



An Chartlann Náisiúnta National Archives

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Re: Discussion with British Ambassador 5/10/87

1. I met the British Ambassador, Nicholas Fenn, at a coffee reception after the various church services to mark the commencement of the new legal year. I informed him that Bishop Desmond Williams had exhorted all the Judges and Lawyers attending the Mass to exercise great caution when giving consideration to the extradition of Irish citizens to Britain because of serious questions which have been raised in recent times concerning their legal system.

(The Ambassador had attended a different service). I said that statements of this nature including that of Cardinal O Fiaich in recent days served to highlight and enhance the difficulties which the Government faced on the question of implementing the Extradition Act to which I had referred at the B.I.A. Conference in Cambridge (the stance taken by the S.D.L.P., all opposition parties and the fact that we did not have a majority in the Dail).

Since the Cambridge conference Dr. Fitzgerald's statement as to the direct link between the Anglo Irish Agreement and three Judge Diplock Courts had, as anticipated, become a matter of public record.

The Ambassador readily acknowledged that the recent statement of Cardinal O Fiaich would create added difficulties for the Government. He stated that Dr. Fitzgerald's use of the term "preconditions" in his initial intervention

in the discussions in Cambridge were unfortunate and he had of course subsequently withdrawn this word and substituted the term "linkage". He agreed that Dr. Fitzgerald had still maintained that there was a direct link between the implementation of the Extradition proposals and the three Judge Diplock Court. However since then he had spoken personally to Alan Dukes and Dr. Fitzgerald and while both were of the view that the Anglo Irish Agreement linked the extradition proposals with reforms in the administration of justice in Northern Ireland they accepted that there was not a direct link with the specific proposal of a three Judge Court. I said whatever about such discussions the public position of Dr. Fitzgerald and his understanding of a direct link with the three Judge proposal stood uncorrected, having been repeated and indeed elaborated upon many times by the media. In any event this view was now well ensconced in the public mind.

The Ambassador went on to say that it was not his normal practice to apologise for a Minister but that when Mr. Stanley made his statement at the Cambridge conference (in which he refuted any suggestion that the Agreement could be interpreted as linking extradition and reform of the administration of justice) he had not been properly briefed. The fact is, he said, that there may be changes in the Ministers of State in Northern Ireland but 'we continue to have the same Prime Minister.' The British Government accepted that there was a general link between the question of extradition and reform of the administration

of justice but that there was absolutely no link to the specific proposal of three Judge Courts.

There was nothing contentious in the Ambassador's tone in fact he was somewhat defensive and anxious to explain the position of his Government.

I pointed out that notwithstanding any differences which may exist on the interpretation and application of the Agreement/Communique the reality seemed to me personally that the British Government were not going to agree to the three Judge Court proposal in the foreseeable future, and at the same time because the Government were in an extremely difficult situation it may not be possible for it to permit the Extradition Act to come into force. In the event of such impasse serious damage could be done to the whole Anglo Irish process. It would be in the interests of both Governments to avoid such consequences or at least minimize any damage which might flow from such an impasse.

The Ambassador readily agreed that if such a situation arose the potential for damage was serious and it should be minimized in every way possible but that he did not think that we had reached that stage yet. There was still plenty of scope for discussion and indeed the meeting between Brian Lenihan and Geoffrey Howe had been much more positive than the newspapers reports would suggest.

He still hoped that future discussions, particularly

at the forthcoming Anglo Irish meeting would find a solution.

(He was clearly talking on the premise that there would be no give by the British Government on the three Judge Courts). He readily accepted that there may ultimately be a need to minimize damage but that the time for a 'damage limitation exercise' had perhaps not yet come. I agreed that the two Governments would no doubt continue to discuss the issue with a view to a possible resolution but again speaking personally I felt the time had come to at least anticipate the contingency of an impasse. I said the passing of legislation (the Extradition Act) so as to come into force on a later date but on the expectation that events in the meantime would justify its enactment, was wrong in principle and in this instance had created an unnecessary deadline and a focal point for controversy. The result was that there was not a great deal of time for manoeuvre and it could be in the interests of both Governments to agree to a postponement of this issue in the hope that it could be resolved over a period of time and in a different climate. He agreed that the manner in which the Act had been passed and the effect which the deadline of December 1st was having had, in the event, proved unfortunate and even Dr. Fitzgerald now agreed with this. I had adverted once again to the difficulties of the Government and he pointed out that the British Government has its own problems as the implementation of the Extradition Act was being used at least by Unionists as a test of the Irish Government's sincerity in Anglo

Irish relations. Their reaction to the non-implementation of the Extradition Act would be embarrassing for the British Government. The Prime Minister herself would be very susceptible to the views of her senior advisers, back bench M.P.'s and indeed the media generally who would undoubtedly voice strong criticism of a decision by the Government not to proceed with the Extradition Act.

I repeated that this was all the more reason why such possibility of an impasse should be anticipated and the damaging consequences avoided by both Governments perhaps by agreeing to give more time to resolving it.

The Ambassador he would like to discuss the situation again and we agreed to keep in touch.

I feel that Fenn himself ~~is~~ appreciates the real difficulties which are now facing the Government on this issue and that the climate is such that the Government will or may not permit the Extradition Act to come into force but that he cannot formally, or indeed informally, acknowledge that an impasse has been reached or is inevitable (and thus undermine the forthcoming meeting). I also got the impression that his Government's expectations or optimism on the issue are greater than his own. Being conscious of at least the real risk of an impasse one would expect Fenn to give forewarnings on this and certainly I feel he would be prepared to promote the need to minimize the negative consequences of such an event bearing in

mind the strong views held on the issue in London.

J.L.W.
6/10/87