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Convention on the Suppression of Terrorism: Background

1. The British and Irish Governments announced in the Joint Communique issued at Hillsborough on 15 November that:

"the (Anglo-Irish Intergovernmental) Conference will concentrate at its initial meetings on:

- relations between the security forces and the minority community in Northern Ireland;

- ways of enhancing security co-operation between the two Governments; and

- seeking measures which would give substantial expression to the aim of underlining the importance of public confidence in the administration of justice.

In the interests of all the people of Northern Ireland the two sides are committed to work for early progress in these matters. Against this background the Taoiseach said that it was the intention of his Government to accede as soon as possible to the European Convention on the Suppression of Terrorism."

2. The Council of Europe adopted the Convention on the Suppression of Terrorism in 1977. The States parties are: Austria, Cyprus, Denmark, FRG, Iceland, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and U.K. Belgium, France, Greece and Italy have signed the Convention but have not yet become parties. Ireland and Malta have neither signed nor ratified the Convention.

3. The Convention provides in Article 13 that a state party may reserve the right to continue to refuse extradition for

offences which it regards as political offences even if these offences are excluded from the category of political offence or offence connected with a political offence by Article 1 of the Convention (see paragraph 4 below). The Convention directs that if a reservation is made the state party must take into due consideration when evaluating the character of the offence, any particularly serious aspects of the offence including a collective danger to life or liberty, an effect on innocent persons, and cruel or vicious means used in the commission of the offence. The Convention further directs that if a request for the extradition of a fugitive is refused under this reservation, the fugitive must be tried in the requested jurisdiction. Several states parties have made the reservation under Article 13, ie, Denmark, Norway, Iceland, Sweden, Netherlands, Cyprus and Switzerland. Italy made the reservation upon signature.

4. Article 1 of the Convention provides that certain offences shall not be regarded as political offences. (These are: aircraft hijacking, attacks against diplomats, kidnapping and the taking of hostages, the use of a bomb, grenade, rocket, automatic gun or letter or parcel bomb if the use endangers persons, any attempt to commit these offences and any role as an accomplice.) It is this provision in particular which caused difficulty for Ireland. Because the Convention sought to redefine the concept of "political offence" to exclude a wide variety of actions (on the implicit grounds that they were "terrorist-type" actions) there were doubts that the Convention agreed with the principle of international law, generally accepted since the nineteenth century, that political offenders should not be extradited. As Article 29.3 of the Constitution states that Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other states, there were doubts, in consequence, that the Convention was in conformity with Ireland's Constitution.

5. Ireland's Extradition Act 1965 provided for non-extradition if the offence concerned was "a political offence or an offence connected with a political offence". The legislation gave no

definition of such an offence. Nor did did it seek to exclude certain offences with one exception : the assassination or attempted assassination of a Head of State or a member of his family. The matter of general definition was left therefore for interpretation by the Courts. The Courts gave the widest interpretation to the terms of the Act excluding only persons who were manifestly not 'political' but rather ordinary criminals seeking to avoid extradition. Within the Law Enforcement Commission appointed after Sunningdale, the Irish judges who were members took the view that the amending legislation which would be required to ratify the Convention on the Suppression on Terrorism might be invalid by virtue of Article 29.3 of the Constitution.

6. Not until the Supreme Court judgement in the McGlinchey case in December 1982 did the Courts suggest that a different view might be taken towards the meaning of "political offence or offence connected with a political offence". In the judgement in that case the Supreme Court itself began to restrict the meaning of "political offence or offence connected with a political offence" invoking the standard of "what reasonable, civilised people would regard as political activity". In the McGlinchey case, the Courts were dealing with a charge of murder of an elderly lady in private life. In the Shannon case in which judgements were given in the High Court in January 1984 and in the Supreme Court in July 1984, the Courts were dealing with the murder of persons who were arguably officially representative of the institutions of the State in Northern Ireland (Sir Norman Stronge and his son, a reserve RUC constable). However, in that case also, the Courts followed the McGlinchey judgement and upheld the order to extradite, refusing to regard the offence charged as a "political offence or offence connected with a political offence". The Burns case which involved a charge of murder of British Army soldiers was expected to be a crucial further test of the Courts' interpretation of the political offence exception. However, Burns was released by the High Court in December 1985 when the Northern Ireland Courts found the warrant on which Burns had been arrested to be invalid.

7. In the Quinn case which involved the extradition to Britain on a fraud charge of a person connected with the INLA, the present Chief Justice gave the view (February 1985) that "whilst it is possible and of assistance to identify factors which should be assessed in reaching a decision as to whether any particular offence is or is not a political offence, it is probably neither possible or desirable to attempt a precise or comprehensive definition". This view suggested that apart from the general requirement in Article 29.6 of the Constitution that no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas, the Courts would regard it as necessary for the Oireachtas to adopt legislation in order to permit the implementation by the State of the provisions of the Convention on the Suppression of Terrorism.

