

NATIONAL ARCHIVES**IRELAND**

Reference Code: 2005/7/626

Title: Report on the Conference at Sunningdale, England, on 6-9 December, 1973, attended by representatives of the British and Irish Governments, the Alliance Party, the Social Democratic and Labour Party, and the Ulster Unionist Party, chiefly discussing the Council of Ireland; law and order, and, in particular, a common law enforcement area, extradition, and human rights; and the question of the status of Northern Ireland.

Creation Date(s): [Dec, 1973]

Level of description: Item

Extent and medium: 16 pages

Creator(s): Department of the Taoiseach

Access Conditions: Open

Copyright: National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

NOTE OF THE CONFERENCE AT SUNNINGDALE ON 6-8/DECEMBER ATTENDED BY REPRESENTATIVES OF HER MAJESTY'S GOVERNMENT, THE GOVERNMENT OF THE REPUBLIC OF IRELAND, THE ALLIANCE PARTY, THE SOCIAL DEMOCRATIC AND LABOUR PARTY AND THE ULSTER UNIONIST PARTY

PRESENT AS DELEGATES:

The United Kingdom:

Mr E Heath (Prime Minister)
 Sir A Douglas-Home (Foreign Secretary) (until 12.40 pm on 7 December)
 Mr F Pym (Secretary of State for Northern Ireland)
 Sir P Rawlinson (Attorney General)
 Mr David Howell (Minister of State, Northern Ireland Office)
 Mr F Cooper (Northern Ireland Office)
 Sir Arthur Galsworthy (HM Ambassador to the Irish Republic)
 Sir Geoffrey Arthur (F and CO)
 Mr P Woodfield (Northern Ireland Office)
 Mr D Trevelyan (Northern Ireland Office)
 Mr P Jenkin (The Chief Secretary to the Treasury) (from 6 pm until 11.40 pm on 7 December)
 Mr L Pliatzky (HM Treasury) (from 6.0 pm until 11.40 pm on 7 December)

Government of the Republic of Ireland:

Mr L Cosgrave (Taoiseach)
 Mr B Corish (Tánaiste)
 Mr J Tully (Minister for Local Government)
 Mr R Ryan (Minister for Finance)
 Dr G Fitzgerald (Minister for Foreign Affairs)
 Dr C Cruise-O'Brien (Minister for Posts and Telegraphs)
 Mr P Cooney (Minister for Justice)
 Mr D Costello (Attorney General)
 Dr B O'Sullivan (Irish Ambassador)
 Mr H McCann (Department of Foreign Affairs)

Mr A Ward, Sec. of Justice
 Mr D Quigley, Sec. A/G's office
 Mr D. Kelly, A/Sec., D/Taoiseach

Alliance Party:

Mr O Napier
Mr R Cooper
Mr J Glass

SDLP:

Mr G Fitt.
Mr J Hume
Mr P Devlin
Mr A Currie
Mr I Cooper
Mr E McGrady

Ulster Unionist Party:

Mr B Faulkner
Mr R Bradford
Mr H Kirk
Mr W McIvor
Mr L Morrell
Mr J Baxter

Other advisers and officials were also present

1. The Prime Minister opened the conference by welcoming the delegations. He then made an opening statement about the background and aims of the conference. It was later agreed that this statement and the replies made to it by the Taoiseach, Mr Faulkner, Mr Fitt and Mr Napier should be published. It was also agreed that no further briefing or interviews should be given to the press until the general subject of public relations was discussed later at the conference.
2. Summing up the opening statements which had been made, the Prime Minister said that the issues facing the conference had been made clear. They were the Council of Ireland; law and order, and, in particular, a common law enforcement area, extradition and human rights; and the question of the status of Northern Ireland.
3. There followed a discussion on those aspects of a Council of Ireland which would have to be considered further at the conference. These were:

