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Meeting with Mr. F. Judd, M.P., Minister of State for
Foreign and Commonwealth Affairs

Thursday, 19 May, 11.00 a.m.

Agenda

1. JET
 2. Enlargement of European Communities
 3. Fisheries
 4. Common Agricultural Policy
 5. Commission's Proposals for Social Fund
 6. Anglo-Irish Political Relations
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Meeting with Mr. F. Judd, M.P., Minister of State for
Foreign and Commonwealth Affairs

British side

Mr. Frank Judd, M.P.	Minister of State for Foreign and Commonwealth Affairs
Mr. D'Ath	Assistant Private Secretary
Mr. M.J.E. Fretwell	Under-Secretary, FCO
Mr. P. Mallet	Counsellor, FCO
Ambassador Haydon)	
Mr. Hickman)	British Embassy
Mr. Barrie)	

Irish side

Dr. G. FitzGerald, T.D.	Minister for Foreign Affairs
Mr. R. McDonagh	Secretary, Department of Foreign Affairs
Mr. S. Donlon	Assistant Secretary, Department of Foreign Affairs
Mr. K. Heaslip	Assistant Secretary, Department of Foreign Affairs
Mr. D. Nally	Assistant Secretary, Department of the Taoiseach
Mr. H. Swift	Counsellor, Department of Foreign Affairs
Mr. E. Ó Conghaile	First Secretary, Department of Foreign Affairs

Anglo-Irish Political Relations

1. Irish Prisoners in Britain
2. (a) Compensation by British authorities for damage to property in the South arising from the activities in Northern Ireland of British security forces
- (b) Draft Speaking Note on Compensation

Treatment of Irish Prisoners Convicted of
Terrorist Offences in Britain

1. There are at present approximately 100 Irish prisoners serving sentences in Britain for terrorist offences related to IRA activities. Allegations of harassment and ill-treatment of these prisoners have been in circulation almost from the beginning of the terrorist campaign in mainland Britain. It is undoubtedly true that many of the allegations are part of a propaganda campaign; in other cases the matters complained of are the inevitable result of refusal by prisoners to co-operate with the prison authorities. Nevertheless, the information available to the Department, both from contacts which the London Embassy has with prisoners and their relatives and from published material, indicates that Irish prisoners convicted of terrorist offences are in many cases subject to unnecessarily harsh treatment or even arbitrary violence at the hands of prison officers.

2. A number of serious allegations of ill-treatment came to our attention in the autumn of last year. The most notorious of these concerned the measures taken by the prison authorities at Albany, Isle of Wight, to suppress a disturbance which arose when six prisoners - Seán Campbell, Fr. Fell, Eddie Byrne, John McCluskey, Con McFadden and Liam McLarnon - refused to obey an instruction to take down barricades which they had erected in a part of a landing of the prison in protest at the solitary confinement of another prisoner. In the scuffles which ensued when the prison staff moved to forcibly remove the barricades the six prisoners were injured and one of them, Seán Campbell, was hospitalised as a result of the injuries received. Further disturbances involving Irish prisoners occurred at Hull in September and at Gartree in November. The Department, in accordance with its normal policy in such cases, was in continuous contact through the London Embassy with the British authorities on these and various individual cases for the purpose of keeping itself informed on the condition of the prisoners involved. The allegations of ill-treatment by the prisoners at Albany received widespread publicity and were taken up by Fr. Faul and Frank Maguire M.P. An investigation of the incident was carried out by Amnesty International, Howard League and the NCCL and their findings published in an agreed report. This contained a "statement of concern" which listed those aspects of the behaviour of the Albany authorities in the aftermath of the disturbance about which the three organisations

were most concerned. It is noteworthy that these are the same grievances which, either individually or together, are mentioned in most of the complaints which we receive from or on behalf of prisoners all over Britain. The following is the text of the statement:

