

(30 October)

DECOMMISSIONING:

A paper by Her Majesty's GovernmentIntroduction

The British Government endorses all aspects of the Report of the International Body, including the compromise approach to decommissioning set out in paragraphs 34 and 35 "under which some decommissioning would take place during the process of all-party negotiations, rather than before or after". This has been the position of the Government since 24 January 1996.

2. Decommissioning is an important issue for the following reasons:

- no government can tolerate the existence within its jurisdiction of illegal arms which could be used to threaten democratic institutions or for other criminal purposes;
- the retention of such arms by terrorist organisations associated with political parties with a mandate to participate in these negotiations is inimical to the confidence and trust the development of which is necessary if the negotiations, with those parties, are to proceed to a successful conclusion;
- a start to decommissioning of those arms would demonstrate a practical commitment to exclusively peaceful methods so helping to build the necessary trust and confidence;
- as the International Body noted: "Everyone with whom we spoke agrees in principle with the need to decommission. There are differences on the timing and context but

CONFIDENTIAL

they should not obscure the nearly universal support which exists for the total and verifiable disarmament of all paramilitary organisations." (paragraph 17)

3. The Government therefore also agrees with the International Body that the total and verifiable disarmament of all paramilitary organisations "must continue to be a principal objective" (paragraph 17) and that:

"Decommissioning should receive a high priority in all-party negotiations." (paragraph 38)

4. At the same time, the Government accepts that decommissioning is one of a number of important issues on which progress needs to be made during these negotiations. As the International Body noted:

"Success in the peace process cannot be achieved solely by reference to the decommissioning of arms". (paragraph 51)

That is why the Government is committed to a process of inclusive and comprehensive negotiations in which all participants can raise any issue which they consider relevant.

5. The rest of this paper examines the different aspects of the report of the International Body.

Need for Reassurance

6. The abandonment of the IRA ceasefire of 1994, has served only to emphasise that if there were a restoration of that ceasefire it would be necessary, as the International Body noted:

".....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 negotiations or to change any agreed settlement." (paragraph 30)

CONFIDENTIAL

7. So the Government's position on decommissioning remains:

- that the unauthorised holding of arms is illegal. The responsible authorities will continue to apprehend such arms, in accordance with the law;
- that all parties to these negotiations should take steps to work constructively to secure implementation of all aspects of the International Body's Report.

8. Equally, the Government fully accepts the parallel need for reassurance:

"that a meaningful and inclusive process of negotiations is genuinely being offered to address the legitimate concerns of [all] traditions and the need for new political arrangements with which all can identify." (paragraph 31)

These negotiations, which offer a comprehensive agenda under which it is open to the various negotiating teams to raise any issue they consider relevant, should meet that need for reassurance. The Government repeats its commitment that it will use its influence in the appropriate strands to ensure that all items on the comprehensive agenda are fully addressed in the negotiating process and will, for its part, do so with a view to overcoming any obstacles which may arise. Rules of procedure have already been agreed by participants, which, with Independent Chairmen, provide for a fair and open negotiating process.

Principles of democracy and non-violence

9. The British Government, along with other participants, has affirmed its total and absolute commitment to all the principles recommended in paragraph 20.

- 3 -

CONFIDENTIAL

1612/POLDEVT

CONFIDENTIAL

10. It is a basic requirement of the multi-party talks process that all participants - including those associated with paramilitary organisations - should make this commitment. It represents an important step in addressing what the International Body agrees "is not an unreasonable concern," (paragraph 22) that the paramilitaries will use force to influence the negotiations or change any aspect of the outcome with which they disagree.

11. Like the International Body (paragraphs 19 and 23), the Government regards these as commitments which, having been made, all participants must adhere to and take steps to honour.

Decommissioning during negotiations

12. It is against the background of reassurance having been provided that a meaningful and inclusive process of negotiation is genuinely on offer, that the International Body's compromise proposal on decommissioning needs to be considered. Paragraphs 34 and 35 of the Report state:

"The parties should consider an approach under which some decommissioning would take place during the process of all-party negotiations, rather than before or after as the parties now urge. Such an approach represents a compromise. If the peace process is to move forward the current impasse must be overcome. While both sides have been adamant in their positions, both have repeatedly expressed the desire to move forward. This approach provides them that opportunity.

"In addition, it offers the parties an opportunity to use the process of decommissioning to build confidence one step at a time during negotiations. As progress is made on political issues, even modest mutual steps on decommissioning could help create the atmosphere needed for further steps in a progressive pattern of mounting trust and confidence."

- 4 -

CONFIDENTIAL

1612/POLDEVT

CONFIDENTIAL

13. The Government endorses this compromise approach. It recognises that, under this approach, progress on decommissioning and progress on political issues are both necessary and both build confidence to enable further steps to be taken.

