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What a mess

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EXTRADITION OF MCFARLANE AND KELLY

I have seen [redacted] minute to you of 4 November and the draft submission.

McFarlane

I agree that we should accept McFarlane on the conditions set out by the Dutch Supreme Court which provide for him to continue to serve his life sentences for murder and to face charges for certain less serious offences in connection with the Maze escape. I assume action under the Royal Prerogative will be necessary to implement this decision, ie to remit his sentences for the 3 convictions for explosives offences for which he is held to be not extraditable.

Kelly

I find this case much more difficult. Extradition is found not admissible in respect of his life sentences for explosives offences. If we accept him on the conditions set out by the Dutch Supreme Court I assume action will be necessary under the Royal Prerogative to remit his life sentences and it therefore follows that Kelly could be held in Northern Ireland only as a remand prisoner awaiting trial for those charges found extraditable, ie attempted murder, grievous bodily harm and certain lesser charges.

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As both attempted murder and grievous bodily harm have a maximum penalty of life imprisonment it is possible though by no means certain that we may eventually get Kelly again as a life sentence prisoner. Any different result of his trial would be a bonus for Kelly and it must remain a possibility that he could walk free after his trial.

With considerable reluctance however I accept that the balance of advantage overall lies in our taking Kelly on the conditions offered rather than refusing to take him with the prospect of his then being released in the Netherlands. I must say, however, that my view would have been different if the Dutch Court had effectively prevented us from prosecuting him for the charges of attempted murder and grievous bodily harm or had held that Kelly's extradition on the bombing convictions should not be allowed on the grounds that they were "political" offences. However, that is not the case and, as your draft submission makes clear, there are genuine legal reasons for the refusal to extradite either of them on the bombing convictions. Nevertheless, the use of the Royal Prerogative to set aside Kelly's (and McFarlane's) life sentences will be extremely controversial, and is quite likely to be widely misunderstood, misinterpreted and misrepresented: "London bomber given Royal Pardon etc" in the headlines.

Finally, I should like to make the point again that we need to pull out all the stops with the Dutch to ensure that we have the best chance of reaching the position where we have to take decisions, difficult though these may be. I must confess that I am a little uneasy that we seem to be relying on making our case to a Dutch junior Minister in the Ministry of Justice.

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This may be right in detail, but given our current Presidency of the EC Council of Ministers, I would like to think that the political message in all this is being put across clearly too at a higher political level.

12 November 1986

cc

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