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Covering note (with enclosures)
on 347/93

FROM: BRYONY LODGE
SIL/TPU DIVISION
8 JUNE 1993

25/6

I have reviewed these in the N/S paper, on the 16/6

- cc PS/PUS (L&B) -B
- PS/Mr Fell -B
- Mr Thomas -B
- Mr Bell -B
- Mr Williams -B
- Mr Watkins -B
- Mr Steele -B
- Mr Brooker -B
- Mrs Collins -B
- Mr Dodds -B
- Mr Leach -B
- Mr Maccabe -B
- Mr Marsh -B
- Mr Quinn -B
- Mr Rickard -B
- Mr Stephens -B
- Miss Harrison -B
- Mr Archer, RID -B
- HMA Dublin -B
- Mr Beeton -B

1. MR COOKE [I have not done any work myself on these, but will look at them again if and when it becomes likely they will be needed. DALC 15/6]
2. MR SMITH, CPL - B

UK NEGOTIATING POSITION AND BACKGROUND PAPERS

I attach revised versions of the following negotiating position papers for which SIL/TPU are responsible:

Filed on -

- 631/92 — (i) Constitutional Balance - 7 January 1993
- 115/93 — (ii) Endorsement - 11 February 1993
- 660/92 — (iii) Successor to Agreement - 8 July 1992
- 589/92 — (iv) **Tripartism** - 14 September 1992

CONFIDENTIAL

SC/SIL/21485

CONFIDENTIAL

2. Although all have been subject to minor editing, only the first, on Constitutional Balance, has been expanded to take account of the new Irish Government.

(SIGNED)

BRYONY LODGE
SIL/TPU DIVISION
8 JUNE 1993
OAB EXT 6506

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STRANDS 2 AND 3: WHAT IF THERE IS CONVERGENCE ON TRIPARTITE ARRANGEMENTS?

Introduction

* On
file 664/92
R.S. Murd.
25/6

1. The HMG position paper of 4 June 1992, "Talks: Possible Outcomes from Strands 2 and 3", considered the outcomes which HMG might like to see from Strands 2 and 3. It noted that there was a good case for (as well as arguments against) separate institutional arrangements for relationships in the transferred and non-transferred areas. A summary of its main recommendations relevant to "tripartism" is at Annex A.

2. One of HMG's primary objectives has been to identify outcomes within the areas of convergence between the Talks participants. It has emerged during Strand 2 discussions so far that there may be some support for tripartite arrangements in which the transferred and non-transferred relationships would be addressed within a single framework or even within a single forum. (It is worth noting that different people mean different things when talking about tripartite arrangements: paragraph 12 below distinguishes the main meanings.) As part of our contingency planning, this paper therefore examines the positions of the Talks participants on this issue, and sets out two possible broad approaches to tripartite arrangements which might emerge from Strands 2 and 3. It does not at this stage advocate either of these approaches in preference to that taken in the 4 June paper.

What the talks participants have said

(i) Alliance

3. In their opening statement to Strand 2 the Alliance proposed the establishment of a Tripartite Council which would

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bring together the representatives of all three jurisdictions. A series of new institutions was envisaged in which governmental representatives, back-benchers, and officials from Belfast, London and Dublin would meet to explore matters of mutual concern such as the welfare of young emigrants, the transport network throughout the islands, environmental issues, drug trafficking and organised crime. A tripartite structure would also look at the creation of a human rights framework for the islands and address the broader questions of identity, allegiance, the constitutions, law enforcement and security co-operation. It is perhaps worth noting that a beefed up version of the BIIPB would not be a million miles away from this proposal; and that a beefed up BIIPB could co-exist with rather than replace other overall institutions resulting from Strands 2 and 3.

(ii) DUP

4. Under questioning on 22 July, Dr Paisley said that he envisaged that the three governments would have an instrument for consultation which might be called a conference or council and which would meet as and when necessary. He suggested that, whether institutionalised or not, both traditions reached beyond Northern Ireland and there was a need to recognise the East/West context in which relations were set. This did not mean that there could be no direct contact between Belfast and Dublin or Belfast and London. Pressed to reveal his hand the following day he specified a tripartite Council of Ministers. He did not think that separate councils for areas such as agriculture or medical research would lead anywhere and suggested that the best way ahead was rather to build links between departments. The DUP paper of 28 August envisaged "an all-encompassing British-Irish axis, albeit compartmentalized to satisfactorily deal with matters which could more appropriately be considered in that way."