14. In the Government's view, the first step in this "progressive pattern of mounting trust and confidence" is for all the participants to make clear that they accept the International Body's analysis and will accordingly work constructively and in good faith to secure the implementation of all aspects of the report, in the context of an inclusive and dynamic negotiating process.

15. The two Governments then intend to propose that a Committee of the plenary be established, the remit of which would be to secure implementation of all aspects of the report of the International Body. We propose that the Committee should comprise representatives of all the participants and be chaired by the Independent Chairman of the plenary. To further assist the Committee, the two Governments will make available a range of relevant expertise, to include independent experts of international standing. The independent experts would play an appropriate part in the work of the Independent Commission when it is established.

16. On this basis, the Government would be satisfied that there had been a sufficient address to this issue to enable substantive discussion in the three strands to be launched. To implement the International Body's approach on decommissioning all participants will need:

- both to work constructively to secure a start to decommissioning during genuine and meaningful negotiations;
- and to participate constructively and in good faith in substantive negotiations.

17. It will therefore be important for all the participants periodically to review progress across the whole spectrum of the negotiations, including the work of the Committee. The Governments propose a plenary meeting in December for this purpose but envisage further meetings to review progress if necessary.

Guidelines on the modalities of decommissioning

18. The Government accepts the recommended guidelines on the modalities of decommissioning set out in paragraphs 39-50. Specifically:

- the decommissioning process should suggest neither victory nor defeat, and that the arrangements for decommissioning should reflect this (paragraph 39). The Government has consistently emphasised that it is not seeking a 'surrender' and is prepared to be flexible in its approach to modalities to take account of this. The International Body clearly accept that it is possible to devise modalities which would not carry any connotation of victory or defeat;
- the decommissioning process should take place to the satisfaction of an independent Commission acceptable to all parties, and that this should be appointed by the two Governments on the basis of consultations with the other parties to the negotiations (paragraphs 40-42). The Government will seek from Parliament the necessary legislative powers to provide the Commission with appropriate legal status and immunities to operate independently in its jurisdiction, recognising that the precise role and composition of the Commission will be a matter for determination once arrangements for decommissioning have been agreed. It will ensure that the Commission has the resources it needs to carry out its task;

CONFIDENTIAL

- the decommissioning process should result in the complete destruction of armaments in a manner that contributes to public safety (paragraphs 43-45). The Government is willing to be flexible about the methods of decommissioning and to consider carefully all practicable proposals raised during negotiations, provided these reflect the International Body's guidelines on modalities. It notes particularly the possible methods outlined in paragraph 44 of the International Body's report. It accepts that comparable arrangements will be needed in both jurisdictions in the island of Ireland, and it will continue to work closely with the Irish Government towards this end. It will take the necessary steps to give effect in its jurisdiction to the decommissioning arrangements agreed in negotiations. One of its key concerns will be to ensure that those arrangements provide for the safety both of the public and of those directly involved in the decommissioning process;
- the decommissioning process should be fully verifiable (paragraphs 46-47). The Government believes that independent and comprehensive verification procedures will be essential for the reassurance of all the parties involved, and the wider public. It agrees that the Commission will have an essential part to play in this respect, and in reporting progress, and will provide all necessary information to enable it to carry out its task;
- the decommissioning process should not expose individuals to prosecution (paragraphs 48-49). The Government will put before Parliament proposals for appropriate statutory measures. These will include appropriate provisions relating to a prohibition on criminal proceedings, and restrictions on forensic testing and evidential use. The benefit of these provisions will be linked directly to the agreed decommissioning arrangements;

CONFIDENTIAL

- the decommissioning process should be mutual (paragraph 50). The Government's position remains that there is no justification for any retention of illegal arms whatever the circumstances. The proper authorities will continue to enforce the law. But it recognises that decommissioning by paramilitaries would take place on the basis of the mutual commitment and participation of the paramilitary organisations' and that this will be an important confidence building measure.

19. In these areas, as in all aspects of the report of the International Body, the Government fully endorses the report's proposals and believes that they constitute a fair and positive way forward.

Confidence building measures

20. The circumstances required for a process of mutual decommissioning, as called for in the International Body's report, are not in place because of the absence of Sinn Fein from the negotiations, due to the IRA's continued campaign of violence. We urge the loyalist parties to continue their efforts to ensure the maintenance of the ceasefire of 13 October 1994 which has enabled the valuable participation of the PUP and the UDP in these negotiations, in fulfilment of their electoral mandate and as parties committed exclusively to peaceful means. But even in circumstances where mutual decommissioning is not possible, important confidence building measures can be secured:

- a commitment by all participants to the principles of total and verifiable disarmament;
- the development of a detailed scheme or schemes of decommissioning, along the lines recommended in the International Body's Report, including commenting on the draft legislation;

- determination of the role of the Independent Commission including its role in relation to verification of the decommissioning process, along the lines recommended in the Report;
- the introduction of legislation to provide the necessary statutory foundation for whatever detailed decommissioning scheme is put in place.

