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SECRET

Memorandum for the Government

POSSIBLE POLICY CONSIDERATIONS IN STRAND TWO OF THE
ROUND TABLE TALKS

Introduction and Summary

1. The Minister for Foreign Affairs submits the attached memorandum as an aid to discussion of the policy options which may face the Government arising from strand two of the Round-Table Talks.

Issues Arising

2. Direct negotiations on North/South issues between the two Governments and the four Northern Ireland parties are politically very significant. They may raise quite fundamental issues of Government policy on Northern Ireland, for example
 - the arrangements which might be acceptable to replace the Anglo-Irish Agreement
 - the North/South structures which would be appropriate to cater for the "Irish dimension" and to complement any internal structures in Northern Ireland
 - the question of changing or confirming the status of Northern Ireland and meeting unionist concerns on majority consent for any change
 - the extent to which amendment of Articles 2 and 3 of the Constitution may be considered
 - the treatment of the Government of Ireland Act, as the legislative foundation of Northern Ireland, which the

Taoiseach has stressed must be discussed if amendment of the Irish Constitution is on the table

In broad terms the Government may have to decide whether any new balance can be struck between the unionist and nationalist aspirations in the island of Ireland which could be acceptable to both sides and, if so, the practical "package", including possibly changes in institutions and political arrangements in this jurisdiction, which might reflect this.

Developments in Strand One to date

3. Negotiations are continuing in strand one, mostly at subcommittee level, in an effort to find a basis to enable the unionists to move forward to strand two. (The unionist precondition of 'substantial progress' on internal structures in strand one is not the agreed basis for the transition, since that would imply that an internal settlement was the main objective of the talks. Nationalists argue that internal arrangements must be founded on prior agreement about the wider relationships). Nevertheless there has been a practical acceptance that the unionists need something from strand one dealing with internal structures, even if on a highly conditional basis, and the negotiations have explored this.

"Institutions Paper"

4. A paper on new political institution in Northern Ireland has emerged from the subcommittee and will be discussed by Party leaders on 11th June. This attempts to combine (i) the broad unionist approach of an elected Assembly operating through committees exercising day-to-day control of a range of devolved powers and (ii) some of the SDLP proposal for a separation of legislative and executive powers through a parallel system of a directly elected "panel" of three. The Assembly would require a weighted majority of 70% for more significant decisions, but otherwise operate by simple

majority (unless a 30% minority of the Assembly appealed this). The paper does not decide on the precise method of allocating chairmanships, but accepts the system of government must ensure an "appropriate, fair and significant role" for all traditions. The "panel" (i.e. the elected half of the proposed SDLP "Commission") would have consultative, monitoring, referral and representational functions, for example arbitrating expenditure disputes, making sensitive public appointments and acting as the 'public face' of Northern Ireland abroad. The implication is that it would act by consensus, although this is not confirmed in all respects.

5. At the last plenary meeting Sir Patrick Mayhew took the approach that the paper lay on the table but that further work needed to be done in strand one, listing areas such as relations with Westminster, Financial matters, a Bill of Rights etc. The British have tabled an array of papers, mostly of a technical or descriptive nature, on these issues. This approach seems mostly intended to buy further time in Strand One. It is unclear whether the British want the time to persuade the unionists (who had not flagged these concerns in subcommittee) or are doing so for NIO motives, for example to tide the process over the meeting between the Taoiseach and the Prime Minister on June 11th or register some further advance towards an internal settlement. The Taoiseach and Minister for Foreign Affairs have stressed the importance of an early transition to strand two.

Points of disagreement

6. The SDLP leadership has serious reservations on the paper on grounds the 'panel' makes no provision for the appointed commissioners, that its role is a glorified ombudsman, and that the separation of power is undermined if Committee chairpersons act as Heads of Department, (an outcome implied, but not stated in the paper). The unionist

leadership could have problems with a panel working by consensus (as nationalists would presumably insist) since if the "panel" has sufficient powers vis-a-vis the Assembly, it would be a reciprocal internal veto. The question of relationships with the rest of Ireland is left completely in abeyance and there are many other unresolved issues. The paper is best understood as a procedural device to enable all parties to move to Strand Two. Nationalists would agree to do so on this basis, subject to reservations about the global package, and would argue that any further delay by Sir Patrick Mayhew in calling for the transition would be aligning the British chairmanship of Strand One very openly with the unionist emphasis on the internal approach. The Secretary of State will be aware of a loss of credibility if he seeks to buy further time and is likely to bring matters to decision. A move to Strand Two remains the more probable outcome. If so the week beginning 22 June would now be the likely opening date for Strand Two, which could continue up to the end of the "gap" in the week beginning 27 July.

