CONFIDENTIAL AND PERSONAL

FROM: JULIE MAPSTONE
IPL
10 September 1996

cc PS/Michael Ancram - B
PS/Sir David Fell - B
Mr Bell - B
Mr Leach - B
Mr Watkins - B
Mr Hill - B
Mr Lavery - B
Mr Whysall - B

PS/SECRETARY OF STATE

TALKS: PLENARY 10 SEPTEMBER, NON-PAPER

I attach on a limited circulation a non-paper which constitutes an account in note form of the discussion at plenary this morning of the allegations against the Loyalist parties. This may be useful as part of the judgement deliberations.

A full account of today's proceedings will issue as normal tomorrow.

J MAPSTONE

CONFIDENTIAL AND PERSONAL

TALKS/2396

ON-PAPER, 10 SEPTEMBER

TALKS: 10 SEPTEMBER, PLENARY, (NOTE OF POINTS RAISED IN DEBATE)
PRESENTATION OF CASE
DUP

Don't want to see Loyalist parties excluded, want to see death threats removed. Condemn all threats to and by the CLMC, all should be withdrawn. Very important to the Talks process that the Mitchell principles should be signed up to and observed.

As well as the CLMC death threat, punishment attacks have been carried out and attacks on homes this morning. These actions are inconsistent with the Mitchell principles. The rebuttal in the paper issued by the PUP and UDP is based on the core argument that there is distance between the Loyalist parties and the paramilitaries. This is a familiar argument from Sinn Fein and the IRA. It is not accepted there and it shouldn't apply here. The Loyalist parties have themselves said their mandate is the silence of the guns. What is done in this case has a bearing on what will be done with Sinn Fein if they enter the process. The British Prime Minister has referred to the Sinn Fein and the IRA as two sides of one coin; if we conclude that the PUP and the UDP are separate from the paramilitaries, we would then have to accept the separation of Sinn Fein and the IRA. The fact that this matter under discussion is an internal disciplinary one does not mean that the Mitchell principles do not apply. It is a clear breach of the principles. The Governments are changing their position if they do not exclude the parties. The parties can only stay in if the death threats are lifted.

UDP

The UDP position is that we are opposed to the use of threat of violence and we will continue to be so. Much of the evidence that the DUP presents is editorial comment. This is not evidence.

'Inextricably linked/two sides of the same coin': this does not pertain to the UDP which has no control or authority over CLMC actions. Note that the indictment document of the DUP is at variance with Paisley's published comments. Paisley has stated that unless the parties are expelled the DUP will leave talks. Thus their mind is already made up.

PUP

The CLMC ceasefire did not break when the IRA ceasefire did; the political parties had a direct role in achieving this. Similarly with the earlier talks (91/92) a Loyalist ceasefire was achieved during the course of the talks. This was as a result of active engagement from the political parties. This represents an affirmation of the Mitchell principles. In the events around Drumcree, Billy Hutchinson physically disarmed a crowd which was about to open fire on a Nationalist crowd. This is an affirmation of the Mitchell principles.

Condemnation of violence does not save lives. If the political parties distance themselves from the Loyalist paramilitaries it would mean that the paramilitaries would not have access to political analysis. There were among the UVF those who threatened to use force against the forces of the Crown. The UVF disbanded this unit in order to defend the ceasefire. The Unit then formed a private army. The public statement of threat may well have saved lives.

In the DUP indictment they did not produce any evidence that the PUP endorsed the death threat. This is because we did not endorse it.

On punishment attacks Ervine claims he has stopped some of these. On the death threat which still exists, the PUP has offered themselves as mediators and both sides have now accepted this mediation.

Questioning

Secretary of State questions: your position in relation to Mitchell principles has changed since the beginning of talks?

No change.

Secretary of State: do you consider you have dishonoured them, and if so, which ones?

No, none dishonoured.

Secretary of State: would condemning the death threat and the bomb attack have been an effective step in preventing such action?

McMichael: action which opposes is stronger than condemnation.

Secretary of State: if you had condemned these events would it have had an effect on exerting influence on the paramilitaries thereafter?

Ervine: Condemnation would have damaged the ability to influence paramilitaries in the future.

Secretary of State: what was the purpose of offering the service of a mediator?

Ervine: we are committed to no threats and no deaths.

Mallon: would other parties be experiencing similar problems?

Probably

Robinson: Should Governments view Sinn Fein's participation in same way as Loyalist parties and let them in to talks?

Ervine: IRA has no ceasefire, CLMC has.

Robinson: At what point does your relations with paramilitaries impact on your presence at talks?

Ervine: None of your business.

Robinson: It is our business.

Ervine: (Apologises). We won't be in talks if there is a breach of ceasefire.

Robinson: Why will that affect your position, but the death threat doesn't.

