



# An Chartlann Náisiúnta National Archives

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IRISH EMBASSY, LONDON.

SECRET

4 February 1987



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Call on the Lord Chancellor, Lord Hailsham - 2 February 1987

Dear Eamon

I paid a farewell call on the Lord Chancellor, Lord Hailsham, in his office at the House of Lords on Monday afternoon and I spent about fifty minutes in discussion alone with him. I found him very lively and agreeable; interested in, and knowledgeable about Ireland; and sure that his family background, moderate unionist leanings, and the fact that he first visited the area as far back as 1928 all give him a "feel" for the problem which his colleagues in Cabinet do not, and cannot, have. (His father, the first Viscount Hailsham was Lord Chancellor in his time. As you perhaps know, he was the only one in the Cabinet Committee who held out against handing back the ports in 1938; and in March 1938, he wrote to Chamberlain to oppose certain points in the then Anglo-Irish negotiations saying "Ulster loyalty is not for sale!").

#### The Anglo-Irish Agreement

Hailsham (file) admitted frankly that he had had doubts about what was emerging while the negotiations were under way and he predicted to his colleagues in Cabinet what the likely Unionist reaction would be. Now however he feels the Agreement must be supported - he was quite clear in saying this on several occasions during our talk. He believed that we can and must "get around this corner - even on two wheels". There are some problems where one should not look for a single big settlement but where one can do something to set things on the road to resolution.

In discussion, I suggested that the fundamental concept of the Agreement was to try to provide an answer to the insecurity of the majority and the disaffection of the minority. He said he agreed completely with this. But when I mentioned in passing that Northern Ireland had not worked very well from the outset, he demurred and said that in his view it didn't work at all badly until 1969 - until the civil rights marches and the "mainly Protestant" riots. He himself had been against Direct Rule but Ted Heath had nevertheless gone ahead to introduce it in 1972. He spoke well of Sunningdale and of Lord Whitelaw's efforts as Secretary of State for Northern Ireland but felt that the Council of Ireland/Irish dimension aspect had put too great a strain on that Agreement. He agreed readily enough however when I suggested that a good deal of the difficulty about the Council of Ireland concept at the time had been that it was never more than that - a concept without content (pending the second follow up Conference which never actually took place) and therefore a focus for fears.

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### Northern Ireland leadership

Part of the problem in his view is that the present leadership in Northern Ireland is very poor. In the past there had been some "very considerable figures". He acknowledged that "old Brookeborough" had been narrow and bitter but he thought well of Major Chichester-Clark (Lord Moyola), and Terence O'Neill (who was, Hailsham said, like himself a profound pessimist) and he also mentioned Faulkner. Today, by contrast, "you have that inconsiderable Molyneaux, that lunatic Powell and that bigot Paisley". He seemed however to have a reasonably positive view of John Hume ("alright but a bit of a prima donna").

Cardinal O Fiaich he found alright too but he said that he had got on much better with Cardinal Conway. He regretted that Cardinal O Fiaich would not as yet give clear support to the idea of Catholics joining the RUC or becoming JPs (sic).

### Background to Northern Ireland problem

We talked further about the historic background to the problem, the conflict of identities, the role of religion and the points at which history might have gone differently. He thought the key to a settlement of the sometimes turbulent historic Anglo-Irish relationship was the concept of "good neighbours" and "neighbourliness". On reflection about the late 19th Century he thought that Gladstone was probably right in his effort to reach a Home Rule settlement. He thought Irish nationalists might have settled for that at the time and he mused that had that effort succeeded there might now be a Federal United Kingdom with Wales and Scotland having followed Ireland into Home Rule.

At another point he said, slightly mischievously, "you stayed out of the war". I said we had done what many other countries, including the United States, had done - stayed out until we were attacked. But it happened that we were not attacked. He acknowledged the justice of this point and then recalled in our favour that many thousands of Irish had fought in the British forces in the war.

### 3-Judge Courts

We spent a good deal of time on this issue (although I felt I should say to him that that was not my primary purpose in coming to see him). He went over all the usual arguments against the proposal that we heard last year from the British side although he touched lightly enough on each of them. These difficulties included the limited number of judges available; the fact that it might be thought that the "Catholic" judge was being regularly out-voted behind the facade of a unanimous decision of a 3-Judge Court; the attitude of the Northern judiciary; and the fact that "the Unionists would go wild". (On this last point he used the phrase "you would frighten them off the nest". This was a metaphor he seemed to like and one which he used on several occasions about the Unionists).

Of the various points which he made the most fundamental seemed to be that, as he put it, "I could not assure my colleagues that I could deliver". Indeed he seemed at times to imply that his opposition had not been so much on the principle of 3-Judge Courts as because he believed

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that he would not be "able to deliver". I asked him whether he meant "deliver" in the sense of facing down the opposition which he anticipated or in the sense of providing an adequate system to give effect to the idea. He said that both points arose but he had been referring particularly to the fact that he did not believe that, if 3-Judge Courts of first instance were introduced, it would then be possible to provide a suitable system of appeals. He considered that vitally important but felt it could not be done - granted that the number of judges available is limited and that all of the judges concerned are judges of first instance.

