

29/10/96

STATEMENT BY THE MINISTER FOR JUSTICE
ON DECOMMISSIONING

The Irish Government, in responding to the publication of the Report of the International Body on 24 January, made clear that it accepted the Report without reservation. The Government formally confirmed, as did the British Government, its commitment to all aspects of the Report in the Joint Paper on the Scenario for the Opening Plenary published on 6 June. That was confirmed again in the statements which both Governments issued on 30 September and evident in the two Governments' joint paper on the decommissioning issue published on 1 October. It was also spelt out in the speeches of the Taoiseach and Government Ministers on 10 October on the occasion of statements in the Dáil on Northern Ireland in the aftermath of the Lisburn atrocity.

The Government has also consistently made clear, in public statements, its willingness to work with others to give effect to the Report and to take the necessary legislative and other measures necessary to that end, consistent with the proposals in the Report itself.

Following publication of the International Body's Report, the Irish Government also paid tribute to the commitment, skill and energy demonstrated by its three distinguished members in drawing up the Report within a very short and demanding timeframe. I want to take this opportunity to reiterate our appreciation for the work that you, Mr Chairman, and your

colleagues - former Prime Minister Harri Holkeri and General John de Chastelain - put into preparing the Report and for your continuing endeavours in these Talks.

The Irish Government's approach to the issue of decommissioning has, from the beginning, been informed by the conviction that a resolution of the Northern Ireland problem must be sought and established exclusively by peaceful and democratic means. That principle has in turn informed the approach of successive Irish Governments to the Northern Ireland issue.

Our approach continues to be guided by that conviction. We have also, consistent with that approach, long recognised the importance of securing the decommissioning of arms held illegally both in our State and in Northern Ireland. Decommissioning is not only important in its own right in terms of upholding the rule of law but is capable of underpinning the Peace Process in a way that is both real - in terms of providing reassurance - and symbolic in terms of demonstrating longer term intent to resolve political differences by peaceful and democratic means.

The Irish Government has equally recognised that decommissioning, on its own, cannot guarantee peace and would not in itself be decisive in preventing a return to violence at a future date. The broader guarantee that the peace process is irreversible must come from the political process, underpinned by a negotiated settlement. That is the task and the unique opportunity of these Talks. As the International Body's Report puts it in paragraph 23: what is ultimately essential if the gun is to be taken out of Irish politics is an agreed political settlement and the total and verifiable disarmament of all paramilitary organisations.

The long and difficult debate that preceded and led to the establishment of the International Body to provide an independent assessment of that issue confirmed our conviction that the issue of decommissioning would not be susceptible to easy resolution.

The International Body recognised as much. It defined the core difficulty inherent in such a process when, at paragraphs 30 and 31, it said that:

"30. Those who insist on prior decommissioning need to be reassured that the commitment to peaceful and democratic means by those formerly supportive of politically motivated violence is genuine and irreversible, and that the threat or use of such violence will not be invoked to influence the process of negotiation or to change any agreed settlement."

but that equally at paragraph 31

"Those who have been persuaded to abandon violence for the peaceful political path need to be reassured that a meaningful and inclusive process of negotiation is genuinely being offered to address the legitimate concerns of their traditions and the need for new political arrangements with which all can identify."

It is therefore, I submit, a two-way street. All of us who seek to resolve the issues at the heart of the conflict through peaceful political means want to see all arms decommissioned and those who are in a position to actually decommission want to be sure that the political process on offer is real and serious.

The Government remain convinced of that reality and the value of the Report as a means of taking forward the decommissioning issue. We greatly welcome therefore the opportunity this agenda item represents to discuss decommissioning. As we indicated at the time of its publication, the Irish Government believes that the Report sets out, in a realistic and practical way, a means of resolving the very many practical problems associated with a process of total and verifiable decommissioning. It sensibly also left many of the details for subsequent negotiation and agreement.

What is also clear, I believe, is that the Report recognises the parameters within which progress towards actual decommissioning is likely to be made. These are particularly relevant to our discussion today, as the premises on which they are based represent the key issues we need to address.

