



An Chartlann Náisiúnta National Archives

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Government Meeting with the SDLP, Iveagh House,

Friday, 23 May, 1986

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Present:

Government

Taoiseach, Dr. G. FitzGerald,
Tánaiste, Mr. R. Spring,
Minister for Foreign Affairs, Mr. P. Barry,
Mr. Nally,
Mr. Donlon,
Mr. O'Tuathail,
Ms. Doyle.

SDLP

Mr. J. Hume, MP
Mr. S. Mallon, MP
Dr. J. Hendron.

The SDLP met separately before the meeting and were given the following documents:

Judicial Appointments - Questions and Answers.
Electoral Changes - Legibility for membership for
Northern Ireland Assembly.
Electoral Changes - The Franchise.
Further views on Police Complaints Procedure in Northern
Ireland.
Divis Flats.
The Special Criminal Court.

The meeting began at about 11 a.m. and continued on through lunch.

Implementation of the Agreement

The Taoiseach, having welcomed the SDLP delegation, said that it was unclear if the British had any plan to which they were currently working. However, three points should be made.

(1) It could be expected that the rate of progress in the Conference should pick up in the autumn; (2) that the British would deliver on certain things but had not fully thought out their position; and (3) there were real difficulties about 3-man courts. There were serious objections in the British Cabinet to 3-man courts and the problems they are intended to address are incomprehensible to the Cabinet. Hailsham in particular objects very strongly. Mr. Mallon asked if he could be shifted to which the Taoiseach replied that he thought not. (A short discussion followed on press speculation that there might be further changes in the British Cabinet, in particular in the legal area. It was noted that the British Prime Minister would not wish to move Mr. Havers as this would give rise to a by-election. "Hailsham would turn in on himself and die" if he were retired.

Mr. Hume outlined the danger of the present situation. It was vitally important that the unionist veto be seen to be taken on. The pressure was on, not just from Sinn Fein but also from newspaper articles which were asking what was happening. He referred to an article in 'Liberation' recently which concluded that nothing had come from the Anglo-Irish Agreement. He then asked what was the position on supergrasses.

Supergrasses

The Taoiseach referred to Havers' speech, indicating that while it doesn't enable us to say that movement has taken place, that this in fact is the case.

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Name: *Elaine Kelly*

Grade: *AP*

Department/Office/Court: *Taoiseach's Department*

Date: *25/11/16.*

about evidence but that in the North there was only one judge and it was for him to direct himself. The Tanaiste noted that 70-80% of convictions were obtained without corroborated evidence and this did not give rise to problems. In relation to progress on outstanding supergrass cases, it was noted that the Black and Kirkpatrick cases should come up before the summer, the McGrady appeal was outstanding and we did not know for the present whether the Whoriskey case would be proceeded with.

Mr. Hume asked how we would know if there had been a change in British policy on supergrass trials, would it simply be that nothing would happen? Mr. Donlon noted that there should also be the right results from the appeals. The Minister noted that we would also have to hope that there would not be another supergrass case before the end of this year. Mr. Hume noted in this connection that there was someone missing for two months from Derry. He had rung his mother to say he was alright and in good hands but Mr. Hume had been unable to find him. His name was Hegarty and he had disappeared at the time of the Sligo/Roscommon arms find.

Implementation of the Agreement

Mr. Hume said that in the Anglo-Irish Agreement Communique it had been declared that things would be done. In the last six months the unionists had been distracting from the issues. If there were serious confrontation over the summer months everything would be wiped. The Apprentice Boys' march in Derry is due on the 12 August. If loyalists use this for provocation and the other side use it to undermine the Agreement sending people into the streets, there could be a full-scale riot. Tom King has no sense of the situation. If we cannot make progress on the major issues, could they not at least give us some of the non-controversial ones, the Flags and Emblems Act and the Electoral Changes - the I voters? This could mean extra seats for the SDLP. The I voters would be mostly SDLP supporters, as generally those people who moved from the South to the North were professional people.

