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FROM: S J LEACH
ASSOCIATE POLITICAL DIRECTOR (L)
25 SEPTEMBER 1996

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ASSISTANT SEC
CPL 1200DESK IMMEDIATE

PS/Secretary of State (B&L) - B

cc PS/Michael Ancram (B&L) - B
PS/Sir John Wheeler (B&L) - B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Steele - B
Mr Thomas o/r - B
Mr Bell - B
Mr Blackwell - B
Mr Shannon - B
Mr Watkins - B
Mr Ray - B
Mr Beeton - B
Mr Hill (B&L) - B
Mr Lavery - B
Mr Maccabe - B
Mr Perry - B
Mr Stephens - B
Ms Bharucha - B
Mr Whysall (B&L) - B
Ms Mapstone - B
Mr Margetts - B
Mr Lamont, RID - B
HMA, Dublin - B
Ms Collins, Cabinet Office
(via IPL)

PREPARATIONS FOR THE NEXT TRILATERAL

Subject to final clearance by their Ministers (on which Mr O hUiginn this morning anticipated no difficulties), we agreed with the Irish side last night the final text of the "Conclusions" which the two Governments would jointly propose in the debate on the address to decommissioning in the opening Plenary. The key passage, designed to meet the UUP need for a perceived continuum between the Committee and the Independent Commission, occurs in the fifth tiret, where the relevant sentence now reads:

CONFIDENTIAL

PDT/1256

CONFIDENTIAL

"With a view to ensuring continuity between the work of the Committee and the operation of the Independent Commission proposed in the report of the International Body and provided for in the draft legislation, the two Governments will make available to the Committee a range of expert personnel, including independent experts of international standing whom they would envisage playing an appropriate part in the work of the Commission when it is established".

The full text is attached at Annex A.

2. The agreed draft looks to be as close as we will get (at least in present circumstances) to the Irish bottom line, steering between (from their perspective) the Scylla of conceding that De Chastelain might have a role in the decommissioning process as well as chairing Strand II (they would be happy for him to take on the former while giving up the latter, but that would mean reopening the Prime Minister/Taoiseach agreement of 5 June), and the Charybdis of agreeing in terms to an "inchoate Commission" attached to the decommissioning Committee. (Although on that, the wording of course allows scope for interpretation of what is "appropriate".) Mr Perry and Mr Hickey will be meeting today to agree the next steps in identifying and making preparations to secure the services of appropriate expert personnel. The major task for today (and in the run up to the next trilateral on Monday) will be to convince the Unionists that this deal effectively meets their concerns and is the best available.

3. The Secretary of State is due to meet Mr Trimble early this afternoon on returning from Bath. I understand from Michael Ancram that he has agreed that we should hand the "Conclusions" paper to the UUP at that meeting, thus presenting it in the full political context rather than as an isolated text. Michael Ancram believes that it would be useful to the Secretary of State to take Trimble through the points he would make in the address to decommissioning in the opening Plenary in recommending the joint paper to the participants. I have accordingly prepared a draft speech to the

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Plenary (Annex B) which the Secretary of State might use for this purpose. (It reflects some initial comments from Michael Ancram.) This incorporates and expands the speaking note I prepared last week, and draws on a range of other material. (On a point of detail, the draft assumes that the two Governments table the "Conclusions" at the start of the Plenary address. It will be a matter for tactical judgement whether we should do that, or let the debate run on for a while before producing the agreed text.)

4. This is very much a draft, on which I have not been able fully to consult other colleagues. It is likely to be capable of improvement, and the Secretary of State may therefore wish to make clear to the UUP leader that it is liable to change. (Although he will of course have to take away the text of the "Conclusions", Mr Trimble should not I think be given a copy to retain of the draft speech.) I hope that it hits most of the right buttons as far as the UUP are concerned, without compromising our position for the other participants. And the fact that it is a draft does of course mean that there could be scope to adjust it to meet any concerns which may emerge. The Secretary of State may also find it useful to have a set of bull points for this specific meeting, and Mr Hill is providing these separately.

(Signed SJL)

S J LEACH
APD(L)

CB 22286 OAB 6469

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ANNEX A

DRAFT: 24 SEPTEMBER 1996

(Agreed subject to final Irish clearance)

SUGGESTED CONCLUSIONS TO THE PLENARY ADDRESS TO DECOMMISSIONING
[to be tabled by the two Governments]

The participants in the multi-party negotiations, meeting in plenary session:

- note the commitment of the two Governments to all aspects of the report of the International Body including their support for the compromise approach to decommissioning set out in paragraphs 34 and 35, which 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".

- note the commitment of the two Governments to work with all other participants to implement all aspects of the Report.
- note that as an important step towards implementation, each Government will publish at the conclusion of the opening Plenary session draft enabling legislation which will provide the basis for giving effect to the International Body's recommendations on the modalities of decommissioning. Having considered any comments which the Committee referred to below may have they intend to introduce legislation in their respective Parliaments in the forthcoming session so that as progress is made on political issues the legislative framework is enacted by Christmas 1996.

