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FROM: D A L COOKE
SIL
24 October 1991

cc PS/Secretary of State (L&B) - B
PS/Minister of State (L&B) - B
PS/PUS (L&B) - B
Mr Fell - B
Mr Thomas (L&B) - B
Mr Ledlie - B
Mr A P Wilson - B
Mr Deverell - B
Mr Bentley, HOLAB (BY HAND)
Mr Bell - B
Mr Dodds - B
Mr Leach - B
Mr Petch - B
Mr Archer, RID - B
HMA, Dublin
Mr Boys Smith, HO (BY HAND)
Ms S McCarthy, F3, HO (BY HAND)

PS/Paymaster General (L&B) - B

MM 55/11

881/10
25 OCT 1991
CENT 25X

Mr Haffey

TREVI 1992: TRANSBORDER SURVEILLANCE AND PURSUIT

1. This submission, prepared in consultation with FCO and Home Office, seeks the Paymaster General's agreement to the way in which we propose to handle a TREVI proposal for a binding agreement between the Twelve for cross-border surveillance and pursuit ('hot pursuit'). I am afraid there is a tight timetable, so I need to ask the PMG to look at this over the weekend.

The proposal

2. The text of the proposal, which has been drawn up by Belgium, is attached as an annex. It deals with both cross-border surveillance operations ('observation') and with attempts to arrest a fleeing suspect ('pursuit'). It would permit observation by police officers either where advance permission had been given for the border to be crossed or where 'for particularly urgent reasons' prior notification was impossible. Pursuit would be authorised to continue across the border in circumstances where it had either proved impossible to notify the authorities on the other side, or where the latter had not been able to reach the

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*Eliza...
Have you got
see file
over
4/11*

*MR Maxwell
To see if for a relevant
S.C file. There will be
further papers on the
post 1992 points
so we should have files. MA 11/x1*

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scene in time. There is no necessary limitation to police officers. The pursuit must cease as soon as the state on whose territory it is taking place requires it. Detailed provisions are left to be settled in bilateral agreements. The draft contains "opt out" clauses designed to accommodate the British, Irish, and perhaps Danes (whose frontier with Germany is the only EC land frontier, apart from the Anglo-Irish border, not already covered by the Schengen Agreement). These permit two states to agree not to apply the "pursuit" and "emergency observation" provisions of the agreement between themselves. The "observation by prior consent" provisions remain obligatory. (Another draft, lacking opt-out clauses, and with much detail specified in the text, remains "in play" in TREVI; but the attached text is probably the one best used to settle policy.) The proposal raises issues going beyond cross-border security between the ROI and NI which the Home Office are considering but which do not cast doubt on the basic proposition. This submission deals with the NIO interest.

The background

3. The Belgian draft derives from the rolling programme of TREVI work on strengthening international defences against crime which was agreed at the Dublin TREVI meeting in June 1990. This said:

"the interested member states are examining the principle of, and the conditions under which, the crossing of land frontiers by their respective agencies could be authorised. This examination should include in particular circumstances where persons having committed flagrant violations of the law are being pursued or where the authors or possible authors of serious offences are being followed. The procedure for such crossings will be the subject of special bilateral or multi-lateral agreements as applicable".

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4. The Belgian draft reflects the provisions of the Schengen Agreement, to which eight of the Twelve are signatories or likely to become so in the near future. (The exceptions are the UK, Republic of Ireland, Denmark, and Greece). The Schengen Agreement is not yet in operation. The UK is opposed to the Schengen Agreement, mainly because it raises major problems on the immigration side.

5. So far, the UK has reserved its position in relation to the draft, while expressing interest in measures which might improve security co-operation on the Anglo-Irish land boundary. The Irish initially reserved their position also, but it is clear that they would have difficulty with any text along the lines being considered.

