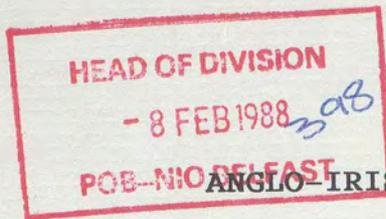


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ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE

Note of a Special Meeting held at Stormont Castle
on Tuesday 2 February 1988

Present

Mr King

Mr Stanley

Sir Robert Andrew

Sir Kenneth Bloomfield

Mr Stephens

Mr Burns

Mr Fenn

Mr Elliott

Mr Masefield

Miss Steele

Mr Collins

Mr Burke

Mr Dorr

Mr Matthews

Mr Brosnan

Mr Gallagher

Mr O'Donovan

Mr O'hUiginn

Mr Ryan

Mr Collins

Introduction

The Conference was preceded by a private discussion (lasting some thirty-five minutes) between Mr King, Mr Stanley, Mr Collins and Mr Burke.

2. In his opening remarks to the full Conference Mr King said that he had readily agreed to this special meeting (to discuss the situation arising from the statement made by the Attorney-General on 25 January on the Stalker/Sampson enquiry and related matters), although the timing posed problems, as it was in accord with the spirit of the relationship he was keen to see grow. Mr Collins said the meeting had been sought because of the Irish Government's serious concern for the situation, which was reflected by all shades of opinion following the Attorney-General's statement on 25 January.

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Mr Collins' presentation

3. He said that two concepts were basic to the Agreement:-

a) bringing peace and stability by ending the alienation of the minority community, a central aspect of which was confidence in the fairness of the system of justice,

b) full co-operation between the two Governments in dealing with terrorism, which was only possible on the basis of confidence.

These had received a serious setback. Mr Collins then set out the three incidents in 1982 and subsequent events as he saw them. They had caused widespread unease and disquiet in Ireland and Britain. Moreover despite repeated requests the Irish Government had not been given a report on the 1982 incursion revealed by Constable Robinson.

4. There were a number of issues which caused concern:

a) the shoot to kill policy, the seriousness of which it was impossible to exaggerate,

b) a cover-up involving senior RUC officers,

c) the conduct of the two controversial trials involving RUC officers,

d) a covert Special Branch operation in Irish jurisdiction,

e) that the DPP had been dissatisfied with the report of a high-ranking officer.

f) the disturbing circumstances of the removal of Mr Stalker from the inquiry,

g) what he had to believe was a deliberate policy of delay.

The Attorney-General's statement amounted to a declaration that in Northern Ireland the rule of law took second or third place to undefined public interest and national security.

Implications for Security Co-operation

5. Mr Collins prefaced his remarks on this subject by paying tribute to the dangers faced by the RUC, the losses they had suffered and the viciousness and cowardice of their killers. But no matter what the provocation no officer should be deflected from upholding the law. If there was to be effective security co-operation, there had to be a high degree of confidence and trust between the two forces. Changes in attitudes by the RUC were largely responsible for increasing trust in recent years; the development of security co-operation went hand-in-hand with the build up of trust. That confidence was a plant that had not easily rooted and it had received a devastating setback. Co-operation would suffer when it was known that the RUC was shielding officers strongly suspected of serious crime. The Garda would lose support if it was seen as closely associated with the RUC, and individuals inside and outside the Garda would have reservations about passing information if there was no confidence. The British Government had damaged co-operation by this decision and it had a serious responsibility to put matters right.

The Irish Proposals

6. Mr Collins and Mr Burke concluded this section by enumerating six proposals which the Irish Government wished to be put urgently to the British Government. They hoped to have an early resumption of the meeting to receive the answers.

(i) the Stalker/Sampson report should be published. It would

be very helpful to the process if it (and the McLachlan report) could be brought out into the open. The public did not understand the failure to publish. Mr Stalker's book would soon be published, covering the same material.

(ii) all those identified in the report against whom there was evidence of wrong doing should be prosecuted. The decision not to prosecute based on public interest was unacceptable. He had said that there would have been prosecutions but for the factors with which he had acquainted himself. It was not clear whom he had consulted and what had been the nature of the advice. The Irish Government had a right to be consulted under the Agreement, why had they not been? The decision was politically based and it should be reexamined.

(iii) the decision in the Birmingham Six case had serious consequences for confidence in the administration of justice and the prisoners should be released. This was relevant to extradition. It was one of the most serious and emotional issues in Mr Collins' public life. The importance of this issue on political opinion in Ireland could not be over-emphasised. The Home Secretary should be urged to use his powers to secure their early release.

(iv) both cases had implications for extradition and raised concern about Irish people getting fair treatment. British Ministers knew why safeguards had been felt necessary in the recent Irish legislation, but the problem now was that the Attorney-General was not prepared to produce the minimum documentation that his Irish counterpart sought. They asked for an assurance that in each case the Irish Attorney-General would be given sufficient information to comply with the law. This issue needed quick resolution.

