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Reference Code: 2004/21/626

Title: Summary of the outcome of talks between British and Irish officials regarding arrangements for the forthcoming Sunningdale Conference, by H McCann of the Department of Foreign Affairs.

Creation Date(s): 29 November, 1973

Level of description: Item

Extent and medium: 10 pages

Creator(s): Department of the Taoiseach

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Summary of outcome of talks with British at
official level on the 28th and 29th November 1973

29/11/73

SECRET.Conference arrangements

It is contemplated that the Taoiseach and Prime Minister will not be present throughout the Conference but that both will be available throughout. Both will, it is expected, play a very substantive role in the work of the Conference. In these circumstances the Taoiseach could stay in the Embassy for such portions of the Conference that he did not wish to participate in - this would provide an excellent opportunity for other Ministerial participants to get away from the Conference complex to consult the Taoiseach when desired.

British participation is likely to include, in addition to the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for Northern Ireland, probably some Minister from the Home Office and the Law Office. It is not contemplated that a Treasury Minister be present. On the British side, of course, there is the factor that immediate access is possible. The British side would like to know to-day, if possible, the extent of our official delegation so as to enable accommodation arrangements to be made. They contemplate the attendance of the full Administration, including the Executive, ^{from the north} and they will be generous about the presence of advisers in view of the fact that they have no back-up Civil Servants.

While the procedure to be adopted in the course of the Conference will have to be determined thereat, it will ^{most likely} begin by general statements on behalf of each participating party. It is envisaged that, in view of the unwieldy nature of the Conference, at a given point certain subjects may be allocated to sub-groups for study. Representation of all Parties would be contemplated on all such sub-groups. 2½ days have been

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allocated for the Conference but while it is desired to keep up the pressure to achieve progress we feel that an extension would likely be provided if this should prove necessary.

Agenda of Conference

We indicated the following as our Government's proposals for the agenda:-

1. The Council of Ireland
2. Policing, common law enforcement and human rights
3. The status of Northern Ireland

While not objecting to this, the British side commented that it is phrased differently to the relevant portion of the White Paper and is in a different order, and the Unionists might have some comment to make on this. They said that they would convey our suggestions to Ministers. It was recognised, furthermore, that the Agenda could only be finally determined at the Conference itself.

In the course of the discussion of the Agenda the British side argued in favour of the desirability of something on item No. 3, the status of Northern Ireland, being said at an early stage of the Conference in order to encourage the Unionists to be more forthcoming on other items. It was indicated ^{in reply} that this was a very sensitive matter which would be dealt with at Ministerial level and that it was not something which could be discussed at official level. It was clearly contemplated that there should be as detailed a communiqué as possible at the end of the Conference so that it would be quite clear what had been agreed and that Parties in their press statements afterwards would be to that extent tied down. The end result would clearly be based on a compromise and even the Parties in the North would be anxious

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that the basis of the compromise should be clearly spelt out so that the balance could be seen. The British side endeavoured to establish that anything which might be said in relation to the status of Northern Ireland should also be included in the communique. We said that we could not give an assurance on this point as it would be for the Taoiseach to decide in what manner he would wish to deal with this question publicly. The British side also stressed the importance of there being no delay in any statement by the Taoiseach on this subject if it were not being included in the communique itself.

Council of Ireland

The document given to the British on 6 September 1973 setting out our ideas on the possible functions and structure of a Council of Ireland, supplemented by Government decisions subsequently taken, gave rise to no substantive objections on the part of the British except as indicated hereunder. They made it clear, however, that they could not speak for the Parties from the North. They commented:

1. that Unionists are not yet fully committed to the Consultative Assembly tier of the Council; although they implied that, after making their point on this, they will probably acquiesce. In response to a suggestion that the British document of 21 November 1973 implied commitment by all Parties to its contents, the British side made it clear that it was solely a British statement but was unlikely to include anything totally unacceptable to any of the Parties.
2. In regard to the proposal that the Ministerial Executive body should have a harmonising role in relation to functions retained by Northern and Southern Administrations, the British gave us the advice that the Unionists are highly allergic to the word "harmonising";

3. with regard to the suggestion that the Parliamentary body have a representation on a proportional basis from the Dáil and Northern Assembly the British indicated that all Parties in the North would prefer a 50-50 representation. In regard to the suggestion that the Parliamentary body should have advisory, review and such decision making powers as may be agreed, the British thought that the decision making portion of this would be difficult for the Unionists;
4. ^{the} suggestion that the Consultative Assembly should have "the power to make decisions on the basis of an agreed majority about the future evolution of the Council would, in the British view, be a question on which the Unionists would be very wary indeed;
5. while agreeing to our ideas about the Secretariat, the British raised the question about interim loans of staff to get the Council under way until such time as the Secretary-General had been appointed and he had recruited his own organisation.

