



An Chartlann Náisiúnta National Archives

Reference Code:	2017/10/18
Creation Dates:	30 October 1987
Extent and medium:	8 pages
Creator(s):	Department of the Taoiseach
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

ROINN AN TAOISIGH

Uimhir.....

SECRET AND PERSONAL

Meeting between the Taoiseach and British Cabinet Secretary, Sir Robert Armstrong

The meeting, which took place in the Taoiseach's room on 30th October, 1987, lasted for approximately three-quarters of an hour. It was extremely cordial throughout. The following reproduces the discussion in direct speech but does not purport to represent exactly what was said.

After some preliminaries, the Taoiseach asked Sir Robert to give an outline of his major concerns.

Armstrong:

The Prime Minister can appreciate as well as anybody the significance of parliamentary arithmetic and she knows the sort of difficulties you face. At the same time, she is very conscious of the sort of change which the Anglo-Irish Agreement has brought about in relations between the two countries, in the place the Secretariat plays in Northern Ireland, and in the political scene in Northern Ireland itself. The general view is that there would be a considerable set back if the Convention was not ratified. It is something which I think we would all regret very much.

The Prime Minister is deeply committed to the Agreement and remains so. She is going very slow in Northern Ireland and is making sure that there is no understanding that anything done there will, in any way, upset it. [This was a reference to her attitude to the "Talks about Talks" and other Unionist activity.] The Agreement just is not up for re-negotiation. The process under it is continuing. There have been changes under the Agreement which are irreversible.

Taoiseach:

I appreciate what you say about the change in the old order. There have been really fundamental changes.

Armstrong:

The change has been radical.

Taoiseach:

I fully understand and agree with what you are saying. We are very anxious to keep the Agreement going. You must, however, appreciate our situation. We took a lot on board on coming into Government. Having opposed the Agreement in Opposition, we began, in Government, by working it and doing everything possible at the technical level to continue to make it work. If there is anything more we can do on operational security, we will do it.

ROINN AN TAOISIGH

Uimhir.....

- 2 -

I got the impression that the recent meeting between the Tanaiste, myself, and Secretary of State King went very well. We certainly got on well personally. I want to make it clear, that if we get time, we can do an awful lot. But the Government here face really major problems at grass-roots level. In addition, we have had the recent contributions from Garret FitzGerald, Peter Barry, Seamus Mallon, the Cardinal, and others. What we would most like to do is to reach agreement to defer on the basis that we have problems and you have problems and that we should both take another 12 months or so to give ourselves time to get over these difficulties. If there has to be deferral then both sides should engage in a danger limitation exercise. I would suggest that, for this purpose, a small group might be set up so that consultation should be fast and effective; and that something might be done in the courts area.

Not so long ago, my ideas on mixed courts were very different. I can see now that the idea has certain attractions. If we were to follow that route, we would not be pointing a finger at Northern Ireland and we might avoid extradition.

It could easily be argued that courts in both parts of the country were set up in circumstances of more or less normal democracy and that changes were made in them to deal with violence when it started, on a large scale, nearly 20 years ago. Now, in both countries, it is time to compare experiences. There must be something after nearly two decades, which the two sets of courts could contribute to each other. Let us look at both court systems now to see how they have responded to the threats to society which they have faced and what we can do now with both sets of court. We can do this without reflecting on the Northern system.

Armstrong:

(contemplatively) You may be handing the problem over to jurists. We faced these problems before. At the same time, that is not a total argument against..... Some of the attitudes of those opposed before to the idea of mixed courts have started to move. You will know Hailsham's ideas on sovereignty. We now have a very new Lord Chancellor. I think that his position could be more modern (moderate?).

Taoiseach:

And he is a Scot!

ROINN AN TAOISIGH

Uimhir.....

- 3 -

Armstrong:

It is the first time he will have come across this problem. He has a very subtle mind. You must also take into account the Prime Minister's view of the Northern judiciary. She will not do anything that appears to throw doubt on their work. She has often spoken of their courage and what they do to uphold the law in most difficult conditions. At the same time, if something were to happen in this area it could be declared to be part of a continuing process between the two Governments.....I see what you say about the mixed court or something like it not being a reflection on the courts in one jurisdiction any more than in the other.

Taoiseach:

I know Lowry very well. I can appreciate that we just cannot say we haven't got faith in the courts. In the mixed court idea, sovereignty is involved. But if there is agreement on the subject we both, reciprocally, give up a little bit on this. Is this any different from any international treaty - such as that under which we both joined the European Community

We have faced a very bumpy road in the economic area. I am asking my backbenchers to close hospitals and take extremely difficult decisions, often contrary to what they themselves have said in their constituencies. So far "our troops" are rock solid behind us in this process. They are taking what we are doing but my belief is that we could not, on top of all this, ask them to take extradition as well. What I am asking for now is understanding and sympathy of the position of the Government. We can see your difficulties. We are asking that you too see our difficulties. Let us as partners in this Agreement agree to defer action to give both of us time over the next 12 months.

