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FROM: PETER MAY
24 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 (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) - B
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 Perry - B
Mr Stephens - B
Ms Bharucha - B
Ms Mapstone - B
Mr Whysall (B&L) - B
Ms Collins, Cab Off (via IPL) - B
Mr Dickinson, TAU - B
Mr Lamont, RID FCO - B
HMA Dublin - B
Mr Westmacott (via RID) - B
Mr Campbell-Bannerman - B
Mrs McNally (B&L) - B

NOTE FOR THE RECORD

TALKS: 23 SEPTEMBER

Summary

The focus of the day was predominantly on decommissioning, where the UUP remained concerned about the Irish Government's willingness to proceed speedily and openly, and the Irish Government expressed grave doubts about the UUP's determination to do a deal on decommissioning at all. The trilateral which concluded the day showed the UUP on the back foot seeking to explain what it was they

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needed in order to make the move out of opening plenary, and not managing to do so clearly (perhaps deliberately). The two Governments agreed to produce a paper outlining their proposals for resolving the issues for the UUP.

2. Discussion in plenary focussed on the confidentiality issue, where after an hour's fruitless initial debate (where talks participants gave the school fourth form debating society a good name), the parties engaged sensibly and productively for much of the second half of the plenary debate until finally Unionists started to berate the two Governments over the potential passage of talks documents to Sinn Fein. The Independent Chairmen are to produce a paper about the handling of confidentiality for the next plenary.

3. The determination of the two Governments on the Alliance Party's claim against the UUP and DUP was duly circulated and an opportunity for debate will be provided at the next plenary.

Detail: SDLP

4. After the usual morning briefing session, the SDLP were invited to a meeting with the Secretary of State. In the absence of other representatives, only Mark Durkan came, to be reassured that the messages sent by the SDLP last week about the need to make progress had not been forgotten.

5. Durkan reported that generic headings for an agenda had been agreed with the UUP, although Trimble was not yet signed up. The agenda was a very basic document, with a good deal of symmetry between the strands. On dissemination, Durkan reported that the UUP wished to hold off until they were happier about the decommissioning arrangements, but he confirmed that the 2 parties intended to brief the other participants in due course rather than expect the chairman or the Governments to take this burden. Durkan reported the UUP and SDLP were to meet in bilaterals that afternoon to confirm their

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understandings (the meetings involve Durkan and Farren from the SDLP and Donaldson and King from the UUP).

6. Michael Ancram agreed with the SDLP that the opening plenary was not the place for statements, but believed at the launching of the strands there would need to be an opportunity for each party to make a statement. Durkan indicated the SDLP saw no difficulty with one opening statement to cover all 3 strands. Durkin suggested the Loyalist parties may wish to specifically raise the prisoner issue under the broad generic heading of justice to ensure it was given prominence early on. The meeting ended at 11.06 am.

UUP

7. At 11.14am David Trimble, John Taylor and Alan McFarland called to see the Secretary of State and Michael Ancram. The Secretary of State said the good work leading to the arms find that morning had stressed how important it was to push on and agree a scheme on decommissioning. David Trimble agreed saying the UUP wanted to get a scheme in place before any ceasefire. He had found the trilateral with the Irish last week depressing, because the Irish refused to talk substance and seemed to want to delay at all points. Although he did not want to row with the Irish, he agreed fully with John Taylor's comments last week. He was concerned about Irish commitment, although he noted there had been a hint at the end of the trilateral about movement on the issue of a verification Commission.

8. The Secretary of State said he had been surprised to hear reports about the UUP's position that they would not sit down with Sinn Fein until there had been some decommissioning. Trimble said there had been a lack of consistency of language. If there were a ceasefire in the future, there needed to be a clear understanding on how to handle that. The UUP suggested there would need to be the equivalent of an opening plenary with Sinn Fein signing up to

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Mitchell, addressing decommissioning and then beginning decommissioning itself very quickly thereafter. He was concerned the Irish wanted to wait to agree a decommissioning scheme until Sinn Féin were already in talks. Mr Leach said the scheme for decommissioning needed to be agreed upon before details could be answered. David Trimble said this was an unsatisfactory response and what was needed was for each of the possible options to be worked through and answers given according to the different schemes. For themselves, the UUP had no preference regarding the detail provided there was proper verification. Mr Leach suggested the decommissioning committee should design the various schemes. The UUP focussed on the need for a commission. Michael Ancram stressed that much of the work to be done would be technical in nature and the appropriate expertise could be provided to help design the schemes while the legislation is going through Parliament. David Trimble said that although the Mitchell report said the details of decommissioning should be agreed, he believed the parties should only agree the strategy. He refused to be drawn on the exact length of any debate in plenary when Michael Ancram suggested three days as a possibility.

