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SUMMARY RECORD OF LIAISON SUB-COMMITTEE MEETING ON CONFIDENCE BUILDING MEASURES ON TUESDAY 10 MARCH 1998 (10.40)

CHAIRMAN: Mr Holkeri

THOSE PRESENT: British Government
Irish Government

Alliance

Labour

Northern Ireland Women's Coalition

Progressive Unionist Party

Social Democratic and Labour Party

Ulster Democratic Party

Ulster Unionist Party

1. The Chairman asked if the minutes of 4 February and 10 February were in order. The UUP said that the party had not had an opportunity to study the minutes and requested that consideration of them be deferred to the next meeting. There being no dissent the Chairman said that the minutes would be considered as proposed.

2. The Chairman said that it had been proposed to discuss the security related issues at today's meeting, but, in the meantime, the British Government had prepared two papers for the "consideration" of the Sub-committee and it was now proposed to consider these papers instead. He was aware that one party had expressed reservation about this proposed change to the agenda but that the others had no objection.

3. The British Government introduced its two papers. The first focused upon the issue of restorative justice, the second on community partnership. Restrictive justice is used in a whole range of contexts. The traditional focus of the criminal justice system was on the offender with emphasis on retribution. This was not to say that the needs of victims were neglected; for example only two weeks ago the government had published a code of practice on the treatment of victims. Restorative justice however, was intended to bring a new element into consideration for dealing with offenders, namely a wider focus on the crime, embracing the victim, the offender, the community and the family. The paper outlined a wide range of envisaged measures. It was important to stress though that restorative justice was not an alternative to the criminal justice system, but rather was intended to be an integral part of the system. The approach had been well researched and has worked effectively in other jurisdictions. It was not a panacea and the approach was not suitable for all crimes. It was essential also both that the victim must feel comfortable with the process and that the offender must express remorse.

4. The second paper - "Crime and Community - A Local Partnership Approach" - covered rather wider issues. It was widely recognised that crime is not just for the criminal justice process. Government was proposing a partnership approach whereby a well developed community infrastructure would be developed to combat crime. As with restorative justice there were restrictions on the scope of the strategy. The investigation, prosecution and adjudication processes would continue to

be performed by traditional authorities and individuals must continue to have recourse to statutory human rights agencies. The purpose in presenting both papers was to seek the views of the parties.

5. The Irish Government welcomed the opportunity for a discussion of these issues and also looked forward to hearing the views of the parties. It considered confidence building to be an essential part of the talks process particularly with regard to the justice system. A key issue here was the difficult and sensitive area of policing. The talks process had to address the serious problem of the lack of identity with policing structures in certain areas and not just nationalist areas. Work had been done on this problem in recent times and certain models had been proposed which were worthy of serious consideration.

6. There was no place in society for punishment beatings. Clearly a different approach to the overall policing arrangement was necessary and the restorative justice system and partnership arrangements outlined in the British Government papers were part of the search for something better. In relation to how a restorative justice system might work in practice the experience and best-practice elsewhere where similar problems had arisen should be drawn upon.

7. The Irish Government understood that a number of proposals were being developed in co-operation with the relevant statutory bodies and looked forward very much to the development of these community-based initiatives.

8. Alliance expressed anger, shock and amazement at the content of the two papers and found some phraseology to be offensive, in particular the terms "punishment attacks" and "punishment beatings" (paragraphs one and two of "Crime and Community - A Local Partnership Approach"). Terms such as "punishment attacks" implied some sort of justification for the activity. The party also took issue with the proposal in paragraph two of this paper that public representatives should become involved in the management of the response to crime and anti-social behaviour. The party's view was that politicians should not be involved in the implementation of the justice system.

9. The party was also critical of proposed roles for some of the statutory authorities. For example the role proposed for Social Services in paragraph six of the same paper was unrealistic in that the service concerned is already pretty fully committed to its existing statutory functions. Indeed, the proposed role for public agencies generally which was envisaged at paragraph seven seemed rather bizarre.

10. In relation to the restorative justice paper, paragraph three, the concept of a system which "depends crucially on the offender" was disturbing, given what we know about the pattern of crime. The party also pointed out that, for example, in relation to the examples given at paragraph six, the magistrates' court already had the power to defer sentences and this was to be encouraged in that it was part of a proper legal process. Furthermore, probation schemes already incorporated

restorative elements. This again was commendable in that it was done within a proper legal framework.

