

2020/17/54

S25523B

Gibraltar -
Shooting on Sunday
6 March 88

3/3/90 - 11/9/90

START of file

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~~IMMEDIATE~~

This file is
in Registry

Dympre.

Dymling, For Gibraltar File, please 80

AMBASÁID NA hÉIREANN, LONDAIN.



IRISH EMBASSY, LONDON.

17 Grosvenor Place,
London SW1X 7HR.

Confidential

30 April, 1990.

Mr. Dermot Gallagher,
Assistant Secretary,
Department of Foreign Affairs,
Dublin.

M. M. C. Gallagher
4.5.90
W. Kwon
315.

cc PRM & AG
H. Melle: P.S.S.
Mr. Hatcher, Mr. Bussan
Councilor AJ
PSA

Conversation with Juliette Wheldon
Principal Legal Assistant to the Attorney General

Dear Assistant Secretary,

I had lunch on 23 April with Juliette Wheldon.

Gibraltar Three - Action under the Crown Proceedings Act

That day's papers reported on the Foreign Secretary's move under the 1947 Crown proceedings Act to block the action by the relatives of the Gibraltar Three. It appears that the Attorney's office was closely involved in the decision to issue certificates under the Act. Miss Wheldon contended that recourse to the 1947 legislation in no way implied a judgement on the merits of the case but was simply a procedural move rectifying what she sought to portray as an error by the relatives' solicitor in wrongly identifying the Crown and its agents as the party against whom the action should be directed. She insisted that while recourse to the Act was not frequent, the legislation was availed of from time to time. I asked her for a recent example of its use. She confined herself to the one example referred to in press reports where in 1984 Sir Geoffrey Howe had blocked an action by a number of residents of West Berlin seeking relief in the British courts in respect of a nuisance caused by RAF jets at the Gatow airbase in the city. A subsequent appeal against Sir Geoffrey's action failed in February 1986.

Miss Wheldon agreed that on balance an appeal by the relatives in this case was also unlikely to succeed. If, however they were serious in their intention, as reported by the media, to take the case to Strasbourg, they would, she said, probably feel it necessary to exhaust all domestic legal remedies. They might also, she surmised, consider an action in the Gibraltar courts which she argued was the jurisdiction in which the action should have commenced.

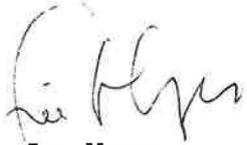
Extradition

She had read with interest of the decision to set up a working group of officials to review extradition arrangements. She wondered if this would include representatives of the two Attorneys' offices. On the British side, she said that they had reassessed our legislation in the light of the recent decisions. While recognising that the 1987 Act had yet to be tested in the Courts, she personally was "far from convinced" that applications under the 1987 Act would turn out any differently from those under the 1965 legislation. She criticized the 1987 Act on two main grounds - the limited listing of specific offences and what she argued was the excessive scope for the application by the judges of subjective criteria.

When I first met Miss Wheldon in October last she had only recently taken over from her predecessor, Michael Saunders and had just returned from a successful and pleasant visit to Dublin with the Attorney. On that occasion she echoed fulsomely the positive views of her boss on the visit to Dublin and on the high level of cooperation and understanding that existed between the two offices. She also voiced the hope that with the Ryan affairs in the past all would henceforward proceed smoothly on the extradition front.

Our conversation on this occasion took a decidedly different turn. Her criticism of the recent Supreme Court decisions was trenchant and detailed and she went on to pick holes in the 1987 Act. I also detected behind this critical legal appraisal a strong sense of personal annoyance with recent events and a determination to give me a hard time.

Yours sincerely,


Joe Hayes
Counsellor

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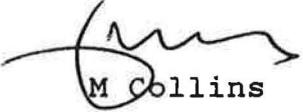
Note

Gibraltar case

I received the attached Certificate today from Jeremy Thorpe of the British Embassy. This matter was the subject of the call by the British Ambassador on the Secretary last Thursday. I had requested a copy at the end of last week. It was Mr Thorpe's understanding that the document has been lodged in Court.

It is interesting that the Act under which the Certificate is issued (the 1947 Crown Proceedings Act) refers only to the 'Government in the United Kingdom' while the Certificate adds on the additional piece 'nor in respect of Her Majesty's Government in Northern Ireland'. The reason why it was felt necessary to do this is unclear.

There was no indication from recent contacts with the Paddy McGrory, who is acting for the families in the case, that he had any knowledge that this action was to be taken by the British Government. It remains to be seen how he, and the Courts in Northern Ireland, respond to this Certificate.


M Collins

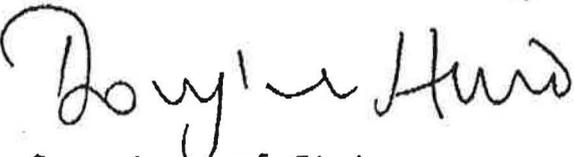
27 March 1990

cc PSS, Mr Nally, A/Sec Gallagher, Mr Brosnan (D/Justice), Mr Russell (AG's Office), Mr Hamilton (AG's Office), Joint Secretary.

