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FROM: MRS DOREEN BROWN
CENT SEC PLANNING UNIT

DATE: 27 OCTOBER 1994

Handwritten notes:
Mrs Cullinane
Mr Fargher
Mr Bingham
The fullest description yet
of what the "Council of Ireland"
entails. To meet
file
BM
16/11

- cc: PS/Michael Ancram (DENI, B&L) - B
- PS/Sir John Wheeler (DFP, B&L) - B
- PS/Baroness Denton (DANI, DED&L) - B
- PS/Mr Moss (DHSS, DOE&L) - B
- PS/PUS (B&L) - B
- PS/Mr Fell - B
- NI Permanent Secretaries
- Mr Thomas - B
- Mr Bell - B
- Mr Watkins - B
- Mr Williams - B
- Mr Brooker - B
- Mr Dodds - B
- Mr Maccabe - B
- Mr Stephens - B
- HMA Dublin - B
- Mr Lamont, RID - B
- Mr Caine - B

Handwritten notes:
u M. Gibson
M. McDonnell
of file

PS/Secretary of State (B&L) - B

NORTH/SOUTH STRUCTURES: CONTINGENT PAPER FOR TALKS

1. Mr Watkins' submission of 11 October had put to Ministers a draft contingent paper which the British side of the Liaison Group had drawn up to give guidance on the Joint Framework Document's proposals for North/South working, and which might be tabled with Parties at the new Talks.
2. Before Ministerial clearance had been received to the paper, the Irish side of the Liaison Group tabled its own draft version of a contingent paper on North/South working. This included a lengthy list of functions which the Irish considered suitable for North/South working at the Harmonisation and Executive levels.
3. My submission of 21 October explained that the British side were currently considering the text of the Irish contingent paper, and the changes which we would propose to make to our paper as a

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result, and that a further submission would be put to Ministers shortly.

4. We have now considered the Irish text fully and have concluded that the most appropriate way forward might be to use as much of the Irish paper as possible rather than adhere to our previous wording, provided no points of principle would be compromised in so doing.
5. The text of the Irish draft paper is attached at Annex A. Our suggested revision of the draft paper is attached at Annex B. The bulk of the changes fall into two categories: first, changes to make the tone of the paper less prescriptive, making it clear that it is the basis for negotiation with the Parties, rather than representing a firm view which must be accepted; second, changes to reduce the references to the role of the North/South body in EU matters, an issue which is still the subject of debate within the Liaison Group.
6. The version of the Irish paper attached and our rewrite of that paper do not include the Annexes listing the functions deemed suitable for North/South working. That is a matter which is being handled separately, and Ministers will be consulted.
7. We would hope to deploy our revision of the Irish paper at the next meeting of the Liaison Group on Tuesday 1 November, so clearance from Ministers on Monday 31 October would be helpful.

(Signed DAB)

D A BROWN

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CONFIDENTIAL(Irish Draft 17/10/94)Annex A)Draft Proposal for a Joint Memorandum of the Irish and British Governments on North-South Institutions

1. In the Joint Declaration the British and Irish Governments made a solemn commitment to promote cooperation between the people of Ireland, North and South, at all levels. They are determined accordingly to enhance North-South and cross-border cooperation in all areas where this would be of benefit.
2. They would wish this objective to be achieved as far as possible under the direction of elected representatives from North and South. That approach would secure the broadest possible support for, and partnership in, the process of cooperation in both parts of the island.
3. The two Governments agree that this partnership should be expressed in the form of new North-South institutions. These could take various forms. Those aspects involving Northern Ireland parties will in any case have to be elaborated and agreed in negotiations. However, if new institutions are to cater satisfactorily and constructively for present and future interconnections on the island, both governments agree they must meet certain requirements.

Mandate

4. A new institutional framework for North-South cooperation must be established and mandated by legislation in both sovereign parliaments. Its mandate should be
 - to promote agreement at all levels among the people of Ireland and to develop cooperation between them across a wide range of interests;

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- to serve to acknowledge and reconcile the rights, identities and aspirations of the two major traditions; and
- to exercise executive, harmonising and consultative functions over an agreed range of matters for the benefit of the island as a whole.

5. New structures should include a North-South body, involving political Heads of Departments from North and South, with a secretarial support unit drawing elements from both administrations. This could be complemented by a North-South Parliamentary Forum, comprising elected representatives from both parts of the island.