- (a) the structure and functions of a parliamentary level within the Council of Ireland;
- (b) the structure and functions of a Council of Ministers; and
- (c) the creation of a Secretariat for the Council of Ireland.
4. The conference adjourned at 11.50 am and resumed at 12.30 pm.
5. The conference then proceeded to attempt to isolate the points within the two main headings of law and order and the status of Northern Ireland which would have to be considered further.
6. On law and order, one proposal was that a common law enforcement area might be created consisting of a court to try specified offences irrespective of where the crime was committed. The judges of the court might be appointed by the Council of Ireland in equal numbers from Northern Ireland and the Republic, and a presiding judge would have to be chosen in a way to be decided. The trial of offences would take place in the area in which the accused had been arrested.
7. It was further proposed that the European Convention on Human Rights and other provisions in the human rights field (for example, dealing with discrimination in employment and housing) should be incorporated in the domestic law of the United Kingdom and the Republic of Ireland.
8. On policing, it was proposed that as an interim arrangement the government of the Republic should set up a Police Authority for the administration of the Gardai who were at present controlled by the Minister of Justice. That Police Authority and the Police Authority in Northern Ireland might then be responsible for policing in their areas but under the Council of Ireland. In addition, an "Ombudsman" might be set up to deal with all complaints against the police in Northern Ireland and the Republic.
9. Summing up the discussion on law and order, the Prime Minister said that the following issues seemed to have been identified:
- (1) the role of the Council of Ireland in the field of law and order;
 - (2) the establishment of a common court for specified offences, and the membership of that court;
 - (3) the harmonisation of legislation;

- (4) the possible incorporation of the European Convention on Human Rights in domestic legislation, and the functions of the common court in this field;
- (5) the role of a Council of Ireland in relation to policing in Northern Ireland and the Republic; and
- (6) the establishment of an ombudsman to deal with complaints against the police in Northern Ireland and the Republic.

10. The conference then turned to the third main question for discussion, the status of Northern Ireland. It was argued on the one hand that the claim in the Constitution of the Irish Republic to jurisdiction over the whole of Ireland was bound to be bitterly resented in Northern Ireland so long as it existed. The political difficulties, however, for the Government of the Irish Republic in attempting immediately to change that provision in the Constitution were recognised, and it was proposed that until the Constitution could be changed a statement from the Government of the Republic that it accepted the right of the people of Northern Ireland to order their own affairs should be made.

11. Summing up this part of the discussion, the Prime Minister said that the subjects for further discussion were:

- (1) the claim in the constitution of the Republic to jurisdiction over Northern Ireland;
- (2) the possibility of changing that provision in the constitution of the Republic;
- (3) a possible declaration by the Government of the Republic of Ireland that it accepted the right of the people of Northern Ireland to order their own affairs; and
- (4) the ways by which, under the Northern Ireland Constitution Act 1973, the status of Northern Ireland might be changed, including the attitude of HMG to any such change.

The conference adjourned for luncheon at 12.50 pm and reconvened at 2.25 pm.

12. The conference then moved on to discuss those issues which had been identified during the morning sessions, in order to discover where there was general agreement and what points still needed to be resolved. It had been

E.R.

- 5 -

agreed that there should be a Council of Ireland consisting of representatives from North and South. HMG reserved its position, however, on matters which involved Westminster finance. It had also been agreed that the Council should have two tiers: a governing Council and an Assembly, but the composition and functions of these bodies had yet to be decided.

13. It was agreed that the Council of Ministers should consist of a central core of five members each from the North and the South, and that other members of the two administrations should attend as necessary.

14. There followed a discussion on how the Council of Ireland Assembly should be constituted. One view was that representation in the Assembly should be in proportion to the populations of the North and the South. Another was that it would be essential to have equal representation on the Assembly, as well as in the governing Council of Ministers, so as to allay the fears of Protestants in the North. It was agreed that this question would have to be considered further.

15. The conference then discussed the nature and functions of the Assembly. In discussion, the following points were made:

- (a) It was argued that the Assembly should have an advisory and consultative role and should have the power to question the Council of Ministers. It should also be constituted in such a way that it could evolve. These points were generally accepted by the conference, except that there was some disagreement about the extent to which the Assembly should be able to question members of the Council of Ministers.
- (b) It was proposed that a majority of the Assembly should be capable of approving any extension in the functions of the Council of Ministers. It had already been agreed that every decision by the Council had to be unanimous and would therefore have the full support of the Northern Ireland Executive and the Government of the Republic. The Conference was, therefore, generally in favour of allowing a majority of the Assembly to approve such extensions of the Council's functions. It was proposed that members of the Assembly should be chosen by the Northern Ireland Assembly and the Dail on the single transferable vote system. By this means the minority parties in the Northern Ireland Assembly and the Dail would become involved in the Council of Ireland and acquire a greater

E.R.

