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To all Missions,

Re: Extradition (European Convention on the Suppression of Terrorism) Bill 1986

The above Bill has been introduced in the Dáil. Please find enclosed a copy of the Bill, the Explanatory Memorandum, a summary of the main provisions of the Bill and the reasons for its introduction, and an explanatory Council of Europe report on the European Convention on the Suppression of Terrorism. These should provide sufficient clarification in case of any queries on the matter.

Bernard Davenport,
Anglo-Irish Section.
3 December, 1986.

The Extradition Bill: Summary Points

- Persons who are wanted in neighbouring European democracies for a prosecution or to serve a sentence for subversive, violent crimes should not be able to evade justice by pleading a political motivation in our jurisdiction for their crimes.

- This legislation will enable the State to ratify the European Convention on the Suppression of Terrorism which excludes certain violent crimes from the political category.

- Introduction of the Bill fulfills the commitment made by the Taoiseach at the signing of the Anglo-Irish Agreement to accede to the Convention on the Suppression of Terrorism as soon as possible.

- This Convention affects our extradition arrangements not only with Britain but with all Council of Europe countries.

- All Council of Europe countries have signed this Convention and all have ratified except France, Greece, Ireland and Malta. France, Greece and Malta are in the process of ratifying.

- The political exception clause originated in nineteenth century Britain as a sympathetic response to revolution against despotic regimes. Modern jurisprudence in like-minded democratic States has been reflecting the view for some years now that the political exception clause should be restricted, and that violent subversive crimes in one democratic State should not, in effect, be regarded as possibly justifiable in another. Our Courts have also begun to take this view in recent years (McGlinchey and other cases).

- The Convention provides the opportunity to introduce a safeguard in our legislation governing extradition arrangements with Britain and Northern Ireland which will permit extradition to be refused where a person shows that he would be prosecuted or punished, or that his position would be prejudiced, on account of his race, religion,

nationality or political opinion. This safeguard is also in the European Convention on Extradition of 1957 (not yet ratified by Britain); it applies in our extradition arrangements with other Council of Europe countries; it is provided for in the British legislation of 1978 implementing the European Convention on the Suppression of Terrorism and will apply therefore to Irish extradition requests to Britain and Northern Ireland as well as to their requests to us; and it applies in the Anglo-American extradition treaty.

- The provision could be described as a fair trial provision - will the person to be extradited receive a fair trial in the requesting State? (It has been so interpreted by the US Senate Foreign Relations Committee in reference to the Anglo-American treaty). It may be said that although our Courts have been willing to hear this argument in extradition cases involving Northern Ireland (they have not been convinced by it), the inclusion of the safeguard <u>in legislation</u> will give it greater potential in future Court proceedings.

- Following the Anglo-Irish Agreement, we are embarked on a process of mutual understanding and cooperation not only between the two Governments but also between the two traditions in Ireland. Nationalists need to have greater confidence in the administration of justice in Northern Ireland and to have better relations with the police. It may be said that unionists need to have greater confidence in North/South security and legal arrangements to combat violence. The work of building up confidence is continuous and is parallel in one area to the other. It will also take time. The Government is not asking the Dail and Seanad, therefore, to make a final decision now. For that reason, and because certain administrative arrangements for dealing with extradition cases have yet to be completed in the Anglo-Irish Conference, the Government is proposing that the Dail and Seanad may delay the commencement of the Act beyond 1 June 1986 (the Dail and Seanad may also bring the commencement date forward).

Anglo-Irish Section,
November 1986. 1769p

Extradition (European Convention on the Suppression of Terrorism) Bill 1986

Reason for the legislation

The general effect of the Bill will be to restrict the scope of application of the political offence exception in extradition cases where, broadly speaking, the offence is a serious one involving an act of violence against the person, or an act against property which created a collective danger for persons.

