



An Chartlann Náisiúnta National Archives

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M. McCarty
8/7

2 July, 1991.

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

1. *o. p. 24*
McNally: 2/2
McNally: 2/2
Gallagher: 2/1
2. Mc McNally

Dear Assistant Secretary,

We had a further "Stocktaking" meeting in the Secretariat yesterday. Our colleagues here were joined by John Ledlie, Austin Wilson, Peter Bell, John McKervill and Linda Rosborough - who is to replace John McKervill shortly. As you know, such meetings in the past have been used to bring us up to-date on a range of security and confidence issues of an ongoing nature and have also been used for a preliminary exchange of views as to the matters to be discussed at the next Conference. Yesterday's meeting fell into that pattern.

Later I will set out the outcome of the discussions on each of the items raised and Nessa Delaney's report will go down separately. Before doing so, however, I must say that the British side showed no reluctance whatsoever to getting involved in an exercise to prepare the agenda of the meeting of the 16th and which was referred to as such at the meeting. Indeed, there were (over lunch) explicit references to the fact that we were preparing for the meeting against the background of the statements of the Unionists parties as to the effect this would have on the political talks. We found this quite puzzling in the light of the position on the subject taken by the British side at last Friday's Liaison Group meeting (Joint Secretary is reporting to you separately on that).

The following are the specific issues discussed and the up-to-date position:-

Lethal Force/Cullyhanna/Coagh

The RUC submitted the file to the DPP about a fortnight ago. While the main "participants" did consent to being interviewed this turned out in many cases to be straight question and answer sessions very much under the influence of the Solicitors involved

and not the kind of interview that the police would find useful to get at the real facts. Nevertheless, they had enough to put a report in. There was nothing they could tell us about the Mansfield enquiry. Lethal force is expected to be on the Agenda for the Conference.

Carlingford

We indicated that we are examining their report about the "Lady Jane" incident and noted that it is in direct conflict with the Barnwell account on all important aspects. In the meantime, we wished to convey concern about the potential for further mischief now that summer has arrived, taking into account the damage that has been done by two widely reported recent incidents and some others. We pressed again for briefing of the Marines on the need for sensitivity. We were informed that HQNI has impressed on the Senior Naval Officer Northern Ireland the need to be more sensitive in the face of the increasing scope for difficulties as the season progresses. We thanked them for this assurance. We also clarified that the patrol limiting line in Carlingford Lough referred the "Lady Jane" report is the centre line in the navigable channel previously referred to by the British side in such reports and that the assurances in the British Embassy note of 1972 that the the Marines will not operate on the "southern side" still stand. We propose that the problem in Carlingford Lough be on the Agenda for the 16th.

EP Bill

The Bill received the royal assent a few days ago (it is now the Emergency (Provisions) (NI) Act) and will come into operation on 27 August. Before Parliament recesses two consequential matters will be dealt with, i.e.:

- (a) Regulations will be made to assure that the corresponding regulations under the 1978 Act do not lapse. (This appears to be merely technical);
- (b) A Criminal Justice (N.I.) Order will be made. (We have already reported on this - the main proposal is to enable an accused person to be remanded back into police custody by a judicial - rather than an executive - route but, because of the small number of cases likely to be involved, is not regarded as significant).

Out of concern that the new provisions should not be applied in a heavy handed or unsensitive way, a number of projects are in hands. These include the preparation of a code of practice in relation to detention, treatment, questioning, etc., (as required by section 61 of the new Act) and a code of practice in connection with the exercise of their powers by "authorised investigators" under Schedule 5. (We have been asked for our views on these - SF668 of 25 June refers). In addition, steps are being taken to get the Police and Army to make new "force orders" under sections 22 and 30 (search and possession) and to

ensure that those who will operate them are properly trained. Steps are also being taken to get the office of independent assessor for military complaints up and running and also that of the new commissioner for holding centres. Our views on these appointments would be welcomed. These are all matters that the NIO would like to dispose of in the Autumn. We would not propose to place them on the Agenda for the 16th.

CSFC

The Report based on the April meeting of the Committee was handed around. It was explained that the delay in giving us such reports is due to the need to get Ministerial clearance. You may wish to note that the Committee's next meeting will be on 11 July.

This is not a Conference item.

Accompaniment

The six-monthly figures for the period up to 31 March 1991 were handed around. These will have to be examined (and are going down separately) but in the course of a short discussion the British made this point that the figures showed an improved average rate of accompaniment over the previous half year for accompaniment of UDR patrols in "Green" and "mixed" areas.

