Extradition

Minister

1. Herewith are two briefing documents, viz

(a) a general one dealing with the recently-passed Act and including a reasonably detailed reference to the "prima facie" issue and a brief reference to the Rule of Speciality (which concerns the addition of "new" charges after extradition)

(b) a separate document which goes into some detail on the Rule of Speciality

2. The first-mentioned document should, I think, be generally suitable as a Memorndum for the Government later on, subject to some expansion of the reference to Speciality. The second document was produced as a separate item because it is certainly too detailed as a possible submission to the Government, but the detail seems necessary to facilitate the making of decisions at Ministerial level. (You may need to consult the Cabinet Sub-Committee).

3. As you will see, the first-mentioned document has a reference to the fact that the British have made it clear that they would be strongly opposed to any proposal to introduce a prima facie requirement. The second document does not say the same thing as explicitly in relation to the possible introduction of a statutory Rule of Speciality but in fact the British were making much the same point, though I would say less forcefully, in that context. They made it clear that, while they accept that there must be some application in practice of a Speciality Rule, they are concerned to ensure that the arrangement would be such that it could not be presented in Northern Ireland as a step backward in extradition arrangements. Specifically, they would be opposed, first of all, to any provision by statute of a Rule of Speciality as between these jurisdictions. Secondly, because of the close relationship that exists, as reflected in the Anglo-Irish Agreement, they would wish that an extra-statutory arrangement should be, at least in form, to some degree less restrictive on the Prosecution than the "full" rule of speciality that applies as between other countries. On this as on other points, the British invariably

emphasise that extradition is a two-way movement and that we get full reciprocal facilities.

4. If the "speciality" document is later being circulated in any form outside this Department, a couple of sentences can be added to bring out more positively that the British argue that there is a fundamental inconsistency between our general stance under the Agreement and the introduction of any new restrictions in relation to extradition.

A. Ward

2 April 1987

CONFIDENTIAL

Extradition (European Convention on the Suppression of Terrorism) Act 1987

Note for Minister

Background

1. On the occasion of the signing of the Anglo-Irish Agreement at Hillsborough in November 1985 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. The Joint Communique issued at Hillsborough indicated that this was done against the background that the two sides were committed to work for early progress on relations between the security forces and the minority community in Northern Ireland, on ways of enhancing security co-operation between the two Governments and on seeking measures which would give substantial expression to the aim of underlining the importance of public confidence in the administration of justice.

2. The Terrorism Convention was opened for signature in 1977 and has now been signed by all twenty one member states of the Council of Europe (including Ireland in February 1986 subsequent to the Hillsborough Agreement). The purpose of the Convention is to assist in the suppression of terrorism by complementing and, where necessary, modifying existing extradition arrangements between member states of the Council of Europe in an effort to overcome the difficulties which may arise in the case of extradition concerning persons accused or convicted of acts of terrorism.

3. The Convention narrows the scope of the exception whereby extradition is not granted for political offences. It excludes certain specified violent "terrorist-type" offences from that exception and permits contracting States not to regard other specified offences as "political" even though a political content or motivation is claimed for them.

4. Up to recently successive Governments have taken the view that Ireland was precluded from ratifying the Convention for constitutional reasons. This was because 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 and, if non-extradition for political offences were a "generally recognised principle of international law" and if the expression "rule of conduct" implied a binding obligation in every situation that might arise, this country would be prevented from allowing extradition for political offences. However, the scope of the political offence exception in Irish law was reduced in recent years in a series of cases (McGlinchey, Shannon, Quinn) in which the Supreme Court decided that certain offences were not to be regarded as political notwithstanding that political motivation was claimed for them. These cases were thought to have so changed the situation as to open up the possibility of Ireland becoming party to the Convention.

Summary of Main Provisions of Act

5. Section 3 of the Act provides that none of the offences covered by Article 1 of the Convention is to be regarded as a "political offence" for the purpose of a request for extradition from a convention country. The offences concerned include hijacking of aircraft, kidnapping and serious false imprisonment and offences involving the use of explosives or automatic firearms if this use endangers persons.

