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BREAKING OUT OF THE IMPASSE

I attach a paper setting out a menu of possible options for breaking out of the impasse in the negotiations. I am grateful for helpful comments from a number of colleagues.

2. Ministers may want to discuss these options at the strategy meeting arranged for Monday afternoon, with a view to considering whether any should be reflected in advice to Thursday's NI Committee meeting.
3. The options are not necessarily mutually exclusive - it would, for example, be possible to combine "parking" decommissioning, with changing, or defining more clearly, the conditions of entry for Sinn Féin. But the menu of options is intended to give Ministers an idea of the range of possibilities which could be considered.
4. Realistically, we judge the choice is likely to come down to options (b), (c) or (d), or some combination of them. My parallel submission on the latest Hume/Adams text points out a close relationship between the two issues.

CONFIDENTIAL

IPL/TAD/26637

5. Whatever way forward Ministers prefer, we shall require the continued support of the Irish Government and at least the UUP and SDLP. That may suggest that, rather than fixing on a single option, we should float a number of possibilities with these key participants to see if a consensus can be established.

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CONFIDENTIAL

BREAKING OUT OF THE IMPASSE

We now face an impasse in the negotiations. Our efforts to construct a consensus on how to tackle decommissioning have foundered. Unless a way can be found of making progress, the talks will run into the sand.

2. The resulting vacuum will encourage violence on both sides making a resumption of loyalist violence almost inevitable; undermine moderate constitutional politicians (particularly the SDLP); produce pressure for some dramatic initiative, whether from HMG, the two Governments (as the Taoiseach wants), or an outside player (such as the US).

3. This paper looks at the available options to avoid this outcome or, in the worse case, manage it with the least long term damage.

Nature of the impasse

4. Some of the conflicting pressures which have brought about this impasse include:

- conditions of entry for Sinn Féin. Unionists are fearful of Sinn Féin's entry to negotiations. They are determined to avoid a situation in which they are expected to negotiate with Sinn Féin on political matters without any guarantee that arms will be decommissioned, whether in advance, alongside, or even at any stage during the negotiations. Nationalists remain hopeful of Sinn Féin's entry to negotiations. Consequently, while ready to proceed without Sinn Féin, they will not take responsibility for conditions which would inevitably exclude Sinn Féin;
- approach to decommissioning. Because of their well-founded doubts about the IRA's intentions, Unionists want a start to decommissioning, or at least a firm timetable, to provide the confidence for them to engage in political

CONFIDENTIAL

negotiations which Sinn Féin may yet join. But nationalists think the only realistic prospect of securing decommissioning is if confidence is first created by progress in a political process to which Sinn Féin have ready access, so they regard the unionist approach as bound to fail;

- electoral pressures. The UUP look over their shoulders to the DUP and UKUP. The SDLP fears Sinn Féin is close to overtaking it electorally, while the Irish Government (whatever Bruton's personal instincts) must keep its coalition together and is conscious of Fianna Fail's readiness to criticise its approach to Northern Ireland if it can.

5. This leads to some conclusions:

- (i) very broadly, the impasse is between unionists and nationalists. It is not between HMG and one party or another;
- (ii) so HMG cannot break the impasse by shifting its position: we have to find a way forward on which both nationalists and unionists can agree;
- (iii) while the talks remain stuck on decommissioning, both unionists and nationalists can comfortably defend their positions to their own communities: a breakdown is therefore likely;
- (iv) but HMG cannot be comfortable with a breakdown over decommissioning. We are currently lined up with the Irish Government, with the UUP and other unionists on the other side of the divide. Moreover, the more unlikely an IRA ceasefire, the more academic is decommissioning as an issue;
- (v) the better issue for HMG is our determination for the

CONFIDENTIAL

CONFIDENTIAL

talks to proceed without Sinn Féin if necessary.

Possible options

6. Against that background, we have examined five main groups of options:

- (a) bridge the gap over decommissioning;
- (b) 'park' decommissioning as an unresolved issue, only to be returned to if there is an IRA ceasefire;
- (c) change the conditions of entry for Sinn Féin;
- (d) a 'closing offer' to Sinn Fein: join the negotiations soon or we shall assume you remain outside for at least this round;
- (e) plan for a soft landing in the negotiations.

7. Of these, we must bear in mind the need for (e) in all circumstances. All of them are examined in more detail below.

(a) Bridge the gap over decommissioning.

8. We could continue to work to bring the Irish Government and SDLP closer together with the UUP. Both most probably have some room for manoeuvre left in their existing positions but, because of the political pressures on them, not much.

9. This is what Mr Trimble is inviting us to do, by claiming that the UUP remains open to negotiation. He has suggested three sorts of concessions which might help:

- (i) unrelated measures outside the negotiations, such as the Grand Committee or changes to education reform;
- (ii) minor changes to the two Governments' approach, such

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as extending the decommissioning Bill UK wide or producing a final decommissioning scheme at the same time as the Bill;

- (iii) greater clarity (or toughness) on the conditions of entry for Sinn Féin.

