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The Draft Treaty Establishing the European Union  
and the Member States:

IRELAND

by

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### The European Policy Unit

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In October 1984, the EPU, in collaboration with the University of Strasbourg and TEPSA, organised a conference to examine in detail the Draft Treaty Establishing the European Union. This Working Paper, presented at the conference and revised in light of the discussion, will appear in book form later in 1985 along with other studies of the Draft Treaty.

Further information about the work of the European Policy Unit can be obtained from the Director, at the European University Institute in Florence.





## INTRODUCTION

This paper begins by summarising the constitutional aspects of Ireland's accession to the existing European Community Treaties, insofar as they have implications for Ireland's ratification of the proposed Treaty setting up the European Union. It then considers how far the Treaty setting up the Union may be inconsistent with the Constitution of Ireland as it is at present, and how the inconsistency should be resolved. It describes the procedures, under the Irish Constitution, for amending the Constitution, and for ratifying a treaty such as the Treaty setting up the Union. Lastly, it assesses the elements likely to influence public opinion in Ireland at the various stages of these procedures.

## PART I

### CONSTITUTIONAL ASPECTS OF IRELAND'S ACCESSION TO THE EXISTING TREATIES

Before Ireland's accession to the three existing European Community Treaties, it was clear that the powers of the Community institutions were incompatible with the provisions of the Constitution of Ireland of 1937 dealing with legislative, executive and judicial powers (1).

Briefly, these provided that the sole power of making laws for the State belonged to the Oireachtas (the President and the two Houses), although subordinate legislatures were permitted. Justice was to be administered only by judges appointed as provided by the Constitution, and the Supreme Court was to be the court of final appeal. Judges were to be appointed by the President. The executive powers of the State, including those in connection with external relations, were to be exercised only by or on the authority of the government which was to be responsible to the Dail (the lower house). The 1937 Constitution stressed



that only the bodies established by the Constitution could exercise governmental powers, to exclude any remnant of British imperial power. The effect was to exclude also the possibility of transferring any such powers to any international body such as the Community (no such body existed, of course, in 1937). The measures to grant the Community appropriate powers in Irish law constituted a transfer of powers and could not have been regarded, under Irish Constitutional law, as a permissible delegation of powers (2). The reasons why the 1937 Constitution was incompatible with the Community Treaties are also applicable to the proposed European Union Treaty.

To make it possible for the Republic of Ireland to ratify the Community Treaties in 1972, some amendment to the Constitution was necessary. Instead of a series of amendments altering each Article of the Constitution thought to be inconsistent with the Treaties, a single amendment was adopted by the Oireachtas and approved by a large (83 %) majority of the people in the 1972 referendum. The amendment, in the form of an addition to Article 29 of the Constitution (on international relations) provides :

" The State may become a member of the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April 1951), the European Economic Community (established by Treaty signed at Rome on the 25th day of March 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March 1957). No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State. "



Several points must be made. First, the provision is limited to the existing three Communities, as established by treaties specifically mentioned. It would not therefore apply to a wholly new community, though it might apply to the existing Communities if they came to be based on new treaties. The amendment is therefore narrower than the corresponding provisions of the constitutions of the Federal Republic of Germany, Italy, Luxemburg, the Netherlands and (perhaps surprisingly) Norway (3).

Second, the amendment wisely avoids listing the Articles of the Constitution which are, or might be thought to be, inconsistent with the powers of the institutions of the existing Communities. This means that no clarification or development of those powers under the Treaties could give rise to difficulties merely because the draftsman had failed to foresee its future incompatibility with the Constitution. For example, it is now clear that the Community's powers in the areas of commercial policy (4) and fisheries (5) and in the expanding areas dealt with by Community legislation which come within Community competence under the principle stated in the AETR judgment, (6) are all exclusive powers, and that no corresponding powers remain with Member States. The exclusive nature of these powers was less clear in 1972 than it is today. This is important because omission of any list of constitutional provisions affected made it possible to avoid having to decide whether the Treaties were, or might through the development of Community law become, inconsistent with Article 5 of the Constitution : "Ireland is a sovereign, independent, democratic state". A State which has no powers in the fields of commercial policy, fisheries, or a variety of other spheres on which the Community of which it is a member has legislated is obviously less sovereign, if the phrase is permissible, than one which still retains powers in those spheres. Any list of the Articles of the Constitution and the Treaty provisions which might prove incompatible with them would also have to make some provision to cover the unforeseeable developments under Article 235, EEC Treaty. A general, all-purpose amendment to the Constitution was the only practical approach to the problem.



The wording of the amendment was narrow in another respect, which has given rise to doubt and some practical difficulty. It authorises Irish legislation which would, but for the amendment, be incompatible with the Constitution only if the legislation is "necessitated by the obligations of membership of the Communities". The question has arisen whether the Convention on a European Community Patent (7) was a measure ratification of which was "necessitated by the obligations of membership". Although negotiated under Community auspices, it is a convention, not a regulation or a directive. Some Irish lawyers have therefore doubted whether ratification is obligatory for Member States under Community law, even in spite of the Council Declaration (8) which says that it is obligatory. These doubts are due to a narrow and, in the present writer's view, incorrect interpretation of Article 5 EEC Treaty, rather than to a particular interpretation of the amendment to the Irish Constitution. Clearly, the question whether Member States have an obligation to ratify the convention is ultimately a question of Community law, not a question of Irish Constitutional law. It seems highly unlikely that the Court of Justice, which has interpreted Article 5 widely (9) on a number of occasions, would rule that ratification was not legally necessary. However, even if that is correct, it does not follow that ratification of all conventions drafted under Community auspices, in some sense, is obligatory for Member States under Community law : the European Monetary System agreement is proof that some very important arrangements are "optional".



## THE TREATY SETTING UP THE EUROPEAN UNION

The first question that arises is whether the Treaty setting up the European Union (herein called "the Union Treaty") would be covered by the 1972 amendment to the Constitution of Ireland. If it was, no further constitutional amendment would be necessary. However, it seems clear that the Union Treaty could not be thought of as a mere amendment of the three existing Community Treaties, or as merely reconstituting the existing Communities under a new name. Any such interpretation is excluded by the broad scope of the new Treaty : by Article 1, which speaks of setting up the European Union ; by Article 6, on the legal personality of the Union, which would be unnecessary if the Union was merely taking over the legal status of the existing Communities ; by Article 7, on the "acquis communautaire" ; by Article 82, which provides for the possibility that not all of the Member States of the existing Communities may initially ratify the new Treaty ; and by the broader explicit scope of the new Treaty.

If the 1972 amendment to the Irish Constitution does not cover the new Treaty, the next question is whether the provisions of the new Treaty are compatible with the rest of the Constitution. It is clear that they are not, for reasons essentially similar to the reasons which made an amendment to the Constitution essential in 1972.

The new Treaty provides (Article 36) that the legislative powers of the Union are exercisable by the Parliament and the Council, acting essentially on the initiative of the Commission. Under Article 42, the law of the Union is directly applicable in Member States, and prevails over national law. In addition, the Commission would have implementing legislative powers (Article 40). These Articles are not compatible with Article 15 of the Irish Constitution which (subject to the amendment to Article 29 to allow legislative powers to be given to the existing Community



institutions) says that the exclusive power of making laws for the State is vested in the Oireachtas (the President and the two Houses of the legislature).

Under the new Treaty powers which are classified as executive by the Irish Constitution would be exercised by the Council and the Commission. Article 21 says that the Council would exercise powers in the field of international relations : whatever powers exactly might be conferred on the Council, they would include powers of the kind now exercised by the Community institutions, which in Ireland are exercisable (except insofar as the Community is concerned) only by the Government, under Article 29 of the Constitution. The powers of the Commission are to be laid down by the basic law (loi organique) on that institution, but in the meantime it would have the same structure and operation as the Commission of the Communities whose executive powers, as already mentioned, would be inconsistent with the Constitution of Ireland if it were not for the 1972 amendment. Specifically, Article 28 of the new Treaty says the Commission would adopt implementing regulations and take the necessary executive decisions to put Union laws into operation, would carry out the budget, represent the Union in external relations, and supervise the application of the new Treaty and the laws of the Union. These powers, however they might be subsequently defined, could not be reconciled with the Irish Constitution. Nor would it be possible for Ireland to ratify the new Treaty in the hope of being able to ensure subsequently that the basic laws governing the powers of the institutions of the Union were so drafted as to be consistent with the Constitution as it stands.

