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7 October 1986

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Discussion with David Goodall - Tuesday, 7 October 1986

Dear Eamon

I took David Goodall to lunch today and discussed with him at some length the situation following the Prime Minister's reply on Friday last to the Taoiseach's letter to her of 1 October. The following points of interest emerged.

Cabinet Sub-Committee meeting of Thursday, 2 October

Tom King led on the issue and made a good presentation in favour of 3 Judge courts - on the merits and because of the general affect internationally (ie USA). The Lord Chancellor Lord Hailsham strongly opposed; and it was simply too much to expect that a decision involving an important change in the judicial system could be taken over his opposition as head of the judiciary especially when he was backed by the Lord Chief Justice of Northern Ireland who claimed to speak for a unanimous view of his colleagues on the bench. (Goodall focussed on the combination of Lord Chancellor and Lord Chief Justice as most important and he was inclined to be a bit dismissive of the attitude of the Law Officers - the Attorney General and the Solicitor General - as simply echoing that of the Lord Chancellor). There was a reasonably thorough discussion and the meeting was not an acrimonious one. I asked (echoing a concern we had begun to feel here in the Embassy) if there had been complaints about the extent to which the Irish side had been aware of the fact that the issue was to come for decision at that meeting or about the extent of our lobbying? Goodall said no - not at all. The only thing to which some exception was taken - as he had rather anticipated - was the fact that we professed to know more about the views of the Northern judiciary than the British Government. (He did not make any great point of this and I had the impression that it may simply have been a matter of a casual, perhaps slightly caustic, comment by Mrs Thatcher).

I said that the reason why the Taoiseach had mentioned this to Robert Armstrong as he did on the phone last week was to indicate that Lord Lowry's account of the views of the Northern Ireland judiciary should not be taken as gospel - why could the judges not be asked? After all their only formal pronouncement as a body, in 1985, was to the effect that they would obey the will of Parliament. Goodall thought that it would be rather odd to ask the judiciary in advance if they would accept a decision on 3 Judge courts - it could have something of the flavour of the "consultation" of army officers at the time of the Curragh Mutiny.

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If we are right in thinking that three of the judges would favour 3 Judge courts while two others are not opposed then why do some of these judges not write either to the Lord Chancellor or to the Lord Chief Justice (who could hardly suppress such a letter); and if, as appears, we have good contacts with some of the judiciary why do we not suggest this? Such a letter could have a considerable impact. (I said that I thought it was probably a lot to expect from an individual judge to take such an initiative).

Incidentally it emerged again from this part of our discussion that Lowry has been categorical in asserting that the Northern Ireland judiciary would be opposed to the proposal for 3 Judge courts.

Prime Minister's letter to the Taoiseach of 3 October

I tried to give Goodall some sense of the disappointment felt in Dublin both at the negative decision in itself and at the letter conveying that decision. He quite understood the former but he was a bit taken aback at the latter. He said that an effort had been made to draft the letter sensitively (and it is possible that he had a hand in this). I pointed to such things as the failure to respond to the Taoiseach's request for an opportunity to discuss the issue with the Prime Minister before a negative decision was taken; the fact that the list of "other things" done or being done was not of great substance; and even the unfortunate mis-spelling of the Taoiseach's christian name.

To this Goodall replied that the Prime Minister really does not like saying no to the Taoiseach since she has a high regard for him. This perhaps in part explained why she did not take up directly in her reply the suggestion for a discussion (?). As to the list of "other points" he acknowledged that they were no substitute for what we had been seeking but noted that her letter acknowledged this in speaking of them as "admittedly lesser changes". As to the mis-spelling of the Taoiseach's christian name which he acknowledged with some chagrin, he said it was due to an unfortunate typist's error (that it was in the original text will be evident from the copy attached which is a photocopy of the text which I received from Robert Armstrong last Friday evening).

Goodall really did seem to think that the reply to the Taoiseach had made an effort to be sensitive in conveying a negative decision; and he said that, generally, in such a case a Government is anxious to "expose as little surface" as possible. Notwithstanding this, they had included two explicit references to the commitment of both Governments under Article 8 of the Agreement. Goodall thought that this re-commitment at two points in the letter to that Article gives us something we can build on and use and he implied that the inclusion of these references was a deliberate attempt to be oncoming in regard to our concerns.

Where do we go from here?

I said that I was not sure but that I thought the Taoiseach might want to reply further to Mrs Thatcher - basically taking the line that there is a problem; that we on our side have put forward two different ways of addressing it (originally mixed courts and now 3 Judge courts); and that, now that these have both been rejected, we would look to the British side to see how they propose to address the continuing problem.

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I said that I felt that it might be better however, to hold off on such a reply until after the Tory Party Conference which is taking place this week and which will no doubt pre-occupy the Prime Minister.

Goodall, speaking personally, agreed that such a reply ("more in sorrow than in anger") would be the right approach, with a slight qualification about not labouring too heavily the point about the British side's responsibility to come up with an answer. (He saw this as something of a debating point). He also agreed that it would be best to defer a reply until after this weeks Tory Conference and send it perhaps next week - though he regretted that the Foreign Secretary, Sir Geoffrey Howe, would be away at that time accompanying the Queen on her State visit to China.