(v) the omission of prior consultation raised doubts about the British Government's commitment to the Agreement. They recognised the difficulties for the British, but even if the Attorney-General himself could not have consulted the Irish, their views should have been sought through the Secretary of State. The failure to consult or even inform undermined the Irish right to make representations. It made a nonsense of the Agreement which called for determined efforts to be made to resolve problems.

(vi) these matters caused concern about relationships between the two police forces and had an effect on security co-operation. They must be cleared up to enable the two Forces to work together closely.

Mr King's response

7. Responding, Mr King said that he appreciated both the strength of feeling and the calm way in which the points had been expressed. It was important to remember that the respect the RUC now enjoyed across the community had been earned by impartial policing. He most regretted that the events of 1982 cast a cloud over the modern RUC. He stressed the importance of public confidence in the police and the administration of justice which was his concern as much as that of the Irish Government - and which was his responsibility. He said that the Attorney-General's statement had been confined to the DPP's decision whether or not to direct criminal proceedings on matters arising from the Stalker/Sampson inquiry, but - as he had made clear on 28 January - that was in no sense the end of the matter. Until the position on prosecutions had been resolved, matters relating to disciplinary proceedings and control arrangements within the RUC could not be dealt with. He had yet to receive the comments of the Chief Constable on those aspects. He had then to consider his report to Parliament. On one particular issue - the cross-border incursion - he readily acknowledged the Government's commitment to provide the Irish with a more detailed account.

8. Mr King made several further points drawing on the Attorney-General's remarks on 25 January:

- a) it was plain that no offence had been disclosed apart from possible cases relating to perversion of the course of justice,
- b) no evidence had been disclosed of any offence - such as incitement to murder - such as would be comprised in what had loosely been called a shoot to kill policy,
- c) it was necessary to distinguish the issues relating to the actual shootings which warranted no further prosecutions in the light of all Mr Sampson's findings (which incorporated Mr Stalker's recommendations); the question of public interest had not been invoked in these cases - it had been invoked only in relation to attempts subsequently to pervert the course of justice.
- d) In considering whether or not prosecution was warranted the Attorney-General had been statutorily bound to consider the public interest.

Mr King then set out from the beginning the decisions taken by the DPP in following matters through. It was he who had originally directed that murder charges be brought and who had requested the subsequent further investigations.

9. Mr King then offered an initial response to some of the Irish points. The Stalker/Sampson report was the report of a police investigation and, as he and the Attorney-General had told Parliament, it was not the practice to publish reports of this kind. Moreover the report contained references to matters of national security which rendered it out of the question to consider publication exceptionally. When the Attorney-General had been asked about national security he had referred to connotations that bore

upon the safety of a very large number of individuals. He himself was not privy to the full range of considerations the Attorney-General took into account. It was moreover the invariable practice never to say who had been consulted in determining where the public interest lay. Consultation with the Irish Government in the context of the Agreement was something to which the British Government attached great importance, as shown by a recent message from the Prime Minister to the Taoiseach and meetings between Mr Stanley and Mr Collins apart from messages passed through the Secretariat. Active discussion was in train on other matters such as fair employment where decisions were yet to be announced. The difference on this issue was that the decision involved the prosecuting authorities in their quasi-judicial role rather than the executive arm of Government.

10 The issue of the Birmingham Six was one which the Irish had fairly introduced though it lay outside his responsibilities. He would pass their concerns on to the Home Secretary. There had been a unanimous decision by the Court of Appeal. While the possibility of an appeal to the House of Lords remained, it was effectively sub judice. On extradition, Mr King said that he entirely shared Irish concerns about the present position as the process was not working as we had hoped. Already it was significantly more complicated than before the recent Irish legislation. There had been some misunderstanding over what the Taoiseach said to the British representatives, but in the light of the latest letter from the Irish Attorney-General he would discuss with the Sir Patrick Mayhew what it was possible to do. Only paramilitaries would gain if this matter was not resolved.

11. Mr King recognised the Irish concerns but said that equally they should understand that in a number of respects he was not able to respond as they would wish; they should take account of the separation between the prosecuting authorities and the judiciary and the executive. It was most important there should be the closest

understanding of the facts - this was an area where the Secretariat played a valuable role.

12. Mr King then set out the next steps. The senior RUC management would consider disciplinary proceedings, including the possible need for further investigation, though he noted that the evidence already available to the DPP concerning the perversion of the course of justice would be available in this context also. Proceedings against officers up to Chief Superintendent were a matter for the Chief Constable, above that responsibility rested with PANI. Hearings could be conducted by an RUC officer or one from another Force. There was a right of appeal to himself or a designated alternate such as Mr Stanley. These procedures could not be interrupted by outside agents. As regards the organisation of the RUC, he had received Mr McLachlan's report on 25 January and awaited the Chief Constable's comments. He would seek to make a very early statement in the next 2 (or 3) weeks on matters for which he was responsible. He was anxious to ensure the Irish had the earliest possible notification of it, though for Parliamentary and other reasons it was vital there was no advance disclosure to the public. Similarly the cases against those who faced charges must not be prejudiced. Individuals' careers were involved and their rights had to be respected. Information about the 1982 incursion might be available to be given to the Irish even sooner than the remainder of the information.

