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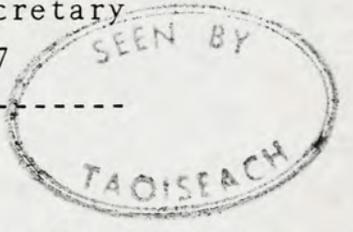
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Taoiseach
To see please
The papers at page
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Meeting between the Tanaiste and the NI Secretary
of State in London on 17 October 1987



1. The meeting began in the NIO at 11.00 a.m. The Tanaiste was accompanied by Mr. Dorr, Ambassador O'Rourke and the undersigned. Mr. King was accompanied by Mr. Iain Burns and Mr. Elliott of the Secretariat.
2. After initial courtesies between the two Ministers, Mr. King referred to his earlier meeting with the Taoiseach and Tanaiste on the extradition issue. He was very appreciative of the serious and sober attitude to the problem he found in Dublin on that occasion. The situation had if anything worsened in the interval. This was not due to the Government but to events in Cambridge. That unfortunate incident had created the impression that the British were sliding out of their undertakings "to that decent chap, Garret FitzGerald". Others such as Geraldine Kennedy had heightened the impression the issue was one of British perfidy. The British side had avoided controversy on this point but Dr. FitzGerald's allegations were quite untrue. Mrs. Thatcher made no personal promise of three judge courts. King could produce the minutes of the Milan meeting written by Mr. Powell. These would show that although Dr. FitzGerald reverted to the issue three or four times, the British side had gone no further than agreement to study the proposal without any guarantee. Mrs. Thatcher had made her position clear on the issue in her letter of October 1986. Dr. FitzGerald as the person directly involved in the Agreement was in a position to do more damage than anyone else by taking this "shock, horror, broken promise" line. Fortunately, there were now some indications that the Fine Gael and Progressive Democrat parties were now prepared to take a more responsible attitude on the issue.

The Tanaiste made it clear that the Government were not accusing the British Government of any breach of faith. There remained, however, an obvious and major political problem and there was a linkage between the extradition issue and confidence in the administration of justice in the Agreement and the Hillsborough Communique.

Mr. King addressed the issues mentioned in Par. 7 of the Communique. The British side genuinely felt there had been an improvement across the board in terms of nationalist confidence. Cardinal O Fiaich had spoken of the Agreement as a "shot in the arm" for the nationalist community. Mr. King elaborated on the warm personal welcome he had experienced in nationalist areas such as West Belfast and Fermanagh. The lack of confidence the British had acknowledged in the administration of justice related to the combined impact of the Diplock Courts and the supergrass trials, where a single judge was trying up to thirty suspects on the evidence of a single witness and without a jury. This no longer happened. They considered there simply was not great concern on the three judge court issue. It could well be argued that a single judge would be more careful to be seen to be fair because of his undivided responsibility than three judges might be. In relation to the administration of justice, 4 out of 10 High Court judges were Catholic. There was only one Catholic among the 13 County Court judges, but every senior (Catholic?) silk since 1983 had declined appointment as had 5 Protestant silks also. There was an obvious problem arising from the drop in income the appointment involved for successful barristers. Mr. King queries whether we were talking to representative nationalists in this area or paying undue attention to disgruntled people who might be seeking us out. If the British went ahead with change for change's sake the actual working of three judge courts might turn out to be a mess with split verdicts etc. and in six months time there would be a general view that "the politicians had put their great big boots in yet again!"

The Tanaiste indicated and Mr. King acknowledged that these arguments were not new. Mr. King then spoke of the very real risks if the Extradition Act did not go through, or more accurately, if it was obstructed, since this was what was involved. The Tanaiste would be aware of the deplorable tone of the newspapers after the Taoiseach's Bodenstown speech. This would get worse. The British Government faced difficulties on the Agreement. The unionists and others were against it. It would now be presented as "the Irish tripping us up again, nitpicking over commas", and so on. Ian Gow and people like him would use it to vindicate their forecasts that the Irish side would never deliver and that it was pointless to think they might. There was a European dimension, as Paisley's admittedly ludicrous behaviour in Strasbourg had shown. What were the British to say to those who challenged them on what the Agreement had delivered to them? The "background" referred to at Hillsborough included security cooperation. What had changed in relation to security? There were still large quantities of weapons and explosives in IRA hands in the South. There was IRA training carried out (in Donegal, he thought). There were gaps in cooperation, such as on questioning of suspects in Garda custody and communications between the forces on both sides of the border. All this created the gravest presentational problems for the British Government. Both sides were very handicapped by the scale of the row which was looming and which could "blow the Agreement out of the water". He had to "watch his back" politically. He felt the Anglo-Irish Agreement was a powerful force for change even if there was a problem that some developments such as the RUC Code of Conduct, were possible only on condition they were not directly linked to the Agreement. Things should be viewed in the long term. The fact that the British could not be seen to yield to what hostile people might term blackmail did not mean that there could be no progress even on three judge courts when the dust died down. The collapse of the Anglo-Irish Agreement would

