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*Mr. Collins
Mr. Hurd
18.9.89*

Meeting between the Minister for Foreign Affairs,

18/9

Mr. Gerard Collins, T.D.,

and the Home Secretary, Mr. Douglas Hurd,

on the Birmingham Six case,

Home Office, London, 13th September 1989.

1. The Home Secretary was accompanied at the meeting by a number of his senior officials (including Messrs. Faulkner, Langdon, Scott and Mower); Ambassador O'Rourke and Mr. D. Gallagher were present with the Minister.

Introductory Remarks

2. The Home Secretary warmly welcomed the Minister and went on to say that he looked forward very much to meeting his successor at the Department of Justice, Minister Burke. He attached particular importance to an early meeting with Mr. Burke, given in particular that Ireland would be taking over the Presidency of the Community in January. He added that he recently had a good meeting in Copenhagen with the Danes on 1992 issues and, as British, Danish and Irish interests were broadly similar in relation to 1992, he would like to see the three responsible Ministers coordinating their positions to the maximum degree possible. The next relevant Ministerial meeting at Community level was scheduled for Paris in December and Mr. Hurd said he would be very keen to meet Minister Burke before that. He would be happy to come to Dublin - indeed he very much regretted that he had not been to Ireland for quite a while - but thought that in present circumstances it might be better to think in terms of a meeting in London. Perhaps he could visit Dublin in the new year; as well as meeting Minister Burke there, he would also like to meet some TDs and in general get a political flavour of thinking here.

3. The Minister said that Mr. Hurd would find his successor an extremely able Minister and that they would get on very well together. He suggested that the two private offices might make contact with a view to arranging an early meeting.

Birmingham Six

4. The Minister expressed appreciation to the Home Secretary for his having agreed to see him at such short notice. The Birmingham Six case was a very difficult and sensitive issue for both Governments. It was an issue which could not be isolated politically. The doubts about the case were held by a broad spectrum of concerned people in Britain and Ireland, with political leaders, Churchmen (most recently Cardinal O Fiach) and others believing strongly that the guilt of the Six had not been proven beyond all reasonable doubt.
5. The Minister went on to say that the Birmingham Six case had implications for the perception of the administration of justice, for Northern Ireland policy and for relations between the two countries. The Government were under constant pressure to adopt a more aggressive approach, including taking the case to the European Court. Against this background, the Minister said he believed it was very important that the most serious consideration should be given to extending the current investigation into the West Midlands Serious Crime Squad (WMSCS) to cover the Birmingham Six case. Apart from the general considerations he had outlined, there was a specific reason to do so in that two or three of the officers involved in the Birmingham Six investigation were members of the WMSCS at the time of its disbandment. The Minister emphasised again that the controversy surrounding these three cases from the 1970s (the Birmingham, Guildford and Maguire cases), was seriously affecting the relationship between the two

countries and was unhelpful to our common effort to put the subversives out of business.

Decategorisation

6. In addition to his call for the existing inquiry into the WMSCS to be extended to cover the Birmingham Six case, the Minister raised the questions of decategorisation and ultimate parole for the Six. He said he understood that annual internal reviews of prisoner categories were held and that the next review for the Birmingham Six would take place in November. He very much hoped that the result of this review would be to move the Six down at least one full category. In saying this, he appreciated the legal context in which the Home Secretary had to operate. However, decategorisation was an internal matter and would have no implications for the decisions of the Courts in the case; we would of course be careful to avoid any reaction which would suggest otherwise. The Minister added that the Six seemed very suitable for decategorisation - they were model prisoners, were now middle-aged and came from a settled community.

Home Secretary's Response

7. The Home Secretary, in response, said the Minister was perfectly right in saying there was an annual review of all Category A prisoners. The next review for the Birmingham Six was due next month, give or take a few weeks. The question of guilt or innocence could not of course be linked with how prisoners are categorised.
8. The Home Secretary went on to say that, while he had discussed this issue with the Tánaiste in the past, the Birmingham Six case was different from discussions in the Anglo-Irish Conference, which, he added, he was glad to see

was working well. (By this we understood Mr. Hurd to mean that the Conference gave us a formal right to put forward proposals on matters within Northern Ireland, but no such formal structure existed for East/West issues). The Home Secretary said he would be in considerable difficulty if it were felt that he was using the powers available to him in this area to respond to political pressure. This was not his job, nor the job Parliament had given him legal powers to do and, unless he was careful, the issue could blow up in his face. Overall, he would not like to hold out much hope.