First, the report acknowledges that proposals for a legislative framework for achieving decommissioning have to be realistic. A basic and inescapable reality is that decommissioning can only be effected by the parties who have actual possession of the arms and in circumstances where they are prepared to decommission. The legislation prepared by us to allow effect to be given to the Report acknowledges the validity of that premise.

Decommissioning, in the sense of that term as used in the Report, is something entirely different from seizures as a result of law enforcement. The security forces in both jurisdictions continue to have notable successes through the seizure of such arms and I want to confirm that the pursuit of illegally held weapons is, and will, remain a top priority for the Gardai. But, as I say, decommissioning is a concept that is separate and distinct from seizure

through normal law enforcement methods.

Second, the relationship between decommissioning and the political process must be clearly understood. The International Body, at paragraph 35 of their Report, dealt with the link between progress being made on political issues and decommissioning. The process of decommissioning is seen as something which provides the parties with the opportunity to build confidence during the negotiations.

Equally, the Body concluded that progress towards actual decommissioning would itself depend on progress in the wider negotiations. This puts a special onus on the parties taking part in these talks. It is by addressing our substantive agenda in a meaningful way, and making progress on that agenda, that we will create the climate necessary for actual decommissioning to take place.

The International Body recommended that decommissioning should receive a high priority in all-party negotiations. They were equally clear that the details of decommissioning, including supporting confidence building measures, timing and sequencing, would have to be determined by the parties themselves. This - against the background of the other considerations already outlined - clearly implies that while the issue of decommissioning should be actively pursued in the negotiations, it would be less than realistic to hope that progress on the subject could be advanced in a really significant way in isolation from developments in the wider political negotiations.

The detailed guidelines on the modalities of decommissioning set out in the Report reflect six

guiding principles. Those principles require that decommissioning should:

- * suggest neither victory nor defeat;
- * take place to the satisfaction of an independent commission;
- * result in the complete destruction of armaments in a manner that contributes to public safety;
- * be fully verifiable;
- * not expose individuals to prosecution; and
- * be mutual.

The Irish Government has no difficulty in subscribing to those principles. Nor do we have difficulty in subscribing to the detailed recommendations contained in the Report intended to give them effect. Work will nevertheless be required to translate those recommendations and guiding principles into a workable scheme of decommissioning, consistent with the nature of the principles themselves. We see the discussion on decommissioning, on which we are now engaged in this Plenary, as offering the opportunity for the parties to settle on the means by which those principles, and the detailed proposals underlying them, can best and most practically be taken forward and implemented.

The Irish Government does not seek to underestimate the difficulties that are likely to be involved in securing the voluntary decommissioning of illegally-held arms. The International Body itself recognised that the decommissioning question is closely related to the underlying issue of trust. The objective situation has undoubtedly changed since the International Body issued its Report. Events of recent months and weeks have impacted negatively on the

process of building trust between the two communities in Northern Ireland. They do not, however, in the view of the Irish Government, invalidate in any way the central argument advanced by the International Body, that decommissioning will not be brought about separately from progress in political negotiations - no more than political negotiations are likely to advance significantly unless the recommendations made by the International Body are taken forward also.

Much as we might wish it were otherwise, therefore, the reality we have to cope with is that progress on decommissioning cannot be divorced from the need to secure political progress in these negotiations. Nor, as the Report of the International Body also makes clear, can decommissioning be divorced from other confidence building measures such as the early termination of paramilitary activities, continued action on prisoners, the issue of legally held firearms, policing and emergency legislation. Resolving the decommissioning issue will, we believe, require issues such as those also to be addressed in these negotiations.

It will be clear from my opening remarks, Mr Chairman, that the Irish Government is committed to working constructively with the other parties to these negotiations to implement all aspects of the Report of the International Body and any agreement reached within the Talks process to enable progress to be made on decommissioning.

The International Body recommended that the details of decommissioning will have to be determined by the parties themselves. The Government, therefore, is convinced that the right way forward, now, is for the parties to work together, so as to settle on arrangements that will need to be put in place to enable us to take the decommissioning issue forward in a way

that is practical, realistic and consistent with the terms of the recommendations contained in the International Body's Report. We will work with the parties to that end.