Handwritten notes:
S 25523
Dy...
for Gibraltar, Feb, 1990
36 28 / 3/90
Mr M...
Mr...
27.3.90
27/3

CERTIFICATE

I, Douglas Richard Hurd, one of Her Majesty's Principal Secretaries of State, hereby certify that any liability of the Crown alleged in the action specified in the Schedule hereto arises neither in respect of Her Majesty's Government in the United Kingdom, nor in respect of Her Majesty's Government in Northern Ireland.


Secretary of State

SCHEDULE

The action in the High Court of Justice in Northern Ireland Record No.1989 No.5008 entitled John Savage Plaintiff and Ministry of Defence Defendant commenced by a Writ issued on the 28th day of June 1989.

Foreign and Commonwealth Office
King Charles Street, SW1

15 March 1990

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*Mr. C. ...
23.3.90 ...
23/3*



*Tadiceach
I understand that
this will not now happen
until tomorrow. The sub-*

Confidential

Court action by relatives of Gibraltar Three - telephone call
from British Ambassador 22 March 1990

*is at + ...
22/3*

The British Ambassador, Sir Nicholas Fenn telephoned me this morning about 10.45 a.m. He said he had been instructed this morning as a matter of urgency (before 12 noon) to convey the following to us "at the highest available level in the Department of Foreign Affairs" by way of advance warning on an action taken by the Foreign Secretary late last night which may become public in court in Belfast today.

Ambassador Fenn recalled that relatives of the three killed in Gibraltar had begun proceedings against the Ministry of Defence in the High Court in Northern Ireland alleging "unlawful assault" by servants of the Ministry of Defence on those who had been killed. A question of jurisdiction would arise under Section 40 of the Crown Proceedings Act 1947 as applied in Northern Ireland by virtue of an order made under Section 53 of that Act. The relevant part of Section 40 is Section 40.3a.

Late last night the Foreign Secretary had signed certificates stating that any liability of the Crown which may be alleged arises neither in respect of Her Majesty's Government and the United Kingdom nor Her Majesty's Government in Northern Ireland (sic). Ambassador Fenn said he was instructed to emphasise to us that this was a legal not a political matter. What was an issue was simply the question of jurisdiction of the courts - it was not the intention of the British Government to leave the plaintiffs without a forum in which to pursue their claims.

I understood Ambassador Fenn in conveying the foregoing to be reading from a telegram which he had just received. When he had finished I went on to seek clarification on a number of points. For the most part he was unable to elaborate and he apologised to me for the lack of adequate background briefing which he had been given. The following additional points must be understood therefore as to some extent speculation on his part (especially since he did not have the text of the relevant acts by him as he spoke).

I asked what was the significance of the signature of such certificates by the Foreign Secretary? He said he believed that any Secretary of State could sign such an order and it was simply the case that the Foreign Secretary had done so. I questioned this and wondered if the Foreign Secretary had been involved because the killing took place in Gibraltar. He conceded that this is possible.

*For Gibraltar Shooting
file, please.
B*

I asked him to elaborate further on the point he had made - that it was not the intention of the British Government to leave the plaintiffs without a forum in which to pursue their claims. Since it appeared from what he said that both Britain and Northern Ireland were ruled out did this mean that the action would have to be taken in Gibraltar? He said that that was not within his instructions but again, on a personal level, he conceded that this seemed to be what was in question. He again emphasised that the action taken by the Foreign Secretary was based on a legal rather than a political judgement - "it was simply a matter of jurisdiction". He added that as he understood it, it was necessary to prevent the courts from acting illegally.

I expressed surprise at this and said that I would have thought that it was surely a matter for the courts themselves to ensure that they acted in accordance with the law. If they did not have jurisdiction under the law they would surely so declare. It seemed surprising to me that it would be a matter for the Executive to direct them - was it rather that the certificate had the effect of removing the case from their jurisdiction? Again Ambassador Fenn was not able to elaborate beyond saying that he thought it possible that the courts in such a case would have to await such a certificate and this had now been issued. *or that they would answer, if the Executive did not give the certificate provided for in the Act, that the Executive's view was*

I asked if the action of the Foreign Secretary had become or was likely to become public? He was not sure on this point but he thought that the signature of the certificates as such would not be public. However it appeared from his instructions that the certificates were likely to be submitted to the court today and they would no doubt then become public. He noted that his instructions had been to convey the "advance warning" to us by noon. He had the impression that the submission of the certificates would result in the proceedings being struck out.

I asked if I was the channel for this "advance warning" - was information also being conveyed to us through the Secretariat? Ambassador Fenn said that they had always regarded the Gibraltar case as an East-West one and for that reason the information was being conveyed primarily through me in accordance with his instructions. He thought it possible however that it might be "backed up" through the Secretariat.



