

SUBJECT MEETING Rhodes CONFIDENTIAL
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10 DOWNING STREET

LONDON SW1A 2AA

2 December 1988

From the Private Secretary

Dear Stephen,

**PRIME MINISTER'S MEETING WITH THE PRIME MINISTER OF BELGIUM
AT THE RODOS PALACE HOTEL IN RHODES ON 2 DECEMBER**

The Prime Minister met Mr. Martens for some 45 minutes this morning before the beginning of the European Council. The only subject of discussion was the Ryan case.

The Prime Minister said that we had been utterly dismayed at the Belgian Government's decision not to extradite Ryan. She then took Mr. Martens through our points (subsequently given to the press):

- Ryan was charged with serious terrorist offences.
- He was arrested at Belgian instigation.
- It was the Belgian authorities who asked us to make an extradition request.
- Our request was prepared with the full help and co-operation of the Belgian authorities. All the information known to us had been given to them.
- That request accompanied by sworn statements made by all the witnesses was delivered to the Belgian authorities on 20 September.
- The Belgian Court of First Instance authorised Ryan's extradition on 26 September.
- The Belgian Court of Appeal upheld the extradition decision on 12 October.
- According to press reports, not denied by the Belgian Government, the Court of Appeal advised the Minister of Justice to proceed with the extradition.
- At no stage were we given any reason to suppose that any legal problems existed.
- But on 25 November the Belgian Government nonetheless decided against extradition.

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- Despite frequent assurances that we would receive at least 24 hours advance notice of the Belgian decision, we only learned of it by chance shortly before Ryan was expelled. It was clear that we were not supposed to know until after Ryan had arrived in Ireland.
- We therefore had no time to alert the Irish authorities in advance.

The Prime Minister added that the Belgian Government's attitude contrasted vividly with all the co-operation we had given to Belgium over those charged in relation to the Heysel Stadium events. We were mystified and deeply wounded by the Belgian Government's decision. Our confidence in them had been dented.

Mr. Martens said that the Belgian Government's decision had been taken on legal grounds and no others. He loathed the IRA. Belgium had shown that it was prepared to extradite suspected terrorists in the past despite the risks, as in the case of the two Basque terrorists in 1984. They had gone ahead with that because the legal position had been absolutely clear. It was important also to understand where responsibility for these decisions lay in Belgium. It was for the Minister of Justice to decide, consulting the Cabinet if he so wished. The legal authorities gave advice, but the Government decided. In the recent case, there had been no question of a political compromise. Nor had there been any disagreement within the Cabinet about rejecting the request. The grounds for rejection had been the vague nature of the charges against Ryan and the matter of "double-incrimination" by which he meant the absence of any offence under Belgian law which corresponded exactly to the charge of conspiracy. He wished to emphasise with the greatest conviction that these had been the only grounds on which the decision had been reached. So far as communicating the decision to the United Kingdom was concerned, the Belgian Foreign Minister had telephoned Sir Geoffrey Howe some hours before deportation was due to take place. The British Ambassador had also been formally told of the decision before Ryan left the country. He wished to assure the Prime Minister that, had the legal grounds for extradition existed, the Belgian Government would have had no hesitation in extraditing Ryan.

The Prime Minister said that it was hard to understand how there really could have been legal problems. After all the Belgian courts had found that extradition was justified. We had worked closely with the Belgian prosecuting authorities and they had never pointed out any legal difficulties in the case we had prepared. It was very discouraging that, though we had worked closely with the Belgian authorities throughout, they had nonetheless rejected our request. Mr. Martens' account of the steps taken to inform us of the decision did not tally with her understanding. In fact the telephone call to Mr. Tindemans had been placed from our side; and Ryan left the country before we had any formal statement of the reasons for rejection of our extradition request.

She did not see how it could be argued that the Belgian Government had taken a legal decision when all the legal authorities had found in favour of extradition.

Mr. Martens said that, under Belgian law, certain requirements had to be met in order to sustain a charge of conspiracy. The names of those involved in the conspiracy had to be provided, there had to be clear evidence of membership of an organisation, and the organisation's aim had to be to cause damage to persons or property. The Minister of Justice had found that these requirements were not fully met in the British Government's request. He had made two observations in his report to the Cabinet: first the charges were very vague and amounted to oscuri libelli under Belgian law: second no evidence was provided of Ryan's membership of an organisation.

