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M

PRIME MINISTER

ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

There is a meeting tomorrow to discuss the Northern Ireland Secretary's paper on three-man courts. The Lord President, the Lord Chancellor, the Foreign Secretary, the Northern Ireland Secretary, the Home Secretary, the Attorney General and Sir Robert Armstrong will attend.

There are copious minutes in the meeting folder, which you have already read. The Law Officers and the Lord President are firmly opposed to three-man courts. The Foreign Secretary is in favour (though recognises that you cannot go against the Law Officers); *so apparently is the Home Secretary.*

You will want to let Mr. King introduce his proposal. I have spoken to him. He understands that his proposal will be turned down. He will stress the need to let the Irish down lightly. You could then ask the Law Officers to put their views. You will then be able to say that we clearly cannot move in the face of their professional advice. The conclusion of this part of the discussion seems bound to be that we should not move to three-man courts.

You will want to move on to consider how to handle this matter with the Irish, in the context of their ratification of the Convention of the Suppression of Terrorism. On the one hand, they have a moral obligation to ratify without any quid pro quo from us. Their record of living up to their obligations on cross border security cooperation is poor. On the other hand, Article 8 of the Anglo-Irish agreement does commit us to seek measures to improve confidence in the administration of justice. There is no great gain for us in endangering Dr. Fitzgerald's position (though it is pretty much at risk anyway). Nor do we particularly want a confrontation in Anglo-Irish relations on the anniversary of the agreement. It is surely worth examining therefore whether there are any

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other more modest changes related to the administration of justice in Northern Ireland which we think desirable in their own right, which might be announced in the near future and would incidentally be helpful to the Irish government.

I don't think that the Law Officers can credibly argue that the administration of justice in Northern Ireland is incapable of any improvement at all.

CJ?

Charles Powell

1 October 1986

The minutes from RTA
immediately below arrived
late tonight.

JALBAQ

Prime Minister
COR.

Ref. A086/2751

PRIME MINISTER

Anglo-Irish Relations: Northern Ireland
Meeting of Ministers: Thursday 2 October 1986 at 4.00 pm

Three-man Courts

The main purpose of the meeting is to discuss the proposals by the Secretary of State for Northern Ireland, in his minute of 18 September, that we should announce that we are prepared in principle to introduce three-man courts, in the first instance for certain scheduled offences, in Northern Ireland.

2. The Lord Chancellor and the Law Officers have minuted you opposing this proposal; the Foreign and Commonwealth Secretary has on balance supported, not only on political grounds but also on the ground that the legal and practical problems are not so great as have been suggested.

3. I have sent to you separately accounts of the message which the Taoiseach has asked me to convey to you on this subject.

4. On one hypothesis the Irish Government are simply using the introduction of legislation to ratify Irish accession to the European Convention on the Suppression of Terrorism (ECST) as a lever to extract the greatest possible price from us. On another hypothesis, it could be that some members of the Irish Government are not particularly keen to ratify Irish accession to the ECST, and reckon that, if they demand of us a price that they know we cannot (or will not) pay, they can blame us for the failure of the ratification legislation in the Dail (or for their own failure to introduce it at all).

5. I should for myself be inclined to acquit the Taoiseach of either of these cynical motives. He has all along - since before Hillsborough - made clear his view that ratification of Irish accession to the ECST would depend upon significant progress in improving the administration of justice in Northern Ireland as the nationalists see it; and his own commitment to the idea of three-man courts is of even longer standing than that.

6. The argument of principle is that, in cases where trial by jury is not possible, justice is more likely to result if the evidence is assessed and weighed by more than one person. The Taoiseach clearly sees that argument as being reinforced by the outcome of the Black case.

7. In political terms, my impression is that the Taoiseach sees himself as having only a few months to run before losing office, and sees the ratification of Irish accession to the ECST as the final great contribution he can make to the process of improving the prospects for peace, stability and reconciliation in Northern Ireland by improving relations between the British and Irish Governments and by securing changes in Northern Ireland which will reconcile the nationalist community to the continuance of the union for the indefinite future.