The rationale of the Bill is that it is desirable that people who are wanted in other countries for prosecution or to serve a sentence for particularly serious and odious crimes of this nature should not be able to evade justice in our jurisdiction by pleading a political motivation for their acts when their extradition from here is sought. The enactment of the legislation will mean that Ireland will be seen to be playing its part fully in the extradition area in the international effort to combat terrorism and to be discharging its obligations in this regard as a member of the Council of Europe group of nations. It will also enable this country to ratify the European Convention on the Suppression of Terrorism, which will mean that we will be able to obtain extradition from other convention countries of persons who may be wanted here for terrorist-type offences such as kidnapping, the use of explosives etc.

Why the Convention can be ratified now

Up to recently successive Irish governments have taken the view that this country was precluded from ratifying the Convention for constitutional reasons (i.e. essentially that the Constitution would not permit of extradition for an offence that was political). However, in some cases in the past few years the Supreme Court decided that certain offences were not to be regarded as

political notwithstanding that political motivation was claimed for them. In the McGlinchey case in December 1982 the Court stated that modern terrorist violence is often the antithesis of what could reasonably be regarded and laid down the test of a political offence as being whether the particular circumstances showed that the person charged was at the relevant time engaged, either directly or indirectly, in what reasonable, civilised people would regard as political activity. The same line of approach was followed in the Shannon case in 1984. In the next year in the Quinn case (which did not involve a crime of violence against the person) the Supreme Court took a different approach, based on the constitutional principle that it could not interpret an Act of the Oireachtas as having the intention to grant immunity from extradition to a person charged with an offence the admitted purpose of which is to further or facilitate the overthrow by violence of the Constitution and of the organs of State established thereby.

The effect of these cases seems to be that the Constitution does not preclude the possibility of some offences being declared not to be political offences for extradition purposes.

General approach taken in Bill

Under the Bill certain offences are not to be regarded as political offences in any circumstances. These are the offences covered by Article 1 of the Convention (which is mandatory). These include hijacking of aircraft, kidnapping and hostage-taking and offences involving the use of explosives or automatic firearms if this use endangers persons. The Bill also accepts (but not fully) the option that is available to Contracting States under Article 2 of the Convention to decide not to regard as political certain other serious

offences. These are serious offences (other than those covered by Article 1) involving an act of violence against the life, physical integrity or liberty of a person, or involving an act against property which created a collective danger for persons. Under the Bill these offences are not to be regarded as political where the court or the Minister for Justice, as appropriate, having taken into due consideration any particularly serious aspects of the offence concerned is of opinion that the offence cannot properly be regarded as political.

The Bill does not, therefore, require thar Article 2 offences never be regarded as political but it does require that, before deciding that such an offence is political, the court will take into due consideration any particularly serious aspects of the offence (including serious aspects mentioned specifically in the Bill).

The reason for the approach taken in the Bill to Article 2 offences is that that Article covers a very wide range of offences, the particular circumstances of which might vary greatly.

No reservation under the Convention

Article 13 of the Convention allows Contracting States to make a reservation in respect of the application of Article 1 which would allow that Article to be given less than full effect. The Bill will give full effect to Article 1, so no reservation will be made by this country when ratifying the Convention. In giving effect to Article 2 of the Convention the Bill employs an approach similar to that provided for in Article 13 of the Convention and uses much of the language of that Article. However, Article 2 of the

Convention is optional and can be given effect to in less than full fashion without the necessity for a reservation under the Convention.

Possible ground of refusal of extradition

Article 5 of the Convention following a similar provision in the European Convention on Extradition (1957) permits the refusal of extradition where there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons. The Bill will apply this provision to extradition requests from Britain and Northern Ireland (the Extradition Act 1965 already applies it to requests from other countries).

Extra-territorial jurisdiction

The provisions of the Bill establish extra-territorial jurisdiction over Article 1 offences if committed in other Convention countries or, in certain limited cases, if committed by a national of a convention country anywhere abroad. This enables the State to comply with its obligation under the Convention to submit to its competent authorities, with a view to prosecution, a case where a person suspected of having committed an Article 1 offence is found within the jurisdiction and a request for extradition is refused.

