



**BRITISH-IRISH
INTER-PARLIAMENTARY BODY**

**COMHLACHT IDIR-PHARLAIMINTEACH
NA BREATAINE AGUS NA hÉIREANN**

**THE FUTURE OF THE BODY:
OPTIONS FOR DEVELOPMENT**

A Discussion Paper prepared by a Working Group of the Body

1. Introduction

1.1 At the meeting in Dublin on Monday 22 February 1999 of the Working Group on the Future of the Body the Clerks were asked to prepare a position paper setting out the options in the light of the discussion which had taken place - the gist of which was that, for the time being, the *status quo* should be maintained with a view to growing together organically with the devolved institutions over time. This paper takes account of the discussion paper on the future of the Body which was presented to the 17th Plenary in York, the debate on the issue which took place at that Plenary and at the 15th Plenary in Co. Cavan, the meeting of the Working Group in Dublin and the comments of the Co-Chairs to the recent 18th Plenary in Drumoland Castle.

2. Background

2.1 It is worthwhile recalling why this debate is taking place. Paragraph 11 of Strand 3 of the Good Friday Agreement, on the subject of the British-Irish Council (BIC) states that:

The elected institutions of the members will be encouraged to develop inter-parliamentary links, perhaps building on the British-Irish Inter-Parliamentary Body.

Answering Parliamentary Questions at the 15th Plenary Session of the Body, the Taoiseach, Mr Ahern, said that the Body would provide the parliamentary dimension of the East-West strand. Similarly, in reply to a supplementary question in the House of Commons from Mr Roger Stott on 17 June, the Secretary of State for Northern Ireland, Dr Mowlam, said that she was sure that the role of the Body would continue to be a positive one. At the recent 17th Plenary in York, the Secretary of State also stated in relation to the possible future role of the Body that

her personal view was that the Nordic Council model was one from which lessons could be learnt.

At the recent 18th Plenary, the Minister for Justice, Equality and Law Reform, Mr John O'Donoghue TD, was even more forthcoming in reply to a Parliamentary Question from Senator Joe Costello:

I envisage proposals from the Body as to how it envisages its role in terms of the new structures which have been provided for in the Agreement... Both Governments look forward to the proposals which will emanate from the Body as to how matters should progress in terms of the Body's future role, which no doubt will be as intrinsically valuable as it was in the past.

Furthermore, answering a further Question from Deputy Charles Flanagan on the possible role of the North-South Parliamentary Forum, he said that

The terms of reference and work programme of a North-South Parliamentary forum would be for it to determine. However, I would suggest that a possible function could be the scrutiny, without prejudice to the roles of the Assembly and Oireachtas, of the work of the North-South Ministerial Council and the implementation bodies.

The above statement provides a clear hint as to how the Irish Government, at least, perceives the function of the mooted North-South Parliamentary Forum. A logical extrapolation from this position would suggest that the Irish Government might see a similar role for the Body or its successor in relation to the BIC.

3. Views of the Members of the Body

3.1 Members have had the opportunity of expressing their views in a number of ways:

during the course of the debate at the 15th Plenary in Ballyconnell, Co. Cavan, at the 17th Plenary in York and through written submissions requested by the Working Group. The broad thrust of the views thus far expressed appears to recognise and extol the value and achievements of the Body, acknowledges the ongoing value of continued close relationships and cooperation between representatives of the two sovereign Parliaments, recognises and welcomes the environment of change within which the Body finds itself and expresses a wish to proceed in a cautious fashion in order to ensure that the Body is firmly placed at the centre of any future developments while retaining the centrality and importance of the Dublin-Westminster relationship.

4. Views of the Working Group

4.1 At the meeting of the Working Group in February a consensus emerged which appears to reflect the generality of the views expressed by Members of the Body as a whole. The views of the Working Group were that

- *the Body should have a role in establishing the parliamentary tier of the British-Irish Council;*
- *the Body should seek to remain the premier parliamentary dimension of British-Irish relations for next few years; and*
- *loss of parity of representation between Westminster and Dublin would be unfortunate.*

This paper is based on this consensus viewpoint and considers two primary options: maintaining the *status quo* and merging with the devolved institutions.

5. Option 1: Maintaining the Status Quo

5.1 Since the last position paper was considered at the 17th Plenary, the devolution process within the UK has changed the political landscape; the Scottish Parliament and Welsh Assembly have now been elected, and full powers under the devolution legislation will be devolved to them on 1 July. Unfortunately, at the time of writing progress in implementing the Belfast Agreement remains slow due to a number of factors - particularly the establishment of the new Executive and the issue of decommissioning. It therefore appears increasingly unlikely that by the time of the 19th Plenary in September in Cambridge the BIC will have developed in any meaningful way. It also seems fairly unlikely that either the Scottish Parliament or the Welsh Assembly will have had much of an opportunity to consider the issue of any new inter-parliamentary body related to the BIC nor, given the likely difficulties which inevitably arise in the wake of the establishment of new legislatures and Executives is this likely to be high on their list of priorities. These latter two comments apply even more forcefully to the Northern Ireland Assembly.