- 6 -

knowledge of its role. It was also pointed out that if any members of the Northern Ireland Assembly boycotted the election of representatives to the Assembly, the seats which they would have gained would go to members of other parties. Seats would be left vacant only if those parties voted in the elections but instructed any of their representatives who were elected not to take part.

16. A discussion about the creation of a Secretariat for the Council of Ireland followed. It was argued, on the one hand, that the Council of Ireland should use the two existing civil services and not set up a large independent bureaucracy. On the other hand, it was suggested that if the Council took on executive functions the staff concerned could be brought together and work directly for the Council. Far from creating extra jobs this would lead to an overall reduction of staff.

17. Summing up the preceding discussion, the Prime Minister said that it was agreed that there should be a Secretariat under a Secretary General, and that it should be independent of the civil services of North and South. This raised the question of finance which should be discussed at a later stage. The conference then discussed the functions of the Council of Ireland, and the following points were made:

- (a) It was argued that the Council should have responsibility for legal harmonisation between the North and South. It could act as an agent of the EEC which was at present studying the harmonisation of the law in relation to economic and social matters, and it could also consider means of harmonising the law in relation to crime. On this latter aspect it was pointed out that the Northern Ireland Executive would not be a sovereign body but would have to work within the framework of the legal system of the United Kingdom. The members of the Executive would not, therefore, have an altogether free hand in making changes in some parts of the law.
- (b) It was further proposed that the Council should be given some executive powers, since without them it would be no more than a cipher and would not gain the confidence of the people of the North and South. There were a number of functions such as tourism, electricity, agricultural and industrial research where North and South duplicated each others work. Both North and South would

benefit if these areas of work were handled on an all-Ireland basis under the Council.

- (c) There were differing views on the speed with which it would be possible to isolate those areas of work in which it would be possible to transfer executive functions to the Council of Ireland. One view was that the difficult administrative problems involved would dictate against any hasty decisions being made. Others argued, however, that there was no reason why a decision in principle should not be made before the Council was formed. It was agreed that the delegations should discuss this further privately during the conference.

18. There followed some further discussion about the agreement that decisions by the Council of Ministers should be unanimous. Some delegates expressed concern that an irrevocable decision on unanimity might be unhelpful and unnecessarily restrictive in the future, but others pointed out that if this happened the arrangement could no doubt be changed by agreement.

19. There was also some discussion of the practical issues such as how frequently the Council of Ministers should meet and where. One view was that these matters could be decided by the Council itself once it was set up. Others wanted the conference to decide where the Council should be permanently established, and the city of Armagh was put forward. Another possibility which was suggested was that the conference should merely decide where the Council should hold its first meeting, leaving the Council itself to decide where it should be based permanently. The question was left over for further consideration.

20. Summing up this part of the discussion, the Prime Minister said that the main points had now been thoroughly considered by the conference, and there was agreement in principal on them subject to a number of points being clarified in further discussions.

21. The conference adjourned at 3.40 pm for tea and resumed at 4.00 pm.

22. The conference next discussed the status of Northern Ireland and the following points were made:

E.R.

- 8 -

- 23 (a) While the difficulties of the Unionist Party in Northern Ireland were recognised, it was argued by some that public opinion in the Republic would not accept any change in that part of the constitution (Article 2) which claimed sovereignty over Northern Ireland. It was proposed that reciprocal declarations should be made by the Irish and UK Governments declaring respectively that the Irish Government was willing to co-operate with the institutions in Northern Ireland, and that the United Kingdom Government acknowledged that there was scope for further change and development in the relationship between Northern Ireland and the Republic.
- (b) It was argued by others that such declarations would be insufficient to allay the reasonable fears of Protestants in Northern Ireland. It would, in any case, be extremely difficult to win support among Protestants in Northern Ireland for a Council of Ireland, and their support would certainly not be won unless the right of the people of Northern Ireland to govern their own affairs was accepted.
- (c) In further discussion, it was argued that in reality the status of Northern Ireland was satisfactorily protected in the Northern Ireland Constitution Act 1973, and that the continued existence of Article 2 of the Irish Constitution did not prevent "de facto" recognition of the North. Against this, it was argued that appearances in Northern Ireland were more important than reality. The status question was extremely emotive, and it was important that there should be no confusion about it.

