



# An Chartlann Náisiúnta National Archives

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MEETING IN CABINET OFFICE LONDON, MONDAY 5 OCTOBER 1987

*Taoiseach  
You may wish  
to see Noel Dorr's  
fuller note of  
the recent  
meeting  
9/10*

Those present were British side: Sir Robert Armstrong (Cabinet Secretary and Head of the Home Civil Service) and Sir Robert Andrew (Permanent Under Secretary at the Northern Ireland Office) and a note taker from Armstrong's office; Irish side: Mr Dermot Nally, Secretary to the Government and Mr Noel Dorr, Secretary of the Department of Foreign Affairs. The meeting began about 5 p.m. and ended about 7.15 p.m.

The following note of the meeting is cast in the form of direct speech for easy reading. It is however by no means a verbatim account of the meeting - it was difficult to take a detailed note as we sat around on armchairs and the meeting was relatively informal.

Sir Robert Armstrong welcomed the Irish side to London.

We should perhaps review developments in relation to the Agreement; and we have a particular issue (extradition/administration of justice) which we should perhaps discuss - particularly in the light of the observations by Garret FitzGerald at the British Irish Association meeting in Cambridge a few weeks ago.

In general how has the Agreement gone? I would say that it has proved rather robust. That is to say the calculation was that the Protestants in the North would huff and puff but they would not go to the ultimate in wrecking it. The huffing and puffing has indeed been difficult but overall not so bad as it might have been; and there are odd signs here and there that people are beginning to accept reality.

On your side the Agreement has survived a change of Government; and it appears to have the strength of something which is in place and which no one would want to displace unless they have a clear view of something else to put in its place.

So generally the Agreement has proved reasonably robust. I don't think things will ever be the same again. Both sides in Northern Ireland have seen the willingness of the British Government, led by as right wing a Prime Minister as they are ever likely to see, prepared nevertheless to enter into an Agreement with the Irish Government. In the long term that is very significant.

Sir Robert Andrew The most significant thing is that two years after it was signed the Agreement is still there. The opposition is still strong but all attempts to wear down the Agreement so far have had little effect - withholding rates, boycotts etc. In some cases the Unionists had to reverse positions they had taken. For example, they have resumed their seats in the House of Commons.

On the nationalist side there has been some impatience in regard to the results which they see the Agreement producing. We do not think this is a fair assessment. On security cooperation there has been progress. The framework for cooperation has been established even if the results are not so dramatic as we would have wished.

On the Flags and Emblems Act we were very apprehensive. We did it nevertheless; and surprisingly perhaps we found that it was accepted. The whole public order scene too has changed. I would not want to say that it was wholly due to the Agreement - the Chief Constable would wish to say that he had plans already in this area but a good deal of it (is due to the Agreement). The marching season went better than expected. The nationalists are taking some comfort from RUC behaviour. The force has been under attack from the Unionist community but it has stood firm. They have been policing impartially. These things are the best answer perhaps to the criticism some time ago by Seamus Mallon (that the Agreement "is dying of boredom").

Now we have a difficult period ahead on the extradition issue. I hope we can get through that without damaging the relationship. So far it has survived better than might have been expected. My Secretary of State (i.e. King) returned from his recent trip to the United States in no doubt that the Agreement has transformed the climate there. He did not meet with the protests from extreme nationalists that British Ministers and indeed members of the Royal family had met with some time ago. It is clear that the Agreement is a notable success in the USA.

Armstrong Two particular points which should be made are first that cross border security cooperation has improved and continued to improve since the change of Government in Dublin; and secondly, that the visible presence of the Agreement - that is to say the Secretariat - has in its own way settled down and become tolerated, and it has contributed powerfully to the maintenance of good relations (between the two Governments). I must say that this last point is due in large measure to the skill of Michael Lillis (until recently Head of the Secretariat on the Irish side) in establishing good working relations with those he has dealt with including in particular the Secretary of State Tom King; and also of course to Mark Elliot (Head of Secretariat on the British side).

Dermot Nally Our assessment is somewhat similar to yours. We do agree that the situation in Northern Ireland will never be the same again. The position of the Unionists will never be the same; and the nationalists have also some things to point to. It has been the quietest August (i.e. marching season) for a number of years. It is obvious from what a number of people who have been somewhat sceptical in the past - people like Seamus Mallon, Cardinal O Fiaich and so on - say that they see merit in the Agreement. There has also been quite an effect on Sinn Fein as was evident at the General Election. So the nationalists population in Northern Ireland do feel that there is something there.