Commencement of legislation

The legislation will come into operation on 1 June 1987 unless before that date resolutions to the contrary are passed by both Houses of the Oireachtas. It will also be open to the Houses of the Oireachtas to pass resolutions that the Act should come into operation on a specified date

earlier or later than 1 June 1987. In that event the Minister for Justice will make an order that the Act shall come into operation on the date specified in the resolutions.

Dept. Justice.
November 1986.

The Extradition Bill : Questions that have arisen and some answers

1.Q. Why is this bill necessary?

A. This legislation is a necessary step in the process of ratification of the European Convention on the Suppression of Terrorism which all of our European partners have ratified or are in the process of ratifying. At Hillsborough on 15 November 1985, the Taoiseach said that, against the background of the commitment of both Governments to work for early progress on relations between the security forces and the minority community in Northern Ireland, on the enhancement of security co-operation, and on measures which would give substantial expression to the aim of underlining the importance of public confidence in the administration of justice, it was the intention of the Government to accede to the European Convention on the Suppression of Terrorism. The Convention was signed by the Minister for Justice on 24 February 1986. At that time he announced the intention of the Government to introduce the necessary legislation in the Autumn.

2.Q. What does this Bill provide?

A. The Bill seeks to implement the European Convention on the Suppression of Terrorism. The Convention, which was prepared under the auspices of the Council of Europe, is designed to assist in the suppression of terrorism by facilitating extradition for terrorist offences, specifically, by setting limits to the scope of the exception for "political offences". The Convention excludes identified violent terrorist-type offences from the political offence exception. It also permits certain additional offences to be excluded under certain circumstances.

3.Q. Since our Courts have been extraditing 'political offenders' anyway, isn't this Bill simply a sop to unionists?

A. We believe that Unionists should certainly welcome the Bill and we hope they will. But that is far from saying that it is introduced as a sop to them. The Bill is necessary to enable us to accede to the Convention. It is also important, in this matter of public policy, that the Oireachtas should, in effect, state its position. The Bill is not intended to prevent further development of the law in the years ahead but it does set down a benchmark : it will be a point of reference for the Courts which, up to now, have been left to carry entirely on their own shoulders the burden of determining what, in modern conditions, should attract the label "political offence".

4.Q. Why will this Bill, when passed, not come into operation automatically? Why take the unusual step of specifying 1 June 1987 as the commencement date and of permitting the Dail and Seanad to prevent or delay commencement?

A. First, as might be expected, there are a number of issues on which administrative arrangements, which are being worked out under the auspices of the Anglo-Irish Conference, need to be completed and put in place. We are satisfied that there will be no great difficulty in getting agreement on the details of those arrangements but they take time.

Second, in the Hillsborough Communique both Governments recognised that progress on the Convention would proceed against the background of the commitment of both Governments to work for early progress in police/community relations, security cooperation and public confidence in the administration of justice. There have been quite a number of improvements in all these areas. The police have acquired a new respect in the eyes of nationalists over the last twelve months; new police complaints procedures have been published; the RUC and the Garda Siochana have been developing their cooperation steadily and I am satisfied that progress has been achieved and the conditions exist for achieving further progress in the administration of justice, for example, in

- decisions of the Northern Ireland Courts, especially in supergrass trials,
- the descheduling of certain offences so that they will now be tried before a jury rather than the Diplock Courts,
- reduction in delays between arrest and trial which means less time remanded in custody,
- important changes to the Emergency Provisions Act now before Parliament, ie,
- arrest, search and other powers to be exercised on reasonable suspicion rather than simply suspicion as heretofore,
- a shift of onus in bail cases from the defence to the prosecution,
- improved rights for persons in custody,
- more stringent conditions for the admissibility of confessions.

We recognise however that we have some way to go before there is adequate public confidence in the administration of justice in Northern Ireland. The changes now occurring need to be consolidated and in some cases brought into effect. We believe that further changes need to be made. That is recognised also by the British Government as for example in Mr King's recent speech when he said "we must seek constantly to develop and improve the arrangements we make for the administration of justice in terrorist cases". In these circumstances, we think it is right that the Dail and Seanad should have an opportunity to review the question of commencement of the Bill in the light of developments .

