be because it would not have executive powers such as those residing in (a) above. The Assembly could perhaps eventually receive and debate (?) an annual report from the Ministerial or Executive Council. If the Council of Ireland concept grew and developed successfully however, the Assembly might eventually be given some power in regard to the election of an executive. At a later stage still with still greater progress towards convergence it might itself be chosen by direct election in North and South.

30. The Administration or Secretariat - (c) above - though small at first, could be given some definite role from the outset in regard to carrying out decisions of the Council (or rather of its Executive, since it is primarily there that power of decision would reside). It could become permanent and full-time after a period. If however the Council is essentially a "weak" one, exercising such powers as it has, not in virtue of direct devolution, but only in virtue of second level devolution via the Northern Assembly and executive, then a secretariat of this kind would not be necessary - and would probably not be acceptable to Unionists, since it might tend to emphasise the separate standing and importance of the Council. In that case (which is more likely at first) a "servicing" or "recording" type secretariat alone would suffice. This service could probably be provided by civil service staff from Dublin and Belfast accompanying their respective Ministers (The Council of Ireland in that case would tend to be essentially an arrangement for North/South meetings rather than a tangible structure with the beginnings of a personality of its own).

31. In neither case however, despite the rough analogy made earlier with the basic structures of the EEC, would the Administration/Secretariat have a power of initiative like that of the EEC Commission.

32. It must be stressed that this structure is a tentative proposal - many other possibilities are open. This model however has the advantage of a certain initial appeal on first hearing, because of the obvious analogy with the EEC. The question of a link with the EEC, as distinct from a similarity in structure, is however a separate issue and it is dealt with further below.



33. An All-Ireland Supreme Court?

The Government of Ireland Act 1920 provided for a single High Court of Appeal for Ireland with appellate jurisdiction throughout the island from judgements of the Northern and Southern Supreme Courts. Donal Barrington in his lecture to the Irish Association on 12 January 1973 (Administration Vol. 20 No. 4 Winter 1972) seemed tentatively to favour the revival of something on these lines, in the context of a new Council of Ireland scheme.

34. Such a single Supreme Court could be attractive from our viewpoint despite the Constitutional obstacles which appear at first sight (cf. the important "integrating" function of the Supreme Court in US history and the potential importance of the European Court in helping indirectly to bring about European integration.) But it is unlikely that the idea would gain Unionist acceptance at this stage. Except perhaps in the rather different cases of the World Court and the European Court of Human Rights, the notion of a Supreme Court with compulsory jurisdiction across boundaries is essentially linked with the idea of a will to transcend those boundaries in a federal interest, as in the US - or in the interest of "ever closer union" as in the EEC. Unionist acceptance of the idea of a North/South link is unlikely to go this far at present.

35. The provision already made in 1920 for a common High Court of Appeal for Ireland is relevant, but not compelling. At that stage an Ireland united under the Crown was just beginning to divide: the proposed High Court of Appeal was simply a maintenance of a Court of a type which had already been in existence on an all Ireland basis; and in any case, both parts of Ireland under the 1920 Act would still be within the United Kingdom. None of this obtains today.

36. It seems probable therefore that it would be over-sanguine on our part to look at once for a common Appellate Court of this type as envisaged by Mr. Barrington. Later on in this memorandum however a suggestion with a certain bearing on this (in regard to trial of offences North and South) is put forward. If that idea were to be followed through, some common Appellate arrangements might come to seem desirable-if not at once then at a later stage. The idea of a single Court transcending the border is therefore at least worth keeping in mind, even if it is "not on" in the short-term.

37. It is suggested that the following are warranted as summary conclusions of this part of the present memorandum:

- (i) Power of decision and action in the proposed Council of Ireland



should reside in an executive constituted by members of the Northern executive and the Dublin Government meeting together as an executive council".

- (ii) There should also be an inter-Assembly link of some kind but it should not exercise substantive powers or have power to block decisions or action by the executive.
- (iii) We could welcome a common appellate court of some kind, but it is probably not on at present (subject to further comment below)

Less firmly, it is suggested that:

- (iv) A Council modelled on the EEC as outlined above is worth considering.