The Constitution of Ireland classifies governmental powers as "legislative, executive and judicial" (10). Monetary powers, if they had to be fitted into this classification, would be "executive" powers. Monetary powers therefore may be exercised only by or on the authority of the Irish Government, unless their exercise is authorised by either the existing provision dealing with the European Community or the future provision dealing with



the European Union. However, no express mention of monetary powers would be needed in the new Irish constitutional provision dealing with the European Union, if it is drafted broadly enough.

The new Treaty says very little about judicial powers. Article 30 provides briefly that the Court is to ensure that the law is observed in the interpretation and application of the new Treaty, and of all acts adopted under it. It provides briefly for appointment of judges by the Parliament and the Council, and says that other matters are to be dealt with by a basic law (*loi organique*). Article 43 provides for judicial control, on the lines of existing Community law, and completed by a basic law. This basic law would extend the rights of individuals to challenge legal acts adopted by the Union, give the Court express jurisdiction in fundamental rights cases involving the Union, and jurisdiction in a "*procédure préjudicielle*" i.e. by reference or case stated from national courts. The Court would have power to review the failure of national courts to refer questions of Union law to it, and to "sanction" the failure of Member States to fulfil their obligations. All this would involve a very substantial increase in the jurisdiction (and the volume of work) of the Court. The Court's overall powers, therefore, however exactly they might later be defined, would be incompatible with the Articles of the Constitution of Ireland on the administration of justice by judges appointed by the President of Ireland, unless authorised by a new constitutional provision.

Some other comments may be useful.

First, the scope of the activities of the Union, as expressly envisaged, is wider than those provided for by the existing Treaties. The new Treaty refers explicitly to citizenship (Art. 3) of the Union, fundamental rights (Art. 4), the power of enquiry of the Parliament (Art. 18), sanctions on Member States (Arts. 43, 44), international crime (Art. 46), credit policy and the European Monetary System (Arts. 51, 52), policies on tele-



communications, research, and energy (Art. 53), health, consumers, regions, the environment, education and culture, and information (Arts. 56-62, *passim*). It is more explicit about international relations than the existing Treaties (Arts. 9, 63-69). It is true that much of this is little more than the existing Communities are already doing, but express provisions must inevitably result in wider and increased powers. More directly relevant to the subject of this paper, Art. 68 provides that the Council may enlarge the field of cooperation to cover armaments, arms sales to third countries, defence policy, and disarmament, and may transfer a sphere from the area of cooperation between Member States to the field of common i.e. Union, action. Less controversially, the Union is to supervise the consistency of the international policies of Member States (Art. 67) and is to use its influence to promote peaceful settlement of conflicts, security, discouragement of aggression, détente, and mutual reduction of military forces and arms on a balanced and controlled basis (Art. 63). These are objectives, not powers, but they make it obvious that the scope of the activities of the Union would not be limited to the economic and social spheres, as a reading of the existing Treaties would suggest was the initial scope of the existing Communities.

In drafting a new amendment to the Constitution of Ireland to allow ratification of the new Treaty, the Irish Government will have to decide whether to limit it to the European Union, based on the new Treaty, or to make it a broader amendment permitting the Oireachtas to ratify any international agreement giving powers to international institutions, on the lines of the provisions of the German, Italian, Luxemburg, Dutch and Norwegian Constitutions. It is not clear whether, if the Irish people are willing to approve by referendum an amendment permitting Ireland to ratify the Treaty setting up the European Union, they would be significantly less willing to vote for a more general amendment. Such opposition as there will be to an amendment concerned only with the new Treaty might not be significantly stronger if the amendment were in wider terms.



Whether the future amendment to the Constitution is drafted to cover only the European Union, or to cover any international or any European institutions, it is clear that, for the same reasons as in 1972, it must be a single amendment in general words, not a list of Constitutional provisions being modified. If that is accepted, it follows that it is not necessary to go through the new Treaty in detail comparing it with the Constitution of Ireland. Nor is it necessary to discuss how far the clauses of the new Treaty dealing with the "organs" of the Union might come into conflict with the Constitution, in the future. A problem which did not arise in 1972 concerns the European Monetary Fund which, under Art. 33.4, has the independence necessary to guarantee monetary stability. This phrase glosses over the very difficult problem of the degree of independence needed to carry out (let alone to guarantee) such an objective. However, whatever the future powers of the Fund may be, they could be made consistent with the Irish Constitution by a single amendment in sufficiently general words which in any case is appropriate for other reasons.

The question of the "organs" of the European Union, and the question of the European Community Patent Convention, discussed above, imply that the new amendment to the Irish Constitution should be worded broadly enough to cover new organs and arrangements not expressly contemplated by the new Treaty and not based on legislative measures adopted by the Union. Irish Governments will want to ensure that difficulties such as that which arose over the Community Patent Convention do not arise again. They are perhaps not likely to do so (the proposed Community trademark measures, for example, is to be a Regulation and not a convention), but it is desirable both for Ireland and for the Community and the future Union, that the problem should be dealt with. A constitutional amendment which would solve this problem would be on the following lines :



The State may become a member of the European Union to be established in accordance with the Treaty signed at - on - . No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by obligations undertaken under arrangements made by the Union or under its auspices, or prevents laws enacted, acts done or measures adopted by the Union or under its auspices or by institutions thereof, from having the force of law in the State.

#### SOVEREIGNTY

Even if the amendment is in the form of general clause substantially similar to the 1972 the question will be raised, in a political if not necessarily in a legal context, whether ratification would be consistent with the "sovereign" status of Ireland provided for in Article 5 of the Constitution. Without attempting a definition of "sovereignty" or trying to give an exhaustive reply to the question, some points may be made (11). First, legally Ireland's sovereignty would be limited precisely as much as, but no more than, the sovereignty of every other Member State of the European Union. Politically, a small State with relatively little influence on its own gains more, on balance, by having a vote in the Council of the European Union than it loses by limiting or giving up certain powers. If, as seems likely, Ireland's economic interests would depend on it becoming a member of the European Union, then the point should be made that a State has more real sovereignty if it is prosperous than if it is not.

Second, sovereignty is not a precise concept, and the new Treaty is (even more than the EEC Treaty) a traité-cadre, a constitutional framework, not a static traité-loi. It is not possible to say, if the political integration of Europe proceeds on the lines envisaged by the new Treaty, at what point in the process member States would cease to be "sovereign", because they would



transfer their sovereignty gradually to the Union, and no one act of transfer would be decisive, politically or legally. Having said that, however, since the new Treaty contemplates (notably in Art. 68) enlargement of the sphere of cooperation and transfer of particular fields from cooperation to common action, in areas including foreign policy and defence, it would be impossible to say that Member States of the Union would still be "sovereign" after all the transfers of powers visualised by the new Treaty had been fully carried out. The history of federations suggests that they do not remain at a stage of partial integration : they either progress further, or they separate again.

Sovereignty de facto, as distinct from sovereignty de jure, depends on how far economic and political realities allow the State concerned to control its own destinies. In the case of a small country with a very open economy (i.e. external trade represents a very high proportion of GNP) which is heavily dependent on foreign capital, control over its economy is strictly limited. Ireland's experiment with import-substitution lasted from the 1930s until the 1950s, by which time it was obvious that its usefulness had ended.