5.Q. You have told us why the Bill has this special provision about commencement. In effect you are saying the Government believe that progress has been made but that more is needed. Why didn't the Government postpone its introduction until they were satisfied and able to recommend it, without qualification, to the Dail and Seanad?

A. One way of explaining it is to say that, now that the Anglo-Irish Agreement is in being, we are participating in a process. Both the Irish and British Governments are seeking to assist in the difficult task of restoring peace and stability to Northern Ireland. The process in which we are involved takes time and involves contributions by both sides. We have, at times, been disappointed that progress has not been more rapid but we recognise that progress has been made in matters

issue at present - it would amount to taking back with one hand what is given with the other, and of course that would hardly inspire confidence among those who are at the receiving end of paramilitary violence. This does not mean there is automatic extradition. It is provided in Article 5 of the Convention, and in this Bill, that extradition may be refused if there are substantial grounds for believing that the person sought would be prosecuted or punished or that his position would be prejudiced on account of his race, religion, nationality or political opinion. Exactly the same is provided in the corresponding British legislation which was enacted in 1978.

8.Q. How can the Government justify relaxing the position governing the political exception in extradition to a jurisdiction where several Irish nationals are serving life sentences for crimes which they almost certainly did not commit (Birmingham Six, Annie Maguire and others, Guildford Four)? If these convictions are not overturned, will you ask the Dail and Seanad to delay commencement of the Bill?

A. In case of any confusion, could I make it clear that those cases did not involve extradition. However, I am well aware of the fact that they have aroused a great deal of concern. It is fair to point out that this concern has been aroused in Britain also and that the cases are under review by the British Home Secretary. Public opinion in Britain has become much better informed about the real nature of the Anglo-Irish problem since those cases occurred in the mid-seventies, and the risk of prejudice has, we believe, greatly diminished. Recently, we have seen British juries acquit Irish people on charges of terrorist offences. We do not envisage the commencement measure as a means of forcing the British Government to take action on these cases. That would not be justified and in any event would be likely to have the opposite effect, as it would if the boot were on the other foot and they were asking us to take action on cases here. We will continue our efforts to persuade the British Government to take positive action.

9.Q. How can the Government justify extraditing Irish nationals to a country where one may be detained under the PTA on grounds of suspicion which, it seems, may be no stronger than the fact that the suspect has an Irish accent?

A. Detention under the PTA has really nothing to do with extradition to face charges. As far as the PTA is concerned, in cases where there have been grounds for believing that the law has not been fully observed, we have approached the British authorities and have made progress. The number of detentions of Irish people under the PTA has been dropping steadily in recent years. We shouldn't overlook the fact that the overwhelming majority of Irish people who travel to or from the UK or who live there go about their business without any questioning by the police.

10.Q. There have been serious doubts in recent cases - notably in the McGlinchey case - that returned suspects have been questioned about offences other than those for which they have been extradited. Have any steps been taken to ensure that this does not happen?

A. The suggestion that there was something improper in that respect was raised in Court and not accepted. There is no suggestion in extradition Conventions or elsewhere that it is improper to put questions to an extradited person and international practice allows it. What would be objectionable would be to seek extradition merely for questioning and the arrangements which are being worked out in the Anglo-Irish Conference will guard against that.

11.Q. Is the Government not concerned that suspects extradited under the Convention may end up standing trial for completely unrelated offences?

A. There is no basic objection to the bringing of new charges as long as they are not charges which, if included in the extradition request, would have caused it to be refused. In the 1957 European Convention on Extradition, it is provided that "new" charges may be brought only with the consent of the "requested" State but consent must be given if the "new" offences are extraditable. Arrangements are being worked out, in the Anglo-Irish Conference, to ensure that a person who is returned will not be charged with an offence for which he could not have been extradited.

12.Q. In the light of what happened in the McGlinchey, Shannon and Quinn cases, there has been a great deal of concern at the lack of a prima facie evidence requirement in extradition arrangements with Northern Ireland. Why has the Government chosen to ignore these concerns in drafting legislation?