38. One final point, which must be stressed again, is that ingenuity or imagination in devising detailed structures for a Council of Ireland is not sufficient. What is needed is an ability to maintain the best possible balance between the devising of ingenious structures and the possibility of their acceptability to the Unionist Community whose leaders will have to be induced to accept them if they are to work.

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#### FUNCTIONS OF A COUNCIL

39. What functions and areas of responsibility should we seek for a Council?

As a minimum general principle, we should certainly try to ensure that all existing areas of cooperation in practical matters between the administrations in North and South come explicitly under the aegis of any Council which may be established - even if there seems to be no practical need for such formal sponsorship in particular cases. Similarly, any new arrangements for cooperation or exchanges, even though they may originate outside the context of discussions on the Council, could be placed formally under its aegis. Our aim should be to "build up" the Council as far as possible as the overarching structure of North/South cooperation.

40. A memorandum outlining existing areas of cooperation between North and South, prepared in 1972 <sup>by</sup> for the IDU, is attached. Further consideration is given below to areas where the Council might be given either a substantive or a formal function. This is done here only in outline. Further expert study would be desirable in most cases (though this might show that some of the suggestions made are not feasible or desirable for other reasons).



A. EEC

41. The most obvious new development, with "in-built" growth potential, on to which it could be desirable to "hook" the Council would be the EEC. Matters relating to the EEC can have the advantage of seeming mundane, pragmatic and non-contentious at the outset; and they may also offer some benefits for Northern interests. At the same time, the issues involved are such that they may well have long-term political consequences, which would be conducive to the larger aims we have for the Council. By coincidence, new structures for the North, probably involving a North/South link, are contemplated precisely at the time when Britain and Ireland, North and South, are becoming involved in the EEC. This creates a relatively fluid situation and a general expectation of change which could be availed of to advantage in having new ideas accepted.

General Considerations

42. Certainly by bringing about the growing harmonization of differences between its members, common EEC membership may make it easier for North and South to come together. If we are to go beyond this, and deliberately tie in the Council of Ireland in some way with EEC matters, the following general points should be kept in mind:-

- (i) Britain now accepts (par. 76 of Green Paper) that

"in the context of membership of the European Communities Northern Ireland and the Republic will have certain common difficulties and opportunities which will differ in some respects from those which will face Great Britain" (emphasis added).

It might be willing to see a North-South body given some role at least in dealing with these "common difficulties and common opportunities" though it does refer elsewhere (e.g. par. 114 of the White Paper) to EEC obligations in relation to the North as falling on Westminster.

- (ii) Since what we hope to achieve in Ireland (by way of gradual convergence between a sovereign state and a region which de facto remains part of another country) has few precedents, our thinking should be flexible and imaginative.
- (iii) The situation here is not directly analogous to that of other EEC areas spanning international frontiers (France-Belgium etc.) but any steps taken in those areas or studies done of the problems which arise may be useful.
- (iv) It might be a good idea to give the Council a role in areas which are not of great importance now and which are therefore non-contentious, but which will grow as the EEC develops.



- (v) Economic criteria are relevant but should not be decisive - the underlying aim is political (like that of the EEC itself).
- (vi) Some kind of role for the Council in the flow of funds in both directions between the national level and Brussels would help to involve the Council with the EEC. But there may also be scope for deliberate involvement for its own sake in areas where there is no great flow of funds and no immediate or obvious need for a body of this kind.

43. A joint approach to the EEC ?

If there is now to be a settlement in the North acceptable to Dublin and involving a Council of Ireland, then the idea of a joint approach by Britain and Ireland to the EEC to get the Communities' "blessing" for the new arrangements being worked out to solve this longstanding political issue between two EEC partners, is worth considering. Such an approach by both countries stressing their common interest in a settlement, could be attractive to the EEC - as showing ~~that~~ the Communities to be a force for good in the solution of political problems and not simply an economic union for the benefit of members. If the EEC (Council of Ministers? Summit?) did give its political "blessing", new economic possibilities for regional development funds etc., would be more easily opened up. The hope of solving such an intractable political/economic problem should provide at least as strong a motivation for special help as the largely economic considerations usually taken into account. Objections by Unionists might be lessened, though not removed, because of the hope of economic benefit to them.