On cross border security cooperation our Government has been doing as much as we can. There should be no doubt whatever about the determination of this Government on the security front.

Armstrong That has been absolutely clear. I should also say that in this building through a green door (i.e. Prime Minister Thatcher) the commitment to the Agreement is as solid as ever. That is very perceptible and I think you should know that.

Nally On our side the Taoiseach's views on the Agreement on coming into office had been well known. However he said that his Government would work the Agreement.

and they have worked it. That process is going on. It would be a pity now if it went into wrong channels. But you must understand that people like Garret FitzGerald, Peter Barry, Geraldine Kennedy and PDs are all coming out now saying that there has not been sufficient change in the administration of justice in Northern Ireland to allow the Extradition Act to come into effect. The Taoiseach for his part leads a minority Government; and if the three main opposition parties are saying, as they are, that not enough is being achieved then it is extremely difficult for him. He would like to get the Act through but in this kind of situation he cannot. Only today the Cardinal spoke of it and used the highly emotive word "betrayal" in reference to the possibility of ratification without substantial prior changes in the system.

The position is that the Taoiseach and the Government think it would be very difficult, if not impossible, to get sufficient progress in the administration of justice to enable him to "sell" the Extradition Act. There is after all less than two months left to 1 December. Of course if it were possible for you to do something of real significance within that time then I think the whole scene might change but I don't see, and they don't see, that it would be possible.

Intaking that line he is not saying that extradition should not take place. The courts have decided that there should be extradition in a number of particular cases. In the McGlinchey case our courts decided that the murder of a grandmother could not be treated as a political offence; in the Shannon case they decided that someone who had sought to overthrow the Constitution could not appeal to its terms for protection. There is also the Russell case coming up for decision at some point. So extradition does take place. But there is a big difference in the Taoiseach's eyes between the courts doing this, as they have done, and asking our Parliament to put through the new Act - especially when his Government is in a minority: and all the main opposition parties have placed large question marks over the issue.

Dorr spoke of the extent to which the Government are working the Agreement; the importance of this if it is to be solidly based; and the extreme political difficulty of having to face this particular issue at this particular time (Note: I did not take a note of my own intervention).

Andrew Garret FitzGerald, in an informal discussion with me at Cambridge, said he thought it would be the PDs who would put down a motion on the issue in the Dail. When do you think a motion on the Extradition Act would have to be put down?

Nally There is no way of knowing that exactly. The Dail reassembles on 14 October but I don't know how things will develop.

Armstrong I think there are three points I would want to make. First, there is the position which Garret FitzGerald stated at the Cambridge meeting. I was not there myself but I have heard reports. He was arguing that the commitment (to change in the system of justice) was stronger than is perceived here to be the case. He talked as if there were some definite understanding about the introduction of 3 Judge Courts - though he moved away from that somewhat, I understand, in private. However, I think it could be very important that he should not now say anything to "rock the boat". I think it would be a pity if the Prime Minister felt that she had to set the record straight on that point.

Andrew Garret FitzGerald went further than the facts warranted - certainly in his first intervention at the BIA. He said that without an understanding with the Prime Minister he would not have signed the Agreement. I think it would be desirable to get away from that kind of argument about the history of the negotiations. There could be a danger if the Prime Minister on our side felt she had to set the record straight from her viewpoint. You are saying that it would be difficult to get the legislation into force unless there is something (of significance). On our side we are saying that there is no way that 3 Judge Courts could be agreed - I am not saying never, but in a relevant timescale. In view of this it is not helpful for Peter Barry, Dick Spring and others who were involved to be making it an issue of good faith. I think it has to be accepted that there will not be a statement by the British Government agreeing to 3 Judge Courts.

But what we need to do is to look more closely at the Agreement and the Communique. In paragraph 7 of the Communique there are three issues (i) relations between the security forces and the minority (ii) cross border security cooperation and (iii) ways of enhancing public confidence in the administration of justice (he went on to read out a good deal of the text of paragraph 7 of the Communique). Can we not argue that the commitments have been largely fulfilled and that therefore it is reasonable to argue that the Convention should come into force?

