



An Chartlann Náisiúnta National Archives

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WORKING GROUP 1

Future Action

Working Group 1 was established in March 1986. Its mandate was defined in the following terms:

- (I) To seek measures which would give substantial expression to the aims expressed in Article 8 of the Anglo-Irish Agreement and in paragraph 7 of the Hillsborough Communique, relating to public confidence in the administration of justice, and
- (II) to consider, inter alia, issues which arise for the Conference in its examination of the possibility of Mixed Courts.

A summary is given below of the issues examined by the Group to date and of issues which could be pursued.

A. Mode of Trial

Present Position

- (1) Mixed courts: the Irish side saw this as the single most significant change that could be made in the context of enhancing confidence in the administration of justice. The British side said that mixed courts raised very great difficulties which would not be resolved in the short term.
- (2) Three-judge courts: the British side have said they are not presently persuaded that this proposal should be adapted and see no chance of their position changing.

Future Action

With political will the British could overcome their misgivings about a separate office of President of the High Court. The Irish proposal is not territorially limited and should be pursued.

Future Action

- (1) Mixed Courts: although this is mentioned specifically in the Agreement, it is so only as an example of what could be achieved and the British are unlikely to change their view.
- (2) Three-judge courts: in the wake of the ratification of the European Convention on the Suppression of Terrorism calls from the nationalist community for three-judge courts have been on the wane. However, the report of the City of New York Bar Association of 11 December recommends establishing in effect the Special Criminal Court structure in place of the Diplock courts. Coming as it does coincidentally with the proposal for a study of the special courts in both jurisdictions, the three-judge court proposal may have to be nurtured quietly for the time being.

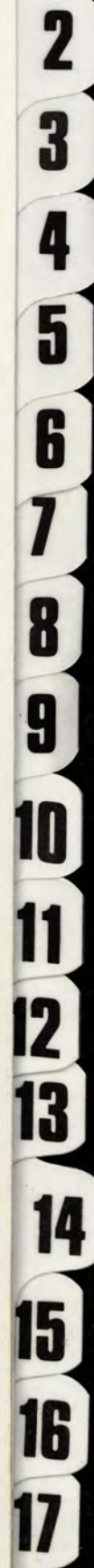
B. Structure and Organisation of the Courts

Present Position

Separate office of President of the High Court: the Irish side have proposed that it would be desirable from both the practical and political points of view to create a new senior judicial post to take up some of the administrative burden on the Lord Chief Justice. The British side have said that they see no practical merit to this proposal and even were it to be adapted the post would be filled on merit.

Future Action

With political will the British could overcome their misgivings about a separate office of President of the High Court. The Irish proposal is not intrinsically flawed and should be pursued.



C. Emergency Legislation

Present Position

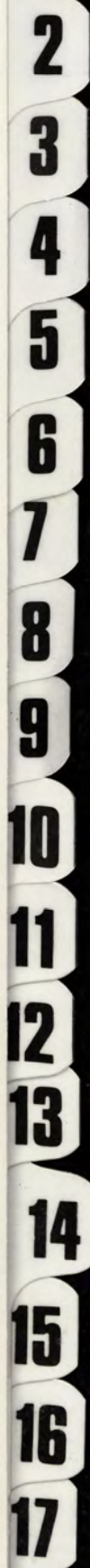
A number of changes proposed by the Irish side have been incorporated in the Northern Ireland (Emergency Provisions) Act 1987, such as reform of the conditions for bail and the possibility of holding Diplock court trials other than at the Crumlin Road court house.

Reasonable suspicion

Future Action

While it is clear that further improvements in the Emergency Provisions Act would be desirable it is questionable whether they could be achieved in advance of the expiry of the Act in 1992 in the context of the work of this group. A more profitable work of action would be to make our views known to Colville when he is preparing the annual review of the legislation. We consider the following reforms desirable:

- prohibition of current judicial discretion to refuse bail where the conditions have otherwise been met;
- the provision of a clear basis for the exercise of the power to stop and question; *USA*
- a clear indication that the Army's power of arrest is exercisable only at the direction of the civil power. *- USA*



D. Accomplice Evidence

Present Position

The practice of securing convictions on the uncorroborated evidence of accomplices (supergrass evidence) has been discontinued by the Northern Ireland D.P.P.