*Return of the
Council of
Ireland
- see 1920
Govt of Ireland
act, among
others...*

6. The legislation establishing new arrangements would

- provide a clear institutional identity, authority and purpose for the body;
- establish its legal status and arrangements for political, legal, administrative and financial accountability;
- establish provisions for the financing of the body as a necessary public function by the two administrations;
- designate the initial executive, harmonising and consultative functions of the body;
- make participation in the body a duty of service in the relevant posts of the two administrations.

7. The remit given to the body should be dynamic, ensuring that it will develop to facilitate and keep pace with the progress of agreement between North and South, the growth of an island

*again,
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economy, and the development of co-operation under the aegis of the European Union.

8. The legislation should accordingly enable the future enlargement of the body's competences, by agreement between North and South, with appropriate saving clauses in respect of both Governments' powers and obligations, eg to ensure compliance with commitments under international agreements.
9. The body would have overall responsibility for all forms of cooperation between the two administrations and could operate both directly and through a series of functional bodies responsible to it.
10. The body would meet on a regular and frequent basis to discharge its duties and functions and to oversee the work of any subsidiary bodies. The Heads of Department on each side would operate within the overall terms of reference mandated by the legislation of the two Governments, and under the rules for democratic accountability agreed by local institutions in Northern Ireland and the Oireachtas respectively.
11. The body would operate by consensus of the participants, thereby ensuring that decisions are made on the basis of equality and guaranteeing complete protection for the rights and interests of both sides.
12. The operation of the body will be subject to regular scrutiny in the new institutions in Northern Ireland and in the Oireachtas respectively.

Categories of Competence

13. Both Governments envisage that, as a general principle, representatives of North and South in the body should be able to raise for discussion and consideration any matter of interest to

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either side which falls within the competence of either administration.

14. However there would be specific provisions designating areas where the body would exercise consultative, harmonising or executive functions respectively. These would be as follows:

Consultative

15. The North-South body would be a forum where the two sides would consult on any aspect of designated matters on which either side wished to hold consultations. Both sides would share a duty to exchange information and to consult about existing and future policy. There would be no formal commitment that agreement would be reached or that policy would be harmonised or implemented jointly, but the development of mutual understanding and common or agreed positions would be the general goal.

Harmonising

16. In respect of matters designated for this category, there would be, in addition to the duty to exchange information and to consult on the formulation of policy, an obligation on both sides to use their best endeavours to reach agreement on a common policy and to make determined efforts to overcome any obstacles in the way of that objective. The two administrations would retain their separate responsibilities in respect of these matters, but would be committed to take the necessary action within their powers to give effect to the body's decisions.

Executive

17. In the case of these designated functions, the body itself would be directly and exclusively responsible for the establishment of an agreed policy and for its implementation on behalf of both parts of the island, whether through its own staff, through

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subordinate agencies or subgroups. or through other designated agencies (for example the existing Government Departments, acting in an agency capacity, in its two jurisdictions).

18. In determining the functions to be discharged by the body, whether by consultation, harmonisation or executive action, account would be taken of:
- the common interest in a given matter on the part of both parts of the island; or
 - the mutual advantage of addressing a matter together; or
 - the intrinsic benefit which may derive from it being administered by the body; or
 - the achievement of economies of scale and the avoidance of unnecessary duplication of effort; or
 - the overall objective of maximising economic growth across the economy of the island as a whole.
19. As envisaged in the Joint Framework Document, the two administrations could elect, by agreement, to upgrade the body's initial competence in a particular matter along the scale from consultative to executive action.

Functions

20. Against the background of the commitments in the Joint Declaration, and applying these criteria, both Governments agree that a range of areas should be dealt with on an island-wide basis. They therefore jointly propose that the initial competences of the body in the various categories should be on the following lines, and they will seek in negotiations to secure the agreement of the parties to this proposal:

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Consultative functions

21. The consultative remit of the body should embrace all policies, decisions or actions of either administration which, in the view of either side, might have actual or potential repercussions or might find application in the other jurisdiction. It should also include consideration of external or international developments with significant implications for one or both jurisdictions, or for the relationships between them. The body might choose to designate certain matters for particular scrutiny and to engage, if so desired, in joint studies.

