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The Honourable Dermott Gleeson SC
Office of the Attorney General
Government Buildings
DUBLIN 2

20 September 1996

Dear Attorney,

ALLIANCE PARTY REPRESENTATIONS

As requested during our telephone conversation this morning, I have now worked-up the Skeleton Judgment into a fuller text of what might become the Governments' Conclusions for delivery next week.

I have, as you suggested, adhered to the format of the Conclusions issued on 11 September in respect of the DUP case against the PUP/UDP. This sets a very useful precedent.

In addressing the Alliance Party's allegations, and the responses to this, I have adopted a minimalist approach and have not sought to paraphrase or amplify matters already covered in the documentation (which will be appended to the 'judgment') or in the Plenary Session of 18 September.

I have slightly reordered some of the material in the Skeleton Judgment in relation to the Drumcree allegations. I have, at your suggestion, dealt with the alleged breach of principle(a) before the allegation in relation principle (d). I have also, at your suggestion, deleted the sentence condemning the events at Drumcree - you felt that we might be better to avoid a debate about the 'lexicon' of condemnation.

Interestingly, the Alliance Party's written submission in relation to Drumcree is confined to an assertion that there was a breach of principle (a). It was only during the Plenary Session on 18 September that this was expanded to cover principle (d). I think we both tended to the view that the oral presentation of an allegation should be confined to the matters asserted in the 'pleadings' and that a party should not be allowed to use this device to introduce a new allegation. However, I have retained the material relating to the alleged breach of principle (d) in the interests of completeness given that it relates to the same factual circumstances as the allegation in respect of principle (a). I think this may be the safer course to adopt in the instant case.

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I have again sent a copy of the attached material to the Secretariat. However, we agreed that in the interests of expedition I should continue to work directly to you as well.

I hope that I have provided you with sufficient material to take this matter forward. Should, however, you require anything further at this stage, please do not hesitate to let me know.

Yours Sincerely,

David A. Lavery

D A LAVERY

Background: the Rules and Principles, and procedures followed

Rule 22

1. The procedure to be followed is set out in rule 22 of the Rules of procedure for the negotiations agreed on 29 July:

11. during the negotiations, a formal representation is made to the Independent Chairman that a participant is no longer entitled to participate on the grounds that they have demonstrably dishonoured the principles of democracy and non-violence set forth in the Report of 22 January 1996 of the International Body, this will be circulated by the Chairman to all participants and will be subject to appropriate action by the Governments, having due regard to the views of the participants.

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[Draft: 20/9/96]

CONCLUSIONS OF THE GOVERNMENTS ON REPRESENTATIONS

MADE BY THE ALLIANCE PARTY AGAINST THE UUP, DUP, PUP AND THE UDP

- [1]
1. This document sets out the conclusions of the Governments on the formal representations made by the Alliance Party to the Independent Chairmen that the UUP, DUP, PUP and UDP were in breach of the Mitchell principles.

Background: the Rules and Principles, and procedures followed

Rule 29

- [2]
2. The procedure to be followed is set out in rule 29 of the rules of procedure for the negotiations agreed on 29 July:

If, during the negotiations, a formal representation is made to the Independent Chairmen that a participant is no longer entitled to participate on the grounds that they have demonstrably dishonoured the principles of democracy and non-violence as set forth in the Report of 22 January 1996 of the International Body, this will be circulated by the Chairmen to all participants and will be subject to appropriate action by the Governments, having due regard to the views of the participants.

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The Mitchell Principles

[3] 3. The relevant passage of the International Body's report reads:

20. Accordingly, we recommend that the parties to such negotiations affirm their total and absolute commitment:

(a) To democratic and exclusively peaceful means of resolving political issues;

(b) To the total disarmament of all paramilitary organisations;

(c) To agree that such disarmament must be verifiable to the satisfaction of an independent commission;

(d) To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or outcome of all-party negotiations;

(e) To agree to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may disagree; and

(f) To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.

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[4] 4. The Alliance Party's "Submission on breaches of the Mitchell Principles" dated 10 September 1996 was circulated by the Office of the Independent Chairmen on 16 September, together with a letter from the Alliance Party leader dated 16 September, and the responses to the Alliance Party Submission by the UUP, DUP and UDP, each dated 16 September. These documents are appended to this determination and speak for themselves. On 16 September the Office of the Independent Chairmen circulated a note by the Governments indicating that they regarded the matter referred to in that part of the Alliance Party Submission relating to the PUP and the UDP as having already been addressed in the Conclusions issued on 11 September 1996 in respect of the representation previously made by the DUP against those parties.

[5] 5. The Alliance Party's Submission was considered on 18 September 1996 in a Plenary Session commencing at 10.05 am and concluding at 10.45 am. In the course of that session there were contributions by the Alliance Party, the DUP and UUP. No other participant sought to express any views on the Alliance Party's Submission. The Governments then considered the question of appropriate action in the light of all the material available and the views expressed at the Plenary Session.

[6] 6. The relevant rule requires the complaining participant to show that the Mitchell principles have been "demonstrably

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The dishonoured" by the participant or participants complained against.

