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FROM: JULIE MAPSTONE
IPL
12 SEPTEMBER 1996

3985
POLITICAL AFFAIR
DIVISION
12 SEP 1996
N.I.O. BELFAST

cc PS/Secretary of State (L&B) - B
PS/Sir John Wheeler (L&B) - B
PS/Michael Ancram (L&B) - B
PS/Baroness Denton - B
(DED&DANI&L) - B
PS/PUS (L&B) - B
PS/Sir David Fell - B
Mr Thomas (L&B) - B
Mr Bell - B
Mr Legge - B
Mr Leach - B
Mr Steele - B
Mr Watkins - B
Mr Wood (L&B) *2 J Smith* - B
Mr Beeton *2 M McLaughlin* - B
Mr Priestly *C13/5* - B
Mr Hill - B
Mr Lavery - B
Mr Maccabe - B
Mr Perry - B
Mr Stephens - B
Miss Bharucha - B
Mr Whysall - F
Ms Collins, Cab Off - F
Mr O'Mahony, TAU - B
Mr Lamont, RID FCO - B
HMA Dublin - F
Mr Westmacott via RID - F
Mr Campbell-Bannerman - B
Mrs McNally - B

TALKS: TUESDAY 10 SEPTEMBER 1996

Summary

The day began and ended in the same way - with concern over the threatened decision of the Alliance Party to reactivate earlier allegations against the UUP of breaches of the Mitchell principles at Drumcree. In between, the threat of further allegations seemed to recede and attention concentrated on the playing out of the process put in train by the DUP complaint against the two loyalist parties. When presenting their case at plenary, the focus of the DUP complaint changed from that in the written indictment which had

CONFIDENTIAL

CT/TPU/2268

highlighted the failure to condemn the death threats issued by the CLMC, to an emphasis on the closeness of the relationship between the loyalist parties and the CLMC, clearly indicating the similarity with Sinn Fein and the IRA. In their rebuttal of the indictment the loyalist parties stressed they had an advisory role only with the CLMC, and emphasised the consistency of their rejection of violence, and their offering of a mediation role within the CLMC.

2. At an early evening meeting, Alliance, in a glum and angry mood towards the UUP, appeared resolute in their intention to renew allegations of Mitchell breaches against the UUP, despite the counter-arguments put by the Secretary of State and Michael Ancram.

Detail

3. At the morning pre-brief it became apparent that late night telephone calls between the Secretary of State and Lord Alderdice had failed to persuade the Alliance to retreat from renewing the allegations against the UUP over Drumcree. Lord Alderdice's motives appear to be two-fold: that the UUP should not get away with their behaviour over Drumcree, and that further complaints would muddy the waters and possibly get the loyalist parties off the hook. The argument that such a move threatens the developing improved relations between the UUP and the SDLP, particularly as the UUP would inevitably respond by renewing their allegations against Durkan, reintroduces acrimony at a time when Drumcree was perhaps fading in people's minds, and potentially threatens the continuance of the talks, did not win the day. Having already talked to the press, Alderdice clearly felt his credibility was at stake. A possible way out had been suggested of lodging his allegations with the chairman but asking that they should not be activated for a fortnight.

4. At 9.45 there was a meeting with the Irish side at which the Secretary of State briefed them on the situation with the Alliance Party. The Irish agreed that it was better to avoid reopening

CONFIDENTIAL

Drumcree wounds and undertook to see Lord Alderdice to add their weight to the arguments against renewal of the allegation. The Secretary of State informed the Irish that he intended to take the opportunity of questioning the loyalist parties at the appropriate stage of the plenary discussion on the allegations. The Irish stated that they would not themselves be participating in the questioning.

5. The plenary convened at 10 am. The chairman outlined the proceedings in relation to the allegation under Rule 29 against the loyalist parties. Beginning with the party which lodged the complaint, he would allow time for the reading out of the indictment and the rebuttal, after which each side would be allowed 30 minutes to present their case, again starting with the party which lodged the complaint. There would then be a period when any participant could put questions to the parties involved, followed by a general discussion. The chairman reported he would limit the entire process to three hours, extended only if there remained a party or parties which had not yet had a chance to speak.