(iii) UUP

CONFIDENTIAL

SC/SIL/21485

- 55 -

5. In their opening statement the UUP proposed the replacement of the 'neo-colonialist' Anglo Irish Agreement with a treaty which addressed the totality of relationships within the islands. They envisaged an Inter-Irish Relations Committee to facilitate business between Belfast and Dublin administrators. This would form an integral part of a larger body, details of which would be tabled during Strand 3 discussions. Their 28 August paper dubbed this larger body "the Council of the British Isles", and envisaged that it would include, as well as UK and ROI representatives, representatives "of any assemblies which may at any time be devolved within either jurisdiction."

6. Both the UUP and more notably the DUP appear to have moved significantly in the direction of institutionalising arrangements, as desired by the Irish Government and SDLP, since their 'British/Irish Agreement' was presented to Tom King in 1988. Then they had envisaged only periodic contacts and ad hoc meetings between Ministers and NI representatives, with an external affairs committee drawn from the NI Assembly alone. But it seems that they are now prepared to concede a standing arrangement between the three jurisdictions. This may be a conscious element in a strategy on the part of the Unionists for binding the Secretary of State into a relationship with representatives of devolved institutions in a way which would make him to some degree their prisoner.

(iv) SDLP

7. In their opening statement the SDLP envisaged North/South institutions which would 'promote co-operation and uniformity in relation to matters affecting the whole island'. But under questioning on 17 July Mr Hume said that such co-operation in no way ruled out tripartite institutions on matters such as the environment or energy.

(v) Irish Government

8. The Irish Government's opening statement did not address the question of institutions but emphasised that the negotiations should not dismantle any gains made in the relationships between the two Governments under the Anglo-Irish Agreement, including the formal acceptance that the Irish Government had both a concern and a role in relation to Northern Ireland. In their response to the opening statements they envisaged 'a new partnership between North and South.'

9. Although neither the Irish Government nor the SDLP have ruled out tripartite mechanisms they may consider that their ultimate goal of a united Ireland might best be achieved through the separate development of an all-Ireland framework while maintaining the special relationship with HMG which they currently enjoy under the Anglo-Irish Agreement. The Embassy believe that, in Irish eyes, a tripartite approach would tend to blur the "Irishness of Northern Ireland."

(vi) HMG

10. HMG has emphasised that it has no blueprint of its own when it comes to an agreed outcome of Strand 2. Under questioning the Secretary of State said on 17 July in relation to EC matters that it would be entirely conceivable for a future Government of Northern Ireland to want to discuss both with the UK Government and the Government of the Republic of Ireland arrangements which could operate to everyone's advantage. And on 22 July he emphasised that HMG's responsibilities did not preclude co-operation between Governments and that a tripartite approach was entirely practicable and not excluded.

What might tripartite arrangements look like?

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11. The remainder of this paper, as part of our contingency planning for Strands 2 and 3, considers two broad approaches to possible tripartite arrangements, on the assumption that what is proposed in the 4 June paper may not go far enough to meet the aspirations of other Talks participants in this direction.

12. As a preliminary point, it is worth noting that "tripartism" does not denote a single unitary concept. It can variously mean tripartite involvement in new institutions resulting from Strand 2; tripartite involvement in new institutions emerging from Strand 3; amalgamation of institutions resulting from both Strand 2 and Strand 3; or, rather differently, bringing non-NI East/West matters within the scope of such new arrangements. There are, indeed, possible elements of tripartism in the proposals in the 4 June paper:

- that paper envisaged that the successor to the IGC and the North/South forum would both be dealt with in a single overarching agreement which would also recognise the third configuration of contacts between the UK Government and the ROI Government to discuss bilateral issues not coming within the scope of either the successor to the IGC or the North/South Council. In this sense, although there would not be tripartite institutions, there would be an overarching instrument which would recognise and enable all three configurations

- the 4 June paper also recognised that, as an adjunct to its institutional proposals, there would also need to be ad hoc meetings of UK and ROI Ministers and their NI counterparts to discuss such matters as EC issues where all three administrations had an interest. Such meetings would not be institutionalised in a standing forum. But when they took place they would clearly be tripartite meetings

CONFIDENTIAL

- 58 -

SC/SIL/21485

CONFIDENTIAL

- it also proposed involving representatives of the NI administration in the successor to the IGC.

It is also possible to envisage other ways in which the proposals in the 4 June paper could involve tripartism. For instance, although the possibility is not mentioned in that paper, it is conceivable that the two Secretariats, or indeed the successor to the IGC and the North/South Council, could from time to time hold joint liaison or review meetings. Such meetings would be tripartite meetings.