- [7]
7. The terms of the rule, and the gravity of the potential sanction, require a clear and unmistakable demonstration by those who assert it that there has been a dishonouring of the principles.

X
[8]
The Alliance Party allegations in relation to Drumcree

8. In relation to Drumcree the Alliance Party submission asserts that the UUP and the DUP were in breach of principle (a). In the course of the Plenary Session on 18 September, the Alliance Party further asserted that the events at Drumcree also constituted a breach of principle (d) on the part of the UUP and the DUP.
9. In relation to the CLMC threat, the Alliance Party submission asserts that the PUP and the UDP were in breach of principles (a) and (d). However, in the course of the Plenary Session on 18 September the Alliance Party did not pursue this assertion and indicated that it regarded this matter as having already been dealt with.
10. In relation to the DUP and Billy Wright, the Alliance Party submission asserts that the DUP were in breach of principles (a) and (d).

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The Parties' Responses

- [911] 11. The UUP response of 16 September is appended. At the Plenary Session on 18 September the UUP further asserted that the Alliance Party had not made out a case to answer. The UUP also confirmed their continuing commitment to the Mitchell principles.
- [912] 12. The DUP response of 16 September is appended. At the Plenary Session on 18 September the DUP further asserted that no evidence had been submitted by the Alliance Party and therefore there was no case to answer.
13. The UDP response of 16 September is appended.
14. The PUP stood by its response to the representation previously made by the DUP, as set out in the Conclusions issued by the Governments' on 11 September 1996.

Conclusions

15. Having considered the documents tabled by the parties concerned and the oral statements and responses made in the course of the Plenary Session on 18 September 1996, the Governments' have reached the following Conclusions.

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(a) Representation relating to Drumcree

16. The Governments acknowledge that aspects of the events surrounding Drumcree constituted either the use of force or the threatened use of force.

[13] 17. In order to establish whether there has been a breach of principle (a) it is necessary to have regard to the intentions of the relevant participants at Drumcree.

[14] 18. In particular, it is incumbent on those asserting that there has been a breach by the named parties of principle (a) to show that it was the intention of their participant leaders to act otherwise than in accordance with their publicly stated commitment to democratic and exclusively peaceful means of resolving political issues.

19. It has not been established that those participant leaders intended to use force or threaten to use force or to pursue their objectives by other than democratic and exclusively peaceful means.

(b) Representation relating to the CLWC threat

[15] 20. It has not been established that any actions of the Orange Order at Drumcree were carried out under the authority or direction of the UUP or the DUP.

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21. Therefore it has not been established that there has been a demonstrable dishonouring of principle (a) by any of the named parties.

[16] 22. In order to establish that those events constitute a breach of principle (d) it must be shown that they were intended to "influence the course or the outcome of all-party negotiations".

23. It has not been established that those events were so intended, and therefore in any event it has not been established that there has been a demonstrable dishonouring of principle (d) by any of the named parties.

[21] 24. The UUP and DUP have asserted, and continue to assert, their total and absolute commitment to the principles of democracy and non-violence set out at paragraph 20 of the Report of the International Body.

[22] 25. Therefore no further action is appropriate.

(b). Representation relating to the CLMC threat

26. The substance of this representation is identical to a representation previously made by the DUP in respect of the PUP and UDP.

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27. The Governments consider therefore that the matter to which the current representation relates has already been addressed in the Conclusions issued on 11 September 1996.

28. The Governments do not consider that any further action is appropriate in respect of the current representation.

(c) Representation relating to the DUP and Billy Wright

[cf 24]
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29. This representation rests on the Reverend William McCrea MP's participation in a public rally in Portadown on 4 September 1996 in support of Billy Wright. Mr Wright had been the subject of a death threat issued by the CLMC.

30. No evidence has been presented to substantiate the accusation that the Reverend McCrea is supportive of the "policies and actions" with which Mr Wright is allegedly associated.

[cf 26]
31. Mr McCrea has asserted that his presence and actions were intended to express support for the right of anyone not to be threatened with murder.

32. The Reverend McCrea's actions have not been shown to be inconsistent with his declared opposition to the threat issued by the CLMC against Mr Wright.

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33. Therefore it has in any event not been established that there has been a demonstrable dishonouring of principle (a) or principle (d) on the part of the DUP in respect of the matters complained of.

34. The Governments' have accordingly determined that it has not been established that the UUP, DUP, PUP and UDP have demonstrably dishonoured the principles of democracy and non-violence set out in the Report of the International Body. No further action is therefore appropriate.

TALKS - THE WAY FORWARD

Michael Ancram has noted Mr Bell's minute of 13 September recording [20/9/96] discussions with Mr Donoghue.

1. The Minister has said that he agrees that we should not give the US's the 'Conclusions' but there may be merit in showing them the more general Irish style response to their questions - it should however not be in Q&A form.

(SIGNED ANGELA DILLAGHAN)

PP
R F LEMON
PS/Michael Ancram
GAB MAY 6456
10 September 1996

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