11. Paragraph eight of the paper referred to the development of mechanisms by local communities for dealing with petty crime and anti-social behaviour. The party found this concept very disturbing, indeed somewhat Orwellian, and wondered if the government had consulted the Chief Constable. The procedures envisaged seemed to go against human rights. Who, for example, was going to control and audit the work of the proposed community safety centres and what sort of powers were they to have?

12. On balance the party was quite shocked by the content of the two papers and found them very disturbing.

13. Labour welcomed the two papers. There was presently a serious problem of confidence in the justice system in the community and any initiative which would restore confidence was to be welcomed. The party felt that the views expressed by Alliance were highbrow. From its work at the grass-roots level in the community Labour had quite a different perspective than that of Alliance.

14. It was unfortunate that in Northern Ireland the policing arrangements had become tainted. In parallel with this the victims of crimes perceived the system to be more favourable to offenders than themselves.

15. The party had much experience of working with the Probation Service and had observed much benefit in that people, including ex-prisoners, were able to obtain employment. There was much restorative justice put into practice, for example the delay in sentencing to facilitate restitution. However, much needed to be done for the victims of crime. Offenders should be required to compensate victims. Parents should be made more accountable for the acts of their children.

16. The party noted the familiar caveat contained at paragraph five of the Local Partnership paper whereby innovative ideas would be welcomed but would be subject to the availability of resources. The party emphasised that the restoration of confidence in the justice system would require resources. It agreed with the thrust of the partnership approach in, for example, training and employment for young people and accommodation for the homeless. All in all the papers were welcomed and all of the parties should work for healing and change.

20. The party had some concerns about the proposals. For example,

17. The NIWC said that its normal commentator on this issue was not present and expressed a wish to submit its comments on the papers in writing. Its present comments would be brief. The papers were very welcome. There wouldn't be a discussion on the issues if there wasn't a policing problem. This problem was wide ranging; for example people were unwilling to bring in the police in matters of family violence. More generally, many victims of crime do not perceive the justice system working for them. There was also the fear factor whereby

victims feared further victimisation by the perpetrator of the original crime and by the community at large. There had to be alternatives to what existed and the party would welcome community partnership. There was a need to address the language employed in describing crime. For example, "joyriding" had all to do with hurt and nothing to do with joy.

18. The way in which the community had been policed in the past had been on a basis of control: keeping and containing that community. The control was exercised by both offenders and the operators of the justice system.

19. The NIWC said the problem of making apologies or showing remorse on the part of offenders was a serious one. Everyone has a problem in this respect. The offender customarily moved from outright denial to minimalisation and then to rationalisation.

20. The party had some concerns about the proposals. For example, at paragraph nine of the restorative justice paper there was reference to diversionary schemes. There was concern that this would be perceived as an easy option for the offender. There was also the concern about resources. There was a need to appreciate that the way ahead was a long hard road. This was manifest in the varying public attitudes towards the release of Roisin McAliskey. For the Women's Coalition her release was a human rights/humanitarian issue. The present papers represented the start of the debate and were accordingly welcome.

21. The PUP welcomed the two papers. At the very least they represented a starting point. The PUP criticised Alliance's attitude, which it described as condemn, condemn, and put nothing in place. The PUP worked on the ground to change things and the government papers represented a step in the right direction. The party described an alternative project on the Shankill which it hoped would be operating soon. A long period of consultation had been undertaken. The project was to be community owned and run and would involve Catholics and Protestants, young and old. With respect to "punishment beatings", the paramilitaries do not want to do them and the police cannot do a lot to stop them.

22. The party commented upon proposals in the papers. Firstly, it agreed fully with paragraph nine of the restorative justice paper but cautioned that much time and effort would be needed and that similar responses would not work in all areas of Northern Ireland; each area would require individual treatment. In the community partnership paper the party wondered, in reference to paragraph four of the paper, who would be conducting the consultation and assessing. In relation to paragraph seven of that paper it was imperative that the issues be taken to the communities concerned. Indeed, the central thrust of the PUP's experience was that if restorative justice and community partnership were to be advanced the communities would have to be involved; there had to be a bottom-up approach if success were to be achieved.