5.2 In all the circumstances it might therefore appear unwise and perhaps even unnecessary to propose any radical changes in the structure and operations of the Body at this stage. The clause in the Belfast Agreement dealing with the establishment of inter-parliamentary links is not directive in any sense but merely a suggestion. Moreover, it will be difficult to see precisely what the role of a new inter-parliamentary dimension to the BIC will be until the Council has itself come fully into operation and evolved functions and operations - perhaps over a period of a year or so.

5.3 Another argument in favour of the *status quo* is that the Good Friday Agreement has so far been driven almost exclusively by the two Governments in Dublin and London. In the absence of developments and initiatives by both Governments there is simply no new role for the Body to fulfil and it is too early to consider radical change in the absence of a framework laid out by the two Governments. Given that all Members acknowledge the achievements of the Body and that most express the desire to maintain the Dublin Westminster axis, the view of Mr David Tredinnick (Bosworth) expressed at the 15th Plenary would seem to have much to commend it: *if it ain't broke. don't fix it.*

Consequences of Maintaining the *Status Quo*

6.1 Clearly, as stated above, maintaining the *status quo* has a great deal to commend it: it avoids the Body having to wrestle with the present uncertainties at a time when there is something of a policy vacuum, and it preserves the current relationship between both Parliaments - an outcome which is desired by Members on both sides. However, is such an approach realistic?

6.2 One of the main functions of the Body has been to provide a forum in which elected representatives from two sovereign Parliaments, from countries with a history of some considerable discord, could meet together and discuss not only their differences but their similarities and affinities. We would argue that the Body has contributed significantly to the breaking down of barriers and the removal of

misconceptions on both sides and has broadened and deepened mutual understanding. The achievements of the Body in these areas are widely acknowledged. However, in the context of the Good Friday Agreement, which the Body has welcomed, and in the context of unprecedented constitutional change within the United Kingdom, the Body has to determine how it fits into the changing political environment and how it may best continue to accomplish its aims and desires.

6.3 In this context it is worth considering the views of Mads Qvortrup, Senior Research Fellow in the Constitution Unit at University College London his paper entitled 'The Prospects for the Council of the Isles - Some Lessons from Nordic Countries' (presented 20 August 1998: see pages 8-9). He suggests two possible scenarios for the Council of the Isles (*ie* the British-Irish Council): one in which the 'Executive Council' is complemented by an inter-parliamentary body and one in which the Executives meet without a formal input from representatives of the respective assemblies and parliaments. He suggests that the latter is not necessarily unworkable and draws a comparison with the so-called "Premiers' Conference" in Canada (meetings between the Prime Ministers of the Provincial Governments). However, he questions whether a Council of the Isles without a complementary inter-parliamentary body would be able to perform the integrative functions which was one of the main reasons for including an East-West dimension in the Belfast Agreement in the first place.

6.4 Qvortrup states that the Nordic experience shows that it is difficult to establish such ties without an inter-parliamentary forum. He notes that the inter-governmental links between the Nordic countries in the 1930s did not facilitate ties across the regional and national borders. This changed with the establishment of the inter-parliamentary body in the 1950s which especially has strengthened the ties between the common linguistic groups in the Faeroe Islands and Iceland, and between Sweden and the Åland Islands.

6.5 In his view, inter-parliamentary bodies are better suited to address common concerns than are inter-governmental organisations, perhaps because they represent '*more different interests*' (*sic*). The Nordic Council has been able to coordinate policies and views in areas of common interest and present coherent and viable proposals to the Nordic Council of Ministers. Qvortrup suggests that similar developments are certainly conceivable on the British-Irish archipelago.

6.6 Qvortrup also argues that an inter-parliamentary forum will make it easier to formulate common policies. He contends that concerns are more likely to be addressed if representatives meet on regularly in an inter-parliamentary body and, perhaps most importantly, that the realisation that common interests exist might lessen tensions between national groups.

6.7 Qvortrup concludes that the lesson from the Nordic countries suggest that a regional organisation can facilitate functional cooperation but that it is questionable whether the Council of the Isles will evolve in the same way as the Nordic

organisations. The difference between the two is that the Nordic Council of Ministers grew out of an inter-parliamentary body - the Nordic Council - whereas the reverse is envisaged for the Council of the Isles. Qvortrup argues (somewhat contentiously) that the history of the Nordic Council suggests that the arrangement proposed for the Council of the Isles is flawed because cooperation in the Nordic countries has grown not as a result of inter-governmental agreement but as a result of initiatives taken by the inter-parliamentary body.

