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Draft

Report of discussions at the Anglo-Irish Intergovernmental Conference,
Belfast, 16 February 1988

A meeting of the Anglo-Irish Intergovernmental Conference took place in Stormont Castle, Belfast, on 16 February 1988. In attendance on the Irish side were the Acting Joint Chairman, Mr. Gerard Collins T.D. (Minister for Justice), Mr. Raymond Burke T.D. (Minister for Energy and Communications), Mr. Des Matthews, Mr. Dermot Gallagher, Mr. Joe Brosnan, and from the Secretariat Mr. Sean O hUiginn, Mr. Noel Ryan and Mr. Padraic Collins. On the British side were the British Joint Chairman, Mr. Tom King M.P. (Secretary of State for Northern Ireland), Mr. John Stanley M.P. (Minister of State for Northern Ireland), Sir Robert Andrew, Sir Kenneth Bloomfield, Mr. Tony Stephens, Mr. Ian Burns, Mr. Bill Innes, Ambassador Fenn, Mr. Mark Elliott, Mr. Robin Masefield and Ms. Valerie Steele.

The purpose of the meeting was to resume discussion of the matters considered at the Special meeting held on 2 February 1988. The meeting began with lunch at 1.00 p.m. The Ministers lunched separately from officials. The plenary session began at approximately 2.30 p.m. and lasted until about 5.10 p.m. A Joint Statement (copy attached) was issued after the meeting. The following account of the meeting is in the form of direct speech. It does not, however, purport to be a verbatim account of the meeting.

Mr. King: Could I start off by welcoming you, your Ministerial colleague and other colleagues. I thought it would be helpful if, having had an informal meeting, we had a formal meeting of the Conference. I thought we would be able to cover some of the ground in more detail. Might it be helpful to deal with this misleading story on the PTA first? We could get it out of the way?

Mr. Collins: No. Leave it to the end.

Mr. King: On the issues you raised I will talk first about matters that are not for me directly. These are pretty well rehearsed. I was able at our last meeting to state the position on the Birmingham Six. I gave you a copy of the judgement of the Lord Chief Justice and his two senior colleagues. Have you had a chance to read it?

Mr. Collins: Not in detail. May I say that it was publicly circulating in Dublin on the previous Friday.

Mr. King: Well, it takes time to get the transcripts. I would just like to say this You understand the situation that in response to representations to the Home Secretary and very exceptionally there was an exhaustive examination in the Court of Appeal. We need to read the judgement. I myself had not read it previously. Having now read it, I can understand how the judges reached their decision. I think one can - if I may say so - caricature the situation thus: that in Ireland everybody thinks the Birmingham Six are innocent and in Britain everybody thinks they are guilty. It is true, however, that the three judges are people who sat and listened to every bit of evidence. It is made quite clear in their judgement. They set out the reasons clearly. The longer the case went on the more they became convinced that the defendants were guilty. I come back to the question I asked before, namely, what do you think we should do if they are guilty?

Mr. Collins: I asked you a question. Do you think they should have been convicted in the first place (at the original trial) on the evidence presented?

Mr. King: Well It needs considering. There is a need to read the judgement and consider it against this background. I leave it there. The problem we have here is that exceptionally the matter has gone to the Court of Appeal and been dealt with. I understand, incidentally, that counsel will open proceedings on an appeal to the House of Lords at 10.00 p.m. this Thursday. So I cannot comment further. The lawyers have used the phrase "open proceedings". It is technical. What does it mean?

Mr. Burns: The phrase means "please may I be allowed to appeal".

Mr. King: Which court is this request to be allowed to appeal made in??

Mr. Collins: The Court of Appeal itself, I take it.

Mr. King: So that is the position now. I made clear before that the matter was referred to the Court of Appeal. The Court of Appeal was not divided. It was unanimous in fact. That is why the Home Secretary, in the light of

the fact that there was an absence of any indication from the Court itself that he should do anything, felt he had to issue the statement that he did. The point of substance is that the Court of Appeal decision was unanimous. They concluded that the previous decision was, as they put it, "safe and satisfactory". No indication was given that it would be right to consider mercy. Others, as well as me, think the Government has no right to intervene. Others have asked for the right of mercy. The Court of Appeal believes they were guilty of the worst atrocity, the worst bombing, ever committed. They were guilty of that. Against that background the verdict would have to be wrong or there would have to be some very specific considerations that the Home Secretary could take into account before he could act. Any points you'd like to make on this?

Mr. Collins: There is the question of clemency. Could I ask about that? You say that is for the Government?

Mr. King: No. It is a matter for the Home Secretary.

Mr. Collins: But he is part of the Government and the Government is saying that there will be no clemency because of the unanimous decision of the Court of Appeal and because it was the worst bomb and the worst atrocity. You believe that to exercise clemency would suggest that the verdict was wrong.

Sir Robert Andrew: Yes. On the exercise of the clemency power

Mr. Collins: Can I interrupt. I have similar decisions.

Mr. King: I think that's not correct. The British Home Secretary is not just another Minister. It is important that that impression be corrected. Could I put the situation on record in the interests of accuracy

Sir Robert Andrew: The situation is not the same in Dublin. There are two circumstances where clemency comes in, namely, miscarriage of justice and the concept of tempering justice with mercy. A miscarriage of justice could be dealt with by the Home Secretary if new evidence came to light. Otherwise there is no way the Home Secretary can set himself up to act on the issue against the court. The Court of Appeal has just given a verdict. There is no way, without new information, to nullify that decision. The other way of

exercising clemency is in relation to tempering justice with mercy. This normally refers to compassionate ground, for example, the state of the prisoner e.g. a terminal illness etc. That is the only way that clemency could be exercised.

Mr. Collins: But there is an Early Day Motion signed by 150 plus Members of Parliament. What is the state of play on that?

