

Mc Carthy

DRAFT SUMMARY RECORD OF OPENING PLENARY SESSION -
WEDNESDAY 16 OCTOBER 1996 (10.10)

Those present:

Independent Chairmen	Government Teams	Parties
Mr Holkeri	British Government	Alliance Party
General de Chastelain	Irish Government	Labour
		Northern Ireland Women's Coalition
		Progressive Unionist Party
		Social Democratic and Labour Party
		Ulster Democratic Party
		Ulster Democratic Unionist Party
		United Kingdom Unionist Party
		Ulster Unionist Party

1. The Chairman called the meeting to order at 10.10. He said he had circulated submissions received the previous day as requested on the subject of item 2 of the agenda from the Alliance and the UUP. There was slight confusion over the absence of the UDP submission which was circulated later after a brief adjournment.

2. The UKUP continued with its presentation on decommissioning. It said that it had mentioned in passing on the previous day various statements which had been made by the SDLP, the Irish Government and the main opposition party in the Republic on the subject. It wanted to outline the quotations in full. In November, 1988, the leader of the SDLP said -

"There is not a single injustice in Northern Ireland today that justifies the taking of a single human life. My challenge to any of those people in Ireland, North or South,

who regard themselves as Republicans is lay down your arms, once and for all. There should be no place at this table for any party if it is either using force, or reserving the right to use force if they do not get their way."

At Oxford in May, 1994, the then Taoiseach, Albert Reynolds said -

"As I and John Hume have said there is no valid excuse or justification for continued violence of any kind They (Sinn Fein) must be continually challenged to explain the failure of armed struggle over twenty five years to advance by one whit the cause of a united Ireland."

In December, 1993, the then Minister for Foreign Affairs, Dick Spring, told the Dail in relation to the Downing Street Declaration that -

"Questions were raised on how to determine a permanent cessation of violence. We are talking about the handing up of arms and are insisting that it would not be simply a temporary cessation of violence to see what the political process offers. There can be no equivocation in relation to the determination of both Governments in that regard."

3. The UKUP said that it was now known with the benefit of hindsight that that was what Sinn Fein/IRA had done. They had a temporary cessation of violence and then dipped their toes in the water to see what the political process had offered. They then decided that the Governments needed more encouragement and bombs were exploded. This action brought immediate results. A talks process was convened in haste - (see Command Paper 3232 of 16 April, 1996) - which provided clear terms on a comprehensive

agenda including the position of the Union and ignored the principle of consent - thus ruling out the prospect of consent by the majority in Northern Ireland. The plan went ahead in any event.

4. The UKUP then referred to paragraph 2 in the submission paper by the Alliance Paper just circulated. It said -

"Talks were convened, were adjourned without agreement, and new talks were recommenced the following year on the same basis, and with the same participants. More progress was made on this occasion, and the outlines of a possible settlement began to emerge, but agreement was not achieved, and a view began to develop within the Irish Government of the time and the SDLP, that a new process was needed, which would try, prior to the achievement of a political settlement, to bring an end to the terrorist campaigns which had been almost unremitting since 1969. This would facilitate the involvement of Sinn Fein, and perhaps others in new and more inclusive talks. Accordingly the talks process which had taken four years to establish, and which had been operative on and off for eighteen months, was set aside in favour of a new process."

5. The UKUP said it was not clear from their document whether that change in direction was well received by Alliance, but it was, nevertheless, a departure from a democratic process with the involvement of Sinn Fein and blessed by the two Governments. There was now a new thrust developing. Policy was being directed to (a) what was the bottom line acceptable to terrorists in terms of political objectives, and (b) the formulation of terms acceptable to constitutional nationalists which had the

acquiescence, not the consent, of the pro-union parties by virtue of bribery and exaggerated jubilation about nationalist demands so as to condition the people of Northern Ireland for the wrong reasons about the economic benefits of non-violence.

6. This process was designed to bring Sinn Fein into the loop by a declaration of principle as contained in the Downing Street Declaration and by the proposals in the Framework Document. It also had to be sold to the UUP. The former leader, Mr Molyneaux, endorsed it and was duped. Mr Reynolds spoke in the Mansion House in January, 1994, and said that at last mainstream unionists had been brought to an historic victory. But in the final analysis, the Framework Document was too much for the UUP to swallow and they began to take a more principled view of the situation.

