



An Chartlann Náisiúnta National Archives

Reference Code:	2018/68/49
Creation Dates:	8 February 1988
Extent and medium:	8 pages
Creator(s):	Department of the Taoiseach
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Discussion paperSTALKER/SAMPSON REPORT - BRITISH ATTORNEY GENERAL'S STATEMENT

1. This paper is intended to provide material for consideration at a meeting with Ministers called by the Taoiseach for Monday, 8 February. The views offered are set out frankly for discussion purposes. They are, obviously, subject to consideration and evaluation at political level.

PRESENT SITUATIONIRISH DEMANDS

2. At the special Conference meeting in Belfast on Tuesday 2 February, Irish Ministers placed six proposals firmly on the table and asked that Mr. King take them back to his Government:

- (1) Publication of the Report in full;
 - (2) Prosecution of all those identified in the Report against whom there is evidence of wrong-doing;
 - (3) The Birmingham Six - early release through the use of the powers of the Home Secretary;
 - (4) Extradition warrants - an undertaking to supply to our AG in each case, such information as he requires to form his "opinion" under our new legislation;
 - (5) No prior consultation with us before Mayhew's statement - a response (apology ?)
 - (6) Cross-border security meetings - recognition that until these matters are cleared up there cannot be the atmosphere of trust which is necessary.
- These are our key demands. In addition, however, the Irish side made a seventh point which was not pressed very strongly:
- (7) The 1984 cross-border operation disclosed in Robinson's evidence - a report/apology

BRITISH RESPONSE

TUESDAY'S MEETING

3. Mr. King took a conciliatory line - as if allowing the Irish side to let off steam. He said

- (a) he understood - and partly shared - our concerns;
- (b) that it was simply not possible to meet our demands in full;
- (c) that some of the points raised were not his responsibility.
- (d) that, following the "no-prosecution" announcement, there were still areas such as possible disciplinary action where something could be done; and he would, in due course, be making a statement in the House.

When pressed, he agreed to take the back our proposals, as made, to the British Government and to resume the meeting next Wednesday.

PRESENT STATE OF PLAY

4. We understand that King duly reported to the regular, weekly Cabinet meeting on Thursday morning. The issue has probably been referred from there to a smaller group of Ministers (Cabinet Sub-Committee on NI ?) which may include such Ministers as Howe and Hurd as well as King - and Mayhew.

5. The British Ambassador in Dublin in an informal contact on Friday said that "a lot of work is being done"; and he confirmed that the British response to our demands would be submitted for approval to the full Cabinet on Wednesday morning, 10 February (displaced from Thursday, the normal day, because of the European Council). We expect the response to be given to Irish Ministers at the resumed meeting in Dublin on Wednesday afternoon.

BRITISH POLITICAL AND NEWS MEDIA REACTION

6. Both in political circles in Britain and in the news media (cartoons, editorials etc.) there is some concern about the Attorney General's statement that prosecutions would not be

brought for "public interest" reasons; and there seems to be fairly general acceptance that the Irish Government, as a party to the Anglo-Irish Agreement, has legitimate cause for complaint about the handling of Mayhew's statement.

7. This should not be over-estimated however. The story is nothing like as prominent in Britain as it is here. Even if there is doubt about the decision, there would be a strong rejection within the British establishment of any attempt to impugn the motives, the independence or the integrity of Sir Patrick Mayhew. Any talk of the consequences for cross-border security cooperation would be seen as a threat by Dublin rather than as we want to present it - as a natural and inevitable consequence of a failure to clear out the "bad apples" within the RUC.

COMMENT AND EVALUATION

8. What follows is an attempt to evaluate the present situation; to estimate the likely British response to our demands as they now stand; and to consider, realistically, what the British Government might be able to offer. This is done here frankly - simply to facilitate private consideration at political level of where we stand.

9. So far, as seen from outside, the Irish Government has played its hand well (in terms of the provisions of the Agreement) and strongly (as to substance). However there is probably no clear-cut public understanding of the detail of the demands we have put forward or the likelihood of achieving them.