6.8 Qvortrup's views are both interesting in themselves and germane to the present discussion. The Body's own direct experience would suggest at least some validity in his arguments for the existence of an inter-parliamentary body (while noting the different parliamentary traditions between Britain and Ireland and the Nordic area). If his views have the ring of authenticity then two questions must be asked: if the Body itself does not take up the challenge of creating such a new inter-parliamentary institution drawing from its own experience, then who will? - and if someone else *does* initiate the creation of such an institution, what then will be the future of the Body? Additionally, if such an inter-parliamentary institution does *not* come into existence, then what are the consequences for the development of BIC which exists

to promote the harmonious and mutually beneficial development of the totality of relationships among the people of these islands? (Strand 3, paragraph 1 of the Belfast Agreement).

If the Body accepts the value of an inter-parliamentary tier along the lines suggested by Qvortrup then it would be difficult for it *not* to get involved in establishing such an organisation, not least because of its ringing endorsement of the Belfast Agreement and its own *raison d'être*.

6.9 It is suggested in the light of the foregoing analysis that the *status quo* can only be successfully maintained until the BIC commences operations and its procedures and operations become established. If and when this happens, it will be in the interests of the Body and of the principles which it serves to embrace a wider role which incorporates the devolved institutions while maintaining and fostering the Westminster-Dublin relationship.

7. Option 2: Merging with the Devolved Institutions

7.1 At the time of writing it is not clear whether a merger with the devolved institutions is even a option - whereas maintaining the *status quo* most certainly is, at any rate in the short to medium term. Given that the BIC has not yet met and that we know little about its likely operations and actual remit, it is very difficult to plan for an inter-parliamentary body, especially one embracing the devolved institutions.

7.2 However, looking to the future and assuming that the BIC is successfully established, there appear to be many advantages to merging in some way with the devolved institutions. First, this seems to be what informed opinion on both sides of the Irish Sea expects - and that expectation cannot be discounted. Secondly, with the

emergence of the new political institutions the political landscape has radically changed and the Body must in some way accommodate itself to that fact. Thirdly, it is probable that if the Body does not take the initiative then someone else will - with the inevitable consequence that the initiative will no longer lie with the Body. Finally, there are sound arguments, as enunciated by Qvortrup, in favour of the Body taking the initiative in order to encourage the development of mutual understanding and cooperation based on its own experience.

7.3 The primary function of an institution embracing representatives of the legislatures associated with the BIC would seem to be the scrutiny of the Council; but it is important to note that there are likely to be areas which currently fall within the BIIPB's remit which may be outside the scope of the BIC - and this needs to be taken into account. Before bringing any plans to the attention of the two Governments or the BIC, the Body will also need to consult with its parliamentary 'neighbours' so as to avoid causing any offence.

7.4 It should be made clear, however, that such plans are very difficult to devise at this early stage, when so much is unclear. We simply do not know enough at the moment about the likely operation of the BIC to enable us to develop plans for a new organisation which are other than entirely theoretical and abstract. The merit of attempting to develop such theoretical plans when so little is known is highly doubtful and we suggest instead that efforts should be directed towards rolling reform. Two scenarios therefore present themselves: pre-BIC and post-BIC, as follows.

8. Pre- British-Irish Council

8.1 In the pre-BIC scenario the Body should broadly continue as at present while keeping a watching brief on developments, perhaps through the continuation of the present Working Group. This state of affairs might continue for sometime after the BIC was established as there would be an inevitable lag while the operation and functions of the BIC became clear and the establishment of any new body. One of the questions which would have to be addressed during this period would be the financing of any new organisation. Inevitably, because of the administrative complexities of running it (about which we have more to say below, paragraph 9.3) it would be more expensive than the BIIPB in its present format. We assume that the bulk of the funding would have to come from the two sovereign Governments.

8.2 In the pre-BIC situation the Body probably needs to take account of the changing environment. This may entail a series of reforms such as those suggested by the Constitution Unit, University College London, in their report on 'The British-Irish Council: Nordic Lessons for the Council of the Isles' (Qvortrup and Hazell), for example:

- More assiduously following through and promoting our reports and resolutions by:

- seeking parliamentary time for regular debates on the work of the Body (though there is constant pressure on parliamentary time, at least so far as the House of Commons is concerned, the experimental "Sittings in Westminster Hall" might provide opportunities for such debates);
 - persuading Government Departments to report what action they have taken in respect of reports and resolutions of the Body; and
 - informing witnesses of the fate and progress of reports.
- Working more closely with comparable Government departments in Ireland and the UK which are already developing joint programmes of action on an East-West basis.
 - Consider refocusing Committees to deal with more East-West issues.
 - Increasing the power of individuals (and, possibly, outside groups) to initiate business.
 - Making it easier for individual Committees to do their work through, perhaps, video-conferencing and similar devices, if funds permit.
 - Restructuring the Plenary Sessions by providing for more sustained debate on major topics and perhaps more spontaneity by way of individual interventions. It might prove possible, for example, to invite the Chairmen of the Human Rights Commission and the Parades Commission to address the Plenary and answer questions.
 - Developing closer links with the devolved parliamentary institutions themselves and with third-level educational institutions carrying out research into British-Irish relations and Irish studies.