44. Some indirect precedent or basis for this kind of approach to the EEC to seek a general "blessing", (resulting in <sup>more</sup> ~~some~~ favourable consideration for Irish problems dealt with by a Council of Ireland), might be found in those provisions of the Rome Treaty itself which allow of special measures to help "the economy of certain regions of the Federal Republic of Germany affected by the division of Germany, to the extent that such measures are necessary in order to compensate for the economic disadvantages caused by such division" [see, for example, Articles 82 and 92 (2) (c)].

45. Another relevant provision of the Treaty might be Art. 92 (3) (b) which provides that aids granted by states which distort competition by favouring certain enterprises may nevertheless be deemed to be compatible with the Treaty if they are "intended to <sup>o</sup> promote the execution of important projects of common European interest". Is it possible that a regime of special state aids to attract foreign industry could be established and/or maintained in



both North and South, once we (and the British) had "reconciliation" in Ireland (under the auspices of a Council of Ireland) recognised as an "important project of common European interest"?

46. This idea of a "joint approach" to the EEC may well be far-fetched - or undesirable for various reasons. But it may deserve further study.

Specific EEC areas where there may be a role for a Council

Specific aspects of the EEC where there may be a possible role for a Council of Ireland are touched ~~on~~ in outline below with a view to identifying areas for further, more expert study:

(a) Regional Fund

The recent Summit in Paris decided to go ahead with this in 1973 but it has not yet taken definite shape. The aim will be to provide funds for development of less prosperous regions outside the "Golden triangle". Each member country will draw up its own regional development plan in the first instance and on this basis Brussels will assist. Britain is pressing for assistance for depressed industrial areas; we would do better from assistance for agricultural areas (to develop industry etc.).

The size and extent of "regions" has not yet been definitely determined. We have tended towards having the whole 26 Counties (perhaps with the exception of Dublin) <sup>viewed as a single development region - Britain would</sup> presumably have to distinguish several regions (Manchester has little in common with the Highlands or Northern Ireland). We might well have thought of urging either <sup>in the present context, a better approach for us would have been to 'seek either'</sup>

(a) a single all Ireland region (excepting perhaps Dublin and Belfast)

or (b) a series of smaller regions some of which would span the border,

with a role for the Council of Ireland in either case.

Press reports on 13 April 1973 however suggest<sup>d</sup> that the Commissioner for regional policy, Mr. George Thomson, in his draft policy programme was<sup>is</sup> proposing that all of Ireland be treated as a single region. One story (perhaps quoting from the draft) says "A central coordinating committee will be necessary to ensure that cross border schemes are fully harmonised". These proposals, if correctly reported, would inter alia be very helpful in the development of a Council of Ireland, and would indeed call for some such body.

(b) Agricultural price support system (intervention agencies etc.) A role here is probably unlikely.

(c) Farm rationalisation etc. ditto.

(d) Social Fund - (when further developed ?)

(e) European Investment Bank projects Perhaps a Dublin/Belfast motorway; or a joint electricity scheme.



(f) Representation in EEC institutions

Thought might be given to having some Northern members of the Assembly of the Council of Ireland, or its presiding officer, or even Northern members of the executive, nominated for membership of

- (i) the European Parliament
- (ii) the Economic and Social Committee

There would however be certain problems in regard to physical attendance by those who were members for example of the Northern Assembly, the Council of Ireland Assembly and the European Parliament (the latter in virtue of our Government's nomination). British acquiescence would no doubt also be required.