N. Dorr
Secretary, DFA
22 March 1990

X

tomorrow
24/3

that the Court did have jurisdiction

For Gibraltar Study file, please

Mr. Keenan 13/3



Gibraltar Petition

*Mr. Keenan
Taoiseach
To see file
13. 3. 90
9/3*

525523

At the request of the Taoiseach's Department, a delegation representing the families of the Gibraltar Three called by arrangement at the Department today (6 March, the 2nd anniversary of the Gibraltar killings), to present a petition calling on the Government

"to undertake the necessary legal steps to investigate the true circumstances surrounding the killings of three unarmed Irish people in Gibraltar on March 6th 1988".

and asking the Government

"in its capacity as a signatory to the European Convention on Human Rights, to adhere to the principles of signatory Governments in the defence of the rights of its citizens and henceforth to pursue this case in the European Court of Human Rights in Strasbourg".

The delegation maintained that the petition had been signed by 100,000 people and a substantial number of completed petition forms were handed over by the delegation.

The delegation was composed of Mr & Mrs Farrell and their son, Niall Farrell; Mrs Savage & Ms Savage, the mother and sister of Sean Savage); and Mrs McCann. The delegation were met by Michael Collins and the undersigned at the Department of Foreign Affairs.

Niall Farrell was the most outspoken member of the delegation and there were few interventions by any of the others, with the exception of Mr Farrell (senior), who intervened on a number of occasions in what appeared to be an attempt to moderate his son's more confrontational comments.

In essence, the following points were made with some force by Niall Farrell:

- From the beginning, the Government had appeared sympathetic.
- He could not see what reasons could prevent the Government

from taking action, even on the question of requesting a Commission Rogatoire from the Spanish Government, and assumed that the reasons must be diplomatic and laid the blame at the door of officials.

- Unless action was taken, the Gibraltar episode would be repeated and, in this context, he pointed to the recent shooting of three people on the Whiterock Road.

He also complained of what he alleged was harassment by the Garda Special Branch in the raiding of the homes of supporters and in photographing people attending meetings in connection with the Gibraltar campaign.

The delegation were told that these issues had been addressed by the Minister in the Dail in early February and that in accordance with the replies given by Minister on that occasion, all aspects of the case, which involved a number of very complex matters, were being closely examined and that no decision had yet been taken on the question of taking a case to Strasbourg. An undertaking was given that the points raised would be carefully noted and would be conveyed to the appropriate authorities.

The petition (which is in several volumes) is available in the Department of Foreign Affairs



Anglo/Irish Division
Department of Foreign Affairs
6 March 1990

cc PSM
PSS
A/Sec Gallagher
Mr Nally Dept/Taoiseach
Mr Brosnan Dept/Justice

ATTENTION: Mr. D. MALLY

THIS LETTER
ACCOMPANIED THE

With the Compliments

PETITION FROM
of the
THE FAMILIES OF

THE GIBRALTAR ^{Secretary} ~~Trust~~.

Department of Foreign Affairs

NOTE OF MEETING
ALREADY SENT TO
YOU. M. COLLINS
6.2

*W. J. ...
6/3
M. J. ...
Please read
9.3.90*

**Charles Haughey,
An Taoiseach,
Leinster House**

A h-uasail Ui Eochaidh

It is now two years since our people were shot down on the streets of Gibraltar, and 18 months since the "Inquest" which, by a majority decision, returned a verdict of "justifiable homicide".

International opinion is united in its disquiet at the campaign of disinformation which followed the shootings, the vilification of witnesses and lawyers acting on our behalf, and the constraints which the British government placed upon our lawyers at the "inquest". Despite the wealth of evidence that the British government acted outside the law in the shootings and in the way they conducted the inquest, your government has done nothing to rectify these grave wrongs. Backed by the 100,000 people who have signed our petition, and by all those who didnt gain access to it but nevertheless voiced support for our call, we now call upon your government, as a signatory to the European Convention on Human Rights, to begin the process that will lead ultimately to a judicial enquiry into the deaths in Gibraltar under the auspices of the European Convention.

In the meantime, we ask that you make public any report compiled by observers which your government had at the Gibraltar "inquest".

Is sinne le meas

Mrs Mairead Farrell (mother) *Mairead Farrell*

Mrs Lily Savage (mother) *Lily Savage*

Mrs Margaret McCann (wife) *Margaret McCann*

Mrs Shelia McCann (mother) *Shelia McCann*

MR. by ~~Cathy~~
For information
P. P. 5/3/90
FAX

N.A. 525523
SEEN BY
TAOISEACH

To: Dept. of the Taoiseach

To: Pauline

From: Dermot Gallagher

For Gallagher's
records
only

Subject: Receipt of Gibraltar Petition

1. Unfortunately, I have a meeting in Belfast at 10.30 tomorrow morning of the North/South Steering Group to finalise agreement on the Ballinamore/Ballyconnel Canal project. I am Joint Chairman of the group.
2. If the Taoiseach agrees, I would suggest that the Counsellor in charge of this area in the Department, Michael Collins (who is Declan O'Donovan's successor here) and Brendan McMahon (who is our Belfast liaison man and a particular friend of Paddy McGrory, the solicitor for the families) should receive the petition.
3. If the Taoiseach wishes, I can of course change the above arrangements.

✓
Mrs. Farrell
088-565631

Note
Phoned Mrs. Farrell to indicate that Javis had
had alleged a meeting with officials
from DFA. on the 6th held at 11.30 AM

P. P. 5/3/90

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have not been copied***

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