The Minister explained that the question of the Flags and Emblems Act was to be taken up in an Order in Council in the autumn. Mr. Mallon noted that he had spoken on the Public Order Bill in the House of Commons. He had asked Giles Shaw why this legislation did not apply to Northern Ireland and he had said that technically it could not be done. Mr. Donlon said that the Public Order Act should be adopted in July (Mallon interjected that it might be later) and that we had been given an indication that an Order in Council would be taken early in the new session in November. This could abolish the Flags and Emblems Act in Northern Ireland. Mr. Mallon asked if the clauses on marching and the use of public demonstrations for racial provocation which are also contained in the Public Order Act could be introduced in Northern Ireland. He said that they would be very helpful.

Mr. Hume said that Mr. Mallon is to introduce a bill dealing with supergrasses under the 10 minute rule on 3 June. This would make the British explain their position. It was rare for a bill to get through under this procedure, for if there were any opposition there would be a vote. The Minister said that he thought that the British Government would not say what their position was on supergrasses. Mr. Mallon asked the Minister to let the British Government know that we want movement on supergrasses before 3 June. In response to a question, Mr. Mallon explained that he did not have a text of his bill, that for the present all that was required was to state that he was seeking leave to introduce a bill to oppose the use of uncorroborated evidence. The Minister said they (the British Government) will vote down the Bill.

Mr. Donlon noted that the first supergrass trial was that of the Kray brothers in the U.K. and that the British Government will want to keep this legislation. Mr. Mallon said that he was opposed to it in Northern Ireland and everywhere. The Tanaiste said that you cannot make a law preventing a jury hearing evidence and making up its own mind. Mr. Hume remarked that the difference was that the courts in Northern Ireland

were non-jury. He asked if the Havers statement was available and Mr. O Tuathail quoted the text of this - "in the case where there is no corroboration at all, either in the strict sense or in the looser sense of supporting evidence, it is very unlikely that a prosecution will be instituted". The Tanaiste noted that language could mean anything. The Taoiseach said that Havers was trying to solve a difficult problem by using this sentence as an honest effort to come to grips with the problem. The Tanaiste said that it would be interesting to ask what 'in the looser sense of supporting evidence' might mean. Mr. Hendron asked what supporting evidence might be used in the current Travers case. The Tanaiste speculated that there might be ballistic supporting evidence.

Marching Season

Mr. Hume noted that progress was not being made because of the marching season. The marching season was seven months long now and when would be the right time? The Minister said that he understood the British view was that the marching season could be defined as the six weeks of July and the first half of August. Mr. Hume remarked that it would be a period in which they would be vulnerable to the Provisional IRA. The Taoiseach said that there was a general vulnerability to the 'men of violence', but that even if violence happened we would stand firm. Mr. Hume said that we should not give the 'men of violence' any opportunity. He repeated that King does not understand the situation. If things were happening under the Agreement the nationalist community position would be solid. There was growing unease and tensions in the Catholic area. The Minister asked what view the SDLP had of Nick Scott and whether they had made these remarks to them. Mr. Hume said that he was impressed with Scott and had made these points. Mr. Mallon said that he wanted to ask yet again when would the autumn come. Mr. Hume remarked that the Black Preceptory takes over after the 12th of August. Mr. Mallon remarked that the

Marching season went on from March to October. The Taoiseach remarked that British perception was that it was a six-week period. The SDLP delegation remarked that they would have to have something for their Party Conference due at the end of October.

The Taoiseach said that it would be difficult to get anything now but that the position should improve after mid-August. Paisley might do something at that stage, however, making the British unwilling to make progress. He said that we would want assurances that there will be progress in any case. The situation had changed. If we were working with the people we had been working with in the negotiations, the situation would be better. However, it is not possible to do business with King in that way at all. As for the British Prime Minister there were three problems in dealing with her. Firstly, it was very difficult to get any of her time to get her to focus on the problems. Secondly, she is furious with the opposition to the Extradition Treaty in the United States. She had written to the Taoiseach looking for support and he had written back explaining why he could not give it. This matter would not be forgiven readily nor forgotten until the Extradition Treaty was out of the way. At the next meeting with Mrs. Thatcher he could expect a half an hour lecture on the subject. She is not a listener. Thirdly, she is very preoccupied and very simplistic about security and about what she sees as our inadequacy in this area. Account should also be taken of the fact that King is very annoyed by appeals to the PM over his head. The Taoiseach said we are all in trouble if we do not get results and that work was going on through intermediate channels to try to get the message through. Mr. Hume said he thought it would be appropriate for the SDLP, therefore, to seek a meeting with King. The Tanaiste noted that King had total paranoia about unionists and that he did not understand their tactics. Mr. Hume interjected to ask if the unionists understood their own tactics.

