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RESPONSE TO MR TRIMBLE, Part 2

[Draft of 8 July]

RESOLVING DECOMMISSIONING: POSSIBLE CLARIFICATIONS OF THE TWO GOVERNMENTS' JOINT PAPER OF 25 JUNE

Introduction

1. The two Governments stand by the position set out in the first part of the paper they tabled on 25 June. They are heartened by the widespread support which the joint paper has received and continue to believe that the "possible conclusions" suggested in the second part of the paper offer a basis for resolving the address to decommissioning to the satisfaction of the talks participants.
2. They accept, however, that this is a complex, sensitive and important issue and that participants need to have a clear understanding of all the proposals on the table before they could be invited to move to a determination on this subject. Accordingly they have prepared the following supplementary notes in response to the various requests for clarification which have been received.

General

3. While the two Governments will of course maintain their efforts to seize all illegal weapons, voluntary decommissioning requires the active and willing cooperation of the paramilitary organisation concerned. Realistically, that is only likely to be forthcoming in the context of meaningful political negotiations. The concern which naturally flows from that is that the latent threat of the weaponry remaining in the possession of the organisation concerned will be used to influence the course of the negotiations. That is a central and valid concern.
4. That concern could be answered on the following lines:

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- (i) the structure of the negotiations makes it impossible for any agreement to be reached without the positive support of parties representing majorities in each main part of the community, of a majority of the parties represented in the negotiations and of both Governments. Given their firm public positions and the political imperatives operating on them, it is difficult to see either Government, or the Unionist or Loyalist parties, or the SDLP, or the Alliance Party, Labour or the Northern Ireland Women's Coalition agreeing to anything which they regarded as unfair or unwise, under the threat of renewed violence;
- (ii) indeed, all the current participants in the negotiations have affirmed their total and absolute commitment to the Mitchell principles, one of which commits them to renounce, and oppose any effort by others, to use or threaten force to influence the course or outcome of the negotiations;
- (iii) prior decommissioning is simply not a political reality, just as it would be unacceptable to many participants that the issue of decommissioning should be left until the end of the negotiations. The compromise approach envisaged in the report of the International Body offers a realistic way forward, with the prospect of securing both a comprehensive and widely acceptable political settlement and total and verifiable decommissioning. [This analysis was accepted by the previous British Government in January 1996, with full support from the Labour Party.]

Timetable for decommissioning [Trimble point 8]

- 5. In the circumstances of fully inclusive negotiations the two Governments' proposals envisage due progress on decommissioning alongside progress in the substantive political negotiations. The two Governments have made clear that that is what they will work to achieve, building on the commitments which they suggest all participants should make to work constructively and in

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good faith with the two Governments and with the Independent Commission to implement all aspects of the report of the International Body.

6. Various concerns have been expressed about that, mainly in the form of requests for certainty about the timing of particular developments. It is of course difficult to offer such certainty about a subject which in essence the two Governments believe needs to be tackled in a dynamic way. Progress on decommissioning will, in their view, contribute to the creation of a mounting pattern of trust and confidence which could facilitate progress in the political negotiations. But the reverse is also true. Real progress made in good faith negotiations will also maximise the political pressure on those with illegal weapons to make further progress on decommissioning them. None of this means exchanging guns for political concessions. It is simply a recognition that any successful political negotiation involving parties associated with paramilitary organisations will require real movement in both areas, creating a benign dynamic capable of leading to a generally acceptable outcome.
7. The two Governments' proposals envisage a series of mechanisms being put in place, both to enable the earliest possible decommissioning of illegal weapons and to ensure that due progress is made on all aspects of the negotiations. As discussed below, they see the Independent Commission being established under item 4 of the agenda for the opening plenary, that is before the end of July, and in a position to commence work in earnest alongside the start of substantive negotiations in the three strands. The proposed Liaison sub-Committee of the Plenary would be operational on the same timescale. Thereafter they envisage
 - regular review plenaries to enable the participants to take stock of progress across the negotiations as a whole and to consider whether the necessary confidence and momentum towards agreement is being sustained;

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- a role for the Independent Commission in "blowing the whistle" on any participant which does not live up to its commitment to work constructively and in good faith with the Independent Commission in carrying out its functions;
- a role for the Independent Chairmen in offering their judgement from time to time on the need for progress on particular issues if confidence and momentum in the negotiations is to be sustained.

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Timing of Independent Commission [Trimble points 5, 6 and 7]

8. It has obviously been impracticable to take steps to establish the Independent Commission in the absence of agreement on what its role should be. It would in any event have been premature to establish the Commission before the talks had reached item 4 of the agreed agenda for the remainder of the opening plenary session ("Launch of three-stranded negotiations and establishment of agreed mechanisms on decommissioning").