Armstrong:

It will be a lot easier to do this if you can say that after 6 months or 12 months - or whatever the period - and no longer the Convention will come into force.

Following this conversation there was a general discussion of world economic issues (referring, in particular, to the visit by Secretary General Paye of the OECD) and other matters.

DERMOT NALLY

Dermot Nally

3 November 1987

Copy to Noel Dorr, Secretary, Dept. of Foreign Affairs
Des Mathews, Secretary, Dept. of Justice.

Meeting with visiting British officials
- Friday 30 October 1987

Those present were:

British side

Sir Robert Armstrong (Cabinet Secretary)
Sir Robert Andrew (Permanent Under-Secretary NIO)
Nicholas Fenn (British Ambassador)

Irish side

Dermot Nally (Secretary to the Government)
Dermot Gallagher (Assistant Secretary DFA)
N. Dorr (Secretary DFA).

At the outset Sir Robert Armstrong , accompanied by Mr. Nally, called on the Taoiseach and spent about forty five minutes in discussion with him on which Mr. Nally will report separately. The official level meeting began about 4.15 p.m. and lasted for about a hour and a half. This was followed by dinner between the same participants held at Iveagh House.

In the discussion and in a more informal atmosphere over the dinner table the Irish side was concerned to reiterate the general message which the Taoiseach had conveyed to Armstrong. This was that, while no final decision had yet been taken (probably until after 15 November), we were now acting on the assumption that it was very likely - indeed virtually certain - that the coming into effect of the Extradition Act would have to be postponed from 1 December. This was so-not because of a basic difficulty of principle-but because the Taoiseach would face severe political difficulty in letting the Act go through at this stage. What was needed was time; and it would be in the interests of both Governments to defer the coming into effect of the Act, by agreement.

We accepted that this could cause a measure of "turbulence" in the short-run; and we pressed strongly the interest which we thought both sides had in trying to minimise any possible damage. This could best be done by a "task force" or "liaison group" which would consider and advise on how the issue should be handled with minimum damage (it would be necessary to discuss such things, for example, as the modalities and form of deferral; the kind of speech which would be made to explain the decision to defer and so on).

We also explained in some detail, and pressed strongly, the idea of a joint commission of some kind to study the emergency court systems North and South. We pressed the view that two democratic societies with much in common in their legal

inheritance had each been forced to provide for jury-less courts as an "emergency" measure to deal with violence. We had handled the derogation from normal jury trial in two different ways and we were now in some disagreement about which was the better. It therefore would make sense, granted that the need for emergency courts would be with us for some time ahead, to engage in joint examination of the two systems to see what modifications, if any, might be desirable. The setting up of such a study group could also help to get us over the difficult period which may lie ahead for a time if the Extradition Act does not come into effect in December.

The British side emphasised, throughout, the problems which a decision not to allow the Act to go ahead would create on their side. There would be jubilation on the part of the Unionists and considerable difficulties for Mrs. Thatcher both from them and from her own back benches. There would be a good deal of "I told you so" (about "trusting the Irish"). At the same time we should know that Mrs. Thatcher herself had invested considerable political capital in the Anglo-Irish Agreement and that she would remain rock solid in her wish to maintain it.

The British side was under instructions (especially so in the case of Sir Robert Andrew who was instructed by his Minister, Tom King) not to talk with us at this stage about "damage limitation" exercises - since this would appear to indicate that they were ready, with resignation, to accept that the Act is going to be deferred. They still had some hope that we would allow it to come into effect and we had told them that a definitive decision had not yet been taken, even if we warned of the increasing probability of such a decision. For this reason they could not, formally speaking, talk with us about a "task force" or anything of the kind; or indeed about any other measures to minimise the damage. They still had to hope that we would see our way to let the Act go through.

Nevertheless, over dinner, the British side relaxed this position considerably on a "mind you I've said nothing" basis and by the end of the evening they had gone a considerable way in considering, together with us, how best to handle the difficult patch ahead. (See below).

They confirmed our previous understanding that they would regard any reservation to the Convention or other amendment of the Act such as a proposal to add a prima facie provision, as worse than simple deferral. If the Act has to be deferred the least bad option from their point of view would be a "clean" deferral to a definite date ahead - preferably six months rather than twelve - with a definite understanding that this was not an indefinite deferral but that the Act would be allowed into effect at that time.