The Prime Minister said that, if these points were really fundamental, it seemed astonishing to her that they had not been picked up either by the prosecuting authorities or by the courts. We had provided all the information available to us on Ryan's activities, either in the extradition request or through security liaison. As to organisations, the Belgian authorities were presumably not unaware of the PIRA. Our information suggested that the Court of Appeal had advised the Minister that extradition was justified. Mr. Martens quoted various legal authorities to show that the Minister of Justice was not obliged to accept the advice of the courts in extradition cases. The Prime Minister said that it still seemed extraordinary to her. She could only conclude that the Government's decision had been taken in defiance of legal advice. What really riled her was that she could not see how a political body could claim to take a decision on legal grounds.

Mr. Martens said there was another point. The extradition request referred to activities by Mr. Ryan within British jurisdiction on 30 June 1988. In fact Ryan had been in Belgium on that date. The Prime Minister said that this comment showed a lack of understanding of the law. Both Britain and Belgium had accepted the European Convention on the Suppression of Terrorism which made an offence in one jurisdiction an offence in the other.

The Prime Minister continued that it was clear that further discussion would not help. She would have to tell the press afterwards that we were deeply dismayed by the Belgian decision which had seriously undermined our joint efforts against terrorism. It was impossible to reconcile with the co-operation which we had given over the Heysel Stadium events. And it was a serious blow to the confidence between our two countries.

Mr. Martens said that the Belgian Government had acted properly in the terms of their law. He felt that they could hold their heads up: they had shown readiness to extradite in the past. They would have done so in this case had the British request met the legal requirements.

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I am copying this letter to Michael Saunders (Law Officers' Department), Mike Maxwell (Northern Ireland Office), Philip Mawer (Home Office) and Trevor Woolley (Cabinet Office).

Yours sincerely,
C.D. Powell
(C.D. POWELL)

J.S. Wall, Esq.,
Foreign and Commonwealth Office.

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Seen by PAB 2112

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FOLLOWING FOR ANDY BEARPARK, 10 DOWNING STREET, FROM CHARLES POWELL IN RHODES

PRIME MINISTER'S MEETING WITH BELGIAN PRIME MINISTER

THE PRIME MINISTER HAD A 45 MINUTE MEETING WITH MR MARTENS THIS MORNING DEVOTED ENTIRELY TO THE RYAN CASE. THE TONE WAS ROBUST.

THE PRIME MINISTER SAID THAT WE HAD BEEN UTTERLY DISMAYED AT THE BELGIAN GOVERNMENT'S DECISION NOT TO EXTRADITE RYAN. SHE THEN TOOK MR MARTENS THROUGH OUR POINTS (SUBSEQUENTLY GIVEN TO THE PRESS):

- RYAN WAS CHARGED WITH SERIOUS TERRORIST OFFENCES.
- HE WAS ARRESTED AT BELGIAN INSTIGATION.
- IT WAS THE BELGIAN AUTHORITIES WHO ASKED US TO MAKE AN EXTRADITION REQUEST.
- OUR REQUEST WAS PREPARED WITH THE FULL HELP AND CO-OPERATION OF THE BELGIAN AUTHORITIES. ALL THE INFORMATION KNOWN TO US HAD BEEN GIVEN TO THEM.
- THAT REQUEST ACCOMPANIED BY SWORN STATEMENTS MADE BY ALL THE WITNESSES WAS DELIVERED TO THE BELGIAN AUTHORITIES ON 20 SEPTEMBER.
- THE BELGIAN COURT OF FIRST INSTANCE AUTHORISED RYAN'S EXTRADITION ON 26 SEPTEMBER.
- THE BELGIAN COURT OF APPEAL UPHELD THE EXTRADITION DECISION ON 12 OCTOBER.
- ACCORDING TO PRESS REPORTS, NOT DENIED BY THE BELGIAN GOVERNMENT, THE COURT OF APPEAL ADVISED THE MINISTER OF JUSTICE TO PROCEED WITH THE EXTRADITION.
- AT NO STAGE WERE WE GIVEN ANY REASON TO SUPPOSE THAT ANY LEGAL PROBLEMS EXISTED.
- BUT ON 25 NOVEMBER THE BELGIAN GOVERNMENT NONETHELESS DECIDED AGAINST EXTRADITION.
- DESPITE FREQUENT ASSURANCES THAT WE WOULD RECEIVE AT LEAST 24 HOURS ADVANCE NOTICE OF THE BELGIAN DECISION, WE ONLY LEARNED OF IT BY CHANCE SHORTLY BEFORE RYAN WAS EXPELLED. IT WAS CLEAR THAT WE WERE NOT SUPPOSED TO KNOW UNTIL AFTER RYAN HAD ARRIVED IN IRELAND.
- WE THEREFORE HAD NO TIME TO ALERT THE IRISH AUTHORITIES IN ADVANCE.