8. There is certainly no doubting the very high political importance which he is attaching to this matter.

9. If it is decided that we should make no move in the direction of three-man courts in Northern Ireland, you may like to ask at the meeting whether there is scope for any other change or changes in the administration of justice in Northern Ireland which we could propose as a substitute for three-man courts. There are two possibilities which you might like to raise, if others do not:

(a) We might be able to offer an end to "supergrass" trials - trials in which prosecution and conviction are based on the uncorroborated evidence of a single accomplice, who turns Queen's evidence. This might in practice be more significant in its effect than the introduction of three-man courts, and could (I understand) be introduced without legislation by means of a directive from the Attorney General to the Director of Public Prosecutions in Northern Ireland.

(b) It might be possible to propose an end to multi-defendant trials - the batch processing in the court of anything up to two dozen people at a single trial. Presumably, however, this would have resource implications not unlike those of the limited introduction of three-man courts.

10. Whatever the outcome of the meeting, you will wish to consider what the next step should be. In view of the Taoiseach's message, you will need to consider whether to offer him some kind of informal meeting, or to speak to him on the telephone (we now have secure communications with the Taoiseach's office, though they are not totally satisfactory and it may in any case be difficult to deal with other aspects of this subject in a telephone conversation), or to send him a message (or an emissary).

Cross-border Co-operation

11. The meeting was not called to discuss cross-border security co-operation, though you have suggested a separate meeting on that subject. The contents of the Taoiseach's message may well mean that it comes up. The message suggests that the Taoiseach is making a serious effort to deal with what we have seen as deficiencies in that field. We have to face the fact that there is a limit to what the Irish can do: the border is as

long on their side as it is on ours, but the resources available to the Irish are only a fraction of the resources available to us. Within those limits they really are trying hard.

Roundtable Conference on Devolution

12. The Secretary of State for Northern Ireland may also raise the possibility of trying to get the unionists into some kind of round table discussion about the establishment of devolved government in Northern Ireland. The latest suggestion is that the Government should indicate to the unionists that, if agreement could be reached upon devolution on a widely acceptable basis, the two Governments would undertake a review of the working of the Intergovernmental Conference set up under the Anglo-Irish Agreement. The Agreement already provides that a range of matters now dealt with by the Intergovernmental Conference would cease to be dealt with there in the event of devolution. It also includes provision for review of the working of the Conference at the request of either Government. The new proposal brings the two ideas together, and contemplates a commitment by both Governments to a review of the working of the Conference if devolution was agreed - a review which (implicitly) might not necessarily be confined to the immediate --- consequences of devolution. I attach a draft of the way in which such a proposal might be expressed.

13. I doubt whether a proposal of this kind would be sufficient to bring the unionists to the conference table: they have been insisting on suspension of the Anglo-Irish Agreement as a condition of talks about devolution. But the signals which came from the unionists after Sir Frederick Catherwood's recent

PERSONAL AND CONFIDENTIAL

speech were conflicting, and an initiative of this kind might help to focus their minds. In order to avoid another open offer and rebuttal, it might be preferable to try this idea on unionist politicians privately through an intermediary.

RA

ROBERT ARMSTRONG

1 October 1986

The Government welcomes the readiness of the leaders of the constitutional parties in Northern Ireland to engage in talks about the establishment of devolved government in the Province. At an appropriate stage the Government would be willing to participate in these talks which would, of course, be outside the framework of the Anglo-Irish Agreement.

That Agreement provides that if it should prove possible to achieve and sustain devolution on a basis which secures widespread acceptance in Northern Ireland a wide range of matters now falling to be dealt with by the Intergovernmental Conference would be removed from its consideration.