I've already addressed, in my earlier remarks, the relationship as we see it, and the International Body saw it, between the decommissioning issue and the wider process of negotiations and also the role of decommissioning as a confidence building measure. Those factors remain relevant when it comes to discussing and deciding on the mechanism by which progress can be made on decommissioning alongside negotiations in the three strands.

Equally relevant to that question is the fact that the Report of the International Body contains not only recommendations in regard to the six guiding principles which should govern the decommissioning process but also detailed recommendations intended to give those guiding principles effect. The International Body recommended, as I've already said, that decommissioning should receive a high priority in all-party negotiations. It equally recommended that the details of decommissioning, including supporting confidence-building measures, timing and sequencing, would have to be determined by the parties themselves, as I've said.

More particularly, it recommended that the decommissioning process should take place to the satisfaction of an Independent Commission acceptable to all parties and appointed by the two Governments on the basis of consultations with the other parties to the negotiating process. Likewise, the International Body recognised that the decommissioning process could encompass a variety of methods which would need to be subject to negotiation and that decommissioning would need to take place on the basis of the mutual commitment and

participation of the paramilitary organisations.

The Governments' joint paper, which sets out suggested conclusions to the address to decommissioning in this Plenary Session of the Talks, continues to represent, in our view, a realistic basis for dealing with the decommissioning issue as part of this process.

I would like to focus on what those proposals would in fact involve. They would involve:

- * a reaffirmation by both Governments of their commitment to all aspects of the report of the International Body, including their support for the compromise approach set out in paragraphs 34 and 35 and their readiness to work with all other participants to implement all aspects of the report;
- * a commitment to publish draft enabling legislation which will provide the basis for giving effect to the International Body's recommendations on the modalities of decommissioning and to introduce that legislation in our respective Parliaments in the current session so that, as progress is made on political issues, the legislative framework would be enacted by Christmas of this year;
- * all present and future participants agreeing to work constructively and in good faith to secure the implementation of all aspects of the Report of the International Body in the context of an inclusive and dynamic process in which mutual trust and confidence is built as progress is made on all the issues of concern to all participants;

- * the establishment of a Committee of Plenary which would be charged with working to secure implementation of all aspects of the International Body's Report on this basis, to include not only representatives of all participants but also, with a view to ensuring continuity between the work of the Committee and the Independent Commission proposed in the Report of the Body, expert personnel, including independent experts of international standing who the Governments would envisage playing an appropriate part in the work of the Commission when it is established;
- * provision for the plenary session to take stock of progress in the negotiations as a whole, including the work of the Committee.

The Committee, which the Governments envisaged being established, would be mandated to take forward work on the implementation of the International Body's Report in parallel with the negotiations in the three strands. The detail of that mandate was also set out in our joint paper. It would have involved examining the Governments' legislative proposals and the conditions necessary for decommissioning, work on the modalities of decommissioning by way of development of a detailed scheme or schemes for decommissioning and determination of the precise functions of the Independent Commission in respect of each scheme, including its role in relation to verification of the decommissioning process, consideration of the role of other confidence building measures, and determination of the detailed arrangements for decommissioning. The Committee would also have an ongoing role in reviewing progress on all aspects of the International Body's Report, beginning with progress towards the enactment of the legislation.

Those proposals, I would submit, are fully consistent with the terms of the International Body's Report and would enable the participants to have control and ownership of the decommissioning issue in the same way as they have ownership of the negotiations in the three strands. It seems to us that a role for the participants in the decommissioning issue is equally important if progress is to be made and if the atmosphere that will be needed to create a progressive pattern of mounting trust and confidence is to exist.

The legislation

As I have already said, the Government will be ready to facilitate the work of the proposed Committee by tabling for its consideration the legislation which has been prepared to enable effect to be given to the Report of the International Body in our jurisdiction, in conjunction with the publication of the corresponding legislative proposals by the British Government. The Government sees considerable value in enabling the participants to comment on the legislation in advance of its enactment and have undertaken, in their joint paper, to consider any comments which the Committee might make.

