

ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE

NOTE OF A MEETING HELD IN OLD ADMIRALTY BUILDINGS ON FRIDAY 9 MAY 1986

British Side

Mr. King
* Sir Michael Havers
* Sir Patrick Mayhew
Mr. Scott
Sir Robert Andrew
* Mr. Saunders
Mr. Brennan
Mr. Stephens
Mr. Chesterton
Mr. Elliott
Mr. Daniell
Mr. Wood
Mr. Hewitt
Mr. Clark
Miss Steele

Irish Side

Mr. Barry
Mr. Dukes
Mr. Rogers
Mr. Donlon
Mr. Ward
Mr. Russell
Mr. Dorr
Mr. Lillis
Mr. O'Tauthail
Mr. Ryan
Mr. O'Ceallaigh
Mr. O'Brien
Mr. O'Donovan
Mr. Smyth

- * (The Attorney General, the Solicitor General and Mr. Saunders attended for the morning session only).

A: MORNING SESSIONLegal Matters: Working Group I

1. The Conference began by discussing the Interim Report (attached) of Working Group I. The Group was established in March 1986 to consider measures which might enhance public confidence in the administration of justice in Northern Ireland in accordance with Article 8 of the Agreement. Introducing the Interim Report, Mr. Brennan and Mr. Ward explained that the Group had met on three occasions and were due to meet again towards the end of May.

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In view of the difficulties associated with the introduction of "mixed" courts, this issue had been set on one side and the group had agreed to concentrate in the first instance on other proposals put forward by the Irish side (see Annex A of the Report). In particular, the Group had focussed on the possibility of establishing three-judge courts for the trial of scheduled offences and the creation of a second senior judicial post in Northern Ireland. Other issues including the use of supergrass evidence had been considered in a preliminary way. Further work remained to be done before the Group had completed its remit. Papers exchanged so far had identified British objections to the introduction of three-judge courts. The Irish side had responded that technical problems predicted by the British side had not caused any difficulties with the operation of three-judge panels in the Republic of Ireland.

2. Mr. Barry said that he was grateful for the work undertaken by the Group. He explained that recent events had led to increasing public concern in the Republic of Ireland about the question of extradition. The Irish Government was ready to introduce legislation in the autumn to give effect to the European Convention on the Suppression of Terrorism but the eventual form of that legislation would depend on progress made elsewhere. If the Irish Government could demonstrate that positive measures had been taken in Northern Ireland to increase the confidence of nationalists in the administration of justice, it would be that much easier to introduce effective legislation. Although the extradition of fugitive offenders and the administration of justice in Northern Ireland were separate issues, they were closely related because of prevailing political attitudes in the Republic of Ireland.
3. Mr. King said that it would be a mistake to link these two issues. Extradition was an entirely separate matter and one which was increasingly recognised by Governments around the world as being crucial to the defeat of terrorism. In that respect, he had been greatly encouraged by a recent press interview given by Dr. Fitzgerald in which the Taoiseach had referred to the common aim of

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the British and Irish Governments to defeat the Provisional IRA. Extradition would play a significant part in the fight against terrorism and should be seen as a separate issue in its own right.

4. Mr. King then outlined the background to the question of three-judge courts. He explained that Lord Diplock and his colleagues had specifically considered this proposal during their review of the legal system in the early 1970's. They had rejected the idea but recommended instead an automatic right of appeal for all those convicted of scheduled offences. Appeals were heard by three judges, a considerable safeguard in the system of justice operating in Northern Ireland. Lord Diplock's report had been regularly and independently reviewed and the idea of three-judge courts had been consistently rejected. The British side were not convinced that they would serve to increase public confidence in the administration of justice.

5. Mr. Rogers said that three-judge courts had operated successfully and in very difficult circumstances in the Republic of Ireland. In particular, there had never been any undue speculation about differences of opinion between members of a three-judge panel. The principle of collegiate responsibility had not been breached. From his knowledge of the judiciary, he would not expect problems of this kind to arise in Northern Ireland and had no doubt that the introduction of three-judge courts would enhance public confidence in the administration of justice. The disadvantages of a single judge, sitting without a jury, had been highlighted by recent supergrass trials involving large numbers of defendants. It was not possible for a single judge to deal effectively with such a trial. This was a problem which Lord Diplock could not have foreseen when he examined the Northern Ireland legal system in 1972. During his review of the Diplock Report, Sir George Baker had focussed on the supergrass issue and concluded that trials involving a large number of defendants did cause major problems. However, Mr. Rogers acknowledged that the issue of supergrass trials (which had been dealt with very fairly in the Attorney General's recent parliamentary answer) was separate from that of three-judge courts.