We propose that the matter be on the Agenda for the Conference.

Discovery of RUC documents in dump

While there was no further development to report, we were informed that the RUC is taking a most serious view of the discovery. (There were references to "cock-up", "serious mistake" and "exocets"). It is now fully accepted that the fact that the documents were spent from an operational point of view, does not negative their potential danger. In fact the papers included the names of some members of the RUC (who have been moved already from their houses) as well as those of terrorist suspects. The understanding is that all persons who might have been compromised by the find have been approached. While not necessarily related, it was mentioned in this context that the killing of Cecil McKnight in Derry on Saturday had taken place while he was actually being interviewed by plain-clothes policemen who were warning him of the danger. (He was shot through the window in what was described as a most professional killing).

We propose that the subject to be on the Conference agenda. The British side are likely to enquire about progress in the investigation of the disclosure of Garda information. We would expect separate discussion in restricted session.

Jurors' Oath

There was general appreciation of the paper prepared by James Farrell which we had given them a few weeks ago. As it happens there is some real movement. It appears that what had been delaying matters was the fact that in the context of the necessary Order the form of Oath for NI had become tied in with the question of peremptory challenge. Following the abolition of peremptory challenge in the UK a consensus was sought as to what should be done in Northern Ireland but proved impossible to find. However the recent SACHR report (No. 16) seems to offer such a consensus (in favour of the retention of peremptory challenge) and it is hoped within the next six months to put out a draft Order in Council for consultation containing a new simply form of oath omitting allegiance to the Crown as already provided for in England and Wales.

The matter could be left on the agenda for the Conference.

Parades

It is envisaged that we will - as happened last year - have a briefing session here some time nearer the 12th. We were informed that the NIO has started to "badger" the RUC for the necessary information so as to provide us with that briefing and in time to ensure that our concerns are registered. The objective is to make the season as uneventful as possible and while the NIO and the RUC say they are in no way complacent about the problems they felt things were going in the right direction. For instance nothing had happened at a White Rock parade over the week-end. They repeated that Duncairn Gardens would not feature this year.

The subject is likely to be on the Conference Agenda.

Funerals

Our concerns about the recent Doris and Ryan funerals (heavy handed policing not in accordance with instructions issued by Sir John Hermon a few years ago) were appreciated but the formal NIO position is that they did not want to "double-guess" what the local police decided in the light of circumstances. In the case of the Doris funeral some paramilitary activity was expected. The contents of Fr. McEntaggert's letter has been discussed within the NIO and would receive further consideration in the light of our observations. Sir John Hermon's instructions would not be regarded as having the status of "guidelines" but were operational instructions for the time (indeed, there had been some demand at the time to change back). It was not a case of overturning previous instructions but of the exercise of operational judgement in the local situation.

For our part, we clarified that in the case of the Monaghan funeral no shots had been fired at the funeral. The events given

publicity took place at 00.59 am and, with hindsight, we were satisfied that no matter what was conveyed in that publicity, the policing of the funeral itself was appropriate and correct. This subject may come up in restricted session. We would not propose to put it on the plenary agenda.

Coroners Cases

It was conveyed to us that the legal representatives of the deceased in the Breslin and Devine cases had obtained leave to appeal to the House of Lords a decision by the High Court that a coroner could accept in evidence a written submission from a non-compellable witness (e.g., a soldier). The appeal is listed for 27/28 November. (The leave to appeal was given by the House of Lords Appeals Committee following a refusal to grant it by the High Court). Should the appeal succeed it would mean (we were told) that, in effect, the usefulness of a coroner's inquest will be further diminished - it has already been decided that certain witnesses are not compellable. The purpose of the appellants however may be to clear the decks for an application to Strasbourg.

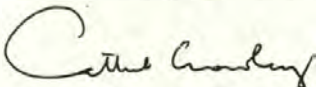
Cross-Border Roads

We thought the reclosure of border roads, confiscation, etc., would again be on the Agenda for the Conference. For their part, the British thought they would like to raise incidents in connection with reclosure exercises. They mentioned the rocket fired recently at NISF at BCP106. (Your SF401 of 24 June).

Crossmaglen GAA Grounds

This may be disposed of prior to the next Conference. If not, we have said we may want to raise it.

Yours sincerely,



Cathal Crowley,
Secretariat.