In spite of the "framework" nature of the new Treaty, and its reliance on "lois organiques" to fill in even very important matters, and in spite of the fact that many of its other provisions state aims and not legal powers, the new Treaty looks more like the constitution of a federation, or at least a confederation, than the existing Treaties do. This is partly because the most conspicuous change proposed is the conversion of the European Parliament into one chamber (admittedly, with limited powers) of a bicameral legislature. It is also because the new Treaty speaks explicitly of exclusive and concurrent powers (e.g. Arts. 12, 47, 48, 50-53) and of the primacy of Union law (Art. 42). The "federalist" method is unmistakeable, although the



powers which would belong exclusively to the Union as soon as the Treaty came into force would be no more extensive, at first sight, than the exclusive powers of the existing Communities. Art. 64.2, for example, merely declares the existing law (12). Article 32, however, which contemplates the enlargement of the competences of the Union, does not (as Article 235 EEC Treaty now does) limit the enlargement to cases where it is shown that it is "necessary to attain, in the course of the operation of the Common Market, one of the objectives of the Community".

In spite of this, the new Treaty retains, in Art. 23, a modified version of the "Luxembourg compromise", under which, during a transitional period of ten years, a Member State may invoke a "vital national interest" and, if the Commission recognises that the interest in question comes into this category, no vote takes place and the matter is reconsidered. This clause preserves a significant element of sovereignty, for as long as it is in force, although its operation depends on the Commission accepting the importance of the matter for the Member State in question.

It must be clearly said that "sovereignty" is not a precise concept, either in Irish constitutional law or (I suspect) anywhere else. It is a political concept, not a legal concept. There is no definition of sovereignty in Irish constitutional law, and no Irish case law to clarify the concept. The Irish Constitution does not embody a hierarchy of rules or principles, so sovereignty is not, legally, a concept or a principle with higher status under the Constitution than any other principle. (No doubt it has a higher status politically in Ireland than many other concepts or principles).



Reading the draft European Union Treaty, it is possible to imagine that, if the Member States do what the Treaty contemplates, they will gradually move along a spectrum, beginning with the existing situation under Community law, towards a situation in which their sovereignty, insofar as it would still exist, would be very limited indeed. The Treaty contemplates the transfer, to the Union, of some at least of each of the kinds of powers which are transferred to a federation by its member states. One cannot now say how many of these powers will in fact be transferred, or in what order, or on what conditions. One therefore cannot say at what point in the future Member States would cease to be "sovereign", even if there was a precise concept of sovereignty, which is far from being the case.

There has never previously been, as far as my knowledge extends, a treaty between independent States which contemplated transfers of governmental powers great enough to establish a federation, but which did not at once transfer those powers. Since the extent of the powers of members of a federation may vary widely, the key question in connection with the issue of sovereignty at first sight appears to be at what point the members would cease to be full subjects of public international law. But even this question is not really a useful one : States which already have no treaty-making power in the field of external trade are not fully sovereign in the conventional sense. The reality is that the concepts of "independence" and "sovereignty" are not appropriate to the situation created by the existing Community Treaties, or to the Union treaty. Member States would no longer be "sovereign" in the normal sense when foreign policy and defence had been entirely transferred to the Union, but it seems unlikely that even the transfer of these powers, assuming it occurs, would be made in one single step. Sovereignty is a bundle of powers, and so it is divisible. In the Community it is divided between the Member States and the Community itself (13), and the same will be true in the Union.



If one asks the more practical question : how may a small country with an open economy best safeguard its interests in an increasingly interdependent world ? It is obvious that its interests may be better protected by the rights and safeguards for member states of a federal or near-federal system than by "sovereign" statehood without close ties by treaty or otherwise. The important question to ask is how the rights and safeguards for the interests of each member state compare with those which would be available to it if it was neither a member of, or closely associated with, the Community or the Union. For example, Ireland, which has not been represented at international "Summit" meetings, would have greater influence at those meetings through the Community or the Union than it is ever likely to obtain in any other way.

#### BRINGING THE LAW OF THE EUROPEAN UNION INTO FORCE IN IRELAND

An amendment to the Constitution of Ireland must, under Article 47 of the Constitution, be made by referendum. An amendment is approved if a majority of the votes cast at the referendum are in favour. There is no requirement that a certain minimum of the electorate should have voted. Voting in Ireland is not compulsory.

Every proposal for the amendment of the Constitution must be initiated in the Dáil (Article 46, Constitution). When passed (or deemed passed, under Article 23, in the case of disagreement between the two Houses) by both Houses of the Oireachtas, it is submitted to the electorate by referendum. It is signed by the President, and becomes law, only after the referendum has approved it.

Private Members' Bills are permitted in the Dáil, but they are extremely rare, and it is inconceivable that a Bill of such importance would be introduced by anyone except the Government. Under Article 28 of the Constitution, Ireland has a system of cabinet government, in which the government normally has the support of a majority of the members of the Dáil.



An amendment to the Constitution on the lines of the 1972 amendment would make it possible for Ireland to join the European Union, but would not make Ireland a member. Ratification of the new Treaty could take place only after the amendment to the Constitution had been signed by the President and so passed into law. Ratification of any treaty is an act of the Government under Article 28 of the Constitution and no treaty (even one expressly mentioned in an amendment to the Constitution) becomes part of the domestic law of the Irish State except by an Act of the Oireachtas. After the Constitution had been amended, therefore, it would be necessary for the new Treaty to be enacted into law by an Act similar to the European Communities Act 1972.

In that Act, which is simpler and more direct than the corresponding legislation in the UK, the most important clause is s.2, which provides :

From the 1st day of January 1973, the treaties governing the European Communities and the existing and future acts of the institutions thereof shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down by these treaties.

This clause, because it embodies a renvoi to Community law, ensures that in any case of conflict between Irish law and Community law, the latter prevails. It also ensures that Community measures have, in Irish domestic law, whatever direct effects are given to them by Community law, no more and no less. The amendment to the Constitution of course ensures that Community measures (and Irish measures necessitated by the obligations of membership) are immune from challenge on constitutional grounds. As between non-constitutional measures of Irish domestic law the normal rules apply (Acts prevail over delegated legislation, later legislation prevails over prior legislation enacted by the same authority) so that express powers have to be



given to enable e.g. the Government or a Minister to amend an Act, even in order to bring it into line with Community law. This was done by the 1972 Act, s. 3.

Ratification by Ireland of the new Treaty setting up the European Union would be possible only after an Act essentially similar to the European Communities Act 1972 had been adopted. (Some drafting improvements could be imagined).

The rules of Irish law concerning the supremacy of Community law, and the effects of rules of Community law which are not directly applicable, would be the same, under the new Treaty, as in the case of the Community Treaties (14), unless the constitutional amendment or the implementing legislation were differently drafted. There is no reason to think that they would be.

The Irish Constitutional rules just stated appear to deal with the question, which might arise, whether the Union had exceeded its own powers. If the new provision in the Constitution of Ireland corresponds to that already discussed, and if the legislation giving effect to the Union Treaty in Ireland contained a clause corresponding to that in the European Communities Act 1972, a determination by the Community Court that the Union had, or had not, exceeded its powers, if that question was raised before it, would be binding on the Irish courts. Unless Irish public opinion altered greatly, it would be most improbable that the provisions would be deliberately drafted so as to make the Irish Supreme Court, rather than the Court of Justice, the ultimate arbiter of whether, in the view of Irish law, the Union had exceeded its powers. The only practical result of drafting the provisions in that way would be to make it possible (though no doubt it would be unlikely) for the two courts to give conflicting decisions on the question, if it ever arose. Irish public opinion is not so concerned about the possibility of the Community exceeding its powers, and is not likely to be so



concerned about the possibility of the Union exceeding its (much wider) powers, that the possibility of such a conflict would be intentionally created, for the purpose of protecting Irish sovereignty or otherwise. As is explained below, Irish public opinion is not as sensitive as public opinion in certain other Member States about enlargement of the powers of the Community.

For the reasons given below in the socio-political part of this paper, it is impossible to imagine a referendum being held to allow Ireland to join the Union unless at least one of the present two large political parties was in favour. However, once the referendum was passed by the people, no further difficulty would arise unless a new government came into office which was opposed to Ireland joining the Union. Unless this happened, (which would be unlikely if the referendum had been passed by the people), the government which had promoted the referendum would be able to ensure that the legislation needed for accession was enacted.