7. The broad policy considerations and options set out in this memorandum are as follows:
 - (a) If the talks are to produce an alternative to the Agreement, and, possibly, the basis for an amendment to the Irish Constitution, the nature and scope of alternative arrangements must be sufficiently attractive to the nationalist community to enable them to agree to such changes.
 - (b) The underlying approach must be parity of esteem and treatment, to the maximum extent that can be devised, as between the two aspirations in Northern Ireland.
 - (c) If arrangements are on the basis of the present status of Northern Ireland, the "Irish dimension" should address the need of the nationalist community for links

with the rest of Ireland, for alleviation of their in-built minority role in Northern Ireland, as well as catering for North/South cooperation and for future convergence between the two parts of the island.

- (d) This might be done either (i) by expanding the Anglo-Irish Conference to include elected representatives from Northern Ireland, provided the role of the expanded Conference was strengthened decisively or (ii) by establishing a Council of Ireland, broadly on the Sunningdale model with both a consultative and an executive role, or (iii) some satisfactory combination of the two approaches, in the light of what negotiations show to be the most likely basis for agreement.
 - (e) Assuming the Irish dimension is satisfactorily catered for in the North-South structures, the internal arrangement in Northern Ireland might be a devolved powersharing administration. In that case the precise mechanisms and the relation of the Administration to an Assembly could be for decision by the Northern parties.
 - (f) The European dimension should be used as fully as possible as a deliberate instrument for cooperation and convergence between the two parts of the island.
 - (g) The new arrangements could be the basis of an agreed North-South charter, enshrined in legislation in the Irish and British Parliaments or endorsed by referenda in both parts of Ireland.
8. If the broad lines of this approach are accepted as a basis for further work, consideration might be given to urgently establishing interdepartmental consultation to:

- consider the options to cater for a satisfactory "Irish

dimension" as between developing the Agreement or reviving the Council of Ireland approach.

- Define the practical extent to which we could hope to secure a uniform EC approach to both parts of the island, and in what sectors.
- Consider the fiscal and security arrangements which might be proposed under new arrangements.
- Make detailed preparations for Irish presentations to strand two on the lines mentioned.

Such inter-departmental arrangements could also serve as a Government committee to monitor the progress of negotiations if strand two gets underway, or to consider the options, if the talks fail, and advise the Government as a whole on these issues.

Department of Foreign Affairs

8 June, 1992

S E C R E T

OIFIG AN AIRE GNOTHAI EACHTRACHA

8 June, 1992

Memorandum for the information of Government

POSSIBLE POLICY CONSIDERATIONS ON STRAND TWO OF THE
ROUND TABLE TALKS

1. Strand two of the talks will be one of the rare occasions of direct dialogue between unionism and nationalism in Ireland, and therefore of very considerable political significance, irrespective of the prospects of success. The policy choices made by the Irish Government will be important, not only for the talks themselves, but for the directions taken in their aftermath, if they should fail. They may also give rise to intensive domestic debate about whether or not they were best designed to promote progress towards peace, which is the dominant concern of public opinion here. They require therefore the most careful consideration.

Need for practical arrangements acceptable to all sides

2. The constitutional issue, in its broadest sense, will be central, both because North-South relations are the specific agenda of strand two, and because the issue is in any case at the root of the divide in Northern Ireland. The conflict, at its most basic, is about whether unionists should finally settle for minority status in the island as a whole, or nationalists should do so within the confines of Northern Ireland. Some people kill, and many more tolerate killing, because of their fears that this choice will be resolved the wrong way. Peace in Ireland needs a stable majority in both the nationalist and unionist communities to

endorse as fully as possible the political arrangements and institutions in the island. The common search for arrangements and institutions which can be so endorsed by both sides is the purpose of these talks, as they must be of any future dialogue between unionism and nationalism. Past experience suggests that attempts to find progress on an "internal" basis in Northern Ireland (in effect to persuade local politicians to ignore the constitutional issue) are unlikely to succeed, because neither side view such attempts as neutral in terms of their opposed constitutional concerns.

Likely objectives of parties to the Talks

3. In searching for new arrangements which might win acceptance, the Irish Government will need to take into account the basic positions and objectives of the other parties to the talks, insofar as these can be identified.

Unionists

4. The Unionists' fundamental objective is to stay out of a united Ireland. They wish to eliminate the "Irish dimension" inherent in the Anglo-Irish Agreement and to ensure that anything which replaces it does not threaten, and if possible confirms, the status of Northern Ireland as part of the UK. They would probably be prepared to accept some degree of powersharing in internal arrangements and some carefully limited "good neighbourly" North-South link as a price for this.

