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To: Mr. Paddy Teahon
From: Secretary Dermot Gallagher
Date: 19 February 1998
Pages: 1 + 10

Grateful for views on latest British suggestions. Most recent version of draft also attached.

British proposals

para 10 Want "President of Sinn Fein" added at beginning of second sentence (comment: no problem)

para 11 want to drop phrase "and the contrary was the case" (comment: wouldn't die in ditch over)

para 13 British accept our additions.

para 13 n British agree dropping "disavowed".

Para 15 Want to strengthen ref to Garda Commissioner's assessment

(Comment: It could be argued that this point is covered by the first sentence of para 17. If absolutely necessary, we could perhaps insert the following, drawing on the Minister's intervention (to be added at end of present text):

"following the Gardai's discussions with the RUC, that the IRA has a case to answer".

Need to check with Tim Dalton]

Para 19 1. British want to drop "for the time being"

2. They are suggesting following formulation for the verdict issue.

Same intro as at present, and add following:

"the Governments are obliged to conclude that the Mitchell principles have been demonstrably dishonoured and, accordingly, Sinn Fein are not entitled to participate in the Talks [for the time being]".

[Comment: would not accept new British language; could live with deleting "for the time being" since it is clearly implied in para 22.]

Para 20 British want to delete "all parties" and replace with "as many parties as possible, consistent with the fundamental principles on which these negotiations are based".
[Comment: would not die in ditch over.]

Para 22 British want the same phrase as for 20 above for the same reason
[Comment: as for 20]

Remainder for political decision.

Dermot Gallagher
19.2.98

CONCLUSIONS OF THE GOVERNMENTS ON THE POSITION OF SINN FÉIN IN THE TALKS

1. This document sets out the conclusions of the Governments on the position of Sinn Féin in the Talks.

Background: The Rules and Principles

Rules of procedure

2. Rule 29 of the Rules of Procedure for the Negotiations agreed on 29 July 1996 says:

If, during the negotiations, a formal representation is made to the Independent Chairman 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:

Accordingly, we recommend that the parties to such negotiations affirm their total and absolute commitment:

- To democratic and exclusively peaceful means of resolving political issues;
- To the total disarmament of all paramilitary organisations,

- To agree that such disarmament must be verifiable to the satisfaction of an independent commission;
- To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations;
- 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,
- To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.

The murders of Mr Campbell and Mr Dougan

4. Following the murders last week of Mr Brendan Campbell and Mr Robert Dougan, the Secretary of State for Northern Ireland announced that she had been fully briefed by the Chief Constable of the RUC, and his assessment was that the IRA were involved in both these murders. She considered that the issue would need to be examined with the Irish Government and the other Talks participants in accordance with the proper procedures.

The British Government's representation

5. Shortly after the start of proceedings in Strand Two of the talks on 16 February, the Chairman (Senator Mitchell) indicated that the Governments had advised him that an issue had been raised under rule 29. The Secretary of State spoke, at his invitation: her speaking note is attached at A. The note was circulated to other participants, and the Chairman later ruled (in response to objections from Sinn Féin) that it constituted a formal representation under rule 29. The Minister for Foreign Affairs spoke in the terms at Annex B.

The Alliance party representation

6. The Alliance Party made to the Chairmen on 17 February a representation under rule 29 based on the same facts as the British Government had raised. It was circulated and considered at the same time as the British Government representation.

Procedures followed

7. The Independent Chairmen, having consulted Sinn Féin and other participants over the timing and other details of proceedings, concluded that, to permit Sinn Féin further time to prepare its response, a plenary session of the talks should be postponed until 2.00pm on 17 February. Senator Mitchell's statement covering the point is at C.
8. When the plenary session met, a total of three adjournments (totalling more than four hours) were granted at the request of Sinn Féin. Sinn Féin announced its intention to take legal action over the British Government representation, and sought a further adjournment pending its outcome. Senator Mitchell concluded that such an adjournment would be unjustifiable.
9. At the start of substantive business, the two Governments were first invited to make statements; then the Alliance Party spoke to its representation. Sinn Féin then responded orally, and later circulated a written response (D). Other participants were then permitted to contribute, in accordance with Rule 29; finally Sinn Féin was permitted to reply. The Governments have since considered the question of appropriate action, in the light of all the material available to them, including previous determinations in regard to Rule 29, and having due regard to the Sinn Féin response and the views of participants.

