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16/12.



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Prime Minister

Fair enough response for
Jack. Content to approve
the case at 5(i) and
demonstrate against the wider
package?

12/12.

Prime Minister

IRISH PRISONERS

I know that you are anxious to make more rapid progress on the repatriation of Irish prisoners to the Republic; and your Private Secretary's letter of 25 November raises wider questions about the handling of prisoner issues in the context of the peace process. Mo Mowlam has also written to me about this.

2 It goes without saying that we need to tread carefully in this area. I am not aware that we have made any public statement about our preparedness to be flexible about prison matters, including releases, as Mo implies. Indeed we need to be careful not to cut across the painstaking efforts we have taken to obtain assurances from the Irish Government that they will enforce our sentences in repatriation cases - with a very satisfactory outcome.

3 I recognise, of course, that enduring peace and a final settlement are, in practice, unlikely to be achieved without some additional flexibility being demonstrated in relation to prisoners. But the political consequences are difficult to assess - even as part of a guaranteed peace settlement. I have therefore asked key officials here to liaise with NIO officials to produce, urgently, a paper which would allow us, without commitment, to consider the options available in terms of a more flexible approach and the scope for the kind of signal which you and Mo discussed. I would hope to have that ready by the middle of next week.

4 As far as the repatriation process is concerned, I will certainly make every effort to ensure we make as rapid progress as possible. But there are real difficulties - mainly on the Irish Government side - which mean that there is almost no prospect of completing the outstanding repatriations before Christmas, as you and Mo had hoped.

5 The outstanding terrorist cases fall broadly into four categories:

- (i) The relatively straightforward. I have just agreed to one more application (Donnelly); and if you and Mo are content, we can announce that straightaway. The Irish are considering one case at the moment (Sherry) which looks straightforward to us; and I can see no reason why it should not be dealt with speedily - ie before Christmas - if they refer it back to us promptly.

I assume
you
are.

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(ii)

Cases affected by a legislative problem in the Republic. There are seven such cases, six currently with the Republic. The Republic have recently discovered that they may not be able to enforce in full sentences passed in cases involving the possession of explosive, or conspiracy to cause explosions. The maximum for such offences is 20 years. The seven prisoners concerned have been sentenced to periods of 30 to 35 years. The Republic hope to have legislation in place to overcome this difficulty by Christmas. We clearly cannot effect the repatriations until this is done. However, I have approved an application from O'Duibhir - who falls into this category - and if the other six cases are referred back to us on the basis of previous assurances I see no reason why I should not take a similar decision "in principle" in their cases as well, so that we can move immediately once the legislation is in place.

(iii)

Whole life tariff cases. There are now five of these. The Republic have had one case (Magee) under consideration since July. The other four are the Balcombe Street gang, whose cases we will refer to the Republic as soon as the tariff decision is announced. Here we are in the Republic's hand. If they give us assurances on enforceability (subject to the exceptional circumstances formula we have agreed), there is no reason in principle why their applications should not be dealt with quickly. But they may have difficulties with this.

(iv)

Others. One other case remains with the Republic. This, together with one of the prisoners referred to in (ii) above, concerns prisoners who may not be Irish citizens (a prerequisite of the Irish courts). Again, if the Irish can resolve their side of these cases, there is no reason why they should not be processed quickly. The only other outstanding request - with us - is J Kinsella. Action in this case has had to be suspended owing to renewed appeal proceedings. The Convention requires that sentences are final. No progress can be made on the repatriation request, by either jurisdiction, until the outcome of the appeal is known.

6 What this points to is a need for further, urgent consultations with our counterparts in the Irish Government. We will put that in hand immediately. But the critical point - which we need to get over to Sinn Fein if necessary - is that if the Balcombe Street gang's cases are referred to the Republic quickly, then 13 out of the total of 15 outstanding cases will rest with the Irish Government.

7 Details of the terrorist prisoners seeking repatriation to the Republic of Ireland are given in Annex A, together with numbers and details of non-terrorist prisoners also seeking repatriation.

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8 An announcement of the decision on tariffs for the Balcombe Street gang is still outstanding. For the reasons I have already given, I can see no alternative to whole life tariffs in that case. But you may now wish to delay a decision on timing until after we have had the opportunity to consider the options paper on the wider issues.

9 I am sending a copy of this minute to Mo Mowlam and to Sir Robin Butler.

Jack Straw

28th November 1997

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