10. The Irish Government have also signalled some flexibility, noting that the proposed Committee is not an end in itself.

11. But neither side, having staked their positions out in public, is about to abandon them wholesale. The UUP (before Lisburn) have declared they would not sit down with Sinn Féin before decommissioning had started. They would be crucified if they now abandoned that position after Lisburn.

12. But the Irish Government will not sign up to a precondition which they are convinced is undeliverable and is not supported by nationalists. And having, in their view, given a series of concessions to Mr Trimble in expectation of a positive response they will be extremely wary of treading further down that road.

13. Our judgement is that any prospect of straightforwardly bridging the gap on decommissioning is now remote. Whether the effort were made by the two Governments, by the SDLP and UUP in bilaterals, or by some intervention by the independent chairmen (as suggested by Mr Campbell Bannerman), the gap is too wide and too public to be bridged.

(b) Park decommissioning

14. We face a paradox. Everyone in the current talks wants to move on to the three strands. Everyone knows there is no prospect of decommissioning without an IRA ceasefire, which seems remote. Yet the negotiations are set to founder on decommissioning when it is - for now - an entirely academic subject.

15. We could acknowledge this by 'parking' decommissioning:

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- decommissioning would be left unresolved;
- the current participants would move straight into the three strands;
- if Sinn Féin were admitted in the future, then at that point all the participants would return to agree how decommissioning would be tackled before continuing in the three strands.

16. Such an approach could be implemented:

- (i) either by sufficient consensus among the participants;
- (ii) or by the two Governments declaring they would convene the three strands on a set date on this basis (with the extra risks that carries);
- (iii) in tandem with both Governments putting the necessary legislation and other practical measures in place. This would provide unionists in particular with reassurance.

17. The advantages are:

- neither side gets what they want. Unionists do not get the 'decommissioning cage'. But nationalists get no guarantee that the negotiations will not immediately logjam again if Sinn Féin ever join them;
- decommissioning is removed as a barrier to progress in a non-inclusive process.

18. But there are disadvantages too:

- an IRA ceasefire takes everyone back to the impasse (although, if political progress has been made in the

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meantime, it may be easier to resolve);

- unionists may think this would allow Sinn Féin to veto progress without them; and
- nationalists may see it as leaving the key to Sinn Féin's entry in Mr Trimble's pocket.

19. Irish officials have said decommissioning would have to be parked on an explicitly neutral basis - that is, with the two Governments' proposed approach remaining the preferred solution.

20. Both the UUP and the Irish Government have seen some attractions in 'parking' decommissioning in some way: it looks a viable approach, but not the only one.

(c) Change the conditions of entry

21. The shadow of Sinn Féin hangs over the negotiations. Their entry is what the UUP fear, calculating that politically they could not sit down with Sinn Féin without some tangible decommissioning or a firm timetable for some. Even if - as may now be likely - Sinn Féin have turned their back on these negotiations, the UUP will still fear the possibility of their entry, however remote. But, however remote an IRA ceasefire now looks, nationalists will not join in slamming the door for good on Sinn Féin, as unionists might want.

22. Mr Trimble has said it would help if the British Government were clearer (presumably he means tougher) on the conditions of entry for Sinn Féin.

23. Section 2(3) of the Northern Ireland (Entry to Negotiations, etc) Act 1996 requires the Secretary of State to refrain from inviting Sinn Féin to join the negotiations for as long (but no longer) as he considers there is not an "unequivocal restoration of the ceasefire of August 1994."

24. So far, in answer to questions as to what is meant by

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"unequivocal", Ministers have drawn attention to the need to take into account the words of an IRA ceasefire, their actions, and all the circumstances surrounding it.

25. There is a range of possible options:

- (i) simply exclude Sinn Féin, abandoning any possible conditions under which they might enter the process. Decommissioning would then fall away as an issue, assuming we were content not to press the loyalists. Nationalists (as the Taoiseach has shown in robust fashion) are ready to proceed without Sinn Féin. But it is more doubtful that they would join in simply closing the door entirely on any future prospect of Sinn Féin joining the political process. Nor may HMG yet be ready to close down all such prospect. It would also give Sinn Féin the change to portray HMG as denying democratic rights to 15% of the population;
- (ii) demand more than 'a restoration of the 1994 ceasefire'. That ceasefire was shown to be equivocal, so it could be argued that a restoration of it - however unequivocal - was simply not enough. Broad nationalist support would again be unlikely, regarding it as a return to the issue of 'permanence'. In any case, we know the reality is that any ceasefire, short of dismantling the terrorist arsenal and structure, is in practice equivocal;
- (iii) define "unequivocal" to mean particular words or actions, beyond simply an end to terrorist attacks. For example, an end to punishment beatings, terrorist recruitment, planning, targeting, procurement etc. The UUP have said that is what they look for. But such conditions are difficult to enforce: punishment beatings are rarely claimed and terrorist preparations are hidden from the public eye. Without strong Irish Government support, we could find ourselves on the

CONFIDENTIAL

defensive;