6. The Act enables the Convention to be ratified without recourse to a reservation under Article 13. That Article enables a State to reserve the right to refuse extradition for an Article 1 offence which it considers to be a political offence provided it undertakes to take into due consideration when evaluating the character of the offence, any particularly serious aspects of

the offence, including certain specified aspects. The Government decided not to avail of that "Article 13" option. That decision implied that, as between the contracting States, extradition should not be refused in Article 1 cases on the basis that the offence was political.

7. Article 2 of the Convention is not mandatory but optional. It allows contracting States not to regard as political, serious offences involving an act of violence against the life, physical integrity of liberty of a person or involving an act against property if that act created a collective danger for persons. (The reason that it is a matter of allowing states not to regard these offences as political is that without it it might be argued that States were forbidden to extradite in these cases on the basis that the offences are political). The Government decided to take the option provided in Article 2 but not fully. Their decision is enshrined in section 4 of the Act which provides that an Article 2 offence is not to be regarded as political where the Court, having given due consideration to any particularly serious aspects of the offence concerned (including certain specified aspects), is of opinion that the offence cannot properly be regarded as political. (In substance, though not in form, this amounts to adopting Article 2 subject to an Article 13-type reservation or qualification.)

8. Section 5, in accordance with Articles 6 and 7 of the Convention, provides, where necessary, for the establishment of extra-territorial jurisdiction over Article 1 offences committed in a country which is a party to the Convention and, in some limited circumstances, elsewhere.

9. Sections 8 and 9 incorporate a new safeguard into Part III of the Act (which deals with requests from Northern Ireland or Britain). This - in accordance with Article 5 of the Convention - permits the refusal of

extradition where there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons. (Provision to that effect already exists in Part II of the 1965 Act which deals with extradition to countries other than Britain or Northern Ireland).

10. Section 13 contains the commencement provision. It provides that the Act will come into operation on 1 December 1987 unless resolutions to the contrary are passed by both Houses of the Oireachtas. It is also open to the Dail and Seanad to specify a date earlier or later than 1 December 1987 for the Act to come into operation.

Proposed amendments in the Oireachtas

11. Opposition to the Bill focussed on three main aspects viz. (1) the question of confidence in the administration of justice in Britain and Northern Ireland (from which most extradition requests would come), (2) the absence of a requirement that a "prima facie" case be established before extradition would be granted and (3) the absence of a rule of speciality in Part III of the 1965 Act.

Confidence in the administration of justice

12. The Commencement provision in the Bill, which postpones its entry into force until 1 December 1987, and permits this date to be put back (or brought forward), was designed to leave the way open for the matter to be reconsidered by the Oireachtas in the light of developments in Northern Ireland and elsewhere in the interim.

13. The considerations differed, at least to an extent, as between Britain and Northern Ireland. In the latter case, concern has focussed both on police interrogation methods and the single-judge non-jury Diplock Courts system. In Britain, of course, jury trials remain but there has been concern about the cases referred to as the Birmingham Six, the Guildford Four and Annie Maguire. An Opposition amendment was put down to enable the Court or the Minister to give a direction for the release of a person arrested on foot of an extradition warrant if the court or the Minister was not satisfied that the person concerned would receive a fair trial within a reasonable period or was not satisfied that the general standard of the administration of justice in the place to which the person was to be removed was satisfactory or acceptable or had grounds for believing that the person concerned might be subjected to methods of interrogation which would be in breach of Article 3 of the European Convention on Human Rights.

14. In rejecting this amendment the Minister for Justice said that, as far as he knew, a provision of this kind was unprecedented in that it was a fundamental prerequisite for having extradition arrangements with a particular country that there be a basic degree of acceptance that the system of administration of justice in that country is satisfactory. He also referred to the provision in the Bill which would permit the refusal of extradition in any case where there are substantial reasons for believing that the request for extradition has been made for the purpose of prosecuting a person on account of his race, religion, nationality or political opinion or that his position may be prejudiced for any of these reasons.

