

CONFIDENTIAL

NOTE OF MEETING BETWEEN BRITISH AND IRISH
ATTORNEYS-GENERAL ON WEDNESDAY, 25 NOVEMBER

1. The meeting took place in Sir M Havers's room in the Royal Courts of Justice, London, beginning at 11.30 a.m. and continuing, with a break for lunch, until mid-afternoon. Mr. Sutherland was accompanied by Mr. Quigley. Sir M Havers was accompanied by Mr. Steel.

2. At the beginning of the meeting it was agreed that both sides would maintain the strictest confidentiality about the contents of the discussions. This would apply not only to this first meeting but also to all subsequent discussions between the two Attorneys-General arising out of the recent Summit between the Prime Minister and the Taoiseach and also to any follow-up meetings at official level. It was also agreed that all these discussions would be strictly on a lawyer-to-lawyer or technician-to-technician basis, concerned only with the technical merits and feasibility of the various ideas that might be canvassed, and that nothing said in them would imply any commitment on the part of either Government to adopt any particular course that might be discussed: in this sense, so far as concerned the implementation of what might be agreed to be technically possible, the discussions would be completely ad referendum the politicians on both sides.

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3. Sir M Havers then suggested that at this initial meeting he and Mr. Sutherland should have a general discussion of the various topics covered by their remit from the Summit and that the points which they identified for further exploration should be pursued in more detail in discussions between officials of the two Governments. The result of these detailed discussions would then be reported back to the two principals. He identified the three topics which he considered as falling for discussion in the light of the remit from the Summit :-

- (a) extradition
- (b) extra-territorial jurisdiction; and
- (c) an All-Ireland Court.

4. Mr. Sutherland agreed with the procedure proposed by Sir M Havers and he confirmed that he had the same interpretation of the remit from the Summit. He suggested, and Sir M Havers agreed, that the three topics should be taken in the above order.

EXTRADITION

5. Starting from the premise that international law precluded the extradition of political offenders and that Article 29.3 of the Irish Constitution therefore precluded the amendment of the Extradition Act 1965 to permit such extradition, Mr. Sutherland emphasized the disadvantages, as he saw them, of seeking a solution through the amendment of existing Irish legislation.

There was an emotional aversion among substantial sections of opinion in the Republic to handing accused persons over to the custody of the RUC and this would make it difficult to get the required result in a referendum where that appeared to be what was at stake. It would, in any case, be difficult to justify deleting or amending Article 29.3 of the Constitution which, on the face of it, stated a principle which nobody could find fault with.

6. Sir M Havers pointed out that if, as the British side believed, Mr. Sutherland's initial premise (ie that international law precluded the extradition of political offenders) was not correct, the need to amend Article 29.3 of the Irish Constitution before amending the Extradition Act did not arise. Mr. Sutherland accepted this but said that he thought that the Irish Supreme Court would endorse the view, taken by most members of the Irish team on the Law Enforcement Commission in 1974, that international law did preclude the extradition of political offenders. He personally shared that view. Sir M Havers suggested the possibility of seeking an authoritative opinion on this question of international law from some independent source. Mr. Sutherland said that he doubted whether this offered a useful way forward, since the Supreme Court could not be bound by any such opinion and might even resent it as an improper attempt to influence their own decision. But he agreed

that that possibility should be pursued in discussions at official level.

7. Mr. Sutherland then suggested that an alternative course might be to build upon some obiter dicta made by Henchy, J. in the recent case of Hanlon v Fleming. He suggested that what Henchy, J. had said pointed to the possibility of persuading the Irish courts to be more discriminating in characterising offences as political offences - in effect, that they might in future cases be willing to order the return of persons wanted for crimes of pure terrorism which had been committed against ordinary members of the public, as distinct from such targets as members of the security forces, government officials and government installations. He recognised that this would cover only a small part of the total of terrorist offences for which (in the absence of a political offender exception) extradition would be granted and that it would require a cautious case-by-case approach. But he thought that even a few successful cases might constitute the thin end of the wedge and could lead to a greater awareness on the part of the courts of the responsibility which rested on them to consider the intrinsic merits of the cases which came before them. He himself thought that this was a promising line to pursue and he intended, if so authorised by his colleagues, to put the weight of his office behind it by himself taking part in the proceedings to urge that line of argument upon the court in the first case in which

it could profitably be deployed. He said that he would put the matter to his colleagues, and seek such authority, as soon as possible after his return to Dublin.

8. Sir M Havers expressed interest in this suggestion from Mr. Sutherland and welcomed his intention to follow it up personally. It would of course be only a partial solution to the problem of preventing persons who had committed crimes of violence from escaping justice by fleeing across the border. But even if it offered the possibility of only a few such offenders being brought to justice, it would be worth pursuing.

9. Mr. Sutherland promised to send Sir M Havers a transcript of the judgment in Hanlon v Fleming as soon as possible after his return to Dublin.