- (iv) avoid defining "unequivocal" but be explicitly sceptical about whether it can be met. We could say we are looking for a restoration that is genuinely unequivocal, that is credible to us and others and provides a dependable basis of confidence for negotiations. It is for the IRA to persuade us, in the wake of Lisburn etc, of the unequivocal nature of any restored ceasefire and it is difficult to see how they could easily or quickly do so. That sets no new conditions, but may be seen by unionists as insufficiently robust to enable them to shift on decommissioning or be confident enough to leave it to one side;
- (v) set a period of time to elapse before any restoration could be regarded as unequivocal. Such an "airlock" would avoid any risk of a bomb on Monday, followed by a ceasefire on Tuesday, leading to Sinn Féin's entry on Wednesday. It reflects the political realities and stands a good chance of securing Irish Government support: Irish officials have mentioned 4 weeks as a possible period. If set out in advance, it would be difficult for Sinn Féin to reject it as unreasonable. It provides some reassurance to unionists - but only that their nightmare will be delayed, not avoided altogether.

26. Of these approaches, (iv) and (v) - or some combination - look the most credible, are most likely to retain Irish Government support while meeting some unionist anxieties and retaining the moral high ground over Sinn Féin.

27. A number of possibilities of how the time in (v) might be used have been floated:

- (i) one or other of the Governments (or both) meet Sinn

CONFIDENTIAL

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Féin to establish the nature of any ceasefire, before concluding at the end of the period whether it is an unequivocal restoration;

- (ii) the independent chairmen are brought in to play a similar role;
- (iii) Sinn Féin can have access to some of the facilities at Castle Buildings, but not the full negotiations;
- (iv) the period is used as a "catching up period" or "purgatory", in which Sinn Féin - as well as satisfying the unequivocal restoration test - must sign up, variously, to the Mitchell principles, the rules of procedure, any agreement reached on decommissioning or any other "acquis" in the negotiations so far. It could also be used to allow work on the arrangements for decommissioning to be completed.

(d) A "closing offer" to Sinn Féin

28. This provides another way of resolving the uncertainty of whether Sinn Féin may yet join the negotiations:

- the Governments reiterate that Sinn Féin can join the negotiations on the basis of an unequivocal restoration of the ceasefire;
- but they agree that unless one is in place by, say, 30 November they will have to assume Sinn Féin have excluded themselves;
- they set aside, say, 6 months (end-May is the date for review of the Forum's life) in which to secure a deal and will not admit Sinn Féin during that period if they are not there at the start.

CONFIDENTIAL

29. This could variously be presented as a "last offer" to Sinn Féin, a "challenge" to Sinn Féin, or even an "attractive offer", giving them at least a timeframe. The offer could, for example, coincide with publication of some variant of the Hume/Adams texts.

30. The advantages are:

- an end to uncertainty, at least for six months, over Sinn Féin's position;
- the door is not closed permanently;
- but there is an incentive, if Sinn Féin remain outside, for the other parties to reach a deal before they can next join again;
- if Sinn Féin choose to remain outside, unionists can safely set decommissioning to one side.

31. But there are disadvantages too:

- a way would need to be found to reconcile a "closing offer" with the entry requirements in the Act to avoid a mischievous challenge;
- if Sinn Féin take up the offer, we still hit the decommissioning impasse. (A possible way round might be for the Governments to say that if the negotiations are to conclude in 6 months then, under the Mitchell compromise proposal, they would expect decommissioning to begin within, say, 3 months against the background of political progress. If it did not, they could take appropriate action);
- time limits are inherently undeliverable (but sometimes bluff can work).

32. This also looks a viable approach. It delivers certainty - at

CONFIDENTIAL

CONFIDENTIAL

least for a period. It would require agreement with the Irish Government, who would want to avoid the appearance of the ultimatum, and acquiescence from the main parties - particularly the SDLP who would need to endorse Sinn Féin's exclusion if they missed the "closing offer".

(e) Soft landings

33. All of these options may lead nowhere. In that case, we have an interest in bringing the negotiations to a close in a manner which avoids unnecessary acrimony, and enables them to be picked up again at a later date if circumstances change. That might point to:

- (i) an agreed closing statement by the participants noting that some progress had been made that they remained committed to the search for a political settlement through negotiations and would remain in contact to that end;
- (ii) or a suspension of the negotiations by either the Chairmen or the two Governments, with a commitment to carry on bilateral contacts to explore a basis on which they could be resumed - but without much real expectation that they could be this side of the general and local government elections (in May).

34. One consequence of any such soft landing is that, under the legislation, once the negotiations have concluded or been suspended, the Secretary of State is required to bring the Forum to a close.

35. There are elements in the Irish Government - the Taoiseach's department - who seemed to be arguing that we had already reached the need for a soft landing or 'mothballing' the process. That appears to reflect an analysis that, not only is there an impasse on decommissioning, but the prospects for an overall deal - even without Sinn Féin - are gloomy. As to an overall deal, we do not share that assessment. In any case, the Taoiseach appears to have backed off this approach.