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POLITICAL AFFAIR  
DIVISION

10 SEP 1996

DUBLIN, BELFAST

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FROM: PETER SMYTH  
POLITICAL AFFAIRS BRANCH  
9 SEPTEMBER 1996

cc: PS/Secretary of State (B&L) - B  
PS/Sir John Wheeler (B,L) - B  
PS/Michael Ancram (B, L) - B  
PS/Malcolm Moss (B, ) - B  
PS/Baroness Denton(B) - B  
PS/PUS (B&L) - B  
PS/Sir David Fell - B  
Mr Thomas - B  
Mr Bell - B  
Mr Legge - B  
Mr Leach - B  
Mr Steele - B  
Mr Watkins - B  
Mr Wood (B&L) - B  
Mr Beeton - B  
Mr Priestly - B  
Mr D Hill (B&L) - B  
Mr Lavery - B  
Mr MacCabe - B | File  
Mr Perry - B  
Mr Stephens - B  
Ms Bhaurcha - B  
Ms Mapstone - B  
Mr Whysall (B&L)- B  
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  
Mrs McNally (B&L) - B

TALKS: MONDAY 9 SEPTEMBER 1996

### Summary

A day which ended on a considerably more optimistic note than that on which it began, and which raised the possibility of significant political progress being made via an SDLP/ UUP axis. Initially, attention focussed on the machinations of the DUP/UKUP to procure the expulsion from the Talks of the two Loyalist parties. The tabling of a Notice of Indictment in the resumed Plenary session

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provided the opportunity for expositions of barrack-room law from McCartney, and warnings from Paisley that the DUP would not sit at the same table as the Loyalist parties while their future was being decided. For the avoidance of doubt on the part of the two Governments as to where their duty lay in this matter, he also warned that the DUP would withdraw from the Talks if the two Loyalist parties were not found guilty of the charges laid against them. Despite - or perhaps because of - such hectorings, the UUP revealed in the course of the afternoon a new willingness to make progress in concert with the SDLP. This included not only much apparent agreement on the agenda for the remainder of the opening Plenary, but also a significant change in the Party's approach to the decommissioning issue, whereby the sub-committee concept was set aside in favour of making progress in bilateral and trilateral meetings with the two Governments. While this new approach was recognised as not being without its own problems, particularly in regard to the capacity of either Government to deliver (primarily via the decommissioning legislation) the "understandings" and comfort sought by the UUP, both Governments agreed that the development was to be encouraged, and that it represented a desire for progress on the part of the UUP which could not have been anticipated even a short time ago.

Detail

2. After a scheduled HMG/DUP bilateral (arranged at short notice) had failed to materialise, the Chairman at 11.10am reconvened the Plenary session after the summer recess. The Chairman put on the record his intention of remaining part of the Talks process, on the terms of appointment he had originally accepted from the two Governments.

3. The Chairman then reported that he had taken receipt from the DUP of a Notice of Indictment against the Loyalist parties, alleging that both the PUP and UDP had breached the Mitchell principles of non-violence. In accordance with the procedure outlined in Rule 29 of the Talks, he proposed to adjourn the Plenary, in order to allow

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for the circulation of the Notice to the Loyalist parties. On receipt of the Loyalists' written response to the Notice, he would circulate both Notice and response to the other Talks participants, and in a reconvened Plenary session would allow the DUP to state their case, and the Loyalist parties to respond. Statements by or questions from the other parties might then be taken. The Secretary of State and the Tanaiste on behalf of the two Governments stated that the proposed procedure would allow the allegations against the Loyalist parties to be treated seriously but fairly, and in accordance with Rule 29. Mr Trimble indicated that he was generally content. Mr Irvine also indicated assent to the proposed procedure, but requested a 40 minute adjournment to allow the PUP to examine the text of the Notice of Indictment.