Northern Nationalists

5. Northern nationalists have resented the state of Northern Ireland on several levels: it denied their independence and cut them off from the rest of Ireland, its delimitation ensured their perpetual minority status in Northern Ireland and they were victims of systematic discrimination at the

hands of the unionists. This latter aspect is more readily tackled under direct rule than a unionist-dominated system. The memory of Stormont means that the negative motive of denying the unionists any return to ascendancy - a uniting factor for different currents of nationalism - probably outweighs the attraction of a minority share in the limited power available under devolution. The SDLP concern will therefore be to enhance the Irish and European "dimensions" and to build strong and potentially dynamic North-South links, both for their own sake and as a symbolic counterweight to the status of Northern Ireland as part of the U. K. They feel their involvement in internal institutions is politically sustainable only insofar as it is balanced by developments on the status of Northern Ireland. Sinn Fein are not of course party to the talks but they also exercise an indirect influence on the constitutional issue as potential competitors for the support of the nationalist community.

British Government

6. As regards the British Government, it can be assumed the overriding British objective is to be rid of the violence, and indeed of the problem as a whole, but that they are baffled how this can be done. Their position is one of formal neutrality on Irish unity. They state they have no selfish strategic or economic interest in Northern Ireland and will legislate for unity if a majority there so wishes. This is always combined with an insistence on the need for the consent of a majority in Northern Ireland to any change in its status. It is unlikely that they enter the Talks with any very radical intentions or expectations. They probably see them as a "fail-safe" exploration of any possible common ground and would hope that a successful outcome could strengthen the political consensus against violence. Their strategy will probably be to exert pressure on both sides in favour of changing some aspects of the

Agreement in return for powersharing and a North-South link, thereby reconciling the unionists to a system which would retain some features of the Agreement but discard the symbolic aspects which unionists find objectionable. The NIO stewardship of Strand One so far has shown a very clear tendency to push the SDLP as far as possible towards an internal settlement. It seems likely the NIO objective is to replace the Agreement by a devolved administration based on assembly committees and a non-executive Council of Ireland. It is not clear whether the British system as a whole shares the NIO concern to force the problem to fit the essentially internal solution they wish to offer. The Prime Minister may be adopting a 'wait and see' approach. However, the experience of the talks can influence the policy direction the British take afterwards, since exasperation at failure of negotiation and the continuation of violence can engender a certain volatility as between strategies of conciliation and repression.

Considerations for Irish Government

7. The Irish Ministers in the talks will need to put forward a position consistent with nationalist aspirations and the public desire to see progress towards peace. They will be aware of the danger of a negative political reaction if any arrangements to replace the Agreement are not seen to offer greater, or at the very least equal advantages, from a nationalist viewpoint. If the outcome is to include an amendment of Articles 2 and 3 of the Constitution it would have to be sufficiently attractive to the electorate to offset likely opposition to this move and carry the referendum. At the same time any acceptable package will have to take into account the diverse and even contradictory requirements of the other parties to the talks. Furthermore, Irish positions should be such that if the

talks fail the Irish position will be seen as reasonable and can provide an acceptable platform for the future.

Nationalist Options

8. The Forum Report remains the most comprehensive statement of the nationalist position. Its first preference was for a unitary state for the whole of Ireland, but it also considered a North-South federal or confederal state and joint authority as alternative structural arrangements.

9. The majority of nationalists on both sides of the border will tend to agree that unity or a federal/confederal state are not practical options at this time. Both would involve unionists accepting a political break with Britain, which they would see as catastrophic. Both would raise the question of replacing the British subsidy to Northern Ireland (currently about Stg. 2.1 billion annually). They would involve a very radical recasting of our institutions and, possibly, completely new political alignments. It could be difficult to win public acceptance for such upheaval except in a situation where there was very widespread North-South and British-Irish agreement.

10. Both the Sunningdale negotiations and the Anglo-Irish Agreement have sought a "mixed" approach which balances the Irish and British dimensions, to some degree at least, but on a basis of de facto acceptance that Northern Ireland remains part of the UK. This is based on an assumption that the unionist refusal of Irish unity may be just as intractable as the nationalist refusal to accept the British status of Northern Ireland. This "mixed" approach can be on a spectrum from the "joint rule" option of the Forum report, at one end, to relatively hollow consultative mechanisms, at the other.

Requirements of "Irish Dimension"

11. Nationalist opinion would see the "Irish dimension" as responding to four related needs:
- (a) a symbolic and practical North-South link, to undo some of the divisions caused by partition and to accommodate their Irish identity;
 - (b) to alleviate the in-built minority status of nationalists within Northern Ireland, particularly in terms of safeguarding them against discrimination;
 - (c) a mechanism for practical cooperation on North-South matters;
 - (d) an arrangement which contains the seeds of future convergence and, ultimately, unity.

Unionists find practical cooperation acceptable, provided the symbolic overtones are excluded. It is however the symbolic overtones which are of most concern to Northern nationalists, who will wish to see a formal involvement of the South in the affairs of Northern Ireland preserved in any new arrangements to replace the Agreement.