3-Judge Courts

The Taoiseach said that the UK do intend to deliver on the Agreement in the autumn but will not include delivery on 3-judge courts. Mr. Hume and Mr. Mallon asked if there were no agreement on 3-judge courts would the Government go ahead with extradition. The Taoiseach remarked that it would be difficult to put through the extradition legislation ⁱⁿ the form that it might otherwise be put through ^{unless} the 3-judge courts were introduced. The Minister noted that the willingness of the people to support the Government putting through the legislation depends on their perception of the courts in Northern Ireland. The Taoiseach remarked that we could live with limited progress in other areas if the 3-judge courts were introduced in the autumn.

Devolution

Mr. Hume said that the NIO were spreading the message that the SDLP were unwilling to deliver. He had challenged this impression on a recent BBC programme asking on what they were supposed to deliver. He was told it was on devolution. He had repeatedly made the position of the party clear on this issue. He thought he would arrange his meeting with King at Westminster in order to keep the Belfast NIO out of it.

The Minister noted that Scott had said at his meeting with him this week that the British Government might dissolve the Assembly early. This would put pressure on unionists. Mr. Scott had asked ^{what would} the position of the Government and of the SDLP would be to having elections and sorting out devolution afterwards. The Minister had replied that this was neither Government nor SDLP policy. Mr. Hume said that devolution would have to be sorted out first, that the electorate would have to know before being asked to vote for an Assembly what kind of body they were voting for. This was the position not only of the SDLP but also of the Alliance Party. Mr. Mallon remarked that they could not fight an election without a

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Name: *Devin Kelly*

Grade: *AP*

Department/Office/Court: *Taoiseach's Department*

Date: *25/11/16*

British observations to 3-Judge Courts

The Taoiseach said that the most important thing was to ensure implementation of the Agreement, 3-man courts and all the other issues. The Tanaiste asked if there were a case for immediate campaign in Britain on the 3-man court issue to explain it.

The Taoiseach wondered if he should go across to Britain to meet groups about it. The Minister remarked that the Attorney General's speech to the conservative lawyers had made a very good impact. However, it was noted that it was not on 3-judge courts. The Taoiseach explained the UK objections in a little more detail. The UK cannot conceive of a situation where each judge would not give his own views. (Mr. Hume remarked that this did not happen in the Appeal Court in Belfast). Mr. Nally said that there was very strong legal opposition to 3-man courts in Britain. The three senior law officers and three reports by very eminent lawyers had all decided against them. Mr. O Tuathail remarked in relation to one of these reports - the Baker Report - that the British were thinking of implementing some of its recommendations. These were innocuous but could be put forward as a substitute for more serious action. Mr. Nally remarked that the legal establishment in Britain was quite opposed to the establishment of 3-man courts and that a decision would have to be made at political level over the heads of the lawyers. Mr. Hume said that the events of the last few months had strengthened the SDLP position on policing. The Catholic community had always perceived the police force as unionist. It was clear from their actions in the last few months that Loyalists felt that the police force should indeed be unionist. It was important to show King that this is the case. The legal system is after all a creation of the political system.

The Taoiseach said that the fact that the British simply had not done things in a particular way was accepted as grounds for not changing current procedures. (He noted that this had been shown by the British in relation to the date of European Parliament elections. They had to be held on Thursdays like all British elections).

Mr. O Tuathail said that we would putting together our case on 3-judge courts and would discuss it with the SDLP before their meeting with King.

Linkages

Mr. Mallon asked if the British knew that the extradition legislation was linked to the 3-man courts and that the SDLP membership of the Police Authority was also linked. The Taoiseach asked Mr. Mallon not to make this link. He said that the Irish side is in the wrong in relation to the Police Authority and that we must put forward members and that the link should not be made. Mr. Hume said that we could come back to this issue. The Taoiseach said that it had been pointed out to the British that there was a tie between the extradition legislation and our confidence in the judicial system. Mr. Mallon repeated that he would not move on the Police Authority if the 3-man courts were not conceded. The Taoiseach said that if nominations were not put forward we would be failing to protect our own interests and the UK could say we were not meeting our obligations. We had looked for these places.