4. Mr McCartney pronounced himself to be satisfied with the proposed procedure, but went on to point out that since many people believed that the electoral process had been distorted to ensure that the Loyalist parties were represented at the Talks, it was crucial that their continued presence at the table was subject to the most rigorous scrutiny. The implications for participation in the Talks by Sinn Fein could not be ignored. He felt it incumbent upon him to point out to "the two Governments" that they had an absolute duty to exclude the Loyalist parties if the evidence showed that they had been in breach of the Mitchell principles - this clearly took precedence over any requirement placed on the Governments by Rule 29 to take account of the views of the other participants in reaching a decision.

5. Dr Paisley complained that circulation of his Party's Notice of Indictment ought not to be delayed until the Loyalist parties were in a position to circulate their rebuttal. He wanted it to be clearly understood that the DUP would not sit at the table while the Loyalists were considering their response. He was quite prepared to circulate the Notice of Indictment immediately unless the Loyalists could promise that there would be no undue delay in producing their response. Both Mr McMichael and Mr Irvine stated that neither of

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their parties had any wish to incur unnecessary delay. Mr Wilson for the UKUP put down a marker that he continued to entertain profound theological reservations about the Irish Government being given any kind of a role in the expulsion from Talks of political parties elected under GB legislation.

6. The Chairman said that he proposed to meet with the Loyalist parties to discuss with them the time which would be appropriate to allow for them to produce a proper written response to the Notice of Indictment. For that purpose, he proposed to grant the PUP request for a short adjournment. Until the session was reconvened, he urged parties to meet in bilateral mode to discuss the agenda for the resumed Plenary session.

7. The session adjourned at 11.00am until 12.00 noon.

8. At 11.10am Dr Paisley, Mr Robinson, Rev McCrea and Ian Paisley junior came to the Secretary of State's room. Dr Paisley wanted the Government to be fully aware of his view that the Loyalist parties must not be allowed to delay the process of adjudicating on the Notice of Indictment which had been laid against them. The public at large remained extremely suspicious that the rules for participating in the Talks would be bent to facilitate the entry of Sinn Fein into the process, and it was crucial that the participation of the Loyalists should be subjected to rigorous scrutiny. The Secretary of State concurred that it was extremely important not to allow the issue to drag on unnecessarily, but pointed out that there was a procedural requirement for the two Governments to have regard to the views of the other participants, before determining on what action was appropriate. He also pointed out that Rule 29 did not require proceedings to be halted pending a determination by the Governments. Dr Paisley responded that if the two Governments were to rule that the Loyalist parties were not in breach of the Mitchell principles, then the DUP would pull out of the Talks. He made an obscure reference to the fact that it would be possible to withdraw in such a way that the Party could still

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make its presence felt. (Comment: All this was delivered in a cheerfully robust tone, giving rise to unworthy suspicions that the DUP leader may have been more intent on creating some disruption before departing for Canada than in pursuing arcane notions of natural justice).

9. At 12.10pm the Plenary session resumed. The Chairman reported that the two Loyalist parties had requested a delay until no later than 10.00am the following morning in order to produce their response to the Notice of Indictment. This appeared to him to be acceptable. He proposed now to circulate the Notice of Indictment, with the Loyalist response to be circulated when it became available. At 10.00am the following day the plenary session would reconvene. At that stage, the DUP would be invited to read onto the record the Notice of Indictment, and the Loyalist parties invited to read their written response to the allegations. Statements would then be taken from either side and, subject to agreement, a time limit might be placed on the proceedings. If the Loyalist response only became available at 10.00am, the reconvening of the Plenary would be postponed until 11.00am to allow consideration of the text.

