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FROM: JULIE MAPSTONE
INFORMATION & PLANNING DIVISION
17 September 1996

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) - 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
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

TALKS: MONDAY 16 SEPTEMBER 1996

Summary

A full day, but with optimism at the close that progress had been made, particularly in arrangements for developing the UUP position on decommissioning. The earlier complaints from the DUP of a breach of the Mitchell principles had been concluded, a vague reference from Mr McCartney to a judicial review of the two governments' conclusions on the complaints notwithstanding. The further complaint from the Alliance Party and the rebuttals were circulated, and a plenary debate on the subject scheduled for Wednesday.

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Arrangements were in place over the next two days for bilaterals between the UUP and the governments on the draft decommissioning legislation, and a trilateral set for Wednesday of this week.

Detail

At 9.30 a meeting was held with the Chairmen to review the day's business: the handling of today's plenary winding up the DUP allegations, and the procedure for dealing with the Alliance complaints. The Secretary of State explained that the Government would take note of parties' comments in today's plenary, but their decision (the "determination") on the DUP complaint was final and the two governments intended avoiding making further comment.

Discussion of the handling arrangements for the Alliance complaint was under way when the Irish side joined the proceedings. Mr Holkeri reported that the rebuttals were expected in the early afternoon and they would then be distributed, along with the Alliance complaint, to all participants. It would be possible therefore to be ready for a debate tomorrow (Tuesday). The Secretary of State suggested that Tuesday would be better spent considering the papers, with time available devoted to bilaterals, leaving the debate for Wednesday [Comment: when Senator Mitchell would hopefully be back to chair it].

At 10.10 the plenary convened. At the outset, Mr Wilson (UKUP) raised a question about the type of minute which would be made available to participants. Waving a copy of an HMG internal minute of the talks which "had come into his possession", he commended the full record available to the British Government team and wanted to know why a similar record was not available to participants. Mr McCartney waded in with a demand for a verbatim record of the 10 September debate on the DUP allegations, his particular bones of contention being the Secretary of State's questions to the PUP and UDP and Mr Ervine's argument which had the appearance of justifying threats if they saved lives. Note-takers should produce a verbatim record of that debate; there might yet be proceedings in the courts

for a judicial review. Mr Empey pointed out that now that procedural rules are established, participants should, under Rules 43 and 44, be in possession of records of all sessions. Miss Sagar for the NIWC asked how this squared with the requirement of confidentiality of the proceedings, to which Mr McCartney was heard to say that nothing is confidential from the courts. The Chairman undertook to consult his note-takers after the session but indicated that the plan was to follow the same procedure as for the 91/92 talks.

In the comments on the two governments' conclusions on the DUP complaint, Mr Empey pointed out that the situation which had brought about the original complaint against the loyalist parties - the CLMC death threat - was still in place. This was not a satisfacotry outcome and he wished the mediation efforts well. As long as the threat was outstanding, a question mark hangs over these proceedings. Mr Taylor contributed a much tougher line, stating that the document giving the two governments' decision was quite inadequate. The fourth Mitchell principle had clearly been breached.

Mr Dodds took the view that the Governments' statement that they would not comment further was unreasonable. The reasoning employed in their conclusion was inadequate and the Secretary of State's questioning of the PUP and UDP had clearly been designed to ensure "satisfactory" answers. The governments' position now means that signing up to the Mitchell principles is meaningless since they are not being enforced, and they have given a clear indication that parties could be regarded as separate from the paramilitary groups associated with them. This clearly has resonance for the situation of Sinn Fein and their assertion of separateness from the IRA. The conditions of entry to the talks now appear much easier; Sinn Fein could now get in and can not be dislodged. The DUP had taken the complaint precisely to avoid this. Mr McMichael intervened to point out that it was quite clear that Sinn Fein could not enter talks without a ceasefire.

Mr Robinson wished to explore the implications for the talks process generally. The two governments' determination of the complaint did not in his view address the questions raised during the course of last week's plenary debate. Two questions specifically were asked there, firstly, is a death threat a breach of Mitchell, and secondly, are the PUP and the DUP punishable for the actions of the CLMC. These have not been answered. The governments had not attempted a legal judgement of the situation but had given a political judgement. He then went on to assert that the Government's original condemnation of the death threat had been less than adequate, amounting to one sentence from Sir John Wheeler, and suggested that the individuals against whom the threats had been made were a "thorn in the side" of the Northern Ireland Office. As a result, the Northern Ireland Office were not sorry about the death threat. As evidence for this extraordinary assertion he recounted the story of a murder attempt on Alex Kerr, foiled when the security forces stopped an armed individual close to his home. The individual admitted his mission but pleaded that he was acting under duress. The RUC had decided not to pursue the case.

