

C O N F I D E N T I A L

FROM: J M STEELE
DIRECTOR POLICING AND SECURITY
22 AUGUST 1997

cc: PS/Mr Ingram (B&L)
PS/Mr Murphy (B&L)
PS/PUS (B&L)
PS/Sir David Fell
Mr Thomas
Mr Bell
Mr Leach
Mr Ray
Mr Stephens
Mr Watkins
Mr Maccabe
Mr Perry
Mr Woods
Ms Bharucha
Mr Margetts
Mr Lamont, RID
Mrs Evans, HOLAB
HMA Dublin
Mr Sanderson, CO
Ms Collins, HO
all without Annex D

Mr Fetch

Any comments?

CRB 26/8

PS/Secretary of State

REPORT ON THE CEASEFIRE

1. This is the report of the Ceasefire Monitoring Group, which was established in July under my chairmanship to provide advice on the IRA ceasefire and on the basis for the Secretary of State's determination on Sinn Fein's eligibility to be invited to join the Talks process. Our remit also included confidence-building measures which might be associated with the progress of the ceasefire.

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Background

2. Entry to the Talks is governed by the Northern Ireland (Entry to Negotiations etc) Act 1996, and in particular by the requirements set out in paragraphs 8 and 9 of Command Paper 3232. These requirements are that parties:

- achieve representation through an elective process;
- establish a commitment to exclusively peaceful methods;
- show that they abide by the democratic process;
- and, for Sinn Fein,
- restore unequivocally the ceasefire of August 1994.

3. Sinn Fein received an electoral mandate in the elections of 30 May last year. On 20 July this year the IRA announced the restoration of its ceasefire. The determination to be made is whether the Secretary of State considers that Sinn Fein meets the other three criteria i.e., whether the ceasefire can be regarded as unequivocal, and whether they have established a commitment to exclusively peaceful methods and shown they abide by the democratic process. Under section 2(2) of the Northern Ireland (Entry to Negotiations etc) Act 1996, the Secretary of State is under a duty to invite nominations from the nominating representative as soon as practicable after the elections. However, under 2(3) of the 1996 Act, the Secretary of State is under a duty **not** to invite nominations from Sinn Fein if, and for so long as, she considers the requirements in paragraphs 8 and 9 of the Command Paper have not been met in relation to Sinn Fein. Whether or not they are met is a question of fact for the Secretary of State to determine in the light of all the information known to her. She is concerned only with whether they are now met. In reaching her conclusion, she must take into account all relevant considerations known to her and

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ignore all irrelevant considerations. The Secretary of State must be careful not to impose requirements additional to or different from paragraphs 8 and 9 of Command Paper 3232, since to do so would expose her to judicial review. Whether or not it would be politically desirable for Sinn Fein to be represented at the Talks is not relevant to the determination and should be ignored.

4. If the decision at the end of August is negative, given the expectations raised, the Secretary of State would still need to make an announcement indicating the reason and stating that she would keep the situation under review.

5. Equally, if an invitation to talks has been issued and later events demonstrate that the ceasefire is not after all unequivocal, or other requirements in the Command Paper are no longer met, the invitation must, under section 2(3) of the 1996 Act, be withdrawn by the Secretary of State at any point up to 9 September. If such events should occur after Sinn Fein enters talks on 9 September and therefore after their commitment to the Mitchell principles, the view taken to date is that Rule 29 of the Rules of Procedure would then govern the situation. This provides that, if a formal representation is made to the Chairman that a participant is no longer entitled to participate on the grounds that they have "demonstrably dishonoured" the Mitchell principles, the matter becomes one for appropriate action by both Governments.

