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MEMORANDUM FOR THE GOVERNMENTMeasures to deal with the problem of fugitive offenders

SUMMARY

1. The Minister for Foreign Affairs wishes to discuss with his colleagues, with a view to the taking of necessary decisions, the present state of discussions with the British Government and the stance to be adopted in that context by the Government in regard to the problem of fugitive offenders within the jurisdiction, notably concerning the question of

- a) extradition;
- b) joint questioning of suspects;
- c) a Joint Court.

2. Arising out of the meeting on 6 November 1981 between the Taoiseach and the British Prime Minister, the Attorney General met his British counterpart to discuss further measures that might be taken to ensure that those who committed crimes in one country should not be able to escape prosecution and conviction by seeking refuge in the other. Progress has been hampered by the fact that the Government has not had an opportunity to take policy decisions in this area.

3. The need to consider new measures at this time stems from the fact that despite extensive activity and co-operation by our security forces, there is a not insignificant number of persons resident in our jurisdiction actively involved in the campaign of violence in Northern Ireland. The Criminal Law Jurisdiction Act has not been effective in dealing with fugitive offenders because of the inherent difficulty in securing evidence. In addition, the fact that the British Government are now preparing a new initiative in relation to Northern Ireland and the degree of our influence on their thinking will depend directly on our capacity to meet their demands in the security field. These requirements are created by real Unionist fears on security which have helped immeasurably Mr. Paisley's success. The acceptability to Unionists of a British package which accommodated SDLP concerns (one of our major objectives) would be greatly enhanced against a more reassuring security background.

4. In accordance with its commitment to diminish the divisions between the two sections of the community in Northern Ireland and to reconcile the two major traditions in Ireland the Government has striven to encourage Unionist's trust in and understanding of our policies. The constitutional review

policy has already had a considerable impact in Northern Ireland. The introduction of satisfactory measures to deal with the problem of fugitive offenders would help to inspire greater trust in the Government and this State.

5. In relation to Extradition the courses of action which suggest themselves are:-

- (a) Constitutional amendment
- (b) A test case to the Supreme Court to appeal a decision not to extradite on grounds of political motivation.
- (c) Legislation to provide that "political offences" shall not include offences such as murder, attempted murder, kidnapping, manufacture, possession of explosives causing explosions, etc.

Possible difficulties in relation to (a) would be that the public would be asked to amend Article 29.3 of the Constitution, an Article which is legally unexceptionable, and that a referendum campaign on the subject of extradition would be a bonus for supporters of the IRA. In relation to (b) - an unsuccessful appeal to the Supreme Court might result in a definition of a political offence which would limit possibilities for future action in this area. Under option (c), an amendment of Section (11) the 1965 Extradition Act might be legislated for and the Bill tested before the Supreme Court. Even should it fail the judgement could hardly be such as not to assist in the formulation of a subsequent amendment of the Constitution should this be considered desirable. A general point in relation to any new extradition agreement is that a major condition would be the exclusion of questioning of the suspect after he or she is handed over.

6. The British Government has pressed in recent months for permitting joint questioning of suspects by Garda and RUC officers. We are only willing to consider this when linked to a Joint Court.

7. A Joint Court as envisaged at present would be a single institution with 'twin' jurisdictions rather than one overall jurisdiction. The Government and the British Government might each set up the Special Court to try defined terrorist offences and consisting of six judges, three from each jurisdiction. Sittings might take place before a bench of three, at least one judge being from each jurisdiction.