13. It is nevertheless clear that at least some of the other Talks participants envisage more permanent and substantial tripartite institutional arrangements than anything set out in the 4 June paper. The following paragraphs seek to sketch out two broad models for tripartite arrangements going beyond the 4 June paper. The first such approach adopts the general strategy of setting up a nominal tripartite institutional arrangement while aiming, as far as possible, to preserve the advantages of separation set out in the 4 June paper. The second adopts the alternative strategy of proposing a full bloodedly tripartite arrangement, but focusing on a consultative council which would not place any obligations on the three administrations.

Model I: bifurcated tripartite Forum

14. On this approach, there would, in addition to an overarching agreement for British Irish relationships, also be a single Forum for British and Irish Ministers and their Northern Ireland equivalents. The Forum would, however, normally only ever meet in one of two configurations corresponding to non-transferred matters and transferred matters respectively.

CONFIDENTIAL

SC/SIL/21485

- 59 -

CONFIDENTIAL

15. There is also an option that the Forum could meet in a third configuration in order to discuss non-Northern Ireland bilateral matters. Our preference in the 4 June paper was for discussion of such matters to be enabled by the governing agreement or treaty, but for no regime to be laid down in that governing instrument for the form or detailed regulation of such discussions. (There is a pre-existing, if largely dormant, umbrella in the shape of the Anglo-Irish Intergovernmental Council, which could have a larger role to play in new arrangements.) That should remain our preferred position, although we need have no fundamental objection to discussion of such matters by the proposed Forum in the third configuration provided there is no detailed prescription for this third configuration, nor anything which precludes the more flexible and ad hoc discussions outside the Forum which would also continue to be necessary.

16. Leaving on one side the question of the third configuration, there would be separate provision in the governing agreement or treaty for meetings of the Forum in the non-transferred and transferred configurations. In other words there would be two different treaty regimes for the two configurations for such matters as the scope of deliberations and any consultation rights for meetings in each configuration. The relevant provisions could follow what is envisaged in the 4 June paper on these points.

17. The forum could be serviced by a single Secretariat of UK, ROI and NI department officials. Such a Secretariat could have separate divisions responsible for servicing the Forum in the non-transferred and transferred configurations respectively.

18. As envisaged in the 4 June paper, neither the Forum nor the Secretariat would have any executive powers. This need not preclude provision for separate joint executive institutions in

CONFIDENTIAL

- 60 -

SC/SIL/21485

CONFIDENTIAL

the transferred sphere to be set up and voted the necessary powers if the necessary majorities in both the Dail and the Assembly could be secured for such developments.

19. Perhaps the most difficult aspect of a model for a Ministerial Forum meeting in two or three separate configurations would be the question of attendance at meetings in each of the configurations.

20. Our position might be that UK Ministers would not normally attend the Forum when it was meeting in the transferred configuration. The core of this configuration would be relevant ROI Ministers meeting their NI counterparts (who might also include members of the Panel/Commission) in a standing Forum. It could be left to the parties and the Irish Government to settle the question of whether certain Ministers and their ROI counterparts would always attend, or whether all Ministers and counterparts would attend or not purely in accordance with what was on the agenda. It might also be envisaged that a UK Minister could be invited but not compelled to attend by either the ROI or the NI side at the Forum meeting in transferred configuration.

21. This might be the basic rule on attendance at the Forum in the transferred configuration. In addition, it would be possible to give UK Ministers the right to seek attendance other than when summoned - for instance when matters to be discussed might have implications in the non-transferred sphere. Alternatively or additionally, the UK Government could field observers for part of or the whole of sessions of the Forum meeting in the transferred configuration. This paper argues that HMG should not itself seek either of these possibilities, on the basis that it is better in principle for North/South discussions of transferred matters to take place between the two key sets of protagonists without reliance on intervention by HMG, and that HMG could in any case seek ad hoc tripartite meetings outside the framework of the Forum

CONFIDENTIAL

SC/SIL/21485

- 61 -

CONFIDENTIAL

where necessary. (It would in addition have separate liaison arrangements with the new NI administration.)

22. As to attendance at meetings of the Forum in the non-transferred configuration, the expectation might be that these would normally involve UK and ROI Ministers only, but that the two Governments could:

- jointly consult the Northern Ireland administration* before meetings
- jointly de-brief suitable representatives of the Northern Ireland administration* after meetings
- jointly invite observers from the Northern Ireland administration* to attend suitable parts of meetings (eg sessions discussing confidence issues but not the restricted security session.)