8. In the light of these judgements, the Taoiseach announced in the Joint Communique and at the Press Conference which followed the signature of the Anglo-Irish Agreement at Hillsborough on 15 November, that it was the Government's intention to accede as soon as possible to the Convention. It is considered necessary to enact legislation amending the Extradition Act 1965 before the State becomes a party to the Convention. Consideration of the necessary domestic legislation is proceeding urgently together with consideration of the question of a reservation under Article 13.

January 1986

'Political' Extradition Cases

A note on the facts of the McGlinchey, Shannon, Burns and Quinn cases is attached for supplementary information.

McGlinchey

On 9 September 1977, McGlinchey was arrested in the South on a firearms charge. He was subsequently convicted and jailed. The Northern authorities issued a warrant for the arrest of McGlinchey on 11 September 1977 and transmitted it for 'backing'. The charge was the murder of an elderly woman, Hester McMullan, in Toomebridge, Co. Antrim in 1977. A second warrant of 24 June 1981 for this murder was eventually served on McGlinchey when he was released from prison in the South, and an order for his extradition was made by the District Court on 2 February 1982. McGlinchey appealed to the High Court and then jumped bail. His appeal failed as did his appeal to the Supreme Court which authorised his immediate extradition in December 1982. The Government made it publicly known that McGlinchey would be extradited immediately upon arrest. He was arrested on 17 March 1984 and following a second confirmation of the extradition order by the Supreme Court, he was handed over to the RUC on the night of 17/18 March. Upon McGlinchey's return, he stated and his lawyer repeated in Court that he had been questioned about offences not in the extradition warrant. A decision to return McGlinchey for trial was made in September 1984. There was much public criticism of the forensic evidence adduced against McGlinchey which rested on fingerprints found on a car which it was believed had been used in the killing. There was criticism also of the use of affidavits made by McGlinchey in the Irish High Court. The trial ended in McGlinchey's conviction on 24 December 1984. McGlinchey appealed the conviction. On 9 October 1985, McGlinchey was acquitted on appeal. The unanimous ruling was that the Irish High Court affidavits should have been disregarded as more prejudicial than probative, that there was no specific evidence to prove the crime had been committed by the IRA, still less a South Derry unit of the IRA, that there was no evidence to exclude other IRA groups and that the fingerprint evidence was unsupported.

Application was made by Crown Counsel to appeal to the House of Lords. The application was withdrawn on 11 October. Later that day McGlinchey was ordered extradited to the South to face charges there.

Shannon

Shannon was arrested in July 1983 pursuant to two N.I. warrants for his arrest on the charge of murdering Sir Norman Stronge and his son in January 1981. The N.I. warrants were issued originally on 23 March 1983 and transmitted. They were reissued and retransmitted on 6 July 1983. The District Court made an extradition order on 26 July 1983. Shannon appealed to the High Court which upheld the order in January 1984. He also took proceedings to have the extradition arrangements with Britain declared unconstitutional. The latter proceedings were dismissed by the High Court in May 1984. The Supreme Court upheld the High Court on the constitutional issue and on 31 July 1984 upheld the High Court on the extradition order also. Shannon was handed over to the RUC on the night of 31 July/1 August. In response to concern expressed that Shannon would be interrogated or tried on other matters, Mr. Justice Hederman said: "an extradition sought simply for the purpose of interrogating (Shannon) and thereby to acquire incriminating evidence would be a gross abuse of the extradition process" ... and "the Attorney General in the course of his submission to the Court indicated that there is no evidence that the plaintiff would be prosecuted for any offence other than the ones referred to in the warrants and I must assume that ... the Attorney General has satisfied himself that the plaintiff, if removed from the State, would not be prosecuted or detained for a political offence". Mr. Justice Hederman agreed with the Chief Justice's judgement in the case of the State (Magee) v. O'Rourke (1971) I.R. 205, p. 216, that it would be "a breach of faith" to prosecute an extradited person for a political offence.

Shannon went to trial on 4 December 1985. On 13 December he was acquitted by Belfast Crown Court of the Charges of murdering Sir Norman Stronge and his son. Shannon's thumb prints had been discovered on one of the stolen cars used in the attack. Mr. Justice Higgins said the onus had been on the Crown to exclude the possibility that they had been planted innocently - this they had failed to do. The fingerprints did not therefore, prove sufficiently satisfying to uphold a conviction in his case.

Burns

Brendan Burns of Crossmaglen, Co. Armagh, is wanted in NI for the murder of five British soldiers. His extradition hearing in the High Court was regarded as a major test of how far our Courts are prepared to go in defining the meaning of a political offence; for that reason it was also the subject of an intensive Sinn Fein campaign against his possible extradition.