Theoretical and practical aspects

12. As at Sunningdale and in relation to the Anglo-Irish Agreement, the "Irish dimension" is likely to arise in the Talks on two levels - that of constitutional theory and of practical cooperation. The first deals with the issue of the legal and political recognition of the legitimacy of Northern Ireland. The second deals with the practical role of the Irish Government, with North/South links and perhaps also with the establishment of all-Ireland strategies in

certain cases where new institutions are either not agreed or not necessary. The following paragraphs summarise the provisions under the Sunningdale package and the Anglo-Irish Agreement, and look at ways in which these could be adapted or built on to meet nationalist aspirations.

Constitutional issue in Sunningdale and the Agreement

13. The Sunningdale Agreement and the Anglo-Irish Agreement treat the constitutional issue in very similar ways: They both balance an acceptance by the Irish Government that there would be no change in the status of Northern Ireland without the consent of a majority there against a British commitment not to oppose, or in the case of the Anglo-Irish Agreement, to legislate in favour of unity, if a majority in Northern Ireland gave its consent. The Government remain bound by the provisions of the Agreement and it can be assumed the British will wish any new agreement to confirm our acceptance of the condition of majority consent, since that has been a consistent British policy objective. The next step, from the British and unionist point of view, is to convert the de facto acceptance into a formal de jure one, by securing amendment of the Irish Constitution. The question arises whether there could be any balancing development in a nationalist direction of the British position on Irish unity which might facilitate this.

British movement to balance an amendment of the Constitution?

14. While there is widespread acceptance of the need for majority consent to any change of status for Northern Ireland there are divergent views on the conditions and circumstances which should be created for the fair and proper testing of such consent. Even Sinn Féin extremists do not directly challenge the practical importance of unionist consent but argue that any reference to unity by

consent is meaningless since the creation of Northern Ireland was a "gerrymander" by the British precisely to ensure a perpetual unionist majority against unity. This view of the British role is the essential justification proffered by the IRA for their violence. It would be undermined to the extent that it could be shown that (aside from their historical role in the creation of Northern Ireland, an entity which has now its own reality), the British are not now in fact actively sustaining division in Ireland. If that is the case unionist refusal of Irish nationalism is a problem of inter-Irish relations and must be accepted as such. This could more easily be achieved if the British were seen to go from their present theoretical neutrality to a more active endorsement of the option of unity by consent, or were seen in practice to be removing obstacles or providing incentives to agreed unity. Since they would be sensitive to the dangers of unionist back-lash they would probably contemplate such a move only in the context of some corresponding strengthening, on our side, of reassurance to unionists that the requirement for majority consent was genuine and meaningful, and not based on the elimination of all practical alternatives, as in the Sinn Fein approach. In short their "neutral" position might be replaced by one of support for unity, or at least of a true "parity of esteem" as between the UK and Irish options for Northern Ireland, which acknowledges that the inertial and active forces of the status quo in favour of the union should be balanced in ways which gave a more level "playing field" for the option of eventual unity. It could be argued in this respect that the strong commitment to unity in the Government of Ireland Act, although admittedly expressed for conditions where both parts of Ireland remained in the UK and with parliaments subordinate to Westminster, can nevertheless find renewed relevance in the context of European Union. However, the British may feel inhibited in this regard by their concern to conciliate the unionists,

who would also be likely to use their veto in the talks to resist any formal endorsement of the goal of unity.

The Irish Dimension in the Agreement

15. The Agreement provides a practical expression of the "Irish dimension" through the establishment of the Intergovernmental Conference "mainly concerned with Northern Ireland" and the Secretariat (whose Belfast location has strong symbolic connotations for both sides in Northern Ireland). The operation of these institutions can shrivel into perfunctory rituals or expand into something close to informal joint rule, depending on the political will behind the "determined efforts to resolve differences" to which both sides are committed under the Agreement. To date the British have operated close to the minimal end of the spectrum, but the dynamic potential of the Agreement for a different approach in the future should not be dismissed.

A Council of Ireland?

16. The other broad concept for dealing with North-South links has been that of a Council of Ireland. This originated with the Government of Ireland Act (1920) which proposed separate Northern and Southern parliaments for Ireland, both subordinate to Westminster and linked by a Council of Ireland (forty members drawn equally from both). The Council never came into existence. The concept was revived at the Sunningdale Conference, which agreed it should comprise a Council of Ministers (seven members each from the Irish Government and the Northern Ireland executive operating unanimously) and a Consultative Assembly. The Council was to have an executive, harmonising and consultative role. Although much work was done to identify the executive functions it might discharge (and which on one interpretation would have given it authority over more than

20,000 staff) the proposal collapsed with the fall of the Northern Ireland executive. This was caused in part, it was argued, by the opposition to the Council of the unionist population, who feared, as indeed nationalists hoped, that its executive role made it an embryonic all-Ireland Government. The complex administrative problems caused by a joint executive authority co-existing with both Governments were not fully explored or solved at the time.