23. Representatives of the Northern Ireland administration* would have no right of their own motion to attend meetings of the forum in non-transferred configuration. This could be justified on the basis that we envisage that they will have a separate right of input to HMG on non-transferred matters.

24. If the Forum were also to meet in the third configuration - ie that dealing with non-Northern Ireland bilateral issues - there

*

Mr Hume has recently suggested that it might help with the lifting of the SDLPs reservations in Strand 1 if the Members of the Panel/Commission were also able to attend the IGC. There may be no difficulty about involving them on broadly the same basis as Northern Ireland Ministers or political heads of Department, although much turns ultimately on what is agreed on the relationship between Panel Members and NI Ministers.

CONFIDENTIAL

SC/SIL/21485

- 62 -

could be similar arrangements for inviting representatives of the Northern Ireland administration to attend, be consulted and be debriefed. It should not be assumed that they would have no legitimate interest in meeting the Forum in this configuration: for instance, it could be as important to them to be consulted about, observe and be debriefed on discussions about East/West trade matters as about cross-border security co-operation.

25. The approach set out in the preceding paragraphs need not preclude occasional sessions of the Forum meeting in full session rather than in one or other of the proposed restricted configurations. For instance, annual review sessions could be held involving UK and ROI Ministers and their NI counterparts on an equal basis. Such sessions could be provided for in the governing treaty or agreement.

Modell II: British/Irish Consultative Council

26. An alternative approach to North/South tripartite institutions would be to create a unitary Council (supported by a single Secretariat) which would not normally meet other than in full tripartite session, but which would not impose the sort of obligations on represented administrations which the IGC currently imposes on the UK Government because the consultation arrangements would be weaker and more generalised.

27. On this second model, the Council might be attended by:

- the Secretary of State for Northern Ireland plus one other representative of the UK Government

- the Irish Minister for Foreign Affairs plus one other representative of the Irish Government

CONFIDENTIAL

- other UK and ROI Ministers on an ad hoc basis in accordance with agenda items
- the members of the Northern Ireland Panel
- the Chairmen of the External Affairs Committee and of the General Purposes Committee of the Assembly
- other Northern Ireland political Heads of Department on an ad hoc basis in accordance with agenda requirements.

28. The Council could have a single remit irrespective of whether the matters concerned fell in the transferred or the non-transferred fields. Such a remit might comprise:

- cross border co-operation
- all Ireland matters
- safeguarding the different national identities within the island of Ireland, and promoting reconciliation between the different traditions.

29. The Council could be serviced by a single tripartite Secretariat.

30. As with Model I, neither the Council nor the Secretariat would have executive powers or operate a decision-taking procedure. In contrast with the first model, however, the consultation rights exercisable through the Council and the Secretariat would be weaker, thus denying this machinery any role in focussing obligations onto any administration or administrations represented on the Council. For instance, it could be provided that any member of the Consultative Council could raise in it any issue within its remit, or any policy issue

CONFIDENTIAL

- 64 -

SC/SIL/21485

CONFIDENTIAL

in the UK, ROI or NI having a bearing on a matter within the remit of the Council. Any such matter could then be discussed by other members of the Council. It would, however, be up to the responsible administration to decide what response to give, and whether to give it within the Council or outside it. The Council would have no right to prior consultation by any of the three relevant administrations, and there would be no requirement for determined efforts to be made to reach agreement. Similarly, the Secretariat would lose the role of the present Anglo-Irish Secretariat as a formal conduit for consultation and notification obligations, but would concentrate on supporting the Council and providing fast reciprocal channels of communication.

31. The rationale for such an approach would be that the blurring of the boundary between transferred and non-transferred matters so far as the remit of the Council was concerned would not do any damage because the Council would be purely consultative and none of the three relevant administrations would have any operational obligations in relation to it. There is clearly a danger that such a Council would degenerate into a mere talking shop. But this need not happen. For instance, the Council might be able to commission studies and make recommendations to each of the three relevant administrations as well as merely asking questions or putting points.

32. One advantage of an approach along these lines would be that, to the extent to which the Council provided a consultative forum, there would be greater reciprocity of consultation rights than under Model I or under the proposals in the 4 June paper.

