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Extradition and Extraterritorial Offences

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1. Article 29(3) of the Constitution provides that Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States. One of these "generally recognised principles of international law" is the principle of non-extradition for political offences. In connection with the British Extradition Act 1965, the then Solicitor-General for England, Sir Dingle Foot, explained the position thus to the House of Commons:-

"The exception relating to offences of a political character is thoroughly familiar and has been included in our extradition legislation every since 1870. Indeed the tradition that we do not return to the country of origin persons who are accused of political offences goes back to the Napoleonic wars".

The British authorities have since felt enabled to sign the Council of Europe Convention on the Suppression of Terrorism, which was opened for signature on 27 January 1977 and which provides for extradition for certain offences notwithstanding that they were of a political nature. However, the effect of Article 29(3) of Ireland's written Constitution has been such as to prevent ratification of the Convention which would oblige the State to deviate from the generally accepted principle of international law relating to non-extradition for political offences. In order to be applicable to our situation, any exception to the principle in question would itself have to be generally recognised at international level. A unilateral, bilateral, or even a multilateral departure from such a generally recognised principle would not of itself be sufficient to make the departure part of international law. A departure by a large number of States representative of all continents would be necessary. There is, of course, no constitutional obstacle in the case of conventions or legislation giving the alternative of extradition or trial within the jurisdiction.

2. In December 1973, an Order was made adapting the 1861 Offences Against the Person Act. Any Irish citizen against whom there is evidence that he or she committed murder or manslaughter within Great Britain or Northern Ireland since that date can be brought to justice in the Republic. In only one such case has such

evidence been submitted by the British authorities; the person so accused returned to Northern Ireland while on bail on a preliminary extradition arising from the alleged offence and was arrested and sentenced to life imprisonment in Belfast on 18 May 1977.

3. The Criminal Law (Jurisdiction) Act came into force on 1 June 1976, following a Supreme Court ruling that the measure was not in conflict with the Constitution. The provisions of the Act are based on the principle of "aut dedere aut judicare" - the alternative of extradition or trial within the jurisdiction of arrest. The Act makes it a criminal offence in Irish law to commit in Northern Ireland certain scheduled offences which, if committed within the State, would constitute an offence here. The scheduled offences are: murder, manslaughter, arson, kidnapping and false imprisonment, wounding with intent, causing explosions, possession, robbery or aggravated burglary, firearm offences and hi-jacking. In addition, Section 4 of the Act makes it a crime, chargeable in the Republic, for any person within the State or any Irish citizen elsewhere (including Britain) to conspire to cause an explosion. The Act also provides that evidence obtained by examination of witnesses in Northern Ireland will be admissible at trials in the Republic for offences committed in Northern Ireland, and vice versa.

4. In the first case brought under the Criminal Law (Jurisdiction) Act 1976, John Brendan Brady of Ballybofey, Co. Donegal, has been charged with, inter alia, conspiring to cause an explosion at Castlederg, Co. Tyrone in July 1976. The accused was brought before the Special Criminal Court on 11 January 1978 and was remanded in custody. This prosecution was initiated by the Gardai, not on the basis of evidence supplied by the RUC. A single case has also been instituted under the parallel British Criminal Jurisdiction Act, involving three persons charged with the extraterritorial offence of the murder of Captain Nairac and with possession of firearms with intent in this jurisdiction. The case came before the Belfast City Commission in February and was adjourned as material evidence was in Court custody in the Republic in connection with an appeal lodged by Liam Townson (convicted by the Special Criminal Court for the Nairac murder).

5. In the House of Commons on 2 December 1977, the Northern Ireland Secretary of State said: "I understand that the RUC will make use of the Criminal Jurisdiction legislation where it is appropriate and that it is continuing, where appropriate, to make applications for extradition under the Backing of Warrants Act". In the period between 1 June 1971 and 31 December 1977, 69 warrants relating to terrorist offences in Northern Ireland were presented to the Garda authorities by the RUC. Of the 10 individuals whose extradition was sought by the RUC during 1977:-

- 3 won appeals against extradition
- 3 appeals are still pending
- 2 are in Portlaoise Prison
- 1 was not located within the jurisdiction
- 1 was in Canada (McCann) when the warrant was presented.

As regards terrorist-type offences committed in Britain, only 4 warrants have been received since January 1971.

[This is an extract from a brief prepared by the Dept of Foreign Affairs, in consultation with the Dept of Justice and the A.G. as appropriate, for the Ministerial meeting with the British Prime Minister in London on 6/7 April 1978 (Lindsay, personal meeting). This particular paper was approved by the A.G.]