THE PRIME MINISTER ADDED THAT THE BELGIAN GOVERNMENT'S ATTITUDE CONTRASTED VIVIDLY WITH ALL THE CO-OPERATION WE HAD GIVEN TO BELGIUM OVER THOSE CHARGED IN RELATION TO THE HEYSEL STADIUM EVENTS. WE WERE MYSTIFIED AND DEEPLY WOUNDED BY THE BELGIAN GOVERNMENT'S DECISION. OUR CONFIDENCE IN THEM HAD BEEN DENTED.

MARTENS SAID THAT THE BELGIAN DECISION HAD BEEN TAKEN SOLELY ON LEGAL GROUNDS. BELGIUM HAD BEEN READY TO EXTRADITE IN THE PAST, DESPITE THE RISKS. HE CITED THE CASE OF THE BASQUE TERRORISTS EXTRADITED IN 1984. UNDER THE BELGIAN CONSTITUTION IT WAS FOR THE GOVERNMENT TO TAKE THE DECISION, BUT IT WAS NONETHELESS A LEGAL DECISION. THE GROUNDS ON WHICH THE GOVERNMENT HAD DECIDED NOT TO EXTRADITE WERE THE VAGUENESS OF THE CHARGES AGAINST RYAN, AND THE LACK OF WHAT HE DESCRIBED AS DOUBLE INCRIMINATION, I.E. THE FACT THAT THERE WAS NO OFFENCE UNDER BELGIAN LAW CORRESPONDING EXACTLY IN ALL RESPECTS TO CONSPIRACY UNDER BRITISH LAW. AS FOR LETTING US KNOW THEIR DECISION, THE FOREIGN MINISTER HAD INFORMED SIR GEOFFREY HOWE IN ADVANCE OF RYAN'S DEPORTATION. THE BELGIAN GOVERNMENT'S DECISION HAD ALSO BEEN CONVEYED TO OUR AMBASSADOR BEFORE RYAN DEPARTED.

THE PRIME MINISTER CHALLENGED A NUMBER OF MARTEN'S STATEMENTS. IT WAS HARD TO UNDERSTAND HOW THE BELGIAN GOVERNMENT COULD CLAIM TO HAVE TAKEN THE DECISION NOT TO EXTRADITE ON LEGAL GROUNDS, WHEN ALL THE ADVICE FROM THE BELGIAN PROSECUTING AUTHORITIES AND THE CONCLUSIONS OF THE BELGIAN COURTS SAID THAT EXTRADITION WAS JUSTIFIED. IT DEFIED BELIEF THAT, IF THERE WERE WEAKNESSES IN OUR LEGAL CASE, THEY WOULD NOT HAVE BEEN IDENTIFIED BY THE PROSECUTING AUTHORITIES OR BY THE COURTS. THE ONLY CONCLUSION WE COULD REACH WAS THAT THE GOVERNMENT'S DECISION HAD BEEN TAKEN IN CONTRADICTION TO AND IN DEFIANCE OF LEGAL ADVICE. IN PRACTICE IT SEEMED THAT THE LEGAL AUTHORITIES HAD CONCLUDED THAT EXTRADITION WAS JUSTIFIED. BUT THAT CONCLUSION HAD BEEN OVERTURNED BY THE CABINET WHICH WAS A POLITICAL BODY. SHE WOULD HAVE TO TELL THE PRESS AFTERWARDS THAT WE WERE DEEPLY DISMAYED BY THE BELGIAN DECISION WHICH HAD SERIOUSLY UNDERMINED OUR JOINT EFFORTS AGAINST TERRORISM. IT WAS IMPOSSIBLE TO RECONCILE WITH THE CO-OPERATION WHICH WE HAD GIVEN OVER THE HEYSEL STADIUM EVENTS. AND IT WAS A SERIOUS BLOW TO THE CONFIDENCE BETWEEN OUR TWO COUNTRIES.