B. Administration of Justice

47. The Unionist Party's proposals to Mr. Whitelaw (annexed to the Green Paper) talk of the need for new extradition arrangements and make it one of two specific conditions which must be met before they would accept a "Council of Ireland". This has always been a theme of Unionist spokesmen. But extradition - insofar as IRA and similar activities are concerned - will always raise problems for us because (i) political offences, or offences connected with political offences, are not covered: (ii) the Courts at present might decline to extradite to the North - holding that the "rule of law" does not obtain there; and (iii) extradition to the North will always arouse a certain popular emotional response here.

48. Would it not however be worth examining the possibility of having some kind of mutual or reciprocal arrangements for the administration of justice as between North and South other than extradition? This could be done if it could be arranged that an offence committed in either jurisdiction could be prosecuted in the other, with sentence there and imprisonment there. It would no doubt be proper to confine these provisions ~~as necessary~~ to matters which would constitute a crime in either jurisdiction. This should cover most criminal offences however, since our legal systems are basically similar.

49. Such an arrangement would not involve ~~a~~ extradition - any more than would the trial in Dublin of a Galway murder case. <sup>R</sup>ather, a person arrested in Belfast for a crime committed in Dublin, would be charged, tried and, if necessary, would serve his sentence in Belfast on evidence given in the Belfast court by Dublin police (perhaps even counsel would come from Dublin). And vice versa.

50. This arrangement, if it were feasible, would substantially meet Unionist concerns without raising the major objections that extradition does. Its real



significance for us is that it would effectively "abolish" the Border in one particular respect - and that precisely the one respect which it would be most tempting to the Unionists to accept, because it would meet one of their real concerns.

51. The significance of the proposal insofar as the Council of Ireland is concerned is firstly that it would in effect (as a substitute for extradition) meet one of the two conditions set by the Unionists for acceptance by them of a Council of Ireland; and secondly that the procedures, arrangements etc. involved would require some kind of common authority - even a nominal one - and this offers a role for the Council of Ireland. In time the arrangements might even develop in the direction of giving the Council some kind of responsibility for certain judicial appointments, prosecutors etc. - later still perhaps even some responsibility for security and police forces. At a certain stage the idea of a Common Supreme Court of Ireland or the High Court of Appeal of Ireland mooted by Donal Barrington (par. 33 above) might be accepted <sup>by</sup> North and South (with both criminal and Human Rights jurisdiction).

52. Of course this idea raises major problems from a legal and constitutional point of view. But it is worth examining - bearing in mind that we require really imaginative, new thinking if we are really talking about the new Ireland in embryo. In any such examination of constitutional objections the following points might be relevant:-

- (i) The idea of some future process <sup>of</sup> in "integration", which would extend our present "jurisdiction" could be said to be envisaged in the Constitution itself (Article ~~2~~ 3)

"Pending the re-integration of the national territory and without prejudice to the right ..... to exercise jurisdiction.....")

The proposal made here could be represented as a stage towards that "re-integration": which is so specifically envisaged by the Constitution. It should therefore not be held to be "unconstitutional".

- (ii) If however the proposal outlined has to be seen as simply an example of the trial in one jurisdiction of crimes committed in another, there may be precedents in some fields of law so that an act to give effect to the proposal could still be upheld by the Courts:-

[ Piracy?, highjacking?, Casement and William Joyce cases in English law (??) ]

53. While the above suggestion has some analogy with the idea of a Council of Ireland responsible for a single, all-Ireland, unarmed police force also mooted by Mr. Barrington, and might indeed lead to this, it would probably be better



to take things in stages and concentrate first on the "reciprocal criminal jurisdiction" aspect mentioned above. The police issue is probably too sensitive to be pushed strongly at an early stage.

C. Generation of Power - Atomic Energy

54. There is already cooperation at a practical level in exchange of electric power between North and South. Neither part of Ireland, however, has yet turned to nuclear energy. An opportunity exists therefore to plan now under the aegis of the Council of Ireland for a single, shared nuclear generator for the generation of power which would be more economic on this larger scale covering the needs of the whole island. (Even if the purely economic argument is not decisive, the political benefits would tip the scale decisively.) The success of the European Coal and Steel Community as an initial basis for the whole EEC offers a good headline. It might be possible to deliberately seek the assistance of the International Atomic Energy Agency and Euratom (even if this is not absolutely necessary) in order to link up the work of the Council in another way with the EEC and similar institutions.