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6. Sir Michael Havers replied that circumstances in Belfast were quite different from those in Dublin. Because of the divided society in Northern Ireland, it was inevitable that people would speculate about the individual views of judges. He had no doubt that three-judge courts would provoke considerable hostility from the Northern Ireland judiciary if a single judgement were required and judges were prevented from publicising their own views. He did not accept that a single judge was incapable of dealing properly with complex trials involving several defendants and said that the experience of such trials in Northern Ireland gave no cause for concern on this score. Emphasising these points, Sir Patrick Mayhew explained that the introduction of a three-judge panel at first instance would be a considerable departure from the British tradition of justice and would actually undermine public confidence if knowledge of dissenting judgements became public.

7. Mr. King asked whether the Irish envisaged the introduction of three-judge courts for supergrass trials only. Mr. Barry replied that all scheduled offences should be covered. During further discussion, Mr. Rogers claimed that senior legal practitioners from the minority community felt excluded from the legal system in Northern Ireland. He said that the appointment of more Catholic judges to the High Court Bench would help to overcome this problem and would mean that more Catholics would be prepared to accept appointments to the County Courts. Sir Michael Havers replied that the present imbalance on the High Court Bench was not the result of discrimination. There was no question that the Lord Chancellor discriminated in making appointments and believed that, in view of the large number of senior silks from the minority community, more Catholic judges would be appointed in due course.

8. In conclusion, it was agreed that further consideration of all these issues should be undertaken by Working Group I.

Legal Matters: Working Group II

9. The Conference considered the Interim Report (attached) of Working Group II, also established in March 1986, which had been examining

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the policy aspects of extradition between the United Kingdom and the Republic of Ireland. Mr. King emphasised the importance of a new approach to the question of extradition in order to face the challenge of international terrorism. It was politically vital that the legislation enabling the Irish to ratify the European Convention should be passed. Sir Michael Havers said that it was essential to devise tough and effective measures to deal with the problem of fugitive offenders.

10. It was agreed that Working Group II should continue its examination of extradition and report further at the next meeting of the Conference.

B: AFTERNOON SESSION

Cross-Border Co-Operation: Tourism

11. Mr. King said that tourism could be important to the economies of both parts of Ireland particularly in the field of job creation. He believed that more could be done to market the whole island as a potential tourist attraction. A number of local cross-border studies had been undertaken but a larger perspective was needed. He wondered, for example, whether more could be made of the numerous, excellent golf courses on both sides of the border to encourage all-Ireland golfing holidays. Mr. Barry agreed that a joint approach to tourism would be helpful and said that he would support further studies by the tri-partite group consisting of the Northern Ireland Tourist Board, Bord Failte and the British Tourist Authority.
12. It was agreed that the Secretariat would consider how best further joint work in the field of tourism should be undertaken and report, in due course, to the Conference.

Cross-Border Co-Operation: Environmental Issues

13. Mr. Barry expressed his Government's continuing concern about the possible radiation hazard posed by the Sellafield nuclear plant.

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Mr. King replied that the British Government were determined to improve safety standards at the plant. During the next ten years, more than £3.5 billion would be spent to make Sellafield the safest processing plant in the world. Whilst accepting the Irish Government's clear interest in Sellafield, he said that it was essentially an East-West issue and not one for the Conference. Indeed, discussion of Sellafield on a North-South basis could serve to inhibit the Irish Government from making representations on the issue.

14. It was agreed that the question of nuclear radiation from Sellafield would be given further consideration by the Secretariat which would examine inter alia the possibility of exchanging information between departments on both sides of the border. It was also agreed that the Secretariat would consider how the Conference might help to promote further work aimed at reducing the pollution of inland waterways and would examine a proposal to link the Erne and Shannon waterways. A meeting between the respective Ministers with responsibility for environmental issues was expected shortly.

Bill of Rights

15. It was agreed that detailed consideration of this issue should await the Irish response to the British paper tabled in April 1986. Mr. Barry promised that the Irish side would respond shortly. An initial study would be undertaken by the Secretariat.