10. Mr McCartney, taking care for the most part to refer to "the Government", assumed that if any time limitation was to be applied to proceedings, it would also impact on the Government's consideration of the appropriate action. With some relish, he pointed out that judicial review of proceedings was a possibility - the 1996 Act set out the grounds on which the various parties were to participate in the Talks process, and any breach of those conditions ought to lead swiftly and inevitably to expulsion. (Comment: a mis-reading of the Act by one of Her Majesty's Counsel). The Tanaiste pointed out that it was extremely difficult for the two Governments to bind themselves to a strict timetable in advance of hearing the evidence. He was prepared to commit the Irish Government to proceed as expeditiously as possible, but in his view, agreeing in advance to what might be an unreasonable timetable

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for handing down a decision increased the possibility of judicial review. Changing feet rather nimbly, Mr McCartney said that of course "the Government" must take whatever time was thought necessary to reach a fair and equitable decision; but it had to be recognised that no plenary sessions of the Talks would be possible in the interim. (Comment: further evidence of a distinguished QC misdirecting himself). The Tanaiste queried whether that implied a presumption of guilt against the Loyalists rather than a presumption of innocence until proven guilty. Sticking gamely, if obscurely, to his legalistic metaphor, Mr McCartney maintained that it would be improper to have people on the jury while allegations of guilt remained outstanding against them. Lord Alderdice felt that Rule 29 had been framed specifically to ensure that allegations against the Talks participants were not allowed to act as a drag anchor on all political progress, otherwise Notices of Indictment, either frivolous or well-founded, could be used as a stalling device by those wishing to cause delay.

11. Mr Mallon felt that natural justice required that those parties who desired to make political progress ought to be allowed to achieve it without hindrance from those less well-disposed. Mr Wilson objected to the SDLP "lecturing" the other Talks participants and claimed that the SDLP and its leader bore a greater share of responsibility for the absence of political dialogue in recent years than anyone else. It was the SDLP which was currently absenting itself from meetings of the Forum. So far as he was concerned, while that situation continued, no Unionist should engage in any bilaterals with members of the SDLP.

12. At 12.45pm the Chairman adjourned the session until 10.00am on Tuesday 10 September.

13. At 3.50pm a UUP delegation called on the Secretary of State to report progress arising from their discussions with the SDLP. Mr Trimble announced that an understanding with the SDLP had been reached that the best means of taking forward decommissioning was

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via a series of bilateral, trilateral and possibly quadrilateral meetings with the two Governments, rather than by means of a Talks sub-committee. Mr Empey elaborated. In broad terms, the Party was seeking undertakings from HMG in relation to the timetable for the decommissioning legislation, the detail of how an international verification commission might be established, and the mechanisms under which this might operate. If these undertakings satisfied the UUP, an early move into three-stranded discussion could be envisaged. Mr Trimble emphasised that he envisaged a trilateral process involving the Irish Government running in parallel with bilateral discussions between the UUP and HMG. With regard to the sub-committee approach, he retained an open mind. (Mr Taylor at this stage interjected to say that he was rapidly coming to support the SDLP analysis that a 20 man sub-committee would be a recipe for disaster).

14. The Secretary of State said he found this to be a most interesting approach. Everyone recognised that the SDLP/UUP axis was crucial to the success of the Talks. The Irish Government was certainly aware of the importance that the UUP attached to the decommissioning legislation - the provisions on amnesty for example. For HMG's part, he had to point out that a commitment to a precise Parliamentary timetable for the enactment of the legislation was extremely difficult, although not impossible. Mr Trimble indicated that he was aware that in a short Parliamentary session there would be enormous pressure on the legislative timetable.

15. Mr Empey continued to extoll the virtues of the new way forward. The proposals put forward by the UUP were intended to enable the main parties to nail down decommissioning within a comparatively short space of time - by the end of November if possible. (Comment: There was an implication that agreement with the SDLP might be possible within the next two weeks - an exchange of papers was in the offing - with the late November target apparently being set for general agreement. It was not clear what the consequences of this timetable were for the business of the Talks in

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the interim.) The sub-committee idea need not necessarily be discarded in its entirety - it could play a role in liaison arrangements later in the process. Michael Ancram put down a marker that the precise detail of decommissioning might only become clear at the end of the process. Mr Trimble nodded. He acknowledged that the modalities and timetable could not be fixed precisely, and that some loose ends could only be tied up when all the parties (including Sinn Fein) were present. It might only be at that stage that the decommissioning sub-committee would be activated. Mr Empey stated, without undue emphasis, that it remained important for "some" decommissioning to take place during Talks.