D. TV-Radio

55. Because of the importance of TV/Radio in forming the attitudes (and hence the politics) of the future, and because we are, after all, aiming at an Ireland which will accommodate diversity, we might consider an arrangement under the aegis of the Council of Ireland to open each part of the island completely to the TV/Radio of the other (RTE in the North, BBC-NI and UTV in the South). This would require some shared transmission arrangements or a new transmission-transfer station near the border. (It would, incidentally, meet the demand from Cork, Limerick etc. for access to BBC). Tentative plans are already being made for a second TV channel here and this could take its place.

Of course there would be objections from RTE whose market would be affected - but this "vested interest" need not necessarily prevail. There are other objections too to consider - e.g. the effect of full access throughout the country to the full range of BBC/ITV programmes (They could not be limited under this arrangement to those originative<sup>ing</sup> in "Ulster").

56. A project for a new TV transmitter at Clermont Carn, Co. Louth which would eventually extend RTE-TV coverage from the present 14% to 66% of homes in the North, including most of Belfast, was sanctioned by the previous Government (August 1972) despite formal British objections. The Minister



for Posts and Telegraphs has recently suggested to the Minister for Foreign Affairs that the project could go ahead on a reciprocal basis and this proposal is under consideration. The project as envisaged is on the general lines touched on above. It seems pre-eminently a matter to be put under the aegis of the Council of Ireland and could help to win popular acceptance for the Council.

#### Mineral and oil exploration rights

57. Following the oil and natural gas strikes in the North Sea, the interest of the major oil companies is now turning to the "Celtic Sea" (i.e. the Irish Sea, S. Geoghegan's Channel, the North Channel and the seas around Ireland generally). While exploration and allocation of rights are as yet at an early stage, there appears to be every prospect of substantial oil and gas resources being discovered and exploited.

58. Our rights, it is understood, (subject to checking) extend also into the Atlantic to the 200 metre depth line - or for as far as current technology can exploit the seabed - whichever is the farther. Obviously this whole matter (including seabed mineral rights) is one which could become of immense importance over the next decade, although it has received little attention in Ireland - North or South - as yet.

59. Is it possible to envisage a role here for the Council of Ireland? Perhaps even some arrangement for a small percentage of royalties, if and when they come, which would give it the prospect at least, of an independent source of revenue of its own?

60. There are of course major problems, <sup>general Northern Ireland</sup> *The exact position in regard to rights to the seabed in the area needs to be clarified. But insofar as they are* Britain would probably be reluctant to hand over such a potentially lucrative and important matter to exclusively Irish control (albeit "Northern" as well as "Southern" Irish) especially when the body exercising that control is as yet no more than a hopeful idea. Presumably a line would have to be drawn between Scotland and Northern Ireland, as has already been done between the Republic and England and the South Western Part of that sea "ceded" in some form to the Council. It is also frankly difficult to see what exactly the real role of the Council could be in this whole matter, though it could no doubt be given a formal role fairly easily.

61. Nevertheless, the matter is so ideally adapted to what we need for a Council of Ireland (in that it seems minor at present but has major growth potential built-in) that it is mentioned here as an area that might repay exper-



study.

#### Cultural co-operation and exchange

62. This is perhaps one area where fairly substantial arrangements could and should be made from the outset, since they could have important longterm effects without being so politically or economically sensitive as other matters mentioned.

63. We might think in terms of:

(i) a joint Arts Council replacing our own Arts Council and its opposite number in the North. The new Irish Arts Council should of course be properly funded by both sides and should have a fairly distinguished membership. It could have responsibilities in all the arts, and might subsidise and promote them. It might sponsor publications (poetry etc.) theatre tours (in Ireland and abroad); indeed it might even subsume our own Cultural Relations Committee so that it would be <sup>the</sup> body to which Irish artists, theatre groups, lecturers, folk dancers etc. would apply (from North or South) for guarantees or subsidies for events abroad.

