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**Title:** Memorandum by [?D Nally], Department of the Taoiseach, on the form and function of a Council of Ireland as proposed by the Department of Foreign Affairs and the Inter-departmental Unit on the North of Ireland, and on the future of the latter unit.

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COUNCIL OF IRELAND

## Taoiseach

1. The Foreign Affairs memorandum for the Government dated the 31st July, 1973, raises two questions -

- (1) the form and function of a Council of Ireland;
- (2) the future of the I.D.U.

2. The Foreign Affairs memorandum proposes the same basic framework for a Council as the interim Report signed last June by the Finance representative on the I.D.U. and myself viz.:

- (1) a Council of Ministers, as the highest decision-making institution;
- (2) a parliamentary body consisting of, perhaps, 25 elected representatives from the North and South; and
- (3) a secretariat.

The memorandum is also similar to the report in the functions it recommends for a Council.

3. The memorandum differs from the I.D.U. report in that

- (1) it goes more fully into the question of policing and the Courts, recommending tentatively certain policing functions for a Council.

When the report was being drawn up, the I.D.U. did not have access to the conclusions of the Attorney General's Committee in this field. We took the view that police work is likely to be so contentious that it should not be given, initially at any rate, to a Council. The odium, parades, demonstrations, pressures etc. which this type of work could bring with it could destroy any hope of creating a harmonious working relationship or even of getting the Council properly off the ground. This would be particularly so if, as the memorandum appears to suggest, the Council were to get itself involved in the Offences against the State legislation and the Diplock legislation in the North.

Court and ombudsman work is a different issue. On this, the Attorney General's views as set out in his note of August, 1973, on a possible settlement in the Strasbourg case are relevant. Both types of work could well be associated with a Council;

- (2) it does not mention the economic and social council suggested in the report - to be based on the proposed National Economic Council here and the Northern Ireland Economic Council. The basic reason for this recommendation was to get as many persons from as many different walks of life as possible together in an institutional North/South framework. In a council, parliamentarians

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would meet in the parliamentary body and members of the Government in the Council of Ministers. There would be a judiciary for the associated court work. It seems only logical to suggest a further institution to provide the principal vocational interests with a forum. The suggestion has a model in the Economic and Social Council of the United Nations and in a similar body attached to the European Communities.

It may be that with feelings as they are now this type of institution just would not take off. This applies to any of the recommendations for a Council of Ireland. I do not think it is a reason for not putting it forward.

- (3) it suggests that the Council of Ministers should vary in membership according to the agenda before it with different Ministers and members of the Northern Ireland Executive taking part when matters appropriate to their Departments are under consideration. This report recommended 5 or 6 Ministers from North and South who would be responsible for groups of more or less homogeneous functions within the Council.

The recommendation in the report has the disadvantages mentioned in the memorandum that it would be less flexible and could exclude responsible Ministers and executive members from the Council when matters appropriate to their Departments are under discussion. I do not think that this is an insurmountable obstacle. The functions of Government are becoming more complex and it is by no means unusual for a particular Minister to take a lead in relation to functions which are the concern of a number of Departments. Examples of this are the environment, which concerns Agriculture, Industry and Commerce and Local Government, but where a leading role is taken by Local Government; Regional Policy, which concerns Local Government, Industry and Commerce, Agriculture, Education and Labour, but where a leading role is taken by Finance and Local Government; Transport, which is the concern of Transport and Power and Local Government, but where a leading role is taken by Transport and Power, and Social Affairs, which are the concern of Social Welfare, Health, Labour and Local Government, but where, at present, it is difficult to discern any one lead Department.

The proposal in the Foreign Affairs memorandum could lead to a weak Council of Ministers (since its members will appear only intermittently) and a strong secretariat who, since they are working full-time on general policies etc. will have almost full responsibility for initiating and co-ordinating policies.

It may be that a weak Council of Ministers and a strong secretariat - such as has emerged in the Brussels

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institutions - could be an advantage in the initial years of any Council. The fact that the Foreign Affairs proposals could lead to this set up should, however, I think be recognised and considered now before we put forward firm proposals for the institution of a Council of Ireland. The best conclusion might be some marriage of the two proposals.

4. Foreign Affairs propose the circulation of their memorandum to Departments for views. It is obviously essential that Departments be consulted officially on a matter which affects them so fundamentally. The basic question is whether the memorandum or the interim report, suitably modified to take into account the Foreign Affairs views and expanded to deal with policing and the Courts should be circulated. The report has the advantage of containing the written views of most Departments and a summary of the views expressed orally by their representatives before the I.D.U. last June.

5. Finance and legislative powers:

Basically, what distinguishes a Government Department and make it powerful is the power through its Minister and his place in the Government to

- (1) have legislation enacted and enforced and
- (2) get and allocate money.

The power which a Council of Ireland gets under these two headings will determine its future. For this reason it would be well that any proposals on a Council should be reasonably clear on these two points.

6. It is not practical at this stage to visualise a Council of Ireland with anything more than subsidiary legislative powers corresponding to the powers of a local authority to make ~~the~~ bye-laws, under powers conferred on it by Parliament here and in the North.
7. Insofar as Finance is concerned it is, I think, essential that a Council should have direct control, largely independent of Belfast Dublin and London, of the money with which to finance its operations. This would require, at the minimum a system of block allocations by the respective Governments without detailed controls which, if imposed, would turn the body into a glorified County Council. The last word would be a system which required "Finance sanction" for staff appointments, individual items of expenditure etc.
8. The Government is to an extent bound by the Constitution which says -

"28.4.3<sup>o</sup> The Government shall prepare Estimates of the Receipts and Estimates of the Expenditure of the State for

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each financial year, and shall present them to Dáil Éireann for consideration".