Future Action

Future Action

The abandoning of supergrass evidence may lead to a resurgence of ill-treatment in custody. A case of ill-treatment has come to light in the judgement of Justice O'Donnell. There has also been speculation in the press of a possible supergrass trial in the near future. Consequently these are two areas in which we need to keep in contact with the British side outside the framework of the Group's meetings.

Present Position

E. Identity Issues

Present Position

The objective is to ensure changes in the detail of court administration which could make it easier for nationalists to give their wholehearted support to the judicial system.

- (a) juror's oath: the Irish side have proposed the deletion of references to the Monarch. The British side appear to be willing to reflect on them.



(b) judge's and Queen's Counsel oaths: the Irish side have made a similar proposal but in this case the British side feel that the reference to the Monarch in these cases is a reflection of the constitutional position of the Northern Ireland courts within the UK rather than demonstration of Loyalist ethos.

Future Action

We should pursue vigorously our proposal to remove the reference to the Monarch in the juror's oath. It has nothing to do with the obligation to arrive at a fair decision. However, we are unlikely to gain any ground with our proposal to remove the reference to the Monarch from the judge's and the Queen's Counsel oaths.

F. Appointments

Present Position

While the ratio of nationalists to unionists in the Court of Appeal/High Court is 4 to 6, the ratio in respect of the County Court is 1 to 12. The Irish side have proposed increasing the number of nationalists in the County Court by increasing the number of judges. The British side say there is no objective need for more County Court judges and even if there was, any appointment would be on merit.

No

Kerr
Dr. CC J
Solicitor

Future Action

In view of our knowledge that the County Court bench could do with at least one extra judge to cope with the work load, we should pursue our proposal on this matter.



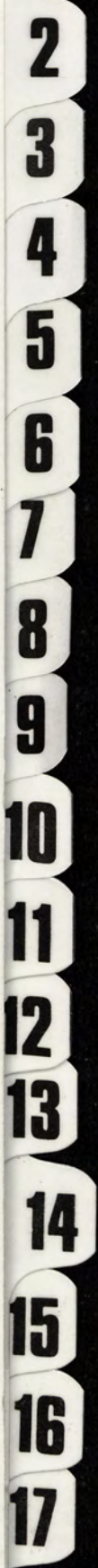
F. Future Issues

In October 1987, the British side suggested on a personal basis that the Group could examine other issues irrespective of whether there is a minority interest, for example the extension of the British Police and Criminal Evidence Act 1984 to Northern Ireland. The Irish side were willing to reflect on this idea.

J.D.

7.1.1987

3238M



WORKING GROUP II

This Group was established in March 1986. Its mandate was defined in the following terms:

- (1) To examine issues of concern to the Conference relation to the enforcement of the Criminal Law in both jurisdictions
- (2) To consider whether there are areas of the Criminal Law applying in the North and in the South, respectively which might with benefit be harmonised
- (3) To give priority to an examination of policy aspects of extradition and extra-territorial jurisdiction.

A number of issues the Group have considered include:

- ratification of the European Convention on the Suppression of Terrorism
- sufficiency of evidence
- speciality

These matters have been resolved in terms of Irish legislation, i.e., the two 1987 Extradition Acts. The latter two may have to be reconsidered in light of the Taoiseach's commitment to review the Extradition (Amendment) Act, 1987, should difficulties arise.

Preparation of Warrants for extradition

The preparation of a 'checklist' for use by the British when preparing warrants to be executed in Ireland is a matter being handled by the two Attorneys General. The ~~final isolation~~^{final isolation} is expected in the near future. Difficulties have arisen over the nature and extent of additional documentation to be provided by the British to enable our AG to form an opinion, in accordance with the Extradition (Amendment) Act, 1987, that there is a clear intention to prosecute and that this intention is founded on the existence of sufficient evidence.

Questioning of Suspects

A long standing request of the British side has been that the RUC be allowed to question suspects in Garda custody. The Irish side have declared this request as politically inopportune and legally questionable under Irish law and the Constitution. This is a matter which may have to be reconsidered should difficulties arise in the operation of the amended extradition arrangements with Britain.

Use of Extraterritorial Legislation

In 1986 the British side presented a paper which set out certain difficulties they identified in the use of the legislation.

Further Issues

In October 1987 the British suggested in an informal basis that consideration might be given to the harmonisation of legislation and/or of the enforcement machinery for certain offences capable of cross-border effect, e.g., pollution occurring in one jurisdiction and the effects in the other jurisdiction.

J.D.

7.1.1987.

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