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Foreign and Commonwealth Office

London SW1A 2AH

1 December 1988

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Dear Charles,

European Council: Rhodes: Bilateral with the Taoiseach

The Prime Minister has agreed to see the Taoiseach in the margin of the European Council in Rhodes. Mr Haughey is now expected to attend.

The Prime Minister will wish to bring home to the Irish the absolute requirement that the warrants for Ryan's extradition are backed. A brief on this is enclosed. On security cooperation (paragraphs 3 and 4) we need to follow up the Prime Minister's latest message to the Taoiseach and also to dispel any Irish complacency. The Irish on the other hand may well complain that we have consulted them insufficiently over recent security measures (paragraph 5). In general, the Prime Minister might confirm that our approach is one of fairness as well as firmness. Hence our concern to secure advance on the political front in Northern Ireland and to get the Irish to face up to the implications of their commitments under the Agreement (paragraph 6). Recent security measures need to be seen in the context of legislation on fair employment (paragraph 7), education reform and help for West Belfast (on which a further £55 million has just been pledged). Finally, it may be appropriate to give an impetus to the Review of the working of the Conference under the Agreement (paragraph 8).

On security cooperation there has been no reply to the Prime Minister's letter of 2 November in which she welcomed the Taoiseach's personal attention to the issues of training and pre-emptive intelligence, and sought his help in ensuring direct communications between the Army and the Garda in an emergency. This issue is clearly difficult for the Irish: but the case for emergency communications is founded in real operational need. The Irish are likely however to hark back to the need for RUC accompaniment of Army patrols. The Hillsborough communique restated our policy of ensuring as rapidly as possible that there should be a police presence in operations involving direct contact with the community.

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We also need to correct firmly the impression given, particularly by Mr Collins (Justice Minister) in a debate in the Dail on 16 November, that we are now wholly satisfied with security cooperation. Police relationships are certainly much better; but it is wrong to claim, as Collins implied, that this is yet producing adequate results. Lenihan is clearer about the need for security cooperation; when Sir Geoffrey Howe visited Dublin on 7 November Lenihan usefully stressed the joint security problem facing the two countries.

The measures taken as a result of the review of security options in Northern Ireland have posed problems of political handling for the Irish. The restrictions on access to the media followed their own law in large measure. But the constraints on the right to silence went somewhat beyond it, and they have some trouble with this, the restrictions on remission and the candidate's declaration. Irish Ministers have however chosen to voice their concern to us in private, and to avoid public comment. It is clear that the more warning we can give them of such measures and the fuller explanation of need, the better the reception is likely to be. The Irish regard the Anglo-Irish Agreement as containing a commitment on our part to consult. We disagree. But this is a theme on which they will harp in the Review, and confirmation of the assurance in the Prime Minister's latest letter that we will keep in close touch will stand us in good stead.

?? It should be possible to convey the fact that while security is important it is not our only concern for Northern Ireland. We must improve the political and social environment in the North for the benefit of all. Haughey continues to regard devolution as a side issue and to hope, quite unrealistically, for an early change in the status of Northern Ireland. It is worth pointing out that he cannot hope for a major change in the constitutional relationship with the Republic in the foreseeable future. Both sides have to live with the existing situation. Political progress within Northern Ireland will only be achieved if the constitutional parties there come to a meeting of minds on the way they are to live together. The Northern Ireland Secretary is minuting separately on this issue. But our current stress on moves towards devolution rather than its immediate attainment, coupled with firm support for the Anglo-Irish Agreement, represent the most fruitful approach for Haughey as well as ourselves. Meanwhile it is important that the signals which the Irish give to both the SDLP and the Unionists do not have the effect of making progress more difficult. Haughey's recent efforts to engage the Unionists in dialogue seem unlikely to succeed, even though Unionists saw in them the possibility of an unholy alliance

/against



against the Anglo-Irish Agreement. Haughey needs still to be discouraged from indulging in such by-play and to be reminded not only of the commitment to democratic choice in Article 1 of the Agreement (which he personally endorsed at the summit meetings in 1980) but, more immediately, to Article 4, under which the Irish "support" our policy of securing devolution on a widely acceptable basis.

Northern Ireland officials have put a great deal of effort into discussions with the Irish over fair employment: the Irish have been consulted thoroughly at each stage, and as a result they have been reasonably helpful. We do however look for more support when the Bill is published. Irish endorsement of the legislation would have a dramatic effect, particularly in our efforts to block the MacBride campaign in the United States. Haughey sees nothing wrong with the MacBride Principles, which ostensibly promote fair employment but which in fact are liable to deter investment. By contrast Lenihan is on record that our proposed legislation should supersede the MacBride Principles. Haughey needs persuading that the new legislation will provide effective support for minority community aspirations.

