



An Chartlann Náisiúnta National Archives

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ROINN AN TAOISIGH

(Subject to verification)

Uimhir.....

PERSONAL AND SECRET

Convention on Terrorism

1. The Taoiseach met the British Ambassador, Mr. Nicholas Fenn at 1.30 pm today. This is a note of the discussion, in viva voce, but it does not purport to represent exactly what was said.

Taoiseach:

We will be looking for your help in this matter which is an enormous political problem for us. The simplest thing of all for us to do would be to put prima facie into the Bill but we understand that you would not like that at all.

Ambassador:

They might have to accept it ...!

Taoiseach:

What we are proposing would not always have been on but the Eksund affair and the French seizure of arms there has brought the whole issue up front. The police were successful then but there may have been three or four other shipments in already. On this I would like to speak, in confidence to you, with a message to the Prime Minister only. [The Taoiseach then went on to give the Ambassador the message.]

Things will never be the same again after Enniskillen. After that and the O'Grady kidnapping, the Government simply had to see what they could do.

This Extradition business is only symbolic. What the Act is proposing can be done already under Court judgements. But what we do want, is something that we can sell in the Dáil, particularly to our own Party members. We would be helped greatly in this if we can say that the British have agreed with what we are doing.

John Murray, the Attorney General, visited your Attorney General yesterday. We can put what we are proposing in such a way that it is not judiciable. What we are proposing is that a warrant would not be backed unless the Attorney General consents. The Attorney General would not consent unless he has received from the British Attorney a certificate to the effect that it is the intention, based on a sufficiency of admissible evidence, to prosecute. We would frame the legislation in such a way as to ensure that the Courts cannot go beyond it - preferably, in consultation with your people.

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Brian Lenihan is seeking a meeting with Foreign Secretary Howe, at the weekend - possibly with the Attorney General, and after consultation with Secretary of State King.

Ambassador:

I absolutely understand the political realities in what you have told me and have tried to get them across to my Government. I need not say how delighted we would be if we can make it happen but we must get over the present hump. Am I to understand that Attorney Mayhew would not take what your Attorney was suggesting?

Taoiseach:

My understanding is that his attitude was unhelpful. There was no attempt to get over obstacles

Ambassador:

Maybe this is not the right way to go about the thing. The matter is now political

The British problem is that we do not want our Legal Officer or Courts to be judiciable in Irish Courts. I have had no report from our people on the Mayhew meeting - other than a fairly brief summary of what happened. Did he actually reject the proposal?

Taoiseach:

He seemed to be changing his ground as the discussion proceeded but we gather from what was said that you do not want to have another statutory layer in this process. There was no effort to accommodate our position or to join in finding a solution. The real bogey is the question of "judiciability".

The position seems to be that your legal people are happy to give the declaratory statement, the terms of which have been agreed and that this should be made public - on the assumption that, if they do so, what they are doing would not be judiciable - but on some views this process would not be any less judiciable than some types of statutory provision.

Ambassador:

Our lawyers are very worried about things in statutes.

Taoiseach:

Under our proposal, the Attorney would be the only one to consent. All that would be in question would be whether or not he has given that consent. The contents of the certificate would not come to the Court

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- Ambassador: If that could be demonstrated, it would solve the problem. Would we be able to consult, at legal level, on language of the Bill?
- Taoiseach: Absolutely. We would do everything we could in that area. If your Attorney wanted to appoint an Irish lawyer who is familiar with Irish statutes and drafting practices, we would have no objection. We would negotiate with him or with the Attorney or with anybody on behalf of your Attorney.
- Ambassador: If we were absolutely satisfied that it would not be judiciable everything would be alright. The official British Government position is that judiciability is the point beyond which they just cannot go.
- Taoiseach: Or at least that this element would not become more significant than if a statement were made in public as to the existence of the certificates. We are willing to go along with anything you would like to suggest in this area. Would there be point in my seeing you again? The Minister for Foreign Affairs is seeking a meeting with Howe (and King).
- Ambassador: I know that the Foreign Secretary is meeting the Greek Ambassador for lunch and immediately afterwards he is going to Yorkshire. Do you not think that for the Minister to fly across at the weekend might give the whole thing a mite too much of a high profile.
- There was some general discussion on this point.
- Taoiseach: I think that this whole question is totally soluble We would also have very much in mind the idea of a commission. We could announce this in principle or say whatever it is that we can both agree to say.
- Ambassador: There are lots of versions of this suggestion. Tom King has considerable reservations about a commission of jurists. He might go along with the idea of a study as to how best Courts can operate in a democratic society with the idea of addressing the problem of terrorism.