10. Mr. Sutherland then put forward two further suggestions in relation to extradition which Sir M Havers agreed should be followed up at official level:

- (a) there might be a need for legislation on one or both sides - probably not difficult or politically controversial - to ensure that there were no problems about "corresponding" offences.
- (b) Some part of the reluctance of the Irish courts in the past to order the extradition of persons wanted for terrorist offences might be due to the fact that the extradition process between the two countries operated through a simple backing of

warrants system. This reluctance might be lessened if that system were replaced by an orthodox extradition system requiring the demonstration to the court that there was a prima facie case against the wanted person. Sir M Havers pointed out that the backing of warrants system worked very well, and was valued by the law enforcement authorities of both countries, in the vast majority of cases, where there was no terrorist or political element: it would be a pity to lose that benefit. Mr. Sutherland agreed and suggested that his proposal might be confined to cases involving a possible political element: the requesting authorities might be given an option as to which procedure they invoked.

EXTRA-TERRITORIAL JURISDICTION

11. On this topic Sir M Havers put forward two suggestions:

- (a) The authorities of the Republic should provide facilities for members of the RUC to interview and question persons who were held in custody in the Republic and who either were themselves suspected of offences committed in Northern Ireland or were thought to have information which could help in the prevention or detection of offences by others or in bringing such others to justice. On this, Mr. Sutherland said that the need for the Garda to be present at any such interviews, and to be seen to be co-operating in them with the RUC, would make them targets for the IRA (and, in the eyes of some sections of public opinion, legitimate targets) in a way which had not hitherto been the case. He thought that, for this and other reasons, the Garda would be reluctant to co-operate. Sir M Havers reminded Mr. Sutherland of the immense benefit which could be obtained if IRA suspects in the Republic were amenable to questioning by skilled and expert operators from Northern Ireland who were necessarily more familiar with the background and circumstances of the events being investigated than the Garda could be. (He mentioned the possibility that, if it was the participation of members of the RUC as such that was the stumbling block, it might be

possible for their place to be taken in some instances by specialists from the Metropolitan Police.) Though Mr Sutherland maintained his doubts, he agreed to pursue Sir M Havers' suggestion with the Minister of Justice and the Garda when he returned to Dublin and he agreed that the matter should be followed up in the discussions at official level.

- (b) There should be reciprocal arrangements for the transfer of exhibits between the courts of the Republic and Northern Ireland, ie exhibits that are in the custody of one court but are needed for the purposes of a trial taking place in the other. Sir M Havers explained that the Northern Ireland authorities were actively considering what steps would be needed on their part to give effect to such arrangements: it might be possible to proceed simply by an amendment to the Rules of Court but there was the possibility that substantive legislation would be required. But there should be no difficulty in doing whatever was necessary once that had been identified and the necessary reciprocal arrangements agreed. Mr Sutherland agreed that it would be useful to have such arrangements. He could foresee no difficulty about taking the necessary steps on the Irish side. It was agreed that this matter should be pursued in the discussions at official level.

ALL-IRELAND COURT

12. Mr Sutherland explained that the idea which he was now pursuing was (in 1974 terms) the "Single Court" rather than the "Mixed Court". He made it clear that the court which he envisaged and which would have jurisdiction throughout Ireland would ordinarily sit, for the purposes of a trial, at the place where the offence was committed, so that a person accused of a bomb outrage in, say, Belfast but apprehended in, say, Dublin would find himself returned to Belfast for trial. If there were witnesses in the Republic who, for good reason, would not go, and could not be brought, to Belfast, the court would have jurisdiction to hear their evidence in the Republic. Sir M Havers pointed out that it had been thought in 1974 that such an arrangement would necessitate an amendment of the Irish Constitution and that this had then been thought to present an insuperable barrier. He asked why that barrier was no longer

regarded as so formidable. Mr Sutherland said that it was his view that those who had thought in 1974 that a constitutional amendment would be required were mistaken: he thought that his proposed court could be set up under the existing Irish Constitution (like a Special Court).

13. Sir M Havers said that, if it was indeed the case that no amendment to the Irish Constitution would be necessary, the discussion could proceed to an examination of the practical implications and difficulties which it had not been thought necessary to pursue in 1974. There were, of course, also major political difficulties but, in accordance with the understanding reached at the beginning of the meeting, these should be left for consideration at the political level if and when the lawyers and technicians reported that the proposal was technically feasible. He suggested that the details of Mr Sutherland's proposals should be pursued in the discussions at official level. Mr Sutherland agreed.

14. Having concluded their initial examination of the topics covered by the Summit remit, the two Attorneys General then considered how the detailed discussions by officials should be taken forward. It was agreed that the two Law Officers' Departments (Mr Steel and Mr Quigley) should be charged with organising the arrangements on their respective sides and with general co-ordination. It was agreed that the meetings of officials from the two sides should get under way before Christmas with a view to a report being made to the two Attorneys General so that these could meet again early in the new year.

15. After the meeting had concluded, and when it became known that news reports of the fact of its having taken place were already circulating, a formula for public use was discussed and agreed (and was subsequently drawn upon by spokesmen for both sides). It was agreed not to go beyond this.

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