

The Alliance Party's Submissions to the Multi-Party Talks

December 1997

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Introduction to the Three-Stranded Process

Negotiations will take place in Three Strands

Strand One

Strand One covers relationships within Northern Ireland, including the relationship between any Northern Ireland institutions and the Westminster Parliament. Negotiations in Strand One are under the Chair of the British Government, and involve the British Government and the political parties.

Strand Two

Strand Two covers relationships within the island of Ireland. Negotiations within Strand Two involve both governments and the political parties.

Strand Three

Strand Three covers relationships between the British and Irish Governments. Negotiations within Strand Three primarily involve the British and Irish Governments, in consultation with the political parties.

Business Committee

The Business Committee schedules meetings and meets regularly to organise the structure and timetabling of the talks.

Subcommittee on Confidence Building Measures (CBM)

This subcommittee discusses potential confidence building measures by both the governments and the paramilitary organisations. Issues include prisoners, security presence, cultural and economic measures, targeting by paramilitaries, intimidation and the like.

Subcommittee on Decommissioning

This subcommittee discusses the theory and practice of decommissioning paramilitary arms and organisations.

The Alliance Team at Castle Buildings

Lord Alderdice	Party Leader and Chief Negotiator
Seamus Close	Deputy Leader, Negotiator and Member of Business Committee
Sean Neeson	Chief Whip, Negotiator and Member of Business Committee
Eileen Bell	Party Chair, Negotiator and Member of Decommissioning Subcommittee
Steve McBride	Negotiator, Member of Subcommittees on Decommissioning and Confidence Building Measures
Kieran McCarthy	Negotiator and Member of CBM Subcommittee
Sir Oliver Napier	Negotiator
Stephen Farry	Member of Decommissioning Subcommittee
Philip McGarry	Member of CBM Subcommittee
Dan McGuinness	Member of CBM Subcommittee

ALDI/2/6/11/2/52

The Alliance Analysis of the Problem

**presented to the multi-party talks on the future of Northern
Ireland held at Castle Buildings, October 1997**

There has never been a time when all the parties here present were around one table, and since the last set of substantive talks in 1992 only the leaderships of Alliance and the SDLP remain as the veterans of such negotiations. Since then our efforts have been bent more towards the establishment of All-Party Talks, than the exchange of views which is the content of such Talks. If we are to reach agreement over the next few months, then time is very short, and must not be wasted. But if we are to understand each other, we must, before moving rapidly to the structural issues, share our different analyses of the problem.

Alliance was born, in the aftermath of the outbreak of the present 'troubles', out of a commitment to build a fair and just society, and the starting point for an understanding of our analysis may be found in the statement of fundamental principles upon which the party was founded in April 1970.

These identify Alliance as a liberal party, committed to pluralism, tolerance, participatory democracy, respect for human rights, non-doctrinaire economic policies, and the necessity of an impartial but firm application of the rule of law.

The principles also identify the constitutional dispute as being at the root of all our most fundamental difficulties in creating a pluralist Northern Ireland, and affirm the view that it is for the people of Northern Ireland to determine their own future.

It was natural therefore that when the Joint Declaration was published by the British and Irish Governments on 15 December 1994, Alliance gave an immediate and fully supportive response. That declaration, in its rejection of violence as a legitimate political instrument, its affirmation of the imperative of respect for human rights, and its watershed commitment to the requirement of separate consent from the people of Ireland, North and South, is regarded by Alliance as an international expression of some of our most cherished views. We believe that these are also some of the central elements of the constitutional settlement which we are met to negotiate.

In presenting our analysis of the problem we would start by noting the very ancient nature of our feud. It is no new thing for the North to be the scene of struggle. Centuries before the Reformation brought its religious divisions, and long before England was England, and began its struggle for control of the islands, the legendary Cuchulainn was defending Ulster against Queen Maeve. In more reliable history we are informed that when Congal of Ulster was fighting with Domnal of Meath as far back as 637 AD, his support came from his friends in Scotland. This suggests that there has never been a simple unity of the people of Ireland, that the Northern people have long had a sense of separateness, and often felt closer to those who lived across the channel in Scotland, than they did to those in the South-West of the island. This is not strange for we usually build relationships with those who we meet most easily and frequently, and the stretch of water between Antrim and Galloway, has throughout history been as much a channel of communication, as a boundary. For this, and many other historical reasons, the people of the North, with their many different origins,

religious views, political affiliations, and cultural attachments, have always been seen as forming a community, though without entirely consistent geographical boundaries.

Superimposed on the natural development of this and other communities, there has been the historic struggle for control of land in this archipelago of islands. The people of England, for many centuries sought to extend their control to include all the islands. This was expressed politically in the Unionist, or British Nationalist view that all the people on these islands should form one nation state. It found its expression in the United Kingdom, though a full political integration, the aim of unionism, was never achieved. This British Nationalist view, and particularly the attempts to enforce it, often in most unjust and cruel ways, provoked a natural reaction, the development of a strong Irish Nationalism. This rebelled against British Nationalism by expressing the view that it was not the people of the islands, but the people of Ireland, that should form a nation state. A whole mythology was created to support this view, and the real historic divisions of origin, religious affiliation, political conviction, and cultural diversity, were submerged in the struggle to create a separate Irish Republic, characterised by Gaelic culture, and Roman Catholic practice. These struggles are not unique. The fight for control of land, even between siblings, is a common feature of life, no less in rural Ireland than elsewhere and those who devote themselves to striving for control of land or property often acquire them at the cost of good relationships. Excessive pressure on one side, usually produces an equal and opposite reaction, and such rivals often find themselves forced into taking up a particular position, simply in contrast to their opponent.