7. From August 1994 to January 1996, it was clear that Sinn Fein/IRA, having duped the International Body, were not content with the progress that was being made, and it decided to return to violence. The UKUP suggested that the two Governments and the SDLP had known all along that the cease-fire was never ever intended to be permanent and that the IRA would never decommission its weapons. By 1995 there was a clear change in the Irish Government's line and now the tone had changed. In his address to the UN General Assembly in September 1995, Mr Spring said that on the question of arms his Government was seeking to avoid as far as possible "symbolic overtones of surrender, or of one-sided admission of guilt". In Northern Ireland, he said, concepts of victory and defeat would never offer a solution. The UKUP said that the process of fudge had begun at that stage.

8. The UKUP contended that everyone must face up to the fact that the IRA won't ever decommission. Yet the Governments have to

have Sinn Fein present at the talks, so a way has to be found to circumvent that determination never to decommission. The findings of the International Body show that the IRA are not required to decommission at all, they are required only to consider it. The response to the Body's Report by the IRA will be in the terms of political gain. Paragraphs 34/35 of the Report allow for nothing else. It was necessary in this context also to look at the Scenario document of 6 June 1996 as well as the joint Government paper on decommissioning of 30 September 1996. When there is political progress of which Sinn Fein/IRA approve, they will consider decommissioning weapons. It was noteworthy also that paragraph 39 in the Report referred to a process not of surrender. That reflected the core view of the Report that political gains had to be made. This meant that no surrender was involved if arms were transferred for political gain and that the terrorists won in political terms. The Report envisaged a process of negotiation which appeased and legitimised terrorism. It was for the participants in the negotiations to analyse what the whole process is about.

9. The UKUP referred to its initial remarks about the corruption of the democratic process by its association with terrorism. The party was horrified at Ms Mo Mowlam talking about the two loyalist prisoners as unsung heroes. This raised the image of an Orwellian democracy. The Mitchell Report went further because it has legally accommodated terrorism. That much is clear from the provisions of paragraph 48 dealing with immunity from prosecution and evidential exceptions. The proposals for enabling legislation in both jurisdictions and the associated regulations will provide further detail on this.

10. The essential provision, nevertheless, was that weapons which are to be handed in may or may not be forensically examined but the results will be excluded by operation of law from being used in criminal prosecutions. However, this will not apply to mainland Britain. Accordingly, a weapon used in the terrorist execution of a British soldier or a member of the RUC in Northern Ireland or the Republic will not be available or evidential in Northern Ireland or the Republic. But if it was used to kill a Metropolitan bobby it will. The UKUP contended that the reason for this went to the heart of the political lacuna in Northern Ireland because the populace are regarded as paddies, irrespective of political views or religion, and quite distinct from mainland citizens who have an accountable Government. The reason for this was that the mainland electorate would crucify the Government if they suggested that they would not allow evidence of a terrorist murder of a first class British citizen to be used in court. However, it was permissible to adopt this policy in Northern Ireland because of the taking of a risk for peace. This involved

- a) the violation of principles of democracy which could not be entertained anywhere else in the western world;
- b) the exclusion of evidence.

11. The conclusion of the UKUP therefore has to be that paragraph 48 of the Report is a staggering recommendation from Senator Mitchell who was considered for appointment as a judge of the US Supreme Court on the grounds that -

- a) the legislation which is required subverted the rule of law, and

- b) it involved the use of legislation to deny justice to the victims of terrorist crimes.

The British Government has said that arms would not be handed over if a risk was not taken in relation to the question of decommissioning. The UKUP wondered how far society has gone; has it lost the vision of what democracy is all about?

12. The UKUP said it seemed to detect a change in the negotiating body that indicated it might think about those fundamental issues and that the risks being taken for peace involved far-reaching consequences for democracy. The party then said it wished to develop certain points with regard to decommissioning and the Scenario paper of 6 June 1996, (paragraphs 9 to 14 inclusive) and paragraphs 34/35 in the Mitchell Report.

13. With regard to paragraph 9 in the Scenario document the UKUP said that it believed its significance was not missed by unionists and the representatives of constitutional nationalism. It felt that this paragraph was specifically addressed to Sinn Fein. It provided that an agenda would include discussion of a united Ireland and that when Sinn Fein enter the talks process, everything would be on the table. The essential item for Sinn Fein in this regard was the union. The principle of consent stated that the union cannot be changed without the consent of a majority of the people in Northern Ireland, but paragraph 9 meant that it would be on the table for discussion to suit Sinn Fein. The prospects for that eventuality are another matter, but the agenda of the main parties viz, the two Governments and the SDLP, meant that there would be pressure for a weakening of the consent principle and a denigration of the principle of the union.