Housing Issues: Divis Flats

15. Mr. Barry said that the Irish side favoured the complete demolition of the Divis Complex. The accommodation at Divis was of an unacceptably low standard and should be replaced as a matter of priority. Bishop Cahal Daly was prepared to release land, in West Belfast, owned by the Catholic church in order to facilitate the necessary rebuilding. As well as the obvious housing benefits, demolition would undermine the position of Sinn Fein in this part of Belfast and reduce recruitment to the Provisional IRA.

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Following discussion of the Divis issue inside the Secretariat, the Irish side had concluded that a decision should be taken in principle to pull down the flats and begin rehousing the existing residents.

16. Mr. King explained that responsibility for the future of Divis rested with the Northern Ireland Housing Executive. The Conference could not override that responsibility although he would, of course, convey the Irish Government's views to the Executive's Board. There were real problems associated with Divis. The residents were not prepared to move away from the Lower Falls and, even with the land offered by Bishop Daly, there was insufficient space available in the area for complete rehousing. Whilst the existing accommodation was unsuitable for large families, it could be made attractive for single people or small family units. The Housing Executive therefore favoured a programme of partial demolition associated with refurbishment of the remaining flats. Two blocks had already been pulled down, and two more were due for demolition. A pilot refurbishment scheme would begin shortly and a major study of housing needs in Belfast was currently underway.

Security Co-Operation

17. Mr. Stephens said that a progress report (attached) on security co-operation had been prepared for the Conference. Bi-lateral discussions continued between the RUC and Garda but the issues were far from straight-forward and it was therefore not surprising that final reports had not yet been completed. There was certainly no evidence that either side was dragging its feet. Final reports from each of the Groups were expected over the next few weeks and would be submitted to the Conference as they became available. The report on intelligence matters was expected first and would be the subject of a meeting between the two senior police officers on 16 May. A quadripartite meeting involving representatives of both forces, the Northern Ireland Office and the Department of Justice would be held subsequently, before the conclusions of this study were reported to the Conference. The reports of the two further study groups would be dealt with subsequently.

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18. Both sides took note of the progress report on security co-operation and looked forward to further substantive discussion of the issues involved at the next Conference.

Confidence in the Security Forces

19. Mr. King said that the British Side were awaiting Irish proposals on measures to increase the confidence of the nationalist community in the security forces. He asked if the Irish side were ready to suggest names for the Police Authority. It was essential that responsible members of the nationalist community agreed to serve on the Police Authority.
20. Mr. Barry said that the Irish would put forward proposals directed at the short and the long term, involving an enhanced role for the Police Authority. It had not been easy to identify nationalists willing to serve on the Authority because of their traditional antipathy to the RUC. Progress on the implementation of Articles 7(c) and 8 of the Agreement would help to convince people that the Authority had an effective role to play. The RUC Code of Conduct, the new police complaints procedure, and the accompaniment of security force patrols were regarded as key elements of the Agreement on which evidence of progress was needed. It would be helpful to have further statistics on the accompaniment of patrols, particularly those undertaken by the UDR. Mr. Barry also enquired about the position in relation to the Stalker Report. The Irish side hoped to be able to suggest names for the Police Authority shortly: they already had one or perhaps two firm candidates.
21. Mr. King expressed some disappointment that people were still unwilling to serve on the Police Authority despite all the problems faced by the RUC following signature of the Agreement. In the past few months 50 RUC families had been burnt out of their homes and a total of 300 officers had been intimidated. He felt it would be a betrayal of the RUC if nationalists declined to take their place on the Authority. If they felt that there were changes still to be made, their best way to bring them about was to work for them from the inside.

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Joint Statement

22. The Conference agreed that the attached joint statement should be issued to the press following the meeting.
23. The meeting, which began at 11.50 a.m., finished shortly after 4.00 p.m.

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ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE

Article 8 - Legal matters including the administration of justice

Interim Report of Working Group I

1. The Group has met on three occasions - on 20 March in London, on 11 April in Dublin and on 23 April in London. Its next meeting is due to be held in Dublin (12 May or shortly thereafter).
2. In accordance with its terms of reference, the work of the Group has been directed towards the search for measures which would give substantial expression to the aim, identified in Article 8 of the Anglo-Irish Agreement and in paragraph 7 of the Hillsborough Communique, of ensuring public confidence in the administration of justice in Northern Ireland. To this end, the group has concentrated its discussion on matters identified by the Irish side as meriting early attention. A list of these matters is given in Annex 'A' attached. Some have as yet been discussed only in a preliminary way.
3. In the course of its work, both sides have presented papers on aspects of the issues under consideration. The British side presented a paper on the structure and organisation of the Courts in Northern Ireland which dealt also with the trial of scheduled offences, the question of three judges to sit in 'Diplock' Courts and the representation of both traditions in the judicial system. The British side also presented a paper on the length of time between remand and trial in Northern Ireland. The Irish side presented a paper on the operation of the Special Criminal Court. Copies of these papers are attached - Annex 'B'.

