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Statement by the Minister of State at the Department of Foreign Affairs, Mr George Bermingham, TD, on the Extradition Bill, Second Stage, Dail Eireann, 12 December 1986.

A number of false impressions have been created about this Bill.

The impression seems to have been created in the minds of some people that the passage of this Bill will mean that extradition will become automatic and that we will be handing people over to other authorities simply at their asking, and with no conditions at all. This is simply not the case. This Bill does not replace our existing legislation in the Extradition Act of 1965, it amends it essentially for the purpose of restricting the meaning of political offence. The formal procedures which are required in order to deal with a request for a person's extradition will remain in place. People whose extradition is requested will still be able to argue their case in court, they will still be able to contest the validity of the warrant or extradition request, and they will still be able to argue the question of whether they will get a fair trial in the State requesting their extradition.

Indeed, there is a feature in this Bill which is not present in the existing legislation governing our extradition arrangements with Britain (Part III of the 1965 Act) which provides that there is no obligation to extradite if a person can show that he would be prosecuted or punished on account of his race, religion, nationality or political opinion, or that his position might be prejudiced for any of these reasons. This provision already applies in our legislation governing extradition arrangements with other European countries which are parties to the European Convention on Extradition of 1957. The passage of this Bill will mean that this international legal principle will now be contained for the first time in our legislation governing extradition arrangements with Britain and Northern Ireland. The inclusion of the safeguard in the Bill will have the effect of increasing the present level of

safeguard against returning a person who would not receive fair treatment. It already applies in the British legislation of 1978 governing extradition arrangements with us.

This safeguard is included in the extradition arrangements even between friendly and democratic states of the Council of Europe because it is recognised that each individual case must be decided on its own merits and that there may be occasions where the fair treatment of a person could be in question.

I repeat therefore that the passage of this Bill will not mean that people will be extradited automatically, or that the formalities involved in dealing with warrants or extradition requests will be changed in any way to the disadvantage of the person whose extradition is requested. On the contrary, administrative arrangements are being reached in the Anglo-Irish Conference to tighten up the present system and to safeguard against mistake or abuse. Furthermore, the position of a person whose extradition to Britain and Northern Ireland has been requested, will receive potentially greater protection by the passage of this Bill because of the fair trial safeguard which it is now proposed to include in the legislation.

Let me now deal with a second false impression. The impression has been given that this Bill will mean the end of the political exception. Again this is simply not the case. The political exception is being restricted not abandoned. The passage of this Bill will not mean that somebody who commits, for example, a property offence involving no danger to human life, as a gesture of political protest, will <u>have</u> to be extradited to another jurisdiction. Our Courts will continue to have discretion in this and many other types of cases. What it <u>does</u> mean is that certain heinous offences committed with terrorist-type methods will no longer be covered by the political exception.

In the last 20 years or so, we have seen the emergence of new forms of terrorist violence, some committed within a jurisdiction for a political motive, some committed in a third country for the purpose of getting publicity and attention, and most involving attacks on the life and liberty of innocent people. It has been necessary for the States of the Council of Europe to join together to take action to stamp out these crimes. Thus, the Convention on the Suppression of Terrorism provides that a person who hijacks an aircraft or who attacks the life or liberty of internationally protected persons, or who kidnaps a person or takes a hostage, or who commits an offence involving the use of terrorist-type weapons such as a bomb or a grenade or rocket (referred to as explosives in the Bill), or who attempts to commit any such offences or participates as an accomplice, shall be regarded as outside the scope of the political exception.

Let us be clear what the label "political" means when it is attached to such offences: it means they are or may be justifiable. I am convinced that the vast majority of people in this country will agree that such offences when committed in one of the Council of Europe States should not be regarded as "political" and therefore non-extraditable. They see the necessity to stamp out these acts of terror whether they occur on this island, or elsewhere in Europe. They see that given the international methods of the modern terrorist, there must be international co-operation to protect ourselves.

Furthermore, I believe the vast majority of the people of this State are utterly opposed to all forms of physical violence committed by people on this island, whether the purpose of the violence is allegedly in the name of a united Ireland, or allegedly in the name of maintaining the union of Northern Ireland with Britain. Whatever the so-called political motivation, I believe we have come to recognise that it must not be tolerated and must be ended before it engulfs us all. I believe that nationalist men and women are appalled by the violence conducted in their name and do not wish it to be open

to subversives to escape prosecution or punishment for their evil deeds because they say they were done in the name of a united Ireland. I do not believe they wish to give protection to people whose aim it is to subvert the institutions of our own State. Nor, may I add, do I believe that they would wish to give protection to people committing offences in the name of unionism and so prevent their return to Britain or Northern Ireland.