14. With regard to paragraph 10 which reproduced the provisions of paragraphs 34/35 in the Mitchell Report and the requirement to consider decommissioning, the SDLP interjected to enquire if in legal terms the expression "consider" did not allow for action to be taken. The UKUP replied that it did, but the paragraph itself described what that action should be. It meant decommissioning, but only when political progress was made by reference to paragraph 39 in the Report which stipulated that no surrender of arms is involved and implied winning in political terms.

15. As to paragraph 11 in the Report, the UKUP asked what was the meaning of "an inclusive and dynamic process which builds trust". It could only mean a process that allowed Sinn Fein to believe that its objectives were being realised. Sinn Fein had expressed its approval of Senator Mitchell's chairmanship. He may well act in good faith and it was true that the Clinton administration think that the decommissioning objective is a worthwhile one. It has indicated a willingness to support a united Ireland and it may well believe that that is the only way forward. That in itself was not an invalid or immoral judgement, but it was a policy which ran counter to the wishes of the pro-unionists.

16. As regards paragraph 12, the UKUP said that this entailed the creation of a sub-committee under the chairmanship of Senator Mitchell. This was the creation of the fourth Strand in the talks - the burial chamber for decommissioning. If the incumbent of the tomb was not dead, it would at least be in a state of suspended animation.

17. With regard to paragraph 13, the position now was that a comprehensive agenda would be arrived at for all the parties and Sinn Fein. The nasty business of decommissioning would be

consigned to a tomb. It might be taken out from time to time and re-interred just to make sure that the process of suspended animation was still at work. Meanwhile the train of political negotiation would speed down the track as fast as possible. The funeral cortege of decommissioning would, however, proceed with embarrassing slowness (it might not even move at all). And, Sinn Fein would always have the opportunity of saying that the fast train was not going in the direction in which they wanted it to go.

18. As to paragraph 14, the dates can be disregarded. The UKUP said that it was clear that the only difference between the Scenario document and the joint Government proposals was that Senator Mitchell would have required clairvoyant skills under paragraph 11 to satisfy himself as to the presence of clear indications of good intent on the part of all the participants (including Sinn Fein) to work constructively. This was reminiscent of the Mitchell Report on the consent issue. The Chairman had come to the conclusion that good intent was present, but it wasn't. Plans for a bomb in London were being laid at the time the International Body were engaged in a task which they thought was honourable. Such powers of judgement should not be granted to anyone. The unionists did not want this provision at the beginning of the talks process but it transpires that the proposal was only shelved. It has risen again in the Governments' document of 30 September 1996, which received special circulation to the UUP and probably the SDLP. This document removed these powers from Senator Mitchell and gave them to the governments, but, essentially, all the provisions of paragraphs 9 to 14 in the Scenario document were repeated in the Governments' proposals. The UKUP quoted from that document in support of its view. It then contended that the draft enabling legislation would be

The document was fundamentally flawed, corrupt and wrong. Furthermore, the fourth strand as suggested by Mr Spring was to take stock of the position in December 1996. But no work can be done because no legislation would be in place by then. It was also implied that progress would be made in the negotiations but no weapons could be handed over by that date because the necessary machinery would not be in place either.

21. The DUP intervened at this point to say that the first meeting of the decommissioning committee was to be in the period 7/14 October. It also referred to the letter it received from the British Government in the House of Commons stating that a Bill to facilitate decommissioning was "in prospect". No definite date was given, yet the Government is saying it will be law before Christmas 1996.

22. The UKUP continued saying that the timing of all of this seemed to be focused on the UUP and SDLP broadly agreeing on the decommissioning issue in early October. It was the party's view that the British Government thought that the UUP had done some sort of deal with the SDLP on decommissioning so there was therefore nothing in the 30 September document or its timing which surprised the party. After the document was released by the two Governments, the UUP, in a fit of strength met the following weekend and from this issued a paper which then became the document produced for the debate on decommissioning. In it the UUP rejected the Governments' proposals because it knew they wouldn't be tolerated by the pro-union community. But the UUP's own document was issued before the Lisburn bombings. The UKUP said that on page one of the document, the party (UUP) talked about essential principles and it quoted the introductory paragraph. Before going in to this in detail, the UKUP said there

had been much recent talk of a new IRA cease-fire. The UUP document added to this comment for it talked about the conditions for the entry of Sinn Fein to the political talks on page 4. The UKUP described the text as semantic nonsense because it did not refer in any way to the issue of the duration of any cease-fire. The UUP comments were therefore meaningless for these words represented an unequivocal restoration of something which wasn't permanent.