9. John Taylor noted that Paisley had broken confidentiality over decommissioning, and Trimble said Paisley has also given false information about the amnesty which HMG should rebut. Michael Ancram agreed to consider what the Government might say, but stressed he would not wish to get into a debate each time a claim was made about decommissioning.

10. The Secretary of State outlined the progress made by the Irish Government in terms of preparing the draft legislation, showing it to the UUP before other political parties in the Republic and agreeing to introduce the legislation within a given timetable. These were substantial moves in their eyes. Mr Trimble said the UUP already felt let down following the promise made by Messrs Bruton and Spring on 11 March about making progress on the legislation

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before the election. He also stressed public confidence which had diminished in the last week would diminish still further as a result of the terrorist find.

11. The Secretary of State and Michael Ancram stressed the Irish Government and the UUP both had suspicions about the commitment and willingness to move of the other. The Irish had made progress, and more was needed from them but before that would be forthcoming they needed an earnest of the UUP's intentions. A timetable needed to be developed. Mr Trimble said a timetable from the Irish would be welcome, but when pushed agreed the UUP would consider what might be said regarding the timetable for exiting the plenary at the trilateral that afternoon. Michael Ancram stressed that the Irish felt they needed something more than simply a decommissioning bill to sell to their Parliament. They had to show it as part of useful negotiations across the board.

12. The Secretary of State said the alternatives on decommissioning should be worked up. HMG had no preference regarding the method, but verification would need to satisfy both talks participants and the general public. Alan McFarland stressed once again the importance of the Commission arguing a skeleton of the Commission should be up and running at the time the schemes were discussed so that if and when decommissioning came about the Commission knew as much as the terrorists who were decommissioning. The meeting ended at 11.40am. [Comment: the Secretary of State said afterwards that he believed Trimble was happy to sign up to the UUP's original position that they would sit down with Sinn Fein in advance of decommissioning, but was not prepared to say so in front of Taylor].

Independent Chairman

13. At 11.50am Senator Mitchell, Prime Minister Holkeri and General de Chastelain accompanied by their aides called on the Secretary of State and Michael Ancram. Senator Mitchell said he wished to

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distribute previous minutes, not least because the DUP and UKUP now believed there was some conspiracy because they had not yet been distributed despite having asked for them a week ago. Mitchell noted they were entitled to see the minutes and believed they should be distributed. He would like to see at the same time a discussion about confidentiality to prevent early leaks of those minutes but would be prepared to schedule that to meet HMG preferences. He indicated that he intended to distribute the minutes of meetings on a weekly basis on the Monday after that week's discussions had taken place. Senator Mitchell said he was not proposing to say anything on the determination of the Alliance Party's claims, but agreed with the Secretary of State's suggestion that it should be circulated, when agreed, and an opportunity for discussion scheduled.

14. The Secretary of State explained to Senator Mitchell the current position with regard to the Irish Government and UUP and the progress which had been made. Michael Ancram explained that the SDLP and UUP had been debating a generic agenda for the three strands which they would sell to the other parties. Senator Mitchell asked about the agenda for the opening plenary, which Michael Ancram said would be resolved once decommissioning had been sorted out.

Plenary

15. The plenary commenced at 14.30 with Senator Mitchell outlining the agenda as the confidentiality requirement under Rule 16 of the Rules procedure and the issuing of records under Rule 43. It suggested that the minutes be distributed weekly on the Monday following the week's discussions. He noted that confidentiality was an important subject, not least because of the intense public interest in the talks deliberations. As Chairman, he had refrained from making public comment except when it had been approved by the plenary or was very general in terms.