Hot pursuit: the merits

6. There are certainly occasions when the RUC would - if appropriate arrangements were in place - like to pursue, or observe, a suspect on the other side of the land boundary with the Republic of Ireland. They said as much to the Commons' Home Affairs Committee, who asked them about hot pursuit in 1990. Provisions which enabled them to do so would clearly be welcome from a security point of view. There would be a price to be paid, in terms of according reciprocal rights to the Garda, but that might not be unduly onerous. With the TREVI text there would be practical difficulties, which would tend to make the provisions less useful in practice than they appear on the face of it. For example, it would seem desirable to include provision for the British Army to pursue/observe across the frontier but it is not clear that this would be negotiable in TREVI; arrangements would have to be made for pursuers/observers to be adequately protected against terrorist attack; the arrangements for applying criminal and disciplinary codes in another jurisdiction are a fertile source of problems; the carriage and possible use of

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firearms is difficult to accommodate; and the arrangements for pursuers/observers to report to the authorities in the receiving state would be difficult for us. All of these problems could no doubt be overcome given time and good will on both sides; but in the short term they would probably operate to discourage use of the provisions on the Anglo-Irish border.

RUC View

7. We have consulted the Chief Constable about the Belgian proposal. He shares our view that in the short term it presents numerous difficulties. He has, however, said that there would be advantage in leaving the door open to make progress with the Irish, on a bilateral basis, in the future.

Irish Position

8. There seems no realistic chance of the present Irish Administration agreeing to observation or pursuit by British police or soldiers on their territory. The Irish have made this clear on various occasions, including through statements at Ministerial level. The implied surrender of Irish sovereignty (and implied risk to the Garda in exercising their own pursuit/observation rights) is too much for a Fianna Fail-led Government to swallow at least for the time being. The Irish could - and would - veto the TREVI text if they needed to. The arguments, therefore, in relation to this particular proposal are not about probably practical changes in the short term, but rather about tactics and posture.

NI Interest

9. There is no chance of the Irish agreeing to the Belgian proposal. We nonetheless should aim, as the Chief Constable has

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suggested, to keep the door open to longer-term pressure on the Irish. If, in doing so, we also:

- (i) demonstrate to the Irish the growing force of European co-operation, thus creating the right atmosphere for a closer Anglo-Irish co-operation on other matters;
- (ii) appear communaautaire ourselves;
- (iii) avoid distracting the Irish from the points which the Prime Minister will make in the forthcoming summit about security co-operation;

then we will have taken most of the tricks which this proposal enables us to take. How could we do this?

Tactics

10. The options are:

- (i) sign up to the Belgian proposal as it exists. This would (should the Irish also sign: we do not believe they will) require us and the Irish to accord rights of observation, subject to prior consent in each individual case, whilst leaving us free to agree with the Irish to apply (or not) the other provisions;
- (ii) propose amendments to the draft extending the opt-out clauses so as to cover all the provisions of the proposed Convention; and accept the draft on that basis. This would still require us to agree bilaterally with the Irish not to apply the provisions; that is, there would be a presumption in favour of their coming into force unless both of us agreed otherwise. The Irish would not sign the agreement without such an assurance;

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(iii) reject the whole concept of an agreement, even in the emasculated form envisaged at (ii) above.

11. On present showing, option (iii) would seem to be closest to be Irish position. They may well be sensitive, on political grounds, to the very idea of having an agreement on this subject; and they might be conscious that an agreement which required the consent of both British and Irish Governments to opting out would place them in a weak position. They might therefore be irritated if the UK were to adopt either (i) or (ii); but they would be particularly likely to object to our doing (i).