in early stage

Harmonising Functions

(a) European Union Matters

22. The body in its harmonising role would, in particular, determine the response in both parts of the island to all aspects of EU policy-making, legislation and implementation having an impact on the activities of the two administrations, except those designated specifically for executive action. The body would:

- identify common all-Ireland interests across the range of relevant EU competences;
- develop appropriate agreed positions in response to specific EU proposals for action or legislation, after formal advance consideration of the relevant drafts of the Commission or other EU institutions;
- formulate and represent these agreed positions in EU fora, in conjunction with, or through, British and/or Irish representatives, as appropriate;
- harmonise the implementation of EU legislation,

unavoidable recipe for confusion

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recommendations, policies and programmes in such a way as to maximise their benefit for the whole island.

23. The British Government will support and enable the exercise of the North-South harmonising functions of the body in relation to all EU matters, save in exceptional circumstances where they formally determine the proposed approach would be in irreconcilable conflict with their national position.

24. The meetings of the body or its subgroups would be scheduled to allow adequate and regular consideration and preparation of key EU meetings.

(b) Other matters for harmonisation

25. In addition to the key EU function, the harmonising remit of the body would cover a wide range of activities where the criteria listed in paragraph 18 above, or the human, social and economic interactions between both parts of the island, make a harmonised approach in both jurisdictions desirable.

26. An indicative list of matters which the two Governments believe to be appropriate for inclusion in the body's harmonising remit is annexed (Annex 1).

Executive functions

27. The two Governments agree that the body should exercise full executive powers on the lines set out in paragraph 17 in relation to a number of areas where they consider the case for a single decision-making capacity for the whole island is particularly compelling:

28. These areas include in particular:

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(1) Initiatives and programmes of the European Union specifically aimed at the development of border areas or at ensuring integrated planning and economic and social development across borders.

This category would embrace most or all of the Community Initiatives under the Structural Funds relevant to Ireland, since even in cases where the cross-border element is not explicit, the similarity of geographic, social and cultural conditions in both parts of the island makes their joint administration the appropriate course.

*- a posteriori
justification!*

It would also include present and future trans-frontier initiatives, such as the EU Trans-European Networks in the transport, telecommunications and energy sectors.

(2) Preparation of a single all-Ireland Development Plan in the context of the anticipated post-1999 Structural Funds, and negotiation of a Community Support Framework, or Frameworks, with the Commission, and implementation of Agreed Operational Programmes.

(3) Sectors involving a physical or natural all-Ireland framework, which call for a correspondingly integrated approach in policy and administrative terms.

(4) Marketing and promotional activity abroad in all sectors where the projection of Ireland as a single entity would be most effective from a marketing point of view or would maximise returns for the island as a whole.

*I doubt
if Conlig
Vol. 1690
would
agree...*

(5) Cultural and heritage issues, reflecting the continuity and diversity of the social and artistic culture of the island as a whole.

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29. An indicative list of areas for full executive action by the body is annexed at Annex II.

30. In any area where both sides agree that discussions in the body or the implementation of any of its decisions would be enhanced by, or require the involvement of the British Government, the British Government is prepared to participate, on a basis and in circumstances to be agreed between them and the representatives of North and South.

I didn't know the British Govt was prepared to be involved in:

31. This dimension might also be addressed through formal or ad-hoc arrangements agreed between the body and East-West institutions involving the Irish and British Governments.

Parliamentary Forum

32. Both Governments believe that the body should be complemented by the establishment of a North-South parliamentary forum, drawn from the Oireachtas and new local institutions in Northern Ireland. This forum would scrutinise the body's actions on a regular basis. It might also have an advisory and consultative role in relation to the work of the body and to North-South relations in general. The composition and function of such a forum would be for consideration between the participating parliamentarians in the first instance.

33. In the event that it should prove impossible to engage or sustain the process of cooperation in the form outlined above, both Governments will seek to implement their commitments on this issue in the Joint Declaration through the intergovernmental channels open to them, including in particular through the mechanism of the Anglo-Irish Agreement.

