

(9 October 1992)

STRAND TWO: ISSUES ARISING FROM THE DISCUSSION
OF POSSIBLE INSTITUTIONAL ARRANGEMENTS

Paper by Her Majesty's Government

1 All participants have tabled papers addressing agenda item 9. Papers addressing earlier agenda items also discussed possible institutional arrangements.

2 The British Government has explained that it does not have a blueprint of its own for Strand 2. Its general approach is that it is most appropriate for those who are likely to operate any North/South institutions to take the lead in devising them. A range of possible outcomes would be acceptable to the British Government, provided that they were also acceptable to the Talks participants taken together. But the Government does have obligations and responsibilities which are relevant to Strand 2 discussions. It is also ready to help in the exploration of proposals, to seek to identify emerging common ground and to join in working out a practical scheme in the light of comments from all participants.

3 This paper attempts to:

- explore the common ground among Talks participants;
- explain where the British Government has obligations and responsibilities which it must bear in mind; and
- suggest possible areas which might be explored further.

Background

4 It is understood that nothing will be finally agreed in Strand 2, as in any Strand, until everything is agreed in the Talks as a whole. Strand 2 takes place against the progress made in Strand 1 towards common ground on new political institutions in Northern Ireland. This is still subject to some reservations. As the outlines of common ground in other Strands become clearer, the Government hopes it will be possible to return to Strand 1 to develop further the common ground there. In his opening presentation to Strand 2, the Secretary of State recalled his statement to plenary in Strand 1: "As to the basis for entering Strand 2, I can say on behalf of the Government that unless and until the four parties agree on a different approach, we take the view that discussions in Strand 2 are likely to take place on the premise that any new political institutions in Northern Ireland would be based on the structures outlined in the sub-Committee report. The Government is ready to enter and participate in discussions in Strand 2 on that basis, not having at this stage a basis in any of the proposals in the form originally submitted by any of the parties in Strand 1 because none of these can be regarded as having sufficient general support."

5 The Government has therefore borne in mind the institutional framework outlined in the Strand 1 sub-Committee report of 10 June, although of course

proposals in Strand 2 can be compatible with a range of possible outcomes from Strand 1.

6 Strand 3 is relevant too. Both governments have made it clear that they would be prepared to consider a new and more broadly-based agreement or structure if such an agreement can be arrived at through direct discussion and negotiation between all the parties concerned. The British Government has said that it will seek as a product of the Talks process as a whole an unambiguously expressed consensus on the constitutional issues and a framework for relationships which will be genuinely acceptable to all.

7 The Committee has already discussed a number of possible principles which might underpin any new arrangements. These are listed at Annex A. It has also had a helpful discussion on the scope for economic and social co-operation between both parts of the island of Ireland.

Common Ground

8 Based on the papers tabled in Strand 2 so far, and on discussion of them, it seems to the British Government that there is a degree of common ground, in which it shares, as to the possible North/South institutional arrangements which participants could contemplate.

9 This common ground seems to include agreement that:

- new structures are needed to facilitate enhanced North/South communication and co-operation;
- any such structures should be designed both to enhance the economic and social well-being of people in both parts of the island of Ireland and to foster understanding and trust between the two traditions;
- they should go beyond facilitation of ad hoc contacts and provide structures for communication, co-operation and working together; secretariat support would be desirable;
- the nature and extent of the functions to be exercised in these structures and the level of representation would be determined according to the subject matter;
- decisions would be taken only by consensus;
- there would have to be accountability for decisions taken and funds expended;
- new structures should provide for contacts at the Parliamentary level;
- they should have a capacity for development by agreement.

10 This is not to suggest that this common ground provides a sufficient basis in itself for North/South institutions. But it provides at least a common starting point. Nor is it to suggest that all participants can contemplate such arrangements in all circumstances. Some could envisage them only if satisfactory progress is made on other issues.

11 Subject to these reservations, can Talks participants agree that this represents common ground between them as far as North/South institutions are concerned?

Areas in common among several participants

12 There are also a number of proposals common to more than one participant, and not ruled out by others. Participants may wish to discuss such proposals to establish whether further common ground (subject to the reservations above) can be discovered among all participants. The rest of this paper explores these proposals under a number of headings.