Mr. King: There isn't any state of play. It is an opportunity for an expression of views. Early day Motions may lie on the table or on the Order Paper. Some may lead to a debate. But for the most part they are declaratory statements. They may or may not lead to a debate.

Mr. Stanley: It is rare to have a debate in Government time.

Mr. Collins: This special Early Day Motion wanted a tribunal established

Mr. King: Well the Home Secretary was not responding to that. The Court of Appeal carried out a most thorough examination.

Mr. Burke: But there is the issue of public disquiet and the possibility of a remission of sentence. The Cooper/McMahon case went to the Court of Appeal four different times and each time the decision was confirmed. Nevertheless, the Home Secretary ordered release because of the public disquiet in the case. In the case of the Birmingham Six, 150 Members of Parliament have signed a motion. That amounts to some public disquiet. It should be looked at again. A decision by the Home Secretary would not be calling into question the judges or the courts.

Sir Robert Andrew: There would have to be new evidence.

Mr. Burke: But in the Cooper/McMahon case it went to the Court of Appeal on four different occasions

Sir Robert Andrew: But I believe that further evidence came to light.

Mr. Innes: They made it quite clear that there was further evidence available.

Mr. Burke: Assuming the appeal in the Lords is out of the way, there is still the possibility of remission left to Mr. Hurd. In the meantime there is the possibility of open prisons in the U.K. What is needed is some gesture, some move. Nobody sees these people as terrorists.

Mr. King: I can't comment. It's absolutely impossible for me to comment.

Mr. Burke: I take note.

Mr. King: Better I don't say anything. There is another step and we'll see what flows from that. I think we should study the full finding. I certainly learned a lot from it.

Mr. Collins: Tom, you can't argue that one. I can't accept the evidence on certain aspects. My basic attitude is represented by the question I put to you. They should not have been convicted the first day.

Mr. King: We are obviously on very different ground on this.

Mr. Collins: Our position is that they should never have been found guilty full stop.

Mr. King: I don't agree with your summary. I don't endorse that. It was not quite as I put it.

Mr. Collins: Well, I'm taking down to the best of my ability what I think you said.

Mr. King: Should I run through it again?

Mr. Collins: No.

Mr. King: At the informal meeting we dealt with the publication of Stalker/Sampson. I told you that I was not able to do that. It is not Government property. It is the prosecuting service that owns them. It involved the DPP and the AG. It is not practicable to publish such reports. You will have noted the Stalker comment in relation to not publishing at this

stage. I gave you a quotation from the Stalker book. There are volumes - which I have not seen - sixteen or seventeen volumes. This was a police investigation involving witnesses and statements. Some of these statements were made under caution. Witnesses were interviewed at great length and did not think when they made their statements that they would be published. There were some 300 policemen/women interviewed and statements from 600 witnesses - doctors, pathologists, relatives etc. There were documents etc. You could not issue these. I hope this illustrates why we can't meet your request for publication. Is that taken on board? On the question of prosecution, there was a DPP decision not to institute proceedings for criminal offences. The position taken by the AG was not simply on grounds of national security. All relevant considerations were taken into account. The overall consideration is the public interest. The public interest includes, but does not uniquely comprise, national security. I mentioned it at the last meeting. There is a need to take account of what Stalker said, that is, that the public interest does not now demand prosecutions. In the Northern Ireland context this is an eminently sensible thing.

We also talked about your concern about the issue of consultation. You maintain that the failure of the Attorney General to consult you was a breach of the spirit, if not the letter, of the Anglo-Irish Agreement. There is a point here that genuinely needs clearing up. There are decisions which have an impact on the administration of justice which can't be the subject of consultation. One of these is the judiciary. You may have some judge who has a case and has to give a verdict which has some impact on Anglo-Irish relations. He says I now wish to have consultations with the Irish Government. This, I know, is an extreme case but you see what I mean?

The second area is that of the prosecuting authorities. They are outside Government. Their decisions may have a bearing on confidence in the administration of justice, practically all of them have. These cannot be the subject of consultation. The AG has an obligation to look at the total public interest. That is part of his standing responsibility. There may be issues where he guides himself. On others there will be wider issues on which he must acquaint himself. He did this in this case and informed the Director of these. The Director then took his decision and informed the Attorney. The Attorney agreed.

You have said there are these other considerations and you should have been consulted. The Attorney never discloses who he consults. It is possible to identify the people he did consult within a possible range such as those involved in the Anglo-Irish Conference, that is, this side of the table. I am choosing my words carefully. I can't go any further. You would not be entitled to say that your views were not put in. (Mr. King was indicating here that he was consulted and that the issue of confidence in the administration of justice by the nationalist community and the Irish Government's concerns were issues put to the Attorney General by King.) You must look at it against the background of this constitutional process that we have and what it represents. I made clear at the last meeting that the Attorney himself has to have regard to the wider public interest and, as a member of the Government, has to have regard to international agreements. Your statement that the non-consultation by the Attorney was a breach of the Agreement is not a fair criticism for reasons I cannot fully explain. I have constraints. I can't go any further. There is another important point also. Somehow it has got about that the decision was made on just national security considerations. That is not so. If you had been directly consulted you would have seen that there were wider considerations involved maybe not to the same conclusion, in your judgement. All these need to be weighed in the balance. There is a need to take all the considerations into account The next matter - stop me if you want.

Mr. Collins: The fact that I don't stop you does not mean than I agree!

Mr. King: O.K. The next matters. As I said in the House of Commons, the decision not to bring criminal charges is not the end of the matter. I would like to turn now to the other matters. First there is the question of extradition. What we said was that we would like to turn to the question of a meeting of officials so that we can get these difficulties resolved. There is this report in the Irish Times which denies this. It quotes Government sources. That is unhelpful. I myself made the request last Wednesday to you.

Mr. Collins: It also quotes a Government source in London and that is not helpful. It says there were quite a few invitations. When we start doing our business through Government sources, we are in trouble.