#### NEUTRALITY - NOT A LEGAL QUESTION IN IRELAND

The question of Irish neutrality is discussed below, as a political question. There is nothing in the Constitution of Ireland, or in any Irish legislation or Irish law, or in any treaty, on the question of Irish neutrality. It has been suggested that a provision stating Ireland's neutrality should be added to the Constitution, but this suggestion seems to have no significant public support. Such a provision, if it were seriously considered, would necessitate a definition, or would at least provoke a discussion, of what is meant by Irish neutrality. A provision in the Irish Constitution stating Ireland's neutrality would ultimately be incompatible with Ireland's membership of the European Union. Once this is understood, and once the long-term economic costs of staying out of the Union have been realised, it is improbable that any movement to have such a provision added to the Constitution would make significant progress.



### A NEW IRISH CONSTITUTION ?

For completeness, another possibility should be mentioned. It has been suggested from time to time that a whole new Constitution should be drawn up, and adopted by referendum. This would certainly be one possible way of making certain changes in the existing Constitution which might not be passed by referendum if they were put to the voters separately. If, for any reason, a whole new Constitution were drawn up and put to the voters in a referendum, the issues concerning Ireland's accession to the European Union (assuming that the new Constitution was so drafted as to permit accession, which presumably it would be) would be combined with the issues, whatever they were, about the relative merits of the new constitution and the existing Constitution. This in turn would mean that, if the new constitution was adopted, the issues concerning accession to the Union would not be decided by referendum : Ireland uses referenda only when it is necessary to amend the Constitution, or to adopt a new one, and not on policy questions, however important. The decision on accession would therefore be made by the legislature. This is not the place to discuss the desirability, or otherwise, of extensively altering the present Constitution. It may simply be mentioned that one of the main reasons why the idea has been suggested in recent years is that it has been felt that extensive changes would be necessary to make the Constitution more attractive to those people in Northern Ireland who are opposed to reunification of Ireland. However, it is obvious that constitutional changes, however extensive, might be a necessary condition but could never be a sufficient condition for reunification, and that the other conditions, whatever they may turn out to be, (not to mention economic and other matters) are more important.



## PART II

### POLITICAL ASPECTS

This part of this paper assesses some of the elements which are likely to influence public opinion in the Republic of Ireland at the time of the referendum which would be necessary to enable Ireland to ratify the Treaty setting up the European Union.

Ireland is the only Member State of the Community which was a colony within living memory. (Legally Ireland was a province of the UK between 1800 and 1922, but most Irish people regarded its status as substantially that of a colony). National independence is therefore not taken for granted as much as in other countries. Ireland is also the only Member State in the position of having part of what it regards as its national territory under the jurisdiction of another Member State. On the other hand, Ireland is a small country, and never had an empire. It does not feel itself to have, or to have had, a world-wide political influence which it would be reluctant to see merged into a European group of states, although there is a strong sense of fellow-feeling with Irish emigrants outside Europe, notably in the USA. Irish people are accustomed to the idea that important decisions affecting their interests are taken outside Ireland, whether in London, Washington or Brussels. They are not annoyed, as I feel that English people are often annoyed, by the thought of decisions affecting their interests being taken by "foreigners" (even when the U.K. has a vote and a veto). Most Irish people are not prejudiced against the idea of the existing Community extending its powers, in the way that many Danes and English people are prejudiced against it. The 1972 referendum campaign in Ireland did not need to concern itself with reassurance against exaggerated or irrational fears. Irish people are not prejudiced against foreigners. In the 1972 referendum, no less than 83 % of those voting were in favour of joining the Community, a remarkably high proportion in a country which did not experience invasion during World War II and therefore which is not greatly influenced by the argument that such a war must never be allowed to happen again.



However, there is relatively little interest in the "European ideal" in Ireland. Only one leading Irish politician has a reputation, in Ireland or elsewhere, as being really "communa-taire". This is not merely because Ireland is not large enough to feel that Europe cannot be built without her, or to feel that she has an important responsibility in international relations. It is also because of the extent to which Irish opinion was preoccupied with the problem of Northern Ireland, even before the present troubles began there fifteen years ago, in 1969.

For these and other reasons, Ireland has not played a role in the Community which has been sufficiently influential and constructive to give Irish public opinion confidence and satisfaction comparable to that derived from Ireland's involvement, in the less recent past, in the United Nations. This is partly because the activities of e.g. Ireland's first two Presidencies (during which, inter alia, the first two Lomé Conventions were concluded) were too complex and not conspicuous enough to be widely appreciated in Ireland.

Irish attitudes towards the Community have been primarily concerned with economics. Initially the Community was, correctly, regarded as likely to benefit Ireland economically in various ways, and to a very important extent. More recently, there has been a tendency to criticise the Community, somewhat unfairly, for its inability to prevent or surmount world recession, increased oil prices, and unemployment in Ireland and elsewhere. This disillusionment has coincided with the unpleasant effects of (very necessary) measures taken to put Irish government finances and the national economy in order, and to reduce budget and balance-of-payments deficits, overspending, and excessive foreign borrowing. Even the very large economic benefits (especially in agriculture) which Ireland has unquestionably obtained from Community membership have not prevented these difficulties from arising, but the difficulties have caused public opinion to underestimate the benefits. However, it is important to emphasise that in Ireland, unlike some other Member States, dissatisfaction with the working of the Community does not imply opposition to



the Community or to its aims, and shows no signs of developing into opposition to them.

#### THE SIGNIFICANCE OF NORTHERN IRELAND

As already mentioned, the problems of Northern Ireland, and of Ireland's relations with the U.K. in the light of Northern Ireland problem, have occupied the attention of many Irish people who would otherwise have been thinking about Community affairs. However, it has been a Northern Ireland politician, John Hume, who has done most to involve the Community constructively in N. Ireland. Many people in N. Ireland realise that they would get greater benefits from the Community if they were part of the Republic of Ireland, or if they could be treated in the same way as the Republic. But the Community has not been able to make the border between N. Ireland and the Republic wither away.

So far, progress towards European integration is not regarded as a way (certainly not an adequate way) of solving N. Ireland's difficulties. One of the papers written for the New Ireland Forum (15) points out that "the structure of agriculture in the North has moved closer to that in the South although the use of MCAs has increased the cost and complexity of cross-border trade ... membership of the Community has facilitated co-operation on issues such as cross-border development ... However, in 1979 economic cooperation between North and South was inhibited by the decision of the UK to stay out of the European Monetary System ... Membership of the European Community has ... benefited both parts of the island but the South, because of its independence, has been able to make greater use of it ... there would be more advantages to the North if a specific agricultural policy could be developed rather than one on a UK basis" . Another Forum paper (16) pointed out that the use made by the Republic of Ireland of Community loan instruments, mainly to European Investment Bank, has been enormously greater than the use by the North. The New Ireland Forum paper on the legal systems in Ireland (17) pointed out that Community law is likely to be a significant harmonising factor in legal development in both jurisdictions.



However, the main Report of the Forum says very little about the Community, merely mentioning (18) that an integrated economic policy for the whole country would be in the interests of both parts, since both have common interests in areas such as agriculture and regional policy which diverge from the interests of Britain.

An improvement in the situation in Northern Ireland would allow Irish people to turn more of their attention to Community affairs. More important, the more the Community can play a useful and constructive role in Northern Ireland, the more favourably public opinion in both parts of Ireland will regard it. Northern Ireland therefore is both a reason why Irish politicians, with the notable exception of John Hume, have given less time than they might have given to Community affairs, and is also an opportunity for the Community to make a real contribution which would not only be worthwhile in itself but would significantly increase its popularity in both parts of Ireland, and no doubt in Britain as well. Northern Ireland's problems are costing the U.K. some one thousand three hundred million pounds sterling each year, and though the corresponding cost to the Republic is less in absolute terms, it is greater in relation to the size of the country's budget. An imaginative and constructive involvement of the Community in Northern Ireland would be perfectly possible, if the U.K. would agree to it, and would offer a much better hope of a real long term solution than anything which anyone has yet suggested.

