

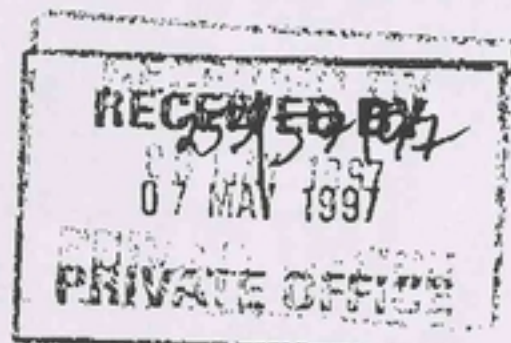
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FROM: D J R HILL
CONSTITUTIONAL & POLITICAL DIVISION
6 MAY 1997



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PS/PUS (L&B)
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Mr Thomas (L&B)
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PS/Secretary of State (L&B)

NORTHERN IRELAND POLITICAL TALKS: RESOLVING THE DECOMMISSIONING IMPASSE

This submission sets out a possible means of resolving the decommissioning issue that has prevented the talks moving on to the consideration of substantive political issues. The attached paper, setting out a possible way forward, was given to Irish officials last month: full Irish reactions are awaited.

Papers

2. The introductory analytical paper *ANA 2 - The Talks Process* gives a general assessment of how the decommissioning issue might be approached as the talks resume and (in the annex) an account of developments over the past year. Volumes 2 and 3 (the blue and white binders) of the collection of background papers bring together various relevant texts.

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Background

3. The issue of decommissioning is effectively a proxy for the concerns of many participants, especially Unionists, over joining in political negotiations with the political representatives of the Republican Movement. It has hung over the prospect of negotiations ever since the ceasefire of August 1994 made Sinn Fein participation a possibility. The previous Government, having for a time sought some prior decommissioning as a token of the Republican Movement's commitment to exclusively democratic methods, accepted the "compromise approach" set out in paragraphs 34 and 35 of the International Body's report under which *some decommissioning would take place during the negotiations*, rather than before or after.
4. The 28 February 1996 Joint Communiqué (paragraph 12, quoted in paragraph 13 of the Ground Rules for the all-party negotiations - Command 3232) sets out the two Governments' view that once the parties participating in the negotiations had affirmed their total and absolute commitment to the Mitchell principles they should "at that stage" *address the International Body's proposals on decommissioning* [while providing reassurance that a meaningful and inclusive process of negotiations was genuinely on offer]. The Unionists would almost certainly not have participated in negotiations without this assurance that the decommissioning issue would be addressed before the start of substantive negotiations, and now use the 28 February communiqué and the Ground Rules to back up their refusal to move on to substantive negotiations until the issue is resolved [to their satisfaction]. The "agenda for the remainder of the opening plenary session" was settled on this basis.
5. There are important distinctions between the positions of the three Unionist parties:
 - the DUP is formally committed to a requirement for total prior IRA decommissioning before Sinn Fein could participate in the negotiations;
 - the UKUP acknowledges the political and psychological significance of decommissioning for the Republican Movement and would therefore be prepared to

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see Sinn Fein join the negotiations after a significant tranche of IRA weapons had been handed in. They also expect to see further tranches on a timetable which would be independent of progress in the negotiations. [Peter Robinson nearly got the DUP to this position at one point, but had to back off];

- the UUP has privately signalled that it would be prepared to accept the Mitchell compromise approach, but wants to be confident that there will indeed be some decommissioning during the negotiations - commencing pretty soon after the substantive negotiations began. Formally their position, set out in their paper of 15 October, is that Sinn Fein could join the multi-party negotiations without any prior decommissioning but a significant tranche of IRA weapons would need to be decommissioned before Sinn Fein could join the substantive negotiations in the three strands;
- all three Unionist parties expect to see Loyalist decommissioning, although the UUP (quoting the International Body's report) have been more ready to accept that this need not happen until the situation enables "mutual" (ie both Republican and Loyalist) decommissioning. The UUP got their pay off in the General Election campaign.

