



# An Chartlann Náisiúnta National Archives

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Notes used by Taoiseach as basis for Conversation with  
Sir Robert Armstrong, 1 October, 1986

- A Our willingness to accept that Three-Man Courts could be confined to extraditable offences and other very serious offences, possibly to be defined in terms of length of maximum sentences. The details are open for discussion. This could significantly reduce the number of judges needed.
- B Leaving aside the fact that the Judges resolved unanimously in June 1985 that they would abide by the will of Parliament and so notified the Prime Minister, we believe that information in London that there is a 'monolithic' objection by the Northern judiciary to Three-Man Courts is not a correct representation of the position and that no formal collective consultation with the Judges has taken place. We believe that three Judges are positively in favour and that two others are neutral. Surely the actual position should be verified before a decision is taken on what could be a false assumption of monolithic opposition?
- C We would wish to be helpful with the presentation of this matter. We recognise that it would be most undesirable that a change in the number of Judges be represented as reflecting in any way on the Court in the past, especially in view of the appalling risks Judges face, and the fact that a number have in fact been murdered or been the subject of murder attempts. We would ourselves present

this whole matter positively, and would be willing to reflect with your Government as to how best this can be done.

D There are a number of misunderstandings about our position on Extradition legislation, at civil service and lawyer levels. We want to make the following points clear - they have been cleared by our Cabinet Committee and will be cleared by our full Cabinet on Thursday, -

1. We shall make no reservation under Article 13.
2. In relation to Article 2, we wish this to be applied, as the range of offences under Article 1 is too narrow, but its inclusion must be accompanied by wording paralleling wording of Article 13, because, apart from possibility of constitutional challenge in specific cases, it is on the cards that in light of the debate in the Dail and constitutional queries by the Opposition, and possibly by academics in parallel public debate the President may feel obliged constitutionally to refer the whole Bill to the Supreme Court. Under this procedure, (as distinct from a reference of a particular section, or a challenge in a specific case), any defect in the Bill would lead to the disaster of the whole Bill being found unconstitutional. And in view of the wording of some past judgements of Supreme Courts, a real possibility exists that while de-politicisation of Article 1 offences would be upheld, as they are specified in the international Convention, an attempt to remove the Supreme Court's discretion in relation to unspecific offences under the Article 2 general category might fail - and in a general reference bring down the whole Bill. Neither of us can afford this risk. But no reservation will be entered on ratification.

3. We shall not include in the Bill any requirement for certification that prima facie case exists and will accept arrangements under which in terrorist cases, papers will be cleared by the DPP's Office. This will cause problems in the Dail because of perception that in a number of cases extradition has been sought where a prima facie case did not exist. I am satisfied that a political party which is publicly committed to this Bill requiring a prima facie case to be shown will now drop this requirement, and also the idea of a requirement for a certificate. It would of course be necessary for it to be known that, in these cases, papers would be vetted by the DPP's Office, but as there has been criticism in Britain of five cases, such a statement would be seen as an assurance of efficient extradition in future, rather than as part of a 'deal' with us.
4. Rule of Speciality requirement (no other charges to be preferred) would not be in the Bill, but could be substituted by a public statement of formal understanding that such charges would be preferred only after consultation with the Irish authorities.
5. No provision in the Bill about questioning after extradition.

It will be seen from these five points that we are not holding back on any issue on which we can facilitate extradition, without introducing a real danger that the whole Act would be found unconstitutional on reference of it by the President to the Supreme Court. In the common interest we could not go further, and are proposing to act in complete good faith in all respects. But all this is possible only if the proposed changes in the Court system in Northern Ireland are made in respect of extraditable and other serious offences carrying heavy sentences. The legislation simply would not pass without this.

**E** Misunderstandings - or in some cases persisting disagreements at police level - about cross-border police cooperation.

Among the matters that have been agreed, according to our records are the following:

1. Regular meetings between Assistant Commissioner/Assistant Chief constable and Border Supts./District Superintendents.
2. Heads of Intelligence to meet regularly.
3. The level of strengthening of Special detective units and surveillance unit.
4. Substitution by either side for temporary depletion of forces on the other.
5. Strengthening of Dublin Special Detective Unit dealing with terrorism to 143.
6. Arranging for compatible and secure telephone, radio, and fax equipment.
7. Harmonisation of computerisation.

Other matters which have hitherto been in abeyance but which we are now in a position to agree:

1. It is now agreed that regular monthly meetings will take place between Divisional Commanders and Chief Superintendents.
2. A training program is being established for detectives being allocated to surveillance work. The training will be undertaken by staff who have themselves received the type of training that has been referred to by the RUC.

Further matters, including issues brought to my attention only this morning after a meeting between Secretary of State King and Mr. Lillis yesterday evening, I am personally examining with the Minister for Justice.

F Finally, in view of the overwhelming importance of these issues, I would hope that no negative decision would be arrived at tomorrow on the question of Three-Man Courts. I have in mind writing briefly to the Prime Minister on this point.