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Mr. J. Langley
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AN RÚNAÍOCHT ANGLA-ÉIREANNACH

BÉAL FEIRSTE

ANGLO-IRISH SECRETARIAT

BELFAST

9 May 1990

Mr. Dermot Gallagher
Assistant Secretary
Anglo-Irish Division
Department of Foreign Affairs

Dear Assistant Secretary

Discussion with Quentin Thomas NIO on extradition

By arrangement, I met Quentin Thomas, Under-Secretary, Northern Ireland Office in London on 4 May. We had a brief discussion about the present position in relation to extradition in the context of the proposed meeting of Working Group II. (Thomas is, as you know, Co-Chairman, on the British side of the Working Group). He was accompanied by Steve Rickard, an Assistant Secretary in his Division.

The British side would like the Working Group to focus principally on the general implications of the recent Supreme Court decisions (Finnucane, Clarke and Carron) for extradition arrangements between the two jurisdictions with particular reference to their likely impact on up-coming cases. As you know, the British side are concerned about the re-opening (as they see it) by the Court's judgement of the political offence exception in Irish extradition law and the 'gaps' that might now exist, given that the '87 Act, which enabled us to ratify the European Convention, does not cover certain offences commonly committed by terrorists and Thomas left me in no doubt about how seriously they view recent developments. They are also worried that there will be more cases that will 'escape' in the future and feel that if this should happen, it will further reinforce the image of our jurisdiction as a 'safe haven' (which has been portrayed in certain quarters).

I took the opportunity to offer some personal views on aspects of Mr. Justice Walsh's judgement about which there could be misunderstandings on the British side, making the point that it did not amount to a restoration of the law to the pre McGlinchy and Russell position; the Court would look at every case on its merits and, where a particular offence had the hallmarks of terrorism, it would not attract the political offence

exemption. I said, moreover, that the judgement in Finnucane accepted the validity of the principle established by the Supreme Court in Quinn and endorsed in Russell that the political offence exemption could not be construed as granting exemption from extradition to anyone charged with an offence the purpose of which was to subvert the 'Constitution or usurp the functions of the organs of State established by the Constitution. I reminded the British side also that we had, in fact, moved a considerable distance in relation to the political offence exception since the days of the Law Enforcement Commission's Report when it was the considered view of the Irish side of the Commission that non-extradition for political offences was a generally recognised principle of international law to which Ireland was committed under Article 29.3 of the Constitution. I said that it should not be lost sight of that, notwithstanding the development of the jurisprudence of the former Supreme Court under Chief Justice O'Higgins during the early eighties towards restricting the scope of the political offence exception, the '87 Act was framed very much in the shadow of the views expressed by the Irish side of the Law Enforcement Commission - views which had dominated legal thinking for some considerable time before that. There was, therefore, a doubt in 1987 about precisely how far the Legislature could go and prudence dictated that the closer the Oireachtas stuck to the terms of the Convention (which could be held to have represented some shift in the generally recognised principles of international law) the less of a risk there was that the Act might be impugned on constitutional grounds.

My efforts with the British side to offer this kind of perspective on the Walsh judgement were reasonably well received but it was clear, nevertheless, that they believe that it is deeply offensive to them to suggest that, for example, the murder of British soldiers in Northern Ireland could in any way be regarded as amounting to 'political activity'. I stressed that even if this happened, it did not amount to a declaration that such acts were not criminal offences or that the State in any way condoned the conduct and Mr. Justice Walsh was very clear on that; it meant only that the offenders could not be extradited. There was still the possibility that, under the Criminal Law Jurisdiction Act, such offenders could be prosecuted extra-territorially in our jurisdiction. This was something that our side would want to focus on in the Working Group. The British side stressed, however, that the sight of terrorists being allowed to walk free by our Courts was deeply offensive and damaging and could not be accepted in a framework where cooperation against terrorism was meant to be close and effective. From their public statements, Ministers on our side did not, according to Thomas, appear to be concerned that this should happen. Moreover, the Criminal Law Jurisdiction Act did not appear to offer a solution in cases where people were wanted to serve the balance of a sentence.

Mr. Thomas spoke at all times courteously and calmly and he came across as a person who does not lack an understanding of the political difficulties in our jurisdiction that such issues in

extradition law present. He would like to have a discussion at the Working Group meeting on the parameters of the Walsh judgement, as we see it, and wondered whether it would be possible for us to put together a brief paper on the judgement. I undertook to pass this request on without commitment. (He mentioned, incidentally, that he had understood that there had been a promise on our part, in the AG's network, to do a paper on how the '87 Act would work but this did not seem to have materialised.) He thought that the group might look generally at up-coming cases to see how they might be affected by the recent judgements though, of course, he accepted that the discussion of the detail of individual cases and how they might be handled were matters for the Law Officers.

The British side will put in a paper before the meeting setting out their views - perhaps in a preliminary way - on how they see things at present. Thomas said that they would not be coming to the meeting with specific proposals to put to us, such as the introduction of amending legislation, but rather to register their concerns and underline the importance they attach to having extradition arrangements which will ensure that fugitives do not go unpunished.

Yours sincerely



Noel Ryan
Assistant Secretary

C.C. Mr. J. Brosnan, Dept. of Justice
Mr. M. Collins, Dept. of Foreign Affairs