European Dimension

17. In looking at new structures which might be of comparable scope and potential to the Agreement, the European dimension is particularly valuable. The pooling of sovereignty, harmonisation of systems and erosion of internal borders inherent in the process of European integration are of themselves helpful developments in terms of North-South relations. A structure which linked North and South as a single region for European purposes could be seen as an effective practical measure, reflecting common interests on the island, and would at the same time have strong symbolic and dynamic appeal for the nationalist community, given the growing relevance of the Community process to every area of endeavour.

Different approaches in Agreement and Council of Ireland

18. It should be noted that there are important differences between the approach to the "Irish dimension" as between the Agreement and the Council of Ireland concept. The Agreement is essentially a consultative process between the two Governments in relation to Northern Ireland, with little or no element of reciprocity as between North and South. Development of the Agreement tends therefore in the direction of joint rule. The Sunningdale Council of Ireland was based on North/South cooperation with a very large

measure of reciprocity between the two, and without formal British participation. Transfer of functions to the council in relation to Northern Ireland would be expected to be matched by a similar process as regards the South, and could therefore represent a very significant change in the decision-making process in this jurisdiction also.

Form of new structures

19. Both the structure of the Talks and the totality of relationships itself suggest that new structures will involve (a) an internal "devolved" process; (b) a North-South element and (c) an East-West element. It is possible to envisage different combinations of structures to cater for these, with different implications for the constitutional status of Northern Ireland and therefore for the attraction to nationalists of the "package" as a whole. The following sets out some of the options and their likely implications:

Devolved Structures

20. The discussion of the structures of devolution in strand one indicates general acceptance of a local Assembly elected by PR and based on the Westminster constituencies. There were however divergent views on whether there should be any form of executive and if so what its composition, and relationship to the Assembly, might be. The Unionist parties have advocated a committee system, partly because the involvement of nationalist politicians could be presented as something other than "executive powersharing", which has been taboo to unionists since Sunningdale, and partly because such a system could be manipulated and controlled, for example by unionist domination of committees such as Finance. The SDLP advocated direct election for the executive, but discussion of their suggestion concentrated

on the problems raised by the three appointed commissioners which they proposed to associate with the three directly elected members. From the point of view of the Irish Government it is suggested that, provided the Irish dimension is satisfactorily catered for at other levels, the main policy test should be that any local structures must give the nationalist population a meaningful role, at least proportionate to their electoral support, in the decision-making process. Given the predictable political cleavage-lines built into the foundations of Northern Ireland it is not merely the abuse, but the very exercise of a "majority-rules" system which will deny the nationalist population a share in power, and so must be avoided. Once that criterion is satisfied the precise organisation of the system could be for decision and agreement among the Northern parties. The extent of powers to be devolved is also a matter for negotiation. The Government of Ireland Act reserved powers relating to the Crown, Armed Forces, foreign relations, major taxation, coinage and external trade. It devolved issues of internal security, prison and legal systems, agriculture, education, regional economic development, health and social services, local government and rating. The most sensitive issue in any future discussion of devolution would clearly be issues of security, the legal system and human rights, where any suggestion of return to unionist control would be gravely worrying to the nationalist community.

Requirements for North-South Institutions

21. As suggested above, the North-South institutions should meet as far as possible a number of related needs as:

- a symbolic North-South link as a counter-balance for the isolation and in-built minority status of nationalist within Northern Ireland;

- an appeal/guarantee mechanism against abuse;
- an arrangement for practical cooperation on the island;
- a system capable of promoting convergence between North and South and developing in step with it.

In addition the arrangements for the "Irish dimension" must be sufficiently significant from a nationalist point of view to be seen to justify any changes in the Agreement, or in relation to the Constitution, which might be proposed as the other side of the package and which would have to be accepted by the electorate here. While such a balance between gains and concessions could be achieved either on a limited or a "deep" basis, the hope would be that the new arrangements could be sufficiently deep to be seen as a symbolic shift, justifying an active identification of nationalists with the system and marginalising the advocates of violence. At the same time they would need to reassure unionists on their basic requirement of not being coerced into a united Ireland.

Symbolic and Practical Aspects

22. There is something of a conflict of objectives as between the symbolic aspects of the Irish dimension, which are necessary from a nationalist point of view and where unionist opposition is likely to be very strong, and the cooperation and "convergence" aspects where unionist involvement is ultimately necessary and could perhaps be secured. The "over-ride" approach to Northern Ireland of the two Governments under the Anglo-Irish Agreement meets the symbolic requirement, the cooperative and reciprocal approach of the Council of Ireland the latter. It will be a matter for political judgement by the Government which

approach, or combination of the two approaches, should be aimed for.

Possible adaptation of the Agreement ?