6. The Solicitor General agrees with this statement of the legal position in paragraphs 3 to 5.

7. The then Prime Minister's statement of 28 November 1996 further clarified the British Government's position on Sinn Fein entry. It set out that, in view of the breaking of the 1994

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ceasefire and the events since then, assurances were needed that any new ceasefire would be intended to be genuinely unequivocal "i.e., lasting and not simply a tactical device". This would be judged by whether "words, actions and all the circumstances were consistent with a lasting ceasefire". Illustrations given in the statement of such words and actions included the wording of any ceasefire declaration, and continuation of paramilitary activity such as surveillance, targeting and weapons preparation. The statement went on to say that developments "inconsistent with an unequivocal restoration of the ceasefire or Sinn Fein's commitment to the Mitchell principles of democracy and non-violence" would affect consideration adversely.

8. The Aide Memoire, published on 25 June, set a time limit to the judgement of any ceasefire and that this would be "some six weeks" from its inception. The time would be used to assess both words and deeds and the Secretary of State would make her determination "having made a political judgement of all the circumstances in the round". This phrase has given cause for concern among legal advisers who have reminded us of the possibility of judicial review of the conclusion arrived at and the need as a consequence for care in the way the determinations is made to ensure that it is taken on a proper basis. In particular, the determination must not be taken on political grounds.

9. It may be worth recalling that it is not the first time that a determination of this sort has been made. Prior to the beginning of Talks on 10 June last year, a similar judgement had to be made on the loyalist parties which had achieved representation in the 30 May elections and whose CLMC ceasefire was in place. It was judged then that the loyalist parties had passed the paragraph 8 test.

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Assessment of Requirements

10. The Aide Memoire indicated that in reaching her judgement the Secretary of State would take into account whether the evidence of words and deeds pointed towards an unequivocal ceasefire. The following quotations, and their context, by Sinn Fein figures should therefore help the Secretary of State decide whether or not Sinn Fein meets the requirements in paragraphs 8 and 9 of the Groundrules.

(i) Commitment to Exclusively Peaceful Methods

11. The vast majority of quotes are positive suggesting a commitment on the part of Sinn Fein to exclusively peaceful methods. In particular, the **Position Paper** which was handed to the Secretary of State at her meeting with Sinn Fein on 6 August contained a number of helpful quotes:

"The great challenge which remains is to remove the causes of conflict by making real progress towards a lasting peace settlement. ... Irish republicans want peace. ... We want an end to conflict, and end to division."

"Everyone shares the responsibility to bring about a real and lasting peace in Ireland. Republicans have demonstrated the will to face up to our responsibility in this."

The apology made by Magherafelt Sinn Fein councillor, **John Kelly**, (reported in the Irish Times on 25 July) to Protestants in Maghera and Swatragh who were affected by sectarian vandalism on the night of 6 July is also a relevant example of Sinn Fein distancing itself from violence.

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12. The only two potentially adverse comments relate to decommissioning and the IRA's unwillingness to decommission in advance of a settlement, if at all. **Martin McGuinness** was quoted (although he later claimed that this was a misquote) as having said in an interview on Sky TV on 20 July that:

"the IRA have said that they will not decommission a single bullet and I have not heard any statement from them saying they have changed their position on that."

And again, on the Newsnight debate on 12 August, he said:

"the IRA's view is that a hand-over of weapons would be a surrender."

In considering these, the Secretary of State will want to bear in mind that the loyalist paramilitaries have made similar noises in the past which have not been seen as obstacles to the loyalist parties' involvement in talks. Furthermore, decommissioning is not a precondition for entry into negotiations and there are other comments, notably those made by **Gerry Adams** when asked about decommissioning in interviews for two US publications, which indicate that Sinn Fein are prepared to address it seriously in the negotiations. For example:

"Disarmament has to be part of the negotiations"

George, August 1997

"We will deal with all issues comprehensively and honestly."

New York Times, 10/8/97

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Ground Rules paragraph 8, unlike paragraph 9, refers specifically to the political party (i.e.: Sinn Fein, not the IRA). Nevertheless, the IRA cease-fire statement refers to the IRA's desire for "a permanent peace" and may therefore also be relevant.