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16. At this point Cedric Wilson of the UKUP asked for clarification on whether the Alliance Party's claim would be ruled on first as had been the case with the UDP and PUP. Senator Mitchell said it was a matter for the two Governments. The Secretary of State and Mr Gleeson both said that the determination would be available shortly and circulated later today. There followed 50 minutes nugatory discussion about whether confidentiality should be discussed at the plenary or whether it should wait until after the two Governments' determination was available.

17. In that discussion, Messrs Robinson and McCartney expressed concern that it had taken longer to reach a decision on this claim than on that for the UDP and PUP. Mr Close said the Alliance Party did not wish to exclude parties as a result of their indictment and therefore wished business to continue. At various points, the DUP, UUP and UKUP stressed that the Alliance Party had made an indictment whose punishment was exclusion from the talks, and that any blame for delay lay at their door.

18. The SDLP and Women's Coalition both pressed for a discussion on confidentiality to proceed. Mr Durkan suggested that as the party making the allegation were willing to sit in plenary with others at this time and they had not last time, a distinction could be made and discussion could continue. Mr Robinson and Mr Weir (for the UUP) said they wished to have their names cleared before debate continued. The Secretary of State said the parties should think carefully before allowing a complaint to stop business because of the potential for deliberate disruption in future. Mr Farren said a precedent regarding delay would not be set in discussing confidentiality because it was itself essentially a procedural matter. Mr Robinson eventually said that as the debate on confidentiality was not a matter of substance he believed it could proceed.

Protracted slanging matches particularly between McCartney and the SDLP over the latter's alleged lecturing of Unionists on the cause of delay ultimately became circular when Mr Durkan said in

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response to a further charge from McCartney that for the record he needed to refute McCartney's allegation for the written record in case of publicity so that SDLP supporters could see that the SDLP had not allowed charges to go unanswered. Ultimately, Senator Mitchell called a 20-minute adjournment to allow the two Governments to consider when the determination might be available. The minutes from previous meetings had already been circulated. (Comment: In the course of the plenary, the Irish side had confirmed to the British Government that they now had the political clearance necessary for the determination to be promulgated).

19. The plenary resumed at 15.50 with the announcement that the two Governments had agreed the determination which was now being copied. It would be made available in due course. Initially, when Senator Mitchell asked for comments on confidentiality none of the participants offered to speak. Ultimately, Mr Durkan suggested that a regular neutral briefing on what was going on was needed. He suggested it should come from the Chair. That would provide information to the Press and remove any excuse to engage in leaks or counter-leaks.

20. Mr Robinson said there were three separate categories to be considered. Firstly, on documents, he noted that other people's documents ought not to be reproduced but asked whether the documents produced by the party in question could be circulated more widely, as this may cast a light on the way in which negotiations were proceeding or on the negotiating positions taken by others. Similar considerations applied in reporting on what was said and there was the third issue of general comments on talks. (At this point Ministers on both the British and Irish sides left for a bilateral). Mr McCartney said that confidentiality considerations should not prevent parties from stating their own position and objectives with regard to the talks process. He identified three key considerations which he believed should be taken into account. First, the acceptance of confidentiality as an aid to negotiation. Second, the need to let the public know the position adopted by

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individual parties at the talks process; and third, what he described as the gagging effect of positions taken publicly by the Governments as architects of the process. He claimed that the British Government were very poor at disseminating information, preferring to throw a veil of secrecy over their policies and actions. Mr McCartney felt that if the public were not kept informed about progress in the talks, they were unlikely to endorse any eventual outcome. One purpose of the Forum was, in his view, to keep the public informed of the broad issues being discussed at negotiations. The use of the Forum for this purpose would go some way to addressing the democratic deficit in Northern Ireland and allay any suspicions which the public may have about what is being agreed. In short, confidentiality regarding the finer points of negotiation was desirable, but at the same time access to the media was essential.

21. Mr Trimble endorsed Mr McCartney's views on the "secrecy" with which the British Government went about its business, and on the desirability of using the Forum to debate the broad issues under negotiation at the talks. In these circumstances, he could not envisage how Rule 16 could reasonably apply, believing instead that it should be left to the individual parties to make up their own mind as to what information should be published.

