

DISTRIBUTION TO
NAMED PERSONS
ONLY

97

FOMIL 017/28

DD 281800Z UKDEL MILAN

GRS 738

SECRET

DEDIP

DESKBY 281800Z

FM FCO 281630Z JUN 85

TO IMMEDIATE UKDEL MILAN

TELEGRAM NUMBER 7 OF 28 JUNE

PERSONAL FOR PS/PRIME MINISTER AND PS/FOREIGN SECRETARY FROM
BRENNAN, NIO

JOINT ANGLO-IRISH COURTS

1. THE BRIEF WHICH SIR ROBERT ARMSTRONG SUBMITTED FOR THE PRIME MINISTER'S MEETING WITH THE TAOISEACH TOMORROW REPORTED IN PARAGRAPH 6 THAT (QUOTE) DR FITZGERALD MAY TELL THE PRIME MINISTER THAT HE HAS HEARD THAT AT A RECENT MEETING OTHER MEMBERS OF THE NORTHERN IRELAND JUDICIARY REFUSED TO ENDORSE LORD LOWRY'S OPPOSITION TO JOINT COURTS, TAKING THE VIEW THAT IT WOULD BE THEIR DUTY TO UNDERTAKE ANY FUNCTIONS OR CHARGES LAID UPON THEM BY PARLIAMENT (UNQUOTE). WE UNDERSTAND THAT MR NALLY HAS CONFIRMED THAT THE TAOISEACH WILL MAKE THIS POINT.

BACKGROUND AND COMMENT

2. THE ONLY KNOWLEDGE WHICH THE NORTHERN IRELAND OFFICE HAS OF THE VIEW ATTRIBUTED TO THE NORTHERN IRELAND JUDICIARY, AS SET OUT ABOVE, IS A REMARK MADE BY MR LILLIS OF THE DEPARTMENT OF FOREIGN AFFAIRS TO MR GOODALL OF THE FCO WHEN HE VISITED DUBLIN ON 24 JUNE. THE NIO IS AWARE THAT THERE ARE WEEKLY MEETINGS OF THE SUPREME COURT JUDGES IN NORTHERN IRELAND BUT IS NOT PRIVY TO WHAT TAKES PLACE IN THEM. HOWEVER, THERE WOULD BE NOTHING SURPRISING IN A NUMBER OF NORTHERN IRELAND JUDGES TAKING THE

VIEW THAT IT WOULD BE THEIR DUTY TO ABIDE BY ANY DECISION OF PARLIAMENT TO INTRODUCE MIXED COURTS. THE NIO HAVE NEVER BELIEVED OR SUGGESTED THAT SUCH A DEVELOPMENT WOULD LEAD TO A WHOLESALE (REPEAT WHOLESALE) RESIGNATION OF THE NORTHERN IRELAND JUDICIARY. MR HURD RECORDED IN HIS MINUTE OF 2 MAY TO THE PRIME MINISTER, REPORTING ON A CONVERSATION WITH LORD LOWRY, THAT LORD LOWRY HAD EXPRESSED THE BELIEF (QUOTE) THAT ALL HIS FELLOW JUDGES IN NORTHERN IRELAND, INCLUDING THE CATHOLICS, WOULD ALSO BE HOSTILE TO THE PROPOSAL: AT LEAST ONE OF THEM WOULD PROBABLY RESIGN TOO, THOUGH MOST WOULD CONTINUE (UNQUOTE).

3. THE NORTHERN IRELAND OFFICE HAS NO REASON TO THINK THAT ANY OF THE JUDGES HAVE CHANGED THEIR OPPOSITION TO THE PROPOSAL. LORD LOWRY REPORTED IN A LETTER TO MR HURD OF 21 MARCH THAT AT A WEEKLY JUDGES' MEETING ON 7 MARCH, ATTENDED BY ALL THE SUPREME COURT JUDGES, (QUOTE) THE UNANIMOUS VIEW WAS THAT THE MERE INTRODUCTION OF JOINT COURTS WOULD BRING THE BENCH INTO POLITICS IN A VERY UNDESIRABLE WAY (UNQUOTE).