#### IRISH ATTITUDES TO EUROPEAN POLITICAL COOPERATION

European Political Cooperation, though useful, has so far been so modest that it is difficult to deduce much from Irish attitudes towards it. When, as in the Tindemans Report in 1976, it was suggested that defence matters might be included within the sphere of political cooperation, or when it was suggested in the European Parliament that defence procurement should be dealt with



by the Community, the Irish reaction was negative, but not primarily on grounds of principle. In fact Irish politicians have seen no difficulty in advocating Irish neutrality and giving at least verbal support for European integration. While avoiding publicity, successive Irish governments have cooperated pragmatically in EPC activities so far.

In a speech in the Dail on 22nd October 1981, the Minister of Foreign Affairs, Professor Dooge (Fine Gael) said :

" When we acceded to the Community in 1973 the position was that we not only accepted the "acquis communautaire" established by the various Treaties, we also undertook a political commitment in the context of progress towards European Union, to consult and co-ordinate with our partners on foreign policy in the non-Treaty inter-governmental framework of European Political Co-operation ... Ireland, in common with other Member States, has been quite satisfied with the way political co-operation has developed within this framework ... Of course, there are some issues where positions still diverge and this is how one would expect it to be, given the varying interests and traditions of the Member States and the essential flexibility and pragmatism of the way political co-operation works. Notwithstanding such divergences, the experience of all of the Ten, including Ireland, has been that to the extent the views of the Ten coincide, we have opportunities to play a far more significant and influential role and serve our interests more effectively on many issues, acting together with our partners in the Ten, than we would have as individual States acting alone ... the London Report of 13 October 1981 on European Political Co-operation ... reiterates the political commitment of the Member States to consult on foreign policy questions. An important element is the recognition that the Report gives to the importance of the Treaties as the basis



for further integration, and the maintenance and development of Community policies in accordance with the Treaties, before further steps can be taken to strengthen political co-operation ... Political co-operation is concerned with co-ordination of foreign policy. Within that context discussion has taken place from an early stage in political co-operation of foreign policy matters that have a security dimension ... This has not presented a problem for Ireland ... it is useful and important that in the London Report it is clear that the scope of political co-operation on these matters is confined to political aspects of security and that defence or military issues as such are excluded ... The relevant paragraph in the Report, far from being an extension of the scope of political co-operation, is in fact an explicit re-statement, in a form acceptable to Ireland, of the practice established under successive Irish governments ... the Federal German Government recently endorsed Mr. Genscher's ideas on establishing a new framework for evolution to European Union ... It is right and appropriate that we should debate those proposals on their own merits ... in our view the commitment to political co-operation is based upon, and indeed flows from the commitment to economic integration set out in the Treaties establishing the Communities ... it is hard to see how political co-operation can respond effectively to external problems unless internal cohesion and common interest within the Community are first of all increased and developed. "

The Irish Times of 27 October 1984 commented that the current Western European Union meeting took place partly because of Ireland's reluctance to go along with the original proposals of Genscher-Colombo which included regular meetings of Defence Ministers of EEC Member States, although Ireland was not the only country to object. "The Government here, and politicians of most



parties, clearly accept the WEU revival with some relief. It seemingly removes the issue of security from the forum of European Political Co-operation among the Ten, sparing Irish Ministers the embarrassment of deciding when the political aspects of security end, and the compromising of Irish neutrality begins ... "Having pointed out that this was a superficial view, which evaded the issue, the paper went on to say that "politicians here adopt a very jealous stance on neutrality when it is a matter of public debate at home, but manage to maintain admirable flexibility on the same topic in the context of the EEC ... Such discrepancies are explicable only if neutrality is regarded as a matter of expediency, related to circumstances, and not a keystone of foreign policy, permanent and non-negotiable. Mr Cooney [the Irish Minister for Defence] had the courage and frankness to say so. " (19).

#### IRISH ATTITUDES TO INCREASED COMMUNITY POWERS

The attitudes of Irish politicians and of public opinion do not display the automatic objection to any increase of Community powers, or even to the full use of existing Community powers or to specific examples of Community powers such as the direct effect of Community law, which are conspicuous in some other Member States. Irish people in general are not opposed to increases in the powers of the Community. Only a very small minority in Ireland share the attitudes, summed up in the emotive word "sovereignty", which are common in Denmark and in the United Kingdom. It has been said (20) that "Britain, like Denmark and Greece, joined [the Community] not because it wanted to be in but because it feared to be out". Without discussing this rather severe statement, one can say that although Ireland certainly would have been unwise to stay out once the U.K. joined, Irish people have never felt any of the ambivalence, to put it no more strongly, which is felt in the U.K. about the Community. There is no widespread or general prejudice in Ireland against the Community. The popular attitude is quite different from that in Britain.



On the other hand, proposals to increase substantially the powers of the European Parliament could give rise to objections which have not been made so far. These objections might be based on instinctive reluctance to change, or to criticisms of the way in which the European Parliament has so far used its powers. There might also be objections to a large-scale transfer of powers from national legislatures to the Council of the Union, i.e. to governments. There might certainly be objections to any provision which created exceptions to the Commission's exclusive right to initiate measures since, once the veto has been ended, the Commission's exclusive right to initiate represents the principal safeguard for ensuring that the interests of smaller Member States will be adequately taken into account. Article 37(2) of the draft Treaty might therefore give rise to criticism.

#### IRISH NEUTRALITY

Irish neutrality has never been defined. As already mentioned, it is not mentioned in the Constitution. It is not the subject of any treaty. It has never been fully or authoritatively articulated. It is therefore not easy to describe, although it has been the subject of a valuable book by my colleague in Trinity College, Dublin, Patrick Keatinge (21). In practical terms, it has merely meant that Ireland is not and has not been a member of NATO, the Western European Union, or of any military alliance. Apart from that, it is an attitude, and not really a policy. The elements which have contributed to that attitude are as follows.

The idea of Irish neutrality has been associated with independence from Britain. The Irish people did not wish to be involved in "England's wars". They have a certain distrust of major powers. Ireland's geographical position made it possible to stay out of conflicts in Europe without having to maintain armed forces adequate to resist invasion : Irish neutrality has been relatively cost-free. In 1938, Ireland negotiated the closing of



British naval bases on Irish soil, and this made possible Ireland's neutrality in World War II. "By 1945 the basis for a national tradition of neutrality, both as a value and a policy, had been laid" (22). After Ireland joined the U.N. in 1955, and in the 1960s, the Irish government worked for disarmament measures and progressive withdrawal of armed forces in Europe. These efforts were regarded with approval in Ireland as demonstrating an independent and constructive foreign policy, although Ireland's voting record in other respects in the U.N. was not very different from that of other Western European countries, or those of the other European neutrals, Austria, Finland and Sweden. Ireland never joined NATO. One reason suggested for this was that NATO member states' commitment to respect each others' territories might imply recognition of the legitimacy of British rule in Northern Ireland. However, a stronger if less explicit reason is that, for geographical reasons, the Irish people do not feel threatened by Eastern bloc forces, and so see less need for military preparedness than peoples further East. The feeling that Ireland's neutrality is in some sense morally preferable to involvement in the East-West conflict or even to membership of a defensive military alliance has been strengthened by Ireland's contributions to U.N. peacekeeping forces, and by the view of Irish people that peacekeeping, neutrality, and aid to developing countries are related. What can best be described as insularity has also played a role.