Mr. King: The story in the Irish Times is unhelpful. We want to ensure we are working as harmoniously as we can. There are problems. There are problems arising from new legislation. I want to say again now that we are very unhappy indeed. We made no secret that we believed there would be greater problems with the new legislation. It is more complicated and more difficult than the more simple backing of warrants system. There is an impasse over extradition. We did not wish to see that legislation brought through the Dail and voted on. Now, we understand very well the political problem you faced. You were saying to us, in effect, that we could either get the Act we got or nothing because of the problem in the Dail. We don't have to accept that. I don't want to be offensive but we have to fight our own corner and fight for the interests of the U.K. What we want is effective, prompt extradition. I know that there is a history of problems here. Either the RUC get it wrong, the Metropolitan Police get it wrong, or somebody is being pernicky.

Mr. Collins: Are you saying that you are going to leave it locked in a vacuum or that we should try them if you come up with the evidence. In other words, that you want the old system?

Mr. King: I was going to come to that. I am making it clear the reason why we are unhappy. There is an impasse. We are profoundly unhappy. But, in the end, it's your decision. We have to accept it. Your Parliament is sovereign the same as ours. If Parliament votes against me there is no point in beating me over the head. You said it was necessary to do this. There was a discussion between the Taoiseach and the Prime Minister and the Prime Minister gave an assurance. You said you had to do it and you have done it. We have to accept all that. We are anxious now to sit down and see just what are the detailed ways in which we can make it work. There was a genuine misunderstanding about what the Taoiseach said to Ambassador Fenn and Ian Burns. This was clarified in a letter from the Tanaiste. I am anxious for officials to meet to establish the nuts and bolts. I would like to repeat the request for the officials to meet and see if we can sort it out. There is a crossed wire between the Attorneys. Officials may be able to sort it out. that's the answer to the fair question you put. I'm not being 'dog in the manger'. The fact is that you took your decision.

Mr. Collins: I am glad that you concede the sovereignty of our Government and Parliament and that we have the right to maintain the interests of our own people.

Mr. King: That's about it

Mr. Collins: Could I say, for the sake of the record of this meeting, that this request for a meeting of officials was only conveyed verbally in the last ten days

Mr. King: I have different information here but it would not be helpful

Mr. Collins: Let's leave it as it is

Mr. King: It is something we would like to get on with. It does not refer exclusively to terrorist cases. There are drug dealers and other criminals involved. It is not just terrorism. Could I move on to matters I said I wished to talk a little more about? The first point is that I want to talk to you in some detail and some of this will be reflected in the House of Commons statement tomorrow. However, I have a problem with such information being published in advance outside. There is the question of privilege. I have to be very careful. But on this occasion, because of your concerns, I will talk quite frankly. I would ask for your understanding on this. I am just a little concerned that in your debate the Taoiseach might wish to quote from what I will say

Mr. Collins: The position is that the Taoiseach is reporting fully to the Dail and there will be a debate.

Mr. Burke: The report will be on the basis of responses received today.

Mr. King: That is very tricky.

Mr. Stanley: If it gets into the Dail

Mr. King: I didn't realise that.

Mr. Stanley: It is impossible in our Parliamentary terms to do this.

Mr. King: Yes. We had been looking for your discretion. I couldn't have it publicly announced by the Taoiseach in the Dail. It would be dynamite. Do you want to have a short break?

Mr. Collins: Yes. Before you go could I ask if you will be giving details of disciplinary proceedings?

Mr. King: If details on disciplinary proceedings came out in advance all hell would break loose. What I'm going to do is I'm going to tell you what I'll be saying in the House of Commons plus a bit more. I will be covering the question of discipline, the McLachlan Report on the structure of the RUC, the incursion and some other matters. I have quite a difficult statement to make.

Mr. Stanley: Could the Taoiseach come back to it in the wind-up? There is only one way to square the circle.....

Mr. King: I had assumed it would happen in a certain way. I had no idea you would bounce in like this. If there could be a one day switch? I know you have a difficult speech also.

Mr. O hUiginn: Possibly the Taoiseach might not wish to go into these details in any case?

Mr. King: Could you leave out entirely what we have to say?

Mr. Collins (to Irish Officials: The Dail debate can't be postponed. Maybe we could find some formula for the Taoiseach's speech and say greater detail will be given later.

(After some further discussions it was agreed that the plenary session would break for a few minutes to enable the Irish Ministers to consult the Taoiseach. The Irish Ministers did so and the plenary resumed.)

Mr. Collins: If I may say unfortunately the Dail debate can't be postponed. However, the Taoiseach said to work out a formula of words which could be included in the Taoiseach's speech. It could contain references to areas. It needn't be specific. It could refer to areas you deal with in your speech.

Mr. Burke: Gerry would then come in with an intervention at about 3.45 p.m.

Mr. Collins: Do you want to call another sos to consider this? What the Taoiseach said was to find a form of words that he could use.

Mr. King: Do you mean by that he would set out the position on some matters (Birmingham Six, Stalker/Sampson) and say that in respect of other matters Mr. King is making a statement in the House of Commons?

Mr. Burke: Yes. Mr. Collins will deal with these later in the debate.

Mr. Stanley: He would 'trail' the further statement. We can find some form of words

Mr. King: What we do aim is to get to you a copy of my statement at about 3.00 p.m. O.K. I'll talk about it now. I haven't absolutely decided what I will put in print. I have supplementary written answers. I'm still debating that point. I think the answer is we should work on the approach you have outlined. It is clear. You understand my concern. We are all parliamentarians. It is very sensitive.

Mr. Collins: It's important to you that you be able to say that your statement has not been made available to us?

Mr. King: What I'll do is I'll talk to you. There will be a piece of paper on the incursion.

Mr. Collins: One other thing the Taoiseach will be on his feet for about 40 minutes. The second Government speaker would be after lunch.