In that event the British and Irish Governments will, in accordance with Article 11 of the Agreement undertake a review of the working of the Conference.

Prime Minister
CDD

Ref. A086/2749

MR POWELL

Anglo-Irish Relations

The Government Secretary in Dublin, Mr Dermot Nally, rang this morning. He said that the Taoiseach was anxious that a message should be conveyed from him to the Prime Minister. The Taoiseach would like to tell me himself what he wanted to say to the Prime Minister, so that I could convey it to the Prime Minister directly. The Taoiseach then took up the conversation.

2. The Taoiseach said that a decision had been taken in Cabinet Committee in Dublin, and would be confirmed by the Cabinet tomorrow, to proceed (subject to one condition, to which I will return later) to the introduction in the Dail of legislation to ratify Irish accession to the European Convention on the Suppression of Terrorism (ECST). There would be no reservations under Article 13 of the Convention.

3. The Taoiseach went on to say that the offences to which the Convention applied were specified in Article 1 of the Convention. In addition, Article 2 of the Convention enabled a signatory to add to the range of offences to which the provisions of the Convention would apply. The Irish Government would want to add certain offences under those arrangements in their legislation, but they would need to accompany that with wording in the legislation on the lines of Article 13 of the Convention, applicable to the additional "unspecified" offences only, so as to avoid a constitutional challenge to the Bill as a whole. The depoliticisation of the offences specified under Article 1 was fully accepted, and the Supreme Court would accept that adherence to the Convention in respect of those offences



was not unconstitutional in Ireland. In relation to the additional offences, however, the Supreme Court might take the view (on a challenge) that the legislation fettered the discretion of the Supreme Court, unless the legislation included wording on the lines of Article 13; and, if it did not include such wording, there would be a risk that the Supreme Court would declare the whole Bill unconstitutional because of this provision. It would be in order to avoid that danger that wording like that of Article 13 would be included in the Bill in relation to the additional offences to be included.

4. The Taoiseach said that the legislation would not include any requirement of prima facie evidence for extradition. What he described as "a small political party" had been committed to requiring prima facie evidence, but he was reasonably satisfied that the party concerned would drop that request. It would be necessary for it to be known that extradition papers would be vetted by the office of the Director of Public Prosecutions.

5. The Taoiseach said that the Irish Government was thus seeking to act in complete good faith in relation to ratification of the ECST. But he went on to say that he was in no doubt that the legislation would not pass unless there were changes in the system of the administration of justice in Northern Ireland to improve the confidence of the minority community in that system, and specifically a move towards the introduction of three-man courts.

6. The Irish Government were willing to accept that three-man courts should be confined to extraditable offences and certain other very serious offences: that would reduce the number of additional judges that would be needed. The Taoiseach said that he understood that Lord Lowry had told the Secretary of State that the Northern Ireland judiciary were unanimously opposed to the introduction of three-man courts. He had reason to believe that this was not the case. His understanding was that there



had been no formal consultation of the Northern Ireland judiciary, and that three of the High Court judges were in favour of three-man courts for non-jury trials and two were neutral on the subject. He suggested that the Government should take steps to ascertain for certain what was the position of the Northern Ireland judges on the matter.

7. If there was a decision to move in the direction of three-man courts, the Irish Government would be very willing to be as helpful as possible in relation to its presentation. They would certainly wish to avoid any reflection on the conduct of the courts in the past or on the courage and integrity of the Northern Ireland judiciary.

8. Turning to cross-border co-operation, the Taoiseach said that agreement had already been reached on a number of things. He instanced:

- Regular meetings between the Chief Constable of the Royal Ulster Constabulary (RUC) and the Commissioner of the Garda.
- The need for improved surveillance south of the border.
- Strengthening of the relevant group of the Garda (I think he said Unit 143).
- Improvements in communications between the two police forces and in computerisation.

9. On two matters that had been in abeyance, the Irish side were now able to make a move:

- It was agreed that there should be regular monthly meetings between divisional Commanders and Superintendants on the border.