9. On what he called the substance of the issue, Mr. Hurd said he had referred the case to the Court of Appeal because the criteria for such referral, the availability of new evidence, had been met. The Court of Appeal had considered the case thoroughly and had spent five days considering the confessions issue, as the heart of the defence case had been that the confessions were not safe. Nothing had occurred since the Court of Appeal to throw any new doubt on the verdict. He simply could not consider bypassing the legal process by, for example, asking the Queen to exercise the Royal prerogative of mercy.
10. The present enquiry into the WMSCS had arisen because the Chief Constable, Mr. Deer, had been troubled by a number of recent acquittals. He began an investigation into the matter and, in the course of this, discovered that papers were missing in two cases. At that stage, he took the draconian step of disbanding the WMSCS, as he did not want officers from the squad at their desks while the investigation was continuing. The basic questions the investigation team were asking were: what went wrong and who was responsible? The investigation had just started and Mr. Hurd said he had no notion when or how it would end. It could, for instance, end up on the DPP's desk or with discipline charges being preferred.

11. Mr. Hurd's own position was that he was not standing in the way of the inquiry nor would he give any signal that, if its findings raised issues of concern, these should not be followed up actively. But there was no indication to date that anything would be found which would lead them back to the Birmingham Six case. Obviously, however, if anything was produced which was new and substantial, the Home Secretary would repeat what he had done already in the Birmingham and Guildford cases, i.e. refer the case again to the Court of Appeal. This would cause him a personal difficulty (presumably he meant in his relationship with the Court of Appeal), given that the Birmingham Six case had already been to the Courts twice. He promised to keep the Minister informed of developments, "perhaps through the Ambassador", but would not like to hold out much hope that he could help the Minister satisfy the concern of that wide body of opinion in Ireland which the Minister had so comprehensively described.
12. The Home Secretary added - and said "this was only a hunch" - that what had occurred may have been an attempt on the part of certain police officers, who were worried or resentful of the requirements for evidence under the new PACE rules, to try to circumvent these rules. More importantly, they had no indication from solicitors or people convicted before 1986 that there was any question of a rush of representations to them to the effect that large numbers of people had been wrongly convicted. To sum up at this stage, he could not say what the scope of the enquiry would turn out to be as it was very early days yet.

Decategorisation

13. The Minister, in summarising his case for early decategorisation, made the point that this would be crucial to the possibility of the Six benefitting from relatively early consideration by the Parole Board.
14. The Home Secretary, in response, said in relation to parole that a particular difficulty existed in the case of terrorist offences. He asked one of his officials, Mr. Faulkner, to explain the position. Mr. Faulkner said that in 1983 the then Home Secretary, Leon Britton, had announced changes in the parole system for those convicted of terrorist offences. This meant that, except in very exceptional cases, parole would not be available until twenty years had been served. They did not wish therefore to raise expectations by indicating that a decision on decategorisation could open the way to release in two year's time. It could be considered but it was very unlikely. In addition, the exceptions to date had involved bringing forward parole by only a few weeks or months. He knew it was disappointing to us to have to say this.
15. The Minister made the point that we had a more flexible system. In particular when people had severed their links with subversive organisations, we had treated them differently (i.e. we moved them to a different prison and, after a reasonable period usually released them). We had not made any mistake to date and in fact the approach tended to have a devastating impact on other subversives in prison. The Minister added that there had been a very positive response in Ireland to the Home Secretary's decision to release one of the Six on temporary parole for a family bereavement.

Guildford Four

16. At this stage, the Home Secretary, apparently in an attempt to deflect the pressure on him about the Birmingham Six, asked one of his officials about the timing of the Guildford Four appeal. The official replied that the case was now expected to be held before Christmas and that the delays involved were at the request of the appellant's and not of the State. (Note: our understanding is that the case will not come up for hearing before next February).

Birmingham Six

17. The Minister brought the discussion back to the Birmingham Six case and repeated that it tended to impact negatively on many aspects of Anglo-Irish relations, including on extradition cases. There might be some changes which were desirable in our extradition arrangements (i.e. the amending of the law to ensure the specific "handing over" had not to be specified in advance), but it was extremely difficult to make such changes at present, given the continuing public concern about cases such as the Birmingham Six. The whole issue was being exploited by Sinn Fein and the IRA; our common interest should be to take this propaganda weapon away from them. We were, in short, concerned to remove the obstacles to good cooperation between the two countries, and the Birmingham Six was a major such obstacle. The Minister concluded by asking the Home Secretary to consider very carefully the points he had put to him. The Home Secretary agreed to do so and added that the Minister had "put the case" very fairly.

18. The meeting, though very frank, was conducted in a friendly and businesslike atmosphere.

DPS

Dermot Gallagher,
18 September, 1989.

cc: PSM; Mr. Nally; PSS; Mr. Mathews; Mr. Brosnan;
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