23. One possible adaptation of the Agreement might be to link it to the SDLP proposal. This is for a six-member executive to administer Northern Ireland, three of which would be directly elected and one each appointed by the two Governments and the EC. This involvement of the external dimensions directly in the day-to-day administration of Northern Ireland is most unlikely to be acceptable to the Unionists or the British. The Unionists would see it as a potential majority against the union, if it operated by vote, or a Dublin "veto" if by consensus. It is difficult to imagine the unionists offering themselves for election to such a system. For the British it would pose both doctrinal issues of sovereignty and practical problems of political control and efficiency. The objections to such a mixed body are strongest in matters of day-to-day administration, where it must be conceded that a direct relationship with the electorate is a criterion which it is difficult to argue against. The arguments in favour of the mixed approach would be greatly strengthened if the role and purpose of the joint body were different.

24. It would be possible to envisage an expansion of the Conference to include three members of a directly elected executive and a European Commission representative. This might be saleable to the unionists as a revision of the Agreement in their direction, as indeed it would be, since it would dilute the input of the Irish Government and would reduce the likelihood of the Agreement being used in the future as a tacit form of joint rule. It would be necessary to strengthen the role of the expanded Conference to off-set what could be seen by nationalists as a backward step. The

experience of the Conference since the Agreement also shows that the British have clearly operated it on the basis of the minimum necessary concession to Irish demands. The expanded Conference could easily become an empty ritual unless express provisions were made to the contrary. This could be done by giving the Conference functions in the following areas:

- (a) monitoring and supervisory powers in relation to the proper discharge of functions and prevention of abuse by the devolved administration;
- (b) a strong coordinating role on the external dimensions. This might centre on the application to Northern Ireland of an agreed EC programme, based on the most comprehensive possible commitment to a specific and uniform approach to the island as a whole for EC purposes;
- (c) a direct role in relation to issues of security and the law. Since these are likely to be powers reserved by the British, the role would probably be coordination of security rather than an executive role (e.g. on policing), but this could be for discussion;
- (d) the Conference would continue to be the vehicle for coordinating cross-border economic cooperation and could be expanded to include technical Ministers as appropriate, analogous to the "core" and expanded modes envisaged for the Sunningdale Council of Ministers.

Revive Sunningdale Model ?

- 25. An alternative approach might be a reversion to the "Sunningdale model" of the Council of Ireland, which, while also very problematic for the unionists, provides a well

developed precedent which is also something of a "bench mark" in nationalist eyes. The Council of Ireland envisaged at Sunningdale, but never of course established, comprised a Council of Ministers and a Consultative Assembly. The Council of Ministers, made up of seven members each from the Irish Government and the Northern Ireland Executive, acting by unanimity, under rotating North-South chairmanship, controlled the functions of the Council of Ireland, whose Secretary General it appointed. In addition to a harmonising and consultative role, it was to have some executive functions. It was agreed at Sunningdale that "studies would at once be set in hand to identify and report on areas of common interest in relation to which a Council of Ireland would take executive decisions and, in appropriate cases, be responsible for carrying these into effect". An impressive array of headings were suggested for examination (natural resources, agriculture, cooperative ventures in trade, electricity, tourism, roads and transport, aspects of public health, sport and culture). The Council was to be funded by means of grants from Dublin and Belfast and was to have functions devolved to it by the Oireachtas and the Northern Ireland Assembly.

26. A Council of Ireland, operating well and with executive functions, would be attractive as the kernel of a future joint administration. It would be particularly well adapted to a strong joint approach in terms of security and policing and to over-seeing all-Ireland bodies which might be set up (e.g. a single tourism or export promotions agency). In practice however the unionists would have to insist on a rule of unanimity, since anything else would involve an anti-unionist majority in the Council. Unanimity in turn would greatly limit the capacity of the Council to administer the large areas which could be involved if, for example, it were to be the vehicle for EC-related decisions for both parts of Ireland. The Sunningdale experience

suggests that a decision to leave the Council to decide its own executive functions is likely to ensure the unionist veto will be used to minimise its actual competences. An ambitious executive structure, therefore, probably risks leaving it with a relatively marginal agenda. The unionists would be more likely to cooperate in a structure which coordinated, but did not seek to replace, the two administrations. The devolution of an extensive array of functions to an executive separate from the Irish Government could also pose considerable administrative and even political difficulties in our own jurisdiction which would have to be borne in mind. The fact that the Council, on the Sunningdale analogy would not include a British presence could have advantages in terms of developing North/South dialogue.