Ireland applied to join the European Communities in 1961. During the previous two years, and subsequently, Seán Lemass, then Taoiseach (prime minister) made a series of public statements to the effect that Ireland would involve itself in European integration without any reservations as to how far it might go in the areas of foreign policy and defence, and that in due course Ireland would cease to have a policy of neutrality. In the discussion before the referendum on Irish accession, in May 1972, the two major political parties both advocated accession, and



both took the view that membership of the Community would not compromise Irish neutrality in the foreseeable future. Since the corresponding view was not held by Austria, Finland, Sweden or Switzerland, the Irish view implied (no doubt correctly) that Irish neutrality was different from the neutrality of those countries. In 1979 Jack Lynch said that Ireland had no traditional or permanent policy of neutrality, and that in the Community Ireland would ultimately cease to be neutral. In a debate in the Dáil in 1981 Charles Haughey, then Taoiseach and leader of the same political party as his two predecessors just mentioned, accepted that full political union in the Community would ultimately involve an end of Irish neutrality. Lemass had probably thought more carefully about neutrality than either of his successors, and it is clear that he did not believe that neutrality should be a brake on Ireland's participation in European integration.

Irish neutrality therefore has been an attitude which Irish people have been able to take for granted, for geographical reasons, without analysis and virtually without economic or other sacrifices. (Ireland has never had compulsory military service). It has certainly been a less clear position than those of the four recognised European neutral states, Austria, Finland, Sweden and Switzerland. Keatinge identifies two points of view. The first is a "moderate" or "pragmatic" view of what national prosperity, security and independence make appropriate. This is the view of at least a majority of the two major political parties, and the essence of it is non-membership of any military alliance. This view would imply that Irish neutrality might be lessened or given up if other national interests or aims justified doing so. The second is a more "far-reaching" view, expressed by the small Labour Party (23) (which has been in government only as the junior partner in a coalition, and which



does not seem likely to achieve power alone in the foreseeable future) and by others, mostly outside the Oireachtas. This view regards neutrality as a basic, immutable, moral principle of national policy.

Since neutrality is highly regarded by Irish opinion, but has never yet conflicted with any recognised national interest or made necessary any significant economic sacrifices, it is impossible to be certain which of these two views would be closer to Irish public opinion after careful consideration of Irish accession to the proposed treaty on European Union. However, those who clearly advocate the second, more inflexible version of Irish neutrality are in general less representative of Irish opinion than the two major parties, though their articulate and indeed emotional advocacy of a more extreme concept of neutrality might win some public sympathy. It seems unlikely that either concept would ultimately prove enough to produce a majority of the electorate opposed to accession to a European Union. Neither of the major parties has had occasion to explain the reasons for weakening or giving up Irish neutrality for the sake of the economic and political advantages of participating in a European Union, but such an explanatory campaign by both the large parties, when the time comes, would certainly have a considerable influence on public opinion. One significant sign is that, although the Labour Party suggested in 1980 that neutrality should be written into the Constitution, there is no other substantial body of opinion which wishes this to be done. However, in Ireland and elsewhere many people hope that neutralist attitudes and military weakness might enable them to avoid being involved in any possible future conflict in Europe, and the wish to avoid such involvement is an understandable one.



It should also be said that although the Irish like to regard themselves as neutral, no Irish politician ever makes the kind of criticisms of the USA or of other European countries which have often been made by Swedish politicians, or speaks as favourably of Communist regimes as leading Greek politicians have done. Since the end of World War II hardly any action has been taken by any Irish government in the foreign relations sphere which would have caused surprise if it had been taken by, say, the Netherlands.

### ECONOMIC ISSUES

Economic questions formed a large part of the debate in Ireland on accession to the Communities. They would probably be important in the debate on accession to the Treaty on European Union. How they will be considered will depend on economic developments in the Community and in Ireland, in particular during the period between now and when Ireland's accession to the European Union has to be decided. We do not know how long that period will be, or how the economies will perform during it. The economic advantages of joining the European Union would also have to be compared, presumably, with (i) remaining outside the European Union but inside the Community, and (ii) leaving the Community entirely. Neither alternative is likely to be economically attractive, but neither can usefully be discussed here.

Irish public opinion would obviously be more favourable to the European Union if the Community proves itself successful economically in the coming years. It is impossible to isolate the effect of the Community on the Irish economy in 1973-1984 from the effects of e.g. the energy crisis, global recession, the Northern Ireland problem and its huge cost to the Dublin government, and Irish economic and financial policies followed during the same period. However, it is clear that membership of the Community has given Ireland very large economic benefits, notably



in improved access to markets on the continent, higher prices for agricultural products, and receipts from FEOGA and the Social and Regional Funds. Ireland could have benefited more if its problems of farm structure and land use policy, and of getting more efficient industry and public administration, had been solved. It is probable that the economic advantages for Ireland of joining the European Union and obtaining the full economic benefits of membership will be strong.

#### IRELAND'S ROLE IN THE COMMUNITY

The Irish people would be more interested in and more favourable to the proposal for European Union if Ireland was playing a greater role in the Community. One major Irish initiative in the Community, if successful, would go far to convince Irish opinion that Ireland could make an important contribution. The kind of measure which would most interest Irish opinion would probably be the adoption of a Community policy, proposed and worked out by Ireland, on trade with developing countries, or of course on Northern Ireland. Irish attitudes on neutrality (quite apart from other States' views) might discourage Irish politicians from suggesting that the Community should take any major initiative to reduce international tension. Irish-inspired measures to eliminate barriers to intra-Community trade, if they were effective and far-reaching, would also help to persuade Irish opinion that European integration could bring important benefits. (Indeed, if under the present Irish presidency the negotiations for the accession of Spain and Portugal and for the third Lomé Convention can be brought to a successful conclusion, or if a useful package of measures on intra-Community barriers were pushed through, thorough coverage by the Irish media of these achievements would have some of the effects under discussion). Like most European



peoples, the Irish tend to be exasperated with the Community not because it is too integrationist but because it is not moving fast enough, and is too often obstructed by short-sighted disputes over petty issues. The Irish would be pleased by statesman-like leadership in the Community, especially if an Irish government had contributed to it or provided it.

#### THE ATTITUDES OF THE MAIN POLITICAL PARTIES

As very few considered comments have been made by Irish politicians on the draft Treaty, it is appropriate to summarise their attitudes to European integration generally.

Reference has been made already, in the section on Irish neutrality, to statements by the three leaders of the largest political party in Ireland, Fianna Fáil. More recently, Mr. Haughey has made more inflexible statements, but he has never argued against the principle of European political integration or of Ireland's involvement in it, and it seems likely that his statements were more influenced by short-term party-political tactics than by long term thinking. Neutrality is popular enough in Ireland to tempt politicians to accuse their opponents of failure to preserve it. On the other hand, Fianna Fáil is more old-fashioned in its outlook than the other parties, and is more likely than the others to oppose, or at least to be ambivalent about, Ireland's becoming involved in European political integration. One or two Fianna Fáil members of the Dáil have made comments more consistent with the "far-reaching" version of Irish neutrality than with the "pragmatic" version. There is some risk that Fianna Fáil politicians may, for short-term tactical reasons, make statements which imply a less pragmatic version of neutrality than their



party has previously held. There is a risk that they may do this without adequate awareness of the economic costs of a neutrality sufficient to keep Ireland out of the European Union, if their statements were to lead so far.

Of the three main political parties, the second largest, Fine Gael, now led by Dr Garret Fitzgerald, is probably the most favourable to European integration. That party holds the more moderate and more pragmatic view on neutrality identified by Keatinge, and Dr Fitzgerald is the most Community-minded politician in Ireland. Mr Cooney, the Minister of Defence has recently confirmed this attitude.