We pressed our views on the study group or commission to study the emergency courts systems North and South and discussed the matter at some length although here too they were limited by their instructions. The idea emerged from Armstrong after some discussion that the best way to envisage the commission or study group would be as a decision to be announced by the two Heads of Government after the meeting between them which we assumed would take place on the margin of the European Council of 5 December in Copenhagen. This would mean accepting that there would be a difficult period of a week or two to be "weathered" between our announcement of deferral and the Copenhagen meeting. The commission/study group announcement could then be a public demonstration of a will to pick up the pieces and to continue together.

The British side made the point on several occasions that the commission/study group tentatively envisaged by Tom King when he met the Tanaiste in London a few weeks ago was not at all the same thing as we are now talking about. We for our part agreed with this but said that the idea mentioned by Tom King had sparked off some further thinking on our side and had suggested indirectly to us the rather different approach which we now outlined to them.

It was fairly clear that the British side are not thinking in terms of an early bilateral Summit (apart from the Copenhagen meeting). On the study group/commission, their formal position is that some idea such as this was discussed between Ministers at the last meeting of the Conference (21 October); and that there would probably have to be a report back to the Conference at its next meeting which they seemed to think would take place in December. In further hypothetical discussion there seemed to be some acceptance of the idea that if a commission/study group is set up it should be anchored firmly in the Anglo-Irish Conference.

The British side would consider it quite important that when and if we do reach a negative decision we convey it to them well before any public announcement so that at that stage they could work with us on damage limitation. In discussion, however, we made the point that, granted the political sensitivity of the issues, it would be extremely unlikely that a formal decision to defer could be held secret from party back benchers and others for more than a few hours.

As discussion of this problem developed, Armstrong, who had initially been lukewarm to negative about the idea of a message from the Taoiseach to the Prime Minister, began to see a good deal of merit in the idea. He even offered at one point, indirectly, to cast an eye over a draft if we wished him to do so

and then give us an informal steer on how it was likely to be received or how it might be phrased to get across our message most successfully.

It emerged that there is to be a meeting of a small sub-committee on the British side (apparently comprising the Prime Minister, Sir Geoffrey Howe the Foreign Secretary and Tom King the Northern Ireland Secretary) on Wednesday morning next 4 November. Armstrong would be reporting orally to that meeting on his talks today in Dublin. He began, as he talked, to consider it a good thing that a message from the Taoiseach should arrive a few days later - say by the end of next week. The purpose of this message would be, not to record a formal decision to defer but to indicate, in a way going somewhat beyond Armstrong's oral report of our present meeting, where the Taoiseach's thinking on the matter has got to at that stage.

Armstrong, musing aloud offered some outline wording for such a message. It could perhaps be on the following lines:

"If I try now to push through on this issue I am likely to fail. I have taken account of your views but my worry is that the Parliamentary position here is such that failure would be more likely and that this would be bad for our relationship. What we need therefore is to try to control the process and work for controlled deferment. So your people and mine should come together to consider how best to do this. We all have a common interest in minimising the damage. Deferment would be better than trying and failing. If we defer, however, we mean defer and not the Greek kalends (i.e. indefinite postponement). We do not want this to be a confrontation and we would like to work out with you how best to handle it".

As Armstrong envisaged it such a message from the Taoiseach a few days after his oral report to the Cabinet sub-committee would indicate a certain firming up in the Taoiseach's view by then as compared with what Armstrong would be reporting about today's discussion with the Taoiseach. It would, however, stop short of indicating that a final decision had been taken.

The effect of this message, reinforcing and expanding a bit on what Armstrong would say on Wednesday would probably be to allow British Ministers to vary their instructions so as to allow their officials to discuss seriously with us how best to limit the damage. A suggestion was made that Dermot Nally and Robert Armstrong might contact each other by telephone after next Wednesday's meeting. In the course of such a call Armstrong could let us know if it would still be opportune to send such a message. We might then if we wished give him some kind of

informal view of a draft so that he might see if he could be helpful to us in suggesting an approach. The message itself could be delivered a few days later.

Throughout this discussion and again at the close Armstrong said a number of times that he believed that things would never be the same again in Northern Ireland and, without minimising the difficulties and dangers of deferral, he expressed strongly the view that Mrs. Thatcher will hold to the Agreement. He evinced a considerable respect for the Taoiseach as a result of their discussion. He took a particular interest in the fact that the Taoiseach had spoken favourably of the idea of mixed courts but said he did not quite understand what the Taoiseach meant when he added that this would make extradition unnecessary. He wondered if the remark represented a basic position on the part of the Taoiseach. We suggested in response that what was significant in the Taoiseach's attitude was the present willingness, despite some initial scepticism, to consider some form of mixed courts system. Secondly, we had never heard the Taoiseach rule out in principle the idea of facilitating extradition. We also stressed his absolute commitment against violence and Armstrong fully accepted this.

The meeting and dinner were, as always, extremely amicable and there was throughout a good and serious level of discussion which allowed each side to get a considerable insight into the other's views.



N. Dorr
Secretary

30 October 1987

SEC 95