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IN[illegible]GOVERNMENTAL CONFERENCE: LEGAL SUB-GROUP MEETING HELD IN OLD AD[illegible]IRA[illegible]TY BUILDING ON 13 FEBRUARY 1986

Those present:

British side	Irish side
Mr King	Mr Noonan TD Minister of Justice
Sir Michael Havers	Mr Rogers Attorney-General
Sir Patrick Mayhew	Mr Dorr Irish Ambassador
Mr Scott	Mr Ward Dept of Justice
Sir Robert Andrew	Mr Russell AG's Office
Mr Brennan	Mr Dempsey Irish Embassy
Mr Steel	Mr Ryan Secretariat
Mr Chesterton	Mr Brosnan Dept of Justice
Mr Elliott	Mr O'Donovan DFA
Mr Clark	Mr Hamilton AG's Office
Mr Daniell	Mr Burgess DFA
Mr Marsh	Miss Walsh Dept of Justice

1. Mr King welcomed the Irish side to the meeting.

2. The composition and terms of reference of the two Working Groups (attached at Annex A) were agreed.

Extradition

3. Mr King said that the British side attached great importance to Irish accession to the European Convention on the Suppression of Terrorism (ECST). The Agreement was perceived in Northern Ireland as being one-sided; it gave the Irish unprecedented and immediate privileges. Any benefits for the Unionists would be longer-term and it was therefore essential that the Irish signed the ECST as soon as possible as an indication of their good faith.

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4. Mr Rogers said that there was a serious constitutional history to be overcome. Extradition was an issue of real sensitivity but he felt that over the past few years Irish law had been changed considerably by the Courts. He now felt that accession to the ECST was possible, and the joint communique had indicated his Government's disposition to do so. The matter was now before the Cabinet. But they had to move with caution and the British side would have to trust their judgement. There were still some reservations about signing the ECST before legislation. In answer to a question, Mr Rogers explained that signature before legislation might leave the Government open to the charge that they were presupposing the Supreme Court's judgement on the possible constitutionality of the issue. Mr Noonan warned that if extradition were made a matter of public controversy the Irish Government, despite its committment, would find it very difficult to act on the ECST.

5. It was agreed that each side was aware of the views of the other and that the subject should be left on that basis.

6. Sir Michael Havers said that he was most grateful for the co-operation which he was receiving from Mr Rogers. He recognised the courage of the Irish Government and courts in advancing case law on extradition and hoped that progress could be maintained. He regretted very much what had happened to the three terrorists so far returned, although this was in no way the fault of the prosecuting authorities. Future cases would be closely supervised and the DPP(NI) would be asked to check that there was sufficient evidence to support a prosecution before warrants were sent down by the RUC. And the link between the Attorneys-General which had been agreed at last week's meeting would ensure that technical problems did not recur. Mr King agreed that supervision of cases together with technical issues such as the

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form of warrants should be for the Attorneys-General.

7. Mr Rogers and Mr Noonan concurred and it was agreed that extradition matters should be handled either directly between Attorneys-General or in the second Working Group, whichever was the most effective forum for the particular issue under consideration. There might be benefit in establishing a smaller body under the Working Group to examine the technicalities. It was also accepted by both sides that, in agreeing stricter procedures for handling terrorist cases, it would be necessary to bear in mind the need to interfere as little as possible with the smooth extradition of ordinary criminals.

Mixed Courts

8. Mr Rogers said that the Irish saw mixed courts as being a real buttress to the NI judicial process in that they would instill the confidence in the system which was lacking at present. He envisaged three-judge courts to try scheduled cases North and South. Domestic and extra-territorial cases would come within their scope. This would be a reciprocal arrangement and the Irish were prepared for entirely domestic scheduled cases to be tried by a mixed panel; any diminution of sovereignty would thus be mutual. Mr Noonan added that the Irish aim was not to tinker with the judicial process in NI; it was to make it more acceptable to the minority and so help to remove community support from the terrorists. There was still work to be done on the mechanics.

24 9. Mr King replied that he saw no early or easy prospect of movement on this proposal. He did not accept that there would be reciprocity because the Irish Government were seeking to bring about greater confidence in the NI judicial system while denying that there was a lack of confidence in their own. He did not agree with the assessment that confidence in the NI judiciary was lacking; their record proved their impartiality and even the Kirkpartick hunger strikers expressed no concern about the judges themselves. Pursuing the proposal would amount to a vote of no confidence in the NI judiciary and a signal to

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nationalists that things might change. And mixed courts would undermine our argument that the Agreement involved no diminution of sovereignty over Northern Ireland.

