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16 JUN 1987

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CONFIDENTIAL

Mr Nelson

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US EXTRADITION: JOSEPH PATRICK DOHERTY: NOTE OF A MEETING HELD ON 9 JUNE 1987

Present: Mr Bell, SIL
Mr Nelson, Chief Crown Solicitor
Mr Hammond, Legal Adviser, Home Office
Mr Bentley, Legal Adviser, Home Office
Mr Grange, Law Officer's Department
Mr Longden, Crown Prosecution Service
Mr Palmer, Crown Solicitor's Office
Mr Rimmer, SIL

Introduction

1. Mr Bell explained that the purpose of the meeting was to identify and if possible resolve the legal and policy considerations outstanding before the UK Government could go ahead at the appropriate time and launch a request to extradite Doherty. In this context, Mr Marsh's minute of 1 June had brought out the state of play in relation to the INS appeal to the US Attorney General; and it was noted that while that appeal might take several weeks to be considered, it was necessary that all the relevant extradition papers should be ready as soon as possible for the launching of an extradition request at very short notice. It was therefore important to have a clear view as to the grounds on which Doherty's extradition should be sought, and Mr Nelson's views had followed consultation with the US Justice Department via the Embassy the previous week.

Convicted offences

2. Doherty was convicted and sentenced in his absence on 12 June 1981 for the murder of Captain Westmacott (life, 30 years min), of attempting to murder members of HM Forces (life), of possession of firearms and ammunition with intent (20 years), and of membership of the IRA (10 years). It was agreed that the membership offence was not extraditable. It was also agreed that, after consultation with the US Justice Department, the Statute of Limitations would not apply to the convictions and that there was no problem about Doherty's absence - Doherty was in fact present during the whole of the proceedings and had voluntarily chosen to absent himself from the conviction and sentencing by escaping.

3. It was not clear, however, whether the firearms conviction could be proceeded with under the terms of the Supplementary Treaty. It did not appear to come under Article 1(d), but there was a possibility that it was extraditable under US law if the facts could be established that Doherty had used the firearms. It was agreed that Doherty's extradition should be sought on the grounds of his convictions in respect of murder and attempted murder, and that the possibility of including the firearms conviction also should be the subject of further consultation with the Justice Department (and bearing in mind that not running firearms offences in this case might weaken future cases of a similar nature).

Escape offences

4. Mr Nelson explained the difficulties he saw about including these offences in the request (possession of firearms, escaping from lawful custody and wounding or causing grievous bodily harm), irrespective of the question of extraditability of the firearms offences. The initial problem would be that running these offences would lead to arguments by the defence about the Statute of Limitations restrictions (although the US authorities were fairly

confident that the "constructive flight" doctrine - ie that Doherty knew or ought to have known of the offences during his absence from the country - could be successfully deployed). These offences would therefore require an affidavit referring to the 1983 warrants and the reasons why they were withdrawn, to enable the argument that any Statute of Limitations objections were invalid because the warrants had first been taken out only two years after the offences were committed.

5. This in turn led to the central problem, which Mr Nelson had not been able to discuss with the US authorities over the telephone, that both the 1983 warrants and the extradition request appeared to be invalid because no complaints had been laid to obtain the warrants. This had been discovered during the general review of warrants undertaken by the Crown Solicitor's Office. In speaking to the police officer concerned, it seemed that no complaints had been laid and that the documentation for the request may not have been sworn properly before the examining magistrate; while there was no concrete evidence that the complaints had not been laid, the Crown Solicitor could therefore not be satisfied that they had been. Similarly, complaints laid on 24 April 1986 were not sworn in properly. The 1983 warrants had now been withdrawn, and US advice on any time bar for the escape offences would be required if they were still considered worth running, but in such circumstances it was clear that an affidavit would have to explain why the 1983 warrants were withdrawn.

Handling the US

6. It was agreed that the fact that the 1983 warrants (and, in part, the 1983 extradition request) appeared to be invalid was likely to be of considerable embarrassment if it emerged during proceedings against Doherty. The defence could seize on this information, which would almost certainly have to be disclosed in referring to the earlier warrants, and seriously undermine the court's confidence in the credibility of the current case (including that resting on the convicted offences) put before it by the UK and US authorities.

It was further agreed that submitting a new extradition request without reference to the 1983 warrants or the escape offences (for which extradition had also been sought in 1983) could also prove to be an embarrassment; if the defence noted the discrepancy between the grounds on which extradition was now sought and the earlier grounds, or between the 1983 warrants and the current ones in respect of the escape offences, the reasons for the difference would have to be explained. It was also agreed that there appeared less scope for embarrassment in explaining to the Court that the present request was based on the major convictions (rather than the lesser offences), and that critical examination of the 1983 documentation in the light of recent Irish cases meant that we had reservations about the validity of the 1983 warrants, than in running escape offences as part of the current request and risking energetic litigation by the defence specifically in relation to the validity of the existing warrants.

7. It was agreed that these difficulties should be put to the Justice Department. SIL would draft a telegram, clear it with Legal Advisers and despatch to Washington which would bring out the conclusions of the meeting and seek the views of the Justice Department (now sent). The telegram would also look forward to an early meeting in Washington with Justice Department officials to resolve the outstanding issues.

Related matters

8. Mr Bell asked Mr Nelson to ensure that if there was any possibility of still including the escape offences, the sufficiency and availability of the evidence should be checked. He also undertook to provide Mr Nelson with full documentation of US Senate hearings on the Supplementary Treaty (now provided). The possibility of being required by the Court to disclose file papers at the request of the defence was also discussed briefly. It was not certain to what extent this provision could be used, although matters might become clearer during the McMullen case. The defence would be aiming to exploit the humanitarian safeguards by showing that the UK

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Government's motivation to extradite was improper; it was therefore important to ensure that the files on Doherty which might be at risk of disclosure were "clean". SIL would also be considering the appropriate stage at which to inform NIO Ministers of developments. They were also providing background briefing on aspects of the administration of justice, prisons etc in Northern Ireland to be deployed as necessary in the USA.

SIL Division

11 June 1987

cc: those present

Mr Burns
Mr Chesterton
Mr Innes
Mr Steele
Mr Blackwell
Mr Coston
Mr G Hewitt

Mr George RID, FCO
Mr Marsh o/r
Mr Wright o/r, HO
Mr Lynagh, RUC

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