- It was recognised that detectives in the Garda lacked training in surveillance work. It had been suggested that they should have five months of training. That would take them off the job for too long. But it was now agreed that they should undertake training for a period to be determined, and that the staff concerned should be those who had already had some preliminary training of which the RUC were aware.

10. The Taoiseach said that they had not until this morning received in Dublin, via the Secretariat of the Intergovernmental Conference, from the Secretary of State a list of a number of matters on cross-border security co-operation which had not been dealt with. There had previously been suggestions that there were such matters, but attempts by the Irish Government to obtain a clear statement of what those matters were had not hitherto been successful. This was the first time that they had had a clear statement at political level of the matters not dealt with. The list would now be strenuously and seriously considered, and the Taoiseach said that he would be personally supervising that consideration. He suggested that the matter should be discussed at next week's meeting of the Intergovernmental Conference. It could well also be useful that there should be a separate meeting between the Secretary of State and the Chief Constable on one side and the Minister of Justice and the Commissioner of the Garda on the other.

11. In conclusion the Taoiseach stressed the political importance for him of a move on three-man courts by us, if he was to be able to get through his Parliament the proposed legislation to ratify Irish accession to the ECST.



12. The Irish Ambassador subsequently called upon me, at his request, to leave with me a copy of the notes from which the --- Taoiseach was speaking. I attach a copy herewith.

13. I am sending copies of this minute to the Private Secretaries to the Lord Chancellor, the Foreign and Commonwealth Secretary, the Home Secretary, the Secretary of State for Northern Ireland and the Attorney General.

RTA

ROBERT ARMSTRONG

1 October 1986

Notes on which the Taoiseach based his telephone
conversation with Sir Robert Armstrong - 1 October 1986

A. I can confirm to you our willingness to accept that three-man courts could be confined to extraditable offences and other very serious offences, possibly to be defined in terms of length of maximum sentences. The details are open for discussion. This could significantly reduce the number of judges needed.

B. Leaving aside the fact that the judges resolved unanimously in June 1985 that they would abide by the will of Parliament and so notified the Prime Minister, we believe that information in London that there is a 'monolithic' objection by the northern judiciary to three-man courts is not a correct representation of the position and that no formal collective consultation with the judges has taken place. We believe that three judges are positively in favour and that two others are neutral. Surely the actual position should be verified before a decision is taken on what could be a false assumption of monolithic opposition?

C. We would wish to be helpful with the presentation of this matter. We recognise that it would be most undesirable that a change in the number of judges be represented as reflecting in any way on the court in the past, especially in view of the appalling risks judges face, and the fact that a number have in fact been murdered or been the subject of murder attempts. We would ourselves present this whole matter positively, and would be willing to reflect with your government as to how best this can be done.

D. There are a number of misunderstandings about our position on extradition legislation, at civil service and lawyer levels. We want to make the following points clear - they have been cleared by our Cabinet Committee and will be cleared by our full Cabinet on Thursday -

1. We shall make no reservation under Article 13.
2. In relation to Article 2, we wish this to be applied, as the range of offences under Article 1 is too narrow, but its inclusion must be accompanied by wording paralleling wording of Article 13, because, apart from the possibility of constitutional challenge in specific cases, it is on the cards that in light of the debate in the Dail and constitutional queries by the Opposition, and possibly by academics in parallel public debate, the President may feel obliged constitutionally to refer the whole Bill to the Supreme Court. Under this procedure, (as distinct from a reference of a particular section, or a challenge in a specific case), any defect in the Bill would lead to the disaster of the whole Bill being found unconstitutional. In view of the wording of some past judgements of the Supreme Court, a real possibility exists that while de-politicisation of Article 1 offences would be upheld, as they are specified in the International Convention, an attempt to remove the Supreme Court's discretion in relation to unspecified offences under the Article 2 general category might fail - and in a general reference bring down the whole Bill. Neither of us can afford this risk. But no reservation will be entered on ratification.
3. We shall not include in the Bill any requirement for certification that a prima facie case exists and we will accept arrangements under which in terrorist cases, papers will be cleared by the DPP's office. This will cause problems in the Dail because of the perception that in a number of cases extradition has been sought

