



# An Chartlann Náisiúnta National Archives

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# ROINN AN TAOISIGH

SECRET AND PERSONAL

## Northern Ireland

### Meeting between the Taoiseach, Tanaiste and Secretary of State King

The meeting took place in the Taoiseach's room in Government Buildings and lasted from 11.30 a.m. to approximately 12.10 p.m. on 16th November 1987. In addition to the Taoiseach, Tanaiste, and Secretary of State, it was attended by Ambassador Fenn and the undersigned. These notes are in the form of direct speech but do not purport to be a verbatim record.

After the usual preliminaries, the Taoiseach began:-

Taoiseach:

Not so long ago we were thinking of deferral of the Extradition Act due to commence on 1st December but recent events have enabled us to change on this position. I discussed the position recently with the Prime Minister on the phone. We want to go ahead with implementation of the Act but in order to do so we will have to put what has been agreed at official level on the certificate or declaratory statement into statute. I understand from conversations between our two Attorneys that there are procedural objections to this. Nevertheless we have to do it. We just can't get the Act through unless we have some provision of this sort. I know your concern is that if we put the safeguard into the Act then the whole issue become judiciable. However, our Attorney here tells us categorically that he is certain that the provision would not be judiciable. In this sense, including it in the Act would actually be an improvement. If the assurance or undertaking were an undertaking at large then the judiciary is just as likely to take hold of it as if it were in the Act. Having it in the Act, in this sense, gives a certain element of control. It makes the whole situation tighter.

What we would propose is outlined in the note which I understand has been given to your people.

At this point the Taoiseach gave a copy of the note to the Secretary of State.

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King:

I am afraid that I am not a lawyer and I have to be guided by them. I have talked to Mayhew. He has told me of the most painful experiences which we have had with the courts in recent years. This is one of the major problems of government with us. The whole question of judicial review is getting completely out of hand. Even judges themselves are becoming worried about the ways things are going. For example, we have had a case recently in which the courts said that if Tamils say they are refugees then the Home Secretary must accept that they are refugees. This is an impossible position for us. It arises despite the fact that the Act makes the Home Secretary the deciding authority. Ordinary administrative processes can go from court to court and finally finish up in the European Court. I would emphasise again that even the judges themselves are embarrassed by what is happening. That is what is at the back of Mayhew's advice. If the Attorney General says I've got a certificate of some sort or another, then those opposing extradition will say that they don't want to go for the monkey: they want to go for the organ grinder. They will attempt to get behind the certificate no matter what we do.

We would be prepared to set up a very informal arrangement under which the Attorney's certificates would be exchanged, if necessary, by diplomatic bag.

Taoiseach:

I have always understood that there was no objection to making the arrangement public.....

King:

Yes, the discussions were on the basis that whatever was agreed could be made public but I understand that our offer has not yet been formally accepted by you. The advice we have from our Attorney General is that what is being proposed would be quite a major step backwards. What is there in Irish law which would prevent review by judges - that is not in British law?

Taoiseach:

I repeat: that what we are proposing is certainly not a step back. It would enable us all to get some control of the situation.

King:

What I am saying I am saying not from any lack of sympathy for your position. I must be guided, in this, by legal advice: that advice is to the effect that it will become judiciable. If we get into that position, then we are in a far worse position than under existing backing of warrants arrangements.

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Taoiseach: That arrangement continues.....

We have to do this. Unless we do, I cannot guarantee delivery. I have to talk to my Party on Wednesday: I am really very worried about the outcome of that discussion.

The reward if we are successful is so great. I would ask you, again, not to look a gift horse in the mouth. You will have extradition: you will have the backing of warrants system: your courts will not be able to interfere any more than they would have been able to interfere under the informal arrangements. You are worried about them. Our courts are perhaps worse! And we are making this proposal to try and get ourselves out of these difficulties.

King: I am bound by our legal advice: they say it will be judiciable. They say the British Attorney will have to explain himself in Dublin courts - that would be an impossible position.

Taoiseach: The provision will be so tightly drawn that that could not happen. I have received that assurance. The contents of the certificate will not be subject to judicial review. All that will be in question is whether or not the Attorney has received this certificate.

King: Can we help in any other way? We have -

- (1) made the offer, which I understand has not yet been formally accepted, under which there would be an exchange of letters formally accepting the declaratory statement idea;
- (2) we would also formally accept the speciality rule under which a person cannot be separately tried for a non-extraditable offence;
- (3) we would also pursue the question of the check list so as to make sure that warrants are properly prepared.

Taoiseach: Unfortunately, I do not think that these arrangements would be sufficient. We are in deep trouble politically. Our Party headquarters say that things there are going berserk. I would like you to understand that this means for us an enormous political battle. We are offering everything you need and want. This is what I thought a few weeks ago I could not give you. What we are offering does not take from the efficacy of the backing of warrants system. The other thing I would like to mention is the question of the review.....

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- King: This poses very real difficulties for us. There is no point in even looking at it. Very undesirable even to talk about it - from the point of view of British political opinion I don't even know if we can do it. They would say "What a time to be horse trading!" I haven't had a chance really to talk to my colleagues on this. What was discussed originally was very much smaller than what seems to be in mind at present.
- Taoiseach: What we have in mind is some sort of review of both sets of courts.
- King: What we were talking about originally was something analytical, almost statistical dealing with facts, the rights of defendants, the number of acquittals, etc. Both sets of courts have to tackle terrorism. What we were thinking of was very much a minimal idea.
- Tanaiste: What we are proposing is very important, if only because it would bring in influential forces in Irish life behind the whole proposal we are discussing.
- Taoiseach: I cannot emphasise sufficiently how dodgy the whole thing is - even after Enniskillen. I would be very disappointed indeed if we had to throw out the idea of a review.
- King: Extradition will, I am told, take a step back from the existing position under the Supreme Court judgements. Persons can be extradited under the backing of warrants system. The legal press will take it to pieces.
- Taoiseach: If we write it into the statute in such a way that it cannot be judiciable.....
- King: We have tried that: it has never worked.
- Taoiseach: But what we are proposing decreases judiciability. Can I ask for your political support for what we are trying to do?

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King: The House of Commons and the Government would feel that there is a new situation which should enable you to get the proposal through. This would be a clear demonstration of the community of purpose between us. Against that background, I would very much hope that it would go through without the statutory background.

Taoiseach: I have to make this amendment. I am anxious that it should be made with the fullest input from your law officers so as to make what we are proposing as watertight as possible from the point of view of both countries. And I want to do it with maximum satisfaction on both sides. I am asking for your understanding and support on this basis.

King: I am afraid that, today anyway, I am not in a position to give anything.

Taoiseach: I will have to do what I am proposing, anyway.

Ambassador: Would the review you are suggesting be reciprocal?

Taoiseach: Yes.

The Secretary of State and the Taoiseach then went on to discuss certain security matters of some gravity.

The meeting then concluded. While each side made its case with clarity and force, the atmosphere at the meeting was good and relationships obviously friendly.



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Dermot Nally

18 November 1987.

Copy to: Mr Noel Dorr, Secretary, Department of  
Foreign Affairs.

Mr Des Mathews, Secretary, Department of  
Justice.