10. In fact the stakes in the game now being played are extremely high on both sides.

From the British viewpoint, two at least of the demands we have made (publication of the report and full prosecutions) would mean a direct reversal, on key points, of what Mayhew said to the House of Commons. This would be a major U-turn by the British Government and would, most probably, result in (though it would not necessarily require) Mayhew's resignation.

From the Irish side, to the extent that we remain adamant on the six (seven) demands we have made and envisage serious consequences for extradition and/or cross-border security cooperation if we do not get them, we are in effect, staking the Anglo-Irish Agreement on the outcome.

11. The Government may prefer to play the game in a "hard-nosed" way at this stage and without any weakening of our initial position in order - (a) to frighten the British into an adequate response; and (b) because they may feel that, unless there is such a response, the Agreement will in any case have been devalued. It seems necessary however, in our own planning, to have as clear a view as possible of what the British might possibly agree to, and what they are virtually certain to reject.

WHICH OF OUR DEMANDS CAN BE MET ?

12. Of our six/seven demands, two (no. 5, the absence of prior consultation and no. 7, the cross-border incursion) relate to past events. A remedy can, therefore, take the form of an acknowledgement/report/apology - with some understanding/commitment that it will not be repeated. It should be possible for the British side to give this in some form that we might find adequate.

13. Another item on our list (no.4, an undertaking to supply the necessary information with each Extradition warrant) is, at first sight, not something of value to us but to the British. They want extradition; and this is intended to facilitate it. Nevertheless, in this context, and granted the history of the past six months, it is we who are asking for something. We have accepted extradition publicly, through our legislation and otherwise, but we have set conditions. We now need a British willingness to meet these conditions if we are not to be blamed for frustrating extradition by imposing them.

14. In fact the British side may well be ready to meet us on this issue, whenever the next official-level working group meeting takes place. From informal contacts we understand that our Attorney's reply to Mayhew was helpful in clearing the way and they may now be ready to offer some kind of "statement of the facts". It is of course for our AG to decide if what they may offer is sufficient. But at least, for present purposes, it appears that our "demand" on point no. 4 can be met.

15. Our point no. 6 (recognition that cross-border security meetings require an atmosphere of trust which will not be present until the Stalker/Sampson issues are cleared up) is couched as a demand. But in fact it is really either a threat by the Irish side in support of our other demands; or at a minimum, a simple warning about what may happen if they are not met.

WHAT DEMANDS CAN THEY PROBABLY NOT MEET ?

16. This leaves three important demands which we have made, which it is very hard to see being met in their present, strongest form.

(1) Publication of the Report in full

In his statement Mayhew said

"..the Secretary of State for Northern Ireland has, on several occasions, informed the House that, in conformity with the usual practice relating to reports on police investigations into criminal matters, the report will not be published."

It is hard to see how the British Government can reverse itself directly on this point by now publishing the report in full (though a compromise may be possible - see below). British officials also say, in informal private contact, that Parts I and II of the report are so explicitly directed to issue of prosecutions that it would not be feasible to publish them, once prosecutions have been ruled out.

(2) Prosecution of all those involved

To meet in full what we have asked for would call for a direct and explicit reversal, of the decision already taken by the prosecuting authority and announced by the AG to the House of Commons. The British position is that such decisions (by the DPP, acting under the general responsibility of the AG) are "quasi-judicial" and not subject to interference, still less to reversal, by the Executive. We may have arguments to offer against this but there is virtually no chance that the British will agree to meet our demand - especially since to do so would almost inevitably mean that Mayhew would resign.

(3) The Birmingham Six

The British position is that the Home Secretary, in response to new evidence and to meet public concern, referred the case to the Court of Appeal which heard all the arguments. Now that they have had their further "day in court" and three judges, under the Presidency of the Lord Chief Justice of England, have categorically reaffirmed the guilt of the Six, it is virtually impossible for the Home Secretary simply to order their release. To do so, would be to join Irish critics in impugning the quality of "British justice". (In any case,

we are told that Hurd has now himself come to believe them guilty).