Thirdly, the drive to create a nation state is a strong one. It is an attempt to include within certain borders as many of 'my people' as possible, while keeping 'the others' outside. This may arise whether or not there is an apparently natural geographical boundary, as in an island like ours. The up-side of such an ambition is the group cohesion it creates. The down-side of such nationalism is the powerful tendency to homogenize society and disregard the welfare of dissidents, and contribution of minority groups.

It is our view that the struggle between British and Irish Nationalisms for control, has tended to polarize our people, and to diminish the opportunity to recognize that many of us in this island do not wish to identify ourselves exclusively or even primarily, with a British, Protestant, monarchical ethos, nor with a Gaelic, Roman Catholic, republican ethos. We come from many different roots, with diverse faiths, conflicting political creeds and rich cultural variety. The political task which lies ahead is for us to create structures which facilitate the expression and exchange of this rich diversity. To institutionalize the divisions in our community would be failure. We must recognize them, and then seek to overcome them.

This by definition requires something much less tidy than the exclusivist propositions designed to give expression to Irish Unity, or a simple United Kingdom, or even the apparently more progressive jointery which sees a solution in terms of parity of esteem for only these two views.

We have earlier mentioned the principles of the Joint Declaration of 1993, and in our view these provide an excellent basis for progress. When combined with the widely accepted three sets of relationships upon which in recent years talks have been based, a useful map emerges.

Firstly, it is for the people of Northern Ireland to find a way of living together, and deciding their own constitutional future. That we in Northern Ireland are divided on this is clear, so some other principles must be outlined to assist us in reaching agreement. Violence must not be regarded as a legitimate political instrument, and it is an enormous help in the search for a settlement that the use of terrorism has been set aside by both sides. It is also of central importance that the rights of every individual must be respected and the contributions of all minorities must be welcomed, facilitated and valued.

Whilst the people of Northern Ireland are more than likely to decide, for economic, social, historical and other reasons to remain for the foreseeable future within the United Kingdom, the significance of our shared island home cannot continue to be minimized. The economic, environmental and social imperatives of co-operation can only be ignored at great cost to all of us. Structures within Northern Ireland should have institutional opportunities to work alongside the political arrangements in the Republic of Ireland. These institutions should express the realities of our relationships, rather than a forced political agenda, so some may have more responsibilities than others, some may extend to the whole island, and others to this part or that. In all we should be striving to help relationships grow, rather than force our people into fulfilling the requirements of a political creed.

Thirdly, the British and Irish Governments must deepen their mutual respect through constitutional recognition. It would be counter-productive if the Irish Government sees it as important only to address the sensitivities of Nationalists in the North, and the British Government is only really concerned about Northern Unionists. Both Governments must be sensitive to the anxieties and aspirations of all sections of the people of Northern Ireland, and divorce themselves from any temptation to use partisanship as a card to be played in their own domestic politics, now or in the future.

Finally, we must all be prepared to pay a price for peace. An honourable compromise will require each giving up elements of political control. London, Dublin, and our divided people must understand that there will not be mutual satisfaction, without significant sacrifice, but surely after all this time, we have begun to realize, the cost of failure, and to appreciate that the prize of peace, is worth the price of peace.

ALDI/2/6/11/2/57

ALDI / 2 / 6 / 11 / 2 / 52

The Principles And Realities Of A Settlement

An Alliance Paper

13 October 1997

The Principles And Realities Of A Settlement

In our initial presentation of the Alliance Analysis of the Problem and its origins we outlined some fundamental principles which inform our approach. These principles express very concisely what are, for us, the minimum necessary requirements for a solution to our difficulties.

Detailed structural proposals will be put at a later stage, but at this point, in examining the principles and realities we will refer in outline to some structural elements, in order to give life and meaning to the description of what we hold to be the most important principles and realities.

A Community Government

Our first principle expressed the conviction that, despite the obvious divisions, the people of Northern Ireland form a community. Like any other such community, these *people have the right to determine their own future, and participate directly in their own governance*. For this reason it is very strongly our view that a provincial or regional government is necessary, to provide a common focus of identity, and an opportunity to share in self-government. This is not an exclusively Northern Ireland requirement, but is being recognised increasingly throughout Europe where regional government is the norm. More recently the people of Scotland and Wales, when given the opportunity, have expressed their desire to have regional government, and the enabling legislation will soon begin its route through parliament. The taking of responsibility through self-government is a positive and enabling principle.

On the more negative side, uncertainty and ambiguity provoke anxiety and give encouragement to those who thrive on fear. Any settlement must therefore *remove negative uncertainties*. The acknowledgement by the two governments of the *principle of consent* is a clear statement of the right of the Northern Ireland community to self-determination, and a tacit acknowledgement that the present wish of that community as a whole is to remain within the United Kingdom. This principle must also be enshrined in any settlement, and, since it has been a fundamental matter of dispute, it must form part of fundamental law in all the jurisdictions which participate in these talks. Fear thrives not only on uncertainty, but also on ignorance, confusion, and unnecessary complexity. *Openness and transparency*, are the enemies of the fears fed by ignorance and confusion. These must also be key principles in the establishing of any settlement, and indeed of this Talk Process.