10. Mr Noonan agreed that the NI judiciary had an honourable tradition. The problem was that the nationalist community had no confidence in the system. There had been a clear understanding at Prime Ministerial level that the possibility of mixed courts should be studied with an open mind. The Irish attached importance to the concept and he hoped that the Working Group could examine it in good faith and taking account of the Irish view. Mr Scott observed that it was a very high hurdle to surmount and that perhaps the Group should tackle less ambitious matters first. Mr Noonan replied that the Irish wished to see progress and that it should be a priority item on the agenda.

11. Mr King said that the British side would honour the Agreement in good faith. But he urged the Irish to think hard before purusing the idea of mixed courts. It raised important issues and might lead to the Agreement becoming unstuck. However, if the Irish insisted it would be looked at, notwithstanding the awkwardness of the present time and climate.

Other Confidence Points

. Sir Michael Havers said that he certified out of the non-jury mode of trial as many scheduled offences as he could. He pointed out that more offences would be made capable of this treatment as a result of the forthcoming Emergency Provisions Bill. Mr Rogers took note.

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13. Mr Rogers acknowledged that the rights of suspects in custody constituted difficult territory. Detention and interrogation gave rise to resentment but the Irish had no way of getting at the truth. They had an interest but would not make definite points. Mr Scott understood the Irish concern and said that the position was carefully

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monitored. But the emergency powers were important and effective. There was some overlap between the PTA and EPA and this was about to be tidied up. Mr Brennan added that the question had to be approached from the angle of securing convictions of the guilty as well as from the angle of the suspect. Mr Rogers accepted this.

14. Mr Noonan stressed the urgency of the RUC code of conduct. Mr Scott said that this was common ground, and that Police and Criminal Evidence Act codes would also be introduced. Mr Ryan said that similar codes would be introduced in the Republic as well.

15. Mr Rogers said that even if there was no move towards 3-judge courts there was a need for more High Court judges in NI to avoid delays. He felt that if the lower courts had a wider jurisdiction, as in Ireland, this would also help. And he wondered whether each court should have regular personnel, again as in Ireland. Mr King said that these were matters outside his direct responsibility; he felt moreover that the Irish were straying beyond their legitimate interests. Mr Noonan said that there were real problems of perception. More nationalist judges would make the courts more acceptable. He accepted entirely that judges were chosen on merit; if the size of the judiciary were increased, then not only would delays be reduced but there would inevitably be more nationalist judges. It was agreed that the Working Group would look at the issue, but that they would need to refer back frequently.

16. Mr Rogers said that some nationalists found the oaths used in courts culturally difficult; this was an indication of withdrawal from the system. The oath on taking silk was holding back some nationalist junior counsel. Mr Noonan said that he was content to leave the matter between the Attorneys-General.

17. Sir Michael Havers said that he was pleased to be able to tell the Irish that between 70% and 80% of scheduled cases were granted bail; the overwhelming majority of those bailed appeared for trial. Mr Noonan took note.

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18. Mr Rogers said that 'supergrass' trials had the appearance of show trials. He urged the British side to recognise that such large numbers of defendants and charges undermined the whole concept. Trials should be of individuals and closely-related offences. Mr Scott said that the Working Group should analyse the position. Mr King said that 'supergrasses' existed in default of other witnesses who might have been intimidated. 'Supergrasses' often resulted in an instant reduction in terrorist incidents in a given area. Mr Noonan replied that the Irish were only asking for a change in practice and procedure, not in the rules on uncorroborated evidence. Sir Michael Havers welcomed this, and made the point that delays were often due to the unavailability of defence counsel. One potential 'supergrass' case in the future, that of Worriskey, might well not go ahead.

19. Mr Noonan said that the second Working Group should examine why the extra-territorial legislation was used in so few cases. Sir Michael Havers explained that this was largely due to the different rules on confessions in the two jurisdictions. It was agreed that the meeting need not go into the details of harmonization of the criminal law.

20. The joint statement (attached at Annex B) was discussed and agreed. There being no other business, the meeting then closed.