(ii) Abiding by the Democratic Process

13. Again, the vast majority of the comments are positive, indicating a willingness to abide by the democratic process. While it could be argued that Sinn Fein have evaded the question of consent - most notably in the Newsnight debate - it can easily be argued that what is in dispute, in relation to consent, is the unit of self-determination not the democratic process itself and there is evidence to support their commitment to democracy. For example:

"We will abide by what the people of Ireland want. There's no way we would want to foist or to impose in any way any particular view which we may have of a future society in Ireland. Let the people decide, but let it be the people of this island and not politicians from a neighbouring island who decide the future of Ireland."

Gerry Adams on National Public Radio, USA, 28/7/97

"Our long-standing position has been one of willingness to enter into dialogue with a view to removing the causes of conflict. Democratic, political and practical imperatives clearly require the involvement of all political views if a democratic resolution is to be sought and achieved."

Sinn Fein Position Paper (Item 2)

"We want to see the consent or the assent of all sections of our people."

Gerry Adams, interviewed following meeting with SoS, 6/8/97

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14. It is also relevant to note that Sinn Fein have also made a number of comments suggesting a willingness to consider the concerns and views of unionists which can be interpreted as further evidence that they abide by the democratic process. For example;

"We have to reach across this chasm and seek with honesty and in good faith to understand where we each stand, what we feel, believe and desire. ... We are not saying to unionists to forget your past, forget the pain in your community, forget your part in our collective history. You are an intrinsic part of Ireland and its history for close on five centuries. This is your home. We have embittered each other by our actions and inactions. It is time to end the hostility."

Jim Gibney quoted in the *Irish News*, 4/8/97

"Sinn Féin is not threatening the unionists' heritage or identity. Unionists are an intrinsic part of Ireland. This is your home. Republicans don't want you to leave it nor do we wish to dominate you. You have a right and a responsibility with the rest of the Irish people to shape our shared future. We acknowledge our responsibility, as part of a reciprocal process, to try to convince unionists of our good intentions with regard to their future on this island. ... We recognise that the concerns of the unionist population about their position in an Irish national democracy must be addressed and resolved in a concrete way. ... This process of national reconciliation must secure the political, religious and democratic rights of the northern unionist population. That is not only the democratic norm but a practical necessity if we are to advance the cause of peace in Ireland"

Sinn Féin Position Paper (Introduction and Item 10)

"We understand that [unionists] are fearful of what the future would hold for them in a new political entity. But I can assure them that we do not want to dominate or humiliate unionists ... We want to build an Ireland of equals. ... I want them to negotiate that change, so that together we can map out a future for our children where they can live and play side by side in peace and harmony as equals in their own land."

Martin McGuinness quoted in the *Irish News*, 9/8/97

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(iii) Other Relevant Points

15. The Secretary of State will also wish to bear in mind that, following her meeting with Sinn Féin on 6 August, she said, when asked whether the meeting had contributed in any way to her sense of confidence that republicans were real in seeking peace:

"Yes I think in a sense it did. ... The commitment to try and keep peace was very clearly there."

16. A further selection of relevant quotations is attached at Annex C.

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OF THE PUBLIC RECORDS ACT

18. It is also worth noting that the same initial period of the 1994 ceasefire saw much higher levels of IRA activity - including, for example, 8 paramilitary assaults as against the two in recent weeks. Although it is not strictly relevant, it should also be remarked that activity by the loyalist paramilitaries covered by the

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PREM 49 115 Steele to SoS dated 22/08/97

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CLMC ceasefire has been at a higher level than IRA activity since 20 July.

Overall Assessment

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19. The Ceasefire Monitoring Group takes the view that since the ceasefire Sinn Fein have, at face value, established a commitment to exclusively peaceful methods. Their stated positions point almost without exception to the desire for a lasting and peaceful settlement.