Reflecting generally on the 3 Judge courts proposal Goodall agreed with me that the issue was not simply a "Dublin" one but rather an idea which many people thought worthwhile on the merits. To some extent our espousal of the idea had perhaps made it more difficult for some on the British side to accept it. But on the other hand if we had not pressed it, it would never have got so far as it did. While accepting that we should continue to press the issue he wondered if there may be other ways of achieving the same general aim. Perhaps something stated publicly about a virtual end of supergrass trials "except in very exceptional cases" could be helpful? This would mean developing the reference in the Prime Minister's letter to the attention which the DPP will pay to the observations of the Lord Chief Justice in the Donnelly case. He agreed however that a qualified reference to supergrass trials would not have very much public impact.

#### The meeting of the Conference in Dublin, 6 October

Timothy George the new Head of the Republic of Ireland Department at the FCO had been at the meeting. Goodall said that George remarked that while the general assessment was that the meeting was quite a good one he as a newcomer had found it rather "stiff" - at least insofar as the formal part of the meeting was concerned.

I mentioned the headlines in the Dublin papers today about the Bill of Rights question. Goodall said he had been a bit surprised at this but then said, speculatively, "perhaps that is the way forward". At the same time he said he would worry a bit lest expectation be built up on this issue beyond the capacity of the British side to respond.

#### Security cooperation

We spent a good deal of time talking about this issue - although not of course in detail (on which I did not feel competent to speak). Goodall has followed the work of the working group/committees on the security side to the extent of reading summary reports of their conclusions but he has not read detailed reports on the discussions. He said he is reasonably satisfied from what he has been hearing for a long time - over many months - from competent and able people in the security/intelligence community (sic) that they perceive a problem on our side in regard to intelligence/surveillance. He is told that the kind of information which the Gardai have been able to supply to the police in mainland Britain is "absolutely invaluable". On the other hand there is simply nothing of this kind in the area of cross-border security - there has not been one

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case where it was possible to supply information in advance on an attack. There were "bad people" on both sides of the border. When a point has been made to us in the past our usual reply has been that if there is evidence enough to charge anyone we will pick them up and do so. But, we say, we do not have such evidence. In that case, I understood Goodall to be saying, we should at least be able, through competent surveillance, to supply information on their movements to the security forces in Northern Ireland to an extent sufficient to allow them to foil particular cross-border operations.

Somewhat to his surprise, Goodall went on, the working groups seem to have agreed on good recommendations in this regard but these simply came to a standstill when they reached top police level on our side. No doubt there was a problem of lack of resources. This is a problem generally for Governments - he acknowledged that on their side they had sometimes pleaded lack of resources in relation to the issue of having an RUC presence with UDR patrols; and indeed the Treasury seems to argue strongly against extra judges in Northern Ireland for financial reasons.

This was all said in an explanatory rather than in a polemic way. I made some obvious points in reply; that, notwithstanding the natural RUC tendency to claim otherwise, attacks in the area immediately North of the border may often not be due to cross-border activity but rather to the particularly nationalist character of those areas and to a deliberate "targetting" policy of the IRA. I also spoke of a certain exasperation on the part of our Ministers who hear on the one hand that security cooperation is going well and then hear occasional critical comments which they can never quite pin down. Goodall blamed this latter point to a considerable extent on the <sup>Chief</sup> Constable of the RUC who has sometimes failed at meetings with the Commissioner (?) to state clearly the criticisms which he makes in another context.

I also said that I was sure that the Taoiseach and Ministers on our side would be willing to commit whatever resources were necessary if they became convinced there is really a gap on our side which should and could be filled. I also suggested the implied criticism of the Garda Commissioner could be misplaced. It could well be that he is wise in not rushing to adopt recommendations purely for their cosmetic effect or to please the RUC without regard to the impact they would have and their effectiveness in the very different conditions on the southern side of the border.

Goodall acknowledged all of these points while commenting facetiously that there was a certain analogy between the role of the Commissioner on this issue and that of Lord Hailsham on the 3 Judge courts (each looking askance at recommendations for change of a kind which they would regard as damaging or ineffective in an area within their professional competence). Nevertheless he repeated that all his information does show that there is a problem focussed largely on the question of surveillance and the allocation of resources for that purpose. I replied that I thought the paper given by Tom King to Michael Lillis which the Taoiseach had referred to indirectly in his telephone call to Robert Armstrong, the measures mentioned by the Taoiseach in that telephone call, the discussion at yesterday's meeting in Dublin and the arrangement for another meeting on cross-border security foreshadowed in the Communique all suggested that the problem is now being taken seriously with a view

to establishing at least whether or not there is substance in the criticism. Goodall said he was a bit worried that the paper which King had given to Michael Lillis was rather insensitive on various points - I thought he had considerable misgivings on this even when I said that plain speaking on the issue, that there really is a problem, would be no harm. He promised to send me a copy of the paper on a personal basis but he asked me not to let NIO know that he had done so.

Yours sincerely



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