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Luncheon with British Attorney General, London, 12th October, 1987

1. The lunch had originally been arranged to promote a personal relationship between myself the Lord Chancellor and the British Attorney General. Havers (who had been promoting the idea since last March) did not attend because of his current ill health. All the arrangements were made and the luncheon hosted by Richard Ryan, Counsellor, London Embassy.

2. When the conversation turned to matters of current political interest I outlined the current difficulties facing the Government on the Extradition Act including the stance taken by Fitzgerald, Barry and Spring, and stated that I personally felt that it might ultimately prove impossible for the Government, with the best will in the world, to ensure the Act came into force. Mayhew was willing to acknowledge these difficulties and the possibility of the Act not coming into force was obviously no surprise to him. He had no particular reaction at this point to such a prospect and I went on to speak of the advantage of the existing procedures for extradition which are, in essence more straightforward than those between any other two countries, notwithstanding the legal difficulties which arose from time to time. Recent judicial decisions moderating the effect of the political offence exception had gone a long way to meet British objections to current procedures and that if the Supreme Court granted an Order for extradition in the Russell case these would be largely, if not entirely, removed. He showed keen interest in this prospect I having indicated that I was "optimistic"

for such a result, although this was, I said, purely speculative.

He accepted the advantages of the existing system.

Later on when he made the observation that the introduction of a prima facie requirement in extradition cases would be a long way from a 'favoured nation' arrangement.

I did not comment on the favoured nation concept but, pointed out that the existing 'backing of warrants' system was very much a favoured nation type of arrangement and something for which all too often we were given little credit.

This he agreed.

3. He made no special comment on the prospect of the Extradition Act not coming into force confining himself to observing, in passing, that he did not have to tell me what the repercussions would be from London and the Unionists, in such an event.

I take the view that if he foresaw serious and lasting damage being done to the Agreement, or the Anglo Irish process under it, that he would have made a point of conveying this. The impression I got was that in such an event the Agreement would have a rough passage for a period after which the process would continue on course.

4. Having at one stage pointed out the disadvantages which the focal point of a deadline on December 1st had created I added that if the operation of the Act were postponed my own personal view was that a general postponement rather than a postponement to a specific date could be more advantageous as it would avoid the creation of another focal point down the line for which a climate hostile to progress in this area could be built up in advance.

5. He raised two matters with which we are mutually concerned and which he expressed a desire to finalise. These were:-

- (a) Agreement on the check list of steps to be followed by the British authorities in preparing a warrant for extradition from this country. (This is close to completion. In fact this has been the subject of further discussion between an official from my office and Mayhew's in London on Tuesday. The British have to come up with further documentation concerning their proposals. I intend writing to Mayhew to confirm that the matter will be expedited as soon as we hear from his office.
- (b) The second matter is related to the so-called certification procedure to be followed in future in respect of applications for extradition to Britain. The proposal is that the British Attorney General would furnish to the Irish Attorney General, in respect of any application for extradition a certificate stating that the application for extradition is being made for the purpose of placing the person concerned on trial for the offences stated in the warrants and that such application is based on a sufficiency of evidence. I expect to have a memorandum on a proposed formula for the Taoiseach early next week.

6. He also expressed concern on two other matters which were:-

- (a) A letter from Garret FitzGerald to the London Times on the 7th October had considerably offended Barry

Shaw, the Northern D.P.P., because it contained a claim that the ending of the "Supergrass Trials" was an achievement and consequent upon the Anglo Irish Agreement. He had to stop Shaw writing to the London Times and hoped that a statement at a press conference that afternoon by Tom King would deal with the matter. His point was that decisions of the D.P.P. not to prosecute in "Supergrass Trials" were based on proper criteria and not political policy and any suggestion otherwise was improper. I pointed out that the British side repeatedly claimed the ending of supergrass trials as evidence of progress under the Agreement in the administration of justice ("not by me" - Mayhew) and specifically Tom King. While I accepted that the D.P.P. must take his decisions in accordance with proper criteria policy considerations did apply to police operations which initiated the supergrass type of trial whereby people were offered large rewards and homes abroad to give evidence against alleged culprits.

- (b) He also complained of a link, in the sense of a precondition, being made on the Irish side between the extradition legislation and the Birmingham Six and Guilford Four cases. He qualified this by saying he could understand political pressure being put on in relation to the Guilford Four since this concerned a decision of the Home Secretary whether or not to refer the cases to the Court of Appeal but the Birmingham

Six were before the courts and such pressure is inappropriate. I pointed out that the Government were making no such link between those cases and the extradition Act and indeed the Minister for Foreign Affairs had publicly stated this. He accepted that there was a general link between such cases and extradition in the sense that public concern over them affected public attitudes towards extradition generally. Mayhew said a public statement repeating the Government's position on this point would be very desirable and helpful. I said consideration would be given to this possibility.