Burns took an action in the NI Courts to have the warrants for his arrest declared invalid. This action succeeded on 4 December. 1985 apparently because the information was sworn before a magistrate other than the one who had issued the warrants. As a result Burns was released by order of our High Court on 5 December. Once the NI warrants were declared invalid, the Court had no option but to order the immediate release of Burns and in the wake of the Trimbole case (where the High Court ruled that Trimbole had been illegally detained under the Offences Against the State Act for the purpose of awaiting an Australian extradition warrant) the Gardai had no power to detain Burns. He was, therefore, let go. New valid warrants were subsequently endorsed here for Burns' arrest and these will be executed when he is apprehended.

because the information was sworn before a magistrate other than the one who issued the warrants

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Quinn was arrested in December 1983 on foot of a British warrant of 9 March 1982 for his arrest for an offence (cheque fraud) in November 1980 under the British Theft Act 1968. The District Court ordered his extradition in December 1983. The High Court upheld the Order in November 1984 and the Supreme Court did likewise on 28 February 1985. Quinn was extradited to Britain on 1 March. On 5 May 1985, the proceedings at Horseferry Road Magistrate's Court on 1 May were reported in the Sunday Tribune.

The Magistrate had responded angrily to a police request for a (fourth) remand and had released Quinn on bail. (At the previous hearing on 4 April, a police officer had assured the Court that papers had been sent to the DPP when in fact the papers in his possession in Court showed they had not been sent.) On 6 June, with the prosecution's case still unready, the Magistrate dismissed the case and Quinn returned immediately to Ireland. Mr. Roy Amlott, prosecuting, is reported (Guardian, 7 June) to have said that it was decided not to investigate the case in depth until it was known that Mr. Quinn would be extradited (emphasis supplied).

Public Concern in Ireland

There has been continuing media interest in allegations of delays, improper and unauthorised use of Irish court affidavits, lack of evidence and interrogation with a view to trial on other charges, in regard to the handling by the Northern Ireland and British authorities of various aspects of the McGlinchey, Shannon and Quinn cases. On 31 March 1985 the Fianna Fail Ard Fheis (Annual Conference) unanimously adopted a motion urging an end to the present extradition arrangements with Britain.

APPENDIX 1

Irish law and position on extradition up to 1982 and British concerns in that regard

1. The Terrorism Convention is concerned with facilitating extradition by and between contracting States with a view to collaboration, among Member States of the Council of Europe, in combatting terrorism. Previous to conclusion of this Convention, extradition between Council of Europe countries was governed by the 1957 European Convention on Extradition and/or bilateral agreements. Ireland is a contracting party to the latter Convention but the U.K. is not. Reflecting a position generally accepted in international law since British court decisions in the 19th century, the 1957 Convention provided that "extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or an offence connected with a political offence". There is no internationally agreed definition of what constitutes an offence of a political character.

2. The Irish law on extradition is contained in the Extradition Act 1965. This and the corresponding British act regulate extradition between the two States and, by agreement, both included the concept of the non-extradition of political offenders as between the two countries: the Irish act also applies this concept generally. Since the onset of fatal violence in Northern Ireland at the beginning of the 1970s, the British have, in a significant number of cases, sought the

extradition, especially to Northern Ireland, of persons against whom they were proceeding for, allegedly, having committed terrorist offences but up to December, 1982, no such application was successful, the Courts here applying the political offence exception in favour of those whose extradition was sought for such offences. As a consequence, successive British Governments have pressed, with a force varying from time to time, for changes in our legislation and/or practice in order, as they saw it, to overcome the problems posed by suspected terrorists enjoying the protection of the political exception.

3. The Law Enforcement Commission appointed jointly by the Irish and British Governments in December, 1973, pursuant to the Sunningdale Agreement was unable to make an agreed recommendation about extradition and was equally divided on the matter. The four Irish members adhered to the view previously taken by the Irish Government that it is a principle of international law that the extradition of a person accused of a political offence does not take place. They also maintained the Irish Government view that because Article 29.3 of the Constitution declares that Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States, amending Irish legislation to permit extradition for a political offence would be repugnant to the Constitution. Mr. Justice Henchy entered a caveat to

the opinions expressed by the other Irish members, confining himself to the opinion that it was not possible to advise that the possible amending legislation in question would not be held to be repugnant to Article 29.3 and therefore invalid. The British members took a different view, concluding that while international law recognises a general practice of refusing extradition for political offences, there is no principle of international law forbidding it: rather such law recognises the right without imposing the duty to refuse extradition in such cases.

4. The British members also made the point that sovereign States, where it is in their mutual interest to do so, make exceptions to the general rule of non-extradition and that it is the practice of States to make such an exception where that is justified by the enormity or barbarism of the crime. They held the view that the terrorists operating in Northern Ireland, whatever their motivation, fall within such an exception. The Irish members, in contrast, adhered to the view that to qualify the political offences exception might be invalid by reference to Article 29.3 of the Constitution.