Mr McCartney shared Mr Robinson's concern about the decision of the DPP not to charge an armed man in the Kerr incident [Comment: implying a degree of political intervention]. His chief concern was the impact of the governments' conclusions in this case on the position of Sinn Fein. A ceasefire is an essential requirement for Sinn Fein to get into talks and the Mitchell principles provided a set of criteria for determining what a ceasefire actually is. Sinn Fein could now argue that it is not necessary to have a ceasefire. The judgement in this case had been governed not by principles but by expediency. Moreover the governments' were condoning the argument that it was not necessary to condemn violence if a party could thereby claim to be preventing future violence.

The Chairman adjourned the session at 11.10.

In a post-plenary meeting at 11.15, Michael Ancram reported on a conversation with Reg Empey concerning decommissioning in the margins of the plenary. It emerged that the UUP's main concern was being "hung out to dry", ie agreeing a way out of the impasse with little to show for it in terms of practical steps in place to ensure decommissioning took place. They needed real reassurance against DUP and UKUP taunts. Their demands amounted to a sight of draft legislation, a commitment to legislate by a specified date, reassurance on the role and composition of the Independent Commission, and the sub-committee.

At 12.45 there was a meeting with the Irish side. Michael Ancram began with the Alliance complaint. There was no indication that Alliance would withdraw the part of the complaint which was directed against the loyalists, despite last week's debate. If their complaint against the loyalists was in essence no different from the DUP's complaint, the governments' previous decision may stand. It was agreed that it would be better to hold the debate on Wednesday when Senator Mitchell would be able to chair it.

Michael Ancram then reported his conversation with Reg Empey. The UUP wanted political cover and were worried that if the legislation when eventually published appeared thin, they would be exposed to political (Unionist) opponents. The Secretary of State therefore wished to show the UUP our legislation on a confidential basis as soon as possible, probably with an official present to explain technical points, and it would be advantageous if the Irish side would follow suit at about the same time. The point of this strategy was to demonstrate how far along were the plans for the modalities of decommissioning, and therefore how serious both governments were about the issue.

The Irish had no problem with letting the UUP see their draft legislation, as long as it was on a confidential basis and it was clearly understood that they were not prepared to accept suggested

amendments. They were not entirely happy about showing the draft legislation to one party only, which would mean they could be accused of bad faith, even though the UUP were the only party which had shown interest and made the request. And they clearly still had suspicions of the UUP's motives. Mr Hill described the object of the process as being to bring the UUP into an exit strategy to allow substantive negotiations to begin. Mr O'hUiginn pointed out that the Irish object was a little different: it was to discover the UUP's strategy and to ensure it was not intended to block progress. A timetable was provisionally agreed for bilaterals with the UUP on the draft legislation on Tuesday, and the trilateral on Wednesday afternoon. It would therefore very shortly become clear how likely it was that there was a way out of the decommissioning impasse.

There followed a discussion on the best time to publish the draft legislation. Although there was an argument for publishing before the plenary debate on decommissioning, there was clearly anxiety that the plenary could become bogged down in details of the legislative proposal, which, as Mr O'hUiginn pointed out, would be counter productive to the exit strategy. A detailed summary might be made available for the debate, which could give cover to the UUP, or there might be an argument for publishing immediately after securing an exit strategy. Whatever the approach taken, it would need to be jointly agreed and implemented.

Over lunch negotiations took place on the draft text given to the Irish on the Joint Proposal which might form the exit strategy. The detail of the changes suggested by the Irish are the subject of a separate minute. Both sides agreed to work further separately on the text. The meeting closed at 2.40.

At 3.00 pm the Chairmen arrived. The rebuttals from the UUP and the DUP had been received, the loyalist parties opting to stay with their previous rebuttal, and the documents would be circulated. Mr Holkeri asked about whether in the Government's view the case against the loyalists should be reopened. Mr Ancram reported that

we were preparing a paragraph jointly with the Irish Government along the lines that the second Alliance complaint - against the loyalist parties - had already been dealt with. It might be appropriate for the Chairman to ask at plenary if parties thought there was therefore a need for a further debate. Mr Holkeri was keen to have the debate the next day - Tuesday. On the basis that the DUP had suggested the complaint against William McCrea was sub judice as a result of writs he had taken out, Mr Holkeri was persuaded that the debate should be left to Wednesday to enable legal advice to be sought on this point.

A brief meeting was held with the UUP, including Messrs Trimble and Taylor, at 3.30 to put to them the proposed timetable for the bilaterals and the trilateral on decommissioning. With some minor timing adjustments this was agreeable to the UUP. They indicated they would try and schedule a bilateral with the SDLP before Wednesday afternoon's trilateral. The meeting ended at 3.40.

SIGNED:

JULIE MAPSTONE