23. The SDLP welcomed the two British Government papers as offering a useful contribution to the debate on justice and community policing issues. While recognising the contribution made by existing community-based work to this area, it said the justice system was deficient in the particular mechanisms it deployed for the maintenance of public order. This was reflected by the hostile feelings in working class areas within both communities towards the police force and the culture that had developed within the RUC regarding its role in society. The attitudes that prevailed in working class communities on both sides towards the police and the attitudes that prevailed in the RUC towards working class communities were such as to make policing one of those dysfunctional elements that contributed towards making society in Northern Ireland dysfunctional.

26. Regarding restorative justice, the SDLP said it strongly supported

24. The SDLP said reform of the RUC was not sufficient in itself to deal with "ordinary decent crime". Fundamental reform would also have to be complemented by some of the proposals contained in the British Government's papers. However, such fundamental reform could not be bypassed by attending solely to the issues outlined in the two papers.

27. The DUP began by observing that all the parties apart from

25. The SDLP said all unofficial means of dealing with crime had grown in scale and had, in the absence of an acceptable police force, developed a degree of community acceptance. Indeed in some areas a demand existed within the community for such activity. So-called punishment attacks continued on a daily basis because of the absence of a sufficiently acceptable police service. The party said vigilante activity

was often manipulated by paramilitary groupings to satisfy their agenda of maintaining control over the local communities. In creating new community-based policing programmes great care would have to be taken to combat the inevitable attempts by paramilitaries to take control of the schemes. The SDLP said it fully recognised the benefits that had already resulted from such initiatives and the positive impact they could have on anti-social behaviour. It said it wished to look positively at imaginative initiatives designed as a means of enabling the community at large to take more control over addressing the crime issue. However, there was a real need for careful control of these initiatives. Order could not be maintained unless there was broad public confidence in the force that policed society.

26. Regarding restorative justice, the SDLP said it strongly supported an imaginative approach to the whole problem of dealing with offenders. It welcomed the British Government's statement on the need for a proper balance to be struck between the needs of victims, their families, the community and the offenders.

27. The UUP began by observing that all the parties apart from Alliance had so far welcomed the British Government's two papers. Noting the Alliance Party's statement that it had been "aghast, shocked and appalled" by the papers, the UUP said it was no longer surprised by any paper placed before the parties by either Government, including these two. The party drew attention to the Irish Government's earlier remarks. In particular, it recalled with concern the latter's statement that

the non-acceptability of the police in sections of both communities necessitated that alternatives should be considered.

28. Repeating its earlier remarks, the Irish Government said that alternative models worthy of consideration had been suggested to the “absolutely unacceptable actions of those engaged in so-called punishment activity”. It added that in addressing the difficult and sensitive issue of policing within the Talks process, “the lack of identity with policing structures in certain areas had to be examined and all viable and acceptable alternatives should be considered”.

29. The UUP maintained that what in fact the British Government papers proposed was something to deal with the non-acceptability of the RUC. While some of the initiatives could be beneficial, they should be aimed at complementing the police service. Instead these papers seemed to undermine the police service and replace the work that it was already trying to. Therefore, at its root the approach outlined in the Government’s documents sought to undermine the very tenets of the state.

30. The PUP intervened to say that the simple reality was that the police were not accepted in many areas, including some working class loyalist areas. The NIWC asked the UUP if it would accept that there were different reasons why the police were unacceptable in some areas. Many positive things about community policing could be learnt from the

considerably lower than the Government had suggested.

work and experience of community groups. It was within this context that the British Government's papers should be judged.

31. The UUP remarked that the fundamental problem in Northern Ireland, and the reason why the police did not enjoy the widespread support of both communities, was that the nationalist community's identity and allegiance did not coincide with allegiance to the State. Given this situation, these papers would be interpreted as an attempt to undermine the police service. The fact was that if the two Governments simply implemented the principles and practices of international human rights law, Northern Ireland would be well on its way to resolving the schism between elements of the community and the police.

32. Concluding, the UUP said that if the police service enjoyed full acceptability among all democratic parties, elements of the Government's documents might be acceptable. However, introducing these initiatives at this stage would, rather than complement the police actually undermine them. Therefore, the party said it was very wary of the papers. While there may be some merit in them, it was only relevant to speak of such possible merit in the context of a normal society.

33. The UDP queried the statistics on loyalist punishment attacks provided in the British Government paper to the Liaison Sub-Committee meeting on Confidence Building Measures the previous week. The actual number of paramilitary punishment attacks was, it claimed, considerably lower than the Government had suggested.

