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DESK IMMEDIATE

FROM: D A LAVERY  
CENTRAL SECRETARIAT  
23 SEPTEMBER 1996

cc PS/Michael Ancram (B&L) - B  
PS/PUS (B&L) - B  
PS/Sir David Fell (o/r) - B  
Mr Thomas (o/r) - B  
Mr Leach (B&L) - B  
Mr Watkins - B  
Mr Bell - B  
Mr Hill (B&L) - B  
Mr Maccabe - B  
Mr Stephens - B  
Mr Whysall (B&L) - B  
Mr Jagelman - B

PS/SECRETARY OF STATE (B&L) - B

#### ALLIANCE REPRESENTATIONS

1. This is to let you have an up-dated draft of the Governments' Conclusions reflecting further discussions I have had with the Irish Attorney General this morning. The attached draft has been agreed ad referendum the Minister of Justice and the Secretary of State.
2. Mrs Owen is due to arrive in Belfast at approximately 3.00pm today. We expect to have final Irish clearance for the judgment shortly thereafter.
3. Once final Irish approval has been obtained, and subject to the approval of the Secretary of State and Michael Ancram, I shall have the 'judgment' reformatted to be handed over to the Office of the Independent Chairmen. The judgment would then be circulated by the Chairmen's office under a memorandum indicating that time would be made available to discuss the judgment at a Plenary session.

[Signed DAL]

D A LAVERY

DL/LM/1267

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[Draft: 23/9/96 - 12.15pm]

## CONCLUSIONS OF THE GOVERNMENTS ON REPRESENTATIONS

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

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. 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.

### The Mitchell Principles

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.

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. 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. 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. 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. The relevant rule requires the complaining participant to show that the Mitchell principles have been "demonstrably dishonoured" by the participant or participants complained against.

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

The Alliance Party allegation against the UUP and DUP in relation to events at Drumcree

8. The Alliance complaint specified a breach by the UUP and DUP of principle (a), on the basis that the events surrounding Drumcree represented a deliberate defiance of the rule of law, organised by senior members of the Orange Order, which is constitutionally linked to the Ulster Unionist Party, and with an overlap or cross-membership of some key personnel. In the course of the Plenary session on 18 September, the Alliance Party further asserted that the events surrounding Drumcree also constituted a breach of principle (d) on the part of the UUP and DUP.

9. The complaint alleged further that the events surrounding Drumcree were endorsed by leading members of the UUP and the DUP, and could not have taken place without the knowledge and approval of the UUP leadership.

10. The Alliance Party also made clear that it was not seeking the expulsion of any of the accused parties from the Talks, but rather wanted renewed emphasis on the importance of the principles, and of universal adherence to them by all participants.

#### UUP response

11. The UUP response restated that party's full acceptance of the principles of democracy and non-violence set out in the report of the International body. It rejected any breach of the principles and said that the UUP had consistently condemned violence from whatever quarter.

12. The DUP stated that the Alliance Party had failed to produce proof of breaches by the DUP of the Mitchell principles and maintained that the actions of their members had been consistent with them.

#### Government consideration

13. In order to establish whether there has been a breach of one of the principles, it is necessary to have regard to the intentions of the relevant participants at Drumcree.
14. 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 the UUP or DUP to act otherwise than in accordance with their publicly stated commitment to democratic and exclusively peaceful means of resolving political issues, and that they did so.

15. In relation to possible breaches of the principles by the Orange Order or members of that institution referred to by the Alliance Party, it would be necessary to establish that the relevant acts were carried out under the authority or at the direction of the UUP or the DUP.
16. In order to establish that a failure to oppose the threat or use of force in relation to events at Drumcree constitutes a breach of principle (d), it must be shown that such threats or use of force was intended to "influence the course or the outcome of all-party negotiations".

### Conclusion

17. We do not consider that the Alliance Party established that the actions of the Orange Order complained of were demonstrably under the authority or at the direction of the UUP, or that the relationship between the UUP and that institution is such that the UUP must of necessity be answerable for the actions of the Order in relation to the principles.

18. We do not consider that the Alliance party established that the involvement of individual members of the UUP or DUP in the activities of the Orange Order, or more generally, at the time of Drumcree demonstrably established on the part of those individuals a breach of the principles.
19. We do not consider that a breach of principle (d) may be safely inferred from a failure to condemn particular actions, since it would, among other considerations, be necessary to establish that any threat or use of force involved was intended to influence the course or outcome of all-party negotiations, and such motive was not established.
20. Therefore it has not been established that there has been a demonstrable dishonouring of principle (a) or (d) by any of the named parties.
21. 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. Therefore no further action is appropriate.

#### Representation relating to the CLMC threat

23. The Governments considered that the Alliance complaint against the UDP and PUP was not different in substance from

one of the DUP representations which the Governments had already considered and determined, having due regard to the views of all the participants. The Governments therefore reached the view that it would be inappropriate for them to enter into renewed discussion and consideration of this matter, and that they should take no further action on it.

23. In view of the Reverend McCrea's assertion that his actions

Representation in relation to the DUP and Mr Billy Wright

against Mr Wright, we do not consider that the Alliance Party

24. This representation rests on the participation by the Reverend William McCrea MP in a public rally in Portadown on 4 September 1996 in support of Mr Billy Wright, which it was asserted, combined with the failure of the DUP to condemn this action, violated principles (a) and (d).

25. Mr Wright was the subject of a threat of "summary justice" issued by the CLMC.

26. Mr McCrea has asserted that his presence and actions were intended to express support for the right of anyone not to be so threatened.

27. The likelihood that such association might be interpreted as support for, or solidarity with, Mr Wright's alleged policies and actions, rather than opposition to the threat against him, was highlighted in the Alliance presentation.

28. It was not however demonstrably established that the Reverend McCrea intended or wished his association with Mr Wright on the occasion complained of to express any positive support for the positions and views of Mr Wright, or that his statements on the platform warranted such an interpretation.

29. In view of the Reverend McCrea's assertion that his actions were intended to express opposition to the threat issued against Mr Wright, we do not consider that the Alliance Party established a demonstrable breach of principle (a) or of principle (d).

30. No further action is therefore appropriate.

This is in accordance with the spirit of the Conclusions issued on 11 September in respect of the DUP case against the DUP/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 Judgment (which will be appended to the 'Judgment') or in the session of 18 September.

I have slightly reordered some of the material in the Skeleton Judgment in relation to the Drumree 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 Drumree - 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 Drumree 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 the allegation should be confined to the matters asserted in the 'pleadings' and that a party should not be allowed to use the 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 circumstances as the allegation in respect of principle (a). I think this may be the safer course in such a case.