On the first point, for example - relations between the security forces and the minority community - we would hope that by the meeting of 21 October we may have a Code of Conduct, though of course I cannot give you a guarantee on that point. There are other things also. There is the Flags and Emblems Act; the handling of the marching season; strengthening of the police complaints procedure; the complaints procedures against the Army; and the fact that the RUC are demonstrating great even-handedness. On the question of "accompaniment" (of the UDR by the RUC) we could probably produce some formula even if it is not easy to get statistics. Altogether therefore as regards the first point in paragraph 7 of the Communique we ought to be able to produce a reasonable case that there has been a good deal of progress.

As regards the second point (i.e. security cooperation) I hope we can also make a reasonable case.

On the third point (i.e. the administration of justice issue) we cannot do anything on the single big issue. But there are a number of areas where there has been a good deal of progress: more offences are being "certified out" (i.e. sent for jury trial). There is a speed up in the administration of justice through the creation of extra judges; there have been changes in the emergency legislation so that for example it is necessary to show "reasonable cause"; there is now automatic access to a solicitor after 48 hours; there has been a decrease in the period for which people may be held by the police; and there has been an increase in the number of Catholic judges. We would of course want to handle this last point with care in presenting it since in principle judges are chosen on merit. The fact is however that there are now four of the ten High Court judges who are Roman Catholic. That is just about the proportion in the population. Furthermore, there is the virtual disappearance of supergrass trials - although here again this is something that needs to be handled carefully in public presentation.

Put all of this together and we have got quite a presentable package. There may not be a single major thing but what we should do is to maximise the effect of what has been done. If we can stop talking about 3 Judge Courts and go back to the Hillsborough Communique I think we can show that a reasonable case can be made for progress in all of the areas I have mentioned. It does however depend on people not going on and on about 3 Judge Courts.

Armstrong Perhaps we could give you a paper on this if you like?

At this point Andrew handed over the attached paper headed "Improvements in administration of justice in Northern Ireland since November 1985". In doing so he stressed strongly that it was a "non-paper".

Nally (referring back to what had been said about Garret FitzGerald's statement at the BIA meeting in Cambridge). I don't think one could say that there was a pre-condition. (Note: Garret FitzGerald had initially used the word "pre-condition" in Cambridge but later corrected it to "linkage"). But what Garret FitzGerald spoke of was his own understanding of the position. The Prime Minister did not say she accepted that but she did say that she would examine it.

Dorr said that we were not trying to say there was a commitment before the Agreement to the introduction of mixed courts or 3 Judge Courts as such. Rather these were possible answers which we had put forward and which the British side has not been able to accept. What was agreed, as was clear from the Agreement (Article 8) and the Communique (paragraph 7) was the need to bolster public confidence in the administration of justice particularly on the part of the minority community. That is to say there was agreement on the question and on the need to find an answer. The possible solutions which the Irish side put forward have not proved acceptable so far but the question remains and it has still to be answered. (Note I did not keep a note of this intervention).

Armstrong The problem is that the Irish Government has to face a difficult challenge (i.e. the Extradition Act) at this particular time when things have not gone as far as they would like (with the Agreement). That is so. But they have gone surprisingly far; and things are still on the move (i.e. changes taking place even though the pace is slower than the Irish side might have wished).

Obviously the Irish Government will have to make a political judgement on the whole issue. We must point out however that on this side the minus of not doing it would be considerable. It would be said "we always knew that the Irish would not deliver and this proves the point". I understand the political difficulty which the Taoiseach faces. But there is a political downside here in relation to the Prime Minister which we hope the Taoiseach for his part would take into account. If the objective on both sides is steady progress under the Agreement then not letting the Extradition Act come into effect is going to be a setback.

Andrew Quite a big setback - if only because of the way in which we built it up at the time of the Agreement. In response to Unionist criticisms we pointed to this as a substantial benefit from their viewpoint.

Nally We have made the point internally to Ministers that there are three items mentioned in paragraph 7 of the Communique; and we have drawn attention to things that have been achieved. But at the end of the day the Taoiseach says "what you are asking me to do is to put legislation through to extradite to a court system in which we don't have confidence. I cannot do that - especially when the people who are involved in signing the Agreement are saying publicly that there has not been sufficient progress or change to make it acceptable".

[Note: From this point on my notes are much sketchier as I was taking a fuller part in the discussion].

Andrew Would it be helpful if my Secretary of State (i.e. King) made a speech at some point setting out, by way of a kind of stocktaking, what has been achieved in relation to the three points listed in paragraph 7 of the Communique?