6. Quite apart from being a test of confidence in the Republican Movement, the decommissioning issue has become a test of Unionist confidence in the Irish Government. The Irish Government formally subscribes to the Mitchell compromise, but has at times suggested that it requires the talks participants to do nothing more than "consider" an approach in which some decommissioning would take place during the negotiations - a tortured reading of the Mitchell report, hardly a "compromise" at all and (privately) not supported by Senator Mitchell. Some Irish officials, especially in the DFA, accept that this interpretation is over-strained and that in reality there will be no agreement in the talks (assuming Sinn Fein participation) unless there has been some IRA decommissioning, but the formal Irish position remains ambiguous. In any event, Unionists have taken the message that the Irish Government is not serious about securing IRA decommissioning and is determined to find ways in which the Republican Movement could wriggle out of even the

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Mitchell compromise. Mr Spring is widely castigated for proposing that decommissioning should be dealt with in a "fourth strand" of discussions without any prior resolution of the issue. Against that background, the two Governments' initial proposals on decommissioning (reflected in the joint paper of 1 October), which envisaged a sub-Committee of the plenary being established to discuss decommissioning alongside the three strands was widely seen by Unionists as a device for allowing Sinn Fein to participate in substantive negotiations without any commitment to decommission IRA weapons: they feared that Sinn Fein would be able to ensure that the "consideration" continued at least until the substantive negotiations were concluded, resulting in no decommissioning until (at best) after the talks had finished.

Developments in the Talks so far

7. There has been an extensive process of oral presentations, written papers, periods of "questioning" other participants' views and several series of "bilateral" contacts - the initiative sometimes being seen to lie with the two Governments; sometimes with HMG alone; occasionally with the Chairmen; and latterly with the UUP, SDLP and Alliance Party (the "trilateral" parties), with four of the smaller parties (NIWC, Labour, UDP and PUP) providing encouragement.

8. Privately the British Government made several efforts to broker an agreed basis for resolving the issue. The two main obstacles appeared to be:

- Irish Government/SDLP determination to minimise the pressure on the Republican Movement to do anything about decommissioning, arising from their focus on efforts to bring Sinn Fein into the process;
- UUP nervousness about standing out from the Unionist herd on such a highly charged and emotive issue, especially in the pre-election period.

Both sets of obstacles may now be easier to surmount: the UUP may receive an accession of confidence; and with the ratcheting up of the IRA campaign earlier this year and (in

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Great Britain at least) through the election campaign the Irish Government and SDLP seem less inclined to give the Republican Movement the benefit of the doubt.

9. The most significant developments arising from these exchanges have been:

(a) decommissioning legislation in both jurisdictions

The Unionists had a half decent point that until the necessary legislation (and Independent Commission - see below) was in place it was impossible for decommissioning to take place so they would be politically very exposed if they agreed to enter negotiations, potentially with Sinn Fein, before the legislation had even seen the light of day. Following a series of trilaterals between the two Governments and the UUP in September the UUP were shown drafts of the two Bills and seemed relatively encouraged. The two Governments' paper of 1 October committed them to enact the legislation as soon as possible and both Bills were finally passed in February 1997;

(b) the Independent Commission

The International Body recommended that an Independent Commission be established as part of the mechanics for facilitating decommissioning. There is a strand of thought within the UUP, led by the "security spokesman" Ken Maginnis MP, which sees considerable significance in the early appointment of an Independent Commission with a somewhat wider remit - to promote progress on, and in due course verify, decommissioning. Mr Maginnis seems to believe that the establishment of the Commission would itself create the necessary expectation and momentum towards actual decommissioning, and has occasionally had to be reined back by his colleagues who do not see it as the complete answer, although they would welcome the early establishment of the Commission as further evidence that the two Governments were indeed serious about achieving decommissioning during the negotiations. The Alliance Party (in a very well researched and well argued paper) also suggested a greater role for

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an Independent Commission, based on the members of the original International Body (now the Independent Chairmen). The idea that the early establishment of an Independent Commission could have a role to play in resolving the issue has therefore developed fairly wide support;

- (c) the provisional "trilateral" agreement on the "mechanisms for achieving further progress on decommissioning alongside progress in the three strands"

This emerged on 11 December from a series of trilaterals between the UUP, SDLP and Alliance Party and reflected a high degree of agreement that there should be an Independent Commission and a Liaison Committee of the plenary on decommissioning. It was implicit that these would be established alongside the launch of the three strands. [The paper was shown to the two Governments and the Chairmen, and the four smaller parties were briefed on it, but it has not been formally tabled and the DUP and UKUP make much of their exclusion.] The Irish Government have indicated privately that they would be prepared to go along with the early appointment of an Independent Commission on this basis. Formally the unresolved issue has to do with how "confidence building measures" should be dealt with in the talks context: the UUP are opposed to any question of trading guns for prisoners etc within the Liaison Committee and the SDLP are keen both to extract the positive potential benefits of confidence building measures (by all sides) and to keep contentious individual issues out of the substantive political negotiations. In practice we suspect a deal could have been cut (and the four small parties offered one way through) but the UUP were not ready to be seen to compromise on this issue at that particular stage - when the betting was on an early election.

10. All these developments took place against the background of mounting public and political interest in the terms on which Sinn Fein might be admitted to the talks process: the British Government statement of 28 November 1996 represented an attempt to balance principle and the conflicting political pressures from the Unionists on the one hand and the Irish Government/SDLP on the other. If nothing else, it demonstrated to the Unionists that

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they were not going to be able to achieve the simple answer in which Sinn Fein were effectively excluded from the talks.