Mr. King: Do you stop for lunch?

Mr. Collins: Tomorrow, yes. On long days we do. There are questions from 2.30 to 3.45 p.m. I would probably be the second speaker.

Mr. King: Can we then agree the form of words?

Mr. Burke: Could we send two people out to work on the form of words.

Mr. King: The problem is that this is so critical. If it broke down there would be allegations of bad faith. I want to be absolutely clear. It is a very helpful suggestion but things can go wrong and then we would get into "how did that happen" country. I would like to take just a moments break to get this thing tied up.

Note:- Drafting of the form of words then began for a few minutes (the following interventions occurred during the drafting).

Mr. King: Let's draft this. I will pick up from the point of my statement on 28 January in the House. The next step I said was that there would be consideration of the findings of the report. It is at col. 465 of Hansard. (Mr. King then began drafting aloud and went on): There would be a full statement on the special inspection by HM Inspector of Constabulary. I said that I would announce a conclusion and that there would be a Government intervention after that. Mark (King addressing himself to British Joint Secretary) - have you got that and the preamble?

Mr. Elliott: No. Sorry; I haven't Secretary of State.

Mr. King: This is very important. If we get the right words, it means the whole shop is not on parade. Is that acceptable for the Taoiseach's statement?

Mr. Collins: The Taoiseach's statement will deal with the issue of prosecution and publication. The only areas of concern relate to discipline and the McLachlan Report. What he said was to work out a formula of words with the Secretary of State.

Mr. King: If it were only those words then I would know where I stand. I

just wonder whether he would say that we had a meeting. Would he want to say that?

Mr. Burke: He'll be saying it in relation to publication and prosecution.

Mr. Collins: In relation to other matters he would say that the Secretary of State would be making a statement in the House of Commons. This will be referred to then by other Government speakers.

End of drafting session (text taken away for typing)

Mr. King: O.K. I want to talk now about the disciplinary situation. I will start by pencilling in the background because I want to clarify one very important matter at the start. The phrase "shoot-to-kill" is a very unfortunate phrase indeed. It is in fact a complete nonsense and it has no accuracy because it means shooting without warning or shooting on sight.

Mr. Stephens: The legal definition involves the concept of not having used reasonable force in all the circumstances.

Mr. King: Yes, that's very well and so quickly put - it ought to shut everybody up!

Mr. King: There were certain implications in what was being said that people had not been charged when there was evidence relating to the killings themselves and I want to make it quite clear that that is not correct. What the DPP said was that, when he considered all the facts, having looked at the original RUC files and Stalker/Sampson, he concluded that the evidence was not sufficient to warrant any further prosecutions in relation to the two incidents in November 1982 and the third one in December. He did, however, consider that there was evidence relating to the 'perversion of the course of justice'. He further concluded that no proceedings would be taken for the reasons given. I want to get that bit on the record.

In my statement in the House of Commons I referred to the likelihood of disciplinary proceedings. The position in relation to the question of perversion of the course of justice is that responsibility for discipline for ranks at the level of Chief Superintendent and below rests with the Chief

Constable, and because of the nature of this case, he has determined that the framing of disciplinary charges should be carried out under the overall direction of a Chief Constable from another mainland police force. He will be assisted by an Assistant Chief Constable from another mainland force. The latter appointment is at the discretion of the Chief Constable.

The Chief Constable has also decided that, when it comes to the actual hearing of disciplinary charges, another - different - Chief Constable will be brought in to hear the charges. I want to stress that these are decisions of the Chief Constable himself and I think that it is absolutely correct that he should bring in an independent Chief Constable to prepare the charges and then a separate independent Chief Constable for the hearings. I fully support the integrity of those proposals. I also want to emphasise that it is in everybody's interest that this matter be completed at the earliest possible date. I'm afraid I cannot give any specific definition in relation to the timescale for obvious reasons when you think about it. The whole process is already underway but I haven't yet been told when the Chief Constable thinks he will be in a position to report. You must bear in mind, of course, in all of this that the members concerned have their rights, and since there will likely be disciplinary hearings, people will have to be given time to enable them to prepare their defence etc. I just want to say that I think it is terribly important that this whole matter should be dealt with effectively, promptly and firmly and I know that view is very widely shared.

The next aspect of this matter is the role played by more senior officers. As I think I mentioned previously, the Police Authority itself is the disciplinary authority for officers above the rank of Chief Superintendent rank. The Chairman of the Police Authority has already been made aware of certain "observations" that have been made on more senior officers and is now taking steps to address this matter. It will be appreciated that the taking of disciplinary action is not under my direct and immediate control, as I mentioned previously. I am, however, the appellate authority. People have a right of appeal to me. I intend to keep the House informed of progress in relation to this whole matter. Have you written an important note? (At this juncture Mr. Innes had passed a note to the Secretary of State which appeared to relate to the next point that he made. Mr. King then went on) The DPP has already identified to the Chief Constable those offences in relation to which he concluded that there was evidence.

Mr. Collins: Could I hold you there for a moment? I want to get that right. Are you saying that the DPP has notified the Chief Constable?

Mr. Stephens: Yes. In relation to those offences in respect of which there was evidence.

Mr. King: Yes. In other words, he has identified these to the Chief Constable and he has then taken steps and acted on this and appointed another Chief Constable to frame the disciplinary charges.

Mr. Stephens: It does not follow from that that the charges will be precisely the same as the charges identified by the DPP. Disciplinary proceedings are not identical with the criminal law. The terminology may be different and there is also the point that it is necessary to avoid double-jeopardy.

Mr. Burke: The DPP has notified the Chief Constable. Has he notified the Police Authority?

Mr. King: There is a certain difference here because Sampson had made certain observations on the role of more senior officers. This was not something done by the DPP. The position now is that Her Majesty's Inspector of Constabulary has informed the Chairman of the Police Authority of these observations.