CAN THE BRITISH GO SOME WAY TO MEET US ?

17. This paper so far has suggested that something can probably be done to meet us on four of our seven demands; but that it is virtually certain that the British cannot and will not meet in full our demands on the three other points - which are, in many ways, those which are most important to us. Is there anything they could do ? And how far could they go ?

18. One "vehicle" available to them which they could use, if they wish, to meet our concerns to some extent at least, is the statement which the Northern Secretary, Mr. King, intends to make at some point to the House of Commons. Indeed this may be the only device they can use for this purpose at this point. Without seeking for the moment to decide whether it would be adequate, it is worth looking to see what is the best use that could be made of such a speech in the present crisis.

19. In the first place, the speech would have to be made at a very early date. If, for various reasons, King says that he cannot make it at once, then he should at least announce publicly now that he would be making a full statement and specify the day.

20. Secondly, the speech would need to take the form of a comprehensive statement on the whole issue. It should be as specific as possible on all that had happened and should contain in effect, a summary of the Stalker/Sampson/McLachlen report(s). It should note what has changed since 1982/4; and enumerate the specific changes that have been made and those that will be made in the RUC. It should acknowledge mistakes, where necessary; and it should be specific about the institution of disciplinary proceedings. It should also put on record some specific statements of future policy, intended to remove all doubt and to make it clear that there can be no "shoot to kill" policy and that the police must both uphold the law and be subject to it.

21. More specifically, the following points might be included as a partial response to some of our demands:

(1) Publication of the Report

King's speech might contain a fairly explicit, numbered, outline (identified as such) of the main conclusions and recommendations of the various reports (Stalker/Sampson, McLachlen).

(2) Prosecution of those involved

(a) The speech should contain a specific announcement of disciplinary proceedings, and probably suspension, pending the outcome of those proceedings, of a number of officers, including senior officers. (Due process must of course be observed and those involved are entitled to a hearing in accordance with the standing procedures).

22. In addition, it would be desirable to include some or all of the following elements:

(a) An announcement of some new, institutionalized investigation procedures in respect of the RUC. The idea here would be to be seen now, to have established a standard procedure, involving inspection, as the British say, "from the mainland" to handle future Stalker/Sampson investigations.

(b) An announcement that any member of the security forces involved in an incident where someone was killed would automatically be suspended, on full pay, until cleared by an investigation (note: how far does this happen at present ?) //+

(c) Publication (for what it is worth) of the new Code of Conduct for the RUC. Application as soon as possible of a similar code to all of the security forces.

(d) Something concrete on RUC accompaniment of the UDR (??)

There are probably a number of other points which, on reflection, we might want to see included - the foregoing is intended primarily to offer a framework for consideration.

X cf. the rule which requires the suspension of an air traffic controller involved in an air accident, while the accident is being investigated - on the grounds that the stress involved would impair his work during the investigation.

8/2

Conclusions

23. This paper is intended simply as an outline, for discussion purposes, of what may be possible and what seems politically impossible in the present situation. It suggests that

- (i) Leaving aside for the moment (for political evaluation) the strong feelings in Ireland itself, the Irish Government are seen so far in Britain and elsewhere to have a legitimate complaint which deserves some redress.
- (ii) This perception has its limits however - it would probably not, for example, survive against a serious push to have Mayhew removed.
- (iii) The stakes are very high for both sides at present.
- (iv) It is virtually certain that the British cannot meet us, in full, on all points in our present demands.
- (v) If, however, they are willing to use the vehicle of Tom King's promised statement to the House of Commons (which is indeed probably the only device available to them), creatively and imaginatively, then there is a good deal they could do to meet us by way of frank acknowledgement of past problems and particularly by focussing on future measures.
- (vi) We could perhaps consider some further ideas for inclusion in such a speech beyond those suggested above - including perhaps something in a wholly different, non-security area (?).
- (vii) In the final analysis it is for consideration at political level whether any of this would be at all adequate to meet our requirements. This paper is intended simply to provide a framework for such consideration.


ND

8 February 1988