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PM/86/064

PRIME MINISTER

The Administration of Justice in Northern Ireland

1. As I explained when we met last night, I believe we need to think very carefully about the proposals put forward by Tom King for modifying the Diplock courts (his minute to you of 18 September).

2. I recognise, of course, the strength of feeling that underlies the objections expressed by the Lord Chancellor and the Attorney General, reflecting the views of the Lord Chief Justice of Northern Ireland. But the argument that introducing this reform would cast doubt on the integrity of the judicial process hitherto is effectively an argument against any significant change in any subsisting procedures, even where (as I believe to be the case with three judge courts) the change could well be justified on its merits. I believe we need to think very carefully about the wider implications of the decision which faces us before accepting the arguments of that kind which have been put forward.

3. Despite the continued opposition of the Unionist community, the Hillsborough Agreement is still seen as a profoundly worthwhile achievement. We always knew it would take time to bear fruit, and that patience and hard work would be needed to make it work. Even on this timescale, we

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CCB/WF  
Prime Minister  
This expands on the  
views which the  
Foreign Secretary put to  
you last night  
CBP  
30/9.



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can point to some progress: the political advance of Sinn Fein has been halted; the impartiality of the Royal Ulster Constabulary has been well demonstrated. You were of course right last night to point out that progress on cross-border cooperation has been slow; this is in large measure due to shortage of resources on the Irish side, aggravated by the personality of the Irish Commissioner of Police. Given time the latter at least will change. But already, structures are in place which in the longer term can only be beneficial, and there has been significant improvement in the climate of confidence between the RUC and the Garda. The Irish Government has by and large accepted our own measured approach to the implementation of the Agreement, as Mr Barry's positive speech to the UN General Assembly last week demonstrated. There are better prospects for a continuing joint approach to the problem than there have been for many years.

[? non-existent]

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4. I fear that even these worthwhile achievements could be jeopardised unless we take seriously our commitment under Article 8 of the Agreement, spelt out in greater detail in the Hillsborough Communique, to seek "measures which would give substantial expression" to the aim of promoting public confidence in the Administration of Justice in Northern Ireland. You will remember from your own discussions with him how much importance Garret Fitzgerald has attached to this aspect from the very beginning of the negotiations leading up to the Hillsborough Agreement.

They should take seriously  
the commitment  
on cross-border  
security

5. The Irish initially hoped that we could agree to the establishment of joint courts. That was never possible. Broadening the composition of the District Courts has been widely canvassed as the most desirable alternative, and one which would involve no infringement of British sovereignty.



Indeed it was at an earlier stage supported by Dr Paisley himself. The Government's readiness to contemplate a move of this kind is increasingly seen, not only by the Irish Government and the minority community in the North, but also by much responsible opinion in Great Britain, as important evidence of the Government's continued determination to honour its obligations under the Agreement.

6. It is important to remember that the present single judge courts were introduced in 1973 as a temporary expedient. They have worked extraordinarily well in the face of great difficulties, and I would pay my tribute to those who have manned them. But they have all along represented a derogation from trial by jury; they are exceptional for that reason; and they were introduced only after great hesitation, not least on grounds of legal principle. However unfairly, they are a major target of criticism both domestically and internationally, and their reform on the lines proposed (in the absence of an early return to jury trials) would be widely welcomed. It would help us in the task of countering pro-IRA propaganda in the United States and elsewhere overseas; and it would almost certainly facilitate the extradition of fugitive offenders. Even under the UK/US Supplementary Extradition Treaty it is still possible to deny extradition if the judge can be persuaded that a fair trial is not available in the requesting state. Similar considerations apply in other countries, as currently in the Netherlands.

7. The link that is perceived between three-judge courts and Irish ability to ratify the European Convention on the suppression of Terrorism is an additional, and tactical, argument for making the move now if possible in time to enable the Taoiseach to get the ratification Bill through

by whom?

No

This was  
 made for  
 the original  
 under the  
 which the  
 must be  
 NOT delivered



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the Dail without the attachment of conditions which would negate its effect. But in my view this is less important than the benefits which the reform would bring in terms of maintaining and strengthening public confidence in the administration of justice in the United Kingdom.

8. The Lord Chancellor in his minute puts considerable stress on the practical problems involved. Some of them of course are very real - most notably the problem of judicial manpower. If it is the case, as we are told, that the pool of available barristers in Northern Ireland has increased considerably since 1984 when Sir George Baker reviewed the position, then that might help. Much more useful, as it seems to me, is the Irish willingness to see the change confined only to a relatively small group of cases.

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Moreover as Sir George Baker pointed out, we had three-judge courts of first instance in India; and the experience of the Special Criminal Courts in the Republic of Ireland, where judicial traditions are similar to our own shows that a collegiate court of first instance need not face impossible operational difficulties. The principle of several members of a court delivering a single opinion is far from uncommon in our own system, from Quarter Sessions Appeals Committees to the Privy Council. My own belief is that, if the political decision to make the change were taken, the practical and technical difficulties would be overcome.

No →

9. This is not, in my view, a case of the Irish once again refusing to be satisfied with what we have given them, and pressing for more. The obligations on the Intergovernmental Conference - that is to say, on the two Governments jointly - to look for reforms in the administration of justice is clearly spelt out in the Agreement, and we have always recognised that the courts were the crucial area in this respect. If we rule out now a favourable response to Tom King's suggestion, then I fear we shall send the wrong

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signal to both communities in Northern Ireland and that an important opportunity of demonstrating our determination to continue to complement the Agreement gradually but steadily will have been missed.

10. If, in spite of these arguments, it is felt that the objections to modify the Diplock courts now must be regarded as overriding, then I hope we can keep the opportunity open for the future. Meanwhile, it will be important to try to find other areas of reform of the judicial system which might satisfy the requirements of the Agreement. I fear this will not be easy.

Why?  
Should we  
the courts  
did something  
do further  
the agreement  
not

11. I am sending copies of this minute to the Secretary of State for Northern Ireland, the Lord President, the Lord Chancellor, the Attorney General, the Home Secretary and Sir Robert Armstrong.

GEOFFREY HOWE

Foreign & Commonwealth Office  
30 September 1986

IRELAND  
SITUNTON  
PT 21