16. The Secretary of State suggested that, while HMG was willing to prepare the ground with the Irish, the UUP would be the most effective advocates of their own case. Mr Taylor agreed, and suggested that a meeting as early as 5.00pm might be possible. Mr Empey suggested that the trilateral process might in due course lead to a joint statement by the two Governments, incorporating a series of understandings/confidence-building measures which had been agreed in advance. Such a statement might come at the end of a debate in Plenary on decommissioning, (probably lasting for three days, but possibly time-limited) and would serve the function originally envisaged for a sub-committee report. As a final gesture, Mr Empey also mentioned that papers were being exchanged with the SDLP on the agenda for the opening Plenary. The meeting ended at 4.10pm.

17. At 4.45pm the British side met the Irish team to review these developments. The Secretary of State and Michael Ancram outlined the UUP proposals, emphasising the extent to which they represented a departure from the position the Party had been adopting at the end of July. The Irish side explained that the SDLP had given them a broadly similar readout of the UUP's intentions. It was their intention to meet the UUP tomorrow when the Tanaiste returned. There was a suspicion that the Unionists might be looking for rather more detail in the legislation than was easily deliverable, and there were queries about what might happen if Mr Trimble should deem

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the draft legislation to be insufficient, but in general terms, their suggested approach was well worth exploring. In view of its potential importance, however, it would be preferable to delay a meeting until a Cabinet Minister was present. The Secretary of State suggested that it might be important to take early advantage of the UUP's willingness to engage in bilateral discussion. A meeting tonight could be held ad referendum Ministers. The Irish side repeated their concerns that while there was no difficulty in principle in showing the draft legislation to the UUP, it would be problematic to give any firm undertaking to take the legislation through the Dail before Christmas. Michael Ancram pointed out that, as we understood the UUP position, they were seeking firm reassurance as to the intentions of the two Governments, but were not asking for the legislation to be implemented before they engaged in three-stranded discussion. He regarded that as a significant shift in the UUP posture. The Irish side indicated that they would consider seeking a meeting with the UUP that evening.

18. At 5.10pm an SDLP delegation - Messrs Hume, Mallon, Hendron, Farren and Durkan - came in to report their version of the UUP position. They retained some worries that the UUP might be seeking too much detail in the understandings they required from the two Governments, and that Trimble might revert to an obsessively lawyer-like approach, but overall, their reading of the UUP mood at present was positive. Two persons from each party were meeting tomorrow to discuss the development of agenda proposals, and no great difficulties were envisaged. A full meeting between party delegations was also scheduled for two days hence.

19. Mr Durkan (unaware of the UUP's thinking on a joint statement from the two Governments) wondered how the UUP's understanding of the Governments' position was to be delivered. His general sense was to commit as little as possible to paper. Mr Mallon concurred. He had tried to impress on the UUP that the more formality they sought to achieve the less comfort they were likely to win. A scheme whereby every detail was copper-fastened in advance was simply not achievable. The Secretary of State pointed out that the

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UUP needed the maximum clarity achievable in order to cover their flanks against a DUP attack. Mr Mallon took the point, but reiterated that the understandings sought must not become pre-conditions. He himself had written a paper on decommissioning, and was fully prepared to help the UUP out of the decommissioning impasse, provided they did not overplay their hand. Mr Hume and Dr Hendron concurred that the proposal to take the issue forward by means of bilaterals/trilaterals was a very helpful development and that the UUP seemed genuine in their desire to achieve movement on the issue.