Given that there are, as in every community, different identities, and particularly since at least some of these distinctions have, in Northern Ireland, been pushed to the point of division, it is necessary to create common institutions and instruments of government *in which all can participate and with which all can identify*. We take the view that an elected assembly, with legislative as well as executive functions in an extensive range of areas (giving significant socio-economic autonomy), including relationships with the Republic of Ireland is the minimum necessary to provide this unifying factor. *It would be Profoundly counter-productive if in the construction of*

such structures the very divisions which they were established to heal were institutionalised by the forms of protection they used. For this reason setting out two separate sets of mirroring rights, with parity of esteem between only two traditions, and insisting on always dividing people into Protestant and Catholic, and unionist and nationalist (and assuming also that these divisions are contiguous), would not be a healing of the divisions but an institutionalising of them. Instead we should recognise one set of rights that applies to everyone, one community with a number of rich, overlapping strands of culture and tradition, and recognition of an inclusive pluralism of religious and political thought and adherence which does not marginalize the partners and children of mixed marriages, the values of integrated education, and interdenominational religious activities, and political liberals who do not espouse nationalism or one kind or another. Everyone must be able to be confident of equality of treatment.

Everyone Involved And Protected

This naturally leads to our second fundamental Alliance principle. This presented our primary objective to be the protection and the valuing of minorities.

There are a number of ways in which this can be achieved.

Firstly, of course, all elected representatives can press the case for their people on the floor of an assembly, or in committees. All elections to a regional assembly, and to the membership and chairmanship of any committees of such an assembly must be on a proportionate basis so that all are treated equally fairly.

The prospect of being involved in government must be open to any democratic politician from any part of the community. In many societies including, one could argue, the rest of the United Kingdom and the Republic of Ireland, the expedient of the 'simple majority' creates the prospect of changing the government. This is the principle upon which the Westminster system was constructed, right down to the arrangement of seating in the House of Commons, (though not of course the House of Lords where there is a significant cross-bench component). Much of this system was adopted by the Republic of Ireland. In Northern Ireland during the period 1922-1972, the Westminster-based system created not one single change in the political profile of government. Elections were in that sense so meaningless that on occasions they were not even contested in some seats. In order to ensure that elections are meaningful such arrangements must be modified. Modifications such as weighted majorities have been mentioned in this regard, and we believe that, applied in the formation of the government and in the passage of legislation, could fulfil the necessary requirements.

All of these proposals deal with the positive aspect of *involvement of minorities* (and majorities), but there is also a need for protections. The best machinery would be the establishment, entrenchment and enforcement of *a Bill of Rights*, justiciable through our own courts. Further political protection of groups could be achieved by the creation of a Political Right of Appeal, whereby a certain proportion of members of the assembly could appeal to a separate authority for arbitration.

The Rule Of Law

The third of the fundamental principles set out in the Alliance founding document in 1970 begins as follows: "We firmly believe that without universal respect for the law of the land and the authorities appointed to enforce it, there can be no measurable progress..... We believe that this is not only a self-evident principle, but also one which commands widespread support in all sections of the community. The major problem remains, how to achieve such respect.

Some of the requirements mentioned above will help, but it is also necessary to deal directly with the control and execution of justice and security policy. This is a matter of such extreme contention that in earlier times Alliance has in the past regarded it with especial caution, however it is clear that a significant input into security policy is necessary for the self-respect, and community respect of a regional administration.

Many other aspects of the administration of justice, (for example prisons, probation service, law reform etc.), could usefully be considered in a regional context and we would wish to fully explore the possibilities.

The principle requirement may again be stated thus:

There is no future for the Northern Ireland community, no security for any family or individual, and no prospect of economic improvement without respect for the Rule of Law. *At every level those who take positions of responsibility and represent all strands in our community, must have, and must exercise, confidence in the law and in those who administer it.*

The Totality Of Relations

In these talks we have to consider the requirements of relations with the rest of the United Kingdom (strand 1), the Republic of Ireland (largely strand 2), between the United Kingdom and the Republic of Ireland (strand 3), and the rest of the European Community (strand 1/2/3). We have already stated that there is a contribution to be made, and a price to be paid for peace in our community, by those who live outside of Northern Ireland. The principles upon which such relationships should be established like those of any Northern Ireland structures are those of partnership, workability, democratic accountability, and subsidiarity. What are some of the practical requirements which these principles might suggest?

In relation with the rest of the United Kingdom, we would accept that there could usefully be some clarification of the lines of communications, the channels of influence, and the levels of accountability, between a new provincial/regional government and the sovereign government, and between the Westminster MPs elected from Northern Ireland, and the elected representatives of an assembly. The emergence of differing regional institutions in Scotland and Wales, and probably in London and elsewhere, will ensure that this element of our discussions may be usefully informed by the experience of others.

Relations with the Government of the Republic of Ireland will require changes to Articles 2 & 3 of the constitution of the Republic, but given that prospect we would see it as important that a direct, standing, North/South, government to government relationship, be established, and exemplified by joint commissions on areas of shared practical interest, e.g. agriculture, energy, tourism etc.

We have previously expressed the view that the totality of relations could usefully be fostered by the 'replacement' of the present bilateral Anglo-Irish Conference with a tripartite council, and an associated tripartite back-bench parliamentary tier, building on the present bilateral inter-parliamentary body. We still view these as necessary developments.