Asked about any ideas as to the location of the Secretariat the British referred to the SDLP suggestion of Armagh but commented that this was unlikely to be acceptable.

On the question of the possible functions of the Council the British made a number of points. Firstly, each suggested function ~~in respect of those~~ we had proposed for the transfer of Executive responsibility should be examined separately. Secondly, one had to have particular regard to the cases in which Whitehall had a direct interest either because of reserve functions or of the financing aspect. They thought that Social Security and the Health Services in particular would give rise to difficulty and they suggested that these should have a low priority. As we understood that the Government were proposing to withdraw these items from the suggested list, we acquiesced in the British attitude to them. While the British side accepted that certain aspects of the CAP, foreign trade and even EEC aspects of the CAP could be contemplated as Executive functions of the Council, ^{some aspects of} all these three subjects would have to be looked at more closely e.g. certain agricultural grants which were in practice handled directly in Whitehall e.g. farm modernisation grants.

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On functions, the British proffered the suggestion that to help presentationally vis-a-vis the Unionists it would be desirable to group some of the functions in a manner which would make them appear less intimidating to the Unionists. They emphasised the desirability of highlighting areas of activity in which there is already a measure of cooperation. In the case of electricity generation and supply they saw some problems arising because of the high capital requirements involved and because of the over-all effect it might have on their economic policy. While the British side seemed to lean to the view that the Council should study all the possibilities after it was formed we made it quite clear that there would have to be agreement at the Conference on a certain minimum number of functions for assignment ab initio with Executive responsibility.

On the question of the British Government devolving reserve powers directly to the Council the British side were not too receptive but they did not rule it out altogether. They did seem to contemplate, however, the possibility of doing this by direct devolution of a reserve function to Northern Ireland. *in the first instance*

The British seemed to attach considerable importance to their involvement in an appropriate manner in matters before the Council in which they had either a reserve function or a heavy financial interest. It was pointed out to them that, as the Council represented the Irish dimension, a basic consideration from our point of view was that the Council should at all times be a North-South one and there should not be a British presence on the Council. While recognising their interest in certain subject matters there were many possible

channels of communication on the subject. There could be London-Dublin bilateral talks, London-Belfast bilateral talks and, conceivably, there could be talks between the Council or a delegation of the Council and the British side. The British seemed to contemplate that at certain meetings the British should sit in at the Council discussions as they would not welcome a situation where the Council took a final view on a subject in which they were concerned without their being involved. It was suggested on our side that the point should be accepted that the British Government should not be represented on the Council although there would have to be provision for relations between the Council and the British Government. The British side accepted this and seemed to envisage the possibility of private or separate meetings at which a British representative could be present where finance was concerned. The British do not require that they should be appointed to membership of the Council for subjects in which they are directly involved.

They thought that our idea of an Economic and Social Council was a sensible one and likely to be acceptable.

Financing of Council

The sense of the Government decision on financing was conveyed to the British and they seemed to accept this subject to the following. They exhibited caution in relation to "own resources" for the Council. Their clear preference was that grants should be given from both sides. They seemed to interpret our concept of "own resources" as giving the power of taxation to the Council. This they would find very difficult to accept because of -

1. the implications it would have for their economic policy generally;
2. the implications for a regional distribution of authority within the United Kingdom following the Kilbrandon report;
3. there is no significant extra taxable capacity in the North;
4. even if taxing powers were given to the Council it would still be necessary for the British Exchequer to pay supplementary grants to the Council. The need for such grants would be difficult to present to British public opinion.

The British side did accept that for some time to come they will have to pump substantial sums of money into the North.