The Body should consider ways of making its Plenary Sessions more relevant and should perhaps consider adopting a more robust approach to certain issues including the responses by both Governments to Committee Reports. The Body should also consider whether it might be possible to provide Committees with greater back-up (eg by permitting them to appoint consultants) in order to improve the content and impact of their Reports. The Body is in any case going to have to refocus the Committees on areas in which the sovereign Parliaments have jurisdiction because it will no longer be appropriate to examine areas which have been devolved.

9. Post- British-Irish Council

9.1 If, assuming the successful establishment and operation of the BIC, it was considered desirable to establish inter-parliamentary links via a new organisation which would 'shadow' the BIC and hold it to account, there are several factors which would have to be taken into account.

- First, the integrity of the present relationship between the two sovereign parliaments would have to be maintained. It should be borne in mind that there are some areas of crucial importance to Northern Ireland (such as trade and international relations) which are matters reserved to the United Kingdom Government and others (such as security) which are reserved for the moment - and these will remain entirely legitimate areas for discussion by an East-West Body. The maintenance of this East-West relationship might entail the co-existence of two groups: the present BIIPB (perhaps in a revised form) and, for the purposes of the scrutiny of the BIC, a larger organisation into which the BIIPB would merge or assemble, in whole or in part, with representatives from the devolved institutions. The BIC is unlikely in any foreseeable future to cover all the areas which the Body can currently consider and, moreover, there should be considerable synergies between both groups within the context of their different but intertwined competencies.
- Secondly, the equality of representation issue will need to be resolved. The suggestion is that current representation could remain unchanged for the purposes of the Dublin-Westminster relationship within the current structure or something similar, but would probably need to be adjusted within the larger body shadowing the BIC. This need not be a major concern, since the latter is unlikely to have decision-making powers, will probably be consultative in nature, and is unlikely to breakdown on strictly British-Irish lines.
- Thirdly, a central secretariat of some description and some kind of centralised funding would seem to make sense. While we are assured by the Joint Clerks to the Body that they would be more than happy to assist in the initial stages, servicing an inter-parliamentary assembly which brings together eight disparate institutions will very soon become a full-time job; and there will come a point at which an enlarged institution will need its own Clerk and Secretary/Administrator. Such centralisation will not remove the necessity for the current localised staff or funding but would be needed to deal with common issues and finance. As we have already observed, a disproportionate share of the initial funding might have to come from the two sovereign Governments.
- Fourthly, the system of control will need to be handled with care. In respect of the new body it would seem to make sense to provide for the present system of Co-Chairs and Vice-Chairs, with perhaps the Co-Chairs in the first year being drawn from the sovereign Parliaments and one Co-Chair thereafter being rotated between the three devolved institutions and the three small islands. It is hardly worthwhile at this stage to go into much detail, except to stress the need in the early years for a degree of control by something like the current Steering Committee until the new organisation has settled down.

10. Conclusions

10.1 The pace of reform in the context of the British-Irish Agreement has proved to be slower than envisaged. The Body should in the first instance concentrate on reforming its present structure to take account of devolution within the UK, the changed political framework within the islands and the need after so many years to ensure the continued relevance of the Body. Irrespective of whether or not it ultimately joins with the devolved institutions to shadow the BIC, it appears to us that there will be a continuing need for something like the Body in its present format in order to consider matters which fall outside the remit of the BIC and any parliamentary organisation associated with it. Hence, any reforms carried out now or in the near future will have continued relevance.

10.2 We also recommend that the Working Group continue in existence in order to keep a watching brief on developments, especially with regard to the BIC, and develop proposals as events unfold and become more clear. The Steering Committee should also consider inviting several observers from the devolved assemblies to Plenary Sessions of the Body and should consider ways in which such observers can actively participate including in any debate on the future of the Body. The Steering Committee should also consider ways in which it can enhance both the relevance and energy of Plenary debates and the effectiveness of their work. To this end it should consider meeting with the Chairs and Vice-Chairs of Committees to discuss the matter and obtain their views not only on this area but perhaps on the format of Plenary sessions generally.

**The Working Group
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