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Mr. Wally Kirwan,
Assistant Secretary,
Department of the Taoiseach
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Upper Merrion Street
Dublin 2

Keep Dermot Gleeson General and Ministers
14/2

Dear Wally,

Dublin/Monaghan Bombings

Thank you for your letter of 11 February, 2000 about the latest developments on the terms of reference into the Dublin/Monaghan Inquiry which were agreed by the Government last week.

I note that, prior to writing to me, you took the trouble to clear the proposed approach with the Taoiseach, the Attorney General and, indeed, my own Minister. In the circumstances I am not sure that there is anything useful which I could reasonably be expected to add at this point!

For all that, on a personal level, it might be useful for me to make the point that the reservations which I mentioned to you last week did not arise solely on the basis - which from your letter it is clear that you explained in detail to the relatives - of a perception of "political partisanship". There was the more fundamental point that to appear to give equal weight in the terms of reference to an inquiry into the killing of a great number of people and what was said in a television programme seemed to us to be bizarre.

The reality is that, even on the basis of the Group's own analysis of what was contained in the programme, there is nothing in the programme which would not fall within the terms of reference without including in those terms a specific reference to that programme.

It is clear from what you have said in relation to the course of the negotiations

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which you have led that the question of including in the proposed terms of reference a reference of a particular kind to a particular television programme is essential and that the "formula" agreed by the Government last week would not be sufficient. In those circumstances I do not propose to brief my Minister to the effect that he should argue at Government that the new terms of reference should be rejected. However, if you were to find, during the course of your negotiations, that, rather than including the term of reference in question as an indent - giving it equal status with the other proposed terms of reference -, a sentence before the definition of the Dublin/Monaghan bombings along the lines of "The Inquiry will, inter alia, have regard to the issues raised by the Hidden Hand T.V. documentary broadcast in 1993" would be acceptable to the Group, then I think, that in the interests of sense and balance, that would be a better approach.

Finally, and again on a personal note, it might be worthwhile for me to mention that I am by no means convinced that the inclusion of a broad term of reference along the lines of "the response of the state and its agencies to the above matters" (assuming that the above matters would not refer - peculiarly - to television programmes and would relate to the bombing itself) would carry with it the type of difficulties you seem to envisage.

I will, of course, despite the limited time available, be happy to discuss these matters with you.

Yours sincerely

Diarmuid Cole

14 February, 2000

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Roinn an Taoisigh
Department of the Taoiseach

11 February, 2000.

Mr. Diarmuid Cole,
Assistant Secretary,
Department of Justice, Equality & Law Reform,
72-76 St. Stephen's Green,
Dublin 2.

Dublin/Monaghan Bombings

Dear Diarmuid,

I refer to previous contacts and papers about the above, including this Department's Aide-Memoire of 7 February, 2000 and the Government decision (S19192D) of 8 February.

This Department held a pre-scheduled meeting on 9 February with the Executive of the Justice for the Forgotten group, including their legal advisers, having communicated the Government decision to them on the previous day. In explaining the rationale of the terms settled by the Government, in line with directions by the Taoiseach, we indicated to them that the Government wished to avoid any appearance of getting into a partisan political exercise and to keep the examination above party politics.

They were not at all satisfied with the terms of reference as per the Government decision of 8 February. The root of their objection is that they wish Mr. Hamilton's examination to have the capacity to assess whether there was any cover-up by the State or any part of its apparatus, going beyond the Garda Siochana, in regard to the bombings. An emerging strong tendency at the meeting on the part of the relatives present, in response to the point put to them about avoiding an appearance of political partisanship, was to drop reference to the TV documentary and to include a term which would refer to the "response of the State and its agencies to the above matters". They saw this as getting over any suggestion that there would be a focus on what was done or not done by the former Minister for Justice, Deputy Nora Owen but it would, of course, open up an examination of all aspects of the State's response back to 1974. In order to avoid their moving towards support for excessively wide terms and detecting that there might be the possibility of getting their acceptance of a formula as set out below, I brought the meeting to a close, undertaking to reflect on the points they had raised.

I reported yesterday to the Taoiseach who, at all stages of the process on this matter, has given me a strong brief to ensure that the relatives did not emerge in open opposition to the approach or, now, the terms of reference settled by the Government. The Taoiseach called in

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your Minister who was in the building for his bilateral meeting with the Taoiseach at 1.30 p.m. yesterday. They reviewed the issue in my presence and there was agreement on deleting the final phase of the second indent of the Government decision and adding a fourth indent, as follows:

"the issues raised by the Hidden Hand T.V. documentary broadcast in 1993".

The terms of reference as they would stand, if these changes were approved by the Government, are set out in the enclosure to this letter. The Attorney General has signified his support for this approach.

The Taoiseach intends to take the matter back to the Government meeting on Tuesday next to secure Government approval for a variation of the previous Government decision, in line with the enclosure to this letter. It is not certain that this will not be opposed by the relatives. It is certain that the terms as per the Government decision of 8 February would be opposed. My own assessment is that the relatives will just about stop short of opposing the terms as set out in the enclosure. You will note that in this the fourth term excludes the words that gave you most concern when you spoke to me last week.

Once the terms of reference are decided finally by the Government, it will be for Judge Hamilton to interpret what they cover. I have made clear to the legal advisers to the Justice for the Forgotten Group that, having regard to the strong desire of Judge Hamilton that the matter be now brought to a conclusion, the Government are most unlikely to revisit this matter of the terms of reference after next Tuesday.

I will telephone you about this but I thought it best to set down the position in writing as a basis for talking to you.

Yours sincerely,

Walter P. Kirwan,
Assistant Secretary,
Northern Ireland Division.

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Alternative

Terms of Reference
Dublin/Monaghan bombings

To undertake a thorough examination, involving fact finding and assessment, of all aspects of the Dublin/Monaghan bombings and their sequel, including

- the facts, circumstances, causes and perpetrators of the bombings;
- the nature, extent and adequacy of Garda investigation, including the co-operation with and from the relevant authorities in Northern Ireland and the handling of evidence, including the scientific analyses of forensic evidence;
- the reasons why no prosecution took place, including whether and if so, by whom and to what extent the investigations were impeded; and
- the issues raised by the Hidden Hand T.V. documentary broadcast in 1993;

The "Dublin/Monaghan bombings" refer to

- the bomb explosions that took place in Parnell Street, Talbot Street and South Leinster Street, Dublin, on 17 May, 1974
- the bomb explosion that took place in North Street, Monaghan, on 17 May, 1974"

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