cc Mr Masefield - MARCRYP

Ms Wood
Mr Coleman
PA WG 11

SECRETARY OF STATE FOR NORTHERN IRELAND

BACKING OF WARRANTS : REPUBLIC OF IRELAND

Following the Irish Attorney General's insistence that he and I should meet before there could be any meeting of officials to discuss the implications of McVeigh and the Irish review of their extradition legislation, I went to see him yesterday in Dublin. Through the good offices of Mr Thorpe, our Charge d'Affaires in Dublin, I entertained Mr Murray to lunch at the Kildare Street Club.

We discussed a number of individual extradition cases, on some of which we made useful progress. My office will send to yours a detailed note of our talks. On the general issue of the Irish review of Part III of the Extradition Act, 1965, however, I am not optimistic that the Irish Government will introduce any legislation at all.

In introducing the subject, I emphasised (in the light of their sensitivities) that it was of course for the Irish Government to decide what amendments to their legislation they should promote. Mr Murray asked me to outline our concerns and our suggestions. I said that a number of cases we had earlier discussed were illustrations of the "surprising" and sometimes bizarre decisions which were being handed down by District Justices. It seemed to us that there was a very strong case for conferring this jurisdiction on a higher, better qualified tribunal or possibly a specialised District Court in Dublin. I also urged him to consider the creation of a right for the lower courts to detain a fugitive pending an appeal.

Mr Murray was well aware of all the arguments in favour of removing the jurisdiction from the District Courts and for creating a power in the courts to detain a fugitive pending an appeal. He replied, however, that the Irish Government had to be careful not to restructure the judicial system in order to

meet political or "emotional" sensitivities. He indicated that the Government would be carefully studying all the arguments, including those advanced in the Debate in the Dail. Whilst he was very happy to listen to my views at any time on this matter, he felt it was important that I should bear in mind the sensitivities and realities involved. The matter was not, he stated, an appropriate subject for officials to study, as I had suggested on an exploratory basis, in Working Group II. That would heighten tensions and would be counter-productive to progress. The questions were too hypothetical and too contingent to be suitable to be remitted to officials.

I took the opportunity to remind him that "sensitivities" were not restricted to his side of the Irish Sea. We too were sensitive to a bomber walking free from a District Court unjustifiably.

When we discussed the less controversial proposal of extending the period of validity of a provisional warrant, Mr Murray accepted the force of my arguments. But he emphasised that any extradition legislation would be extremely controversial and that the timing of it would need to be very carefully considered. He was equally unenthusiastic about the proposal to amend the provision in their 1965 Act, which provides that the court may presume the validity of a warrant unless it sees good reason to the contrary - a provision which has been the inspiration of many mischevious applications on the part of the defence. Mr Murray could not see the Dail accepting any amendment to replicate the equivalent provision in our reciprocal legislation.

Mr Murray totally rejected any possibility of not renewing the 1987 Amendment Act! He, like the Taoiseach, considered that the ratification of the European Convention on the Suppression of Terrorism and the consequent introduction of the 1987 Amendment Act had been a mistake - the jurisprudence has been moving in the right direction but it was we who had insisted on the ratification of the Convention by the Republic. There could be no question now of the abandonment of the safeguards legislation. In time, he said, that legislation would bring about, or restore, confidence in extradition.

I emphasised our strong objections to the legislation which we had expressed prior to its introduction. I told Mr Murray that extradition from the Republic was perceived as being so fraught with difficulty that police forces throughout the UK were already concluding that it was not worth the time and effort to apply for extradition. The very small number of applications since March and in the pipeline starkly illustrated this trend. I said that the present Irish legislation with all its built-in obstacles was a recipe for turning the Republic into a haven for criminals. They must make a choice: either they must operate a truly simplified backing of warrants arrangement, in which case they must legislate to remove many of the existing obstacles or they must negotiate a new Treaty with us starting from scratch. It was clearly in the interests of both countries to have a simplified backing of warrants system; but the present system was not working satisfactorily.

During our discussion of the McVeigh case, Mr Murray expressed his irritation that the DPP had produced to the press the advice that had been received from Dublin, especially as we had agreed with the tenor of that advice and the advice had been tailored to take account of our interests and concerns. He was very concerned that we should not be looking to blame anyone if a particular case went wrong. Otherwise, he said, the advice given would be "belt and braces" advice which did not take any account of the approach to a particular case which would meet British concerns. Mr Murray also complained bitterly about the role he believed the Metropolitan Police played in alerting the press to the arrest of McVeigh at Portlaoise Prison and the charges he faced.

I firmly rejected any criticism of the press statement published by the DPP and told Mr Murray that we had to rely on Irish advice as to the technical requirements of Irish law in all these cases. If a case went wrong, we had to be in a position to say that we had taken advice and had complied with it. Otherwise, quite justifiably, we would be open to stringent criticism. Expressions of opinion as to how an Irish court might exercise its discretion were a different matter. I had no reason to believe that it was the Metropolitan Police who had alerted the press to McVeigh's release or to the charges he faced.

This was a unfruitful meeting, perhaps not surprisingly. I think it unlikely that the Irish Government will promote any legislation to amend the Extradition Act. I think it equally unlikely that we will secure the return of any terrorist from that jurisdiction. Our interests must lie, as I have indicated before, in ensuring that the blame for the failure of any particular case is plainly seen to lie with the Irish and not with us. I intend to ensure this. Our task will be made more difficult by the failsafe advice we are likely to receive from the Irish Attorney and his advisers in particular cases. Mr Murray and the Irish Government have clearly been stung by their experience in McVeigh, and rather than adopt the positive approach of amending their legislation, they are showing signs of retreating into a defensive and recriminatory shell.

I am copying this minute to the Prime Minister, the Foreign Secretary, the Home Secretary, the Lord Advocate and to Sir Robin Butler.

(Approved by the Attorney General
and signed in his absence.)

19 July 1988