Issues to be covered

13 There seems to be common ground that the issues available to be covered by North/South institutions should include those matters for which responsibility has been transferred to new political institutions in Northern Ireland, and equivalent matters in the Republic. The lists of possible subjects suggested by participants include elements of most areas of the transferred field. Joint action in respect of social and cultural issues, as suggested by the UUP, would also be covered.

14 In addition, the SDLP propose that security and legal affairs, including matters relating to human, civil and communal rights, should be covered by North/South institutions. The UDUP also register their concern for effective measures against terrorists in the context of new wider arrangements.

15 Agreement has yet to be reached in Strand 1 on those matters for which responsibility might be transferred to new political institutions in Northern Ireland. For some matters, even if responsibility is not transferred in the first instance, it would still be possible to transfer responsibility later.

16 The British Government notes that responsibility for matters affecting Northern Ireland will either rest, in the first instance, with new political institutions in Northern with the British Government. As a general rule, it considers that discussion, consultation and co-operation with the Irish Government would best be carried out in a structure which includes representatives responsible for those matters as far as they affect Northern Ireland.

17 So, where responsibility is transferred for some matters to new political institutions in Northern Ireland, discussion, consultation and co-operation with the Irish Government on those matters would best be carried out in a structure which includes representatives from those political institutions in Northern Ireland. For those matters where responsibility remains with the British Government, whether for the time being or permanently, discussion, consultation and co-operation with the Irish Government would best be carried out in an intergovernmental structure.

18 Nevertheless, the British Government recognises that issues of mutual concern to institutions in both the North and the South may range wider than those issues for which they each have responsibility. In the same way issues of mutual concern

between the British and Irish Governments may range wider than the issues for which they have direct responsibility in the first instance.

19 One possibility would be that North/South institutions should be able to discuss any matter of concern to either party to the relationship and address recommendations to the relevant responsible institutions. But they should only be able to agree co-operative, or other, action on matters for which those institutions represented in the structure had direct responsibility.

20 Can participants agree that North/South institutions should be able to address any issue of concern to either party, but should only directly sponsor action on those matters which are within the responsibilities of the parties to the relationship?

Membership

21 It seems generally accepted that North/South institutions should involve representatives of the Irish Government.

22 As far as representatives from Northern Ireland are concerned, all participants seem to envisage that those exercising political authority over the Northern Ireland Departments and "transferred" matters in general (though there remain differences of view, in Strand 1, about exactly where that political responsibility should lie) should have the capacity to engage in direct exchanges with their counterparts in the Republic. The UDUP and UDUP envisage the establishment of a specific Assembly Committee concerned with relations with the South. This could facilitate and possibly initiate practical co-operation between government departments.

23 Can Participants agree that North/South institutions should promote direct contact and active co-operation between those exercising political authority over departments in Northern Ireland and the Republic?

Format

24 No delegation has seemed to rule out the possibility of specifically bilateral contacts between those exercising political authority over individual departments in Northern Ireland and the Republic, within the framework provided by North/South institutions.

25 Some have noted that some issues might engage the interests of more than one Department and would benefit from collective consideration in a larger group. Others have mentioned the value of considering North/South co-operation on a broader basis.

26 Can participants agree that it should be possible to vary the format of meetings within North/South institutions, according to the subject under discussion?

27 Would it be desirable to build in regular opportunities for North/South institutions to review the overall level of activity and proposals for enhancing it?

Parliamentary Dimension

28 There seems to be agreement that new structures should provide for contacts at the Parliamentary level. The Alliance, Irish Government and SDLP proposals consider the possibility of - inter-parliamentary links. The UUP undertook to participate in the British-Irish Inter-Parliamentary Body if it continued. Those who did not exercise political authority over departments might also be brought together through the UDUP's proposal for an Inter-Irish Relations Committee, drawn from the Northern Ireland Assembly and possibly the Dail.