33. Full reciprocity could be achieved only by widening the remit of the Council so that there was no particular focus on Northern Ireland, and all relevant GB, NI and ROI matters were within its scope on an equal footing. It seems questionable whether a Council with a wider remit of this sort would serve a

CONFIDENTIAL

SC/SIL/21485

- 65 -

CONFIDENTIAL

useful practical as distinct from presentational purpose. This paper assumes that HMG's interest would continue to be to avoid such a broadening of the remit of the Council.

34. On the assumption that such a proposed Council would not place obligations on the administrations, and would not in practice therefore interfere with the operation of the distinction between transferred and non-transferred matters, it seems likely that separate bilateral contacts would need to operate between the UK and the ROI on the one hand and, on the other, between the ROI Government and a new NI administration to deal with matters where joint consideration or decisions were needed. On this model the arrangements for such contacts could be allowed to evolve. The fact that they would probably be needed is not of itself an argument against having a Consultative tripartite Council of the sort sketched out in the preceding paragraphs.

Other points

35. Neither of the two models sketched out above deals expressly with such matters as Summits between the Heads of Government, interparliamentary liaison, or attendance at interministerial fora by the Chief Constable and the Garda Commissioner. This is because it is assumed that none of these elements need have any structural implications for the two models proposed. On either model, Summits between the UK and Irish Prime Ministers could take place separately, as at present. Neither of the two models proposed above envisages a parliamentary tier: in both cases lines of political accountability would run back to Westminster, the Dail, and the Assembly respectively; and the assumption is that any arrangements for interparliamentary liaison along the lines of the BIIPB would sit alongside the proposed structures rather than cutting across them. Either model would permit attendance by the police chiefs at relevant sessions along the lines of their attendance at IGCs at present.

CONFIDENTIAL

SC/SIL/21485

- 66 -

CONFIDENTIAL

Assessment

36. This paper does not attempt a rigorous assessment of Model I or Model II, given the starting point that this is contingency planning for outcomes which we would not necessarily prefer on the merits. It does seem clear, however, that while Model II is on the face of it closer to what some of the parties may have in mind than Model I, it is also more problematic than Model I.

37. Model I in effect represents the 4 June paper proposals in more tripartite-looking garb. Model II is a political fudge. An attempt is made to make sense of it by watering down the consultation obligations. But this would probably be too much of a retreat for the Irish and SDLP from what the present IGC and Secretariat give them.

38. Model II with strong consultation obligations would present us with a dilemma: either consultation obligations would have to be extended into undesirable areas such as the Irish in Britain; or the lack of reciprocity would become even more glaring in a tripartite setting than it is now. The Irish might also (undesirably) seek to argue that all contacts should be through the Forum and Secretariat, including ordinary bi-lateral UK/ROI official contacts. And in a Model II with strong consultation obligations the blurring of the distinction between transferred and non-transferred matters would become more significant: for instance, representatives of the NI administration might be more likely to appeal to their UK counterparts about Irish criticism of their draft proposals. The Unionists in particular might seek to use Model II as a ratchet, perhaps even leading to a share in decision-taking outside the strictly transferred field.

39. Model I could be tilted more to meet Unionist concerns - for instance by

CONFIDENTIAL

SC/SIL/21485

- 67 -

CONFIDENTIAL

- placing greater weight on tripartite plenary meetings of the full Forum
- placing greater weight on meetings of the Forum in the third configuration envisaged in paragraph 24
- enabling the Forum also to meet in UK/NI only configuration. (Our preference would be to have separate arrangements for this.)

But these are all possibilities which could tend to re-inforce Unionist objectives of shielding behind or even capturing HMG while watering down the rights given by the 1985 Agreement to the Irish Government and the nationalists.

Summary

40. This paper has rehearsed the arguments which parties have reduced in Strand 2 so far for tripartite arrangements which might emerge from Strands 2 and 3, and has sketched out two broad possible ways of introducing a greater element of tripartism than is currently envisaged in the 4 June paper. The first such approach involves a Ministerial Forum which would normally meet only in separate transferred or non-transferred configuration. The second such approach envisages a tripartite Council with a purely consultative role. Certain variants have been noted, but it would be possible to devise other models. This paper does not advocate either of the two outlined models in preference to the proposals in the paper of 4 June, but simply seeks to highlight some of the issues we would need to look at if the current in favour of tripartism continues to flow strongly.

Talks Planning Unit
14 September 1992

CONFIDENTIAL

- 68 -

SC/SIL/21485

TRIPARTISM: DISCUSSION IN THE 4 JUNE PAPER

The paper of 4 June set out possible outcomes which HMG might wish to see from Strands 2 and 3.