The current Review of the working of the Conference is important. Partly because of Mr Haughey's illness the Irish have not fully developed their thinking about the Review and officials have shown some signs of using the delay to build up a negative picture of progress under the Anglo-Irish Agreement. This is not reflected at the political level. Indeed the debate in the Dail on 16 November demonstrated a generally reasonable attitude towards the Review on the part of the Irish. Nevertheless we expect that Mr Haughey will wish to use it to put his stamp on the Agreement in some way. It would be useful for the Prime Minister to confirm with him that our intention is that the Review should be thorough-going, but positive and forward-looking, and should not be the excuse for pursuing unattainable objectives thereby souring the atmosphere for practical cooperative measures.

I am sending copies of this letter and its enclosure to Stephen Pope (NIO), Philip Mawer (Home Office), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours ever, L Parker

(L Parker)
Private Secretary

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EUROPEAN COUNCIL, RHODES 4/5 DECEMBER

BILATERAL WITH THE TAOISEACH

Extradition of Father Patrick Ryan from the Republic of Ireland

Our objective

To get Ryan extradited from the Republic but without putting
overt political pressure on Irish law officers.

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Our arguments

(a) Accept that Murray (Irish Attorney General) has to consider the case under the law. But in view of the gravity of the charges and the knowledge that warrants were out for Ryan it was quite wrong to have ignored our request that he be held on his arrival in the Republic.

(b) If he disappears worst impressions of Irish attitudes will be confirmed.

(c) No political pressure but hope that Murray sees that the case against Ryan is strong enough to ensure that the warrants are backed quickly.

(d) Standing up to terrorism means taking brave decisions. Belgian refusal to extradite was disgraceful in itself, but the arguments they used (imprecision of charges) do not apply in relation to the Republic.

(e) Problems with your law which must be corrected in the context of the Review.

His response

(a) We know where Ryan is: he has not left the country.

(b) The Attorney must satisfy himself without political pressure that there is a clear intention on British part to prosecute based on a sufficiency of evidence. He will need time to do this.

(c) Must realise how sensitive extradition is. To imply that we are acting in bad faith is untrue and will complicate our ability to co-operate on extradition. Apparent public pressure on Irish to kowtow is widely resented. Do not inflame the situation.

(d) British justice is deeply mistrusted in Ireland, with most people doubting whether an Irishman can get a fair trial. Guildford Four are universally thought to be innocent.

(e) We shall be looking at the law in the course of the Review in the New Year. Views have been exchanged in the Conference.

Your response

(a) Good. But how will you stop him leaving without endorsing the warrant or impounding his passport?

(b) Noted. Both sides committed to effective extradition. Quick decision needed. The length of time taken by Murray is inordinate.

(c) Note renewal of extradition act likely next week. We are looking forward to the Review in the spring.

(d) Have no reason whatever not to trust British justice. Must trust the courts. Cannot have judgement by political convenience. (We do not assume Ryan's guilt).

(e) You committed yourself to changing the law if it proves unsatisfactory. Unwillingness to issue a provisional warrant deeply disturbing, as we understood there was no problem with this in principle. Length of time a provisional warrant is valid (2-3 days) clearly inadequate if Attorney's decision cannot be made within the deadline. Other problems also with the Act.

Press line

To be determined on the spot. Starting point might be:

"A frank exchange of views on a number of issues. Both sides confirmed that effective extradition arrangements were essential."

Background

1. Dublin telno 593 is attached.

2. Under the Extradition Act introduced in 1987, due to be renewed and made permanent in December (2 day debate in the Dail next week) the Irish Attorney has to satisfy himself before warrants are backed that there is a clear intention to prosecute based on a sufficiency of evidence. The law has yet to be tested in a terrorist case. It has worked in one non-terrorist criminal case where the accused did not seek to mount a challenge.

3. Questions of legal propriety apart, our objection to the law is that, even if warrants were backed, Irish courts would go behind the Attorney's decision, thus ensuring a pre-trial and probable frustration of extradition. We have not got that far in the Ryan case since warrants have yet to be backed.

4. Under Irish law the Garda may apply for a provisional warrant valid for 3 days (but often only 2 since the second day begins at midnight after its issue) if they know that valid warrants are on their way from the UK. The period is manifestly inadequate for the workings of the Extradition Act (as now demonstrated by Murray's long consideration of the warrants); and in any case no warrant was issued for Ryan's arrest.

5. There is no hope of the Irish improving their law this December. Indeed there are pressures to stop extradition to the UK altogether. Haughey will probably resist them. We are looking to the annual review due in the New Year in which, without accepting the new law, we seek a number of changes: apart from provisional warrants, these include getting hearings transferred from district courts (where there tend to be rogue decisions) and ensuring that if a court reaches an absurd verdict the accused may be held in custody pending an appeal by the state. (This would have helped in the case of McVeigh.)

6. The Irish are trying to reactivate the provisions for extraterritorial jurisdiction. In Northern Ireland these provide for trial in the other's jurisdiction of most terrorist cases. In Great Britain only explosives cases are covered. There are a number of difficulties, including over the provision of evidence. The Attorney General has however agreed to consider whether some cases might be taken extraterritorially, but as an adjunct to extradition, not its replacement. The Irish ostensibly agree that it complements extradition only. Only two of the charges against Ryan could be covered in an extraterritorial case, and there would be difficulty getting key witnesses to testify.