34. The UDP said building confidence in the justice system was indeed one of the most important issues in this conflict resolution process. The party said it was the breakdown of this confidence in the Government's ability to provide security and justice which was, amongst other factors, at the root of this conflict. Consequently, it said it welcomed the Government's position papers.

35. The UDP said the notion of restorative justice was a positive step provided it was based upon the consent of all parties involved. It said restorative justice should address the needs and fears of victims, provide offenders with the opportunity to make amends, involve the families who were often as affected as the victims themselves and acknowledge the important role of society and community.

36. The UDP said that restoration between victim and offender, as outlined by the Government papers, addressed only certain areas of the criminal justice system. It said these needed to be broadened in order to achieve full confidence from all sections of society. The party maintained that the Government's proposals on restorative justice and mediation through community groups and the voluntary sector were aimed at petty crime and anti-social behaviour. They thus rightfully distinguished between offenders who often themselves had been victims of their environment, providing them with the opportunity not only to repair relations with their victims but also to repair a problematic

relationship with society. Support for both would need to be made available in order for restorative justice to work.

37. The UDP said restorative justice should function through full co-operation with other public agencies, particularly the police and voluntary agencies. Full co-operation, if successful, would achieve a number of results. First, it would serve to include rather than marginalise offenders, thereby giving them a stake in society. This was important as these offenders were often young offenders who needed attention, direction and education rather than a prison sentence. Second, voluntary agencies would be able to address the broader framework of the social environment and thereby deal with the causes of petty crime and anti-social behaviour as much as the consequences. They would be able to address the related issues such as urban deprivation, poor education, unemployment and lack of skills. Third, the UDP said the involvement of the police in such community programmes would aid the transition of the RUC from a police force to a police service and thus aid the restoration of the people's confidence in the justice system.

38. The UDP said the Government's papers limited the notion of restorative justice to petty crime and anti-social behaviour in order to repair victim-offender relations. It maintained that, in order that a full restoration of society's confidence in the justice system could occur, the greater division in Northern Ireland- that between the communities- would have to be addressed. Consequently, the party said the justice system would have to address another category of victims and offenders

who had both been the product of the Troubles. Just as it was important to separate young offenders engaged in petty crime and anti-social behaviour and try to reintegrate them into society, it was of equal or even greater importance to find a similar system for repairing the relations between society and politically motivated offenders.

39. The UDP said that while it recognised that victim-offender face to face confrontation might not be the appropriate approach and definitely, under no circumstances, should it be pursued against the will of the victim, approaches to address this particular victim - offender relationship needed to be explored. It noted the very helpful contribution made by the CLMC in their cease-fire statement of 1994 where they offered their true and abject remorse to the victims of loyalist violence. More recently loyalist prisoners had met with the Faith group and had displayed a willingness to meet other victim support groups. Loyalist prisoners were, it said, keen to address the sensitivities of the victims of loyalist violence.

40. The party stated its belief that the framework for restorative justice needed to be broadened to include a suitable framework for the restoration of relations between victims, community and politically motivated prisoners. Recognition of the special status of political prisoners was, it said, imperative.

41. Concluding, the UDP said the notion of restorative justice should not only deal with petty crime and anti-social behaviour, but should also

include political prisoners and their reintegration into society. It said only through a comprehensive framework could the confidence of all sections of society in the justice system be restored.

42. Noting that all parties had had a chance to give their initial response to the British Government's papers, the Chairman invited the British Government to respond.

43. The British Government said it fully understood many of the concerns expressed by the parties and wished to reassure them on some of the points raised. It said that it was fully committed to the whole question of ensuring the protection of human rights for all of Northern Ireland's citizens. This commitment was outlined in paragraph four of 'Crime and Community- A Local Partnership Approach'.

44. The British Government said this paper made clear that a community-based approach to dealing with criminal activity could only be achieved successfully through the full co-operation of the public agencies, including the police, and the voluntary and community sectors.

45. The British Government said there was no question of the existing criminal justice system being replaced by a system based upon restorative justice. Furthermore, participation in a restorative justice programme would have to be on a voluntary basis and both the offender and the victim would both have to consent to their participation. The

British Government said it would not contemplate participating in a process where individuals were coerced into admitting guilt.

46. Replying to an earlier query from the parties, the British Government said that while it bore sole responsibility for the papers, the subject matter had been discussed in detail with the Chief Constable.