The growth and development of the European Union, convince us that it is vital that we are able grasp the opportunities offered by this broader framework. To see ourselves as all living within a larger border, rather than living on either sides of various geographical and political dividing lines, opens up the prospect of an increasing sense of shared experience. The economic necessity of representing our people will also help to bind us together as a Northern Ireland community, as has already been seen by the joint activities of the three MEPs. We could learn from the experience of other Europeans who have regional administrations, and who have had to explore their relationships with each other, with the governments of the EU member-states, and with the European institutions. We regard as necessary the elaboration of a direct role for a new assembly and executive, through a Brussels Office, in representations and negotiations with the European Union structures.

Permanence And Stability

After so many years, and indeed generations of violence and instability our people long for a settled peace. The *permanence and stability* of any agreed outcome will be considerably enhanced by its direct endorsement by the people, but if it is to survive the heady endorsement of a referendum, it must also be *workable* in practice, carry out the business of political life in an *efficient and effective* manner, and not be dependent on any particular electoral outcome or inter-party deal.

Clearly the people of Northern Ireland have a primary interest in these issues, but the people of the Republic of Ireland also have a very real interest, and in any case they must express their view positively in a referendum, if there is to be any change, as we maintain there must be, in Articles 2 & 3 of the Republic's constitution. The construction of such a test of public opinion is not a simple matter and will require a good deal of thought and discussion.

All political structures and societies are, in the nature of things, temporal, and must have *the capacity to change, grow and develop*. These capacities must be part of any new settlement. Any such capacity must of course be governed, by the other principles of consent, democratic accountability, transparency, and so on.

ALD1/2/6/11/2/63

ALDI/2/6/11/2/64

Constitutional Issues

**An Alliance submission to the multi-party talks, relevant to
all three strands**

Constitutional Issues

It is particularly difficult to cleanly divide constitutional issues between the strands: we will accordingly be presenting a single paper on constitutional issues in Strand 1 and 2.

The constitutional status of Northern Ireland and the principle of consent

Northern Ireland is part of the United Kingdom and is so because that is the choice of a clear majority of its citizens. Recognition of those facts, and of the fundamental principle that it is for the people of Northern Ireland to decide their own future - is the essential cornerstone for a successful outcome to this process.

We welcome the support for the principle of consent set out by both governments in the Downing Street Declaration and other subsequent documents. The embodiment of that principle in the constitutions of both jurisdictions would do much to remove the basis for distrust and provide a sure foundation for the development of positive relationships on all sides.

The relevance of on-going constitutional change in the UK

Devolution by its nature merits different arrangements in different areas to take account of local needs. Nevertheless in devising a satisfactory scheme of devolution for Northern Ireland it will be necessary to have regard for the emerging schemes for devolution in Scotland and Wales.

The entrenchment of arrangements and protections

It will be necessary to ensure the effective entrenchment of those features included in new arrangements which are perceived as being particularly necessary for the protection of rights or of the needs and concerns of particular groups.

The protection of human rights

The clear, effective and entrenched protection of human rights is an essential element of any new arrangements. The incorporation of the European Convention on Human Rights in domestic law as proposed by the present British Government would be a very important step in that direction. A similar incorporation by the Irish government would be another positive step, creating an unbreakable framework of shared protection of fundamental rights.

The Irish Constitution

Articles 2 and 3 of the Irish Constitution are unclear and unsatisfactory and take no account of the wishes of the people of Northern Ireland. They should be amended so as to clearly embrace the principle of consent. Other aspects of the Irish constitution should be examined with a view to ringing about a constitution which more appropriately reflects the realities and diversities of modern Ireland.

The alignment of the two constitutions

Given the importance of removing doubt and establishing new arrangements on a firm foundation it would be valuable to incorporate the principle of consent in the same terms in the Irish Constitution and in an appropriately entrenched form of British legislation.

ALD1/2/6/11/2/67

ALDI / 2/6/11/2/68

A NEW SYSTEM OF GOVERNMENT FOR NORTHERN IRELAND

An Alliance Paper relevant to Strand One of the multi-party talks

27 October 1997

A NEW SYSTEM OF GOVERNMENT FOR NORTHERN IRELAND

These negotiations have been established in three strands, dealing with resolving the problems of relationships, amongst the people who live in Northern Ireland, between those who live in Northern Ireland and in the Republic of Ireland, and between the people represented by the British and Irish Governments. We all recognise that these three sets of relationships are part of a complex system, that they cannot be hermetically sealed from each other, and that institutional proposals in one strand will have implications and requirements for other strands.

This paper outlines the Alliance proposals for the return of greater democracy and the restoration of legislative and executive responsibility to the elected representatives of the people of Northern Ireland. It is based on our principles and our analysis of the problem.

We are strongly of the view that a single provincial Assembly and Government (or Executive) is necessary to provide a common focus of identification and an opportunity for our people and their elected representatives to share, and to be seen to share, in self Government.

The starting point is the institutional framework.

THE LEGISLATURE

In order to be consistent with the principles of democracy and democratic accountability, to avoid entrenchment of our divisions, and to give all democratic parties a role, whilst being as straightforward, transparent and effective as possible, we favour the election of a single chamber Assembly, as the central element in any new arrangements. Northern Ireland has a relatively small territory and population, and in our view it is better to limit the size and number of institutions to what is essential. (We do not entirely rule out a second chamber for balancing purposes.)

The Assembly we envisage would consist of 5 or 6 members for each of the 18 Northern Ireland Westminster constituencies, elected by the single transferable vote system of proportional representation for a fixed term of 4 years. The use of the STV (1,2,3) system is important. It is familiar to Northern Ireland electors and provides a reflection of the range of opinion within an area, while ensuring that electors have a choice of locally elected representatives with whom they can relate. It also encourages people to look across the familiar divides in our community, rather than be trapped within them.