22. Mr Close agreed that there was a need to keep the public informed, and suggested that this might be done in the form of a briefing, the contents of which would be agreed by the participants. This might be conducted by the Chairman, possibly accompanied by participants.

23. The Chairman attempted to move discussion forward by seeking the agreement of the participants to the following concepts:

(1) That Rule 16 prevents the leaking of minutes to the press.

24. This was agreed unanimously by plenary.

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(2) That minutes of meetings should be kept confidential in all circumstances. This was agreed, but qualified to exclude circumstances where all participants agreed otherwise, or where discovery of minutes was sought by court order, or where a party sought leave of the Chair to make available minutes of meetings for the purpose of court proceedings. The Chairman conceded that it was impossible to foresee all circumstances where exceptions might need to be made, and that a degree of discretion would have to be available to cover particular circumstances.

(3) That information contained in minutes will not be further disseminated. Plenary discussion on this point was inconclusive.

(4) That documents prepared by the Chair at the request of participants will not be circulated by participants. This was agreed unanimously.

24. On the question of documents prepared by participants, Mr Farran suggested that publication would be acceptable provided that such documents represented the views of that party only. It was generally agreed that a document which stated a party's publicly held position or which referred to the publicly held position of another party was not covered by Rule 16, but that all other documents in respect of the negotiations were covered.

25. Discussion then moved on to how oral statements might be handled. It was generally agreed that the same principles should apply to oral statements as to documents. Mr McCartney observed that in the final analysis it all came down to a matter of trust and confidence!

26. At this point, the Chairman suggested that he might produce (overnight) a document which would summarise the discussion to date and put some alternatives to the participants for agreement. In

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response to a question from Mr Robinson, the Chairman indicated that the document would consider what sanctions might be available in the event of Rule 16 being broken. Mr Robinson said that whatever sanctions are made available should not be put in the hands of the two Governments, but rather should be administered by the chair. This view was endorsed by Mr McCartney and Mr Durkan, the latter suggesting that this might best be done in consultation with the Business Committee.

27. Representatives of the UUP, DUP and SDLP sought an assurance that whatever confidentiality rules were ultimately decided upon should apply equally to the two Governments. The British Government side agreed that the Government would be bound by the agreed guidelines, subject to the requirements of accountability to Parliament. The Irish Government also agreed to be bound by whatever guidelines were adopted. Dr Paisley and Cedric Wilson asked whether this would include the possibility of the British Government, the Irish Government and/or the SDLP passing information on the negotiations to Sinn Fein/IRA. Mr Durkan provided an assurance that his party would not engage in the transmission of information (written or oral) to any party. Mr Cooney responded on behalf of the Irish Government by referring to a recent article in the Newsletter by Mr McCartney and a statement made by Dr Paisley following a meeting with the Secretary of State in Parliament, and suggesting that as a result the DUP and UKUP were not without sin in publicly referring to the position of other parties. (Comment: This "courageous" defence by Mr Cooney of the Irish Government's position effectively deflected attention away from the British Government's position, thereby obviating the need to respond.)

28. Rounding off this part of the discussion, Mr Robinson indicated that his party was happy to proceed on the basis that no-one was without sin, adding pointedly that HMG had been communicating with the IRA during the last talks when a similar confidentiality rule had been in place. He went on to indicate that his party would reserve the right to respond in the event that another participant

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breached the confidentiality guidelines ultimately agreed. Mr Durkan disagreed, suggesting instead that if a party felt compromised by the statement of another, a "levelling" statement might be made by the Chairman. Mr Robinson also asked that the Chairman, in considering his draft paper, consider the duration of the embargo on information, ie would it stay in place for so long as the talks lasted or for all time?

29. The Chairman adjourned the plenary at this point at the call of the Chair - probably sometime during the course of Tuesday morning. The confidentiality document would be produced by his office overnight and be distributed early tomorrow morning. A plenary would be convened after participants had had an opportunity to consider this document. The Chairman also indicated that the judgement on the indictments brought by the Alliance Party against the DUP and UUP would be distributed to the party delegation rooms immediately following the plenary session. In response to a question from Dr Paisley, the Chairman indicated that, if required, a discussion on the judgement could take place during the next plenary session. Plenary was adjourned at 17.30 hours.