23. It was strongly argued that it would not be practical politics to expect the 1937 Constitution to be changed instantly. It had been made clear that the United Kingdom Government would not object if the majority of people in Northern Ireland wished to change their status. It was agreed that the status question should be further discussed by the conference, bearing in mind the possibility that any declaration by the Irish Government might be registered with the United Nations.

24. Turning to the general field of law and order, the conference first discussed the difficulties which arose in extradition between the Republic and

E.R.

- 9 -

Northern Ireland, and the possibility of creating a common law enforcement area.

25. One proposal was that a special court should be set up under the Council of Ireland having jurisdiction over a limited schedule of offences. The court would have power to sit in the North or the South and try an accused person for committing a scheduled offence in any part of the island. A person would be tried in the place where he was arrested. The court would be composed of three or five judges appointed by the Council of Ireland and there would be no jury. Detailed consideration would have to be given to the procedures of the new court, to rules of evidence, the schedule of offences etc, but these problems were not insurmountable.

26. In discussion of this proposal the following points were made.

- (a) The common law of Northern Ireland and the Republic had developed in different ways and there would be great problems in reconciling the two legal structures. Differences existed in sentencing policy, bail procedures and legal aid provisions. Arrangements would have to be made for the summons of witnesses across the border and some sort of appellate court would have to be created.
- (b) It was pointed out that a great many of the practical problems arising from the proposal were related to reserved matters. It was made clear that the United Kingdom Government would welcome a close study of the possibility of a common law enforcement area, but did not under-estimate the size of the problems involved. An alternative solution put forward was that the extradition law in the ^{South} should be amended so that offences involving firearms and explosives were excluded from the definition of a political offence. Such a change would not derogate from the 1957 Convention to which the Republic (but not the UK) was a signatory. If a common court of the sort proposed was set up it would also be necessary to consider whether trial without jury was acceptable as a permanent arrangement.
- (c) Because of the many problems which had been described, it was argued by some that a good deal of work was necessary before it could be established whether a common law enforcement area was worthwhile and was the best way of dealing with the problem of suspected criminals who were not extradited. It was also pointed out that even if a scheme was agreed.

E.R.

- 10 -

legislation would be necessary and the scheme could not therefore be expected to come into operation very quickly.

27. It was agreed that the appropriate members of the delegations should discuss the problems involved in the proposal which had been made and report back to the conference.
28. The next topic to be discussed under the general heading of law and order was policing. It was put to the conference by some speakers that the minority community in Northern Ireland found it difficult to identify with the police force there. It was proposed that this difficulty would be solved if the Police Authority for the North was appointed by the Council of Ireland. The Government of the South would reciprocate by creating a Police Authority, the membership of which would also be appointed by the Council. There should also be a common procedure for examining complaints against the two police forces and this too should be the responsibility of the Council.
29. Other speakers argued that Protestants in Northern Ireland would have great difficulty in agreeing to the Police Authority there being appointed by the Council of Ireland in the way proposed. It was also pointed out that policing and the organisation of the police were reserved matters, financed entirely by Westminster. There would be no objection to a Police Authority in Northern Ireland working together in some way with a Police Authority in the South, but, whatever arrangements were made, the UK Government would always need to be centrally involved in making appointments to the Police Authority. There was undoubtedly a need for closer co-operation between the police forces on both sides of the border and there was no doubt that the Council of Ireland could play an important part in bringing this about.
30. In further discussion the following points were made.
- (a) The name of the RUC should have been changed so as to win support for it from the minority community in Northern Ireland, but as this had not been done, it was vital that the RUC should in some way be identified with the Council of Ireland.
 - (b) Although violence in border areas was a serious problem the very large number of assassinations in the Belfast area was even more worrying. The problem in Northern Ireland was quite different from that in the South, where it was notable that the IRA did not attack policemen because the population in the South supported the Gardai.

Just the
com
used
S.

(c) It was argued on the other hand that the RUC was operating as effectively as it could. Its morale was improving and serious damage would be done if it seemed that the RUC was controlled, however indirectly, by Dublin.

