



# An Chartlann Náisiúnta National Archives

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Mr McCarty  
14.6.88  
14/6

CONFIDENTIAL

McGimpsey Case

I received Mr Thorp of the British Embassy in the Department at 4.30 pm this afternoon. He said his authorities had been informed through the Secretariat that a subpoena had been served on the Secretary requiring him to give evidence and to produce documents. He had instructions to say to us that his authorities hoped that any request for discovery of documents would be robustly and successfully resisted. The Agreement had been negotiated on the basis of confidence and its operation was a matter of confidence between the two Governments. Mr Thorp said similar remarks would be made to us through the Secretariat.

I said the summons on the Secretary had not been a request for discovery strictly speaking and that, in any event, the Secretary had subsequently learned that the purpose of the summons was to get agreement on certain basic facts, eg, that the Agreement had been signed, ratified and registered with the United Nations. This was now being dealt with by another method and the Secretary had been informed that the summons could be disregarded. At present, therefore, we had no reason to believe that the Secretary would be asked to give evidence or to provide documents to the Court. I could not exclude such a possibility, but this was simply bureaucratic caution on my part; there had been no indication that a request for discovery might be made.

I noted that in a call to the Department earlier in the afternoon, Mr Ferguson of the Embassy had gone over the same ground with Mr Dillon but had also suggested that in response to any request for discovery we might take the line that it would be most unusual and contrary to the practice of diplomatic negotiations to provide documents without the consent of both parties and that the Irish Government were aware, having consulted the British Government, that the British Government were not prepared to give such consent. Mr Thorp said that this

It had been his own idea but that following consultation with London he had decided not to mention it to me. He asked if he should enquire again about this possibility. I said I had no instructions to make such an enquiry and no reason to suppose that the State would wish to rely on that line if there were a request for discovery. Mr Thorp will enquire more fully into this idea on his own initiative in case his authorities should consider it desirable to put it to us in the event of a request for discovery.

Mr Thorp asked if there had been any further indication by State counsel (beyond the defence already entered) of the line they would take in the case. I said not. I mentioned that State counsel had had the benefit of a briefing by Mr Nally and Mr Dorr the previous day in which the negotiating background to the various parts of the agreement had been explained. I said he could take it that the concerns which the British side had expressed were known to State counsel.

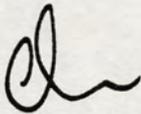
#### Observers

Mr Thorp said his authorities intended to have two observers present at the hearing, Mr Mark Dickinson (the Embassy's Press Officer) and a solicitor. Both observers would not necessarily be present at the same time. Mr Thorp said that it had been considered necessary to retain a solicitor so that the Embassy would understand the constitutional and legal issues which would be raised. He emphasised that the Embassy wished the presence to be discreet. The observers would not intervene in any way. He assumed that they would not have to identify themselves to the Court.

I said that as a party to the Agreement it was natural that they should wish to observe the hearing and that they had already assured us at a meeting in Stormont on Tuesday that they understood the importance of discretion on the part of the observers. Mr Thorp repeated these assurances. He said the Embassy appreciated that inferences might be drawn from the

behaviour of the observers. I said I had mentioned the possibility that a lawyer might be retained to observe on the Embassy's behalf to the Attorney's office. I said the Attorney was concerned that any enquiries which the Embassy might have about the hearing should be made through the Department in the normal way and not directly to counsel. I asked that the Embassy should act accordingly.

We had some discussion on seating arrangements in the court room. The Embassy would strongly prefer to be in an inconspicuous place among the public but equally would wish to be assured of getting into each session of the hearing. I said I would raise the matter with our authorities.



Declan O'Donovan  
9 June 1988

CC: PSS  
Mr Gallagher  
Mr Nally  
Mr Russell  
Mr Brosnan  
Joint Secretary, Belfast  
Ambassador London