9. However, the necessary enabling legislation is in place in both jurisdictions and the two Governments have, on a contingency basis, made preparations such that if the "possible conclusions" they have suggested are agreed, they will be able to:
 - make the necessary Commencement Order[s] under the Northern Ireland (Entry to Negotiations etc) Act 1996 [and the Irish Act] before the end of July. The necessary Order can be made by negative resolution;

 - [sign the necessary International Agreement between the two Governments, before the end of July]

 - formally establish the Independent Commission under item 4 of the agenda for the remainder of the opening plenary session, before the end of July;

 - nominate a Chairman for the Independent Commission, before the end of July, following discussion with the other participants;

 - engage in consultation with the other participants about other possible members of the Commission;

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- engage in preparatory discussions with the Commission during any summer break in the negotiations;
 - [agree on a basic scheme for decommissioning and reflect that in regulations to be made in both jurisdictions before 15 September so that the Independent Commission would be in a position to verify actual decommissioning from that date];
 - invite the Commission in consultation with those identified in the first tier of its proposed terms of reference to make rapid progress with drafting [further] schemes for decommissioning [after 15 September].
10. The regulations necessary to implement any scheme for decommissioning can be made by negative resolution so there need be no delay at that point. Both Governments have given an undertaking that no delay or obstacle in achieving decommissioning will be caused by any lack of Government preparation or provision.

The role of the Liaison sub-Committee on decommissioning [Trimble point 4]

11. The terms of reference proposed by the two Governments for this sub-Committee build on earlier exchanges among the talks participants and reflect the view that the sub-Committee should be a conduit for a two-way flow of information between the talks participants as a whole and the Independent Commission. The two Governments envisage that the sub-Committee would have an important deliberative role in considering a range of issues relevant to the practicalities of decommissioning, including proposals for schemes for decommissioning which will be drawn up by the Independent Commission, and draft regulations to be made by each Government under the relevant legislation; but that it would have no power in itself either to promote or hold up progress on decommissioning. Any agreed opinion of the Liaison sub-Committee on proposed schemes for decommissioning would of course be

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passed to the Independent Commission, but the two Governments do not envisage that the absence of any such opinion would impede progress.

[12. ? response to NIWC request for clarification on the Chairmanship of the two sub-Committees]

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Role of review plenary [Trimble point 9]

13. The two Governments' proposals do not envisage any requirement for "sufficient consensus" agreement before negotiations could resume after any review plenary. However, if any participant has serious concerns about what they may see as the uneven pace of developments in the negotiations, the review plenaries will give them full scope to express those concerns.
14. It is a political reality that the negotiations can only be sustained if there is widespread confidence among the participants that they are moving in a constructive direction, but the two Governments believe it would be unhelpful to introduce specific tests at any one point.
15. The two Governments certainly envisage that the review plenaries will provide opportunities for the participants to consider whether the necessary confidence and momentum towards agreement is being sustained. If there were genuine and well founded worries on that score their proposals envisage that the Independent Chairmen, as a group, might have a role to play in indicating the need for progress on particular issues in order to sustain the necessary confidence and momentum.
16. If Sinn Féin is involved in the negotiations the two Governments will be working to achieve due progress on decommissioning alongside progress in the substantive political negotiations. Their proposals envisage that any party invited to join the negotiations would need to affirm its acceptance of a range of commitments relating to decommissioning, as well as its total and absolute commitment to the Mitchell principles. Those principles do of course include a commitment to the total and verifiable decommissioning of all illegal weapons. The two Governments expect all participants to work constructively and in good faith to achieve the necessary progress on decommissioning and in the negotiations, and to contribute to the progressive pattern of mounting trust and confidence which they want to see established.

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Implications of any failure to achieve due progress on decommissioning

17. If any participant fails to live up to any of the commitments it has accepted on decommissioning there would be a number of formal opportunities for the other participants to focus on this:

- (i) the Independent Commission would draw attention to any case in which a participant fails to engage with the Commission in carrying out its role;
- (ii) a participant's failure to contribute to due progress on decommissioning might lead another participant to make a formal representation that the party concerned should be excluded from the negotiations on the basis, that it had demonstrably dishonoured its commitment to the second of the Mitchell principles. That representation would of course be dealt with under the established procedure;
- (iii) the review plenaries will give those who may be concerned an opportunity to argue that the participant's perceived failure to live up to its commitments meant that the necessary confidence and momentum was not being sustained;
- (iv) the Independent Chairmen might be moved to indicate a need for more progress in a particular area of the negotiations in order to sustain the necessary confidence and momentum towards agreement.

18. Ultimately, however, it is a basic political reality that these negotiations will only lead to a successful conclusion if all concerned negotiate constructively and in good faith and address all the issues of concern to all participants. The two Governments have invited all the other participants to commit themselves to work constructively and in good faith with them and with the Independent Commission to implement all aspects of the report of the International Body and have said that in the context of fully inclusive negotiations they will work to achieve due progress on decommissioning alongside progress in the substantive

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political negotiations. They look to all the parties to join them in moving the negotiations forward on that basis

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