

# **Dermot Nally Papers**

**UCDA P254/99**

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### North-South Structures

#### Draft Paper

1. This paper is intended to set out, for discussion, a possible institutional model for structuring the North/South relationship. The question of which matters might be specifically designated as falling within the remit of North/South structures, and the various levels of the powers granted to the structures in respect of those matters, will form the subject of a separate paper. Likewise, the possibility of new and wider East/West structures, which we recognise is also a key issue for negotiation, has not been addressed in this paper.

#### General Approach

2. In general terms, we have based our proposals on the Council of Ministers of the European Union, making due allowance for our circumstances, in particular the differences between North and South, the differences in scale between the island of Ireland and the EU, and the fact that the new structures will only have two members.
3. The EU Council model has two particular merits. First, while innovative in a North/South context, it is broadly familiar to politicians and public servants North and South. Secondly, over forty years it has, all in all, demonstrated a capacity to combine institutional effectiveness and coherence with the recognition, protection and accommodation of the vital interests of individual members.
4. We therefore propose a **North/South Council**, which would bring together at political level representatives of North and South. It would have the general task of promoting consultation, co-operation and common action between North and South on all matters of mutual interest within the competence of the two administrations. The Council's level of responsibility in regard to these matters would be three-fold: (i) it would in certain designated areas take decisions, determine policy, and agree

arrangements for the implementation of those decisions or policies; (ii) in other specified areas the members of the Council would use their best endeavours to reach agreement, which could result in joint action or the adoption of a common policy; (iii) on all other matters the Council would act as a forum for consultation and co-operation: it would of course be open to the two sides, by agreement, to take joint action or adopt a common policy on these matters also.

5. The Council would be assisted by a **Secretariat**. Operating under its direction there could be a number of **functional executive bodies** with specific administrative or executive responsibilities. There would also be a **Parliamentary Forum** and a **Consultative Forum**.

#### **Council**

6. The proposed North/South Council would be, in institutional terms, a single entity, but it would bring together separately individual Ministers/heads of Department to consider specific sectors of activity (eg agriculture, education), take decisions and set policy guidelines and directions. The Council would meet in each particular sectoral format on a regular basis, with the possibility of further meetings at short notice if required. Agendas would be settled by prior agreement between the two sides, but it would be open to either side to propose any matter for consideration or action.
7. There might also be a "general affairs" Council at which the Minister and head of Department with overall responsibility for North/South issues would meet on a frequent basis to consider institutional or cross-sectoral matters and to review unresolved issues. The Council could also meet at summit level on a periodic basis: the Taoiseach and the head of the Northern Administration might be accompanied by those of their colleagues most involved in the Council's business.
8. With regard to designated sectors or matters, the Council would take decisions and determine policy. It would also agree arrangements for the implementation of policies or decisions, whether through functional executive bodies working under its direction



or through the agency of the separate Administrations North and South. In regard to other specified matters, the two sides would use their best endeavours to reach agreement, which could result in joint action or the adoption of a common policy.

9. In all matters, the Council would operate by agreement between the two sides.. In the event of initial failure to reach agreement on an urgent designated matter requiring some administrative action, there would have to be arrangements to allow the two Administrations to proceed separately on a "care and maintenance" basis pending the securing of agreement. A continuing failure to reach agreement on important matters would have to be resolved at summit level, or in accordance with whatever overall guarantee/oversight mechanisms were in place within the settlement as a whole. In the case of disagreement on technical matters (for example, whether a particular action by one side met its agreed commitments) the Council would appoint arbitrators (for instance, judges or other senior legal figures).
10. Participation in the Council would be a duty of service attaching to relevant posts in the two Administrations. Its members would exercise their powers in accordance with the rules for democratic authority and accountability in force in the Oireachtas and in political institutions in Northern Ireland, and also in accordance with whatever procedures for and expectations of collective responsibility applied within the two Administrations. The actions and decisions of the Council and of any subsidiary bodies would be subject to regular scrutiny in the Oireachtas and in political institutions in Northern Ireland. A North/South parliamentary forum might also have a role in this regard.
11. The Council would agree its own financial requirements and those of any subsidiary bodies. It would be funded by the two Administrations on the basis that it constituted a necessary public function. Initially, its budget might simply be determined by aggregating the current cost, North and South, of those functions being designated to it, plus shared administrative costs. Subsequently its financing by the two Administrations could be on the basis of an agreed key based on objective criteria (eg

population, likely use of service, income per head, etc.). The possibility of assigning dedicated sources of revenue to it could also be examined. Mechanisms for the allocation to the Council of funding received from the EU or other external bodies would have to be examined. It could be envisaged that this would be assigned to the Council, along with any agreed matching funding, by the two Administrations, as part of their overall contribution to it.

12. The Council's expenditure could be audited jointly by the Comptroller and Auditor-General's Office and by the Northern Ireland Audit Office. Their joint report might be submitted simultaneously to the Oireachtas and to political institutions in Northern Ireland.
13. Arrangements for the legal accountability of the Council would need to be put in place. The decisions and actions of the Council might be subject to judicial review in either jurisdiction, depending on the normal residence of the complainant or the location of the Council's action.

#### **Secretariat**

14. Council meetings might be prepared by relevant officials of the two administrations, North and South. There would in addition be a Secretariat, staffed jointly by members of the Northern Ireland Civil Service and the Irish Civil Service and appointed by the Council. The Secretariat would operate as a single administrative structure, under the direction of the Council and accountable to it.

#### **Functional Executive Bodies**

15. A number of bodies with executive or administrative functions in certain of the specified areas falling within the remit of the Council would be established either simultaneous with it and/or as the Council felt it necessary. The Council would appoint members of the bodies' boards and/or their senior officers and would allocate funds to them. It would retain political accountability for their actions.

### **Council Representation in EU Institutions**

16. Inasmuch as the Council had the capacity to take decisions and agree policy, and to agree on arrangements for implementation, in respect of certain designated matters, it would assume responsibility for the EU aspects of those matters, including the implementation of EU policies and programmes and the adoption of agreed approaches towards proposals under consideration in the EU framework. Arrangements for its participation in decision-making structures under the aegis of the EU Council of Ministers and for its liaison with the Commission and other EU bodies would have to be agreed in advance between the two Governments, as member states of the EU.
17. Arrangements would have to be made to ensure that the views of the Council were taken into account and represented appropriately at the EU Council of Ministers. It might be that the view of the Council on a particular proposal would be communicated to both Governments; that members/officials of the Council would participate in relevant Irish and/or British delegations; and that in respect of designated matters the Irish Government would, as a political act, agree to be bound by the decision of the Council as to the substance and presentation of a position on a relevant issue, and not to alter its stance without the agreement of its Northern partner in the Council.

### **Parliamentary Forum**

18. There would be a Parliamentary Forum, with representatives from the Oireachtas and from political institutions in Northern Ireland. It would consider, and could make recommendations on, all matters of mutual concern. It might also have a role in scrutinising and questioning the Council.

### **Consultative Forum**

19. There would also be a Consultative Forum, appointed by the two administrations and comprising *inter alia* the social partners and experts on social and economic

questions, which would offer advice on issues which were the subject of consideration within the Council and on medium-to-long term aspects of co-operation on the island.

**Revision of Arrangements**

20. The Council could by agreement develop its functions or activities, or transfer matters from one category of responsibility to another. There would be an expectation that its role would evolve in line with the development of the relationship between North and South in all its aspects.