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- agree 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. A reality for all present and future participants is that progress in the negotiations will only be possible on this basis.
- agree to establish a Committee charged with working to secure implementation of all aspects of the International Body's Report on this basis. The Committee will comprise representatives of all the participants and be chaired by the Independent Chairman of the Plenary. With a view to ensuring continuity between the work of the Committee and the operation of the Independent Commission proposed in the report of the International Body and provided for in the draft legislation, the two Governments will make available to the Committee a range of expert personnel, including independent experts of international standing whom they would envisage playing an appropriate part in the work of the Commission when it is established. The Committee will follow the attached working agenda. It will first meet on [7/14 October].
- agree that a plenary session should be convened in December to take stock of progress in the negotiations as a whole, including the work of the Committee. At that meeting, all participants would review the position, and the progress which has been made across the entire spectrum of the negotiations. It would also be possible, under the provisions of paragraph 12 of the rules of procedure, for the plenary to be convened specifically to enable the Independent Chairman to brief participants on the progress made by the Committee.
- agree that the adoption of the above proposals will conclude the address to decommissioning by the opening Plenary.
- agree, on this basis, to complete the remaining business of the opening plenary session in time for the appropriate Chairmen to convene meetings of the negotiations within the three strands and the proposed Committee on Decommissioning, opening on [7/14 October] and proceeding in parallel.

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COMMITTEE ON DECOMMISSIONING
WORKING AGENDA

ANNEX B

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PLENARY ADDRESS TO DECOMMISSIONING

1. I welcome this opportunity to set out the British Government's position on the key issue of decommissioning. This is a fundamental issue, for a

no one can expect the existence within its jurisdiction of illegal arms which could be used to attack

the functions of the Independent Commission in respect of each scheme, including its role in relation to verification of the decommissioning process.

converted to a peaceful use of those arms would demonstrate a peaceful

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spoke They have agreed to decommission

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exte they have agreed to decommission

paramilitary organisations." (paragraph 17)

2. The Government's commitment to the removal of illegal arms does not, of course, signify any lessening of our resolve that the full extent of the law should continue to be used to seize such arms and to prosecute those who possess them. The security forces in both jurisdictions have extensive powers in this area. But clearly, those efforts have not so far been completely successful. The process of decommissioning will be a different and distinct procedure, necessarily based on co-operation and assent, designed to secure the removal of those illegally held arms which have eluded the efforts of the security forces.

CONFIDENTIAL

PDT/1256

CONFIDENTIAL

PDT/1256

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ANNEX B

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PLENARY: ADDRESS TO DECOMMISSIONING

1. I welcome this opportunity to set out the British Government's position on the key issue of decommissioning. This is a fundamental issue, for a number of reasons:

- no government can tolerate the existence within its jurisdiction of illegal arms which could be used to attack democratic institutions or for other criminal purposes;

- the retention of such arms by terrorist organisations clearly threatens the basis of confidence and trust necessary to make progress in these negotiations;

- conversely, a start to decommissioning of those arms would demonstrate a practical commitment to exclusively peaceful methods, so helping to build 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 they should not obscure the **nearly universal support** which exists for the total and verifiable disarmament of all paramilitary organisations." (paragraph 17)

2. The Government's desire for the decommissioning of illegal arms does not, of course, signify any lessening of our resolve that the full extent of the law should continue to be used to **seize** such arms and to prosecute those who possess them. The security forces in both jurisdictions have extensive powers in this area. But clearly, those efforts have not so far been completely successful. The process of decommissioning will be a different and distinct procedure, necessarily based on co-operation and assent, designed to secure the removal of those illegally held arms which have eluded the efforts of the security forces.

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3. The Government's position is squarely based on the Report of the International Body, which we fully endorse. We therefore agree 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, we also accept 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)

5. It is for these reasons that the Government accepts, and has accepted since January, the **compromise approach** to decommissioning set out in the report of the International Body, which envisages some decommissioning taking place during the process of negotiations:

"[The compromise approach] 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."

6. The Government will play a full part in building the climate of confidence in which decommissioning should go ahead. Thus (in parallel with the Irish) we have prepared draft **legislation** which will permit the maximum flexibility in taking forward the decommissioning process. We aim to introduce this legislation early in the new session of Parliament. It will provide for a scheme, overseen by an independent Commission, which will verify that the decommissioning process results in the safe and complete destruction of armaments. The Bill will also provide for an amnesty from

CONFIDENTIAL

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prosecution in respect of certain (mainly possession-related) offences for those acting in accordance with the decommissioning scheme. This will be a very narrow amnesty - in no sense a general one for all crimes committed in the past. There will also be provisions dealing with the exemption from forensic examination of armaments made available for decommissioning, and limitations on the use in evidence of information obtained as a result of the process.

7. I have referred to the building of confidence as the basis for progress across a broad front. The prospects for a process of mutual decommissioning, as called for in the International Body's report, have undeniably been set back by the abandonment of the IRA ceasefire, and their continuing attempts to perpetrate large-scale violence. We urge the loyalist parties to continue their efforts to ensure the maintenance of the CLMC ceasefire, 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 to peaceful means.