where a prima facie case did not exist. I am satisfied that one political party which is publicly committed to the view that this Bill should require a prima facie case to be shown will now drop this requirement, and also the idea of a requirement for a certificate. It would of course be necessary for it to be known that, in these cases, papers would be vetted by the DPP's office, but as there has been criticism in Britain of five cases, such a statement would be seen as an assurance of efficient extradition in future, rather than as part of a 'deal' with us.

4. A rule of speciality requirement (ie that no other charges could be preferred) would not be in the Bill, but could be substituted by a public statement of a formal understanding that such charges would be preferred only after consultation with the Irish authorities.
5. There would be no provision in the Bill about questioning after extradition.

It will be seen from these five points that we are not holding back on any of these issues on which we can facilitate extradition without introducing a real danger that the whole Act would be found unconstitutional on reference of it by the President to the Supreme Court. In the common interest we could not go further, and we are proposing to act in complete good faith in all respects. But all this is possible only if the proposed changes in the court system in Northern Ireland are made in respect of extraditable and other serious offences carrying heavy sentences. The legislation simply would not pass here without this.

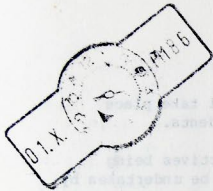
E. There appear to be misunderstandings - or in some cases persisting disagreements at police level - about cross-border police cooperation.

Among the matters that have been agreed, according to our records are the following:

1. Regular meetings between Assistant Commissioner/Assistant Chief Constable and Border Supts/District Superintendents.
2. Heads of intelligence to meet regularly.
3. The level of strengthening of special detective units and surveillance unit.
4. Substitution by either side for temporary depletion of forces on the other.
5. Strengthening of Dublin Special Detective Unit dealing with terrorism to 143.
6. Arranging for compatible and secure telephone, radio and fax equipment.
7. Harmonisation of computerisation.

There are also other matters which have hitherto been in abeyance but which we are now in a position to agree:

1. It is now agreed that regular monthly meetings will take place between Divisional Commanders and Chief Superintendents.
 2. A training programme is being established for detectives being allocated to surveillance work. The training will be undertaken by staff who have themselves received the type of training that has been referred to by the RUC. We are now studying very seriously further matters, including issues brought to my attention only this morning after the meeting between Secretary of State King and Lillis yesterday evening and I am examining these matters personally with the Minister for Justice.
- F. Finally, in view of the overwhelming importance of these issues, I would hope that no negative decision would be arrived at tomorrow on your side on the question of three-man courts. I have in mind writing briefly to the Prime Minister on this point.



It is now agreed that regular monthly meetings will be held between Divisional Commanders and Chief Superintendents. A training programme is being established for detective being allocated to supervisory work. The training will be undertaken by staff who have themselves received the type of training that has been selected by the SUC. We are now studying very seriously further matters, including factors brought to my attention only this morning after the meeting between Secretary of State King and Mills yesterday evening and I am examining these matters personally with the Minister for Justice.

Finally, in view of the overwhelming importance of these issues, I would hope that no negative decision would be arrived at tomorrow on your side on the question of three-man courts. I have in mind writing briefly to the Prime Minister on this point.

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Ref. A086/2750

PRIME MINISTER

THIS IS A COPY. THE ORIGINAL IS
RETAINED UNDER SECTION 3 (4)
OF THE PUBLIC RECORDS ACT

I have sent to you separately a note of a message which the Taoiseach asked me to convey to you when he spoke to me on the telephone this morning.