12. Option (iii) would be unnecessarily feeble. It is not in the UK's interest to reject the concept: we want better cross-border security co-operation. It would be strange for us to oppose a proposal designed to improve it, even given the range of disadvantages set out in paragraph 6 above. We want to position ourselves so as to be able to keep long-term pressure on the Irish on this issue, whilst not attracting charges of bad faith from them, or from our EC colleagues, which might put us on the back foot. The tough line in option (i) is on the face of it more attractive: sign up and leave the Irish to look like bad Europeans by rejecting the proposal. But the FCO believe - and I agree with them - that (i) would not really be in our best interests. We would get no practical benefits (because the Irish would veto the text) but we would greatly annoy the Irish, who have at least taken pains to explain their position to us on various occasions. There must be a risk that the Irish reaction would feed through into the Taoiseach's approach at the Summit, ultimately making it more difficult for us to secure the practical cross-border security improvements which we want.

13. We propose, therefore, that we should go for option (ii). Our line with the Irish would then run as follows. Security co-operation is of great importance to us. We know that

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terrorists use the border to their advantage. Our concern about border security has been on the agenda for a long time. We are looking for ways to bring about better border security. The TREVI proposal is an important symbol of that. We agree that in practice this agreement would not be implemented for the NI/ROI border. We would expect to operate the opt-out clauses. But we will continue to look for cross-border improvements in the spirit of the agreement. This conditional assurance, that we would expect to opt-out, could if necessary run for a specified term of years.

14. We would aim to put this approach bilaterally to the Irish before the next major TREVI occasion (which looks likely to be a meeting of the 1992 group on 7-8 November - the proposal, if agreed there, would then be submitted to TREVI Senior Officials and from them to Ministers).

Recommendation

15. I recommend that:

(i) Ministers should authorise officials to propose amendments to the Belgian draft enabling two states to opt out of the substantive provisions of the proposed agreement, by agreement between them;

(ii) that, subject to the acceptance of these amendments, officials should be authorised to say that the UK concurs in the Belgian draft;

(iii) that Ministers agree that a conditional assurance, along the lines suggested in the preceding paragraph, should be given to the Irish; and

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(iv) that we should seek to broker this approach in advance with the Irish.

16. Perhaps I could check with you on Monday whether the PMG is content.

(SIGNED)

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24 October 1991
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TRANS-FRONTIER OBSERVATION

1. Police officers of one State who, within the framework of a criminal investigation, are keeping under observation in their country, a person who is presumed to have taken part in a criminal offence to which extradition may apply, shall be authorized to continue their observation in the territory of another State where the latter has authorized cross-border observation in response to a request for assistance which has previously been submitted to a competent authority designated by each Contracting Party.

2. When for particularly urgent reason, prior authorization of the other State cannot be requested, the officers conducting the observation shall be authorized to continue beyond the border the observation of a person, except if two States decide otherwise because of the particular situation at their common frontier.

3. The general conditions of the observation referred to in paragraph 2 shall be defined in bilateral or multilateral agreements as regards:

- contacts between the officers conducting the observation and the local authorities;
- the respect for rules of local law;
- the type of criminal offences for which the observation may take place;
- the officers who may conduct the observation.

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TRANS-FRONTIER PURSUIT

1. Officers of one State following, in their country, an individual apprehended in the act of committing or participating in an offence, shall be authorized to continue pursuit in the territory of another State without prior authorization where given the particular urgency of the situation it was not possible to notify the competent authorities of the other State prior to entry into that territory or when these authorities have been unable to reach the scene in time to take over the pursuit.

The same shall apply where the person pursued has escaped from provisional custody or while serving a custodial sentence.

The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the State in whose territory the pursuit is to take place. The pursuit will cease as soon as the State on the territory of which the pursuit is taking place so requests. At the request of the pursuing officers, the competent local authorities shall challenge the pursued person so as to establish his identity or to arrest him.

2. The provisions referred to in 1 are not implementable if two States decide otherwise because of the particular situation at their common frontier.

3. The general conditions of the pursuit referred to in 1 shall be defined in bilateral or multilateral agreements as regards:

- the area of the pursuit in time or in place;
- the contacts of the pursuing officers with the local authorities;
- the type of criminal offences for which the pursuit may be carried out;
- the officers who may carry out the pursuit;
- the pursuing officers' possible right to apprehend;
- the respect for rules of local law.

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