POWERS

In what follows, when we talk about powers, we mean full executive (to decide on and execute policy) and legislative (to make laws) responsibility for the subject concerned.

The powers of the Assembly may be defined by reference to a three tier categorisation.

The first tier are the "excepted matters" in relation to which powers would permanently stay at Westminster. Matters in this category would mainly be those of national rather than regional concern, for example defence, but in addition we would envisage that certain sensitive subjects, for reasons of constitutional propriety, would also be retained, for example electoral law and the appointment of Supreme Court judges.

The second tier are the "reserved matters" in relation to which legal power would for the time being stay at Westminster. We would hope that this category would be very limited.

The third tier of powers are the "transferred matters", in relation to which the Assembly would have legal power devolved to it by Westminster. The transferred matters would be all those remaining after "excepted" and "reserved" matters are subtracted. In our view the transferred matters should be as wide a possible and certainly no less than those transferred in 1973. The most obvious matters to be transferred would be agriculture, health and social services, education, the environment, economic development, and finance. In addition we see a strong case for transferring responsibility over a substantial part of the administration of justice system, such as prisons, probation services, victim support and law reform, and indeed some or all of policing. The Assembly should also have some powers in respect of taxation (see under Finance below).

Finally, in dealing with the Assembly's powers, we think that the Assembly should have an advisory role in relation to matters affecting Northern Ireland but which are not transferred. Thus the Assembly, where appropriate, could discuss reserved and excepted matters and offer opinions, even though the legal power rests elsewhere.

SCRUTINY ROLE

It is clear to us that policy formulation and the execution of the day to day business of administration will need to be undertaken by a smaller body, in effect an Executive, answerable to the Assembly. Our proposals on the method by which the executive authority is formed will be described later but what is relevant to say now is that the role we envisage for the Assembly in relation to the Executive is a scrutinising, and deliberative one. Accordingly we have given our attention to the means which ought to be provided to enable the Assembly to fulfil this role.

Of course in this context the Assembly through establishing its Standing Orders will have its own contribution to make, but for our part we see advantage in the provision of back-bench Assembly committees for each of the main areas of regional government, performing both what

at Westminster would be select and standing committee functions. This would mean that for example the Environment Scrutiny Committee would have power to launch inquisitorial investigations (including the taking of evidence) into the policies and activities of the Department of the Environment and report to the Assembly (the Westminster select committee role). It would also have the power, where the Assembly refers primary legislation relating to the Environment to it, to conduct a "committee stage" type debate on that legislation and report to the Assembly (the Westminster standing committee role). In fact we foresee that the committees, when dealing with legislation, would be likely to use both the tools of evidence taking and debating of amendments within the committee in order to produce a single report on the proposed measure for the Assembly.

The composition of back-bench scrutiny committees should reflect, so far as practicable, the balance of the parties in the Assembly, as should the chairmen (and any deputy chairmen) of the committees taken as a whole.

In addition to the committee structure set out above we consider that the Assembly would be at liberty to establish such other committees as it so chooses but we think that the composition of such committees should, by law, be governed by the proportional formulation stated in the last paragraph.

Apart from scrutiny through the committee structure we would expect the Assembly to establish procedures to enable all members to ask questions of those exercising executive power. Furthermore we would expect a Business Committee or usual channels system to regulate Assembly business.

FINANCE

The financial arrangements under which the Assembly will operate are plainly of considerable importance. Perhaps the central question which has to be addressed in this sphere is whether the method of financing provided ought to be revenue or expenditure based. Under a revenue based system the subordinate government is given certain predetermined sources of revenue and has to finance the devolved services out of the proceeds. Under an expenditure based system, expenditure requirements are measured first and the subordinate government is then furnished with the income necessary to meet them. The Government of Ireland Act 1920 used the former system. The Northern Ireland Constitution Act 1973 used the latter system. It is not in doubt that the 1920 Act system was a failure in this area and we are sceptical about the proposition that it would be possible in a devolved system for Northern Ireland institutions to finance themselves while at the same time maintaining comparable standards of services to those provided in Great Britain. Accordingly we favour an expenditure based system because it would best assure the population of a high standard of services.

But should the devolved administration be able to increase local revenues to finance expenditure over and above what would be sufficient to ensure that General parity of services or potential parity is maintained?

We consider that provided the benefit of additional tax effort exerted within Northern Ireland (and this does not necessarily follow), then attention should be given to results in actual additional expenditure capacity for the devolved government the possibilities of giving power to the devolved Government to raise supplementary or alternative taxes. As an absolute minimum this must include those tax raising powers currently used to raise the Regional Rate, and which refer to expenditure in areas formerly in the remit of Local Government, but now directly under Departmental operation. An alternative method of revenue raising could then be considered by the provincial government, though we would not of course propose the 'community charge'. A Local Income Tax would be a credible alternative.

We do not say that these powers have to be used, but while preserving the maximum area of financial discretion and autonomy for the devolved administration within an overall expenditure based system, we think the facility to deviate, in the manner described, from national norms, ought to exist, and that the Assembly should have the discretion to decide on alternatives.

We also take the view that there ought to be an opportunity for the regional administration to make direct links with the European Community, especially in financial matters. This would help to deal with the long-standing concern over additionality.