Ervine: Not the same thing.

Robinson: You mentioned the word renounce earlier; do you renounce the death threat?

Ervine: Yes.

Robinson: Same question to McMichael.

McMichael: We oppose and condemn all violence.

Robinson: A spokesman from the UDP need the word condemn about the attacks last night. Can you condemn the death threat?

McMichael: All violence is condemned, that is no exception.

Robinson: If your role with the CLMC is one of persuasion can you not persuade them over the death threat?

Ervine: We are trying to persuade; our offer of mediation has now been accepted.

Ervine: Will the DUP go for judicial review if you don't get the outcome you want?

Robinson: Too soon to say.

McCartney: You say the death threat had probably saved lives, and inferred that the same strategy if used by the IRA might have saved the Canary Wharf bomb. So death threats are justified?

Ervine: We renounced the death threat.

Cedric Wilson: Ruling on this will be taken by Sinn Fein as ruling on them. Quoted Mallon as not condemning violence of Sinn Fein in the past.

Mallon: Yes, wants to see Sinn Fein at talks, only way is with a ceasefire. Have some sympathy with PUP and UDP who have to wrestle with problems of violence.

General discussion

UUP: Empey: If rebuttal was trying to distance parties from CLMC, this would be unacceptable, but they don't. Resolute opposition to violence not compatible with passivity displayed in their relationship with the CLMC (para 5 of rebuttal).

Should not be narrow reading of Mitchell. Threats are contrary to the spirit of Mitchell. Precedent aspect of this issue very important. Wants CLMC to lift death threat; urge mediation.

Alliance: Alderdice

Accept what parties have done to maintain Loyalist ceasefire.

Issue is has there been a breach of principles. Our view is there has been a breach, and there were other events in the summer which constituted a breach.

But not so simple as breach, therefore party excluded. Have to ask, will party recommit itself, how will it be handled?

NIWC: McWilliams

Wish to have inclusive talks, including Sinn Fein. Accept reaffirmation by PUP and UDP of Mitchell principles. Rule 29 gives Governments discretion, exercise of judgement in deciding appropriate action.

Refusal to condemn is not a breach of Mitchell principles. DUP indictment states "endorsement of violence", but no evidence.

Drumcree: attacks DUP, UUP and Willie McCrea. Suspect DUP and UUP trying to bring talks down with emphasis on CLMC threat.

SDLP: Mallon

This is not a judicial or quasi-judicial process. Here as politicians, must assess primacy of political process. For elected politicians to decide best how to solve a problem.

UKUP: McCartney

Cannot make democratic process more inclusive by including terrorists. Is the CLMC threat a political issue? David Ervine advanced the principle it would be justified if it saved lives. No evidence that either party has opposed the CLMC in using force.

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uggestion is that we should not prejudice the degree of influence these parties have with the paramilitaries.

Loyalist/CLMC relation is a mirror image of SF/IRA in terms of shared personnel, claims of a purely advisory role, intimacy with political strategies, preparedness to use democratic process in tandem with terrorism. The 2 parts want to keep the Loyalist parties in the talks because they want to broker deal between terrorists. HMG has already decided on their verdict in this case.

Have no faith in talks. They were set up wrongly to bring in fringe parties.

UKUP seeking lifting of death threat; not looking to put Loyalist parties out. Want the condemnation of the threat and assurance that such threats are never justified. Need clear guidance on what we do in such situations in the future.

Labour: Curran

Welcome DUP assertion that they do not wish to see Loyalist parties removed. Labour sees UDP and PUP as organisations trying to suppress violence in own areas. Call for SF to be admitted, after ceasefire.

DUP: Robinson

We have a decision to take on the basis of criteria laid down. Arguments like those of NIWC ("we want them in") and SDLP ("a political matter") avoid the issue. The issue is, Is the death threat a breach of the Mitchell principles (the letter not just the spirit)? If it is done for political purposes, then breach of Mitchell (a); if to direct these negotiations, breach of Mitchell (d); if for punishment/discipline reasons, breach of Mitchell (f).

If it is a breach, are the 2 parties associated? If yes, there is no lesser punishment available under Rule 17 of Ground Rules, as

lliance seemed to imply: if they have "demonstrably dishonoured", they cannot still participate in talks. Only one possible outcome to a breach. The only alternative is for CLMC to withdraw the threat.

Labour: Casey

Believe Loyalists genuine in their attempts to break away from violence. Drumcree - can parties here confirm they did not take part? Willie McCrea has shared a platform with Billy Wright. DUP is taking sides in this, taking the part of those who used to be paramilitaries.

UUP: Donaldson

Responding on Drumcree. If other participants feel UUP has breached Mitchell, they should say so. Drumcree symbolic of conflict, not a cause.