23. The UKUP said that other words such as dependable or credible could be used but only one word actually captured the full context and this word was permanent. The leader of the UUP had eventually used this word on the record following the Lisburn bombing. The UKUP referred to the 6 June Scenario document and the view of both Governments that a permanent end to violence was what they sought. The UKUP said that if such an end was permanent, then there was no need for weapons and guns beyond calling a permanent cease-fire. There was an inextricable link between both aspects. If Sinn Fein's aims and objectives were to be gained through the political process, they presently only had 15% of the vote and this size of electoral base would be vulnerable to the wishes of others with greater political strength. If Sinn Fein committed themselves to a permanent cease-fire this would result in the abandonment of violence for exclusively political aims. Therefore despite claims that the original IRA cease-fire was permanent, the UKUP said it was quite evident that this was never going to be the case. Shutting off one part of the IRA strategy and following exclusively political means was not an approach which Sinn Fein would consider was likely to pay dividends for it.

24. The UKUP said that now the two Governments were saying that the process could get round decommissioning by forgetting it,

because recent bombs showed that the IRA had no intention of stopping the violence for the reasons given earlier. So the new approach was to simply talk about the terms of a new cease-fire. The UKUP said this was a fatal mistake for the process to make for it was now back at the point where the price of silencing the guns, no matter how high that price was, would be taken up by both Governments immediately, to enable Sinn Fein to get into the talks. Once Sinn Fein was in, according to the UKUP, it would not be possible to get them out. The UKUP said past experience had already confirmed this point for if Sinn Fein were at the process and a bomb went off, it may be faced with questions regarding its commitment to the Mitchell Principles. Such questions would be similar to those asked by the British Government of the PUP/UDP in early September. The UKUP reminded participants of the questions asked on that day and the responses given and suggested that Sinn Fein would adopt a similar approach. This then exposed the total hypocrisy of what was going on. There were, however, more recent events such as Lisburn, which might suggest that the IRA was fragmenting into different groups and going out of control thereby bringing the whole process down with it. What was happening in this eventuality? The UKUP answered this by saying that now the process had to ensure that both loyalist parties did not become involved in any counterstrokes following IRA atrocities; otherwise those parties would have to leave the process thereby resulting in any terms of decommissioning involving Sinn Fein going directly out the window. Even more recently, the UKUP said, Ms Mowlam had come to the Maze Prison and spoke to the unsung heroes of the peace process; yet this was probably being described as a risk for peace?

25. The UKUP said it was evident that the loyalists had a role to play in the process. However, under the rules of sufficient

consensus, the loyalist parties could carry anything through the process with the UUP, provided the SDLP also went along with the proposal. In other words, it didn't really matter about the DUP, UKUP, Alliance, Labour and others, the Governments only had to talk to the UUP and fringe loyalists to gain progress. But irrespective of this constant superimposing from above by the Government on such parties, any deal still had to receive the blessing of the people on the ground and this was were another fatal mistake was being made. Northern Ireland history had shown that when Brian Faulkner and the Sunningdale Agreement were placed in front of the people on the ground, the political deals that had been pulled together in internal discussions simply failed on the outside. This was why the UKUP had said all along that a simple majority as viewed by the rules was not always the best means of making decisions. The UKUP then moved onto item 2 on the agenda.

26. The SDLP sought an adjournment for 20 minutes at this point. The DUP raised an issue with the Chairman regarding the attendance of an individual as an observer at the conference room the previous day. This situation also gave rise to the question of whether representatives of the media could be brought into the building by delegations. The DUP asked for a ruling on this matter, insisting that a ruling be made without the advice of Senator Mitchell's staffperson. The Chairman pointed out that the Independent Chairmen's staff did exactly what staff were supposed to do, i.e. provide support in the service of the talks. The Chairman initially replied to the DUP by stating that so far as he was concerned there was no observer status. It was, however, a matter for the British Government as it issued the passes for visitors to the building. The DUP indicated that any ruling on the issue should come from the Chairman and not from the British Government. Alliance sought clarification as to whether all

participants were present around the table at the invitation of both Governments. If this was the case then surely it was important that the Governments give a response to the matter. The UKUP said that points of order such as this should be made at the end of a session rather than be presented when another delegate had sought an adjournment on an intervention. The DUP said it was quite prepared to have a ruling on the matter at the end of the session, but the ruling had to come from the Chairman.

27. The Chairman said he would come back to the matter when he had more time to consider the details. He stated, however, his belief that there was no observer status at the talks. Any further advice would be provided later. With this comment the Chairman adjourned the meeting for 20 minutes at 12.05.

Independent Chairmen Notetakers
22 October 1996

OIC/PS25