



An Chartlann Náisiúnta National Archives

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IRISH EMBASSY, LONDON.

30 Sept. 1986

~~Secret~~ AN OVERALL ASSESSMENTTHREE JUDGE COURTS

1. In sending a further report today on this (based on a conversation last night with David Goodall), it may be useful to try to set down a single, coherent, account of where things now stand in London. This involves piecing together ~~into~~ a number of elements which we can assert with a reasonable degree of assurance on the basis of what we have gleaned within the past week from Armstrong and Goodall (myself), Havers (the Attorney General) and Powell and Houston (Richard Ryan).

2. British Ministers (the Cabinet Sub-Committee) discussed the three judge court question on Thursday (?) 18 September. They agreed to return to the question at another meeting to be held on Thursday 2 October. No further such meeting on "Ireland" is fixed for the weeks ahead; and the British have so far been operating under the assumption that a deadline of 10 October set by us for our parallel decision on the Extradition legislation still holds. There is therefore good reason to suppose that next Thursday's discussion will be crucial -whether it formally closes the matter or not.

3. The line-up in the Sub-Committee is as follows:

FOR: Howe, Hurd, King

AGAINST: Hailsham, Havers, Whitelaw (on balance ?)

Mrs. Thatcher is not neutral - she is querulous and "difficult" at present. Among other things she believes that, despite some good statements by our Ministers, cross-border cooperation is not going well for lack of a full-blooded commitment of resources on our side.

4. Howe in particular is fighting our case strongly and King has supported the proposal but too late (in Goodall's judgement) and without "squaring the law officers". Havers view is not of great weight. Hurd is positive but we know no more than that. Whitelaw, who is important, has veered against but may be open to some persuasion (?).

5. The most powerful force against is Hailsham supported by and quoting Lowry, who in turn professes to speak for the whole of the NI High Court

bench. Hailsham is a unionist, with a deep, historic feel for the whole Anglo-Irish issue. His status as the Lord Chancellor, supported as he is by the NI Lord Chief Justice allows him to exercise all the "legal" weight of his office but his real motivation is political - a belief that over a long period "Britain has always conceded and Ireland has always asked for more." He may be open to some argument but not in the short run - if at all.

6. The assessment of our friends about the outcome of Thursday meeting is therefore gloomy. Of course the outcome is not certain. But at the very least the meeting will be "very difficult". They are also apprehensive about the effect of a substantive intervention by the Taoiseach with Mrs. Thatcher (a meeting - already turned down in any case - or a substantive message). Goodall thinks - that our best approach in a very difficult situation would be to try to ensure at least that no negative decision is taken on Thursday and that options are not closed. He thinks - without being certain - that a simple message on these lines would be our best course. (He also thinks incidentally that it is now counter-productive for us to use the argument of our political need in relation to the Extradition legislation).

7. To some extent, British officials may be too much in awe of Mrs. Thatcher's mood and attitude and too afraid that a message from the Taoiseach would rile her or be counter-productive. Another Government need not be so much in awe of her tone and whim as that. Nevertheless, I think Goodall's advice is sound - though he says we have to make up our own mind.

8. I would accordingly recommend:-

(i) Indicating to the British that our deadline - formerly 10 October is now more flexible-if this is indeed the case;

and

(ii) A simple short message from the Taoiseach to Mrs. Thatcher so drafted as to avoid ASSUMING that Thursday's decision will be negative (or perhaps *ask* showing too much knowledge about the British decision process) but essentially asking that if they can't yet see their way to a positive decision they should at least not close off options at this stage.



N. Dorr
Ambassador, London