7. I do not think Mayhew had any brief to raise these latter points but were raised by him as an Attorney General concerned with the undesirability of the courts or the D.P.P. appearing to be objects of political pressure.
8. From the point of view of establishing a ^{rapport} ~~report~~ the meeting was quite satisfactory.

Explaining the difficulties concerning the Extradition Act and putting them in context was undoubtedly helpful. Since Mayhew is not known as an enthusiastic supporter of the Anglo Irish Agreement it may be that the nature and extent of any 'fall out' from an impasse on extradition would not be of great concern to him. Nonetheless if he was aware of any likelihood of any fundamental problems arising in the operation of the Agreement, as already

indicated, I feel he would have made a point of conveying them.

9. With the return of M.P.s to Westminster imminent Mr. Richard Ryan is proposing to make contact with a series of M.P.s with a known interest in these matters to explain the difficulties facing the Government with a view to minimizing as far as possible the strength of any negative reaction from these quarters in the event of the Act not proceeding.

10. Mr. Ryan's memo. on the meeting attached.

J.L.M.

15/10/87

P.S. The Northern D.P.P. has written to the Times after all. Copy attached.



CONFIDENTIAL - BY COURIER SERVICE

12 October 1987

Dear Assistant Secretary

Attorney General Murray's lunch
with the British Attorney General, 12 October

1. The conversation was very amiable and clearly served to establish good personal relations. Mayhew was in no hurry to get down to specific business but, when this arose, the pace quickened. The following main points were covered.
 - Mayhew said he appreciated "politically" the difficulties involved in going ahead with the Convention. He took without quarrel Mr Murray's outline of the background leading to the present situation.
 - He acknowledged our Government's measured approach to the matter. His comments and his overall demeanour were such as to imply that he did not see non-delivery of the Convention on 1 December as permanently harming the Agreement or the wider relationship. At the same time he did say, as it were in passing, that "I do not have to tell you what the repercussions will be, from the Unionists of course, and here in London". [Note: it may be taken as read that he felt he did not have to labour this point, and that his views in detail, previously given (and reported to you) were known to Mr Murray.]
 - He said there were a few things which could be done which would be helpful.

.../

These were:

- 1.- the finalisation of the check-list for warrant procedures;
 - 2.- agreement on the certification procedure for warrants
(a letter from the British Attorney General to ours certifying that the evidence behind the warrant in question had been scrutinised and that he was satisfied as to the grounds for prosecution);
 - 3.- a public statement as to the fact that the Birmingham Six case, the Guildford Four case and the Maguires case are not linked to the present Extradition Act dilemma would be very helpful. Mr Murray outlined the very real concerns - which the Government shares - in these cases, and reminded Mayhew that the Government has not made any such linkage. Overall, however, he took the point and said he would look into the possibility. He also reiterated the elements constituting the real linkage involved.
- Mayhew raised separately a fourth matter where he obviously felt that positive movement could be helpful. This was the Russell case where a positive decision (to extradite) would helpfully extend the extradition framework further. Mr Murray took this point and, in doing so, took the opportunity to outline how well - technical difficulties aside - the extradition practise is working. Again, Mayhew declined to take issue or to take advantage to hammer home (as he has in the past) the need for delivery on the Convention.
 - Mayhew said that Barry Shaw, head of the DPP in Northern Ireland, is up in arms about Garret FitzGerald's letter to the Times (7 October) in which the ending of so-called "supergrass trials" is claimed as the first of 10 areas of progress under the Agreement. It has made necessary a statement by Tom King in a press conference this afternoon in which King will answer this. Mayhew had sympathy for Shaw in this on the basis that Shaw is responsible to no-one in his decision - making

process as to what prosecutions should take place, and how.

Comment

Mayhew did not exhibit the same hardness shown in previous conversations. He showed concern to hear out our Attorney's views and to establish a good personal relationship. It must be assumed, however, that he presumed that Mr Murray was in no doubt as to his views on reform of the administration of justice in the North.

He left the impression that he took it more or less for granted that the Convention will not come into force on 1 December; he made it clear - albeit in passing - that there would be major repercussions in that event; but one could detect in him a sense that the relationship with Mr Murray/the Agreement/Anglo-Irish relations will not stop in their tracks on that account, that these things will be resumed.

