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cc PS/Michael Ancram (B&L)
 PS/PUS (B&L)
 PS/Sir David Fell
 Mr Bell
 Mr Leach (B&L) ① D. McN
 Mrs Evans, HOLAB
 Mr Watkins
 Mr Hill (B&L) ② DC
 Mr Lavery ③ 186
 Mr Maccabe
 Mr Stephens
 Mrs Mapstone

PS/SECRETARY OF STATE (B&L)

THE ALLIANCE COMPLAINTS

1. This is to consider ways of dealing with the Alliance complaints. It is not, (pending the debate) definitive advice, but examines a number of outcomes and offers a possible way of proceeding without a formal determination.

The complaints summarised

2. The complaints are expressly made under two principles, the commitments to:

(a) democratic and exclusively peaceful means of resolving political issues; and

(d) to renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations.

3. Leaving aside the complaint against the Loyalists, there are two charges:

a) over Drumcree, against the UUP and DUP, under principle (a), that:

i) the Orange Order engaged in a systematic and politically-motivated campaign which challenged the rule of law and authority of the RUC, seeking to overstretch police resources and threaten a complete breakdown of law and order; and this campaign was consistently portrayed by those taking part as a challenge to overall Government policy; and

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ii) the Order's activities and campaign had the support - often in angry and violent language - encouragement and active involvement of senior members of the UUP and DUP; moreover the Order is constitutionally linked to the UUP - the position of Mr Smyth and Mr Donaldson are mentioned - and it is impossible that the Order's campaign could have proceeded without the knowledge and approval of the unionist leadership. (Mr Trimble's own activities at Drumcree are not mentioned, though feature tangentially in the next complaint).

b) over the Portadown rally, against the DUP, under (a) and (d), that:

i) Mr McCrea took part in a rally in support of Mr Wright. His antecedents are set out: widely identified as a militant loyalist and supporter of the Mid-Ulster UVF; took an active part at Drumcree, where Mr Trimble met him in an attempt to avoid violence; described in the press as a strong opponent of the leadership and policies of the PUP and CLMC, an opponent of the loyalist ceasefire, and linked to the emergence of a hard-line breakaway faction of the UVF.

ii) Mr McCrea thus supported Mr Wright; he failed to condemn the policies and actions with which he was associated; the DUP did not condemn or dissociate themselves from Mr McCrea's stand.

4. The covering letter (not circulated) says that Alliance's wish is 'of course not to see anyone evicted from the Talks, but to see all parties proceed with serious talks, and to conduct themselves in accordance with the Mitchell principles'.

The rule

5. It is worth looking at the rule in detail. The elements are:

- a) If... a formal representation is made
- b) that a participant is no longer entitled to participate
- c) on the grounds that they have demonstrably dishonoured the principles of democracy and non-violence
- d) this will be circulated... and will be subject to appropriate action by the Governments
- e) having due regard to the views of the participants.

6. The Alliance complaint

- a) nowhere says it is a representation under rule 29;

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- b) does not say that any of the parties mentioned are not entitled to participate (as did the DUP 'indictment'); the covering letter says it is not the intention to see anyone evicted;
- c) alleges breaches of the principles, but not 'demonstrable dishonourings';
- d) does not call for any action by the Governments.

It includes no 'evidence'. Arguably the complaint meets none of the criteria for a valid complaint under rule 29. It has been dealt with according to rule 29 procedures; but it does not follow that it have the same treatment as the earlier complaint, from which it is very different.

Merits

7. The merits are endlessly arguable. On the first complaint:

- a) was the issue at Drumcree a 'political' one within the contemplation of principle (a)?
- b) so far as it was, was the mere massing of so many protesters itself at odds with the principle of recourse only to 'democratic and exclusively peaceful' means?
- c) how far was the Orange Order responsible for the 'active' violence?
- d) how far is the responsibility of the UUP engaged by this - is it a reasonable inference that it must have approved the policy followed?
- e) how far is the DUP responsibility engaged, given that it has no constitutional links with the Order, merely by the (undocumented) 'encouragement and involvement' of senior members?