please the IRA and they should be denied this pleasure. His understanding was that political parties in Dublin were undergoing a considerable rethink on the issue and coming to see that if they believed in the Agreement they were playing with fire on the extradition issue, as they undoubtedly were. His plea therefore was that the Irish Government would sense the gravity of the issue and see their way not to obstruct the Act.

The Tanaiste said he agreed on the importance of maintaining the processes of the Anglo-Irish Agreement and the work of the Conference and Secretariat. Whatever political expedients might be necessary in a difficult situation should not be allowed to interfere with this. There was a political perception that not enough progress had been made on the issue of confidence in the administration of justice. This problem had not been made easier by Dr. FitzGerald's involvement. He hoped that a more mature outlook would prevail in time and that confidence could be built up on this issue. Time was of the essence, however. It was necessary to see things in perspective. Since the MacGlinchey case the courts were actually allowing extradition in most serious cases. Both sides should ponder the dangers of rushing into the Act in the present emotionally-charged climate. It should be "left on the back burner" for 12 months. In view of existing extradition it should not be a major issue for the Anglo-Irish process. There was room for improvement in the court system which could be carried out in the interval. There could perhaps be improvements in security, without approaching this in a legalistic way. On the European dimension it had to be borne in mind that many countries which had ratified the Convention had done so on the basis of a reservation for political offences. The Tanaiste listed these. Mr. Burns said that such reservations referred to the executive branch refusing extradition in particular cases (with the implication that this would create its own difficulties for the Irish side).

The Tanaiste again reverted to the need for a breathing space. Could there not be agreement between the two sides that the Act would come into force in, say, 12 months time? In the meantime there could be improvements. There could be a special conference devoted to security. It was important for all sides not to be hoisted on these hooks. The issue was not so much the substantive question of extradition but the political mirror game which had grown up around the Act. Mr. King objected that that argument could be turned around. If it meant little difference to actual practice then why not go through with the Act?

The Tanaiste again referred to the substantial problems posed by political perception and timing. The issue was coming too soon to be managed properly. One could discuss at length whether the perception of a lack of progress was justified by the facts or not, but the overwhelming political fact was that such a perception existed. The statements of Dr. FitzGerald, Mr. Spring and Cardinal O Fiaich added powerfully to this perception. A period was needed if the more balanced perspective Mr. King had referred to was to assert itself properly. The Government wanted to see a period of postponement and wished the British side to understand the need for this. Mr. King said that if he was being asked whether postponement was acceptable to the British, the answer was an emphatic no. It was vital to make the thing work, otherwise the Agreement would be blown out of the water. People were lying in wait to use the issue to call into question the sincerity of the whole endeavour to get to grips with terrorism. The emotions were such that the extradition issue would become a symbol for the whole Agreement. It would appear Machiavellian that the former Government said they needed time for the issue and now the same thing was being said all over again. There never would be a right time. The fence had to be jumped. Otherwise it would be said that the Irish Government expected the British to undergo pain for the

Agreement but would not do so themselves. The Tanaiste again pleaded for the two sides not to get impaled on their present difficulties. Mr. Dorr pointed out that there was now a different rider on the horse taking the fence and emphasised the need to take greater account of the political context in which the Government had to operate. Mr. King again stressed that failure to implement the Act would cause things to go sour. Relations were better now than they had been for a long time but this could change. He doubted the perceptions in Dublin. Cardinal O Fiaich had raised the question of UDR patrols but not three judge courts. The younger elements of the SDLP were not concerned with this. He referred to criticisms by West Belfast Alliance candidate Dan MacGinnis of the operation of the Special Criminal Court in Dublin. He reverted to the difficulty of making changes in the courts for purely political reasons when no problem existed and quoted the Northern Ireland Director of court services to the effect that the courts were "rather quiet" at present. Dr. FitzGerald had pushed for mixed courts but Mr. King understood that this was a personal idea and was coupled in his mind with joint patrolling of the border. It would create huge issues for the British and probably for the Irish side also. There was evidence that in non-scheduled cases, e.g., claims against the security forces, members of the minority community were opting for a single judge rather than for a jury to hear their cases. The Tanaiste and Mr. Dorr again reverted to the political problem that a linkage existed and no answer had been found to the question of improving confidence in the administration of justice. The three judge suggestion had been one possible answer. If this was not the way forward what was?