The attitude of the much smaller Labour Party is less easy to summarise. The Labour Party argued against accession to the Community in 1972, though perhaps not all its members argued with conviction. It loyally accepted the verdict of the 1972 referendum. In the 1980s the Labour Party published several policy papers (24). The paper on the European Community unreservedly supports the Community and Ireland's involvement in it (while naturally calling for more socialist policies), saying "Labour - ... has sought, since Irish entry in 1973, to contribute fully and positively to the development of the institutions, policies and programmes of the Community, and to its overall progress." It adds that "Ireland's neutrality must not be compromised". The paper on European Political cooperation stressed "the vital importance of neutrality in all of this country's international dealings". "Creating a socialist basis for the future of the Community does not imply any diminution of Ireland's long-standing neutral position". European political cooperation is a "threat to Irish neutrality" and Ireland should adopt "a non-aligned position". The question of what Ireland's attitude should



be if the Community were to discuss military issues is left open, and the non-aligned position was undefined. The apparent implication is however that the Labour Party would be opposed to Ireland being involved in any developments which compromised Ireland's freedom to be "non-aligned". Keatinge however considers that since neither Fianna Fáil nor Labour has repudiated the commitment to eventual European Union, implying involvement in collective defence, their real position, as distinct from their rhetoric, may ultimately be essentially similar to Fine Gael's.

The attitudes and uncertainties of the three main Irish political parties were shown at the time of the vote in the European Parliament on the final Spinelli Report. The Fine Gael MEPs voted for the Report. Of the three Labour Party MEPs, one voted for and two voted against. The Fianna Fáil MEPs had signed the register on the day of the vote but, presumably deliberately, were not present, and so took no position, not even abstaining.

#### TRADE UNIONS AND EMPLOYER ORGANISATIONS

The attitude of Irish trade unions towards Ireland's accession to the European Union Treaty is likely to be a result of two elements, the relative strength of which it is difficult to assess in advance. These two elements are, first, the economic advantages of joining the Union, compared with the economic results of not joining, and second, the extent of the feeling among trade unionists against joining, on political grounds primarily concerned with neutrality. In the short term, the economic consequences of joining will presumably be, in substance, simply a continuation of the existing situation within the Community. It is now, and may well be when the question arises, very much more difficult to say what the economic consequences of staying out of the Union would be for the Member



States of the Community, if any, which decide not to join the Union. Presumably these consequences would depend, in part, on whether their reluctance to join the Union was thought to be temporary or permanent. In the case of Ireland, the economic consequences of both joining and of not joining would be affected (though much less than in 1972) by whether the U.K. joins or not. Probably, as in 1972, the majority of trade union members would vote in accordance with their economic interests, as they saw them when the time comes, and the leaders of the trade union movement would tend to adopt the attitude adopted by the Labour Party, and indeed would probably largely determine that attitude.

The attitude of the employer organisations in Ireland (the Confederation of Irish Industries and the Federated Union of Employers) is almost certain to be based on their view of the economic results of joining or not joining, and to be uninfluenced by (or little influenced by) political considerations. They would however be more influenced than trade unions by the argument that Ireland's interests would be better protected if Ireland continued to have the maximum influence available to it in European affairs, which would imply that Ireland should join the Union when it comes into existence.

#### PUBLIC OPINION AND THE MEDIA

In the light of what has been said above, the probable attitude of public opinion and media opinion can be summarised briefly. The media in Ireland are mostly moderate and middle-of-the-road on most issues, and do not often diverge significantly from public opinion in general on issues relevant to the European Union. Of course, different newspapers, for example, represent different tendencies within public opinion, but all the national newspapers and all, or almost all, of the provincial and local papers are, and are likely to remain, moderately "pro-European".



Television, which is influential, is, although State-run, not significantly government influenced on issues directly relevant to the European Union (measures have been in operation for years to prevent television from giving publicity to the I.R.A.). However, there is a minority in the media which adheres to the more far-reaching view of Irish neutrality, and which therefore, as in 1972, will be opposed to Ireland joining the European Union, even if the economic consequences of not joining were clearly unattractive. Such minorities are vocal, and the controversies they arouse excite public interest and are therefore good media material. In 1972 what can now be seen to have been a small but vocal minority of anti-EEC opinion obtained a considerable amount of publicity, and the same viewpoint will no doubt be thoroughly aired (as indeed it should be, in view of the importance of the issues at stake) when the occasion arises. Both public opinion and the media will no doubt give a great deal of attention to the question of neutrality, both because it has been a vague concept, taken for granted rather than analysed in the past, and because it is more likely to arouse discussion and controversy than the economic issues. It will by now be clear that the writer believes that the majority attitude to Irish neutrality is the "moderate" or "pragmatic" one, and that although Irish public opinion supports this attitude, it is not likely to prevent Ireland from following what presumably will be its economic interests and joining the European Union.

#### THE CATHOLIC CHURCH

For completeness, a mention should be made of the influence of the Roman Catholic Church in Ireland. Although it is less strong than it was, it is still greater than in most other European countries. Approximately 95 % of the population of the Republic of Ireland are Catholics. The 1937 Constitution "recognised" the "special position" of the Church as that of "the great majority of the citizens", but this clause, which had never been considered as having any practical or legal effects or as being more



than a statement of the obvious, was removed from the Constitution, by referendum and without any opposition from the Church or from any significant body of opinion, several years ago. However, Irish Catholicism is somewhat conservative, and there was a majority in favour of the referendum to add a provision to the Constitution designed to prevent both the legislature and the courts from legalising abortion.

It seems unlikely that the Church or Catholic opinion in Ireland would take any position for or against Ireland joining the European Union. No real view of this kind emerged in the discussion before the referendum in 1972 on joining the Community.

IRISH OPINION IN A REFERENDUM ON ACCESSION TO EUROPEAN UNION :  
CONCLUSION

It is not easy to foresee the circumstances most likely to lead governments to advocate ratification of the European Union Treaty. This might result from an economic crisis which only a more united Europe could surmount, or it might result from accumulated public impatience with the pettiness of national politicians and civil servants who are now obstructing the operation of the Community. Or it might result primarily from creative leadership from European statesmen.

Irish public opinion would almost certainly support a major initiative in European integration if it was led by an Irish politician. In the absence of such an initiative, the result of a referendum on Ireland's accession to a European Union would depend on the attitudes of the two large Irish political parties. Accession would be impossible unless at least one of those parties was in favour of it. Either, in power, would seek the support of the other, to obtain a bipartisan attitude, as in 1972. If both were in favour, the referendum would almost certainly approve accession. If one of the two large parties opposed



accession, the outcome would be doubtful. Much would depend, if the two parties disagreed, on the campaign to explain the purpose of the referendum and the reasons for joining the European Union. Of the two big parties, Fine Gael would be more likely to be in favour of joining, and Fianna Fáil would be more likely to oppose it. In the Republic of Ireland, the Labour Party would certainly be concerned by the implications of joining for Irish neutrality, but it is not clear if they would go so far as to oppose joining if the economic arguments for it were strong, as they almost certainly would be. Apart from the question of neutrality, Ireland and Irish opinion would not be as opposed to the incipient federalism of the European Union as the United Kingdom and Denmark would probably be. Irish opinion is not sensitive about the Community institutions having greater powers.

Fine Gael in particular has supported majority voting in the Council, strengthening the Commission, and direct elections for the European Parliament. Fianna Fáil have been less explicit, but by coincidence Fianna Fáil have only once been in power when Ireland held the Presidency (and at that period were distracted by internal questions) and so have never had occasion to see its political potential.



#### FOOTNOTES

- (1) See the Irish Government publications *Membership of the European Communities : Implications for Ireland* (1970, Dublin) and *The Accession of Ireland to the European Communities* (1972, Dublin) of which extracts are given in Chubb, *A Source Book of Irish Government* (1983) ch. 11 ; Temple Lang, *The Common Market and Common Law* (1966) ch 3 ; Lynch (Then the Taoiseach), *The Republic of Ireland and the EEC - The Constitutional Position : I*; and Temple Lang, *The Republic of Ireland and the EEC - The Constitutional Position : II*; in Bathurst, Simmonds, Hunnings and Welch (eds), *Legal Problems of an Enlarged European Community* (1972) ; Temple Lang, *Legal and Constitutional Implications for Ireland of Adhesion to the EEC Treaty*, 9 *Common Market L. Rev.* 167 (1972) ; Kelly, *The Irish Constitution* (2nd ed., 1984), Section on Article 29 (international relations) ; Murphy, *The European Community and the Irish Legal System*, in Coombes (ed.), *Ireland and the European Communities* (1983) pp. 29-37 ; Keatinge, *Ireland and the World*, in Litton (ed.), *Unequal Achievement : the Irish Experience 1957-1982* (1982) ; see also Hederman, *The Road to Europe : Irish Attitudes 1948-61* (1983) ; Lyons, *Ireland since the Famine* (1971) 543-551 ; Lee, *Reflections on Ireland in the EEC* (1984).