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Taoiseach: This was the idea that I had - that the Courts, set up a democratic society have had to face up to violence day after day over a long period - something for which their structure was never designed. Can we not look, jointly, at any improvements we can make in the system?

Ambassador: The original idea here was a low key study to help you in ratification of the Terrorism Convention. I know that the idea was then used, in reverse.

Taoiseach: I would go along with the idea of a low key thing - something made up of experts.

Ambassador: I certainly wouldn't despair of persuading our people to go along with the idea.

Taoiseach: Even if we agreed, only in principle, it would be a considerable help.

Ambassador: The whole thing is to help to get over a short-term political problem.

Taoiseach: Margaret Thatcher rightly resents accusatory fingers being pointed at Northern Ireland Courts. She is sensitive on sovereignty.

Ambassador: And also on the idea that the courageous men there are being unfairly criticised.

We can try the idea. An in-house study on both sides might get through but not the idea of someone sitting outside in judgement of the system. Could we pursue this through the Inter-Governmental Council?

Taoiseach: Yes.

There was then some general discussion, at the end of which the Taoiseach said that what we were suggesting was essential. He was convinced that the gap is bridgeable. The rewards for getting this thing right were very substantial on both sides. We all recognise the horror of judiciability and we want to assure you that we are satisfied that what we are proposing would not be judiciable. We can give you any wording you want to try to secure this objective. The Ambassador agreed as to the desirability of the objective from the point of view of both sides. A basic objection from their point of view would be to bringing a British Law Officer under an obligation through the operation of a foreign statute.

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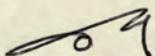
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The meeting concluded with the Taoiseach saying that this issue was urgent and that he would be available if the Ambassador wished to contact him on Sunday or at the weekend. He mentioned, incidentally, that the Government would probably not be sending a representative to the Enniskillen ceremony on 22 November, essentially, because he had a feeling that a Government presence there might not be welcome.

During the discussion, it was also indicated to the Ambassador, that if there was a public knowledge that the statutory declaration was on offer, the Taoiseach simply could not answer critics in the Dáil or elsewhere who would want to know why this was not incorporated in the statute. There was the further point that if the process were in the statute then the whole thing could be subject to some sort of control - which would not be available if the declaration were at large.

Subsequently, the Ambassador contacted me to ask if he could have a written statement of what precisely our proposals were. The attached was issued to him, in reply, following its approval by the Taoiseach and in consultation with the Attorney General.



13 November, 1987.

P.S.

During the conversation, the Taoiseach also mentioned that he was easy as to whether the new provision should apply to the U.K. only or to the U.K. and other countries. The Ambassador while not committing himself definitely felt that it would be better to make the provision of general application.



Copy to:

1. Attorney General
2. Mr. Noel Dorr, Secretary, Department of Foreign Affairs
3. Mr. Des Matthews, Secretary, Department of Justice

The amendment will be in two parts.

First, there will be a provision in simple terms that the warrant would not be backed unless the Irish Attorney General consents to its being backed.

Second, there will be a provision that the Irish Attorney General will not consent unless he has received from the British Attorney General a certificate to the effect that it is the intention, based on a sufficiency of admissible evidence, to prosecute.

The Bill will categorically exclude review by the Courts of the British Attorney General's certificate or its contents.

The Irish Law Officers are fully prepared to discuss with their opposite numbers the terms of the amendment, the language to be used, and the drafting with a view to securing these purposes.

Department of the Taoiseach.
13th November, 1987.

Conveyed to British Ambassador, HE Mr. Nicholas Fenn,
by Despatch Rider on Friday, 13 November, 1987, at
4.45 pm approx.