(ii) a joint Museum (and Art Gallery) Board or Council, grouping the National Museum, the National Gallery, the Ulster Museum etc. and arranging for exchanges between them.

#### Planning

64. Regional planning has been touched on above in the EEC context. (par. 46) There are perhaps also matters of physical planning, which would be worth considering jointly, even if they do not arise in connection with the EEC.

#### Other areas

65. The following are simply listed here pour memoire; as other areas to be considered:

(i) Tourist promotion abroad

(Should the Council be the single authority responsible for this and fund it directly)?

(ii) Standardisation of tourist facilities at home etc.

(A single grading system and inspectörate for hotels; perhaps an extension of our system of tourist regions into the North - with regions spanning the border in some cases)

(iii) Irish Lights

Carlingford Lough problem (Greenore Ferries)

(iv) Sport (possibly a joint Sports Council of some kind with a role in relation to sports where there is a single All-Ireland organisation already). © National Archives, Ireland



(v) An All Ireland Community Relations Council?

(It might also have some role vis-a-vis the Churches).

(vi) A school text books board (common history texts?)(vii) Transport (Railways, bus system, motorways etc.)(viii) Semi-State bodies (e.g. Aer Lingus etc.)

Is there perhaps some way in which the North could be brought to share in, some of our more prominent semi-state enterprises - since they have few of their own? The prospect might be attractive to them and could lead them to take a certain pride in an Irish ; presence in such matters as international air traffic, shipping etc.

(ix) Coordinated industrial promotion efforts abroad

Joint office premises abroad, with a single office representing both parts of the country. This would be relatively difficult, since we are in fairly direct competition with the North for foreign industry (but then, according to our own theory, the North, too, is Ireland and our concern must now begin to extend to it in practice as well as in theory.)

66. The foregoing is a relatively haphazard list, which is intended largely to identify areas which might be worth consideration. There are no doubt others. But the problem is not merely to identify matters on which we could work with the North, if both sides were fully committed in principle to closer integration, but matters which we could induce Unionists, (who are suspicious of the Council, if they are not opposed to it) to accept and work.)

67. For this reason, no reference has been made here <sup>so</sup> far to the SDLP proposals for a National Senate of Ireland

"to plan the integration of the whole island by preparing the harmonisation of the structures, laws and services of both parts of Ireland and to agree on an acceptable constitution for a New Ireland and its relationships with Britain".

Such a body would be both logical and desirable - seen from our point of view, and that of the SDLP. If it is feasible, we should press for it. Realistically however, one must assume that it is simply "not on" at the present time.

68. One further point which should be investigated is the possibility of developing an arrangement in Ireland for closer economic union on the lines of the Benelux economic union. The operations of Benelux should be studied closely, with a view to seeing (a) if something on that model could provide a closer relationship in some areas than either the EEC or the Anglo-Irish Free Trade Area Agreement; and (b) if so, whether such arrangements would be compatible with our obligations under both.

FinancesFINANCES

69. Any direct action by the Council in matters of some substance, as distinct from coordination of actions between North and South, would require some provision for financing what had to be done. Of course,



even a minimum-type Council, would need to be financed to some limited extent (secretarial services for meetings etc.)

70. If substantial individual projects were undertaken the costs could be met jointly, by a vote in accordance with appropriate procedures, in the Dail and the Northern Assembly respectively; or a sum for the general purposes of the Council could be voted annually by each side.

71. Ideally of course, we should hope to see the Council have its own sources of revenue, (difficult though it would be to get agreement on this) since nothing would so clearly give it a personality and life of its own.

72. Some of the projects mentioned above (oil exploration) might conceivably provide direct revenues of this kind. Another possibility worth thinking about would be that all Customs duties collected at the border by either side should go to the Council direct.