Irish Government

30. At 16.05 the bilateral between the two Governments began. The Irish Government were led by Mrs Owen and Mr Gleeson, and the British Government by the Secretary of State and Michael Ancram. Clearly speaking to a prepared brief, Mrs Owen said that the time had come for the UUP to provide answers; they had said that they needed sight of the legislation in order to engage, now they seemed to want more. She said the key question was under what circumstances the UUP would engage in substantive discussions. She was not prepared to go on offering concession after concession. The Secretary of State said he recognised the Irish concerns and reported on his bilateral that morning with the UUP in which he had stressed that both Governments needed assurances regarding a

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willingness to make progress. He noted that both the UUP and the Irish Government had the same suspicions, and that Trimble had difficulties in the form of Taylor and some of his own young Turks.

31. Michael Ancram stressed the need to look at the issue in overall terms to see what would be required to bridge the gap. He suggested the key was how to fill the time prior to legislation being passed. Work could be done by a committee, informed by technical advisers on the separate schemes offered in the Mitchell Report. Mrs Owen was sceptical whether the UUP wanted a committee as they seemed to prefer a commission. Michael Ancram explained no commission would be available until after the legislation had been passed and said that the UUP were concerned that a committee might cause delays, and for that reason they wished to see elements of a commission shaded into the committee. Answering Mrs Owens' request for more information about the commission proposal, Mr Ancram said part of the UUP's concern could be met by technical advice and part by the Chairman designate of the committee and one or two of his staff officers sitting on the committee and forming the basis of a commission. In that way they would gain expertise.

32. Mrs Owen stressed on a number of occasions her belief the British side should lead the trilateral debate in order to use whatever influence it had to bring greater certainty to the UUP position. Michael Ancram said that the key was to agree an exit strategy from the plenary, and in reaching an agreement on how that might be achieved, the two Governments should be prepared to show joint or individual statements which they might make at that plenary. If the UUP then rejected the proposals they were rejecting them they were rejecting sensible and well reasoned propositions. The Irish Government were concerned at the suggestion of showing the UUP a paper, questioning whether it was not merely a further concession being wrought out of the two Governments by the UUP with further questions in prospect.

33. Mr O'hUiginn in typically downbeat mood, summarised recent history from the International body to the present day and suggested

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the UUP were unwilling or unable to move ahead. He likened their ploys to a decoy process while the real issues did not get addressed and to a ratchet process where the demands and hurdles became ever higher. He suggested the UUP were unlikely ever to make a stand. He said there were two meetings left in the process and that HMG should use its leverage. The alternative was to go back to plenary and have the discussion which had originally been intended there. Michael Ancram said that he believed the gap had been narrowed and that that could be tested by showing them a final position. Mr O'hUiginn retorted by saying that legislation was supposed to be that step and Mrs Owen stressed how significant it had been that the UUP had been shown the legislation in advance of members of the Dail.

34. Mr O'hUiginn was concerned that the negotiating position of the two Governments was becoming known and would rebound should no agreement be reached with the UUP. If a debate had to be had in plenary all room for manoeuvre would be taken back. Mr Leach said that the UUP had accepted the logic of the committee. They now needed the confidence that that approach would ensure meaningful progress and provide a substantial public position which they could defend. Mrs Owen said the time had come for the UUP to sign on the dotted line if they were serious. Mr Leach said a document needed to be provided upon which they could decide. The Secretary of State stressed that in his judgement the UUP were for real, and that we needed to bring them to a position where they had to show it.

35. Mr O'hUiginn complained about Mr Maginnis' belief that de Chastelain would be Chair of the decommissioning committee. This had not been discussed with the Irish and yet they heard it at every turn. It was obvious that it had been discussed in detail between the British Government and the UUP. The British side said that he was only one option.

36. Michael Ancram said the prize to be gained in reaching agreement was that it would avoid an endless discussion in plenary. A document would be passed to the UUP summarising the position of

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the two Governments. Mr O'hUiginn cautioned against further concessions to the UUP, and said he was not happy with the changes to the document offered by the British side which he believed departed from the June 6 agreement in a number of respects. Mr Leach stressed that the document was essentially in line with the 6 June paper with the views of the Chair taken into account.