I answered the various points he had made against the 3-Judge system in various ways and summarised our own arguments in favour, laying particular stress on the importance of confidence in the court system as a way of helping to end the disaffection of the minority. I pointed to our introduction of 3-Judge Courts in our own jurisdiction when we moved away from jury trial in subversive cases as evidence that we believed that there was a strong objective case for such courts; and I said that, as we saw it, it was a more radical step to move from jury trial to 1-Judge Courts than it would be to move to 3-Judge Courts. Hailsham said there was something in the point but he passed it off facetiously by recalling a saying of his father's "two heads are better than one even if they are sheeps heads" - a joke which seemed to me <sup>scarcely</sup> very much to the point.

In further discussion as we went around the subject in various ways, I mentioned that our information was that the Northern Ireland judiciary was far from monolithic in opposition to 3-Judge Courts. Hailsham allowed me the point that it is not monolithic but he clearly thinks that the opposition is very strong and, he said, "not even all Catholic judges are in favour". When I spoke at another point of the considerable "pool" of senior counsel qualified and willing to accept appointment to the bench Hailsham demurred. He accepted that there were a few-but not many who had seemed to be qualified. He spoke too of the dangers which a Catholic judge in particular would face of murder. He mentioned Lord Chief Justice Lowry at one point and described him as "good but not so considerable a figure as McDermot with whom I worked closely".

While Hailsham, during this discussion, touched at some point on virtually every argument against the 3-Judge Courts, the main difficulty he identified, as noted above, was his inability to assure his colleagues in Government that he could "deliver". While this, as he described it, seemed to refer particularly to the difficulty of providing, with a limited number of judges, both for 3-Judge Courts of first instance and for an adequate appeal system, I think he was also saying, without perhaps wishing to be too blunt to me about it, that the opposition which he anticipated in Northern Ireland from the Unionists in general and particularly from the judiciary was a major factor.

Recent UDA proposals

I mentioned this recently published paper to him as a development of some interest and noted that the paper contains a quotation from Hailsham himself on the desirability of a written Constitution (or Bill of Rights). He said that what he wanted was to see the European Convention on Human Rights incorporated into British law so that it became a standard of reference for British Judges.

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T.R.  
Argument?  
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### Electoral System

This led on to some discussion of electoral systems. Hailsham said he would want to see the House of Commons continue to be elected by the direct straight vote system in order to continue to provide "a strong Government". But he would want to see the House of Lords reformed and have it elected on a regional basis (Scotland, Wales, Wessex etc) by the proportional representation (single transferable vote) system. He seemed to have no objection to the PR (STV) system as such but thought that Britain ("unlike Ireland" - sic) would continue to need strong Government-based on a straight vote House of Commons.

### Northern Ireland Secretary?

Hailsham said that, if asked, he would have accepted to become Secretary of State for Northern Ireland when Mrs Thatcher formed her Government in 1979! He thought it would have led to some opposition and that all in all he was better at his present job. I ventured, with a certain irony, that no doubt the possibility of such an appointment was still open after the next election here. He replied, with something of a glint in his eye, that he thought he might now be too old at 80 for this.

### My successor

He asked about my successor in my present post in London. I said that I thought this has not yet been decided. He replied quickly that although it is right not to "politicise" such appointments he thought it a very good and democratic thing to leave over nomination of my successor until after the election.

### Comment

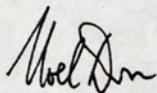
Apart from the fact that he did not at any point get up from his desk, - understandable in an eighty-year old - Hailsham, in my view, can be described as spry. He is lively and agreeable to talk to; and a discussion with him on Northern Ireland is marked by some of the warmth, affinity and shared understanding which in time draws old opponents together. Hailsham may still be a serious obstacle to our hope of progress on the Courts issue but whatever about this I found it encouraging at a more general level that, starting from a different position, he now strongly believes that the Anglo-Irish Agreement must be sustained and that he is prepared to impress this on his colleagues.

As to his own future, he will, I suppose, step down after the next election. But I wouldn't bet too heavily on it. The Attorney General, Sir Michael Havers, his putative successor, would no doubt outpace him in a foot race. But, having seen each of them at close quarters within a week, I would in other respects give more for Hailsham's than for Havers' chances of good health two years from now; and I wonder if Mrs Thatcher might not give greater weight to this than to their respective ages. Is it possible that after an election a victorious Mrs Thatcher might eventually be tempted to reappoint Hailsham to his present post where he could keep the Woolsack warm for Geoffrey Howe - say two years from now - if Howe does not succeed her as Prime Minister when she steps

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down at that time? A long shot I agree but Hailsham is a durable and wily old bird whom she might like to keep around.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Noel Dorr". The signature is fluid and cursive, with the first name "Noel" and the last name "Dorr" clearly distinguishable.

Noel Dorr  
Ambassador

Mr Eamon O Tuathail  
Assistant Secretary  
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