20. The Group also believes that Sinn Fein have demonstrated that they abide by the democratic process. Their comments point in this direction, and they participate regularly in elections north and south (although they also organise fraudulent voting on a large scale). They evade the issue of consent, but that may well be a reasonable attempt to protect their negotiating position (given that this will be a key issue in the Talks) rather than a fixed unwillingness to disregard a democratic verdict which went against their views.

21. As to whether the ceasefire of August 1994 has been unequivocally restored, the statement of 19 July 1997 said that would be the case

there has indeed been a complete cessation of IRA operations. The level of activity is in fact appreciably lower than during the early weeks of the 1994 ceasefire. The Group therefore takes the view that this criterion also has been met.

22. The legislation does not require that the Secretary of State must be satisfied that the IRA ceasefire is permanent; indeed, the

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Secretary of State has already said publicly that this cannot be determined except after a very long period of time, if at all. While the IRA retains its manpower, organisation and weaponry there is a possibility of a return to violence which cannot be ignored. Nevertheless, the Group takes the view that this is not incompatible with the ceasefire being unequivocal, and Sinn Fein having established a commitment to exclusively peaceful methods and shown that they abide by the democratic process.

23. If Sinn Fein enter the negotiations, they will need to make clear their total and absolute commitment to the Mitchell principles of democracy and non-violence - if any other participants feel they have dishonoured those, then the two Governments can take appropriate action. Thus, Sinn Fein will be accountable for the quality of their commitment to peace not just for six weeks, but throughout the negotiating process.

Next Steps

24. The advice of the Group is therefore that **the criteria have been met**. If the Secretary of State agrees, she will wish to send a brief note to the Prime Minister advising him of her determination (IPL will provide this on Tuesday); she should then **write** to Sinn Fein inviting them to nominate a team to participate in the negotiations - a draft letter for the Secretary of State's consideration is attached at Annex B. Simultaneously or slightly in advance of that, she will doubtless wish to contact personally or have briefed by Ministers and officials various people, including Mr Trimble (these will of course not be consultations). IPL/PAB will provide early next week a schedule of people to be notified. Finally, the Secretary of State will wish to announce her determination in a statement - alternative short and long versions

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are attached for consideration at Annex A. The Group favours the longer version. This and the draft letter to Sinn Fein has been cleared by the Law Officers.

25. The **handling and timing** of events next week - announcing a decision and related issues, and of the complex procedure for signing the Agreement establishing the Decommissioning Commission, will need careful management. An integrated handling plan (on the assumption that the Secretary of State decides to invite Sinn Fein and that the signing of the Agreement takes place on Tuesday is attached as Annex E.

26. Finally, the Group has considered the issue of **confidence-building measures**. Whichever determination the Secretary of State reaches, it will be important in the longer-term to maintain a flow of proactive measures demonstrating even-handed government which is sensitive to real concerns on both sides of the community. This longer-term programme will be the subject of separate advice. But in the short-term, it is important that the determination on Sinn Fein should be seen to be taken on the basis of the facts as the Secretary of State sees them, not as part of a political calculation which balances a prize for nationalists against one for unionists. We do not therefore believe that a positive announcement next week (if that is the determination) should be accompanied by any announcement of other measures which might be perceived as "unionist-friendly" or "loyalist-friendly".

27. At the same time, the Secretary of State may well wish to reassure Mr Trimble **in private** that she continues to be sensitive to Unionist concerns. One way of demonstrating this would be to discuss with him the Government's position on the **checklist** of "measures to build confidence" which he left with her on 31 July.

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Details of these measures and what could be said on them will be provided in a separate submission early next week.

28. The Secretary of State may wish to discuss with the Chief Constable at SPM on Tuesday what **further de-escalatory measures** might be envisaged if she reaches a decision to invite Sinn Fein. A note on the measures taken to date is attached at Annex F.

29. Finally may I say that I am grateful to all the members of the Ceasefire Monitoring Group for their assistance in this, and particularly to Mr Leach and the others who contributed to this report. I strongly recommend its conclusions to the Secretary of State.

(signed JMS)

J M STEELE

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