31. It was agreed that private discussions should take place after the meeting and that the subject should be reopened at the meeting on the following day. It was agreed that a short press statement should be worked out between the representatives of each delegation and that there should be no additional briefing of the press.

32. The conference adjourned for the day at 6.15 pm.

33. The conference reconvened at 12.20 pm on 7 December.

34. The conference reviewed the progress which had been made during the private discussions between the parties to the conference since the meeting on the previous day. The four subjects considered were:

- (a) the constitutional status of Northern Ireland;
- (b) the executive functions of the Council of Ireland;
- (c) law enforcement; and
- (d) policing.

35. It was reported that discussions on the status of Northern Ireland were still at a formative stage and it was agreed that they should be continued outside the conference.

36. It was reported that broad agreement had been reached on the executive functions of the Council of Ireland, and that a statement of the position had been prepared which could be included in Heads of Agreement.

37. On law enforcement, it was reported that more time was needed before agreement could be reached both in the area of common law enforcement and on policing.

38. In discussion, it was argued that the private discussions during the morning had been somewhat haphazard, and that in future all five parties to

E.R.

- 12 -

the conference should be represented in such discussions.

39. There was some discussion about newspaper reports that the conference had decided that the Council of Minister should contain a core of 5 members from the North and 5 from the South. It was agreed that the number of members should be reconsidered.

40. It was agreed that further private discussions should involve all five parties to the conference; that such discussions should include the suggestion that the number of Ministers in the Council of Ireland should be other than five; and that there should be no briefing of the press at that stage of the conference.

41. The conference adjourned at 12.40 pm and reconvened at 6.00 pm.

42. The conference had before it a document which drew together all the work that had been done in private discussions outside the conference. Also before the conference was a separate paper on the financing of the Council of Ireland. Paragraph 5 of the general paper, which dealt with the status of Northern Ireland, had not yet been fully agreed. To enable the wording of that paragraph, and the papers as a whole, to be considered by the delegates it was agreed that the conference should adjourn.

43. The conference adjourned at 6.12 pm and resumed at 7.30 pm.

44. The conference proceeded to discuss the general paper which had been circulated together with a shorter paper dealing with the financing of a Council of Ireland. In discussion, the following points were made.

- (a) the question was raised whether the reference in paragraph 1 of the general paper to the "Government of the Republic" should be amended to read "The Government of Ireland". It was also suggested that the reference in that paragraph to the "Northern Ireland Executive" should be expanded to read "parties involved in the Northern Ireland Executive".

- (b) It was suggested that the reference in the paper to Mr Faulkner's statement about the incompatible sets of political aspirations in Ireland should be modified by the inclusion of the word "apparently" before the word "incompatible".
- (c) It was argued on behalf of some delegates that the paragraph dealing with the status of Northern Ireland should spell out more clearly than in the present draft that HM Government was committed at present to maintaining the status of Northern Ireland "as part of the United Kingdom". It was argued on behalf of other delegations that the form of words in this paragraph should not be such as to conflict with the written constitution of the Republic of Ireland.
- (d) The question was raised whether it was only the two declarations about the status of Northern Ireland which would be registered at the United Nations, or whether the entire agreement reached by the conference should be so registered.
- (e) It was suggested that paragraphs 8 and 11 of the general paper, which dealt with the structure of the Council of Ireland, needed further study. Also, some amendment, it was suggested, would be necessary to paragraph 9, which dealt with the possible executive responsibilities of the Council of Ireland.
- (f) When the conference turned to the separate paper on the financing of the Council of Ireland, it was suggested that reference should be included to the possibility of establishing independent financial resources for the Council, and that the paper should reflect the need to create methods of financing the Council consistent with its taking executive responsibility.
- (g) The section of the general paper dealing with common law enforcement and human rights had been put forward by the Secretary of State for Northern Ireland for comment by the respective delegations. Some delegates felt that the section dealing with extradition was inadequate. Others had similar reservations about the section dealing with policing. It was argued by some that Protestants in Northern Ireland would not be able to accept any link between the Council of Ireland and policing at this stage. It was also pointed out that if the Police Authority in Northern Ireland were to join in a Standing Joint Committee under the aegis of a Council

- 14 -

of Ireland an interest of HM Government would be brought into the field of the Council, thus altering its bi-partisan nature.