A. Much of the comment was based on a belief that a prima facie requirement is the international norm. That erroneous belief clearly arose from the fact that there has been a requirement to that effect in English law. But a prima facie evidence requirement is not the norm in extradition arrangements between European countries. There is no such requirement in the European Convention on Extradition of 1957 to which we acceded following the 1965 Extradition Act. Consequently, we ourselves have had no such requirement in our extradition arrangements with other European countries for over 20 years. Britain, which has had such a requirement with European countries excepting ourselves, has now brought in legislation to drop it, and is so conforming to the general European norm. The understanding among our European partners is that an extradition request will not be made unless there is a clear expectation that court proceedings will follow. The British and ourselves both subscribe to this view and the arrangements being made in the Anglo-Irish Conference will be such that the system will be operated accordingly on both sides.

13.Q. Why is there no precaution in the Bill against bungled warrants such as were sent over in the Glenholmes case?

A. Because it is unnecessary. There already is provision in the law for the courts to examine and if necessary throw out defective warrants. That position is not being altered. What is being done is that administrative arrangements are being made under the auspices of the two Governments which will help minimise and we hope eliminate the risk of defective warrants being sent from one jurisdiction to the other. Those arrangements are nearing completion.

14.Q. Why is Britain being treated differently/more favourably than other European countries?

A. We have had traditionally a simple backing of warrants arrangement with Britain which was continued in Part III of the Extradition Act 1965. That arrangement will remain. After the signing of the Anglo-Irish Agreement and the work now being done in the Conference to put in place improved administrative arrangements for the operation of the system, it would not be appropriate to turn around now and make the system more complicated than it has been in the past.

15.Q Why does our extradition treaty with America (motion approved by Dail on 25 November) include a political exception clause? Will there be a new treaty with America?

A The Convention on Terrorism does not put an end to "political exemption" clauses even as between member States of the Council of Europe. What it does is to limit the meaning of "political offence", in the context of extradition between member States. It follows that there is no conflict between the Convention and the retention of a "political offence" exception in other Extradition Treaties.

[Supplementary Question: If the Treaty with the U.S. were being negotiated now, would the "political exception" clause be limited on the lines of the Convention?

A: That would be a matter for consideration on the merits and of course the views of both sides would have to be taken into account. The Convention is related only to the member States of the Council.]

[Additional Note
This treaty was signed some years ago (1983) and has now been before the Dail as a result of a recent decision of the Supreme Court. The reason for the decision had nothing to do with the extradition arrangements, but related to the fact that, as held by the Court , there would be a

charge on public funds and that on that account Dail approval was needed.]

16.Q. Why ratify the Convention? Is it not enough to continue to use the Criminal Law (Jurisdiction) Act, 1976?

A. No. It is generally accepted, internationally, that extradition, where it can reasonably be arranged, is a better way of dealing with criminal cases than trial in a country other than the one in which the crime is committed. That view is at the heart of the Convention. That apart, the 1976 Act is limited in its scope. It provides for the trial in the State of certain subversive-type offences committed in Northern Ireland, but it does not cover offences committed in Britain or in other jurisdictions with the exception of explosives offences.

17.Q. Has it not been said in the past that ratification of this Convention could be unconstitutional?

A. Doubts about the constitutionality of ratification of the Convention were expressed when it was drawn up in 1977 and indeed later. However, it has become clear from decisions in our courts in recent years that the Courts, certainly, do not regard such issues as static. Circumstances change, and change radically, and views about what constitutes a "political offence" change also. As I need hardly say, the Government believe that ratification of the Convention is constitutional.

18.Q. Why send people back to the one-judge Diplock Courts you have failed to have reformed?

A. We need to look at progress in the whole area of the administration of justice and the overall level of public confidence, not at any single issue. We need to continue to build public confidence in the administration of justice in Northern Ireland. Significant progress

has been made and we believe that this process of reform will continue, as Mr King has recently made clear. New extradition procedures are not dependant on any single reform.

Joint Dept of Justice / Dept. of Foreign Affairs paper.

26 November 1986.