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ROINN AN TAOISIGH

Subject to Verification

Uimhir.....

PERSONAL AND SECRET

Convention on the Suppression of Terrorism

The Taoiseach met Ambassador Fenn and Mr Ian Burns, Deputy Secretary, Northern Ireland Office, again this morning, at the Ambassador's request. This note is in direct speech but it is not a reproduction of what exactly was said.

Ambassador:

I want to say at the outset that we recognise the enormous importance of the events taking place on the border and in the rest of the country. I have been authorised to say that we will offer every co-operation.

My immediate purpose here is to deliver to you a message from the Prime Minister (which the Ambassador then handed to the Taoiseach). The gist of what we are saying is that the propositions we discussed yesterday, for nine hours, with your officials, seem to us to represent prima facie by the back door. If something goes into the statute, on the lines proposed, we think that it would be judiciable. Further, new obstacles seem to be created to extradition. Some of these even have the appearance of an amnesty - which would be very difficult for many people on our side to swallow. There have been, from time to time, unilateral departures from agreed positions. At times it seemed to us that every new problem was making the new position worse than it had been before. I hope you will recognise the critical importance of contact with Ministers so that the reality here - which I can appreciate as one who lives here - is explained to Ministers but we, of course, fully recognise that this is something that you yourselves must make up your minds on.

The real fear is that between us we could destroy a system which is working now - and what we are putting into the legislation would not work on the day.

During our nine hours of negotiation, at official level yesterday, we eliminated some problems but there are still very great misgivings.

*Taoiseach
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Taoiseach:

What is going on on the border and elsewhere is far more important than the legalities we are talking about now. I don't know if we will find anything but we will pursue what we are doing to the end.

I don't quite understand your points about our having moved ground. If we have done that it is because we were listening to you and wanted to take the British Attorney General out of our legislation. We do not want his warrants or judgements to be judiciable in Irish courts. On the question of amnesty, we have changed the original draft so as to make it accord with the Supreme Court decision here and provide for retroaction only insofar as it would not be unjust, invidious or oppressive.

On Section 44A, we cannot go any further. We have put what we are saying in a negative form, which should be helpful to you. This is not a matter of choice. Quite literally it is a question of survival for us. Anything other than what we are proposing just would not be saleable here. You may say that all hell will break loose but what would happen here, if we did not follow the route we are taking, would be that we just could not get the legislation through.

Burns:

What is important here is a sense of reality. The border action is far more important than what we are talking about here. There is certainly no flood of applications for extradition awaiting this legislation. But we are talking about perceptions rather than realities. What we must deal with is a series of political problems rather than legal obstacles. Our basic problem is that the new provisions seem to be bringing prima facie in by the back door.....

Ambassador:

Every time we looked at it, the horse seemed to be carrying more weight. We fully recognise the effort you have made to get as far as we have come. We have tried to convey to our people the firmness with which you believe your Attorney General must make a choice. You have elected to change the provision so that only the Irish Attorney General should, on the face of it, appear in Irish courts. But we do not know how this will go. This is very largely a political question now.

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Taoiseach: When we made the change, new difficulties appeared to be found. All we want is a statement of the facts. We want to take a minimalist position. We have shown our good will on the ground in the current search operation and in the Bill, which literally goes as far as we can go. I would ask you to take these efforts at their face value. Let us see if they work. If in six months or twelve months they do not, we will review the situation. There should be an ability on both sides to initiate this review. I would regard this as being very important.

Ambassador: I freely acknowledge the good will you have shown us in all this. I would ask also that you see the good will that we have brought to bear on the question. We as officials are not able to promise you that this system will work. We can only report to our masters and get their reaction. We agree that the border search is far more important than what we are talking about here.

Taoiseach: That is something new. It is not something asked for in the Anglo-Irish Conference. It is new in that we are putting more resources than ever before in the history of this State into the operation. We have genuine on the ground good will. I am prepared to say in the Dáil if these arrangements are shown not to work to the satisfaction of the British side they will be positively reviewed -

Ambassador: Thank you very much for that offer, which we appreciate.

Taoiseach: I am doing what I can: it is politically impossible for me to do more. Please convey this. I am going as far as I politically can: for me and for this Government it is a question of survival.

Burns: She appreciates that: she knows that all this is not being done as a whim. We will certainly convey the strength of your position, as you present it. Some on our side may have to recognise that sovereign states have to regulate things in their own way. The reaction of Ministers on our side will be extremely important. That, in turn, will depend on the tone of the reaction in this country.

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Ambassador: I do not know if our Attorney General will operate the system; but I would like to make it absolutely clear that what your Attorney General will get is a certificate.....

Taoiseach: What we are concerned about is a minimalist position. The Attorney will form an opinion. It will be his business how he forms that opinion. What is needed is nothing more than the facts: we need a simple statement of the facts. If these are in the certificate there is no going beyond the certificate. If things require more, then we will have to stop there and go back from the present position.

While the views expressed at the meeting were obviously irreconcilable at points, the tone continued to be friendly.



Dermot Nally

24 November 1987.

Copy to: Attorney General.
Mr N Dorr, Secretary, Department of
Foreign Affairs.
Mr D Mathews, Secretary, Department of
Justice.