- (h) An assurance was sought, and given, that the releases of detainees before Christmas, which was mentioned in paragraph 17 of the general paper were related to the current security situations.
- (i) It was noted that the final paragraph of the general paper, dealing with the holding of a further formal conference to ratify the agreement reached at the current conference, might need rewording in the light of decisions taken on the rest of the "package" of agreements.

45. It was agreed accordingly:

- (i) that HMG should look again at its declaration of policy in regard to the status of Northern Ireland and communicate with the parties to the conference;
- (ii) that the whole field of common law enforcement and human rights, including a possible ombudsman for police complaints, should be looked at;
- (iii) that the passages dealing with the structure and functions of the Council of Ireland should be reconsidered;
- (iv) that the role of the Council of Ireland in relation to policing should be further discussed; and
- (v) that the paragraph dealing with the methods of financing the Council of Ireland should be re-examined. In this connection it would be necessary to take into account whatever was decided on the structure and functions of the Council of Ireland.

46. The conference agreed that the press should be told that the conference had adjourned for dinner, that there would be further discussions between the delegates afterwards, and thereafter a further full session of the conference. The conference adjourned at 8.15 pm and reconvened at 11.15 pm.

E.R.

- 15 -

47. It was reported that a revised paper on the financing of a Council of Ireland had been prepared which seemed likely to be generally acceptable to the delegations.
48. It was reported that some progress had been made on the subjects within the general heading of law and order, and further draft papers had been exchanged. Further discussion on these would, however, be necessary.
49. While some progress had been made on the declarations as to the status of Northern Ireland significant difficulties, mainly of a legal character, remained. It was agreed that discussions outside the conference should continue.
50. On the issue of policing, it was reported that very little progress had been made.
51. The sub-committee on the structure and functions of the Council of Ireland had, it was reported, nearly reached agreement and would do so with very little more time.
52. It was agreed that the sub-committee on law and order should continue its discussions that night in the hope of making progress towards agreement; that the sub-committee on the declarations as to the status of Northern Ireland should also continue that night to see how much further progress could be made; and that the sub-committee on policing should meet again as soon as possible the following morning.
53. There was some discussion about a suggestion that the conference should aim to reach complete agreement by noon the following day. While some delegates felt that this would be beneficial because of the tense security situation in Northern Ireland, others thought that there was no point in being rushed towards a hasty agreement which might lead to more violence than one which was properly worked out. It was agreed that the sub committee on policing should meet the

- 16 -

following day at 9.15 am and that as soon as possible thereafter the conference would resume, bearing in mind the remarks which had been made about tension in Northern Ireland, as well as the expectations in the rest of the country. It was also agreed that a short statement should be made to the press saying that the conference had resumed at 11.15 pm, after further discussions by the sub-committees, in order to receive progress reports, and had adjourned until the following morning to enable further meetings of the sub-committees to take place. The conference adjourned at 11.40 pm and resumed at 11.05 pm on 8 December.

54. The conference had before it a document which incorporated all the passages which had been agreed between the delegations. This document had been presented so that the conference could, for the first time, consider all the areas of agreement in one package and decide whether they corresponded with what had been agreed. No point of substance having been raised by any of the delegations on this paper, it was pointed out that a wide area of agreement on very important issues had been reached. This included the status of Northern Ireland, the structure and functions of a Council of Ireland, human rights, the devolution of powers to the Assembly and the holding of a formal conference in the future to ratify the agreement. The one outstanding issue was policing.

55. It was agreed that about two representatives of each delegation should meet to consider policing, while any drafting amendments to the paper which had been circulated were dealt with by officials.

56. The conference adjourned at 11.20 pm. After further meetings throughout the night and during the following day the conference reconvened at 8.30 pm on 9 December.

57. The conference had before it a revised paper which included six paragraphs dealing with policing which had now been agreed. It followed that the conference had reached a successful conclusion. After personal statements by each of the delegations' leaders, it was agreed that the Prime Minister, the Taoiseach and the party leaders from Northern Ireland should join in signing the agreed communique to mark the end of the conference.

58. The conference ended at 8.45 pm.