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FROM: MRS D McNALLY
Political Development Team
11 September 1996

ASSISTANT SECRETARY
SECURITY POLICY & OPERATIONS 1

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- cc PS/Secretary of State (B&L) - B
- PS/Sir John Wheeler (B, L&DFP) - B
- PS/Michael Ancram (B&L) - B
- PS/Malcolm Moss (DHSS, DOE&L) - B
- PS/Baroness Denton (DED, DANI&L) - B
- PS/PUS (B&L) - B
- PS/Sir David Fell - B
- Mr Thomas - B
- Mr Bell - B
- Mr Legge - B
- Mr Leach - (B&L)
- Mr Steele - B
- Mr Watkins - B
- Mr Wood (B&L) - B
- Mr Beeton - B
- Mr Priestly - B
- Mr Hill (B&L) - B
- Mr Lavery - B
- Mr Maccabe - B
- Mr Ferry - B
- Mr Stephens - B
- Ms Bharucha - B
- Ms Mapstone - B
- Mr Whysall (B&L) - B
- Mr Holmes, No 10 - M
- Ms Collins, Cab Off (via IPL) - B
- Mr O'Mahony, TAU - B
- Mr Lamont, RID FCO - B
- HMA Dublin - B
- Mr Westmacott (via RID) - B
- Mr Campbell-Bannerman - B

aw (D)

NOTE FOR THE RECORD

TALKS: 11 SEPTEMBER 1996

I attach a copy of the conclusions of the Governments on the representations made by the DUP against the PUP and the UDP which are being announced at 2.30pm today. The Governments will seek the authority of the Plenary to publish the document.

(Signed)

MRS D McNALLY
Political Development Team
CB 22282

**CONCLUSIONS OF THE GOVERNMENTS ON REPRESENTATIONS
MADE BY THE DUP AGAINST THE PUP AND THE UDP**

1. This document sets out the conclusions of the Governments on the formal representations made by the DUP to the Independent Chairmen on 9 September that the PUP and UDP were in breach of the Mitchell principles.

Background: the Rules and Principles, and procedures followed

Rule 29

2. The procedure to be followed is set out in rule 29 of the rules of procedure for the negotiations agreed on 29 July:

If, during the negotiations, a formal representation is made to the Independent Chairmen that a participant is no longer entitled to participate on the grounds that they have demonstrably dishonoured the principles of democracy and non-violence as set forth in the Report of 22 January 1996 of the International Body, this will be circulated by the Chairmen to all participants and will be subject to appropriate action by the Governments, having due regard to the views of the participants.

The Mitchell Principles

3. The relevant passage of the International Body's report reads:
 20. Accordingly, we recommended that the parties to such negotiations affirm their total and absolute commitment:
 - (a) To democratic and exclusively peaceful means of resolving political issues;
 - (b) To the total disarmament of all paramilitary organisations;
 - (c) To agree that such disarmament must be verifiable to the satisfaction of an independent commission;
 - (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 outcome of all-party negotiations;
 - (e) To agree to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may disagree; and,

- (f) To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.
4. The DUP "Notice of Indictment" setting out its representations was given to the Chairmen on 9 September and subsequently circulated. A joint response by the PUP and UDP was circulated on the morning of 10 September. (Both documents are appended to this determination and speak for themselves.) The Plenary session was adjourned for approximately one hour to permit further consideration. In the subsequent session of some three hours, the DUP, and then the PUP and UDP, were each allowed half an hour to speak to their papers. Other participants were then permitted to question them, and to set out views in accordance with rule 29. The Governments then considered the question of appropriate action, in the light of all the material available and having due regard to the views of the participants.
5. The relevant rule requires the complaining participant to show that the Mitchell principles have been "demonstrably dishonoured" by the participant or participants complained against.
6. 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 of the principles.
7. The DUP Notice does not particularise which of the six principles are alleged to have been violated. We believe that principles (b), (c) and (e) are not material to the representations made against the parties. The allegations made must therefore be considered in the light of principles (a), (d) and (f), asserting commitments:
- a. To democratic and exclusively peaceful means of resolving political issues;
 - d. To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course of the outcome of all-party negotiations;
 - f. To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.

The DUP allegations

8. The DUP document entitled "Notice of Indictment" contains three specific allegations against the PUP and the UDP.
- (a) Failure to condemn the CLMC threat (para 6).
 - (b) Endorsement of the threat (para 6).
 - (c) Failure to condemn the attack on the Kerr home (para 10).

The PUP/UDP response

9. Having considered the documents tabled on both sides, the oral statements and responses made in the course of the discussions, and the differing views of the other participants, the Governments note that the PUP and the UDP:
- strongly assert that whatever degree of influence they exert on the CLMC has been, and will continue to be, consistently deployed in support of the continuance of the CLMC ceasefire in all its aspects;
 - have reaffirmed that they remain fully committed to the Mitchell principles of democracy and non-violence and that they resolutely oppose the threat or use of violence from whatever source;
 - consider that particular formulas of condemnation could have diminished rather than enhanced the efficacy of efforts to oppose the use of force and to ensure the practical promotion and defence of the Principles;
 - drew attention to a series of statements on the public record which distance their parties from the threat and deprecate it.

We further note that the efforts of the PUP to mediate in the dispute, supported by the UDP, indicate the desire of both parties to see the CLMC threat removed.

Conclusion

10. We have reached the following conclusions:

The failure to condemn the threat

The failure to issue a public and explicit condemnation of the threat in the context of active and continuing steps being taken by the parties to oppose the issuing or implementation of the threat did not of itself demonstrably dishonour the Mitchell principles. We consider further that these steps are not compatible with the establishment of any dishonouring by association.

The endorsement of the threat

No evidence was offered of the alleged endorsement of the threat to Mr Kerr and Mr Wright and it was denied by Mr Ervine. We accordingly believe that this allegation is not substantiated.

The failure to condemn the attack on the home of Mr Kerr's parents

Mr Ervine had made clear (and he reiterated) that 'nothing could justify' such an attack. In the light of this, we believe this complaint is not substantiated.

11. The Governments have accordingly determined that it has not been established that the UDP and PUP have demonstrably dishonoured the principles of democracy and non-violence set out in the report of 22 January 1996. No further action is therefore appropriate.

The DUP wishes to serve notice on the Chairman of the Multi-Party Talks that certain participants are in flagrant breach of the Mitchell Principles of Non-violence.

These Principles are the basis for entry to the Talks and are supposed to ensure that a level playing field exists for all participants. Any breach, reflected in actual violence or the threat to resort to violence for political purposes, poses a real threat to the stability of Northern Ireland and to any prospect of a successful outcome to these political talks.

Any failure to deal with such a threat with a serious and unambiguous response will destroy this process.

The DUP complaint is against those parties which claim to speak for the Combined Loyalist Military Command (C.L.M.C.), namely, the Progressive Unionist Party (P.U.P.) and the Ulster Democratic Party (U.D.P.).

On Wednesday 29 August the C.L.M.C. issued a statement threatening the lives of two other loyalists with expulsion from Northern Ireland or else "summary justice". The statement said: "Failure by either man to comply with this directive will result in summary justice for their treasonable and subversive activities. Anybody supporting these persons in their activities will be similarly dealt with."

When challenged about the statement the main spokesmen for the P.U.P. and U.D.P. refused to condemn it. In fact some of the public statements by these same spokesmen actually endorsed the "Mean Threat". David Ervine said he would not condemn it even if it meant his party's expulsion from the talks process.

When these talks commenced on the 12th of September 1996, the DUP was disappointed to find that the P.U.P. and U.D.P. had not taken any steps to deal with the threat.