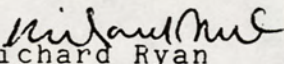
A guess at Mayhew's basic frame of mind would be that

- he probably took the likely scenario on the Convention from the Taoiseach's speech yesterday and, in a sense, this eased the business side of his meeting today;
- he believes that the Northern Ireland judiciary's interests in the status quo are safe, at least for the foreseeable future, and this further relaxed the meeting;
- he set out to establish a good working relationship with Mr Murray and, indeed, to demonstrate this with (as he saw it) a few helpful suggestions as outlined above;
- he may take a measure of personal satisfaction from the likelihood that Dublin will not have its way on the courts issue, and that the likely non-implementation of the Convention on 1 December will have "repercussions", but he was above showing any hint of this.

.../

I attach a copy of a Steering Note prepared for Mr Murray before the meeting.

Yours sincerely


Richard Ryan
Counsellor

SECRET

Attorney General

Meeting with Sir Patrick Mayhew, QC, M.P., 12 October

STEERING NOTE

1. Mayhew is our most implacable opponent within the new British Government regarding the question of reform of the administration of justice in Northern Ireland. He is very close to Lowry and the judiciary and has effectively taken Hailsham's place in Government in this regard. As Solicitor General in November 1985 he had to support the Agreement but we may conclude that he would and will use his present position and influence to prevent the sort of movement that we need in the legal area.
2. Mayhew may well not be personally distressed at the thought that the Anglo-Irish relationship may be entering a phase of strain, with the obvious implications for the Agreement as a whole at least for some time. He is most unlikely to be in a frame of mind to explore positively ideas and ways forward, but is most likely to stand on the view that there has been progress in this area (he will probably elaborate on this) and that the administration of justice is demonstrating fairness and balance.
3. In view of the Taoiseach's speech yesterday, he is likely to stress the likely implications (vis-a-vis the Prime Minister and the Government) of our Government not going ahead on 1 December with the Extradition Act. He is also likely to attempt to break any idea of linkage between the Act and progress under Article 8 of the Agreement.
4. He is also likely to try to draw from you, for reporting purposes to the Prime Minister, Tom King and others (and no doubt to Lowry etc.) as much as possible about our Government's intentions in the matter. He will surely have a major interest in this.

5. It is suggested that he be prevented from taking from the meeting any sense of a tit-for-tat reprisal approach on our part (radio news bulletins are already - last night and this morning - taking this tack and they are presumably being "fed" from the British side). Rather, it might be pushed hard with him that

- one of the three major areas of work for the Agreement (other than security matters and cross-border co-operation) is this one: Article 8 and the communique are specific about that. "The two Governments agree on the importance of public confidence in the administration of justice. The Conference shall seek ... measures which would give substantial expression to this aim, considering inter alia the possibility of mixed courts";
- there has been some slight progress such as shorter remand periods and a discontinuation of supergrass trials although no guarantee for the future exists on this:
- such measures can not, however, add up to the stated, much more far-reaching measures envisaged in a major pillar of the Agreement:
- the connection between the Act and progress in the three areas of the Conference's work, including the administration of justice, is clearly set out in the Communique of 15 November, '85 (par. 7) where "Against this background" (viz. three indents, and "the two sides are committed to work for early progress in these matters") the commitment on the Convention arises;
- tactically, it might be worth suggesting that, inter alia, general elections in the Republic and Britain created a virtual six-month lacuna in the work of the Conference, and that progress in this area, as in other areas, may have been slowed down as a result. It may be therefore, that some further time is needed on the British side to get down to working through ways of delivering on their commitment under Article 8;

- we will look forward to hearing their views on the matter at the Conference on 21 October. We will expect to hear considered views from the British side: he could be reminded of the clear commitment under Article 2(b) where "In the interest of promoting peace and stability, determined efforts shall be made through the Conference to resolve differences." In other words, a simple "no" on three-judge courts, on a mixed court, or on any other idea, would fly in the face of the spirit and the terms of the Agreement;
- he is no doubt aware of widespread political and public opinion in the Republic that there simply has not yet been anything like the measure of progress in the legal area that was clearly envisaged in the Agreement. Garret FitzGerald has said so, and said too that without a British commitment in that area there would not have been an Agreement (BIA, Cambridge, 20 September). This widespread view in the Dail puts a much sharper focus on 1 December.
- We remain open to a response from the British side over the coming phase, including (in particular) the Conference meeting on 21 October but after that too. There must be progress and, in the interests of the Agreement and the overall situation within Northern Ireland, we would expect this as soon as possible.

Richard Ryan
 Richard Ryan
 Counsellor

12 October, 1987