I want to turn now to the general background relating to the report of the inspection carried out by McLachlan. As I said in my statement to the House of Commons, the circumstances surrounding and following the events that occurred in 1982 gave rise to concern in relation to the procedures used within the RUC, in relation to responsibility in certain respects and in relation to control within the force. McLachlan addressed these issues in the light of the Stalker/Sampson report. So the position is that McLachlan's report deals with the procedures and practices existing within the RUC arising from the carrying out of certain anti-terrorist operations. I think it is very important to see this in context because a lot of people have lost sight of particular matters that have arisen. There was concern in 1982 that the Special Branch had become "a force within a force" and that it was, in fact,

operating outside of the normal structures and controls that existed within the RUC - in effect that it was not sufficiently accountable for its actions.

Another aspect of all of this, of course, was the question of protection of very sensitive sources while at the same time carrying out investigations into controversial incidents properly. What was happening in the RUC was that, in the interest of protecting sources, a practice had grown up of devising 'cover stories' for public consumption. A story would be put out, for example, as to why a particular road-block was put up which would not reflect the reality. Let me be quite candid. This practice had grown up because of the fact that certain Special Branch people were unwilling to trust others and so they devised cover stories. The whole thing became so involved that it eventually led to a situation where nobody knew what was happening, and consequently, the prosecuting authorities were misled. At the heart of it, of course, is a very real difficulty which I think we must recognise and which was recognised by the Attorney General. It is important to realise that lives could be at risk. There is the problem of information/intelligence gathering and how to protect it.

All of this had a value in relation to the fight against terrorism but the objective must be to ensure that whatever action is taken is carried out within a proper framework of law. That is at the very heart of the Stalker affair. Lots of things were done that should not have been done. Certain people did certain things for wrong reasons but others did things for perfectly praiseworthy reasons. Some people in fact did things that many people here in this room might themselves feel that they would have to do in similar circumstances because of the serious risk. And we are talking here about a real risk of people being executed and other very serious risks to many other people.

What happened on the night of the incursion was that there was certain intelligence which was to the effect that four policemen were going to be murdered on that particular night in December 1982 and there was information about who was going to do it and how it would be done. This was coming directly on top of a previous incident where three policemen had been blown up. There was clearly a problem in relation to keeping the lid on this,

keeping intelligence of this nature secure. But what was done was totally unacceptable. The consequences are that the Special Branch is no longer able to function in the way in which it could then. That has had to be changed. The 1982 events themselves and various other matters that happened thereafter brought home clearly the extraordinary mess that existed. It was clearly very unsatisfactory that the Special Branch could function in such an independent way within the RUC and without proper accountability. What was happening was that, in any incidents in which the Special Branch was involved, the CID people who came in were completely overridden and obstructed by the Special Branch. This was because of the general view that prevailed in the Special Branch that the CID should not be privy to sensitive information.

What happened next was that, in 1983, a senior officer from Security Service was brought in to carry out an internal review and he came up with certain recommendations which have been progressively carried out. Some indeed are already in operation. I think a lot of the good things that relate to the RUC of 1988 have been the direct result of changes that have been made since 1982. This resulted in the establishment in 1984 of three new posts of senior Assistant Chief Constable one of which was given overall responsibility for both the Special Branch and the CID. Before that, the Special Branch had one 'independent' Assistant Chief Constable. There was no joint head and because of this, CID people, called in to investigate an incident, had no one to whom they could look for proper support. The CID were finding that what the Special Branch were saying to them was that these matters were their own internal business and that it was not the business of the CID. I think that structural change is a very important improvement indeed.

This business of the Special Branch operating as "a force within a force" was also due to other reasons - 'in-breeding' for example - people were becoming too separate. As I understand it, you (the Garda Siochana) have introduced a rule - it was Larry Wren I think who did it - whereby a policeman must spend at least one year in uniform after promotion before he can return to Detective Branch and I can certainly see the benefit of a move like that because it is important that policemen should remember that they are policemen first and foremost. As I have said, McLachlan deals with this aspect of the 'independence' of the Special Branch, being what I might call a "tribe on its own".

While I have not yet decided precisely on the detail of what I will say in my statement to the House of Commons, I can say that the McLachlan recommendations cover items such as

- (1) the role of the Regional Assistant Chief Constables who in future will be able to monitor all Special Branch operations in their own areas so that the Special Branch cannot "go off on their own"
- (2) the transfer of experienced officers from CID into the Special Branch
- (3) career development for Special Branch officers
- (4) arrangements which will ensure that Special Branch training will be included in all mainstream RUC training
- (5) a limitation on the extent to which a person can be promoted within the Special Branch
- (6) greater interchange between the RUC and mainland police forces so that people do not become "too set" in their ways.
- (7) greater attention to training of HMSUs and the provision of better resources for such training. The general objective here would be to raise standards in the HMSUs. The rank of the officer in charge of HMSUs will be raised and there will also be arrangements to ensure that there is greater CID experience within the HMSUs themselves. Moreover, an overall limit of five years will be placed on the length of time a person can serve in a HMSU
- (8) the special secrecy declaration for the Special Branch will be replaced by a declaration from the Official Secrets Act itself.

All of these are being pursued in an attempt to ensure that the Special Branch cannot be "a force within a force" in future. I should also mention that there were a number of recommendations, which I am not sure that I shall want to publish, because they are essentially of a routine and trivial nature

relating to administrative procedures within the RUC for the registering and handling of files, computerisation etc. These arose from the inspection that had been carried out but, as I said, they are not really germane to the issues in hand and are of a minor nature.