*AH!
The sig article/
Am bata mór!*

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(British Draft 27/10/94)

Annex B

Draft Proposal for a Joint Memorandum of the British and Irish Governments on North-South Institutions

1. In the Joint Declaration the British and Irish Governments recognised that the ending of divisions could come about only through the agreement and co-operation of the people, North and South, representing both traditions in Ireland. They therefore made a solemn commitment to promote co-operation between the people of Ireland, North and South, at all levels. They undertook to seek, along with the NI constitutional parties through a process of political dialogue, to create institutions and structures which would enable the people of the island of Ireland to work together in all areas of common interest.
2. Both Governments consider that new institutions should be created to cater adequately for present and future inter-connections on the island of Ireland. Paragraph 22 of the Joint Framework Document stated that the Governments had identified a range of functions which might be designated to be discharged or overseen by a North/South body. It is, however, primarily for all the Talks participants to agree to the structures, powers and role of any North/South body and also to agree to the determination of the subjects to be delegated to it. The Joint Framework Document, therefore, stated that the Governments would be seeking agreement on the nature and extent of delegation in discussion with the parties in Northern Ireland.
3. The purpose of this Note is to initiate discussion on North/South institutions with Talks participants.

Mandate

4. Both Governments believe that a new institutional framework for

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North/South co-operation should be established and mandated by legislation in both sovereign parliaments. Its mandate would be

- to promote agreement at all levels among the people of the island of Ireland and to develop co-operation between them across a wide range of interests;
 - to serve to acknowledge and reconcile the rights, identities and aspirations of the two major traditions; and
 - to exercise executive, harmonising and consultative functions over an agreed range of matters where this could be to the overall benefit of the people of the island as a whole.
5. Although various structures for a form of co-operation can be envisaged, both Governments believe that the essentials should include:
- a North-South body, involving political Heads of Departments from North and South. This might be a unitary body responsible for all forms of functional co-operation or it could operate through a series of functionally-related bodies subsidiary to it;
 - a North-South Parliamentary Forum, comprising elected representatives drawn from the new internal NI institutions and the Oireachtas;
 - an administrative support unit staffed jointly by members of the NI Civil Service and the Irish Civil Service.
6. The legislation establishing new arrangements would
- provide a clear institutional identity and purpose for the body;

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- establish its terms of reference, legal status and arrangements for political, legal, administrative and financial accountability;
 - establish provisions for the financing of the body as a necessary public function by the two administrations;
 - designate the initial executive, harmonising and consultative functions of the body;
 - make participation in the body a duty of service in the relevant posts of the two administrations.
7. The remit given to the body should be dynamic, facilitating progressive extension of its functions to new areas, with its role developing to keep pace with the growth of harmonisation and with greater integration between the two economies, and the development of co-operation under the aegis of the European Union. The legislation should accordingly enable the future enlargement of the body's competences, by agreement between North and South, with appropriate saving clauses in respect of both Governments' powers and obligations, eg to ensure compliance with commitments under international agreements.
8. Both Governments envisage that the North/South body would meet on a regular and frequent basis to discharge its duties and functions and to oversee the work of any subsidiary bodies. The Heads of Department on each side would operate within the overall terms of reference defined by the legislation of the two Governments, and under the rules for democratic accountability agreed by local institutions in Northern Ireland and the Oireachtas respectively.
9. All decisions within the body would be by agreement between the two sides, thereby ensuring that decisions are made on the basis

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of equality and guaranteeing complete protection for the rights and interests of both sides.

10. The operation of the new body would be subject to regular scrutiny in the new institutions in Northern Ireland and in the Oireachtas respectively.

Categories of Competence

11. Both Governments envisage that, as a general principle, representatives of North and South in the body should be able to raise for discussion and consideration any matter of interest to either side which falls within the competence of either administration.
12. There would, however, be specific provisions designating areas where the body would exercise consultative, harmonising or executive functions respectively. These would be as follows.

Consultative

13. The North/South body would be a forum where the two sides would consult on any aspect of designated matters on which either side wished to hold consultations. Both sides would share a duty to exchange information and to consult about existing and future policy. There would be no formal commitment that agreement would be reached or that policy would be harmonised or implemented jointly, but the development of mutual understanding and common or agreed positions would be the general goal.

Harmonising

14. In respect of matters designated for this category, there would be, in addition to the duty to exchange information and to consult on the formulation of policy, an obligation on both sides to use their best endeavours to reach agreement on a

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common policy and to make determined efforts to overcome any obstacles in the way of that objective. The two administrations would retain their separate responsibilities in respect of these matters, but would be committed to take the necessary action within their powers to give effect to the body's decisions, reached by agreement between the two sides.