29 There is a range of other possibilities. In addition to active participation of a broader range of Northern Ireland MPs, the British-Irish Inter-Parliamentary Body could provide for the participation of Assembly members. Or there might be a separate body, perhaps within the framework of the BIIPB, in which political representatives from Northern Ireland and the Republic could meet.

30 Can participants agree that further consideration should be given to a forum in which representatives from Northern Ireland and the Republic of Ireland, other than those exercising executive responsibilities, could meet?

Framework

31 The British Government accepts that, if it is to be successful, the outcome of the Talks process as a whole must address the totality of relationships within these islands. It therefore sees North/South institutions as one element in a wider set of arrangements which might emerge from all three strands of the Talks.

32 The Alliance, UDUP and UUP proposals envisage a relationship involving both Governments and new political institutions in Northern Ireland. North/South institutions would be set within this framework. The SDLP recognises that, while it considers the set of relationships within the island of Ireland goes most centrally to the heart of the problem, no single relationship can be addressed in isolation from the other. The Irish Government take a similar view.

33 There seems therefore to be a general acceptance that the interaction and interdependence of the various strands must be reflected in any new arrangements.

34 Can participants agree that North/South institutions should be one element in arrangements flowing from the Talks Process as a whole which address the totality of relations within these islands?

35 The British Government has a number of interests in the issues which might be covered by North/South institutions. For example, as the Secretary of State explained in his opening presentation to Strand 2, the Government would need to retain its responsibilities for representing the UK as a whole and for the coherence of

UK policy towards the EC. It would also be involved in setting the overall level of public expenditure in Northern Ireland.

36 In Strand 1 there has already been discussion of the need for close links between new political institutions in Northern Ireland and the Westminster Government. In Strand 3 the two Governments are to discuss possible institutional arrangements between them. The arrangements envisaged in Strands 1 and 3 would provide the British Government with opportunities to present its views to the likely participants in North/South institutions.

37 The Government does not therefore seek formal representation in North/South institutions. But it would be prepared to consider suggestions, if others think it might have a useful role to play in North/South institutions.

38 What are the views of other participants on what, if any, role the British Government should play in North/South institutions?

Decision Making

39 There seems to be agreement that decisions would be taken only by consensus and there would have to be accountability for decisions taken. Further consideration may be required as to the means of ensuring accountability.

40 There was discussion in Strand 1, as yet unresolved, of the respective roles and authority of heads of department and/or Committee Chairmen and their relationship with departmental committees.

41 Can participants agree that those involved in North/South institutions would participate in them according to their roles and authority in the Political institutions they represented?

Official Support

42 There seems to be general agreement that secretariat support would be desirable. The Alliance and SDLP envisage the possibility of a permanent, established secretariat. The UUP has acknowledged the case for an established secretariat, either shared by the "Council of the British Isles" which they propose or associated with.

43 The Alliance suggests that officials from each jurisdiction would be represented. They would remain answerable to their respective jurisdictions. They could provide back-up in the form of research, reports and recommendations. These could include studies of the possibilities for further co-operation.

44 Can participants agree that a secretariat should be established which would service North/South institutions and carry out functions required by those institutions?

Operation of North/South Institutions

45 All participants agree that there are a number of areas where greater co-operation and working together between institutions and agencies in both parts of the island of Ireland could bring mutual benefit and should be encouraged. There seems agreement that, amongst other responsibilities, North/South institutions might monitor and promote such co-operation and working together. It is relevant that each delegation has accepted that North/South institutions should at least have the capacity to develop and grow over time.

46 The Alliance and UDUP envisage that co-operative action agreed upon would be implemented separately in each jurisdiction by those exercising executive responsibilities there. The SDLP recognise that one aspect of co-operation could be ensuring that harmonious action is taken between separate institutions in the North and the South.

47 This is the simplest model of co-operative action. Representatives from the North and the South would meet together in North/South institutions to discuss matters of mutual interest. They could agree a common course of action. Each would then implement this within their respective jurisdictions. If legislation were necessary, each would promote this within their respective jurisdictions. Each would remain subject to political and financial accountability within their respective jurisdictions. Within such a framework there could be an extensive commitment to such co-operative action. This need not be the only form of joint action.