If the Council were a body with a personality and functions of its own such revenues could finance its operations direct. If, as is more likely, the Council at the outset is "weak", with largely coordinating functions, then perhaps it could be the channel through which all Customs duties collected at the border would be funnelled, formally at least, to the Exchequer here and to the Northern Assembly exchequer (either 50/50 or prorated in accordance with the level of duties on either side). This would give it substantial symbolic importance as an All-Ireland body in precisely the area where the division of Ireland is now most patent - the customs border. It should also have some attraction for Unionists since it would make available to them through the Council some measure of control in a matter (Customs) to which they cannot <sup>otherwise</sup> have <sup>a function. It would have</sup> the additional advantage of allowing the North some measure of apparent autonomy of Westminster in financial matters - even though that autonomy would be largely symbolic and would be tied to the acceptance of the Council of Ireland as its instrument.

73. Of course this idea is somewhat over-optimistic, from the point of view of what Westminster might agree to in the way of handing over Customs Authority. But then we should not forget, because of our own view of the essential oneness of Ireland, that looked at objectively, the mere acceptance of the idea of a Council of Ireland, with some functions (a Council



which would unite the regional authority in part of "its" metropolitan territory with another sovereign government without direct Westminster participation) is already quite unprecedented and, as Enoch Powell would say, "illogical". Perhaps we could hope to have the British accept this ~~further~~ step suggested here, as a further indication that the amicable sorting out at last of the whole tangled Anglo-Irish relationship to the best advantage of all, must be treated as sui generis, and not as an issue amenable to the dictates of an abstract "logic" deduced from other constitutional models.

Where should the Council meet?

74. At first one might be inclined to suggest a wholly new venue for the Council - Armagh, Lurgan, Monaghan, Athlone, Dundalk or Drogheda. But there are disadvantages to many of these sites at present. Armagh or Lurgan, for example, might present security problems at present; Monaghan is too closely associated with Provo Sinn Féin, Dail Uladh etc.; Dundalk too much an "El Paso" town; Athlone too like a unitary All-Ireland site, for Northern Unionists to stomach. Perhaps at a later stage, if and when the Council assumes its own personality and has begun to be more widely accepted, it could begin to meet in one or other of these places. For the moment however it seems better to envisage it as meeting alternately in Belfast (Stormont) and Dublin (Dail).

This might even do more to break down barriers than meetings in a newly chosen venue; and it would perhaps accustom them and us to the intriguing sight of Ian Paisley, or William Craig, in Leinster House (and their equivalents on our side <sup>in</sup> of Stormont).

How would the Council be brought into being?

75. For Britain, without a written constitution, this presents no problems - a simple Act of Parliament would suffice. For us other issues arise. Some of these are considered in the following section. The point here however is whether a formal inter-governmental agreement on the lines of the 1925 agreement would be necessary. Certainly such an agreement is what the Unionists seem to envisage - with the South effectively recognising Northern Ireland.



76. Two points against such an approach, from our point of view, would be the possible constitutional difficulties touched on below and the sense in the popular mind of a reprise of 1925, which might not be altogether desirable in our new situation.

77. This issue, and the question of whether our Government could participate in a Council of Ireland in virtue of a simple Act of the Oireachtas (perhaps an identical act to that on the Westminster side), raise in turn a Constitutional question:

Would the Council require amendment of the Constitution?

78. This is obviously a matter for close study by Constitutional lawyers. Two possible views which could possibly permit a Council to be established on a basis compatible with the Constitution are however worth considering:

(i) Either

Art. 15, (2) (2)

"Provision may however be made by law for the creation or recognition of subordinate legislatures and for the powers and functions of these legislatures."

or alternatively, (and less plausibly)  
Art. 15, (3) (1)

"The Oireachtas may provide for the establishment or recognition of functional or vocational councils representing branches of the economic life of the people",

(ii) The point made at par. 52 (i) above might also conceivably suggest a way out to a Constitutional Lawyer. Our Constitution strictly speaking, and pace popular belief, is not a 32 county constitution simpliciter (nor is it, of course, a 26-county constitution). It is what one might call a 32 - county constitution "in potency" but not yet "in act" (to use the language of a school of philosophy which seems to inform much of the Constitution's approach to other matters).