COMPOSING THE EXECUTIVE

Composing an Executive within a devolved system has been the most intractable of political problems in Northern Ireland in the last 20 years. Simple application of Westminster principles in this area, by turning the clock back to the Stormont system, would be unacceptable and undesirable. It would in practice mean that the representatives of minorities would be excluded from participation in the decision making process. It must be recalled that the political parties which represent the interests of the minorities cannot realistically so broaden their appeal as to expect to win office outright by way of any future election, at least in the short to medium term. Likewise it would not be sensible to court failure by reviving proposals in this area which have failed or which can no longer be regarded as satisfactory in view of changed political conditions. But in this area of debate above all it is an illusion to think that the proverbial rabbit can be plucked out of the hat, while maintaining the principles of democracy. What we have tried to do therefore is to build a proposal based on the central reality that provision must be made to enable the representatives of this divided community to participate together in executive decision making, and to encourage the working out of arrangements and shared policies amongst those taking part.

We have indicated earlier that we envisage an Executive which would be drawn from, and be answerable to the Assembly. That Executive would make decisions on the basis of collective responsibility and would be founded on the agreement of participating parties representing between them a significant cross-section of the Assembly and the wider community. In practice this would require the support of a weighted majority of at least 67% in the Assembly. The mechanism by which the Executive takes office should be by appointment by the Secretary of

State. S/he would be required by law to act strictly in accordance with a set of criteria. These criteria would be designed to ensure certainty regarding the central principles underlying the appointments to be made, and, on the other hand, flexibility in their application so that, as far as possible, the machinery established can respond to events and does not immediately collapse upon encountering difficulty.

The formulation we suggest is that, following inter-party talks to determine the preparedness of parties to participate in a future Executive, the Secretary of State would have the power to make appointments and transfer power to an Executive if s/he is satisfied, after conducting all necessary consultations, that an Executive can be formed which:

- (a) is widely representative of the community as a whole; **and**
- (b) reflects, so far as practicable and subject to (c) below, the balance of the parties in the Assembly; **and**
- (c) includes no person who supports the use of violence for political ends.

If the Secretary of State is satisfied about these matters s/he may go ahead and appoint and give power to the Executive. That would complete his/her involvement in the matter and the Executive's existence would then depend on its acceptability to the Assembly.

Where the Executive appointed failed to command acceptability in the Assembly or later became unacceptable then provision would have to be made for the Executive to act merely on a caretaker basis to enable political discussions to go on without direct rule being re-invoked, and for direct rule to be invoked at length only if the system has irretrievably broken down. However if the system works as we envisage, the Secretary of State would be likely only to appoint an Executive which would be acceptable to the Assembly. Thus the most likely problems would be either, that there would be no consensus for the first appointment, or that because of changing political circumstances, the Executive became unacceptable. In all events where the system has failed to function the Secretary of State ought to have power to cause a fresh election to the Assembly to be held so as to give the population an opportunity to break whatever log-jam has developed.

Where casual vacancies to the Executive have to be filled, the same criteria as before would apply to any appointment to the Executive by the Secretary of State.

The allocation of portfolios within the Executive would be a matter for the Executive itself. Likewise, within the context of the acceptability requirement, it would be for the Executive and Assembly together to establish a suitable conventional framework to regulate their own relationships.

We would expect that the Secretary of State would consult with the Executive on non-transferred matters.

ACCEPTABILITY

It is of crucial importance that the system by which executive power is exercised is broadly acceptable to the Assembly as a whole. We say this because in the divided society which is Northern Ireland there is a particular sensitivity in this area. There has been a history of abuse of executive power within the province, and many people fear a repeat of this. Moreover since the question of who shall exercise executive power has been the subject of lengthy and unproductive debate over the years, the issue carries a symbolic significance which cannot be ignored.

Hence our aim is to provide a system sustained by the broadest possible consensus and to this end we consider that a mechanism for testing that consensus would be of value. What we would seek to test is the level of acceptability (not support) for the Executive. We think that the Executive should be required to submit itself to the Assembly so that its acceptability can be tested. Thereafter acceptability can be tested upon a resolution supported by at least 15 per cent of Assembly members not more than once in a parliamentary year.

In our view in order for the acceptability motion to be carried it must be supported by at least 67 per cent of the members of the Assembly. We consider it right that there be a requirement for a weighted majority and we have adopted the figure of 67 per cent as it is a figure which requires a substantial level of acceptability across the community.

We consider that an Executive composed as we have suggested and accepted by the Assembly as required above, would command the confidence of the great bulk of the community. Now there will be those who will say that the acceptability hurdle is too high or too cumbersome. Our answer to these criticisms is that special provisions such as the acceptability requirement are a response to actual difficulties which exist in Northern Ireland and which in the past have prevented devolved government being restored because people could not identify within the system sufficient guarantees of their political security. The system is designed to be scrupulously fair in order to allay fears and encourage participation by all. We think that to do less than we propose would be to leave too much to chance and that the better approach is to state clearly the acceptability target which must be achieved. Of course we would like to think that the need for such a special provisions would diminish as the system of devolution takes root and obtains public confidence. But the need is there now and hence we have catered for it.

CONSTITUTIONAL PROTECTIONS

The Party has in the past offered the view that in addition to proposals designed to provide a fair and acceptable scheme of devolved regional government, there was need to give improved constitutional protections for the individual.

We consider that this approach is as important today as ever it was, and we wish to record our support for the incorporation of the European Convention on Human Rights into the domestic law of Northern Ireland, justiciable in the ordinary courts, effectively giving our citizens the protection of a Bill of Rights.