48 Can all participants agree that such arrangements within North/South institutions should be feasible and would be desirable?

49 The SDLP propose that North/South institutions should have a capacity to provide for the administration of services on a mutually agreed basis. The Irish Government propose that they should provide an institutional framework with executive functions for the development of practical North/South co-operation and co-ordination in all areas of mutual benefit.

50 One possibility is that political institutions in Northern Ireland and the Republic could agree to establish joint bodies to deliver specific services on an all-Ireland or cross-border basis. Such agreements could be reached within North/South institutions and then implemented by legislation (where this was necessary) in each jurisdiction. The relevant political institutions in the North and the South would need to consider, perhaps in discussions in North/South institutions, what funding and accountability mechanisms were required for each such joint body.

51 Can participants agree that the administration of some services by such joint bodies might in principle be of mutual benefit? If so, are there any suitable services which can be identified now?

52 Can participants agree that North/South institutions should provide a forum in which agreement can be reached to establish such joint bodies through, for example, legislation in each jurisdiction?

53 Another possibility is that responsibility for certain specific matters could be transferred to North/South institutions which would themselves have executive authority from the outset. Such arrangements have been cited as a particularly important factor in winning the widest possible degree of allegiance and support for the outcome of the Talks process as a whole.

54 Further consideration would be required of the appropriate arrangements for political and financial accountability, and for funding. Questions which might arise include:

- Who would such institutions be accountable to? How would they be democratically accountable? How would they be funded?
- and - If funds were provided from public expenditure in Northern Ireland and the Republic, how would contributions be split?
- How would any expenditure be subject to normal financial monitoring and accountability?
- How would further functions be transferred, if that were appropriate?

55 Can Participants agree that the desirability and practicability of such arrangements should be considered further?

56 Is it desirable to identify which matters might be suitable for such arrangements from the outset? If so, what are they?

Conclusion

57 Some of the questions set out in this paper are interlinked with issues under consideration in Strands 1 or 3. But participants may still wish to address these questions in order to establish whether there is further common ground.

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ANNEX A

POSSIBLE PRINCIPLES ON WHICH TO BASE INSTITUTIONAL ARRANGEMENTS FOR ENHANCED COMMUNICATION AND CO-OPERATION BETWEEN NORTH AND SOUTH

1 The Committee's report to plenary of 10 September, which was subject to a general reservation from the UDUP, offered some general principles for consideration. Without being exhaustive, these suggested that channels of communication and co-operation between North and South should be: such as to

reconcile and acknowledge the rights of the two major traditions in Ireland represented on the one hand by those who wish Northern Ireland to remain as an integral part of the United Kingdom and on the other hand by those who are of a different view and who aspire to a sovereign, united Ireland achieved by peaceful means and through agreement; such as to encourage, promote and develop improved relations and better understanding within Northern Ireland and between Northern Ireland and the Republic of Ireland; conducive to a new spirit of cordial co-operation and friendship among the people of the island of Ireland, bringing a united effort for the common good; legitimate in the sense of respecting all the rights of the people of Northern Ireland and the people of the Republic of Ireland; legitimate in the sense of respecting the validity of both the nationalist and unionist identities in Ireland and the democratic rights of every citizen on the island; geared to the development of governmental arrangements that are widely acceptable and aimed at protecting and enhancing the interests of the people of the island of Ireland; widely acceptable in both parts of the island of Ireland; and durable; constructive and meaningful; capable of development, on an agreed basis, in response to changing political realities; workable, in the sense of being as straightforward to operate as possible; designed to provide a two-way channel of communication which would enable issues of mutual benefit or of concern to either party to the relationship to be addressed; innovative, in the sense of learning from and not merely modeled on any previous arrangements; conducive to optimising the benefits from the EC framework, and its programmes, for the two parts of the island of Ireland, consistent with the role and responsibilities of the UK and the Republic of Ireland as separate member states.

2 During the Committee discussion on 23 September, the Irish Government proposed a further principle which was added to this list: conducive to ending terrorism, maintaining and advancing effective security co-operation, promoting justice and achieving lasting peace and stability.