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17th February, 1986.

Extradition and the Convention on the Suppression of Terrorism

Present Position vis-a-vis the British

Following a Cabinet sub-Committee meeting on Saturday, 19 January, Mr. Lillis gave a "preliminary and tentative indication" to the British side that we could contemplate the signature of the Convention at an early stage to

1. A reservation under Article 13.
2. Possible provision in the necessary domestic legislation for the requirement of prima facie evidence.
3. Simultaneous progress on a programme of special measures to improve relations between the security forces and the community including the code of conduct for the RUC (Article 7(c) of the Agreement).

Mr. King was informed of this indication prior to a meeting with Mrs. Thatcher on 22 January. The reaction from that meeting was said to be positive.

A background note on the convention prepared in the Department and an additional note on the legislative issues prepared in the Attorney's Office were handed over to the British side of the Secretariat during an extensive oral briefing on 4 February. This note highlighted recent Supreme Court decisions which led us to believe that we could proceed with signature of the convention without infringing the Constitution. The Minister for Justice in his meeting with the Secretary of State for Northern Ireland on 13 February advised him that a Memo has been sent to Government by the Taoiseach seeking authorisation for signature prior to ratification. The signature of the Convention is proceeding against a background of progress on the areas set out in Article 7 of the Agreement. No specific timetable was, however, mentioned as regards signature the passing of domestic legislation or the ratification of the Convention.

Present Position

The Memorandum to Government seeking authorisation to sign the Convention is likely to be considered at the meeting on 18

February. The question of preparing the necessary domestic legislation is being handled by the Department of Justice. This Convention is a Council of Europe Convention and the domestic legislation will apply, therefore, to extraditions to all the countries which have ratified the convention or expect to do so. This is perhaps the main reason why the legislation will be complex and take some time to draft. The Taoiseach's Memo for Government envisages signature as soon as possible and presentation of legislation to the Dail within six months. It is expected that a reservation will be made under Article 13 of the Convention at ratification stage. Ratification of the Convention will not mean automatic extradition; our Courts will, because of the reservation, have the final say in determining whether a person is to be extradited or not. In such instances where the Court refuses to extradite the Convention directs that the fugitive must be tried in our jurisdiction.

British/Unionist attitude

The British have repeatedly told us since Hillsborough - most recently in the course of the meeting between the Security of State for Northern Ireland and the Minister for Foreign Affairs in London on 12 February and the meeting of the sub-Group of the Conference in London on 13 February - that they attach enormous importance to the fulfillment of the committment to accede to the Convention.

Constitutional Position

Our courts have traditionally applied the widest possible interpretation to the term "political" when considering cases of extradition to other jurisdictions including Britain and Northern Ireland. Until the McGlinchey decision in December 1982, no 'political' offender was extradited (of course the claims of some ordinary criminals that their offences were 'political' were dismissed as bogus). Therefore, when the Convention was adopted in 1977, we took the view that the restrictions which the Convention placed on the political exception clause would cause difficulty in our courts. We expressed the view then and we have maintained until very recently that provision in Article 29.3 of our constitution stipulating that Ireland accepts the generally recognised principles of international law as its rule of conduct in its relation with other states, prevented us from signing or ratifying the Convention. This was a position which was widely seen by the British and Unionists as a cover for a failure of political will on our part.

Our Courts

The Supreme Court judgements in the McGlinchey and Shannon cases made it clear that the courts themselves were beginning to reflect a growing international trend and were prepared to accept that the political exception clause could be and should be modified (nine years after the adoption of the Convention, all the Council of Europe States except Ireland and Malta have ratified and signed the Convention). Thus, it appeared that the courts would not see a restriction on the political exception clause as being an infringement of a generally recognised principle of international law or therefore an infringement of Article 29.3 of the Constitution. The Attorney General therefore indicated that ratification of the Convention was constitutionally permissible.

Recent Supreme Court Decisions in Extradition Cases

In the Supreme Court judgement in the McGlinchey case in December 1982 the Courts suggested 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.

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". Most recently, the High Court gave reserved judgement on 15 February granting the extradition

request from Northern Ireland for Robert Peter Russell who is wanted there on foot of 19 warrants which relate to his escape from the Maze prison and the attempted murder of an RUC detective. In this instance, the judge upheld the line taken in the Quinn case in which it was held that no relief could be given to a person whose offence, which might otherwise be considered a political offence, had as its objective an attack upon the institutions of the State established by the Constitution. The High court's decision is being appealed to the Supreme Court.

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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.

Quinn

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.