Finding a way through the impasse

11. The attached paper (given to Irish officials on 7 April with the agreement of the then Secretary of State) builds on the experience of successive rounds of discussions with the Irish and with UUP, and indeed with the other parties. It sets out a basis which is consistent with the Mitchell "compromise approach" while addressing genuinely-held Unionist and nationalist concerns. A paper on very similar lines was shown to Mr Trimble at the end of January: although he did not feel able to pursue a resolution of the issue at that time he indicated that the ideas "if developed further might help" to provide a way through.

12. The main features are:

- commitment to the Mitchell compromise approach (properly understood) including a specific commitment from the Irish Government - see paragraph 8c - to work to achieve "due progress on decommissioning alongside progress in the substantive political negotiations";
- formal commitments by participants to implement all aspects of the International Body's report (ie including confidence building measures, but also the compromise approach to decommissioning) and to work constructively with the Independent Commission;
- incorporation of the work of the trilateral group, including establishment of an Independent Commission and a Liaison Committee of plenary alongside the launch of the three strands, for which a firm date would be set. (The paper also proposes a compromise on the handling of confidence building measures which meets Unionist concerns but which we understand the SDLP could live with);

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- a whistle blowing function for the Independent Commission;
- a proposal that the Independent Chairmen should be invited to offer a judgement on the timing of confidence building measures in general and the start of decommissioning in particular. [We floated a narrower version of this with the Irish and, separately, the UUP last November and it did not find favour with either, but it still seems capable of providing the necessary independent objective judgement on this crucial question];
- a system of review plenaries, probably at eight weekly intervals, at which participants would consider whether the basis still existed, or could be recreated, for progress. This is, crudely, to give Unionists the opportunity to bring the negotiations back to the decommissioning question if the process has not started or is not proceeding as expected, without incurring the odium of positively acting to block talks. But it could equally be applied the other way round if Unionists were stalling progress in the substantive negotiations;
- a loop mechanism, by which, were Sinn Fein to join the talks, the plenary would resume straight away - avoiding the Unionist fear of Sinn Fein getting into substantive negotiations in the first place without satisfactory assurances.

Next steps

13. The credibility of the talks process is low: the talks only retained any measure of confidence at all because the hope was cherished that positions might become more flexible after the elections. Without early movement into substantive political negotiations they will be very difficult to sustain. That will require a resolution of the decommissioning impasse.

14. The analysis implicit in the attached paper is that this will require both the Irish Government and the UUP to shift their previous positions. But we judge that if the Irish Government were prepared to be rather more explicit about its commitment to the Mitchell compromise approach as properly understood it should be possible to bring the UUP, with hesitation, to accept a package on these lines.

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15. Certainly, if the Government was in a position to table and promote a basis for resolving the decommissioning impasse on these lines shortly after the talks resume on 3 June it would demonstrate the Government's commitment to making progress in the talks and, if successful, would give them the necessary new impetus. Progress of this sort might also give the Republican Movement an incentive to find a way for Sinn Fein to join the process by the time the substantive negotiations begin.

16. Both the Irish Government and the UUP will want to know that the other is signed up before they concede anything, so we may have to pursue progress on an iterative basis. The first priority is probably to press the Irish for a reaction: it is a month since they saw our paper. If they seek to argue for a less advanced position, we should set out the reasons why this would probably be insufficient. Thereafter the key negotiation will be with the UUP. Any early indications of their position will be important, and the evidence of Monday's meeting between Mr Trimble and the Secretary of State is not discouraging. However, they are likely to avoid public positions on decommissioning (and probably private ones too) until after the District Council elections at least, especially given the prospect of developments in respect of Sinn Fein.

17. Tactically there could be a range of options for taking the proposals forward. They might be more saleable to the Unionists if presented as a British Government proposition, but the Irish are always keen to be seen to share the driving seat and may insist on co-presentation. They could be floated, perhaps in a series of bilaterals, as a basis for discussion; or tabled as a set of firm propositions to be voted on. Either way it would be desirable to be able to demonstrate widespread support among all the non-Unionist participants (including the Loyalists) in order to maximise the political pressure on the UUP to make the necessary break with the DUP and UKUP.

Conclusion

18. The Secretary of State may want an early discussion with officials to go over the subject, the detailed propositions set out in the attached paper and the tactical options.

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19. For the moment the message is that this could offer a way through the decommissioning impasse; and pressing the Irish on this issue should refocus their attention on the talks process, countering any tendency to prefer a joint Government initiative outside the talks process.

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