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Reference Code:	2018/68/33
Creation Dates:	29 January 1988
Extent and medium:	4 pages
Creator(s):	Department of the Taoiseach
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Secret

Discussion with British Ambassador, Nicholas Fenn, 29 January 1988

At a social function last night (Thursday) the British Ambassador, Nicholas Fenn, asked if he could come to see me today (Friday) for a general exchange of views on the present difficulties in Anglo-Irish relations. He had nothing special to communicate and he did not want to cut across the proper (Secretariat) channels for exchanges about next week's meeting of the Conference. But he thought it would be helpful to have an informal discussion and to use all channels to increase understanding in face of present difficulties in Anglo-Irish relations.

In the event he called on me before lunch today (Friday) and we spent over an hour discussing the present situation (Stalker/Sampson Report and Birmingham Six). He plans to leave Dublin before lunch on Monday and will spend the afternoon briefing the Secretary of State, Tom King, in preparation for the meeting of the Conference on Tuesday. His hope, he said, was to get as full a view of present concerns in Dublin as he could by then.

I said that our position on the British Attorney General's statement on the Stalker/Sampson issue was set out clearly in the Taoiseach's speech in the Dáil on Thursday afternoon - a speech which had been carefully considered and prepared by the Taoiseach before delivery. This speech was intended to give full expression to the concerns we felt while focussing that concern on the special meeting of the Conference where we would be pressing for a response on these points.

Ambassador Fenn said that, in the British view, the Taoiseach's speech had indeed been strong and forceful. But at the same time they felt it was "measured" and they appreciated it. On the other hand, he felt it necessary to let me know that the comments by the Minister for Justice on BBC last night had been taken badly in London because the Minister had seemed to say or imply that the British Attorney General may not be "fit to hold public office". The Ambassador said that for his own part he could understand that this comment was not intended to be a considered one. But it had caused some offence in London; and he believed that this would be conveyed to Ambassador O'Rourke by the Foreign Office in London today. The FCO would express the hope that the Minister was speaking off-the-cuff and not reflecting the views of the Irish Government which, they took it, were those stated in the Dáil by the Taoiseach.

I said that I had not heard or seen the interview (nor had

Ambassador Fenn as we were both at the same dinner last night). I doubted, however, if the Minister had intended to make a direct or considered attack on the British Attorney General's fitness for office. In any case the British side could take it that the Taoiseach's Dáil speech was a full and considered statement of the Irish Government's position. Our focus now is on the special meeting of the Conference on Tuesday where we will be pressing for answers on the issues which the Taoiseach had raised.

(Note: I understand that the Head of the Republic of Ireland Department at the Foreign Office, Timothy George, has since passed on British concern by telephone to Ambassador O'Rourke in London. This would suggest that the British do not wish to escalate the matter too much.)

Ambassador Fenn noted that the Tánaiste is ill at present. He hoped that he would be able to go to the special meeting of the Conference on Tuesday next. If not, it was of course entirely a matter for the Irish Government to decide who should attend; and the necessary arrangements would, he assumed, be made through the Secretariat. Speaking personally however, and without any real right to say this, he ventured the hope that if the Tánaiste could not go, then the Minister for Justice would lead for the Irish side. He said this simply because he knew that Mr. Collins is very well respected on the British side, and he thought it important at a time of difficulties such as the present to draw to the maximum on good personal relationships already established between Ministers.

Fenn went on to ask me if I could help his understanding by giving him a "plain unvarnished account" of Irish feelings and concerns at present.

In response I set out in considerable detail the whole history of the affair; and I identified the various issues which arise, referring back as required to the Taoiseach's Dáil speech. In concluding I laid particular emphasis on the fact that, whatever might be said on the British side about the independence of the Attorney General, they had not found it possible even to extend to us the minimum courtesy of letting us have the text of his statement to the House of Commons immediately before he made it (I mentioned that we had received it from the Opposition spokesman in the House of Commons and, two hours after it was made, through the Secretariat). This seemed to us to be a failure to act in accord with the spirit, as well as the letter of the Agreement (I drew on the objectives in the preamble and the reference in the Communiqué committing both sides to implement the Agreement with determination and imagination, as well as the Articles of the Agreement itself in making this point).

Ambassador Fenn heard my presentation in silence and took notes of what I said. He then, personally, said he regretted that we had not been given the text of the statement as a courtesy. He went on to make a number of comments.

He said that it is important to realise that the position of the British Attorney General on these matters is not at all similar to that of the Irish Attorney General. He has indeed a unique position - he is not accountable to the Cabinet and he would regard it as "appalling" that he should be expected to put his statement to the Cabinet for clearance in advance. He would not even tell the Prime Minister. It would therefore be very difficult for the British side to be responsive to our pressures on this point.

A second point is that the Attorney General's statement on Monday last is not the complete picture. What he addressed himself to is the question of prosecutions. It is not a matter for the Secretary of State, Tom King, to speak on possible disciplinary action and also on the questions which arise in relation to the structure and organisation of the RUC. King has already received a report from the Inspector of Constabulary on this latter point. King will wish to make a statement to the House in due course on both these issues. He will do so in the light of that report and also in the light of what transpires at Tuesday's meeting of the Conference.

Thirdly, Fenn said, we should note that the Attorney General had said explicitly that there was not evidence of a shoot-to-kill policy. As to the decision not to prosecute on charges of perversion of the course of justice, we should at least give the British side credit for frankness. Every democracy has to wrestle with questions of national interest but in many countries there would be no question of being so frank in a public statement as to admit that prosecution might have been warranted if it were not for the national interest.

Fourthly, he said, we should note that the Attorney General had said explicitly, confirming previous statements by King, that the Stalker/Sampson Report would not be published.

Ambassador Fenn said that his own view was that the Conference should now try to focus on what is to be done in regard to the wider questions arising under the Agreement. We should also keep in mind that the issue is not closed in that the question of disciplinary proceedings has still to be decided.

Fenn went on to talk about the Birmingham Six case. He asked if we intended to raise this at the special meeting of the Conference? If we were thinking of doing this, he felt he had to say that it was not an issue which arose under the Agreement and was therefore not appropriate to the Conference.

In reply I said that it could perhaps be argued that the question of mutual confidence in each other's Court systems, including even the Court system in Britain, is not irrelevant to "the policy aspects of extradition" which are a concern of the Conference under Article 8 of the Agreement (admittedly "as between North and South"). However I thought that the Government's intention was to focus the Conference meeting on the Stalker/Sampson Report and that, if the Birmingham Six case were raised, it would be as something affecting the general climate. I also noted that the Government statement had taken account of the possibility of a further appeal to the House of Lords.

In further discussion of the Birmingham Six case, Fenn showed some understanding of the feelings here on the issue. He said, however, that we had to realise that, following the most recent judgement, the vast majority of the British public would probably be persuaded of the rightness of the conviction simply because three of the most eminent judges in the British legal system had reviewed all the evidence and had decided strongly against the appellants. He added that there had been some talk here of the possibility of "clemency" been shown by the Home Secretary. We should be aware that clemency could be shown only where the Home Secretary is absolutely satisfied as to the innocence of those concerned; and no Home Secretary could declare himself to be so satisfied after the Lord Chief Justice of England had examined the case and had pronounced otherwise.

In reply I said that "clemency" might perhaps be a technical term under some particular act or procedure but that we believed that the Home Secretary did have a range of powers available to him under which he could act eventually and that we very much hoped he would do so.



ND
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29 January 1988

cc Secret Nally
cc Sec Matthews
cc Secret Gallagher