Similarly we propose that a Political Right of Appeal available to a sizeable aggrieved minority in the Assembly, could usefully be included in any legislation establishing regional government. In essence the aggrieved minority, which in numerical terms would have to be 30% of the Assembly members, would have the right to lodge an appeal against a political decision of the majority and the effect of doing so would be that the matter would be considered again by the Westminster Government or other appropriate body within a specified time.

We have already proposed that the executive would require to have the support of a weighted majority in the Assembly. Similar weighted majorities might be required for particular decisions of the Assembly such as the election of a Speaker, the passing of a budget, or the passing of particularly significant legislation. Further consideration would have to be given to determining which decisions of the Assembly would require such weighted majorities, bearing in mind the danger of making the institution unworkable.

SUMMARY OF MAIN ALLIANCE PROPOSALS

A New Northern Ireland Assembly

The transfer of power over Health & Social Services, Education, Agriculture and Environment, Economy, Finance, and Justice, etc. to a new Assembly, which would have a consultative role on non-transferred matters,

because such a regional government provides the right framework for all the citizens to work together.

Partnership Executive

A partnership Executive based on the strength of Assembly Parties which wish to participate,

because we must all work and build together at the highest level of regional government.

Test of Acceptability

A test of acceptability of the Executive with a weighted majority requirement in the new Assembly,

because any new administration must be widely accepted if it is to work.

Committee Structure

A back-bench committee structure with membership and chairmanship based on the proportionate strength of parties in the Assembly,

because there must be effective participation in the scrutinising of the operation of the Executive.

Constitutional Safeguards

Strengthening the already existing protections of individuals and minorities by both a Bill of Rights, and also a Political Right of Appeal for aggrieved minorities, which would require 30% support within the Assembly,

because all citizens must be confident that their essential rights will be protected.

AD01/2/6/11/2/77

AZD1/2/6/11/2/178

A New System Of North-South Relations

**An Alliance Paper to Strands Two and Three of the
multi-party talks**

27 October 1997

A New System Of North-South Relations

Our proposals for arrangements for North-South co-operation are necessarily based on our views on constitutional issues, already set out in a previous paper, and on our thinking, on Strand 1 issues, in which we envisage a responsibility-sharing Northern Ireland Assembly with a wide range of powers, as the key element.

It is difficult to proceed far in identifying any possible Strand 2 structures without establishing a degree of clarity about Strand 1 structures, because any effective North-South co-operation will have to be based on those structures, and on the structures of governance in the Irish Republic. We find it difficult to envisage effective co-operation between institutions which are not at least broadly similar in their shape and scope.

The central issue for us in any North-South arrangements is democratic accountability. Any cross-border institutions must be based on, and answerable to, democratic structures in Northern Ireland and in the Republic of Ireland, notwithstanding the differences between a devolved government and a sovereign government. Without democratic accountability any such arrangements would be liable to generate suspicion, distrust and resentment, and only on one side of the border. Arrangements in both Strand 1 and Strand 2 must therefore be such as to provide a proper role for all elected parties who wish to take part, and are prepared to shoulder their responsibilities.

Tripartite Council

Given the wider context within which North-South co-operation would take place, and given that very significant powers, notably in defence, customs and excise, international relations, and in some wider economic matters, would remain primarily the responsibility of the Westminster parliament and the British government, we would propose that there should be a tripartite structure involving the British government, the Irish government, and a new Northern Ireland administration, to ensure consultation and co-operation on matters of common concern. This would replace, or extend the current Inter-Governmental Conference. An expanded inter-parliamentary body, involving representatives from Westminster, the Northern Ireland Assembly, and the Dail, and building upon the current Inter-Parliamentary body should also be part of this wider framework.

North-South Structures

Any new North-South structures should operate within the context of that broader framework, so as to maximise communication and co-operation, but North-South elements of the conference would meet separately on matters which were particularly within the remit of the Northern and Southern administrations.

North-South institutions would involve, at different levels, those exercising executive responsibility in the two jurisdictions, civil servants, and inter-parliamentary contacts, and would promote consultation, co-operation and even, where appropriate and agreeable to both sides, harmonisation in respect of particular areas falling within the competence of the Northern Ireland Assembly and the Dail.

Areas particularly suitable for co-operation might include economic development, tourism, agriculture, environmental protection, health care especially in border areas, and in respect of high specialist equipment or techniques and training, and cultural and sporting- affairs. Different areas of co-operation might require different institutional arrangements and mechanisms, for example, work referring only to border areas co-operation, or the development of a Belfast-Dublin economic corridor, need not be all-island in their remit.

Areas such as animal health, anti-drugs programmes and other areas of preventative health may be suitable for consideration of harmonisation of standards.

Other important areas, notably EC affairs and the development of border areas might also require cross-departmental arrangements within, as well as between, North and South. In all areas the reality of the benefits of North-South co-operation need to live alongside the other reality of North-South competition, not least in areas such as tourism and inward investment.

Formal Structures

In any event some wider co-ordinating structure will be needed to ensure co-ordination and to ensure the widest practical involvement and support from the Northern Ireland Assembly.

Meetings should be on a regular basis, between the co-ordinating body, respective Heads of Department or Ministers, or inter-departmental Committees as appropriate.

Such structures would provide for consultation and the exchange of information, and practical, for the development of common strategies and programmes.

Civil servants from each Jurisdiction could provide back-up in the form of research, and recommendations.