Possible combinations

27. It would of course be possible to combine these approaches in various ways (e.g. a Conference remaining much the same, coexisting with a non-executive Council of Ireland dealing with North-South cooperation in devolved matters, which under the terms of the Agreement would no longer come within the competence of the Conference. Recent British emphasis on this "claw-back" provision suggest they are considering some such strategy. An additional worry from an Irish viewpoint is that it might be combined with private assurances to the unionists of an even more minimalist operation of the Agreement in the remaining areas which would be mainly security and human rights/confidence issues. It is likely however the unionists would still require some symbolic change in the Agreement before they would accept this). To concede the actual and potential Irish influence under the Agreement for a diluted version of the Sunningdale Council of Ireland would not however commend itself to Northern nationalists. It is suggested the Government

should make a broad strategic decision as to the approach it wishes to take, and the criteria it would wish to meet as regards the "Irish dimension", leaving some flexibility to decide in the course of negotiations which "package" of institutions might best satisfy those criteria and win general acceptance.

East-West Arrangements

28. Leaving aside the Parliamentary link through the Interparliamentary Body, the East-West dimension is catered for in the provision for twice yearly Anglo-Irish Summits and by the Anglo-Irish Intergovernmental Council, set up in 1981. The record of the latter suggests that any new East-west arrangements are likely to reflect the need for British constitutional "cover" for North-South structures rather than any perceived joint need of new East-West structures for their own sake. The unionist hope of transforming the Anglo-Irish Conference from being mainly concerned with Northern Ireland to an institution which would deal with the Irish community under British jurisdiction everywhere - the Irish in Kilburn is the example used - would rightly be seen as implying a status for Northern Ireland as a normal part of the UK which happened to have an Irish population. Such an approach would be very objectionable to Northern nationalists. Apart from this consideration the question of new East-West structures could be determined by the extent it was felt necessary or desirable to provide such an element as an enabling cover from some new North South arrangements.

Tactics for the Talks

29. Tactics for the talks should endeavour to concentrate on the nature of the problem in the first instance and only then consider the institutions which could provide an acceptable

accommodation. They should concentrate on the fact that there are two traditions within Northern Ireland. Both define their identities and aspirations by reference to the Irish or British dimensions. Both are logical in their own terms. The contradiction between them has caused death and instability. Nationalists believe the two could be reconciled on the basis of all-Irish arrangements. If or when that is undertaken, clearly the unionist community would have to be the main focus of concern, compensation and guarantees as to their identity, well-being, and political and human rights. If (as may be assumed) the basis for an accommodation at present is that of no change in the status of Northern Ireland without consent of a majority, then, by the same logic, the compensatory effort must be directed towards the nationalist community within Northern Ireland, who find themselves in a state with which they cannot readily identify, and which moreover was created by direct political decision to serve the purposes of the other community. The suggestion that their sense of Irish identity must be repudiated from the South is in no sense more "reasonable" than the demand that the unionist sense of British identity must be repudiated by Britain. To argue otherwise is to seek the victory of the unionist community, and that approach has failed to bring peace or stability to Northern Ireland.

Parity of Esteem and treatment

30. If it is accepted that the objective is the accommodation of both traditions, we should then seek to establish that this should be on a basis of parity of esteem and the most equal possible treatment as between the two communities. That is difficult to argue against on grounds of fairness. It is implicit in the Anglo-Irish Agreement, and should therefore be logically developed in any successor arrangements. Real equality of treatment is of course very difficult, since for

as long as Northern Ireland is within the UK, both the active and inertial forces of the administration will tend to reflect and reinforce that situation. The net point would be that a much fairer balance is required to offset that situation than lip-service to a purely theoretical legitimacy of the Irish aspiration of the nationalist minority. It must be reflected both in theory and in meaningful and practical ways in the arrangements for the governance of Northern Ireland. If that is done the unionists will in turn have greater reassurance that their identity is protected and respected, and be entitled to demand that any proposal to change the status of Northern Ireland would be under ground-rules which all could accept.

Unionist tactics in Strand 2

31. If the unionist parties do agree to enter strand two, it may be with the intention of early concentration on Articles 2 and 3. The DUP might even plan to "grand-stand" on that issue, and walk away from strand two, as part of Paisley's perennial second agenda of outflanking the UUP on the "protection of the union". An approach which concentrated on a functional, as opposed to a doctrinaire nationalist analysis of the criteria needed for consent, even viewed on a purely internal basis, might make it more difficult for them to do so. If the notion of a real balance between the aspirations of the two Northern communities is accepted, the talks might then proceed to examine ways in which this might be achieved. This could be used to seek agreement on some variant of the North-South institutions listed above. If agreement in outline seems unattainable, we might consider (as an alternative to collapse), whether the talks could switch gear to a studies/dialogue process, rather like a version of the Forum initiative. Such a move would however have to be compatible with the continued operation of the Agreement and its mechanisms.

EC Agreement

32. It would be desirable basis for a worthwhile package to secure British agreement to a significant uniformity of the EC regime applicable to both parts of Ireland. There are obvious difficulties, since this would involve distinguishing between two parts of the UK jurisdiction. The issue of the Community undermining their sovereignty is also a particularly sensitive one for the British at present. It would also pose certain difficulties for the Community, but these should not be insuperable, particularly if the Northern Ireland case is presented as sui generis and supported by both Governments in the interest of political progress. The "peace-making" role would also have attractions for the Community.

