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11 DECEMBER 1996

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TALKS: DEALING WITH CONFIDENCE BUILDING MEASURES

I attach a self explanatory paper on how confidence building measures should be dealt with in the talks. It fleshes out the arguments and conclusions we reached at this morning's pre-brief. I will look for an opportunity to point the UUP in the right direction.

(signed)

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CONFIDENCE BUILDING MEASURES: AN ANALYSIS

The place of confidence building measures in the Talks

1. Section 7 of the International Body's report identifies a number of "further confidence building measures":
 - the early termination of paramilitary activities, including surveillance and targeting; Government and SDLP attach importance to this point as providing a more fruitful context in
 - the provision of information on the status of missing persons;
3. The two Governments' proposal of 1 October included "role of"
 - the return of those who have been forced to leave their lands for communities under threat; Decommunisation, with the rubric: "consideration of those other aspects of the International
 - continued action by the Governments (plural) on prisoners; format". HMG's latest proposals, given to the Irish on 14
 - early implementation of the proposed review of emergency legislation, consistent with the evolving security situation; and make recommendations as appropriate, on other aspects of the
 - the commitment by the two Governments "to continue to take responsive [security] measures, advised by their respective security authorities, as the threat reduces";
4.
 - the normalisation of policing in Northern Ireland, as soon as the security situation permits; with that so long as the other confidence building measures are within the terms of
 - a review of legally held weapons in Northern Ireland;
5.
 - a review of the use of plastic baton rounds; and that this would involve the discussion of issues which were "internal to
 - continued progress towards more balanced representation in the police force; the presence of the Irish Government. This would be unacceptable on "jurisdictional" grounds even if, as
 - an elective process; the Irish were to "tactically avert

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- further progress in the social and economic development of Northern Ireland.
2. The two Governments' emphasis on the implementation of "all aspects" of the International Body's report was intended to embrace these issues as well as the main recommendations on the decommissioning of paramilitary weapons and adherence to the Mitchell principles. The Irish Government and SDLP attach importance to this point as providing a more fruitful context in which to achieve IRA decommissioning.
3. The two Governments' proposal of 1 October included "role of other confidence building measures" on the draft Working Agenda for the proposed Committee on Decommissioning, with the rubric: "consideration of those other aspects of the International Body's report which participants may wish to raise in this format". HMG's latest proposals, given to the Irish on 14 November and the UUP on 25 November, envisaged the Independent Commission having terms of reference which included: "consider, and make recommendations as appropriate, on other aspects of the International Body's report which may be relevant".

UUP reservations

4. The UUP want the Commission to focus on "Decommissioning and Verification" and the SDLP seem happy with that so long as the other confidence building measures are within the terms of reference of the proposed Liaison Committee.
5. The UUP are unhappy with this on the declared ground that this would involve the discussion of issues which were "internal to Northern Ireland" (eg policing issues, prisoners, social and economic issues) in the presence of the Irish Government. This would be unacceptable on "jurisdictional" grounds even if, as David Donoghue suggested, the Irish were to "tactfully avert

their eyes" at appropriate moments. The UUP may also be nervous of the general risk that Sinn Fein might seek to trade progress on decommissioning for progress on certain confidence building measures, or be given a half justifiable excuse for going slow on decommissioning pending, for example, movement on prisoners.

The "jurisdictional" issue

6. In principle, it may be difficult for HMG or the Irish Government formally to accept the UUP's reservations on the jurisdictional point as the Irish Government has extensive rights under the Anglo-Irish Agreement to raise such issues - with HMG at least. However, this argument is unlikely to go down well with the UUP.
7. The point is perhaps made easier to deal with by the fact that the UUP and SDLP seem to be agreed that the Liaison Committee would have no decision-taking powers. It will, apparently, only be able to take note of developments (mainly on decommissioning) and report to the plenary with additional comments.
8. An additional relevant factor is that many of the "confidence building measures" are clearly identified, including in the International Body's report, as being the responsibility of each Government and/or as "continuations" of current practice; or are clearly within the gift of the paramilitaries. Only one or two (primarily policing) are clearly issues for substantive negotiation, but they have an acknowledged home in strand one. Some issues, eg "prisoners" are not in any event solely a matter for HMG: the Irish Government will be engaged in respect of prisoners in the Republic and the possible transfer of prisoners to the Republic from Great Britain.
9. Against that background it should be possible to meet the UUP's "jurisdictional" concern by suggesting that the Committee should be entitled to "review" progress made (by others or elsewhere) on the various confidence building measures identified as being

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relevant to the issue of decommissioning. There could in any event be no substantive discussion of those issues in the Committee because the Committee would have no decision-taking powers. On that basis the UUP ought to be content for the Committee to consider the various confidence building measures even though the Irish Government would be a member.

10. A further argument is that the Committee is intended to be a sub-Committee of the plenary and the plenary - with the Irish Government present and without UUP objections - has already considered some issues arguably within the sole jurisdiction of HMG but with implications for mutual confidence, notably "Drumcree". If they can wear that the UUP ought to be able to wear the Irish Government's participation in a non-decision-taking Committee.

The substantive issue

11. If the UUP is in fact concerned about the possibility of Sinn Fein seeking to trade arms for progress on confidence building measures, they should again be reassured by the fact that the Committee will have no decision-taking powers and that responsibility for progress on each item is clearly located elsewhere. The SDLP have argued, quite convincingly, that it is better to have a relatively safe environment like this to which Sinn Fein could be pointed if they joined the talks and sought (as they inevitably would) to raise the various confidence building measures.
12. Beyond that, however, the position of the two Governments is already clear: as paragraphs 2 and 3 above bring out, we have already acknowledged the right of participants to consider the various confidence building measures mentioned in the International Body's report as part of the context in which decommissioning would be expected to occur. In practice, such measures may have an important role to play in creating the

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conditions necessary for decommissioning to take place, and they give the Government a number of cards to play which do not raise the far more difficult question of appearing to make "political" concessions in the substantive political talks.

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