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STRUCTURE AND ORGANISATION OF THE COURTS IN NORTHERN IRELAND

At the meeting of Working Group I on 11 April the Irish side invited the British side to pass over a list of questions which arose from the Group's discussion of the British side's paper. The following questions broadly indicate the points which the British side would like to have clarified.

Judicial Appointments.

1. Does the Irish side accept that selection of members of the Judiciary should be strictly on merit and in accordance with the principle of section 19 of the Northern Ireland Constitution Act 1973 which makes discrimination on the grounds of religious belief or political opinion unlawful?
2. Having regard to the answer to question 1, does the Irish side consider that courts composed of three judges are preferable on their intrinsic merits, irrespective of whether they contain a "representative" of the minority community? If minority representation is important, is it the view of the Irish side that it should be a requirement that each court should contain a representative of the minority, or that this should be merely an objective?
3. What does the Irish side see as the justification for a second senior judicial post, given that current workloads in the Supreme Court do not necessitate the creation of such a post? What functions does the Irish side envisage for the postholder?
4. Does the Irish side have any views on what criteria could be used to identify candidates for judicial appointments who would be representative of, and acceptable to, the minority community?

The Irish Courts

5. The British side looks forward to receiving statistics on the operation of the Irish Judicial system, preferably in a form comparable to Annex A of its paper.

6. It would also be helpful to know how in practice the Special Criminal Court is made up and how it resolves procedural difficulties of the type identified in paragraph 18 of the British paper.
7. Is leave to appeal from the Special Criminal Court required? How many appeals are there from the Special Criminal Court each year, and what proportion of appeals are successful? Has the Court of Appeal commented on its inability to tell whether the findings of the Special Criminal Court on issues of fact was unanimous or by a majority?

Three-Judge Courts for Scheduled Offences in Northern Ireland

8. How does the Irish side envisage that a Court of three Judges would deal with procedural points arising during a trial, for example points that the Court might wish to raise with counsel? Would it only be the Presiding Judge who would raise such points, whether or not at the instance of his colleagues, or could any one of the three do so? If one of the Judges raised a point would his colleagues be free to comment publicly on it?
9. The Irish side has said that it might not favour a three Judge court if there were not to be a single judgement. How does the Irish side envisage that speculation as to the views of each judge might be avoided in the context of a divided community?
10. If three-Judge courts giving a single verdict were introduced in Northern Ireland, would the Irish side envisage such courts giving a written judgement when convicting? If so, how could a single judgement deal adequately with a situation where two Judges agreed on a conviction but for different reasons (of fact and/or law) and the third Judge voted in favour of an acquittal?
11. If one Judge became ill or died during the course of a trial, would a re-trial be necessary?
12. Does the Irish side accept that the requirement for a written judgement stating the reasons for conviction, a right of appeal

- without leave and the freedom of the Court of Appeal to consider issues of fact as well as of law, all of which are seen as major safeguards in the present "Diplock" structure, should be retained? If not, how would the Irish propose to answer the criticism that safeguards in three-Judge courts were in practice less effective?
13. Does the Irish side accept that the high percentage of "guilty" pleas in "Diplock" cases and the low number of appeals against conviction (statistics to follow) do not suggest any objective cause for concern about the integrity and impartiality of "Diplock" courts. Does the Irish side have any objective evidence of the extent to which members of the minority community perceive such courts to be unfair?
14. Does the Irish side accept that there is a danger that three-Judge courts might in practice reduce confidence among the minority community, (particularly if the safeguards currently built into the appeal procedure were to be weakened,) as a perception might arise that Judges representative of the minority community were being outvoted?

'Ethos. of the Courts'

15. Does the Irish side have any specific proposals for changes under the heading "ethos of the courts", which they consider feasible in the present climate?