- "(a) We are concerned that more force may have been used against the demonstrating prisoners than was required merely to restore order, and that consequently the prisoners suffered injuries of varying degrees of severity.
- (b) We are concerned by the allegation that at least some of the prisoners did not receive adequate medical treatment for their injuries.
- (c) Our concern on point (b) is strengthened by the swiftness with which the prisoners were put into cellular (solitary) confinement after the incident, possibly before they had adequately recovered from their injuries.
- (d) We are concerned by the fact that none of the prisoners' relatives was officially notified of the incident or the prisoners' injuries, and that their later requests for a second medical opinion were refused, in spite of their obvious anxiety in view of points (a), (b) and (c) above.
- (e) We are concerned at the practice (exercised at the discretion of the prison authorities) of removing even basic amenities from the cells of prisoners in solitary confinement. This is especially disturbing since the prisoners were injured, at least one of them seriously.
- (f) We are concerned at the considerable length of terms of solitary confinement (ranging from 13 to 19 weeks) imposed on the prisoners.
- (g) We are concerned that the maximum duration of solitary confinement is apparently limited only by the length of a prisoner's sentence.
- (h) We are concerned that punishments of long periods of solitary confinement and loss of remission (ranging from 19 to 23 months) can be imposed at internal disciplinary hearings in the absence of legal or other representation of the prisoner."

It was reported in the press that Mr. Rees discussed the report with a delegation of MPs, including Frank Maguire, and representatives of the three organisations which produced it on 12 May.

3. The concern expressed at (f) above at the possibility of virtually unlimited segregation, which is provided for under rule 43 of the Prison Rules - this rule allows for the removal from circulation of a prisoner "for the maintenance of good order or discipline or in

his own interests" - seems justified not only in the context of the Albany incident but in the light of the widespread use made of this rule throughout the British prison system. The severity of the punishments awardable also illustrates the degree of discretion open to the authorities under the Prison Rules and hence the possibilities for discrimination against particular groups of prisoners. While we are not in a position to assess the validity of all of the findings of the NCCL et al report on the Albany disturbance and still less to determine whether they can be properly applied to the British prison system as a whole, it does appear from the information which is available to us that certain aspects of the treatment of these prisoners are justifiable causes of concern.

4. The journal of the British Law Society carried an article by A.D.W. Logan in its edition of 24 November on "The Treatment of Irish Prisoners Convicted of Terrorist Offences". Logan examined almost every facet of the treatment of these prisoners and concluded that they were subject to discriminatory treatment at all stages of their detention. The general description and conclusions contained in this article coincided with our own experience that many regulations are applied to Irish terrorist prisoners in a discriminatory manner, that they are not always adequately protected and that they are treated on occasion by the authorities in an unlawful manner. A number of cases regarding the treatment of Irish prisoners and the compliance of parts of the Prison Rules with ^{the} Convention on Human Rights have been filed, principally by Logan, with the European Commission of Human Rights. The cases are at present being examined by the Commission and no decision on admissibility has been made in respect of any of them.

5. The Parliamentary Secretary replied in the Dáil on 16 February 1977 to a question tabled by Deputies Blaney and Keaveney on the treatment of Irish prisoners in Britain, with particular reference to the Isle of Wight (copy of extract from Dáil Debates attached). Dr. Kelly informed the House that aspects of the treatment of 41 prisoners, including 11 in the Isle of Wight, had been discussed with the British authorities since August 1974. He went on to say that he expected "to be in political contact with the British authorities to ensure that all Irish prisoners are treated properly".

6. The Parliamentary Secretary met the Home Secretary in London on 7 March. He conveyed our concern at the allegations in circulation

which were not only disturbing in themselves but were also, through their effect on public opinion, potentially damaging to the continuation and development of security co-operation between the two Governments. Dr. Kelly suggested that a satisfactory outcome to the situation would be to transfer some prisoners with links in either part of Ireland to Northern Ireland. He also referred to the particular problem arising out of the way solitary or cellular confinement was being used. The length of the periods involved and the condition of some of those in solitary confinement gave rise to doubts about the humaneness of the application of rule 43. The Home Secretary replied that he was aware of the problem but felt that the campaign on prison conditions which was being mounted in Britain was no different from that which he was aware was being waged in this country in relation to Portlaoise. Mr. Rees indicated that he would look at the question of transfer of prisoners but made it clear that he saw serious obstacles in the way of such a move. The Home Secretary contacted Ambassador Keating almost immediately after the meeting and told him that there was one point he had omitted to make in his discussions with the Parliamentary Secretary: there could be no question of transferring to prisons in Northern Ireland persons serving sentences for crimes committed before 1 March 1976 who would be entitled to claim special category status. Mr. Rees also promised to make available a copy of a detailed commentary on the Logan article which had been prepared in his Department. This was handed over by the British Embassy on 29 March. It did not in fact amount to the promised point by point rebuttal of the allegations made in the article and in general defended any measures taken by the prison authorities as being required on grounds of security.

Treatment of Prisoners.