The second main issue that arose was the issue of ensuring that proper investigations were carried out into serious incidents while, at the same time, protecting to the maximum extent Special Branch intelligence and sources. I have already referred to the key point in relation to this which was the appointment in 1984 of a senior Assistant Chief Constable to take overall charge of both CID and the Special Branch. There were a number of other recommendations relating to this general area. The first was that, in future, where incidents of this nature arise it will be standard practice for the Chief Constable of the RUC to bring in immediately a mainland Assistant Chief Constable to lead the investigation. Secondly, the investigation itself will be generally overseen by the Deputy Chief Constable of the RUC. Thirdly, experienced CID officers will in future attend all de-briefing sessions on incidents in which firearms have been discharged or people have been killed or injured. Fourthly, CID officers will attend all post-mortems where it is suspected that the death has been unlawful. Fifthly, there are certain recommendations in relation to the forensic science and scene of crime areas. These relate to the rank of the senior RUC officer who will liaise with the forensic science department, the question of attendance by pathologists at the scene of the crime and certain technical matters relating to video recording and colour photography which are already in force.

I want to mention also another important recommendation that has already been implemented and this relates to the practice that existed in the past of the preparation and promulgation by the RUC of 'cover stories' relating to security incidents. That practice has now been discontinued, it is, in fact, totally forbidden. The present arrangements are that the RUC press office will issue a very short statement giving the minimum amount of information but whatever they say must be the truth. It is not always possible to give the full story. Nevertheless, the point is that what they say must be true.

At the heart of this whole issue relating to the perversion of the course of justice lies the very difficult issue of balancing the need to maintain security while at the same time ensuring that the Director of Public

Prosecutions gets full information. Now, as the Attorney General has already told the House, the DPP has decided to discuss this whole matter with the Chief Constable and his Deputy to ensure that, in future, facts in all respects - facts which will be full and accurate - will be placed before the DPP. I want to say that the DPP has already had his first meeting with the Chief Constable and the Deputy Chief Constable. You will know that at the very heart of this is the business of policemen deciding what they themselves should say to the DPP. This is not acceptable and as the Attorney General said in his statement in the House of Commons, the DPP is discussing with the Chief Constable safeguards to ensure that full and accurate facts and information, whether or not national security is involved, will be placed before the DPP. Needless to say, I regard these developments as very important because they go to the very heart of this whole matter relating towhat is the actual phrase? I want the exact phrase (Ambassador Fenn then gave the Secretary of State a file).

Mr. King:...Yes. The evidence of conspiracy or attempting to pervert the course of justice. The basic objective is to introduce steps which will ensure that the policies and practices of the RUC should include and reflect the paramountcy of the Criminal Investigation Division (CID) in future in all incidents of this kind. There are two fundamental principles involved here, one is the preservation of evidence and the second is that the questioning of witnesses can take place without constraint. I think the role of the senior Assistant Chief Constable is also very important as indeed is the decision in relation to the dropping of cover stories. Then you have the other important recommendations such as greater 'cross-posting' which will ensure that the Special Branch can no longer be "a force within a force". This will ensure proper accountability and full disclosure of information.

Now, the other matter that I said we need to address is the question of the incursion. Have I got the copies of the report on the incursion here? Right. There are 15 copies. Hand a couple over. (At this point a document headed "Members of the Royal Ulster Constabulary in the Republic of Ireland on 12 December 1982" was circulated. Mr. King then read the last paragraph of the document in full. It states):

"The above is a full and accurate account of the border crossings that occurred on that day. It is emphasised that the two officers who made the

crossings were in plain clothes, were unarmed and were in an unmarked car without radio. As the Chief Constable said in the statement which he issued on 7 April 1984, the crossings were made 'for observation purposes only. There was no preplanned incursion nor is there any deliberate or authorised system of incursion'. Nevertheless, it is fully accepted that it was wrong and regrettable that two RUC officers were permitted to enter the territory of the Republic unannounced as part of an ongoing operation. It is the British Government's intention that this should not happen again and the Chief Constable for his part has undertaken to ensure that it does not; nor has it occurred since. The Anglo-Irish Agreement has of course opened the way for closer liaison and communication between the RUC and the Garda Siochana".

Mr. King then continued): So that is the fullest statement of the facts and, as the document itself says, it was indeed wrong and regrettable and it is the British Government's intention that this should not happen again and steps are being taken to ensure that this does not occur. As I said, I was anxious to give you the fullest possible report on this matter.

Mr. Collins: I think we could discuss many aspects of this whole matter but I won't. I have to say that I find the last two lines somewhat amusing. (The last two lines read "the Anglo-Irish Agreement has, of course, opened the way for closer liaison and communication between the RUC and the Garda Siochana"). I find that amusing, having served in this particular job for a number of years before the Anglo-Irish Agreement.

Mr. King: Yes, well, there you are. Right! Well, now you are up-to-date on the disciplinary aspects. Obviously your interest is to know how soon these can happen. The point is that things are already well underway.

Mr. Collins: Can I ask how many people would have been prosecuted if the matter had been carried forward by the DPP?

Mr. King: I'm afraid I don't know the answer to that.

Mr. Collins: Were there people above the level of Chief Superintendent?

Mr. King: No, no. There was no evidence relating to people above the level of Superintendent.

Mr. Collins: Will there be any suspensions now?

Mr. King: Well, as you know, two Superintendents are under suspension at present.

Mr. Collins: Will there be any more? There are only two at present.

Mr. King: Well, that is a matter for the outside Chief Constable and let me say that I would be grateful if you would regard this as a matter of the tightest confidence because it is not known yet that the outside Chief Constable has already been called in.

Mr. Collins: Yes, we appreciate that.

Mr. King: The question of his Assistant has not yet been determined. It will be a matter for his own choice. It would depend on who would be available. As I understand it, the Assistant Chief Constable will be fulltime. He will in fact do the legwork. His name is probably known by now (Mr. King meant that the name was known within the British Administration somewhere).

Mr. Stephens: Probably.....