The restrictions which will now be placed by law on the meaning of political offence are precisely designed to ensure that the specific acts of terrorist violence against the person, referred to in this Bill, shall not be grounds for the refusal of extradition, and that in the case of other acts of violence against the person which are not specified, our Courts, in evaluating the character of the offence, will consider any particularly serious aspects of it, including any collective danger to life or liberty, any effect on innocent persons, and any cruel or vicious means used in the commission of the offence.

It is the restriction on the meaning of political offence which is at the heart of this Bill. Our Courts have taken the view in recent years that the meaning of political offence should be restricted to what reasonable, civilised people would regard as political activity. That view in turn reflects a change in the attitude of ordinary people to the use of violence to further a political objective. That view is grounded on respect for human life, on the principle that political argument should be conducted by peaceful means, and on the resolve that there shall be no excuse for terrorist attack on life and liberty in democratic States. The Government believe that it is right and necessary that that view should now be reflected by the Oireachtas itself in legislation and not simply left to the Courts to put into effect. We believe it is right and necessary to take a stand on this issue and to positively assert the non-violent nature of our view of political life and of our aspirations as a people. It is extremely important that this basic purpose of the Bill should not be obscured by argument about legal technicalities.

Nevertheless, it is necessary to point out, because again a false impression has arisen about this, that the Government recognise that there have been problems in recent years in cases involving the execution of warrants sent here from Britain or from Northern Ireland, and that the Government have acted to prevent a recurrence of these problems. The Minister for Justice has said in his opening speech that the administrative arrangements in extradition cases are being tightened up and that agreement on them is now virtually complete in the Anglo-Irish Conference. The Government are satisfied that the new arrangements will reduce to an absolute minimum, if not wholly eliminate, the risk of a recurrence of the kinds of difficulties that have arisen in recent years.

I am referring here to mistakes or omissions in drawing up warrants and in completing the necessary formalities. The question of a sufficiency of evidence to justify a warrant being sent here is a separate matter which also requires comment.

The Minister for Justice has pointed out that in the opinion of legally experienced people with access to all the facts, there has been only one case, and that an arguable case, in which a question might have arisen about the sufficiency of the evidence to justify the warrant submitted. In other words, there is no adequate basis in fact for the argument being made for the proving of a prima facie case in our Courts.

I will return to this point, but I first want to say that in order to allay any possible public concern about warrants being sent here without a sufficiency of evidence, it has been agreed with the British Government that the warrant for the return of a fugitive will not be sought unless the Director of Public Prosecutions in Northern Ireland, or the Crown Prosecution Service in Britain, has considered the evidence and is satisfied that it is sufficient to ground a clear expectation of a prosecution. The Northern Ireland Secretary of State, Mr.

King, in his speech of 8 November, has made it clear that the British Government also are anxious to ensure against error or abuse in their extradition arrangements with us. This arrangement is of course reciprocal. It means that the warrant in each case, whether sent by us to Britain and Northern Ireland, or by Britain and Northern Ireland to us, will not be sent unless the case has been examined at a high legal level to establish if there is sufficient evidence on which to bring a charge.

Let me correct any false impression that this Bill authorises extradition merely for the purpose of questioning. Nothing of the sort could be contemplated, nor is it contemplated. The administrative arrangements being reached in the Anglo-Irish Conference are firmly based on the principle that extradition is for the purpose of charging a person and not merely for the pupose of questioning.

These are the arrangements we are making. What we cannot do is to introduce the concept of a prima facie evidence requirement, namely, that the question of a sufficiency of evidence should be gone into in our courts. The technical problems associated with this have long been recognised by the Council of Europe countries and it was for that reason, that the Council of Europe countries including ourselves drew up the 1957 European Convention on Extradition. The irony is that those who want the incorporation of a prima facie evidence requirement in our Bill are talking about an English legal principle which is now being abandoned by the English themselves after being abandoned by the rest of Europe, including Ireland, 30 years ago. The effect of introducing such a requirement now would not merely be to make us odd man out in the whole of Europe, but would also make it much more difficult to obtain extradition from us, or for that matter, assuming retaliation by the other countries of the Council of Europe, much more difficult for us to obtain extradition from other countries.