Executive

15. In the case of these designated functions, the body itself would be responsible for the establishment of an agreed policy and for its implementation on a joint basis. Implementation would be undertaken either by existing or specially created mandated bodies, either jointly or separately North and South.
16. In determining the functions to be discharged by the body, whether by consultation, harmonisation or executive action, account would be taken of:
- the common interest in a given matter on the part of both parts of the island; or
 - the mutual advantage of addressing a matter together; or
 - the mutual benefit which may derive from it being administered by the body; or
 - the achievement of economies of scale and the avoidance of unnecessary duplication of effort; or
 - the overall objective of maximising economic growth across the economy of the island as a whole, shared equitably North and South.
17. As envisaged in the Joint Framework Document, the two

*letter than
"mutual"
in the coming
note.*

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administrations, North and South, could elect, by agreement, to upgrade the body's initial competence in a particular matter along the scale from consultative to executive action.

Functions

18. Both Governments agree that legislation in the sovereign Parliaments should designate those functions which should, from the outset, be undertaken by the North/South body; and they seek agreement on the nature and extent of this designation in discussion with the relevant political parties in Northern Ireland. As the Joint Framework Document makes clear the two administrations and legislatures, North and South, could subsequently in agreement designate further functions. The British Government for its part believes that, in principle, any function devolved to the institutions in Northern Ireland could be designated, subject to any necessary savings in respect of the British Government's powers and duties, for example to ensure compliance with international obligations. [The Irish Government is also ready in principle to contemplate designating a comparable range of functions.] However both governments believe that, subject to discussion with the relevant Northern Ireland parties, the initial competences of the body to be set out in legislation in the sovereign Parliaments should be on the following lines.

EU Matters

19. Both Governments envisage that the North/South body will have an important role in respect of European Unit matters. A number of its designated functions are likely to concern matters in which the European Union has competence; and more generally the North/South body would provide a forum to consider the harmonisation of the positions the two administrations adopt towards EU matters in which they have an interest. The body may wish to develop means of representing its shared views to EU

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institutions and more widely. More specifically both Governments believe the North/South body should be given defined responsibilities for responding, in a way to be agreed, to the challenges and opportunities of the EU, with the support of both Governments.

Consultative functions

20. The consultative remit of the body could cover a wide range of designated policies, decisions or actions of either administration which might have actual or potential repercussions or might find application in the other jurisdiction. It could also include consideration of external or international developments with significant implications for one or both jurisdictions, or for the relationships between them. Functions which would appear suitable for designation to the consultative remit are set out in Annex A.

Harmonising functions

21. The harmonising remit of the body could cover a wide range of activities where the criteria listed in paragraph 16 above, or the human, social and economic interactions between both parts of the island, make a harmonised approach in both jurisdictions desirable. An indicative list of matters which the two Governments believe could be appropriate for inclusion in the body's harmonising remit is set out in Annex B.

Executive functions

22. The two Governments consider that the body could exercise full executive powers on the lines set out in paragraph 15 in relation to a number of areas where they consider the case for a single North/South decision-making capacity is particularly

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strong. An indicative list of functions which could be suitable for full executive action by the North/South body is set out at Annex C.

23. These functions include:

- sectors involving a physical or natural all-Ireland framework, where a correspondingly integrated approach in policy, and possibly administrative, terms might be appropriate;
- aspects of marketing and promotional activity, projecting Ireland as a single entity;
- heritage issues.

24. In any area where both sides agree that discussions in the body or the implementation of any of its decisions would be enhanced by, or require the involvement of the British Government, the British Government is prepared to participate, on a basis and in circumstances to be agreed between them and the representatives of North and South.

25. This dimension might also be addressed through formal or ad hoc arrangements agreed between the body and East/West institutions involving the Irish and British Governments.

Parliamentary Forum

26. Both Governments believe that the body should be complemented by the establishment of a North/South parliamentary forum, drawn from the Oireachtas and new local institutions in Northern Ireland. This forum would scrutinise the body's actions on a regular basis. It might also have an advisory and consultative role in relation to the work of the body and to North/South relations in general. The composition and function of such a forum would be for consideration between the participating parliamentarians in the first instance.

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