The British side seemed however fairly ready to contemplate the hypothecation of certain taxes or parts thereof in order to provide "own resources" for the Council. The British would have preferred that a specific period, such as three years, should not be spelt out for the introduction of "own resources". We, on the other hand, made it clear to them that unless a particular period were specified at the forthcoming Conference the chances of introducing them later would be much less.

Policing. Common Law Enforcement and Human Rights

The British see no possibility of committing themselves in any way on the achievement at any time in the future of a common form of policing for the whole of Ireland.

In respect of the interim arrangements, their position is:

- (a) If a Police Authority were established in the Republic it could be loosely linked with the Northern Ireland Police Authority under the umbrella of a Council of Ireland. The limits of the Council's connection with the authorities would be that it could simply call for reports from both authorities. Under no circumstances could any change be envisaged in the present statutory functions reserved to the Secretary of State in relation to the Northern Ireland Police Authority - but this did not exclude the possibility that the Council might be given a right to be consulted about appointments to the authorities. The possibility of some further step, such as that the Secretary of State should have to make appointments from a panel nominated by the Council was not accepted - but did not seem to be

rejected with the same force as the idea of a total transfer to the Council of the right of appointment;

- (b) Proposals are at present in the pipeline for the setting up in Britain of new systems for dealing with complaints against the police. While these proposals are not necessarily incompatible with ours they do not regard ours as being politically acceptable given the limited policing role envisaged for the Council under (a);
- (c) The British thought that the proposal for institutional co-operation between the police forces on both sides - presented by us as initially at least involving non-sensitive expert areas - had great scope only if it were extended to include co-operation in the really vital areas of tackling terrorism. Co-operation between the police forces, including the CID and special branches, were mentioned as obvious areas. In its present form this proposal should not even be mentioned as it would raise Unionist hackles in that it would show us as shying away from co-operation in the areas that mattered.

In general, the British see attractions in the principle of a common law enforcement proposal and they think it contains the ingredients for a possible agreement. They see, however, political and practical problems and an analysis of these suggest that, in addition to our proposal, at least two others should be considered, viz.

- trial by the ordinary Courts in the place where the person is arrested;
- send the arrested person back to the area where the crime was committed for trial by an all-Ireland Court.

The main practical problem which they see in our proposal related both to the safety of witnesses and to dealing with witnesses who were unwilling to come to court. Other problems included the differences in the rules of evidence and in criminal laws north and south. The main political problem they saw was that the Unionists would question our whole commitment to and confidence in All-Ireland institutions, including the Council of Ireland, if we did not find it possible to envisage sending persons arrested in the south back to the north for trial by an all-Ireland court.

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The British view is that human rights are now better protected by legislation in Northern Ireland than they are anywhere and it is simply not necessary, nor indeed appropriate since the Convention was designed primarily with continental legal systems in mind, to incorporate the ^{European} Human Rights Convention into Northern Ireland legislation. There may, of course, be areas where there was room for improvement (e.g. while there was ample protection for an individual whose rights were being violated by the Government, there was not enough protection for the individual whose rights were being violated by another individual) but this situation might be met e.g. by agreeing at the Conference that the Council of Ireland would look at the human rights situation north and south and recommend remedies appropriate to the respective jurisdictions. The Conference might, if it were felt helpful, go so far as to agree in a declaration that both Governments would agree to embody the principles of the Human Rights Convention into their respective legislations.

The British see no particular difficulty about the suggestion that the Council should have a harmonisation role in relation to legislation relevant to the proposed all-Ireland court. For presentational purposes they thought the word "harmonisation" was not, from the Unionist point of view, the best one to use.

While there was obvious British interest in the common law enforcement aspects of this whole question from the point of view of putting down terrorism, there is a very substantial gap between their thinking and ours on the question of policing and General Impressions human rights and it was recognised that the matter is now one for Ministers.

While the British were fairly open and frank in the official discussions which were conducted in a very friendly atmosphere, one had the impression that they were seeking to condition us as to what might not be acceptable to the Unionists and to persuade us that we should accept whatever is the best that we can get. Even where they were prepared

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to go along with what we had in mind they made it clear that in many instances it was for the Parties in the North to decide. We, on the other hand, sought to make it clear to them throughout that it was vital that next week's Conference should produce a balanced over-all package so that the achievements of last week in Belfast could become an actual reality. Without adequate progress on the other items in the package there could be no real progress on any front.

Harb

29th November, 1973.