Any decision could only be on the basis of full agreement, and would be implemented separately in each jurisdiction by the relevant Head of Department or Minister after appropriate consultations.

There could be a permanent secretariat in which officials from each jurisdiction would be represented, remaining answerable to their respective jurisdictions.

While the most fruitful areas of co-operation would clearly be those kinds of areas over which the Northern Ireland Assembly would have direct powers, consultation and discussion might usefully cover much wider areas, such as Irish Government policy in various fields.

Structures of the kind suggested here should be capable of flexibility and development. The essential governing features must be the establishment of goodwill, co-operation, mutual respect and, eventually, trust.

AZDI 1/2/6/11/2/82

Justice and Human Rights

Strand 1,2 and 3: Alliance Party submission

Justice and human rights issues are of most immediate relevance to Strand 1 of these talks but also raise significant questions which are also relevant to other strands. Accordingly this paper primarily addresses Strand 1 matters but refers to relevant aspects of other strands where appropriate. It is naturally based on the Alliance Strand 1 proposal of an elected Assembly with a cross community executive drawn supported by the Assembly on the basis of a weighted majority vote.

Principles

Justice and human rights issues are clearly central to these talks and to the success of any agreement reached here. They impact on all sections of the community, where individuals, irrespective of background want to live their lives free from the fear of crime and violence, free from the fear of discrimination, and free from the fear of undue interference by the authorities. It is essential that any new institutions emerging from these Talks should be seen to uphold the highest standards of justice and to comply with internationally recognised standards. It is also important that such institutions should enjoy the widest possible support and respect throughout the community, and that those who have the task of upholding the rule of law have the full support of public representatives.

A Department of Justice

It is clearly necessary to achieve the widest possible sense of 'ownership' in respect of policing and justice structures and the fullest public engagement in shaping the priorities of such institutions. It is equally essential that the police and the courts are clearly seen to be independent, impartial, and free from political interference. In order to meet the need for public and political engagement with the administration of justice we believe that there is a strong case for the creation of a department of Justice, with a minister and an associated Assembly Committee, as part of any new Northern Ireland arrangements. Such a Department could have a substantial legislative and policy making role in respect of, ordinary criminal law and sentencing, criminal compensation, victim support, prisons, probation, legal aid, the court service, the legal professions, and civil law reform.

The Department and Committee might also have a remit in respect of wider human rights obligations and issues. It would not have any role in operational policing matters but it should receive Annual Reports from the Chief Constable and should be involved in shaping policing priorities through the approval of an Annual Policing Plan submitted by the Chief Constable.

This proposal may seem radical to some. We see it as a challenging but necessary step towards bringing about the important goal of a broadly agreed approach to policing and justice matters.

Security

We would not envisage substantial authority over security and anti-terrorist matters being devolved at an early stage, but it would be essential that the Executive would have a significant role in shaping security policy. That could be facilitated by regular contact on security matters between HMG and the Secretary of State on the one hand and a Northern Ireland Executive on the other.

Given the shared interest of all three jurisdictions in combating terrorism, which is of course a cross-border, indeed an international phenomenon, we would also see security as being a matter which should be within the remit of the tri-partite body we have already proposed in our Strand2/3 paper, involving the two governments and the Northern Ireland Executive.

Cross border co-operation

The border poses particular problems for effective policing within the island of Ireland. Agencies of justice are restricted by the border. Those involved in terrorism, organised crime, and drug smuggling are not. Policing is therefore a significant area for mutually beneficial cross-border co-operation. We would see a potential role for a joint intelligence or anti-terrorist co-ordination body, or for a form of cross-border regional crime squad dealing with serious crime.

Legislation

We welcome the British Government's announcement of a review of emergency legislation and of its intention to replace the Emergency Provisions Act and the Prevention of Terrorism Act with a single UK-wide Act. While anti-terrorist legislation will no doubt continue to be necessary it is important that such measures should deviate from the ordinary standards of justice and policing no more than is strictly necessary to combat the realistic threat. Internationally recognised standards must also be respected in a consistent fashion across the jurisdictions.

Human Rights

We have long advocated the incorporation of the European Convention on Human Rights in UK domestic law. We warmly welcome the British Government's decision to so incorporate the Convention, which has high international standing, well respected institutions and a substantial body of well developed case law, and to which both Britain and the Republic have been signatories for many years.

The similar incorporation of the Convention in Irish domestic law would send a very clear signal that all three jurisdictions were committed to upholding the same high standards of human rights protection and ensure that the same internationally recognised standards of human rights protection were available in all three jurisdictions, with the possibility of appeal to the European Court of Human Rights ensuring consistency of application.

Within Northern Ireland, the Standing Advisory Commission on Human Rights should have a significant role in promoting education and research on human rights issues, and should be required to lay reports before the Northern Ireland Assembly, as well as the Secretary of State.

In a cross-border context a similar body might be established in the South to keep under review the protection of Human Rights in the Republic, and a mechanism created whereby the two bodies could co-operate on the protection of human rights across the island.

Discrimination

Adequate and appropriate mechanisms to combat discrimination should be maintained in any new arrangements, but we want to explore the further development of a human rights culture which would move beyond the current mechanisms and approaches which have been combatting discrimination through the present agencies. Efforts should also be made to harmonise the anti-discrimination provisions in the various jurisdictions. The key guiding principle should be the protection of individual rights for every single person, rather than the classification of group rights which will inevitably leave some people out.