This question of prima facie evidence has clouded and confused the basic purpose of this Bill, which is, as I have said, to enable us to join with other European countries in co-operative efforts to stamp out international terrorism, and to assert a basic priniple of our society, that we do not see certain specified terrorist acts of murder or other violence against any person on this island as being justifiable. They are not justifiable whether the victim is Catholic, Protestant or Dissenter. They are not justifiable whether the victim is an RUC or Army man. They are not justifiable if the victim is a nationalist employer shot by the IRA, without the benefit I might add of a court trial let alone the legal formalities which have been talked about in this debate. They are not justifable if the victim is a nationalist victim of loyalist sectarian murder, of which we have had an appalling example this week. By passing this Bill, we will be saying that the acts of murder and violence specified in the Bill, will not be seen as justifiable whether committed by nationalist or loyalist paramilitaries or anyone else, and that other acts of violence may not be seen as justifiable depending on the character of the offence. I might add that the British Parliament has already made its position clear by passing legislation enabling Britain to ratify the Convention on the Suppression of Terrorism in 1978.

I now want to turn to the question of the commencement provision in this Bill. The Taoiseach announced our intention to accede to the Convention on the Suppression of Terrorism at the signing of the Anglo-Irish Agreement on 15 November 1985. He said that our accession would be against the background of the building of public confidence in the administration of justice in Northern Ireland, in the improvement of relations between the community and the police and in the context of enhanced cross-border security co-operation. There have been improvements in all these areas. The RUC have acquired new respect in the eyes of nationalists over the last 12 months as they have resisted loyalist violence in protest at the Agreement. New police complaints procedures have been

published. The RUC and the Garda Siochana have been developing their co-operation steadily. Progress has been achieved, and conditions exist for achieving further progress in the administration of justice. I would draw attention to:

- decisions of the Northern Ireland Courts especially in supergrass trials,

- the de-scheduling of certain offences so that they will be tried before a jury rather than the Diplock Court,

- a reduction in delays between arrest and trial which means less time remanded in custody,

- important changes to the Emergency Provisions Act now before Parliament, i.e.,

- 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 more must be done 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 speech of 8 November when he said "we must seek constantly to develop and improve the arrangements we make for the administration of

justice in terrorist cases" and as he made clear again following the last meeting of the Anglo-Irish Conference. In these circumstances, we think it is right that the Dáil and Senate should have an opportunity to review the question of commencement of the Bill in the light of developments.

Lastly, may I say a word about the cases of the Birmingham Six, Annie Maguire and others and the Guildford Four which have been referred to in the course of the public debate on this Bill.

It is a fact that these cases have aroused a great deal of concern here, and not only here but in Britain also. A statement of the Home Secretary only this week has indicated that he is very well aware of this concern expressed through tthe media and of course transmitted by the Minsiter for Foreign Affairs directly to him. He has indicated that the necessarily careful and thorough review of the Birmingham Six case is nearing completion and that he expects to be in a position to announce a decision before long.

Let me give a word of caution to those in this House who have linked the Extradition Bill to these cases. First, it should of course be made clear that these cases did not involve extradition in any way. It is also fair to say that public opinion in Britain has become much better informed about the real nature of the Anglo-Irish problem since these trials took place in the mid-1970s, and especially since the report of the New Ireland Forum and the signing of the Anglo-Irish Agreement. The risk of prejudice has, I believe, greatly diminished in Britain, as has been shown by recent decisions of British juries to acquit Irish people on charges of terrorist offences.

What action is taken in Britain by members of the British Parliament and by other persons interested in these cases is a matter for them, although I would add of course that we greatly welcome their concern and their efforts to bring these cases to

attention. The action taken by our Government and by this House is a separate matter. It is important that the Government and the members of this House should continue their efforts to persuade the British Home Secretary by all appropriate means to take positive action to enable those involved in the Birmingham, Guildford and Maguire cases to have an opportunity to clear their names. But the crucial word here is persuade. Those who would seek to force the Home Secretary to make a certain decision, by linking the passage of a Bill which should be passed on its own merits to such a decision, are acting unwisely and not in the best interests of the persons they wish to help. What would be our reaction if another country seemed to try to force us to take action on convictions which had been decided upon by Irish juries in an Irish court? I do not need to answer that question.

The Government will continue their efforts to persuade the Home Secretary to take what we see as the right course of action. I believe that has also been the approach of the All-Party delegations who have visited Britain and discussed these cases with the Home Office, including the Home Secretary personally, and with a wide variety of political figures and other persons who have serious doubts about the safety of the convictions. I would strongly recommend the same approach to all the interested Deputies in this House.

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