Police Authority

In response to a question from Mallon as to what the Police Authority could actually do the Taoiseach pointed out that we have Article 6, which enables us to put forward views on the role of the Police Authority. Mr. Donlon noted that last Summer the British had wanted to fill the remaining vacancies on the Police Authority. We had said that we wanted to have the right to nominate. The British had explained that in law they could not do so but after much negotiation they had agreed to leave the places available. The Conference gave us the opportunity to put forward views on the role and composition of the Authority. Insider experience obtained by working on the Police Authority from a few months would be very helpful in obtaining information about its operation and would help us in drafting proposals on changing its role. Mr. Mallon said that

It was not possible to join the Authority and withdraw, that to join would be to go down a road with no return. Mr. Donlon remarked that membership was being proposed on a new basis, that is, in the context of proposing a new role for the Police Authority. Mr. Mallon asked that if their views got nowhere what should then happen. He said that, as spokesman, he would oppose putting forward names for the Police Authority. The Taoiseach said that this would be extremely embarrassing for him and the Minister said that we have at every Conference meeting to date promised names for the next one.

Mr. O Tuathail said that the Police Authority did have a considerable relevance. It was considering the Code of Conduct and could advise on Article 13. If we do not have people on the Board, our position is undermined. (Mr. Hume nodded in relation to this). The Minister said that it would always be open to the members of the Board to resign, it had been done in the past. However, Mr. Mallon did not accept this. In response to a question as to whether the SDLP could accept that the Irish Government would put forward names who would not be regarded as SDLP nominees, Mr. Mallon said O.K.. Dr. Hendron emphasised that they should be nominated by the Irish Government. He said that anyone going on the Police Authority would have grave difficulties in relation to his personal security. However, being nominated by the Irish Government should help. The Minister said he would like some SDLP guidance on names.

Police Complaints Board

In response to a query, Mr. O Tuathail said that we had received the SDLP views. In response to a question as to whether they had as yet submitted views to the British Government, Mr. Mallon said that they had not done so. Mr. O Tuathail remarked that it may now be a bit too late to do so. Mr. Mallon said that there was no point in putting forward views if they were not going to be accepted. The Minister did

ot agree. He said that if views are put forward and are not taken up, it is possible afterwards to distance oneself from the final outcome, pointing out that one's views had not been taken into account. Mr. Mallon repeated that he knew that they could not get the two elements of importance to them. Firstly, that there should be an independent element in the Police Complaints Board and secondly, that complaints should be made outside of police contacts. He had been making his complaints known to both Governments for months but nothing had happened about them.

Mr. O Tuathail said that in relation to Section 13 we need SDLP support. If it were to be dropped it would be seen as a step back by the nationalist community. Mr. Mallon asked if we are in the business of tarting up the situation or getting fundamental changes. As far as he was concerned policing was not a simple issue. It involved legitimisation of the State in Northern Ireland. The Minister said that police complaints fall into the area of improving community policing, not legitimisation. Mr. Mallon did not agree. He said that they had supplied their paper to the Irish Government and would not do so for "the Brits".

Mr. Donlon said that we were involved in a political process which involved a high degree of confidence on our part for the present. He asked if the SDLP could come with us in this act of faith. Mr. Mallon said that they needed delivery, not necessarily on the very big things, but on these fundamental issues. The Ministersaid that dealing with the Police Authority and the Police Complaints Boards were important factors in achieving equality and justice. Mr. Mallon said that 3-man courts were already a compromise and that he could not compromise further upon this. There was some discussion of 2-man courts which had been considered by the Attorney General. However, this option had been rejected as it was quite likely that the two members would be unionists. It was remarked that it was easier to stay with the single option of 3-man courts at this stage.

Mr. Hume asked to see the list of members of the Police Authority and this was shown to him. He asked for a copy to be supplied.

Marches

The Taoiseach asked if we had a list of the marches that were likely to give rise to difficulties. Mr. Hume said that it depends on the route that is taken in each case. Mr. Mallon remarked that, although there are only seven Protestants living in Keady, there are marches there every there every week and there are also marches in Newtownhamilton. Mallon said decisions on marches were taken on the basis of whether the bands were good or bad (bad bands are of the 'kick the Pope' variety). The SDLP agreed to supply a comprehensive list of likely flashpoints. The Minister noted that our getting this list did not mean that all of these would then turn out to be peaceful.