37. After further discussion, it was agreed that the two Governments should offer to produce a paper as soon as possible to act as a basis for a third trilateral. The issue of the Chairman designate of the commission being included in the committee was not to be mentioned. The Irish side had no clearance to do so. It was agreed the paper would provide a summary of the position the two Governments were adopting on decommissioning and that it would essentially be an exit strategy from the opening plenary for the UUP to agree or disagree with. The meeting concluded at 17.02.

Trilateral

38. At the trilateral involving HMG, the Irish Government and the UUP, which started at 17.10, Messrs Trimble, Taylor and Maginnis led for the UUP. The two Governments were represented as before. The Secretary of State outlined the progress made to date, the purpose of the trilaterals were to look for a way to leave the opening plenary and get into the three-stranded process by addressing decommissioning. He noted the fears and anxieties on each side addressing both the UUP's need to be clear what was on offer and for each Government to be sure there was sufficient common ground to get into the three-stranded process.

39. Mr Maginnis started by asking how the two Governments could safeguard the Unionist position and ensuring that the progress on decommissioning was made in parallel with discussions on the three-stranded process. The Secretary of State said that HMG was as keen as the UUP for that to be the case and that ought to act as

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some reassurance. HMG believed that the gap between now and the legislation being in place could be filled most advantageously through a committee as had been proposed. Mrs Owen said (and repeated at regular intervals) that the biggest reassurance to the UUP had already been offered by showing them the Irish Government's draft legislation. The additional agreement to pass the legislation in this session and the technical discussions about the legislation meant more had been shown to the UUP than would ever be shown to a back-bencher in the Dail.

40. Mr Trimble said that the draft legislation would offer some reassurance to the public when it was published, and gave the party some reassurance but not that much. They had been looking for it for a long time and there had been an inordinate delay. The shape of the legislation was likely to give rise to as many questions as it answered. He believed the two meetings of officials had achieved little. The UUP were decidedly uneasy about the proposal for a committee not least because the sufficient consensus rules could ensure a blockage of the decommissioning issue in committee with no progress made. Mr Maginnis stressed the importance of continuity between the committee and the commission and suggested that the Chairman designate of the commission should be available to the committee. The Secretary of State said that the two Governments were proposing to offer expert advisers drawn from the two Governments who would act as a link between the committee and the commission. Mr Maginnis said the Chairman designate went beyond expertise although the offer of advisers would facilitate continuity. Mr Maginnis said the UUP could not keep modifying their approach on this crucial issue. Mr McFarland said the UUP were proposing that the Chairman designate and two staff officers would sit on the committee in advance of the commission, in order to build up knowledge and ensure they were ahead of the terrorists if decommissioning were to happen. The UUP's fear was that the commission would never catch up otherwise.

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41. Mr Trimble said there were three issues to be addressed. The first regarded methodology, where the UUP were not particularly interested in the technical details provided decommissioning happened and it was verified. The second was the commission which went to the very heart of the process, and said the UUP wanted to know some idea of how it would be structured and how it would operate. The third issue was what would happen if Sinn Fein entered and what would be needed is agreement in plenary as to how Sinn Fein would catch up, the timetable to which they would operate and what commitment would be required from Sinn Fein and other paramilitaries.

42. The UUP remained to be convinced of the utility of a committee, and when pushed about their objections, Trimble said there were other factors in addition to the sufficient consensus point. He did not specify. However, he said the nightmare for the UUP was that procedures would not be agreed by the time Sinn Fein joined the process. The British and Irish Governments sought to explain the advantages of the committee as it would address the political issues not covered by the commission, and provide a forum to test the sincerity of those close to the paramilitaries. The UUP remained concerned about the timetable of work for the committee and asked whether it would continue after legislation had been passed. The Secretary of State said the British Government had an open mind on that issue.

43. Mr Trimble then appeared to become more co-operative and said he wanted the issues settled quickly. The twin issues of the agenda and decommissioning were close to resolution. In response to a specific question about what was required, Mr Trimble said that continuity and the timetable were the key issues. He wanted to make progress and to get round the current impasse. That would allow the UUP to proceed with the discussion of substantive negotiations.

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