9. Mr. Blaney and Mr. Keaveney asked the Minister for Foreign Affairs whether he is furnished with up-to-date information in relation to Irish citizens serving prison sentences in British jails and in particular those jailed on the Isle of Wight; if he will make a statement on the alleged maltreatment of the latter.

Mr. Kelly: I am generally informed about the position of Irish citizens serving sentences in British jails and am satisfied that in the vast majority of cases, there are no significant problems. In the cases of some persons sentenced for terrorist offences in Britain in recent years, there have been allegations of maltreatment of which I am aware and which are being examined in detail. Aspects of the treatment of 41 prisoners, including 11 in prisons in the Isle of Wight, have been discussed with the British autho-

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Questions—

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rities since August, 1974. I expect to complete inquiries in the near future and to be in contact at political level with the British authorities to ensure that all Irish prisoners are treated properly.

Mr. Blaney: It is useful to know that the Minister has been in contact, but how long will this contact go on? Has there been any real bite in the investigation or in the knowledge that the Minister may have? Is the Minister aware of what is more than an allegation—it is factual—that there are prisoners in the Isle of Wight now recovering in solitary confinement from broken limbs, multiple breaks, and that there is information, which is available to the Minister, that solitary confinement is being enforced in the Isle of Wight in the case of Irish citizens and that this means at least not only solitary confinement but prisoners being without clothes or bedding and living like half animals? Of course that always has been the attitude of the British. I ask the Minister urgently to follow up the contacts he has and not allow himself to be led up the garden path or to be delayed so long that the ill and sores of these much abused prisoners will have been healed up beyond recognition before he can take action about this. It is a bloody disgrace and it should be added to the Strasbourg trials that are going on—

Mr. Kelly: This will be followed up vigorously, I assure the Deputy, at political level in the near future.

Compensation by British Authorities for damage to property

Mr. Donlon

1. We are aware of damage totalling nearly half a million pounds to private property in the State caused by the activities of the British security forces in the North. There are in addition some outstanding claims from private property owners which have not yet been processed by our Courts, and it is understood that some property owned by local authorities and by the State itself may also have been damaged. However, it is understood that the approximately half a million pounds referred to above is the major part of the damage.
2. Typically, the damage consists of damage to building structures and to drainage and water systems and to walls, etc., with some cases of damage to stocks. The damage resulted principally from the British campaign of road closures, including road cratering and cutting bridges, in the 1971-74 period.
3. The British authorities acknowledge liability for the damage in question, to the extent that they will entertain claims for compensation submitted to the Ministry of Defence Claims Commission by the property owners in question. (During the '50s Border disturbances the British authorities paid compensation for similar damage to property with a minimum of procedural difficulty and without dispute as to their liability.)
4. There is no difficulty in principle with respect to compensation for publicly owned property. We are pressing the Department of Local Government to prepare a statement of claim for submission to the British authorities at an early date. Nor, indeed, should there be any difficulty in the simple case where the private owner of damaged property submits a claim to the British Ministry of Defence Claims Commission. (We have however no practical experience of any such claim.)
5. The difficulties which we face at present arise from cases of damage to private property where the individual property owner has sought and obtained a Malicious Injuries award through our courts

against a southern local authority. Under a Government decision of 1974, such awards are reimbursed to the local authority by the Department of Local Government. Our position is that, as ultimate responsibility for the damage in question lies with the British authorities, they should assume the financial cost of compensation. The position of the British authorities is

- (a) that they cannot simply accept the assessment of compensation by the Irish courts but must apply their own procedures, which in many cases would present difficulties because of the lapse of time; and
- (b) that any liability on their part is to the property owner. It cannot be transferred to an Irish authority which has paid compensation. Such a transfer, they suggest, would leave them with a double liability.

These arguments put forward by the British authorities are essentially matters of detail and of administrative arrangements, rather than of policy. It is also clear that the British argument would lead to the absurd and potentially scandalous position that an owner of damaged property could successfully claim compensation from both the southern and the Northern Ireland authorities. I have been unable to obtain advice as to whether either the Northern Ireland authorities or our own Courts could refuse to make an award where compensation had already been obtained from another source or indeed as to whether a southern Local Authority could oppose a Malicious Injuries claim on the grounds that a claimant should first pursue his remedies with those responsible for the damage, namely the Northern authorities. The first Circuit Court decision making a Malicious Injuries award in a case of this kind was made in 1972, at a time when the Northern authorities were refusing to accept liability for damage arising from road cratering "where the claim is made by a resident of the Republic of Ireland".

