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Mr Murray
I understand that you will be making a submission on this very soon
copy for [unclear] 31/1/83
31/1/83

Report of the Meeting on 24 January 1983 on the Question of Compensation Claims

Secretary to the Govt.

No see please at this stage. A
Further note will follow in main issues involved. For damage to private property the British are offering £500,000 in respect of compensation claims already paid which total almost £700,000. This offer may be revised on Thursday next.
A.H.
31/1

31-1-83

A meeting between British and Irish officials was held in Iveagh House on 24 January 1983 to discuss the question of compensation claims for damage to public and private property in the State as a result of the activities in Northern Ireland of the British security forces.

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Those present were:

British side

Mr S. Boys-Smith (NIO), Mr P. Eyers (FCO) and Mr P. Johnstone (British Embassy).

Irish side

Ms M. Hennessy (D/FA), Mr J. Cullen (D/Environment)
Mr B. Nolan (D/Environment) and Mr D. Brangan (D/FA).

2. Opening the meeting, the Irish side said they proposed to discuss compensation claims under three headings:

- (a) those lodged directly against the British Government by 17 Kiltyclogher residents,
- (b) those covering compensation already paid by the Irish Government in respect of damage to private property,
- (c) claims in respect of damage to public property.

They outlined the extent of the compensation claims already lodged with the British viz. a total of £837,224 not including the Kiltyclogher claimants and said that they wished to add a further £24,333.95 to the total for private compensation claims and £90,000 in respect of public property (Aghalane Bridge).

The British side reported that they had come to the meeting in a spirit of goodwill to remove the source of difficulty that had delayed the settlement of these claims.

3. (a) Kiltyclogher claims

The British side said that a total of twenty-three claims had been lodged in the Northern courts for damage to private property in Kiltyclogher (18), Dromard (2) and Rosleigh (3). They stated that there was no legal provision in Northern Ireland statute law to entertain claims for damage to property outside the jurisdiction and the "Mozambique Rule" effectively excluded recourse to a suit in common law. They were proposing, therefore, in the absence of a legal basis, to make an offer of ex gratia payments and would deal directly with the legal representatives of the claimants on this basis. Such payments would be calculated on their loss adjusters' estimation of loss, at historic cost levels (late 1974) without any inflation factor. They stated that the original claims were exaggerated and their recommended settlement figure was in the order of £11,265 as compared with the sum of £51,726 claimed. The Irish side agreed that the general approach seemed reasonable but expressed reservations on the absence of an appeals procedure, particularly in the light of the difference between the claims and proposed settlements. The case of a woman whose house was destroyed was mentioned specifically. It would appear that her loss would necessitate substantial compensation. The British side replied that they had taken into account the condition of the house prior to the damage. Our concerns were noted by the British who argued that because of the legal position, there was no other alternative to ex gratia payments. Either the Northern Ireland Office or the Ministry of Defence would begin discussions shortly with the legal representatives of the claimants. The Irish side pointed out that if the British offers were considered by the claimants to be too niggardly or derisory there could be a good deal of public criticism. The British side were urged to be flexible in their approach.

have offer
say there may
be reply.

4. (b) Private property

In relation to the compensation claims for damage to private property, the British said that the legal position remained the same but unlike the Kiltyclogher claims, they were not in

possession of the court papers relating to the assessment of loss. They said that their evidence was that the Irish courts were more generous than their UK counterparts. They emphasised that they were not in a position either to accept liability on behalf of the British Government or to offer direct reimbursement of the claims. They were, however, prepared to offer a payment of Ir£500,000 in respect of all claims for compensation for damage to private property in the State [total claim is Ir£696,707.85 including the £24,333.95]. Because such a payment would need a special subhead in a supplementary estimate, they were anxious to pay such monies within this financial year. They stressed that to organise this they would need an answer within a fortnight. Any delay would push the settlement of these claims back towards the end of the following financial year as there was no provision in the estimates for the year 1983/84 for such payments and a supplementary estimate would clearly have to wait until this time next year. The Irish side rejected the assertion that the Irish courts were overgenerous in relation to compensation claims and pointed out that, if anything, the claims submitted to the British were understated in that the legal cost of the County Council involved and claims for consequential loss (permissible under the Northern Ireland malicious damages code) were not included nor was any account taken of inflation. However, the Irish side welcomed the offer given the spirit of goodwill involved but said that instructions would have to be sought on the matter. They emphasised that the offer seemed low in relation to the total amount claimed and the British side was asked if this offer was a final one or was there room for negotiation. The Irish side agreed to reply to the offer within the time period specified but said, in the meantime, clarification on the negotiability of the offer would be appreciated. Both sides agreed to keep in contact.

5. The meeting then began to explore avenues as to how questions of future compensation claims might be handled. While both sides were in agreement that this area should be the subject of future talks a number of possible approaches to the problem

ends on 31/3/83

N.B.

were discussed including the County Councils changing their legal defence in relation to such claims and trying to force claimants to pursue their suits in Northern Ireland, provided a clear understanding existed that such claims would be settled by the Northern Ireland authorities. The problem, however, was that there was still no legal basis for claims in Northern Ireland for damages outside the jurisdiction. It was thought likely that new legislation might be needed in both jurisdictions to enforce such a scheme and to avoid double payment situations. Another possibility discussed was that British loss adjusters might be present at or have a say in County Council's claims. Finally, the British side suggested that all future claims would be dealt with on the same basis as Kiltyclogher and that the NIO (or the MOD) would deal directly with the legal representatives. It was agreed to talk further on this question of future claims.

6. (c) Public property

The British side said that their position on this area of compensation claims was unchanged since their last communication. They were prepared to offer to make good all damages at an appropriate date in the future when the security situation allows and that payment would be in kind rather than cash. The Irish side restated their formal position that this stance was unacceptable because of the complications (e.g. work rescheduling, employment issues etc.) that this would give rise to and also because of our insistence on entitlement to compensation for damage to property regardless of whether or when the work might be carried out.

The British side said that they envisaged, when the security situation permitted, that the NIO would make contact with the local County Councils to see about repairing the roads. They said that they were not in a position to say if County Councils would be asked to repair certain roads on a contract basis. When asked about the possibility of any cross-border roads being reopened, the British said that they saw no expectation of that but that they might be in a position to say more on that subject at the next meeting.

*have offer
of offer for
future
consideration*

The NIO have contacted us subsequently to propose a further meeting next week which might lead to final agreement on the intergovernmental compensation claims. The British position would be based on their consideration of the points we had raised in relation to the £500,000 offer. We agreed provisionally to meet again in Iveagh House at 10.30 a.m. on Thursday 3 February.

Department of Foreign Affairs

January 1983