I want to take this opportunity to say something about that legislation. Work on the draft legislation has been underway in the Department of Justice for some time and has involved close consultation with the Northern Ireland Office. The Bill reflects those discussions and is intended to permit a co-ordinated approach and the implementation of complementary arrangements in relation to the decommissioning of illegally-held weapons. The Bills differ in some respects but the intention, which is to give effect to all relevant aspects of the International Body's Report, is the same. The Bill is moreover consistent with the terms of that Report.

The key provisions in the Irish Government's Bill will provide for:

1. the making of regulations in relation to the means by which arms will be decommissioned in our jurisdiction, by reference to four methods of decommissioning identified in the Report of the International Body, but not excluding other possibilities;
2. the establishment of a Commission, whose independence is guaranteed in the draft Bill, by agreement between the two Governments, whose functions and role in relation to decommissioning for the purposes of our jurisdiction will also be specified in regulations;
3. a prohibition on the taking of proceedings in relation to an offence, provided that the act constituting the offence, or an act that is an ingredient of the offence, was a part of the process of decommissioning;
4. a prohibition on the forensic examination or testing of arms made available for decommissioning or the use of information obtained in the course of decommissioning, subject to certain limitations (that is, those which are necessary in the interests of public safety or to preserve the rights of citizens and defendants and the ability of the authorities to act in the event of decommissioned arms being subsequently misappropriated or misused).

I would again emphasise that the Governments' joint paper of 1 October envisages that both Bills will be introduced in the Dáil and the House of Commons in good time to enable

enactment by Christmas. Moreover, the Taoiseach, in his statement in the recent Dáil debate on Northern Ireland, indicated that our legislative proposals will be published at an early date.

We will also, of course, continue to proceed with the preparatory work that will enable both Governments to give effect to whatever agreements are reached within the framework of these Talks on the detailed nature of the decommissioning schemes to be put in place.

It is right to recognise, of course, that some parties have expressed concern about the idea that a Committee of the Plenary should oversee progress on the decommissioning issue, side by side with the three stranded negotiations. Their primary concern, as I understand it, is that progress might in fact be stalled if such a mechanism were put in place.

That certainly is not the intention nor would it, in our judgement, be the outcome of establishing a Committee.

I've already stated, for example, that we envisage that the Committee would examine our legislative proposals on decommissioning. But I have also said that the plan of both Governments is to have the legislation enacted by Christmas. The intention in allowing the Committee to comment on the draft legislation, therefore, is certainly not to create a stalling mechanism, but to ensure that potentially valuable comment by the parties is not lost for want of the opportunity for detailed discussion of the legislative proposals, before they are enacted.

There is a body of significant and extremely important work to be carried out before actual decommissioning - which is what we want - can become a reality. We believe that the input of

the parties through the proposed Committee to that work

- in relation for example to modalities,
- in relation to the Independent Commission and its role
- in relation the role of other confidence building measures

is vital if decommissioning is to be taken forward in a way that is likely to ensure success and produce the results we are all seeking to achieve.

We believe that the Committee could begin that work and make very worthwhile inroads into the requirements for decommissioning before the Independent Commission, which is provided for in the legislation, is established. And in order, Mr Chairman, to ensure that the Committee will not be hampered in its work for want of expertise, both Governments have signalled their commitment to make expert personnel, including independent experts of international standing, available to the Committee, who they would envisage would play an appropriate part in the work of the Commission when it is established.

What we are proposing, therefore, is a mechanism which is intended to - and should - engender confidence that real progress can be made, rather than the opposite.

To sum up, Mr Chairman, the Irish Government considers it crucially important that the decommissioning of arms held illegally in both jurisdictions is secured. We welcome the fact that this view is shared by the other parties who have contributed to this discussion. The question we face therefore is not whether arms should be decommissioned but how that can be

brought about. We firmly believe that decommissioning can be achieved on the basis of the International Body's Report. That is why we base our approach on the Report and commend it to others.

The Irish Government equally believes that the joint proposal tabled by the two Governments offers the best and most realistic way forward towards our common objective of seeing the Report of the International Body implemented so that full and verifiable decommissioning of all paramilitary weapons will become a reality.

Thank you, Mr Chairman and delegates.