Overall presentation and endorsement of package

33. For this approach to make a decisive impact on the nationalist community it should be recognised as implying a separate status for Northern Ireland, even if the formal basis of UK sovereignty remained unchanged unless or until a majority decided otherwise. It would probably be necessary to draw up explicit understandings on both the theoretical and practical basis for the arrangement (acknowledgement of both identities, new devolution act, Bill of Rights, safeguard procedures in various areas, etc.). It might also be desirable to enshrine in these the new balance between the aspiration to unity and the requirement of majority consent referred to in para. (14) above. One could envisage the heads of such agreement being incorporated into a charter on relations between the two parts of Ireland (pledging cooperation and solidarity, and particularly non-violence in resolving all differences between the two traditions, among other things). This could be incorporated

in legislation in both Dublin and London and perhaps opposed by referenda in both North and South. It could if necessary be entrenched by reference to it in the Irish Constitution. References to Irish unity might be made less threatening to the unionists by providing that any eventual agreed unity would incorporate safeguards for the unionist minority in Ireland corresponding to those in force to protect the nationalist minority in Northern Ireland under the new provisions. A referendum to endorse the new arrangements in both parts of Ireland would undermine the formalistic IRA claim that the people of Ireland have never had an opportunity to pronounce collectively on the issue of self-determination. There might be grounds for hope that the new arrangement would offer many IRA supporters a powerful incentive to abandon the "armed struggle" for politics, or if it did not, that the IRA constituency would be decisively reduced and marginalised.

34. The foregoing is an attempt to envisage a package which would have some possibility of being accepted and worked by both sides in Northern Ireland. If, as there are grounds to suspect, the British objective in these talks is to reduce the "Irish dimension" of the Agreement in return for limited power-sharing in Northern Ireland, the ideas will be far too radical. However the political reality is that such an approach is unlikely to be acceptable to nationalists. Failure in the Talks would mean the Agreement continues on the same formal basis as before. Presumably also the need for a political accommodation will remain undiminished. If so, an approach based on parity of esteem and the Irish and European dimensions would remain the valid policy approach. There are of course other more adventurous options - formal joint sovereignty, special protectorate status under the EC, variations of independence, federal and confederal approaches, etc. However all involve radical change in the status of Northern Ireland which would be unlikely to

attract the support of a majority there at present. This paper has therefore concentrated on approaches which are compatible with the likely British insistence on this point, to which we are also committed under the Agreement.

Summary of suggested overall approach

35. A summary of the proposed approach might be as follows:

- (a) If the talks are to produce an alternative to the Agreement, and, possibly, the basis for an amendment to the Irish Constitution, the nature and scope of alternative arrangements must be sufficiently attractive to the nationalist community to enable them to agree to such changes.
- (b) The underlying approach must be parity of esteem and treatment, to the maximum extent that can be devised, as between the two aspirations in Northern Ireland.
- (c) If arrangements are on the basis of the present status of Northern Ireland, the "Irish dimension" should address the need of the nationalist community for links with the rest of Ireland, for alleviation of their in-built minority role in Northern Ireland, as well as catering for North/South cooperation and for future convergence between the two parts of the island.
- (d) This might be done either (i) by expanding the Anglo-Irish Conference to include elected representatives from Northern Ireland, provided the role of the expanded Conference was strengthened decisively or (ii) by establishing a Council of Ireland, broadly on the Sunningdale model with both a consultative and an executive role, or (iii) some satisfactory combination of the two approaches, in the light of what

negotiations show to be the most likely basis for agreement.

- (e) Assuming the Irish dimension is satisfactorily catered for in the North-South structures, the internal arrangement in Northern Ireland might be a devolved powersharing administration. In that case the precise mechanisms and the relation of the Administration to an Assembly could be for decision by the Northern parties.
 - (f) The European dimension should be used as fully as possible as a deliberate instrument for cooperation and convergence between the two parts of the island.
 - (g) The new arrangements could be the basis of an agreed North-South charter, enshrined in legislation in the Irish and British Parliaments or endorsed by referenda in both parts of Ireland.
36. If the broad lines of this approach are accepted as a basis for further work, consideration might be given to urgently establishing interdepartmental consultation to:
- consider the options to cater for a satisfactory "Irish dimension" as between developing the Agreement or reviving the Council of Ireland approach.
 - Define the practical extent to which we could hope to secure a uniform EC approach to both parts of the island, and in what sectors.
 - Consider the fiscal and security arrangements which might be proposed under new arrangements.
 - Make detailed preparations for Irish presentations to strand two on the lines mentioned.

Such inter-departmental arrangements could also serve as a Government committee to monitor the progress of negotiations if strand two gets underway, or to consider the options, if the talks fail, and advise the Government as a whole on these issues.