

# NATIONAL ARCHIVES

## IRELAND



**Reference Code:** 2011/127/1092

**Creation Date(s):** [December 1981]

**Extent and medium:** 6 pages

**Creator(s):** Department of the Taoiseach

**Access Conditions:** Open

**Copyright:** National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Meeting of Irish and U.K. Attorneys General

1. The meeting arose from the Summit between the Taoiseach and the U.K. Prime Minister at which it was agreed, inter alia that the Attorneys General should meet as set out in the joint communique issued after the Summit. The Attorneys General met in Sir. M. Havers room in the Courts of Justice in London, began at 11.30 a.m. and continued, with a break for lunch, until mid afternoon. Sir M. Havers was accompanied by Mr. Steel of his office and Mr. Sutherland was accompanied by Mr. Quigley.
  
2. At the beginning of the meeting it was agreed that both sides would maintain the strictest confidentiality about the contents of the discussions. This would apply to all meetings between the Attorneys General and their officials arising out of the Summit. It was also agreed that all these discussions would be strictly on a lawyer-to-lawyer, technician-to-technician basis, concerned only with the technical merits and feasibility of the various ideas that might be put forward, and that nothing said in them would imply any commitment on the part of either Government to adopt any particular course that might be discussed: in this sense, so far as concerned the implementation of what might be agreed to be technically possible, the discussions would be completely ad referendum the politicians on both sides.
  
3. It was agreed that the discussions would be under three main topics
  - (a) extradition
  - (b) Extra-territorial jurisdiction, and
  - (c) an All-Ireland Court.

4. Extradition

Mr. Sutherland explained the Irish position under the Constitution and how it would be idle, in his view to try to amend the law to permit extradition for political offences since the Supreme Court would declare such legislation unconstitutional. Further, he believed that to seek an amendment of the Constitution would be unwise. First of all there is a strong emotional aversion to handing over accused persons to the R.U.C. and, secondly, it would be very difficult to justify deleting amending Art.29.3 of the Constitution which was a provision with which nobody could find fault.

5. Sir M. Havers said the British side believed that the principles of international law did not preclude extradition of political offenders and suggested that an authoritative opinion might be sought from some independent source to resolve the diverse opinions. Mr. Sutherland said he thought this would not be at all helpful. Such an opinion would not be binding on the Supreme Court and the members might very well resent it as an improper attempt to influence their independent decisions.
6. Mr. Sutherland referred to a recent decision of Hanlon -v- Fleming in which Henchy J. might be said to be putting forward some shades of different attitude to the definition of political offence and promised to have a copy of this judgement sent to Mr. M. Havers on his return. Mr. Sutherland put forward two

suggestions with regard to the present extradition law which might be followed up at official level.

- (a) there might be a need for legislation on one or both sides - probably not difficult or contraversial - to remove the problems of "corresponding" offences;
- (b) the Irish courts have a certain reluctance in relation to "backing of warrants" process as against the orthodox extradition system. In the former there is no requirement for any form of proof of a prima facie case and this may be the cause of this reluctance.

The attitude of the Courts might well be improved if the ordinary extradition system was applied. Sir. M. Havers pointed out that the present system worked well in ordinary cases and was valued by the law enforcement authorities in both countries. Mr. Sutherland agreed but thought consideration might be given to have an option given to the requesting state to invoke either system, depending on the difficulties anticipated in a particular case.

#### Extra-territorial Jurisdiction

Sir M. Havers put forward two suggestions:

- (a) That joint interrogation of suspects by Gardai and R.U.C. be facilitated. Mr. Sutherland said this had been mooted and discussed in detail in 1979. The matter was not one for him,

of course, but, as far as he was aware there was no change in the stand taken at that time. Sir M. Havers stated that joint interrogation would be of immense benefit in acquisition of information and added that if it was participation by members of the R.U.C. which was the stumbling block, specialists from the Metropolitan Police could be used in many instances. Mr. Sutherland maintained his position but agreed, when asked, to take up the matter with the Minister for Justice when he returned to Dublin.

- (b) Reciprocal arrangements should be made for the transfer of exhibits in Court custody North or South. An amendment of the Rules of Court might suffice or legislation might be necessary. Mr. Sutherland said the matter would be looked at on his return.

#### All-Ireland Court

8. Mr. Sutherland explained that the idea which he was now pursuing was (in 1974 terms) the "Single Court" as described in the submission of the Irish Government at that time rather than the "Mixed Court". He made it clear that the Court which he envisaged, and which would have jurisdiction throughout Ireland would ordinarily sit, for the purposes of trial, at the place where the accused person was, unless the accused person consented to return for trial to the place where the act constituting the offence was committed. A person could not,

of course, be forcibly removed out of a State jurisdiction except in accordance with law. In the Republic any law permitting such forcible removal from the State would be unconstitutional and, indeed, unthinkable. The "Single Court" as he, Mr. Sutherland, saw it would not require an amendment of the Constitution. Sir M. Havers asked how this was the position since in 1974, as he understood it, the necessity to amend the Constitution had been thought to present an insuperable barrier to an "All-Ireland" Court. Mr. Sutherland explained that an "All-Ireland Court" as considered by the Commission was to be an ordinary court within the meaning of the Irish Constitution. What he proposed was that this "Single Court" could, in the Republic be made a Special Court and as such, it would not be in breach of the present Constitution.

Sir M. Havers said that, if it was indeed the case that no amendment to the Irish Constitution would be necessary, the discussion could proceed to an examination of the practical implications and difficulties which it had not been thought necessary to pursue in 1974. There were, of course, also major political difficulties but, in accordance with the understanding reached at the beginning of the meeting, these should be left for consideration at the political level if and when the lawyers and technicians reported that the proposal was technically feasible. He suggested that the details of Mr. Sutherland's proposals should be pursued in the discussions at official level. Mr. Sutherland agreed.

9. Having concluded their initial examination of the topics covered by the Summit remit, the two Attorneys General then considered how the detailed discussions by officials should be taken forward. It was agreed that the two Law Officers' Departments (Mr. Steel and Mr. Quigley) should be charged with organising the arrangements on their respective sides and with general co-ordination. It was agreed that the meetings of officials from the two sides should get under way before Christmas with a view to a report being made to the two Attorneys General so that these could meet again early in the new year.

10. After the meeting had concluded, and when it became known that news reports of the fact of its having taken place were already circulating, a formula for public use was discussed and agreed (and was subsequently drawn upon by spokesmen for both sides). It was agreed not to go beyond this.

The meeting then concluded.