Dorr said that the problem could be seen in Andrew's formulation. He said "we have got quite a presentable package". The problem is that the package is not seen as really substantial on our side. For instance, on the issue of accompaniment of the UDR by the RUC it is right that he should be aware that there is a serious problem in that either it is not happening or the absence of statistics for a year now is making it very difficult for us to show Ministers that something is happening. At a recent meeting between the SDLP and the Government in Dublin, for example, there had been general criticism on this point; and a good deal of anecdotal evidence of things going wrong.

Andrew noted this point. He went on to say that some informal soundings they have taken recently in Northern Ireland would suggest that the issue of 3 Judge Courts is not an important one for the minority - they are much more interested in issues of employment etc. (This was based on soundings by Andrew McKay MP, PPS to Tom King).

Dorr That is somewhat strange because our understanding is that Reggie Weir QC, who had spoken at the Cambridge meeting against 3 Judge Courts and had argued that they were not important to people, went back and did a kind of poll of the Bar and changed his mind when he found that they are regarded as quite important.

Dorr went on to say that it was important to see the courts issue in context. To the extent that there was alienation and disaffection on the part of the minority in Northern Ireland, the British and Irish Governments two years ago had agreed on new structures (i.e. the Anglo-Irish Conference) in the area of Government and administration. They had also agreed at that time on the great need to bolster public confidence in the other important area of the administration of justice but so far nothing comparable has been done in this area to meet the need which was identified and accepted.

Armstrong returned to the issue of presentation. He said that what the British side were suggesting was summed up by saying "we may not have gone fast enough but at least we are on the road . . ." He returned again to Andrew's idea of a speech by King pointing out what has been achieved.

Andrew on reflection, thought it would be better to wait for this at least until after the meeting of the Conference on 21 October. He said he hoped that on that occasion Tom King would recognise the Irish Government's problem; and that our Minister, Brian Lenihan, on his side, would recognise the problems of the British side. They could discuss these issues and put their heads together and see then if it would be a good thing or not if Tom King were to make a speech of this kind.

Dorr agreed that this was something best discussed at the Conference. He said that if Tom King made a speech now of this kind there was a danger that people on the Irish side and the opposition in Dublin would feel it necessary to say publicly that in their view adequate progress had not been made. So that things would be worse than ever.

Andrew agreed that the matter should be left over until it could be discussed between the two Ministers on 21 October. He added that a good deal of what King would have to say was in any case on the record since his "Bridgewater" speech of November last - though there would be some additional issues to point to.

Nally noted again that the number of people in Ireland - opposition politicians etc - who were coming out against ratification is now quite considerable. There is obviously a very serious problem for the Irish Government. There is a need to be able to show significant progress on the Court issue. Do the British have any ideas?

Nally (after a moment when no particular idea emerged on the British side) stressing that we were speaking personally and in a purely exploratory way, asked about the possibility of handling cases where there has been extradition, in mixed or 3 Judge Courts - as an initial move or agreement.

Dorr elaborated further on this idea, stressing also that what we were saying was exploratory only and had not got political approval in Dublin.

He noted as background that the particular problem about the Diplock system is that the judge/jury system has been replaced by a single tribunal which decides questions of fact and of law; and that that tribunal consists of a single person. We in our jurisdiction have had to take the first step but it is a combination of the two that raises the particular problem in the case of the Diplock Courts. The Irish side in the past had suggested mixed courts but that had not found favour; they had then proposed and pressed for 3 Judge Courts but that too had not been accepted. The Irish Government therefore now face two problems (i) the need for change in the system of justice in Northern Ireland; (ii) the difficulty of extraditing to a system in which they cannot have full confidence.

Against this background, we have been wondering if it might be possible to consider moving in a limited, trial way, towards a mixed courts approach by providing that, at the option of the defence for example, a judge from the extraditing jurisdiction would sit on the bench at the subsequent trial in the other jurisdiction of a person who had been extradited. This could be coupled with say a study of the advantages of disadvantages of introducing mixed courts on a wider scale.

Armstrong and Andrew noted these exploratory ideas and said they would consider them.

Andrew referred to articles in the news media recently suggesting that there had been some new thinking on the British side in regard to mixed courts. He didn't know what the source of these articles was. He said they could certainly look at the ideas which we had put forward in an informal exploratory way but there might be problems.

Dorr Do you ever allow visiting judges on your courts - for example from other Commonwealth countries or from the United States?