Mr. King said that the kernel of the problem was the supergrass issue and delays in the processing of cases. These problems had been remedied. There was now a need to highlight what had been done. He understood the Fine Gael

party would be clarifying their view on a forthcoming occasion, possibly the party conference. (There was an inconclusive discussion on what the occasion might be.) In the context of clarifying what had been done, he referred, somewhat obliquely, to an idea put forward by Mr. Burns for a joint look at the entire area, possibly on the basis of Article 8 of the Agreement, after the next Conference. The Tanaiste and the Irish side indicated interest in this general idea and tried to elucidate it. Mr. King made clear that he did not see this idea as a basis for deferral. He spoke again at some length on the dangers of this course, enumerating the difficult decisions which the British side had taken such as the Flags and Emblems Act and that this was seen as the first real test of the Irish willingness to do something on their side. To obstruct the Act would call forth a torrent of speeches in Parliament and elsewhere.

The Tanaiste repeated with some force the arguments in favour of deferral. Mr. King said they could not protect the Agreement from the outcome of deferral and could offer the Irish side "no fig leaf" on this.

There was then a general teasing out of the form or implications of a joint study. In response to various questions from the Irish side, Mr. King and his officials gave the following impression of their thinking:

- The idea was purely tentative in the NIO and had not been considered by other British Ministers.
- It would be a high level academic-type study of the special courts North and South, something on the lines of the paper on e.g., powersharing in various countries produced at the time of the Convention report, rather than a "White Paper".
- They did not envisage involvement of e.g., European or American lawyers but rather eminent British or Irish legal experts or personalities.

- They did not envisage actual recommendations on the courts (since this would be linkage with a vengeance) but rather the kind of assessment which would help to focus public debate on the real situation and dispel misconceptions. (Mr. Burns referred in positive terms to the experience of the 1975 Law Reform Commission.)
- It would examine the Southern court also but might naturally regard the two very different situations as requiring or justifying different approaches.
- It was emphatically not seen as a mechanism to justify deferral of the Act but rather something which, taken together with what has already been done and other small measures, would enable "the fence to be taken" on December 1st.

(The above is an attempt to condense a somewhat disjointed discussion where the British side gave the impression of thinking aloud rather than presenting any settled proposals.)

The discussion then reverted to the issue of confidence in the administration of justice. Mr. King again questioned the doubts expressed by the Northern courts and referred to the language of the Bodenstown speech and an article by Mary Holland to suggest that much of the real concern related to issues in Britain such as the Birmingham and Guildford cases. The Tanaiste observed that this merely confirmed the complexity of the issue. Mr. Dorr pointed out that Cardinal O Fiaich and Mr. Mallon must be considered representative spokesmen for the nationalist community and had gone strongly on record on the issue. Mr. King referred to Mr. Hume's position which he understood as being different. As to other "straw for bricks" available he pointed to the Code of Conduct (although acknowledging that it would not be

linked directly to the Agreement) as well as a more forthcoming attitude on UDR accompaniment and statistics on this issue.

At the conclusion of the meeting, the Tanaiste expressed appreciation for the spirit in which the new idea had been put forward. Clearly the idea merited reflection. Handled properly, it might enable both sides to prevent the extradition issue becoming a political football and promote a degree of consensus. A deferral, possibly for a very limited period, would enable that consensus to grow. Mr. King said that he had to make clear that deferral would be a serious setback for both sides. It was necessary to mobilise voices of goodwill to point to what had been achieved. He wondered whether it would be helpful if he made a speech to some appropriate audience in Dublin on these lines. (In face of the Tanaiste's polite but manifestly unenthusiastic reaction, he concluded that the proposal was, in "Yes Minister" parlance, "courageous" (i.e., ill-advised). There was no dissent on this point.

After the meeting the Secretary of State and his officials joined the Irish party at a lunch offered by Ambassador O'Rourke in the Embassy. Conversation at table was however general and social. A brief press release was issued noting the fact that the two Ministers had met.

Sean O Huiginn
Joint Secretary

October 1987

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