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ANNEX A

ANGLO-IRISH AGREEMENT ARTICLE 8

ESTABLISHMENT OF WORKING GROUPS

British and Irish officials have discussed terms of reference and membership for the Working Groups to be established under the terms of Article 8 of the Agreement and recommend as follows:-

Working Group I (Administration of Justice)

(I) To seek measures which would give substantial expression to the aims expressed in Article 8 of the Anglo-Irish Agreement and in paragraph 7 of the joint Communique, relating to public confidence in the administration of justice; and

(II) to consider, inter alia, issues which arise for the Conference in its examination of the possibility of mixed courts in both jurisdictions for the trial of certain offences.

Working Group II (Criminal Law Matters)

(I) to examine issues of concern to the Conference relating to the enforcement of the criminal law in both jurisdictions;

(II) to consider whether there are areas of the criminal law applying in the North and in the South, respectively, which might with benefit be harmonised;

(III) to give priority to an examination of policy aspects of extradition and extra-territorial jurisdiction.

Both groups are empowered to seek the advice of outside experts to the extent considered appropriate to enable

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them to discharge their functions.

Membership

Group 1 (Administration of Justice)

British side		Irish side	
Mr Brennan	(NIO)	Mr Ward	(DOJ)
Mr Steel/Saunders	(LOD)	Mr. Russell	(AG's office)
Mr Steele	(LCD)	Mr. Ryan	(Secretariat)
Mr Hammond	(NIO)	Mr Brosnan	(DOJ)
Mr Innes	(NIO)	Mr O'Donovan	(DFA)
Mr Elliott/ Mr Hewitt	(Secretariat)	Mr Burgess	(DFA)
Mr D J R Hill	(NIO)		

Group II (Criminal Law matters)

British side		Irish side	
Mr Chesterton	(NIO)	Mr Ward	(DOJ)
Mr Steel/Saunders	(LOD)	Mr. Russell	(AG's Office)
Mr Hammond	(NIO)	Mr. Ryan	(Secretariat)
Mr Innes	(NIO)	Mr. Brosnan	(DOJ)
Mr Wright	(HO)	Mr O'Donovan	(DFA)
Mr Elliott/ Mr Hewitt	(Secretariat)	Mr Burgess	(DFA)
Mr Marsh	(NIO)		

Other officials might be invited to meetings as necessary.

Interpretative Statements

In relation to the terms of reference of Working Group II (Criminal Law matters), it is agreed at official level by both sides that:

(a) in its consideration of issues arising under heading (I), the group may draw attention to possibilities for amending the criminal law in either jurisdiction where this might help to resolve issues of concern to the Conference relating to its enforcement;

(b) in relation to issues arising under heading (II) the group will give priority to areas of the criminal law where harmonisation might bring practical benefits, but will also consider itself free to examine other areas;

(c) any recommendations arising under heading (III), particularly in relation to extradition, will have implications for the arrangements to deal with fugitive offenders as between Great Britain and the Republic, as well as between North and South; and

(d) in relation to heading (III), the phrase "examination of policy aspects" is understood to allow the group to arrange for appropriate practical and procedural points to be considered.

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Northern Ireland Office
Press Notice
Whitehall, London SW1A 2AZ · Telephone Enquiries 01-273 5441
Stormont Castle, Belfast, BT4 3ST. Telephone Enquiries Belfast 63011

ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE: 13 FEBRUARY 1986

JOINT STATEMENT

British and Irish Ministers met in London today within the framework of the Anglo-Irish Intergovernmental Conference to discuss legal matters including the administration of justice. Those present were, on the United Kingdom side, Mr Tom King, MP, (Secretary of State for Northern Ireland), Sir Michael Havers, MP, (Attorney-General), Sir Patrick Mayhew, MP, (Solicitor-General) and Mr Nicholas Scott, MP, (Parliamentary Under Secretary of State, Northern Ireland Office); and on the Irish side, Mr Michael Noonan, TD, (Minister for Justice) and Mr John Rogers (Attorney-General). Officials were also present.

Ministers authorised further work by officials on matters of mutual concern in this area in accordance with the terms of Article 8 of the Agreement. These include measures relating to extradition; the possible harmonisation of areas of the criminal law; and the search for measures to enhance public confidence in the administration of justice. Ministers also took note of practical steps being taken by the two Attorneys-General to enhance co-operation in legal matters.

Mr King and Mr Noonan then held separate discussions on questions relating to cross-border security co-operation.