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4. Progress in the discussions has also been assisted by a questionnaire drawn up by the British side which sought information and views from the Irish side on a wide range of issues concerning judicial appointments in Northern Ireland, the Irish Courts, three-judge courts for scheduled offences in Northern Ireland and the 'ethos' of the Courts in Northern Ireland. The questionnaire, the response to which has not yet been discussed in the Group, deals only with some of the questions that have been discussed and should not be taken to represent fully the concerns of either side on the issues it addresses. A copy of the completed questionnaire is attached - Annex 'C'.

5. The Irish side indicated, at the outset, that while it believed that the most significant change that could be made in the context of enhancing confidence in the administration of justice would be the introduction of mixed courts in both jurisdictions for the trial of certain terrorist-type offences, it accepted that, because of difficulties indicated by the British side, this was essentially an issue which would require careful consideration over a longer time-span. In the meantime, the Irish side said that there was an urgent need for special measures and it suggested certain changes which might be made in the administration of justice in Northern Ireland which it believed were feasible in the shorter term. The most important of these, in the Irish view, were the introduction of three-judge courts for the trial of scheduled offences and the creation of a new post at senior judicial level, the holder of which would be given certain administrative responsibilities.

6. Although the work of the Group has not yet reached the point where agreed recommendations or, in the absence of agreement, final positions can be put forward, it was agreed, at the request of the Irish side, that this report would summarise the main arguments advanced by both sides in relation to the introduction of three-judge courts in Northern Ireland for the trial of scheduled offences and deal briefly with the creation of a new administrative post in the judiciary.

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7. In relation to the existing "Diplock" Courts, the British side have said that, in their view, there are no objective grounds for lack of confidence in the system of criminal justice and that the onus is, therefore, on critics of the present "Diplock" procedures to justify any proposals for change. They have, moreover, adverted to certain safeguards in the system. These include:

- a requirement that there should be a written judgement giving reasons for conviction and dealing with issues of both law and fact;
- an automatic right of appeal in every case;
- a provision allowing the Court of Appeal to consider issues of fact as well as of law.

The British side have also expressed concern that procedural difficulties of the kind referred to at paragraph 39 of the Diplock Report could arise in practice in three-judge courts and that the introduction of the change could damage confidence in the judicial system. In particular any such change might call into question the validity of earlier convictions by single judges. They have also questioned whether in practice the change would enhance confidence in the nationalist community particularly as judges from that community would normally be perceived as being "outnumbered" in any three-judge panel. They have also adverted to the problem that would arise in respect of the availability of judges.

8. The Irish side have argued that, both on the merits and because of the divided society which, as the Agreement recognised, exists in Northern Ireland, there is a strong case for the introduction of three-judge courts. They do not believe that such a change would damage confidence in the judicial system: they are in fact convinced that it would increase public confidence in the administration of justice (on both sides of the community but especially amongst nationalists) and would afford the possibility of

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greater "representation" of the minority community on the criminal bench. They have argued that a three-judge court, irrespective of its composition in terms of the two political traditions in Northern Ireland, would be intrinsically better than a court of one judge. This was because the introduction of collegiate discussion, as well as lessening the load on one judge, would minimise the risk of error. Verdicts would, therefore, be safer. The Irish side have pointed to the example of the three-judge Special Criminal Court in the South which, they said, worked well without any of the procedural difficulties mentioned in the Diplock Report. As regards safeguards in the 'Diplock' system, the Irish side said that in practice the position in the Special Criminal Court in relation to written judgements and the right of appeal was substantially the same and they believed that those existing features of the 'Diplock' system could be retained in a three-judge court.

9. In relation to the creation of a second senior judicial post, the British side have argued that current workloads of an administrative nature in the Supreme Court in Northern Ireland do not justify this. The Irish side have said that current workloads should not in themselves be the sole determinant. In a divided society there were particular advantages in having administrative work of this nature "spread". It would contribute substantially to the avoidance of a perception of undue concentration of functions. Moreover, if in practice one of the posts of administrative responsibility were held by a judge who came from the minority community, it would be conducive to greater acceptability among that community of the system of justice as a whole.

9 May 1986

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