This would require that any allocation here to a Council would have to go before the Dáil. In Britain and Northern Ireland similar requirements would have to be faced though not as part of a written Constitution.

9. Alternatively, or in addition to this block allocation, there could be assigned to the Council either -

- (1) the power to tax directly e.g. local rates or
- (2) the yield of a fixed percentage of State taxation or revenue on the analogy of the old assigned revenue grants used to finance local authorities.

These possibilities may be too extreme for opinion in the North in that they would create an organization with a large degree of independence and obvious potential for growth. They are, however, worth mentioning if only to draw this reaction.

10. I am not convinced that the Foreign Affairs memorandum stresses sufficiently the question of a United Kingdom contribution. In 1972-73 the British Exchequer poured some £200 million into the North in grants-in-aid, social welfare, agriculture, subsidies etc. They lent a further £100 million at "commercial" rates and provided imperial services with a notional value of £135 million. Taxes paid in Northern Ireland should be deducted from these totals. These payments are large in absolute amount, but in relation to the total resources of the United Kingdom they are small - probably of the order of .01% of GNP. The point about them is that in any discussion of the contributions and functions of a Council of Ireland and particularly of a United Kingdom association with it, the question of direct U.K. financing to the Council must be considered.

x. £277m. in  
1973/74  
24/8

11. Future of the I.D.U.

The Foreign Affairs memorandum says that the Unit's examination of the question of a Council has not succeeded in producing a clear-cut picture of the functions and structures of a Council. The Unit had a fortnight to produce its report. It worked within this time limit and produced a report which differs only in the ways mentioned from the Foreign Affairs memorandum.

12. The I.D.U. consists of a representative of the Departments of Taoiseach, Finance and Foreign Affairs. It was set up originally by Government decision on the 28th May, 1970, of which a copy is attached.

13. In March, 1972, the chairmanship was transferred from the Department of Foreign Affairs to the Department of the Taoiseach as the Department primarily responsible for Northern Ireland affairs. This is still the set-up of the Unit.

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14. Foreign Affairs maintain an Anglo-Irish Political Section consisting, according to the Directory of State Services 1973, of two persons of about Principal Officer rank, three persons equivalent approximately to Assistant Principals, and three persons equivalent to Administrative Officers, with supporting staff.
15. Finance maintain a small section, consisting of an Assistant Principal and other staff with the responsibility for monitoring Northern Ireland affairs from an economic point of view.
16. The staff in this Department, where the Chairmanship lies, consists of part of the services of one Assistant Principal who also services the Inter-Party Committee on Northern Relations and does other Departmental work.
17. The Unit meets infrequently; it is asked for advice on subjects which, as a group, it has had no chance of considering over any worthwhile period of time. It has no system of continuous review and monitoring or of keeping up to date with Northern affairs. The Department of Foreign Affairs, where the major part of the staffing is, work directly to their Minister without reference to the Unit. In this way, the existence of a secretariat in one Department and the chairmanship in another gives rise to numerous <sup>stresses and</sup> difficulties. There is evidence of similar disquiet on the part of the Finance representative on the Unit (see a copy of his note attached).
18. The question of the proper functioning of the Unit will become critical if it is to be used in connection with the forthcoming discussions on the North - and for briefing the newly constituted Inter-Party Committee on Irish Relations. If the Unit is to continue, it should be given firm terms of reference and it should be a more closely knit and continuous type of body than it has been in the past. This could involve -
- (1) transfer of the chairmanship to Foreign Affairs so that the secretariat and the chairmanship are in the one Department. This would, however, mean the assignment to Foreign Affairs of prime responsibility for Northern Ireland which has traditionally been the concern of the Taoiseach's Department with its concern for attaining the prime objective of ~~continuity~~ Irish unity;
  - (2) transfer of the Foreign Affairs secretariat to the Department of the Taoiseach. This would mean the separation of the Foreign Affairs staffing from Foreign Affairs; or
  - (3) arrangements for much closer liaison than in the past between staff in the Department of Foreign Affairs and staff in the Department of the Taoiseach. This has not been satisfactory in the past and may not be so in the future, but at least we could give it a try. It would involve, at the least, a letter from the Taoiseach

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to the Minister for Foreign Affairs, the terms of which could be decided in the light of the proposed action on the Foreign Affairs memorandum. *I am less than hopeful about the prospect of success for this course.*

19. Summary:

- (1) Policing should not be given to a Council. Courts and ombudsman type work might be associated with it. (This could depend on the Strasbourg case).
- (2) The question of an economic and social council associated with a Council of Ireland might be considered.
- (3) The proposal that Ministers would attend meetings of the Council of Ministers only when matters <sup>with</sup> of which they are concerned are being discussed rather than a system under which a Council of Ministers would consist of permanent ministerial representatives may lead to the lack of co-ordination and drive in the Council at ministerial level. Some combination of the two systems may be more desirable.
- (4) The draft proposals for a Council should be circulated to all Departments concerned. It is for consideration whether the Foreign Affairs memorandum or the interim IDU report, suitably modified, should form the basis for this circulation.
- (5) Financing will be crucial to the existence and development of any Council. It might receive separate and detailed study by the IDU and the Department of Finance.
- (6) The present method of working of the IDU is not satisfactory.

*gn*  
 24 Lúnasa, 1973.

*Mr. Stally.*  
 The Gov. decision on the C of Ireland disposes of question (1). It may be as well to await developments and (1) before deciding on (2). LC 24/9/73