6. Having been adjourned for one hour to allow time for the DUP to study the loyalist parties' rebuttal, the plenary recommenced at 11.15. Peter Robinson, for the DUP, asserted that their object was not to see the loyalist parties excluded but to see the CLMC death threats removed. The Mitchell principles were fundamental to the talks process and required parties not just to sign up to them but also to observe them. The recent CLMC death threats, together with the punishment attacks, are inconsistent with these principles. Mr Robinson asserted that the PUP and UDP's rebuttal was based on the distance between themselves and the CLMC, despite that fact that their spokesmen were on record as saying that their mandate was the silence of the guns. This argument was as unacceptable for them as it was for Sinn Fein. Mr Robinson drew the parallel with Sinn Fein more than once, pointing out that how this case is dealt with will provide a precedent if Sinn Fein enter the process.

CONFIDENTIAL

CT/TPU/2268

CONFIDENTIAL

CT/TPU/2268

CONFIDENTIAL

7. Mr McMichael for the UDP spoke first in reply. He emphasised that the UDP was not "inextricably linked" with the CLMC and in fact had no control or authority over its actions. The UDP's position has been consistently to oppose the use or threat of violence. He asserted that the Mitchell principles do not require specifically the condemnation of violence. Mr Ervine for the PUP concentrated on the occasions on which the loyalist political parties had succeeded in averting or reducing violence, including the stopping of some punishment attacks and Billy Hutchinson's personal intervention to prevent a loyalist crowd opening fire on nationalists in the aftermath of Drumcree. Indeed, Mr Ervine's offer to mediate between the two sides had now been accepted by the CLMC. On the links with paramilitaries, he asserted that complete separation from the paramilitary groups would deprive them of valuable political analysis. At one stage he claimed the actions of the CLMC may have saved lives by preventing the formation of a new paramilitary grouping. Warming to his theme he then referred to the Canary Wharf bomb and speculated that firm action by the IRA of its dissident elements might have saved lives in that case too.

8. In the questioning phase, the loyalist party leaders asserted that their position on the Mitchell principles had not changed and they had not dishonoured them. They did not consider condemnation an effective, preventative weapon and in fact it might damage their ability to influence the paramilitaries in the future. However, in the course of questioning Mr Ervine "renounced" the CLMC death threats and Mr McMichael condemned all violence, the death threats being no exception. Mr Robinson further probed their relationship with the CLMC, again drawing parallels with Sinn Fein. Mr Ervine reminded him that unlike the IRA the loyalist ceasefire was still in place; the issuing of the death threat had not broken it. Mr McCartney was concerned about Mr Ervine's early reference to the possibility that the death threat had saved lives and his reference to the Canary Wharf bomb. Mr Ervine denied this was a justification of violence.

CONFIDENTIAL

CT/TPU/2268

CONFIDENTIAL

9. A general discussion followed. Mr Empey viewed the threats as contrary to the spirit of the Mitchell principles, but stressed that the precedent aspect of this case was the most important issue. The UUP wanted the CLMC threat lifted and urged mediation.

10. Lord Alderdice accepted that there had been a breach of the Mitchell principles, (and also commented that there had been other event during the course of the summer which constituted breaches). If the parties would recommit themselves to the principles, the Alliance view was that it may not be automatic that they would be excluded. Mr Mallon appealed for the proceedings to avoid the character of judicial or quasi judicial proceedings. The political process can resolve problems which the judicial process may exacerbate. In an emotional roll-call of massacres [Comment: which incidentally included the name of Drumcree] he appealed for a new commitment to address Northern Ireland's problems through negotiation, discussion and understanding.

11. Mr McCartney in his usual analytic style proceeded to examine which of the Mitchell principles may have been breached in this case, and concluded that principles 1, 4 and all came into play. He claimed that the loyalists/CLMC relation was a mirror image of that of Sinn Fein/IRA and clear guidelines were needed on what should be done in such situations in the future. However, he also did not want the loyalist parties out but desired a lifting of the CLMC death threats. Mr Robinson disagreed with the comment of many other parties. A decision needed to be taken on the basis of criteria set down. It was a question of the letter of the Mitchell principles, and not just the spirit. Mitchell's first, fourth and sixth principles had potentially been breached, and if the decision of the Government's was that a breach had indeed occurred, there was no other recourse than expulsion. Unlike the Alliance party, he disagreed that the rules allowed any other outcome. The only way out was for the CLMC to withdraw the threat.