2. In institutional terms it envisaged:

- institutionalised co-operation between Northern Ireland Ministers (or Committee Chairmen) and ROI Ministers in the form of a standing Forum or Council which might be serviced by a joint Secretariat. HMG would not necessarily have standing representation on the Council (although the paper recognised that there are arguments for as well as against a tripartite North/South Council). But there would need to be clear liaison arrangements between HMG and the Northern Ireland Government, and the ability to set up ad hoc tripartite meetings on transferred matters where desirable. For instance, there might be occasions when HMG, the Northern Ireland administration and the Republic of Ireland would need to discuss the handling in Brussels of matters where the interests of both parts of the island of Ireland would be better served if a joint approach could be worked out.

- A successor to the Intergovernmental Conference, which would be attended by relevant UK and Irish Ministers, and serviced by a separate Secretariat. There would, however, be scope for Northern Ireland Ministers or Committee Chairmen to attend certain sessions of the IGC in order to be consulted and debriefed by UK and ROI Ministers. This right could also extend to members of the Panel.

CONFIDENTIAL

- There would be an overarching agreement, which would make reference to the North/South Ministerial Forum, and also to arrangements for discussion between the UK and Irish Governments on bi-lateral matters not relating to Northern Ireland, but which would contain detailed provisions only for the successor to the Intergovernmental Conference.

3. The 4 June paper accordingly envisaged elements of tripartism in the successor to the IGC and the successor to the Agreement, but essential separation between the new North/South arrangements for dealing with transferred matters at the governmental level on the one hand and the successor to the IGC on the other.

4. Paragraphs 17-18 of the 4 June paper noted that there was a balance of arguments as to whether the proposed North/South Ministerial Council or Forum for dealing with transferred matters should be a tripartite body also involving UK Ministers. In practical terms, much would turn on whether HMG's own interests and responsibilities in the non-transferred field could be adequately catered for through means other than institutionalised involvement of the UK Government in the Forum (or Council) and Secretariat. There would be separate machinery for liaison between the new local administration in Northern Ireland and HMG over such matters as securing compliance with international obligations, the Secretary of State's responsibility for bidding for resources for the transferred as well as the non-transferred aspects of the governance of Northern Ireland, and securing compatibility of action as between the transferred and non-transferred areas. While responsibilities such as these would clearly entail the necessary channels of communication between HMG and the Northern Ireland administration, it is arguable whether standing tripartite arrangements would also be needed. The absence of such arrangements need not preclude ad hoc tripartite

CONFIDENTIAL

- 70 -

SC/SIL/21485

CONFIDENTIAL

discussion of matters in the transferred field where this seemed desirable.

5. One possible conclusion is that a combination of liaison arrangements between HMG and the Northern Ireland Government, and the ability to set up ad hoc tripartite meetings on transferred matters, would be sufficient. It is worth noting that in 1973 the Council of Ireland was envisaged on all sides as comprising representatives only of Northern Ireland and the Republic, although "with proper safeguards for the British Government's financial and other interests."

6. Another possible view is that HMG nevertheless does need to have some form of standing representation in any new North/South overall institutions, particularly in view of its interests in promoting overall strategies across the transferred and non-transferred fields - eg in relation to bringing terrorism to an end, and its ultimate responsibility for the EC aspects of transferred as well as non-transferred matters.

7. The North/South relationship will in a number of respects remain an unequal one, and one could arguably envisage circumstances, eg in the economic field, where HMG would want to reinforce the position being taken by the devolved administration in the interests of Northern Ireland as a continuing part of the United Kingdom.

8. Balanced against this is the desire to see new arrangements which function effectively, and help to build links between the two parts of the island of Ireland, without undue recourse to HMG as the arbiter for any difficulty which may arise. There has been evidence, particularly in the later discussions of the Strand 1 Sub-Committee, of a desire of the Unionists to bind the Secretary of State into a relationship with representatives of devolved institutions in a way which would make him to some degree their

CONFIDENTIAL

- 71 -

SC/SIL/21485

CONFIDENTIAL

prisoner (eg in the finance sphere). A requirement for UK Ministers to attend the new North/South Ministerial Forum or Council seems to be a part of that strategy. (So would any requirement for Northern Ireland Ministers or representatives to be standing members of any successor to the IGC, with attendance rights equal to those of UK and Irish Ministers. The 4 June paper did not recommend this, and such an approach would not be acceptable to either Government.)

CONFIDENTIAL

SC/SIL/21485

- 72 -