The adoption by referendum of the Constitution of Ireland in 1937 offers a precedent for at least a partial solution to the problem of establishing the Union and making it compatible with the Community Treaties, discussed in the paper by Weiler and Modrall.

The previous Irish Constitution of 1922 was adopted, according to Irish constitutional theory, by the Irish assembly or Dáil which had proclaimed itself the legislature of an independent Irish State. In British eyes the 1922 Constitution was conferred on the Irish Free State, with its dominion status, by an Act of the U.K. Parliament. The 1922 Constitution was a compromise between Irish and British wishes. The 1937 referendum was therefore arranged to enable



the people of what is now the Republic of Ireland to give an unambiguously Irish basis to a constitution drafted wholly by Irishmen. See Temple Lang, *The Common Market and Common Law*, (1966), pp. 57-64. This prompts the idea that the Union Treaty might be the subject of a simultaneous referendum in all the Member States of the Community, so that the peoples of the entire Community could vote on the same question on the same day, on the basis that those States in which a majority of the people were in favour would join the European Union. This would be very democratic, and because the will of the people is the ultimate source of law in a democracy, the best possible basis for a "legal revolution".

- (2) Temple Lang, *The Common Market and Common Law* (1966) pp. 40 - 42, 46-51.
- (3) Temple Lang, *op. cit.* 9 *Common Market Law Rev.* (1972) 167, 167-168.
- (4) Article 113 EEC Treaty.
- (5) Case 804/79, *Commission v. United Kingdom* 1981 E.C.R. 1045.
- (6) Case 22/70, *Commission v. Council (AETR)*, 1971 E.C.R. 263.
- (7) Convention for the European Patent for the Common Market, O.J. No. L 17, January 26 1976.
- (8) Council Declaration concerning the Convention on a European Community Patent. The question mentioned in the text arises because the Convention gives the Court of Justice power to interpret the Convention by a procedure similar to Article 177 EEC Treaty : this would be incompatible with the Articles in the Irish Constitution on Judicial powers unless it is covered by the 1972 amendment.



- (9) See Temple Lang, European Community Law, Irish Law and the Irish Legal Profession - Protection of the Individual and Cooperation between Member States and the Community, The Second Frances E. Moran Memorial Lecture, in Dublin University Law J. at pp. 11-18.
- (10) Article 6 of the Constitution reads "All powers of government, legislative, executive and judicial, derive, under God, from the people ..."
- (11) Temple Lang, The Common Market and Common Law, (1966) pp. 39-40, 74-75.
- (12) Article 113, EEC Treaty ; Opinion 1/75, Local Cost Standard, 1975 E.C.R. 1355 ; Case 41/76, Donckerwolcke 1976 E.C.R. 1921 ; Opinion 1/78, International Agreement on Natural Rubber 1979 E.C.R. 2871 ; Case 70/77, Simmenthal 1978 E.C.R. 1453.
- (13) On the divisibility of sovereignty, see Pescatore, The Law of Integration (1974) 30 ; Pescatore, L'apport du droit communautaire au droit international public, 1970 Cahiers de Droit européen 501, 502-507.
- (14) Temple Lang, op. cit., 9 Common Market Law Rev. 171-176. (1972) ; Murphy, The European Community and the Irish Legal System, in Coombes (ed.), Ireland and the European Communities (1983) pp. 29-37, who also describes the work of the Oireachtas Joint Committee on the Secondary Legislation of the European Communities. This Committee concerns itself with both Community Secondary Legislation and with Irish Secondary Legislation implementing Community Directives and supplementing, where appropriate, Community Regulations.



- (15) New Ireland Forum : The Economic Consequences of the Division of Ireland since 1920 (1984) paras. 7.1-7.
- (16) New Ireland Forum : A Comparative Description of the Economic Structure and Situation, North and South (1983) paras. 11.1-11.4.
- (17) New Ireland Forum : The Legal Systems North and South (1984) Part 5.
- (18) New Ireland Forum : Report (1984) para. 6.8. For a view of Northern Ireland by the European Parliament see the Haagerup Report, European Parliament Documents de Séance 1983-84, Doc. 1-1526/83 ; see also Lyons Ireland since the Famine (1971) 682 et seq.
- (19) See also D. Kennedy, Neutrality Stance has changed, Irish Times 15 November 1984 who comments that "no real attempt has been made to reconcile this enlarged [i.e. "far-reaching"] view of neutrality with the dominant thrust of Irish foreign policy, that is commitment to the EEC and to European integration ... This poses a danger to Ireland - that of being relegated to the periphery of Europe moving towards ... a two tier Europe.
- The Fianna Fáil European Progressive Democrats election document "A strong Voice in Europe" (1984) stated that "Fianna Fáil supports the process of European Political Cooperation..." but also drew a distinction between "security" and "military" matters, saying "it has been suggested that European Political Co-operation should be extended to military affairs. Fianna Fáil is totally opposed to this idea. While Member States may discuss certain foreign policy questions touching on the political aspects of security, Fianna Fáil is opposed to any involvement in either military or defence matters by Community institutions. This opposition is rooted in our status as a Member State which does not belong to any military alliance".



- (20) International Herald Tribune, 14th July 1984, "When will Britain be European? "
- (21) Keatinge, A Singular Stance : Irish Neutrality in the 1980s (1984, Dublin) ; Bowman, De Valera and the Ulster Question 1917-1973, (1982), ch. 6. For some comments on the historical reasons for Sweden's neutrality see The Economist, 6-12, October 1984, Sweden : a survey.
- (22) Keatinge, op. cit., p. 20.
- (23) Notably in the Labour Party booklet, Ireland - a neutral nation (1981).
- (24) Labour Party, Ireland - a neutral nation, (1981) : The European Community (1984) ; European Political Cooperation (1984).







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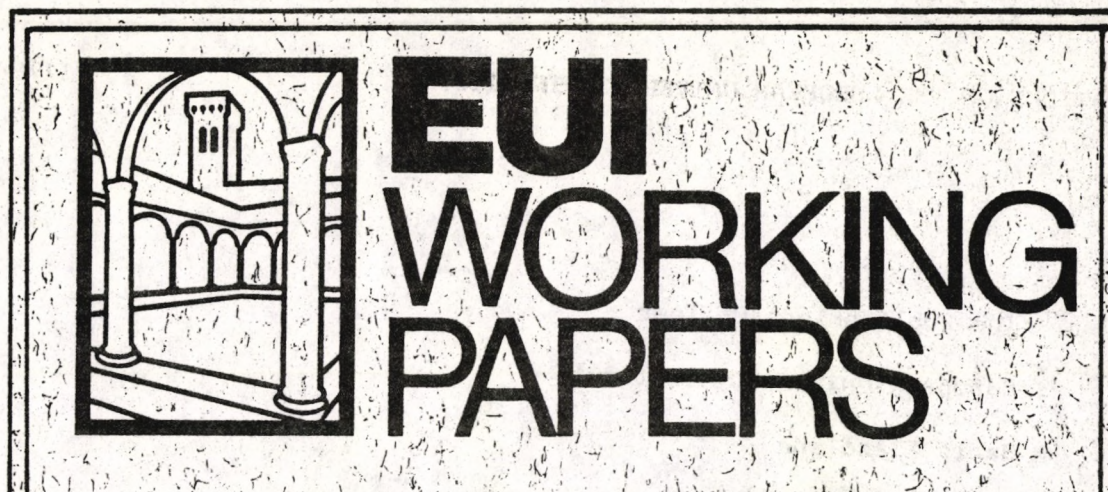
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