Mr. Collins: One of Stalker's difficulties was that he did not have the authority here in Northern Ireland. In that context, how do you see the new people who would be coming in...? Stalker says he was thwarted.

Mr. King: I would be very loath to comment on anything that man (he meant Stalker) says.....

Mr. Collins: But you've already given us a number of quotes.....

Mr. King: Well.....Look at the Unger Diaries (Unger is a Manchester journalist and confidant of Stalker). He had the authority. Mr. Sampson

was after all able to make progress. Admittedly, he was a Chief Constable whereas Stalker was a Deputy Chief Constable. But Stalker had the authority of the Chief Constable behind him and he could work through the Chief Constable. Moreover, he could have indicated his difficulties to the DPP.

Mr. Collins: On the issue that arose this morning about the Prevention of Terrorism Act, could you perhaps tell us a bit about that?

Mr. King: Right. The position is that, while there are annual renewals of the Prevention of Terrorism Act, the Act itself provides that it shall expire after five years. That will be in March 1989. A new Bill is being drafted following the Colville review. Essentially this is an East/West rather than a North/South issue because the PTA deals with all forms of terrorism, especially international terrorism. It is because of international terrorism it is being made permanent. Now, the provision whereby the Act will expire after five years will be ended but the legislation will still be subject to annual review and there will be provision whereby it will be possible to discontinue individual provisions or powers of it. The actual date of its expiry is the 21st March 1989. Now, what Douglas Hurd will be doing is bringing an Order in to the House of Commons. He will be making a statement in the House after 10 o'clock tonight which will set out his views and what form the new legislation will take. I want to stress, in relation to this, that there will be an opportunity for full consultation with you on it - the Order itself will not be introduced in Parliament until November.

Mr. Burke: Can I clarify? Are you saying that it will be subject to an annual vote in the House?

Mr. King: Yes.

Mr. Collins: The present position is that it is valid for five years but still subject to annual renewal. Is that correct?

Mr. King: Yes, but we will, as I have said, have an opportunity for consultation and discussion with you. What Douglas Hurd is doing tonight is giving the Government's initial response to the Colville report and he will be saying that the legislation will still be subject to annual Parliamentary scrutiny. (Mr. King then read from a document and continued): Perhaps I

shouldn't read out this last sentence but it says here that the Irish Embassy has been fully briefed on this issue this morning. (Mr. King then proceeded to read aloud from a draft of the statement that Douglas Hurd would make in the House of Commons tonight. It was not possible to record accurately the content of the statement but it dealt with the background to the legislation, touched on the Jellicoe report and what Colville himself had said in his report about the Act being made permanent. The statement would stress that the scrutiny by an independent person of the legislation would continue but this would not be enough in itself - there would still be annual renewal by Parliament. He would say that the BBC report was wrong. Essentially what was happening was that they would be returning to the situation that existed after the Act had been introduced originally by the Labour Government. Mr. Hurd would mention that the powers would be renewable in whole or in part. He would make clear that terrorism was not just an Irish problem. And he would stress that the renewal in whole or in part meant that powers that were no longer considered necessary could be done away with. He would say that the powers to proscribe and exclude would remain on a temporary basis.)

Mr. Collins: We will reserve our position on this matter until we have seen in full the statement to be made by Douglas Hurd.

Mr. King: I understand that one of your chaps had a three-hour meeting with Colville.

Mr. Gallagher: Yes. There was a three-hour meeting.

Mr. King: Yes. I understand Irish sensitivity on this issue. We have to bear in mind here that it is not just an Irish situation - there is the Libyan terrorism and we recall the shooting dead of a policeman in London by Libyan terrorists - then you have the problem relating to the Sikhs. We had a problem with Abu Nidal. You have all kinds of different terrorist groups operating. I'm afraid it's a sad fact of life but the point is, anyway, that, although the Act will be permanent, it will be subject to annual review and I think that the powers in relation to the Irish are, if I may say so, the most temporary.

Mr. Collins: Powers relating to the exclusion of junior members of the Government who travel without passports! Can I ask you if the McLachlan

report will be published.

Mr. King: The intention is that it will not. As you know, it is interwoven with so many other things. I don't know what we will do in relation to the recommendations - publication of them would raise more questions than it would answer. It is something John (indicating Stanley) and I will have to discuss. You will get whatever I put out.

Mr. Collins: Your statement will be helpful. We must make sure that we don't misinterpret what you are saying. The task now is to report to Cabinet and, as you know, the Taoiseach will be making his statement to the Dail tomorrow. Parliament must be listened to on this.

Mr. King: Is that enough on the Prevention of Terrorism Act?

Mr. Collins: I suppose I could summarise it by saying that there will be annual Parliamentary scrutiny and that there is the possibility of renewal in whole or in part including the powers of proscription and exclusion.

Mr. King: Yes. Colville said that the powers relating to the Irish, that is proscription and exclusion, should remain, subject to annual review.

Mr. Burke: Could I ask what is the status of the incursion report?

Mr. King: I don't think we want to go into great detail in the House of Commons. You can certainly use the assurances at the end of the statement in your Parliament, but I don't think we want to get into this business of bringing out that they (meaning the people who were shot) were on their way to murder policemen.

Mr. Collins: I have to say that it's a pity that we couldn't have been given this information six years ago. I can certainly give you instances going back as far as 1981 of people coming over to our jurisdiction. Off the top of my head I can remember four guys armed in Castlejohn (?) and there were some in Donegal. People were found in pubs and stuff like that. I'm glad you have brought in an IQ test!

Mr. King: But there are incursions on your side. Haven't there been four incursions recently in connection with the 'Longstop' operation (he was referring here to the operation mounted by the RUC in their own jurisdiction to coincide with and give support to the Garda search operation).

Mr. Stanley: There were many more.....

Mr. Collins: Now you are getting at me again.

Mr. Burke: Can we have a look at the script?