Armstrong thought that there was some provision for this but that judges only sat on the bench as guests in such cases except in the Judicial Committee of the Privy Council.

Nally said we had to make it clear that the Taoiseach had been somewhat dubious about the desirability of mixed courts.

Andrew Suppose we could say that we were reintroducing jury trials for all cases in the morning - would that meet your problems? Or suppose that I could tell you now that there would be prosecutions before December in cases arising from the Stalker/Sampson Report - would that make a difference? (Note: Andrew was not saying that these developments were likely but merely trying to understand the Irish position fully).

Dorr recalled that Andrew himself had offered a list of issues on which there had been some progress. Further measures of the kind he had mentioned would undoubtedly be helpful; and a failure to move to prosecutions on the Stalker/Sampson Report would on the other hand be made a focus of some criticism. But it was not possible for us to draw up an exact balance sheet.

Nally and Dorr said that in case there was any misunderstanding they had to make it clear that while the door has not been finally closed the Government at present simply cannot see how they could bring the Extradition Act into effect. What needs to be considered on both sides therefore is how best to handle the situation with minimum damage.

This led on to some discussion based on the supposition of deferral. Andrew thought it would be marginally more damaging if the Government themselves were to put down a motion to defer the operation of the Act.

Nally and Dorr replied that while they could not forecast what the Government's decision on the Parliamentary handling of the issue would be, they thought it likely that they might want to keep control of the agenda rather than simply respond to an opposition initiative.

The British side agreed that deferment would be better than scrapping the Act or modifying it (for example by introducing reservations to the Convention or a prima facie requirement. The latter they thought would be particularly difficult for the British side).

Dorr explained the provisions for reservation (Article 13 of the European Convention on the Suppression of the Terrorism) and said that several European countries had made reservations. He said that our understanding was that the British would prefer a "clean" deferral to reservations - were we right in this?

Armstrong and Andrew both thought this was right but said that they would confirm the position to us. It was generally agreed that to enter reservations would be an unsatisfactory approach since it would probably expose the Irish Government to more or less the same kind of criticism in Britain and from the Unionists as simple deferral would.

Andrew thought that if the Act is being deferred it would be important to be careful about how deferral is provided for. It would be preferable simply to give a date - six months or a year ahead; and it would not be desirable to put anything into the motion about the conditions which would have to be met before the Act would come into effect, although, Armstrong added, that kind of thing might well be said in debate in the Dail.

#### Summary and comment

The participants at the meeting know each other rather well by now. The main purpose of the meeting for the Irish side was to use this well-established channel of contact, and Armstrong's access to the Prime Minister, to get across the message that, without very significant change in the administration of justice - which seems impossible in the time remaining - it will simply not be feasible for the Irish Government to let the Extradition Act come into effect on 1 December; we also wanted to sound out our British contacts in a preliminary way about how best to handle deferral and head off subsequent recriminations on the British side.

The message we had to give was conveyed very firmly over the two-hour meeting. It was further re-inforced in private conversations which each of the two Irish participants had (separately) with Armstrong after the (social) dinner which followed the meeting; and also in a private conversation with Boyd, Deputy Under-Secretary at the Foreign Office who also attended the dinner.

The British position as stated at the meeting was that the Agreement has so far proved quite robust; and that there is steady progress on a series of issues arising from par. 7 of the Communique - even if it is not as fast as we might like. They were also concerned about what they see as over-statement by Dr. FitzGerald (at Cambridge) about how far certain things were agreed before signature of the Agreement; and concerned that as a result there has been undue "hying" in the media which creates unrealistic expectations.

There is a certain tendency to under-statement in the style of the two British participants. Allowing for this, the British side were also clearly saying that there could be a rather strong reaction to an Irish decision not to go ahead with the Extradition Act - particularly on the part of the Prime Minister. If the Act has to be deferred, they

seemed to think that straightforward deferral without conditions stated in the resolution would be the least damaging approach.

It was perhaps to be expected that at this stage, Andrew's position that there is continuing progress; his "shopping list" of what has been achieved; and his warning that we should try to maximise the impact of this rather than futilely seek something further of significance, would set the tone of the British position. The question is whether the impact of what the Irish side said, on Armstrong in particular, (and perhaps indirectly on Howe) might, in the short time remaining, produce some further thinking on the British side and a willingness to look at new ideas which would go beyond, or over-rule, the rather complacent presentation by Andrew which formed their position for the present meeting.



N. Dorr  
6 October 1987