Prima facie requirement

15. A number of amendments were proposed in the Dail to the effect that an Irish citizen should be extradited only where a prima facie case had been established in the District Court that the person sought had committed the offence in question. The main argument for those proposed amendments was that Irish citizens should not be liable to be extradited to a foreign country in circumstances in which they could not be returned for trial on indictment by a district justice on a preliminary examination under our own domestic law.

16. The arguments that were adduced against those amendments may be summarised as follows. The basic extradition legislation in this country - the 1965 Extradition Act - makes no provision to impose such a requirement and moreover such a requirement had never been a part of extradition arrangements between this country and Britain. The 1957 European Extradition Convention does not envisage that there should be such a requirement and this country did not enter any reservation in this respect at the time of our signature or ratification of it. (At the time they signed the 1957 Convention two Council of Europe Countries, Denmark and Norway, reserved the right in certain circumstances to impose such a requirement.) The British, who up to now have had a prima facie requirement in respect of extradition requests from countries other than Ireland, have now introduced legislation which enables them to dispense with that requirement - partly, at least, in order to enable them to become a party to the 1957 Convention. There also seems to be a definite possibility that the amendment of our legislation to impose a prima facie requirement, even if this were restricted to cases involving Irish nationals, would oblige us to revoke our adherence to the 1957 Extradition Convention and, if so, it is not certain that we could, at least without the agreement of the other signatories, re-subscribe to the Convention, this time subject to a reservation in relation to our nationals. The argument that

such a course is inadmissible would be to the effect that, as a prima facie requirement is not envisaged by the Convention, it is not legitimate to use a "backdoor" method to impose it in relation to our own nationals.

17. A substantial difficulty would be likely to arise in any event in relation to our extradition arrangements with Britain and Northern Ireland. This is the "area" in which extradition has, for us, by far the greatest significance and linking the requirement of a prima facie case to citizenship would have special significance in that context because - and this situation is probably unique in Europe if not in the world - virtually everybody whose extradition is sought by the North in any type of case and virtually everybody whose extradition is sought by the British in cases with any political "flavour" is an Irish citizen. It means that, as far as the British and the North are concerned, a prima facie requirement for citizens is in practice a prima facie requirement for everybody whose return they seek from us. A prima facie requirement has never existed between these jurisdictions and the British have made it clear that they would be strongly opposed to the introduction of such a requirmeent and would regard it as contrary to the whole thrust of the moves towards closer co-operation that have been taking place in the aftermath of the signing of the Agreement.

18. In order to address concerns that extradition might be sought by the British side merely for the purpose of questioning suspects or without consideration of the adequacy of the admissible evidence available against the person sought, arrangements were agreed with the British Government, and referred to by the Minister for Justice in the course of the debate on the Bill. These arrangements were to the effect that a warrant for the return of a fugitive would in future be sought only where the relevant prosecuting

authorities are satisfied that there is a clear probability of a prosecution founded on a sufficiency of admissible evidence. Additionally it was agreed with the British authorities that, in all cases where a warrant for the return of a fugitive would be sent by them to the Garda Siochana for backing, the British Attorney General would send a confirmatory note to the Irish Attorney General stating that he is satisfied that the relevant prosecuting authorities (Crown Prosecution Service in England and Wales, DPP in Northern Ireland and Lord Advocate in Scotland) have complied with those arrangements in relation to each offence to which the warrant relates.

Speciality

19. Another issue which was raised in the debate on this legislation related to the Rule of Speciality - which relates to the bringing of charges, following extradition, additional to those mentioned in the extradition warrant. A number of Opposition amendments in the Dail proposed that a Rule of Speciality similar to that contained in Part II of the Extradition Act 1965 should be written into Part III of that Act as well so as to apply to extradition to Britain and Northern Ireland. The Minister for Justice did not accept these amendments. It was envisaged that, instead of a statutory provision, there would be an administrative arrangement with the British. This would be designed to ensure that, following extradition, charges would not be brought in respect of any additional offence of a kind that might have been held to be political if the issue had been raised in the courts of the requested jurisdiction. The question of such an arrangement has been under discussion at official level within the framework of the Anglo-Irish Conference and a separate note on the issue has been prepared for the Minister.