Discussion

13. Mr Collins deeply regretted that Mr King's remarks would not help to restore confidence in the RUC. There was vital evidence which had not been given to the investigating officers at the time. He recognised that in practice police reports might not generally be published, but this was an inquiry affecting the credibility of an entire police force. In Ireland they had sworn public enquiries into criminal cases, and he did not fully accept the response. Nor

could he accept that because of the quasi-judicial role of the Attorney-General the Irish could not have been notified of the announcement given that others had been consulted before he advised the DPP. Indeed the Chief Constable had been consulted, and it appeared to them - as it must have to the DPP - that he had put obstacles in the way of the exercise. Mr Collins could not accept that the national interest overrode other factors. The Attorney-General was speaking on behalf of the British Government, and the Anglo-Irish Agreement was between Governments. Mr King commented that as the Attorney-General had made clear he was speaking on behalf of the DPP, not the Government. Mr Collins stressed that the Attorney-General's consultations had shown that it was not strictly a legal decision. He found it hard to accept that Mr King was responsible for Northern Ireland yet was not aware of the full range of considerations. If he was not, the person who was should be at the Conference table. In Ireland, he as Minister of Justice had to be aware of all that was going on in the Garda, although the Irish DPP's decision on prosecutions were entirely independent of Government. Did anybody on the British side care at all for Irish interests?

14. Mr King said that he was deeply concerned about the Anglo-Irish relationship. For this reason, he was especially concerned about the events of 1982. They had been subject to the most exhaustive examination. Police officers had been prosecuted, and the DPP had ensured that all relevant information had been obtained. Two senior officers had been suspended since 1986. Mr Collins observed that a lot of people involved in 1982 were still in the force. He expressed some concern at Mr King's comment that it was possible that a police officer outside the RUC might be brought in and that the disciplinary proceedings might be lengthy. Mr King said that they were not directly his responsibility but he was determined they would be pursued speedily. It was in both Governments' interest that the legacy of 1982 should not sour their relationship. Public interest considerations did not apply to disciplinary proceedings.

In response to a question he acknowledged that it was possible a second appeal (after one to himself) could be made by way of a judicial review. Mr Collins made clear that the Irish Government still wanted prosecutions, not just disciplinary proceedings. This was not out of vindictiveness - the whole question of confidence was involved. Mr Burke hoped that those who took the decision could be prevailed upon to change their minds. Mr King quoted the dictum of Sir Hartley Shawcross on the duty of an Attorney-General in relation to the consultation process, (provoking an Irish comment that the Code for Crown Prosecutors suggested that the graver the offence the less likely national interest was to be invoked). Mr King said that the Attorney-General had approached the matter with the greatest care and he would certainly have been aware of all relevant factors including the arguments now advanced by the Irish.

15. Mr Collins said that if the problem could not be speedily resolved, we would be in a very serious situation. Returning to his Government's six points, he was anxious to have an early, considered response that could if need be take due account of constitutional constraints. Mr King undertook to do so but observed that the Irish should not gain the impression that the final response would be widely different. Mr Collins and Mr Burke recalled successes in security co-operation and the previously supportive climate after Enniskillen. Mr King expressed appreciation for the major arms find at Donegal.

Next meeting

16. On the timing of the resumed meeting, Mr Collins proposed Friday 5 February, on the grounds that Mr Stalker and some of the Birmingham dependants would be appearing on Irish television that evening, and the Irish Government would need to have a firm position by that time. Sir Robert Andrew said that if the meeting were held within two or three days, British responses would inevitably be negative; later, more positive information on disciplinary

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proceedings and matters arising out of the McLachlan report would be available. It was agreed that further thought should be given to the date of the next meeting and the terms of the joint statement over lunch. The Conference ended at around 13.30 hours, with the Irish side leaving at 15.50 hours.

17. The attached joint statement was then issued.

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ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE

JOINT STATEMENT

A special meeting of the Anglo-Irish Intergovernmental Conference was held in Belfast on 2 February 1988. The British Joint Chairman, Mr Tom King MP (Secretary of State for Northern Ireland), was accompanied by Mr John Stanley MP (Minister of State for Northern Ireland). The Irish Government was represented by Mr Gerard Collins TD, Minister for Justice (Acting Joint Chairman) and by Mr Ray Burke TD, Minister for Energy and Communications.

The meeting was called at the request of the Irish Government to discuss the situation arising from the statement on the Stalker/Sampson enquiry made in the British House of Commons on 25 January by the Attorney-General, Sir Patrick Mayhew, and related matters.

The Irish side put forward a number of views and proposals in relation to these matters, for consideration by the British Government. Mr King gave an initial response on the areas relating to his own responsibilities.

It was agreed that discussion of these matters would be resumed at a further meeting to be held very shortly.