47. Responding to some concerns expressed by the parties regarding the possible involvement of sinister elements in the Community Safety Centre, the British Government pointed out that the Centre's work was supervised by a Board made up of representatives of key statutory and voluntary agencies in the criminal justice sector.

48. The British Government said it accepted that there were types of crimes where a restorative approach would not be appropriate, eg where sexual offences had occurred or cases involving organised crime. In all cases, the rights of victims had to be respected and if they were to be involved in restorative activity it would have to be on the basis of genuine consent on their part.

49. Concluding, the British Government said it wanted to underline that the proposals contained in the papers should be regarded as complementing, and not replacing, the existing statutory system.

50. The SDLP said it wished to make a few further points. It said it very much welcomed the emphasis the concept of restorative justice

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involved in crime. The party pointed to the difficulties young people from disadvantaged areas faced in education and in trying to secure employment. Some judges displayed clear prejudices against suspects from particular areas. Identifying people at risk and building up their self esteem was a vital element in the fight against crime. The party said it had been very impressed by the results of the recently established Youth at Risk programme. The positive transformation of the level of self-esteem of the young people participating on the programme had been most impressive.

53. Concluding, the SDLP paid warm tribute to the Probation Board for its excellent service to the community.

54. Alliance said it welcomed the British Government's clarification that its proposals would not affect the primacy of the courts system and its commitment to ensure that human rights were fully protected. This should have been highlighted more clearly in the two papers, which, it said, had clearly been badly drafted. The party repeated its concern at the use of the phrase "punishment attacks", stating that it implied some guilt on the part of the victim. It also warned of the dangers of involving elected representatives in the day to day running of justice issues, as flagged in the paper "Crime and Community - A Local Partnership Approach". It was essential that the justice system be seen to be above board and fair to everybody.

55. The PUP remarked that it was not only paramilitaries groups who had been guilty of miscarriages of justice. The criminal justice system had also perpetrated many such miscarriages. Responding to a point made earlier by the SDLP, the party said its research showed that serious drug pushers were given a "carte-blanche" by the RUC because of the information on paramilitaries such criminals provided to the police. It said it was unsure what the SDLP expected the paramilitaries to do about such drug dealers.

56. In reply, the SDLP said it did not want the paramilitaries to do anything. It simply wondered why these groups always appeared to single out and attack rather insignificant dealers.

57. The PUP said the Youth at Risk programme, while commendable in many ways, would not be viable in the greater Shankill area. This "very indirect" programme required a high level of expertise on the part of the instructors as it often proved a very difficult emotional experience for the participants. The participants were "stripped bare" before being "built up" again. The party said the Alternative Programme, which was up and running in the Shankill area, worked in conjunction with the RUC. It aimed to change the mind set of the community from the bottom up. Among many other things, it represented an attempt to build the community's confidence in the merit of alternatives to punishment attacks as a way of maintaining order.

58. Labour said the police themselves recognised the need to build up the level of their acceptability within both communities. It said it was pleased that Alliance were now satisfied to a certain extent with the response of the British Government to its concerns regarding the two papers. While the papers might have had their deficiencies, they at least marked a start to the process of addressing the important issue of community involvement in justice issues.

59. The British Government said it fully took on board the various concerns expressed about the use of the term 'punishment attacks'. Regarding the Youth at Risk initiative, it said remarkable results had been achieved by the programme. However, it was true that given its nature, a high level of expertise was required by the organisers. It was also very expensive to run.

60. The British Government said a key lesson from the discussion was that community involvement in justice issues had to be based on co-operation and partnership with the existing statutory agencies.

61. Responding to Alliance's assertion that it was important that elected representatives not become involved in this process, the UDP said politicians were regularly requested by their constituents to do so. The public expected the political parties to be active in responding to their needs and concerns. While the party said it tried to direct people towards the police on criminal justice issues, some individuals did not

want to deal directly with the RUC. What were politicians expected to do in these situations?

62. Alliance repeated that it was potentially disastrous for politicians to involve themselves in individual cases of criminal behaviour.

63. Noting that the parties had concluded their contributions, the Chairman said the date of the next meeting would be fixed by the Business Committee, due to meet the following day. However, it would take place at some stage during the week beginning 23 March and security issues, the next item on the agenda, would be the topic for discussion. The meeting adjourned at 13.00.

Independent Chairmen Notetakers 3 April 1998