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Secretary to the

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23/7/82

Lough Foyle - Malicious Damage
Report from Dept. of the Environment

1. Background

On 6th February 1981, a coal boat, the "Nellie M" was hijacked and blown up in Lough Foyle, very close to the Donegal side at Moville. Claims for £912,000 were lodged against Donegal County Council (and, according to press reports, with the Northern Ireland Office). The case was adjourned in Buncrana Circuit Court to July 1982 and has since been adjourned to November or December. It was stated in Court on behalf of the owners that a large proportion of the claim had been paid by the British authorities and if the British paid the balance the case against Donegal County Council would be withdrawn.

More recently, 22nd/23rd February, 1982 a larger vessel the 'St. Bedan' was similarly hijacked and sunk, again close to the Donegal side of Lough Foyle. In this case claims totalling £3½ million for malicious damage were lodged against Donegal County Council and the court proceedings have not progressed further.

2. Who Pays?

If decrees for malicious injuries are given against Donegal County Council, it is virtually certain that the Exchequer will meet the full cost because damage caused by the use of explosives which is attributable to the disturbances in Northern Ireland falls to be met fully by the Exchequer. Donegal County Council would pay initially and would be fully recouped by the Exchequer.

3. Jurisdictional Problems

Lough Foyle separates Derry from Donegal and there are questions about its ownership involving the Government of Ireland Act, 1921

this matter is outside the scope of this Department's responsibility.

*The Department of Foreign Affairs are concerned with jurisdictional questions.

Because of this jurisdictional difficulty it is understood that the British Government have offered to pay half the cost of the damage to the Nellie M "without prejudice". There has been correspondence involving the Department of Foreign Affairs, the Attorney General and this Department about this offer. This Department's line was that we would be glad of a contribution from the British Government to keep down our expense but that there are wider considerations involved which were not of direct concern to this Department. Insofar as malicious injuries jurisdiction is concerned, case law has established a liability on county councils for damage caused to a vessel lying off or passing a coast. This would be relevant to the 'Nellie M' incident. The Malicious Injuries Act, 1981, which became effective on 6th November 1981, strengthens this principle by making local authorities liable for damage caused in a harbour or within one mile of the coastal boundary. However the fact that the two incidents occurred in estuarine waters between two jurisdictions complicates the malicious injuries law.

The legislation on malicious injuries is a matter for the Minister for Justice who, in a reply to a private notice question in the Dail on 10th February, 1981, indicated that the "Nellie M" was "very definitely and certainly within our jurisdiction"

4. Court Case

The Nellie M case has been adjourned to the November/December sitting of the Buncrana Circuit Court apparently at the request of the plaintiffs. It is understood from Donegal County Council's law agent that there has also been a claim lodged with the Northern Ireland Office and the plaintiffs would prefer to process it through those channels because they would be compensated for consequential

loss. Our Malicious Injuries Code covers only the damage caused. Presumably the same considerations would apply to the more recent incident. There is however one slight difference between the Nellie M incident and the more recent one. The Nellie M incident is being pursued under the law prior to November 1981, which involves obtaining a decree in court before compensation can be paid. The more recent incident would come under the Malicious Injuries Act, 1981 under which claims can be settled out of court.

5. Recent Events

The Department of Foreign Affairs, informed us, (22nd) that the British Government has made "interim payments" of £1/4 million. (£250,000) to the owners of "Nellie M" and £1/4 million (250,000) to the owners of the "St. Bedan". It also seems that the British Government intend to give an additional sum of £1/4 million (£250,000) to the owners of the St. Bedan.

6. The question of 'interim payments'

The Nellie M incident is being pursued under the pre - November, 1981 malicious injuries code (Local Government Act, Ireland 1898) which involves obtaining a decree in court before compensation can be paid. Donegal County Council has no power in normal circumstances to make an interim payment. The St. Bedan case is different and will come under the Malicious Injuries Act, 1981, under which claims can be settled out of court, but in this case it is doubtful whether Donegal County Council would in normal circumstances do so, given the large amount of the claim.

In both cases however if the Government were to decide on grounds

jurisdictional policy that payments should be made presumably ~~there~~
this could be arranged using Donegal County Council as an agent and
on the basis of recouping Donegal County Council the amounts paid.
A supplementary estimate may be required depending on the amount
and circumstances of any payment.

22-7-82