8. On the second complaint:

- a) how far could Mr McCrea be said to have been 'supporting' Mr Wright's outlook, rather than simply his right to stay alive? Again there is no documentation, nor actual words quoted;
- b) how far it is right in the absence of argument or evidence to conclude that Mr Wright is opposed to exclusively peaceful means of resolving political issues, so as to engage principle (a)? It would probably not be hard to show as much from statements of his, but they are not quoted. His endorsement of

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force or threats to influence all-party negotiations under principle (d) may be harder to substantiate;

- c) how far can the DUP's responsibility be said to be engaged from its failure to dissociate?

9. An additional complication is the force here of 'demonstrably dishonouring' principles. We said in the loyalist 'judgment' that 'the terms of the rule, and the gravity of the potential sanction, require a clear and unmistakable demonstration by those who assert it that there has been a dishonouring ...': something, perhaps, more than a mere breach. A judgment in either sense is therefore all the more difficult to arrive at with certainty.

Parties' outlook

10. The parties will still be alive to the precedent value of what is decided. The Unionists will be vigilant that the principles are being treated with respect, and no loopholes left that Sinn Féin might exploit; they will also be looking, however, for clear exoneration. Nationalists (and the Irish), though they have not lent any support to the Alliance complaints, would probably have grave difficulties with any categorical finding of no dishonouring, and would no doubt say it would further damage the credibility of the talks (and their standing vis-à-vis Sinn Féin) in their own communities.

Options

11. The consequences of either option are fairly unattractive.

a) if there were a finding that the principles had been demonstrably dishonoured, then according to the Governments' common policy set out in paragraph 17 of the Ground Rules the parties concerned 'would no longer be entitled to participate in the negotiations';

b) a judgment simply that there had been no demonstrably dishonouring, however, would be very difficult for the Irish government; and however explained (and in this context it is anyway difficult to do much explaining) might seem to many in Northern Ireland to be condoning or making light of the actions of the Orange Order, underpinned by many unionist leaders, in bringing about one of the most socially disruptive developments in Northern Ireland in recent years (as this morning's Irish News has it, 'an unconditional discharge from the two governments would add insult to the injury many, not just nationalists, felt...').

12. There are intermediate variations on these themes, but not compelling either:

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a) a finding that the principles had not been demonstrably dishonoured, with the possibility that there had been a mere 'breach' left open. But this would irritate Unionists as it bore on them personally; sow much suspicion among them that the principles were being undermined; and cut little ice with nationalists;

b) a finding that the principles had been demonstrably dishonoured, but that the parties had subsequently redeemed themselves by re-commitment to the principles. This involves a departure from the Governments' position; would strike Unionists as the worst of both worlds - inculcating them, and establishing that Sinn Féin could stay in talks after whatever IRA outrage by reaffirming the principles; and again might have little appeal for nationalists.

Avoiding a 'determination'

13. It is tempting, therefore, to try to find a way of avoiding giving any formal determination. This may be possible. We might agree with the Irish that since the exclusion of no party is being sought - no party, indeed, seems to be seeking any action - the question of 'appropriate action' under the rule does not arise. The Governments would deliver no written conclusions - there would be no point. This might be announced at the beginning of the debate, and would perhaps make it a rather less painful experience; though if anyone wanted to dispute it, they would then have an opportunity. Alternatively it might be announced shortly after, avoiding the issue remaining on the political scene over the weekend.

14. This would be unlikely to please anyone very much; but also to inflame no-one. Unionists might resent not being formally 'exonerated'. Nationalists could potentially take rather greater offence that the issue of dishonouring was not to be looked at. Alliance might take it as a snub (if they did, that would presumably commend it to everyone else). It could be argued by Unionists that a decision not to examine the issue amounted to treating the principles lightly, a bad precedent; but the whole point here is that no-one is seeking ejection, as they certainly would in future cases Unionists might have in mind. No-one, anyway, would be likely to go to court over such a course.

Conclusion

15. Ministers are invited to reflect on these options in advance of the debate. It seems to us that avoiding a determination has a good deal to commend it. If they agree, we might discuss with the Irish (and then mention it to the Chairmen tomorrow morning).

(Signed)

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