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Note for Minister's Information

[Minister for Foreign Affairs.]

Sinking of Two Vessels in Lough Foyle

1. The Nellie M was blown up and sunk by the Provisional IRA on 6 February 1981. The St. Bedan suffered a similar fate on 23 February 1982.
2. The British Embassy approached the Department on 27 February 1981 with an offer to pay half of the total amount of the compensation claims on the Nellie M "without prejudice to other matters on which both Governments had not agreed and in a spirit of goodwill".
3. The advice of the Attorney General on the British proposal to share the damages was that such an arrangement could be made which would avoid a breach of Articles 2 and 3 of the Constitution. The Attorney General also attached a draft letter of acceptance to the British (see text annexed to this Note).
4. The Legal Adviser in the Department of Foreign Affairs advised against the acceptance of the offer in view of the implications for the future with regard to our claims on the waters of Lough Foyle. It was the Legal Adviser's opinion that acceptance of the British offer, would imply recognition of a British claim in this area to an extent that might have adverse consequences in the context of bilateral negotiations on delimitation.

5. The Department of the Taoiseach favoured the approach of the Attorney General. The Department stated that acceptance "without prejudice" would accord well with the overall approach being taken to Anglo/Irish relations in respect of Northern Ireland and to the joint administration approach which that Department favoured in cases where delimitation arises as an issue around the coast of the north-eastern counties.

6. The Department of the Environment has stated that its function in the matter is limited to the recoupment of all or part of any decree which might be given against Donegal County Council.

7. Earlier this year the British Embassy renewed the offer of a joint payment (for both the Nellie M and the St. Bedan) and informed us that the Northern Ireland Office would make an interim payment in the case of the Nellie M. This payment would be below 50% of the full claim to allow the Irish authorities the option of a final settlement through a joint payment.

8. The British Embassy informed the Department on 21 July 1982 that an interim payment of £250,000 had been made in the case of the Nellie M and a similar payment had been made in the case of the St. Bedan. The Embassy further stated that another payment of £250,000 in the case of the St Bedan was imminent. We were also informed by the Embassy that if we wanted to agree on shared payment of compensation it would be necessary for both sides to consult immediately. The British wished us to be aware that they would continue with the processing and payment of the two claims.

9. Enquiries made via the Department of the Environment and Donegal County Council have revealed the following situation regarding possible payment of compensation by the Irish authorities. The case of the Nellie M arose under 1898 local Government legislation which obliges Donegal County Council to seek a court adjudication on the claim (£912,000) lodged by the owner of the Nellie M. The case has come before Bunrana District Court on a few occasions and has each time been adjourned (most recently to December 1982) at the request of the claimant and with the agreement of Donegal County Council. Meanwhile the owner has been pursuing a similar claim against the N.I. authorities and has received the interim payment. The position in relation to the St. Bedan is different as it arose after the 1981 Malicious Injuries Act came into force. This Act gives Donegal County Council the authority to settle the claim if necessary without going to court. A claim for £3½ million has been lodged against Donegal County Council and the N.I. authorities. It would appear that the claimant is not pressing the claim against Donegal County Council pending the outcome of the Nellie M case and the reaction of the N.I. authorities. While it would appear to be relatively easy from an administrative point of view to come to an arrangement with the British for joint payment in the St. Bedan case further consultations will be necessary with the various parties involved including the British and the claimant in order to handle part payment on our side in the Nellie M case which is sub judice. In order to avoid the situation where the British authorities will have paid the full claims it is necessary to take an urgent decision on the British suggestion of a collusive (joint) payment "without prejudice to other matters on

on which both Governments had not agreed and in a spirit of goodwill".

10. Recommendation

That we agree in principle to the British offer of a collusive payment along the lines advised by the Attorney-General.

Anglo-Irish Section

Department of Foreign Affairs

22 July, 1982

A possible form of arrangement.

An arrangement on the following lines should meet the legal requirements: -

"I refer to the conversation which Mr. _____ of your Embassy had with Mr. _____ of this Department on 27 February last conveying on behalf of your Government an offer to share the total amount of the claims for compensation which have arisen from the malicious damage which was caused by persons unknown to the M.V. Nellie M some 300 yds. off the low-water mark along the shore of Co. Donegal, in Lough Foyle.

My Government fully appreciates the offer made by your Government and acknowledges that it is made entirely without prejudice to matters on which both Governments have not agreed and in a spirit of goodwill. My Government has now had an opportunity of considering the matter. They have taken into account the terms in which the offer was made, and have formed the belief that such a sharing of ^{liability} responsibility would be a practical reflection of the ardent desire of both Governments to foster good-will, reconciliation and above all, peace amongst all the people of the whole island of Ireland as well, of course, as between the people of the two neighbouring islands. They have also endorsed your Government's suggestion that a sharing of this liability will be entirely without prejudice to matters on which both Governments have not agreed, and, indeed to the aspirations of the people of the island. In the light of these considerations, my Government wish to thank your Government for the offer which they accept.

Arrangements will now be made for a meeting of the experts involved on both sides to assess the various claims"