The Taoiseach asked for the SDLP views on Hermon's ideas of having a body to regulate parades. Mr. Hendron and Mr. Mallon both thought it would be impossible to set up a genuinely independent body. Mr. Hume felt that it could not work. How could such a body take a decision if the reasons for deciding to ban a parade were based on intelligence as was the case of the Portadown march of Easter Monday? He also said that pressure would be very intense on the members of the Board. On a 7-man body of 4 Protestants and three Catholics, the Protestants would be under tremendous pressure from unionists. The Taoiseach said that it would appear in the circumstances better to leave the matter with the Chief Constable.

Provision of Material

Mr. Mallon said that in relation to the Conference, he was aware that they were falling down in producing material. The Taoiseach said that he was glad that the issue had been raised. However, he did appreciate that it was difficult to

make the transition to the new situation applying under the Agreement. Dr. Hendron remarked that in relation to the health and social services area, the two people who had come up from the Department had been very helpful. He complimented the traveller in his sectoral area for the work that had been done. Mr. Hume said that the way the system should be working is that individual items would be reported to the spokesman and then on the basis of a pattern the policy would be worked out. The Taoiseach said that he agreed with this approach. It was important to deal in policy terms.

Employment

Mr. Mallon said that a great deal needed to be done in the employment area, where the situation was very little changed in the last 20 years. The FEA and the Department of Economic Development were producing the figures but nothing was changing. The Taoiseach said it was up to the Irish side to produce the material and that a special effort would need to be put into certain areas such as discrimination in employment. The Minister said we should work on the areas where the British Government has direct control of employment. Mr. Hume remarked that in the civil service the situation had changed somewhat but there had been no change in the semi-State bodies. Mr. Donlon referred to standard British reply in these areas, that to make effective changes would require positive discrimination. The SDLP had not supported the McBride Principles because they implied positive discrimination. There was also the geographic problem. This was particularly relevant in the case of Shorts, although there was the question of moving some of their operations to another site out of East Belfast. (It is understood that there is a trade union problem about this). Mr. Mallon said that Catholics were losing out in relation to middle level appointments which were vitally important in actually running organisations. Mr. O Tuathail said that our efforts in this area would be based on three items, (a) the Bill of Rights, (b) the role of the FEA and (c) the geographic and sectoral problems.

Lunch

Political Situation

In response to a question from the Taoiseach about unionists' strategy, Mr. Hume said that he wondered if they had a strategy at all; they had never engaged in real politics and had yet to come to terms with them. The possibility of a Grand Committee type structure for Northern Ireland being established as a concession to unionists was raised and the Taoiseach said it would be quite unacceptable. (Such a committee would examine legislation for Northern Ireland. While it would not be composed solely of Northern Ireland MPs the large block of unionist MPs would have a strong influence).

Since the Anglo-Irish Agreement was signed, all three of the SDLP delegation attending the meeting had had their cars maliciously damaged by protestors against the Anglo-Irish Agreement.

On the divorce referendum, Mr. Hume remarked that its being carried would not impress unionists; however, if it were lost it would be seen as an indicator that their fears of the South were fully justified.

RTE Reception in Northern Ireland

Dr. Hendron noted that unionist MPs for border constituencies were willing to go on RTE as they knew their constituents watched it. It was possible with special aerials to get RTE in Belfast. The SDLP would wish that RTE would be available generally in the North. The Taoiseach noted that in the past when this issue was raised we had got indications that the Irish Government would be expected to pay for BBC reception in return. This could run to three to four million a year.

On Navan Fort, Mr. Mallon said that the next issue was to have the contractor removed from the site completely. He thought £1-1¹/₂ million worth of compensation would be required. A major rehabilitation job involving the whole Armagh area should then be undertaken to turn the site into a major tourist attraction.

Divis Flats

Dr. Hendron said that he felt strongly that Divis flats should be demolished as other unacceptable estates had been in the past. However, he felt this would not be done at present. Although he could not say so politically, if one section were kept for temporary accommodation while people were being placed in permanent homes he could accept this. However, there should be a decision in principle to demolish the whole complex. After some discussion as to the length of time over which the flats should be demolished, it was agreed that five years might be appropriate.

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Anglo-Irish Division

2 May 1986.

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