21. At the review the Governments have suggested should be held in December, the Government - along with other participants - would want to review the progress made on these and other issues. The Government imagines that participants would want to consider at that time whether progress on these issues provided, against the background that circumstances may mean mutual decommissioning cannot begin, confidence of a willingness to honour the International Body's Report.

Legislation

22. The Government has worked closely with the Irish Government in considering the practical and legislative implications of the International Body's Report. Effective decommissioning requires a co-ordinated approach in both jurisdictions.

23. As a result of these considerations, the Government has prepared legislation, which will be enabling in character, and designed to allow HMG to put into effect in Northern Ireland the guidelines on modalities set out in the International Body's report, and to provide the necessary statutory foundation for whatever detailed decommissioning arrangements are in due course put in place. Similar legislation has been prepared by the Irish Government.

24. The Bill will provide for a prohibition on criminal proceedings in respect of certain specific offences available to those acting in accordance with the decommissioning scheme; provide for certain evidential restrictions; provide for restrictions on forensic testing; provide powers to confer certain contributes, privileges and immunities on an Independent Commission, its members and staff; and provide powers to pay any expenses incurred. Both governments recognise the hard reality that without restrictions on evidence and forensic testing and an amnesty there will be no voluntary decommissioning of armaments.

Further confidence building

25. In addition, the International Body noted a number of actions, which fell outside their remit, which could nonetheless help build confidence.

26. In particular, in paragraph 52, they noted:

"Support for the use of violence is incompatible with the participation in the democratic process. The early termination of paramilitary activities, including surveillance and targeting, would demonstrate a commitment to peaceful methods and so build trust among other parties and alleviate the fears and anxieties of the general population. So, too, would the provision of information on the status of missing persons, and the return of those who have been forced to leave their communities under threat."

27. The Government agrees that all these measures, along with an end to punishment killings and beatings, would help significantly to build confidence. The continuation of such activities undermines trust and confidence and calls into question any commitment to exclusively peaceful methods.

28. The International Body recognised that:

"... the [British and Irish] Governments made clear their view that our remit is limited to those weapons held by paramilitary organisations. We accept and share that view. There is no equivalence between such weapons and those held by security forces." (paragraph 54)

29. The Government has recognised its own duty to take action to build confidence. Following the ceasefires of 1994, the Government took a wide range of such initiatives, on the advice of the security forces and in response to changes in the level of threat, including:

- changed arrangements for the release of scheduled offenders that reintroduce release at the 50% point of sentence for all offenders;
- a review of emergency legislation which considered replacement of the current emergency legislation, although implementation depends on the evolving security situation;
- the relocation, up until February 1996, of 3 battalions of troops from Northern Ireland, and the 80% reduction in patrolling by the Army. Since the ending of the IRA ceasefire, two battalions have returned to Northern Ireland. Further forces will be deployed in Northern Ireland if the security situation requires it;
- the removal of a number of physical security measures, including the demolition of five security force bases. Further progress, or the reinstitution of some of these measures, depends on the level of threat;
- a review of the firearms legislation governing the holding of legally held weapons is under way, in the interests of updating the legislation as necessary;

- a review by Her Majesty's Inspector of Constabulary of the RUC's handling of public order situations including the use of plastic baton rounds;
- the Government had already been engaged in a wide ranging process of policing reform, including a fundamental review of policing needs, services and organisation; and a review of police complaints procedures, and has published proposals for reforms to policing structures aimed at increasing police accountability, efficiency and effectiveness;
- as the Report recommended, we are continuing to work to improve community balance within the police service, within the legal framework that appointment and promotion must be on merit.

30. In all these areas, where the International Body noted the potential for confidence building action by the Government, the Government has consistently sought to take such actions, taking account of the advice of the security forces and as the security situation permits. Some actions have had to be rescinded as the threat has increased since the abandonment of the IRA ceasefire, and all are reversible. Equally, if the threat reduces again, the opportunity for further confidence building measures returns.

Conclusion

31. The Government welcomed the report of the International Body when it was published. It endorses all aspects of the report and believes that its proposals offer a viable way forward to the total and verifiable disarmament of all paramilitary organisations in the context of a comprehensive political settlement.

CONFIDENTIAL

32. For its part, the Government believes that it is on the basis of working constructively to implement all aspects of the report that the issue of decommissioning should be advanced, and it will work with all participants to achieve this.

- 13 -

CONFIDENTIAL

1612/POLDEVT