(There followed then a brief discussion of a draft for inclusion in the Taoiseach's statement in the Dail on 17 February which would refer to the statement being made later that day in the House of Commons by the Secretary of State but would not disclose details of what he would be saying.)

Mr. King: I feel I have to emphasise again how strict we must be in relation to the rule about not revealing what we have said in advance of my statement to the House of Commons.

Mr. Collins: What you told us will not be used before you speak to the House of Commons. We will say that we have not seen your statement - the baseline is that we do not wish to cause and will not cause you Parliamentary problems.

Mr. O hUiginn: Is there going to be a Communique?

Mr. King: You know that I was in touch with Brian Lenihan, that I rang him the other day. There is this question about fair employment. I have a problem in relation to it - it is necessary that we should move ahead. I know there have been intensive discussions already in the Secretariat and elsewhere and I know that we reached agreement on some points and not on others but the problem is that I must respond to the Standing Advisory Commission on Human Rights and then I must bring out my own White Paper. I would very much like to have a Ministerial discussion on the whole issue to give you the opportunity to make your points to me before we reach final conclusions. But I have a timing problem. I have to make an announcement on Monday week so if you want to have an input we must have a Conference next week. I spoke to

Brian Lenihan about this. He said that I should mention it to you today. I don't expect an answer now. I know this is essentially a DFA matter. It is the DFA that is in the lead on this but we need to keep the thing moving. So that's where we are. Can we have an answer shortly?

Mr. Collins: I have a practical difficulty about next week. I will be away.

Mr. King: How is Brian incidentally?

Mr. Collins: He is very well. In fact, he has been handling his own P.Qs today.

Mr. Burke: He is very willing and anxious to get back to work. Did you mention a meeting at official level?

Mr. Gallagher: Arrangements have been made for a meeting on Thursday next.

Mr. Collins: Then we will wait until the officials have first met before making a decision. Why is there a deadline of Monday week? Is this to satisfy some civil rights group?

Mr. King: No. I never do that.

Mr. Burns: We always like to satisfy civil rights groups!

Mr. King: Well, the point is we do want to get on with it.

Mr. Burke: Let's wait and see what comes out after the meeting of officials.

Mr. King: What are we going to say to the press?

Mr. Collins: Nothing. We are making no statements. We intend to report immediately to Government.

The meeting concluded with a brief discussion on the Communique and on whether there should be a Communique at all. Mr. King felt that, as he put it, "We've got to put something out". The main point of importance was that Mr. King wanted to include a sentence which would record that the British had

sought to have an early meeting of officials on the extradition issue. Irish Ministers said that they were unwilling to agree to recording that as a matter that was agreed. Mr. King then said that his side would put it in as something that would be attributed to the British side. Mr. King asked if the Irish Ministers would agree to a reference to the continuance of the Anglo-Irish process. The Irish Ministers said that their remit was to meet the Secretary of State and report back. A British statement on their request for a meeting of officials on extradition was the British delegation's business. Following further exchanges, it was agreed that there would not be a reference to a meeting of officials on extradition but that the British would mention it in briefing. The Communique, attached, was then agreed.

Padraig Collins/Noel Ryan

17 February 1988

Enc Communique

Paper on incursion

MEMBERS OF THE ROYAL ULSTER CONSTABULARY IN THE
REPUBLIC OF IRELAND ON 12 DECEMBER 1982

In December 1982, information was available to the police that Seamus GREW and another member of INLA planned to bring Dominic McGLINCHEY into Armagh to murder security force members. In an attempt to preempt this, an operation was mounted to maintain continuous surveillance of GREW's movements.

The surveillance team lost sight of GREW at lunchtime on 12 December 1982. It was suspected that GREW had crossed the border into County Monaghan, since the information available specified that he intended to visit a house in the Republic to collect McGLINCHEY.

Two Special Branch officers on duty in Armagh City, a Detective Inspector and a Detective Constable, were then asked by the police officer controlling the surveillance operation at local level to drive into the Republic in an effort to locate GREW's car or to see him collect McGLINCHEY. Having obtained permission from their own Chief Inspector, the two officers left their weapons in Armagh and drove in an unmarked car to the Castleblayney area. They made no contact and returned to Armagh at about 5pm.

At about 5.45pm reports were received that GREW's car had been seen heading towards the border from Armagh. The two officers returned to the Castleblayney area, and at 7.35pm decided that their activities were no longer useful. Having no radio in the car, they prepared to telephone Armagh. As one of the officers made his way to a telephone box, he saw GREW's car appear and stop at the telephone box. An occupant, identified as Roderick CARROLL, entered the box. The RUC officer thought that the car was full, but could not identify other occupants. (Throughout the day, the weather had been poor, and it was now dark.) Believing that GREW

had made the pick-up, the two officers returned to Northern Ireland, and alerted their base to the effect that GREW's car had been sighted in the Republic.

On reporting to their superiors at about 7.45pm, the officers were asked to try to monitor the further movements of GREW's car. They moved towards the border in a colleague's car but, a mile before they reached it, GREW's car passed them going northwards. They followed it as far as Keady RUC station, where they telephoned to report the location of GREW's car. They then returned to duty in Armagh.

The above is a full and accurate account of the border crossings that occurred on that day. It is emphasised that the two officers who made the crossings were in plain clothes, were unarmed and were in an unmarked car without radio. As the Chief Constable said in the statement which he issued on 7 April 1984, the crossings were made "for observation purposes only. There was no preplanned incursion nor is there any deliberate or authorised system of incursion". Nevertheless it is fully accepted that it was wrong and regrettable that two RUC officers were permitted to enter the territory of the Republic unannounced as part of an ongoing operation. It is the British Government's intention that this should not happen again and the Chief Constable for his part has undertaken to ensure that it does not; nor has it occurred since. The Anglo-Irish Agreement has of course opened the way for closer liaison and communication between the RUC and the Garda Siochana.