



# An Chartlann Náisiúnta National Archives

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*Tánaiste  
Perhaps we could have a  
meeting on Monday. We should  
be in a rush about clearing up  
how we might negotiate.  
27/11*

TELEX

*PSM  
PSS  
Mr. Nally  
Mr. Matthews  
Mr. Russell  
Counselor P 1*

IMMEDIATE

*Mr. McCarthy  
8.12.87*

*Refer to  
to see  
52  
30/11*

For Assistant Secretary Gallagher from O Floinn

I have just been given the text of a letter which follows below from King to the Tanaiste. The British side asked that it be transmitted to the Tanaiste as quickly as possible. (I am alerting you by telephone).

*In letter  
to see at 8/11  
B*

Mr. Brian Lenihan T.D.,  
Tanaiste & Minister for Foreign Affairs,  
Office of the Minister for Foreign Affairs,  
Dublin 2.

27 November, 1987.

I have now had a full report on the discussions in Dublin earlier this week about your Extradition Amendment Bill and I have seen the Taoiseach's message to the Prime Minister. I thought I should write to you, as Co-Chairman of the Conference, with my reaction.

While I acknowledge the domestic political pressures faced by your Government the fact is that your proposals cause us great difficulties. As you know, our previous Attorney General undertook to confirm that no warrant would be sent to the Republic of Ireland without there being a firm intention to prosecute based on a sufficiency of evidence. Your proposal that this should now additionally be checked by your Attorney General is felt strongly here to be a reflection on the competence and good faith of our own prosecuting authorities.

Your proposals would mean that uniquely in Europe the UK will be the one country from which the Irish authorities are not prepared to accept warrants in good faith. I find it hard to reconcile this with our common endeavour to establish the closest possible trust and cooperation between us.

On the question of practical difficulties, I note the Taoiseach's commitment that he in no way seeks anything more from our Attorney General than an informal certificate of the kind previously offered, and this allays the fear that your authorities might feel they had to ask our prosecuting authorities for more detailed information. However, you know of our fears that your new procedures will lead inevitably to judicial review of your Attorney General's decision. In that event it is difficult to see how the procedure would continue to operate at all.

Your decision to pursue a statutory provision was, as you know, against our strong representations, but it is an additional disappointment to see that the published Bill is even more unhelpful than the text discussed between officials on Monday evening - the expectation then was that new section 44B would be more negative, and would say that a direction of your Attorney General (not to back the warrant) shall not be given unless he is of the opinion that the relevant conditions are not met.

Moreover I am concerned at the wording of the provision which you intend to insert in Section 50 of your Extradition Act 1965 enabling your courts to refuse to return a fugitive if by reason of lapse of time it would be "unjust, oppressive or invidious" to return him. Our officials had understood, when this was discussed earlier this week, that your provisions would be based on Clause 9 of the Criminal Justice Bill. However, that does not contain the word "invidious". I am concerned that this would give your courts an unacceptably wide discretion to refuse to allow the return of the fugitive.

Because of the good relationship that we enjoy under the Anglo-Irish Conference, I have felt able to write to you quite candidly about our concerns. For those same reasons, we on our side will seek to be as restrained as we can in our comments on your draft legislation: but you should not be under any illusion that however successfully we may avoid a public dispute, we believe that your Bill genuinely threatens the efficient working of extradition between our countries, and sends most unhelpful political signals.

Tom King.

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