THE PRIME MINISTER SUBSEQUENTLY SPOKE IN MORE OR LESS THESE TERMS TO THE PRESS. THE TRANSCRIPT WILL BE AVAILABLE TO YOU.

PLEASE PASS ADVANCE COPIES OF THIS TELEGRAM TO FCO, LAW OFFICERS' DEPARTMENT, NORTHERN IRELAND OFFICE AND HOME OFFICE.

THOMAS

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TELEGRAM - CONFIDENTIAL - FLASH

TO CABINET OFFICE

REPEATED FOR INFORMATION IMMEDIATE BRUSSELS AND DUBLIN

FOLLOWING FOR ANDY BEARPARK, 10 DOWNING STREET, FROM CHARLES POWELL IN RHODES

PRIME MINISTER'S MEETING WITH BELGIAN PRIME MINISTER

The Prime Minister had a 45 minute meeting with Mr. Martens this morning devoted entirely to the Ryan case. The tone was robust.

The Prime Minister said that we had been utterly dismayed at the Belgian Government's decision not to extradite Ryan. She then took Mr. Martens through our points (subsequently given to the press):

- Ryan was charged with serious terrorist offences.
- He was arrested at Belgian instigation.
- It was the Belgian authorities who asked us to make an extradition request.
- Our request was prepared with the full help and co-operation of the Belgian authorities. All the information known to us had been given to them.
- That request accompanied by sworn statements made by all the witnesses was delivered to the Belgian authorities on 20 September.
- The Belgian Court of First Instance authorised Ryan's extradition on 26 September.
- The Belgian Court of Appeal upheld the extradition decision on 12 October.

- According to press reports, not denied by the Belgian Government, the Court of Appeal advised the Minister of Justice to proceed with the extradition.

- At no stage were we given any reason to suppose that any legal problems existed.

- But on 25 November the Belgian Government nonetheless decided against extradition.

- Despite frequent assurances that we would receive at least 24 hours advance notice of the Belgian decision, we only learned of it by chance shortly before Ryan was expelled. It was clear that we were not supposed to know until after Ryan had arrived in Ireland.

- We therefore had no time to alert the Irish authorities in advance.

The Prime Minister added that the Belgian Government's attitude contrasted vividly with all the co-operation we had given to Belgium over those charged in relation to the Heysel stadium events. We were mystified and deeply wounded by the Belgian Government's decision. Our confidence in them had been dented.

Martens said that the Belgian decision had been taken solely on legal grounds. Belgium had been ready to extradite in the past, despite the risks. He cited the case of the Basque terrorists extradited in 1984. Under the Belgian constitution it was for the government to take the decision, but it was nonetheless a legal decision. The grounds on which the Government had decided not to extradite were the vagueness of the charges against Ryan, and the lack of what he described as double incrimination, i.e. the fact that there was no offence under Belgian law corresponding exactly in all respects to conspiracy under British law. As for letting us know their decision, the Foreign Minister had informed Sir Geoffrey Howe in advance of Ryan's deportation. The Belgian Government's decision had also been conveyed to our Ambassador before Ryan departed.

The Prime Minister challenged a number of Marten's statements. It was hard to understand how the Belgian Government could claim to have taken the decision not to extradite on legal grounds, when all the advice from the Belgian prosecuting authorities and the conclusions of the Belgian courts said that extradition was justified. It defied belief that, if there were weaknesses in our legal case, they would not have been identified by the prosecuting authorities or by the courts. The only conclusion we could reach was that the Government's decision had been taken in contradiction to and in defiance of legal advice. In practice it seemed that the legal authorities had concluded that extradition was justified. But that conclusion had been overturned by the Cabinet which was a political body. She would have to tell the press afterwards that we were deeply dismayed by the Belgian decision which had seriously undermined our joint efforts against terrorism. It was impossible to reconcile with the co-operation which we had given over the Heysel Stadium events. And it was a serious blow to the confidence between our two countries.

The Prime Minister subsequently spoke in more or less these terms to the press. The transcript will be available to you.

Please pass advance copies of this telegram to FCO, Law Officers' Department, Northern Ireland Office and Home Office.

C.D.P.
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