2. There was a second part of the message, which the Taoiseach specifically asked should be for your eyes only. I am not therefore sending copies of this minute to anyone else.

3. The Taoiseach said that he believed that his Government would be able to continue in office until after Christmas, and that (subject to a move on three-man courts by us) legislation for the ratification of the European Convention on the Suppression of Terrorism (ECST) would pass through the Irish Parliament by Christmas. He had reason to think that he could count on the support of "a small political party" - by which I presume he meant the Progressive Democrats - on that legislation. But he expected that he might well be driven to a general election shortly after Christmas; that would be on economic issues, and particularly on the budget.

4. The Taoiseach went on to say that he did not believe that Fianna Fail would win an overall majority in an election, but it was possible that Fine Gael would not be able to put together a government that could command a majority in the Dail, even in coalition with another party.

5. There had recently been an important change in the position of Fianna Fail, and of Mr Haughey in particular, on the Anglo-Irish Agreement. Mr Haughey had made it clear in public



speeches that, if he came back into office, he would regard himself as bound by the Anglo-Irish Agreement and would continue to work it, though he would look at the possibility of renegotiating it. Dr FitzGerald believed that, once Mr Haughey was back in office, he would probably not in practice try to renegotiate the agreement when he took stock of the difficulties in trying to do so. Dr FitzGerald therefore believed that the Agreement was secure, particularly in view of the things which opposition spokesmen on Northern Ireland affairs had been saying in the United Kingdom.

6. But it would be politically impossible for Mr Haughey to introduce legislation to ratify Irish accession to the ECST. If such legislation were in place by the time Mr Haughey became Taoiseach, he would not seek to repeal it or to come out of the ECST; but he could not introduce it.

7. There was thus a political opportunity to introduce and pass legislation for the ratification of the ECST, which would be very unlikely to recur if Mr Haughey returned as Taoiseach after a general election.

8. The Taoiseach said that it would be "a tragedy" if the opportunity was lost. The ratification of Irish accession to the ECST would "put the coping stone" on the Anglo-Irish Agreement. Failure to ratify would be a serious setback for the process which you and he had started and carried forward.

9. The Taoiseach stressed once again that it was politically essential for him to have some progress on three-man courts in Northern Ireland, if the ratification legislation were to pass in the Irish Parliament. He reminded me that it had been made clear in the discussions leading up to the Hillsborough Agreement that the ratification of Irish accession to the ECST would depend upon significant progress in improving the administration of justice in Northern Ireland. He was very



anxious that there should be no recriminations as between him and you, if in the event ratification legislation failed because we had not been able to make even a limited move in the direction of three-man courts.

10. The Taoiseach said that he was putting the ratification legislation top of his priorities, despite the effect that he recognised that that could have on his own political situation. He was clearly very anxious that you should be in no doubt about that.

11. Because of the great political importance, to both Governments, of sustaining the Anglo-Irish Agreement and the improvement in Anglo-Irish relations which it represented, the Taoiseach very much hoped that you would take no final decision on the introduction of three-man courts without first having had an opportunity for a further exchange of views with him. He would very much want to talk to you himself, if it seemed likely that an adverse decision was going to be taken.

12. The Taoiseach has now sent you a personal message which --- underlines this last point. I attach a copy of that message herewith.

RA

ROBERT ARMSTRONG

1 October 1986

10.78.
Thank you
EDP

MR. POWELL
MR. NORGROVE
MR. BEARPARK

THURSDAY 2 OCTOBER

SA | I have re-arranged the Northern Ireland meeting for 1600 hours on 2 October. The Lord President, the Lord Chancellor, the Foreign Secretary, the Secretary of State for Northern Ireland and the Attorney General will attend. The Home Secretary will be in Sheffield and I have asked his office if he can put his views in writing. Sir Robert Armstrong is meant to be at the Opera.....

E(LF) is back to its original time of 12 noon.

CP.

C.R.

22 September 1986