6. Later the same year, the Embassy in London raised the question of compensation with the Foreign and Commonwealth Office who said in the course of a reply in November 1972 that in the event of individual claimants not being satisfied with replies to their enquiries from the Ministry of Home Affairs in Northern Ireland, it was open to those individuals to seek redress before the courts in Northern Ireland.

7. This is clearly an unsatisfactory reply in a matter in which Britain is liable in international law. The unsatisfactory nature is underlined by the fact, recently disclosed in a House of Commons reply, that apparently there have been no payments by the British authorities for damage to property in the Republic. The sum in question (£1m) is significant and it is clearly in the interest of both administrations and of continued public support for cooperation that a solution to present differences be found before the non-payment of compensation by the British authorities becomes a matter of controversy. As the principles of the matter are clear, and presumably accepted by both sides, what is now required is an administrative arrangement whereby agreed figures can be established and an appropriate form for the resulting transfer or transfers worked out.

8. An inter-departmental meeting has been arranged for 17 May in order to discuss the problem further with the Department of Local Government. At this meeting it is proposed to seek an assessment of the total damage to property (both public and private) within the State as a result of the activities in Northern Ireland of the British security forces. We are also pressing the Department of Local Government to agree to our proposing to the British authorities (a) that all cases in which we have paid compensation should be examined with a view to assessing in each case, by procedures to be agreed, the amount of compensation which would fall to be paid by them; and (b) that the conditions for the payment of such compensation to the Irish authorities should be examined.

Hugh Swift

H. Swift

13 May 1977

Compensation

Draft Speaking Note

I want to refer briefly to the problems arising from damage to property along the Border on our side as a result of the activities in the North of the British Army and the RUC. This damage resulted mainly from explosions set off in the 1971-74 period as part of the policy of closing minor border roads by cratering the roads and cutting bridges. Typically, the damage consists of blast damage to houses and farm out-buildings, fences, etc., disruption of water and drainage systems and damage to stocks.

Over the years there have been contacts on and off with your authorities about compensation for such damage. However, these contacts have not succeeded in solving all the outstanding problems. Your authorities have indicated that they accept liability for such damage to the extent that you are prepared to entertain claims for compensation submitted to the Ministry of Defence Claims Commission. *the 1950's, similar claims were processed without difficulty.* You have also indicated that such claims could be in respect of publicly-owned property as well as private property.

A problem still remains in respect of private persons whose property has been damaged and who have already sought and obtained compensation from the Irish authorities. I should explain that our Courts have ruled that persons whose property has been damaged in the manner here in question are entitled to make Malicious Damages claims against the appropriate local authority and indeed such expenses are recouped to the local authority by the Irish Government. These developments in our administrative practice took place in the 1972-1974 period when your authorities seemed to

be refusing to accept any responsibility for compensation for the damage in question. At that time, the Foreign and Commonwealth Office informed our Embassy in London that individual claimants for compensation who were not satisfied with replies to their enquiries from the Ministry of Home Affairs in Northern Ireland might seek redress before the courts in Northern Ireland. For its part, the Ministry of Home Affairs in Northern Ireland were at that stage refusing to accept liability for damage arising from road cratering "where the claim is made by a resident of the Republic of Ireland".

Against this rather complicated background, the present problem is that owners of damaged property can, at present, claim compensation both from the Ministry of Defence Claims Commission and against the Southern local authority. It would clearly be inappropriate that they should get compensation from both sources. As far as we are aware, this had not yet happened as no compensation would appear to have been paid by your authorities in respect of damage to property in the South. It is also, however, unsatisfactory that while your authorities have indicated liability for the damage in question, compensation has been, to date, a charge on my Government. Clearly, what we must aim at is some administrative arrangement whereby the ultimate cost of compensation is borne by your authorities rather than by ours.

We are aware of damage to private property running to nearly a half a million pounds. This figure is based on the awards made by our Courts against local authorities under the procedures I

mentioned above. What we want to do is to remove the anomalies from the present system whereby individual property owners could, at least in theory, benefit from a double payment of compensation and, on the other hand, regularize the position whereby my authorities have paid out almost £500,000 in respect of damage for which your Government is liable. I do not wish to begin a discussion on this matter today but merely to draw the problem to your attention. We would propose to pursue the matter at official level in the next few weeks and I would hope that we can count on a sympathetic hearing from your side.

Hugh Siff

H.S.

17.5.1977