20. At 5.50pm the Independent Chairman called on the Secretary of State to outline his thinking on recent developments. He felt that the UUP's request for clarity on decommissioning was not unreasonable, and was encouraged by what was essentially a return to the scenario whereby the formal debate on decommissioning would be informed by the discussion which took place in bilaterals and trilaterals.

21. With regard to the Notice of Indictment tabled earlier that day, he felt that careful handling was required. He proposed to put a time limitation on the debate the following day, with the DUP and the Loyalist parties being restricted to 30 on minutes each side. The Secretary of State pointed out that the Tanaiste might not be available until early afternoon. Given that both Governments would in due course be called upon to determine the appropriate action to take towards the Loyalist parties, was there an argument for delaying the start of the proceedings until the full Irish ministerial team could be present? The Chairman stated he was reluctant to set such a precedent. It had been intimated to him that the Alliance Party were contemplating re-submitting their complaints about the DUP and UUP attitude to non-violence in the light of Drumcree etc, and it would act as a drag on all progress if nothing could be achieved in such cases unless each Government was fully represented at Ministerial level. In any case, he did not think that it was strictly necessary for either Government to be represented at Ministerial level to enable it to reach an informed

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decision under Rule 29. He indicated that the Loyalist response to the DUP Notice of Indictment had now been received, and promised to make a copy available.

22. At 6.10pm Michael Ancram met a delegation of the Womens Coalition. After brief reference to Forum issues on which letters from Ms Hinds and the Secretary of State had crossed in the post, discussion turned to the Governments' attitude towards the DUP Notice of Indictment tabled earlier in the day. The delegation was concerned that the narrow interpretation suggested by Mr McCartney concerning the Governments' scope for manoeuvre might be shared by the Secretary of State. Michael Ancram reassured them that Mr McCartney's interpretation was not shared by HMG.

23. The delegation then went on to inform the Minister that they had had a one hour meeting with the DUP today on agenda issues. The DUP had fielded a full team - Robinson, McCrea, Campbell and Dodds. In the course of the discussions, the DUP had demonstrated considerable movement in the matter of decommissioning - in particular, they had given the Coalition delegation to understand that the handing-in of ten Armalites at the start of the process would be sufficient to allow movement on the political agenda; and that they had abandoned the idea that the best way forward was by means of a sub-committee on decommissioning. (The Minister received this intelligence with due gravity, although speculated in private afterwards that Mr Robinson and his colleagues might have been engaged in a gentle testing of the collective gullibility of the Coalition delegation.)

24. At 6.35pm the Irish side came in for a final review of the day's developments. Their meeting with the UUP had taken place, and had been both relaxed and positive. There were areas of sensitivity on both sides, and hard questions would have to be addressed - not least the political difficulty of getting the decommissioning

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legislation through the Dail in the absence of significant political movement in Northern Ireland. But overall, the UUP had given an impression of wanting to make progress which was very heartening. Both Governments agreed that, while there were technical obstacles to showing the draft legislation to the UUP and SDLP in advance of formal permission to publish it, this should present no insurperable difficulties. Any fall-out resulting from the DUP being excluded from the consultation should be containable.

25. The Irish side rehearsed again the arguments against over-optimism. The UUP wanted a high degree of detail to appear on the face of the legislation (for example the membership of the verification body), and there was some feeling that Trimble had excessive expectations in this regard. There were residual doubts, too, about Mr Trimble's capacity to stay on board, if attacks by the DUP proved damaging. Nonetheless, it was generally agreed that even Hume had looked remarkably up-beat, that Mallon's demeanour had been transformed since the end of July, and that the developments over the day as whole were significantly more positive than anyone could reasonably have expected even at the end of the previous week. Michael Ancram concurred with the Mallon analysis that it was Taylor's shift in attitude which had allowed Mr Trimble some freedom to make progress. The Minister had detected some changes in the UUP stance since the middle of the previous week, and today's developments were consistent with that. The meeting ended at 6.55pm.

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