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*Please index to files 29 & 26*

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OIFIG AN ARO-AIGHNE  
(Office of the Attorney General)  
GOVERNMENT BUILDINGS  
UPPER MERRION STREET  
DUBLIN 2

Telephone: 616944

Telex No: 90879

Fax No: 761806

Our Ref.

Your Ref.

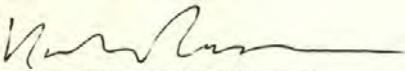
1 October, 1991.

Mr. Frank Murray,  
Assistant Secretary to the Government.

Dear Frank,

I enclose the Advice, sought by you some time ago, on visits by the President to Northern Ireland, which the then Attorney General, Mr. John L. Murray, S.C., gave on 24 September, 1991.

Yours sincerely,



Matthew Russell,  
Senior Legal Assistant.

*Mr. Murray*  
*4.10.91*

*Mr. Murray*

*happy for information*

*Jhr*  
*3/10/91*

*The Children*  
*re see & file announcement*

*RZ*

## OIFIG AN ARD-AIGHNE

Re: Northern Ireland and Article 12.9 of the  
Constitution.

Ard Aighne,

1. I am informed by the Department of the Taoiseach that the question of a visit by the President to Northern Ireland may arise. The Department would like to receive advice in regard to whether the requirement in Article 12.9 of the Constitution that the President obtain the consent of the Government if she wishes to leave "the State" would apply to such a visit.
2. The question appears to have directly arisen, so far as this Office is concerned, on only one occasion previously (in 1963), and indirectly on one other occasion (in 1979).

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On the former of these occasions the then Attorney General (Mr. Ó Caoimh) agreed (tab 'A') with the view that the President does not leave the State when he visits Northern Ireland because

"the State consists of the whole island of Ireland, its islands and territorial seas under Article 2 of the Constitution. In this context it is not material that the laws enacted by the Oireachtas do not extend to the whole island."

3. I find myself, with diffidence, in disagreement with this view. In my opinion the State is not co-terminus with the national territory. The land mass of the latter comprises thirty-two counties (: Article 2) while that of the former extends, I suggest, only to twenty-six of those counties. Such a state of affairs is recognis~~ed~~ed by very many Acts of the Oireachtas, among them

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- the Extradition Act, 1965, section 47(1) of which deals with extraditions to Northern Ireland and requires the District Court to specify the "point of departure from the State"; and
- the Criminal Law (Jurisdiction) Act, 1976 which declares that a number of different activities shall be offences if done "in the State or in Northern Ireland".

Furthermore, it seems to me that the Constitution itself recognises the distinction between the national territory and the State. For example, in Article 8.3 it authorises provision being made by law for the exclusive use throughout the State of either of the official languages. Yet Article 3 makes it clear that laws enacted by the Oireachtas shall apply only within the area of the twenty-six counties and not to the remaining

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part of the national territory (the provision in that Article regarding extra-territoriality not being relevant for present purposes).

I find clear support for the view just expressed in the judgment of Finlay CJ (with whom Walsh, Griffin and Hederman JJ concurred) in McGimpsey & Another -v- Ireland & Others (1990 ILRM 441) where, at p.449, he spoke of "the frontier at present existing between the State and Northern Ireland". This is but one of what I believe to be numerous instances of judicial recognition of the State as comprising twenty-six, and not thirty-two, counties.

4. For the sake of completeness I would mention that the matter was indirectly touched on in an advice given by Mr. Declan Quigley to the Department of the Taoiseach in 1979 when the question of the President going to sea was discussed (tab 'B'). As Mr. Quigley pointed

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out, "a 'State' in the normal meaning of the word is the area of jurisdiction of the laws. This area, again normally, is the national territory...". In my opinion Mr. Quigley's emphasis on the normal rule was directed to the special wording of Article 3 and was not intended to suggest that our State and our national territory were co-terminus.

5. I therefore conclude that should the President wish to visit Northern Ireland this will involve her leaving the State and so will require the consent of the Government.

*B. R.*

6 December, 1990

*1. I agree. The Constitution  
distinguishes between the national  
territory and the State. Article 3 states  
that 'Ireland is a sovereign independent  
democratic state'. Pending the  
relinquishment of the national territory  
that the State is in the 26 counties.*

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*24/9/91*