4. IN ANY EVENT, THE BRITISH POSITION ON JOINT COURTS IS NOT DEPENDENT ON THE COOPERATION OF THE NORTHERN JUDGES, IMPORTANT THOUGH THAT WOULD BE. IT RESTS ON DIFFICULTIES OF PRINCIPLE AND PRACTICE (DESCRIBED IN PARAGRAPH 6 OF THE MAIN BRIEF). IT IS ALSO CLEAR FROM UNIONIST REACTIONS TO RECENT LEAKS (WHICH WE DEPLORE) THAT IMMEDIATE COMMITMENT TO JOINT JUDICIAL ARRANGEMENTS, EVEN IF WE COULD WORK THROUGH THE PRACTICAL DIFFICULTIES, WOULD SERIOUSLY WORSEN THE PROSPECT OF GETTING UNIONIST ACQUIESCENCE IN AN AGREEMENT.

NOT FOR USE

5. *Passage deleted and retained under Section 3(4),
Wayland. 24/6/14*

ON 25 JUNE THAT THERE HAD BEEN A HEARTENING DEVELOPMENT IN THE NEGOTIATIONS WITH THE BRITISH: THE NORTHERN JUDICIARY HAD SENT A LETTER SAYING THEY WOULD NOT OBSTRUCT ANY PARLIAMENTARY DECISION ON IRISH JUDGES SITTING IN FOR TRIALS IN THE NORTH. IT IS UNCLEAR FROM THE REPORT BY WHOM AND TO WHOM SUCH A LETTER IS SUPPOSED TO HAVE BEEN SENT. THE NIO HAS NO KNOWLEDGE OF IT.

LINE TO TAKE

6. WE HAVE NOT TAKEN OUR OWN POLL OF THE NORTHERN JUDICIARY BUT WE WOULD HOPE AND EXPECT THAT, IF PARLIAMENT WERE TO APPROVE NEW JUDICIAL ARRANGEMENTS, MANY OF THEM WOULD SEE IT AS THEIR DUTY TO WORK THE ARRANGEMENTS LOYALLY. IT WOULD NOT, OF COURSE, FOLLOW THAT THEY DID SO WITH ENTHUSIASM: MY INFORMATION IS THAT, AS RECENTLY AS MARCH, THE SUPREME COURT JUDGES AGREED UNANIMOUSLY THAT A JOINT COURT WOULD BRING THE BENCH INTO POLITICS IN A VERY UNDESIRABLE WAY.

7. BUT, IMPORTANT AS THE COOPERATION OF THE JUDICIARY WOULD BE, WE HAVE CONSTANTLY TRIED TO MAKE CLEAR TO THE IRISH SIDE THAT OUR DIFFICULTIES ABOUT JOINT COURTS GO WIDER THAN JUDICIAL ATTITUDES. WE ARE NOT CONFIDENT THAT THEY WOULD ACHIEVE THE OBJECTIVE OF RECONCILING THE MINORITY TO THE CRIMINAL JUSTICE SYSTEM: THEY WOULD CERTAINLY ANTAGONISE MUCH MAJORITY OPINION: AND WE SEE REAL PRACTICAL DIFFICULTIES ABOUT THEM. WE DO NOT APPROACH THE IDEA WITH CLOSED MINDS, BUT FOR ALL THESE REASONS, THE SUBJECT SEEMS TO US EMINENTLY SUITABLE FOR DISCUSSION WITHIN THE PROPOSED INTERGOVERNMENTAL STANDING COMMITTEE SO THAT WE CAN CONSIDER TOGETHER THE CONSIDERABLE PROBLEMS THAT ARISE.

HOWE

NNNN