8. The IRA's continuing preparations for murder reinforce, very clearly, the need which the International Body identified for reassurance:

".....that the commitment to peaceful and democratic means by those formally 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)

The best way to build confidence would, of course, be for the IRA to make an immediate start to decommissioning its illegal arms. If they are unwilling to take that step now, let me reiterate that, under the legislation, there must be an unequivocal restoration of the IRA ceasefire if Sinn Fein are to be invited to nominate a negotiating team. If that occurred and they were to come to this table, then, like all the other participants, they would need to

CONFIDENTIAL

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make clear their total and absolute commitment to the principles of democracy and non-violence set out in the Report of the International Body. And 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, in particular by working constructively to secure implementation of all aspects of the International Body's Report.

9. The Government equally accepts, of course, the 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)

10. We believe that these negotiations, which offer a comprehensive agenda under which it is open to the various negotiating teams to raise any significant issue of concern to them, and receive a fair hearing for those concerns, meet that need for reassurance. As our rules set out, any participant in the format in question will be free to raise any aspect of the three relationships, including constitutional issues and any other matter which it considers relevant. No negotiated outcome is either predetermined or excluded in advance or limited by anything other than the need for agreement.

11. Given our acceptance of the International Body's Report, including its recommended guidelines on modalities, and the establishment of these comprehensive and democratic negotiations within which the necessary confidence can be built, how in practical terms does the Government propose that the decommissioning issue should now be taken forward? [We have set this out in the Conclusions which we have now tabled for the approval of the Plenary.]

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12. In summary, what we are proposing is that a clear structure of purposive action should be established to take forward decommissioning alongside political negotiations within the Talks process. This would involve the following:

- the commitment by both Governments to introduce their enabling legislation early in the coming session with the aim of getting it enacted by Christmas. That timetable of course assumes a supportive Parliamentary climate which in turn would be influenced by the perception of continuing constructive engagement in the negotiations as a whole.
- a commitment which would be binding on all present and future participants to work constructively to implement all aspects of the Report of the International Body, including the compromise approach to decommissioning, 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 reality for all present and future participants is that progress in the Talks will only be possible on this basis.
- this Committee would of course require appropriate resources to get on with its essential tasks, which would include working out the precise role of the Independent Commission proposed in the Report of the International Body and provided for in the draft legislation. For this purpose, and to ensure continuity between the work of the Committee and the operation of the Commission, the Governments will provide to the Committee a range of expert personnel, whose work and expertise will then be available to the Commission when it is established. The Governments will in addition invite to assist the Committee independent experts of international standing, whom we would envisage playing an appropriate part in the work of the Commission when it is set up.

CONFIDENTIAL

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■ We have therefore accepted the value both in terms of practicality and confidence-building of establishing a clear link in this way between the work of the Committee in the early stages of substantive negotiation and the eventual work of the Commission, thereby ensuring that neither works in a vacuum.

■ with these technical resources, the Committee could undertake from day one an active programme of essential preparatory work. This would include

(a) working up into a series of alternative schemes the different options for decommissioning outlined in the Report of the International Body;

(b) carrying out a rigorous practical analysis of the precise role, powers and privileges of the Independent Commission, as required by each of the possible schemes, as an essential preliminary to agreement on the modalities and the formal establishment of the Commission with the appropriate personnel, resources, powers and so on;

(c) considering the necessary timing and sequencing of decommissioning.

■ The Committee would review this work and, once the necessary basis of agreement existed, make recommendations to the Governments, who would then finalise and promulgate a scheme for decommissioning, and precise arrangements for the Commission, as soon as they were satisfied that a workable scheme of decommissioning had been identified which would be capable of finding broad acceptance among the parties and among those expected to decommission.

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13. The establishment of the Commission must in practice await the passage of the legislation, and must also be based on **essential preparatory work**. The Governments propose the **Committee**, with appropriate resources, as the vehicle for that work. The Committee would also address the **context** in which a decommissioning scheme could be developed (including the progressive **confidence building measures** outlined in the Report,) and the impact of the requirement for decommissioning to be **mutual** as between Republicans and Loyalists.

14. The Governments would also propose that a special Plenary session should be convened in December to take stock of progress in the negotiations as a whole, including the work of the Committee.

15. Thus, the Committee would have a **clear work programme** and the **resources to carry it through**. Its work could not be stalled by the absence of any party. Moreover, the commitment which the Governments would be seeking from all parties to the negotiations would be to work constructively to secure implementation of the report of the International Body, including the compromise approach to decommissioning. When that commitment is made, everyone will expect it to be **honoured in good faith**, in the context of an overall process of negotiations which builds mutual trust and confidence. The British Government invites all parties to start to create that mutual trust and confidence, through the process of negotiations **now**.

2. Against that background I suspect that some contingency planning would not be amiss. The O'Donnell line seems to be that if a deal cannot be struck with the UUP in short order the issue should be put into plenary for a general debate. That does not strike me as a sensible course of action, but alternatives do not spring readily to mind. Would it be better simply to declare the negotiations suspended? Is there any way in which we could create some space/time for development of the trilateral relationship?

CONFIDENTIAL