In Art. 3 ("Pending the reintegration of the national territory .....") the constitution itself explicitly recognises that the present situation is one of division; and it further explicitly foresees a stage of "re-integration". Does it not follow, that it must be taken to implicitly envisage some instrument or means of reintegration? Could it not be held that the Council of Ireland is precisely such an instrument - implicitly envisaged in the constitution itself, as a necessary corollary of Article 3? (To mix a metaphor - why should we not, on this point, hoist the constitution with its own petard?)

79. Another point worth keeping in mind is that if the approach suggested earlier is adopted, power of decision and action in the Council would reside in an executive-to-executive link. This would mean that members of our



Cabinet would act jointly with members of the Northern executive. In practice, on matters requiring action, the decisions could be represented as those of the Council of Ireland - but if legal form here required it, they could be seen as they would also be, as decisions of the Government here. This would bring them fully into line with Art. 6.2. of the Constitution:

"These powers of Government are exercisable only by or on the authority of the organs of state established by this Constitution."

Alternatively, of course decisions of the Council could be backed up subsequently by legislation here (and if necessary, in the Northern Assembly or Westminster).

Is recognition of the North a necessary pre-condition for the establishment of a Council?

80. We sometimes profess to be puzzled at calls for the "recognition" of Northern Ireland. How, we ask, can one "recognise" an entity such as this which is not a sovereign state? and in any event have we not, in many ways, including such matters as the O'Neill-Lemass visits etc., fairly clearly recognised the area in practice? In thinking on these lines, however, we are perhaps too easily slipping into legal and diplomatic niceties. What is relevant to the Unionist who speaks of "recognition" is probably not so much a positive act of "recognising" as the negative fact of the "claim" we maintain in our constitution. What he may mean, understood properly, is not "recognise us in accordance with diplomatic procedures" - but "cease to claim us as you do now in your Constitution".

81. Must we then change Articles 2 and 3 now, despite the evident difficulty of getting such a change through a referendum? Not necessarily. If the view above is correct the Unionists are not really seeing the issue as an international lawyer would. What they see is a claim which in their view we have sometimes maintained loudly, and sometimes mutedly, but which we have never abated by our policies - at least not sufficiently to stand against the clear evidence of our Constitution, of which he is regularly reminded.

82. The position might be somewhat different however if we, by our clear policy line, marked by suitable public statements committed our hopes to the Council and accepted the settlement of which it would be a part.

Attendance at the proposed Conference, negotiation and working of a Council of Ireland, legislation to bring it into effect (if needed), and Government statements of various kinds on this issue, would all make it evident that



we had de facto and as a matter of clear policy decided to rest our hopes of reconciliation on acceptance of the present status of the North with a Council as a vehicle for reconciliation and "convergence".

We would in a word have recognised the settlement.

#### Action by the South

83. A final point may be worth making briefly here. Our hope is for a Council that would start a process of convergence between North and South. If and when we get a Council (if not before) we should seek to give that process momentum on our side. The Council alone will be insufficient to do what we want it to do without parallel action by the South to encourage convergence in other ways, and so get a process going. This may mean changes in our law, and administrative practice, (constitutional change, it is assumed, would present considerable problems.) There may also be much that public leaders can do to encourage change outside areas of direct Government responsibility. [They may, for example, where they are themselves committed members of a Christian Church accept their responsibility to give public witness as Christian political leaders (with a special expertise in the political area) to the changes they consider their church should make on those issues where its institutions and practice have important political and community repercussions. (eg. *Ne Temere*, education etc).] Some thought might also be given to the deliberate adoption here of a Bill of Rights paralleling exactly whatever Bill of Rights is to be introduced in the North even if many of its provisions are not strictly necessary. Apart from making our position on "civil rights" look good outside Ireland, this would be a clear symbolic gesture to indicate our goodwill, our concern for rights in a larger Ireland, and our commitment to the process of convergence which we hope the Council of Ireland will begin at last to get under way.

16 April 1973