CONFIDENTIAL

CT/TPU/2268

CONFIDENTIAL

12. For the smaller parties, Labour and the NIWC commended the work of the PUP and UDP in trying to suppress violence in their communities and wished to see them remain in the talks. Both attacked the UUP and DUP over Drumcree, and Mr McCrea's presence on a platform with Billy Wright. In response, Mr Donaldson challenged any party which felt the UUP had breached the Mitchell principles to make a proper complaint to that effect. Drumcree was symbolic of conflict, not a cause of it.

13. The chairman adjourned proceedings until the next morning. He asked participants to give some thought to Rule 16 of the procedural rules which concerned the confidentiality of proceedings. This issue would need to be discussed and guidelines drawn up.

14. At 2.30 the Irish delegation arrived to discuss the debate. In the Tanaiste's view, the reasoning given by the two Governments for their judgement was important because the process will be scrutinised afterwards, and might even be subject to judicial review. The Secretary of State said that a strict reading of the indictment produced 3 allegations, two of failure to condemn (the death threats and the bombing of the Kerr home) and 1 of endorsement of the death threat. The Irish side agreed that it was the allegations in the indictment which needed to be addressed. The two sides agreed to meet later to reach an agreed written judgement.

15. At 5.30 a full Alliance delegation arrived to see the Secretary of State and Michael Ancram. They had a paper prepared alleging breaches of the Mitchell principles by the UUP at Drumcree, by the loyalist parties over the CLMC death threats, and by the DUP over Mr McCrea's appearance on a platform with Billy Wright. They had held off submitting the paper to the chairman, pending further consultation within the party and meetings during the day with the UUP and SDLP. The purpose of the meetings had been to gauge for themselves the extent of progress being made in developing relations between the UUP and SDLP in the light of government concerns that renewed Drumcree allegations might upset hopeful improvements.

CONFIDENTIAL

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16. Unfortunately they could not report satisfaction in that direction and clearly felt the Government's optimism was misplaced. The SDLP did not think they were close to agreement with the UUP on either the agenda or decommissioning proposals. Moreover they did not think that Alliance raising the Drumcree complaint would damage their chances of reaching agreement with the UUP. Neither were the UUP confident of rapid agreement with the SDLP.

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17. Lord Alderdice described a mood of strong resentment among Alliance party supporters about UUP behaviour around Drumcree, and their anger at the UUP's failure to recognise that their behaviour generally, for example in the Forum, was damaging relations and impeding progress. His view was that the UUP want the talks to break down on an issue of their choosing, although not at this point because they don't want Drumcree to be blamed. They have strong doubts about the good faith of the UUP.

18. Michael Ancram described the current position. The SDLP need fast progress. Lack of agreement on the agenda and the handling of decommissioning are holding up substantive negotiations. The UUP have proposed that they see both governments' legislative proposals to ensure they meet their concerns, and they want a timetable for legislation. If they get this they will agree to a general time-limited debate on decommissioning in plenary, and thence move to substantive negotiations. The Alliance complaints would mean delays and a rehearsing of the bitterness of July. They would also inevitably provoke a renewed allegation against the SDLP over Mark Durkan's comments around Drumcree.

19. Lord Alderdice said Alliance party faithful were not prepared to let this go. They feel a responsibility to raise this matter. There is a risk of making a nonsense of the Mitchell principles by ignoring Drumcree.

CONFIDENTIAL

CT/TPU/2268

CONFIDENTIAL

20. The Secretary of State explored with Alliance the possibility of lodging the complaint with the chairman but asking for it not to be activated for a fortnight. This might allow time for progress to be made. Lord Alderdice did not think this would work; leaving it for a fortnight would be too late. The meeting ended at 6.40.

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