Plenary Discussion

10. In their submission, Sinn Féin drew attention to the statement issued by the IRA on 12 February 1998, to the effect that "contrary to speculation surrounding recent killings in Belfast, the IRA cessation of military operations remains intact." Sinn Féin went on to state:

"The IRA have not, in my firmest belief, breached their cessation. Sinn Féin completely disavows all killings. We have worked for, called for and are opposed to all killings."

Sinn Féin recalled that it had worked to establish ceasefires on all sides and indicated that it would continue to work for, and use its influence for, the maintenance of ceasefires of all armed groups.

11. Sinn Féin was strongly of the view that it had not demonstrably dishonoured its commitment to the principles of democracy and non-violence set out in the Report of the International Body and that the contrary was the case.
12. Other points made by Sinn Féin in the plenary discussion and in its written response may be summarised as follows:
 - a. the representation of the British Government was defective as a foundation for the process, and inadequate as a statement of the case Sinn Féin had to respond to;
 - b. the British Government was in an unsatisfactory position, having initiated the process and then taking part in the final determination;
 - c. it had brought the question forward out of political expediency, under pressure from the UUP; it also reflected the influence of the RUC, which was not objective;
 - d. the rule 29 process had only once previously resulted in a party being excluded (the case of the UDP – and even then the case had been brought in slower time to the present one); many other killings, and instances of violence and threats, had taken place without the process being invoked;
 - e. Sinn Féin had no involvement in the killings, indeed that was not suggested. The IRA must answer for itself, though it was to be noted that those charged in connection with Mr Dougan's killing had not been charged with IRA membership. Sinn Féin was not in an analogous position to the UDP, which made clear it represented the UDA/UFF;
 - f. the present process was in large measure due to its efforts; its members had taken substantial risks for peace, and often calmed potential violence;
 - g. putting Sinn Féin out of the talks would deny representation to those who voted for it, and damage nationalist confidence in the process.

13. In discussion the following further points were made by one or more of the other parties:
- a. abhorrence of the two killings;
 - b. it was no contribution to the talks to put Sinn Féin out, any more than the UDP; its political analysis was valuable to the process;
 - c. Sinn Féin's delegates had shown a commitment to peaceful means, and a capacity for political leadership;
 - d. other parties had not shown such leadership and were hostile to Sinn Féin;
 - e. Sinn Féin should not be excluded from the Talks, on the basis that the party had not itself demonstrably dishonoured the Mitchell Principles, had expressed its disavowal of all killings and had in the past worked to bring about ceasefires all round;
 - f. there was particular value in a fully inclusive process; no party should be excluded;
 - g. there was room for concern as to how far natural justice was being observed; the absence of a denial should not itself found an inculpation; there were ambiguities in terminology: what were, for example, the 'Republican Movement' or 'demonstrably dishonouring'?
 - h. the presentation of evidence by the British Government had been insufficiently complete to permit a firm view of who had committed the killings; as a result, parties had been put in an impossible position in the matter;
 - i. it was not a question of any of the parties assessing the intelligence or the evidence; the rules dictated that it was only the two Governments who could make the decision to expel or not to expel;
 - j. in coming to a determination, the two Governments should be consistent in applying the same criteria and following the same procedures as in previous determinations (these were detailed), having regard also to the minutes of

the discussions in those cases, whether these determinations resulted in exclusion or not;

- k. in terms of the role of parties in the determination process, it was not a question of seeking to condemn or support the indicted party; what was needed was a careful process that met the requirements of fairness and consistency; in that regard, the help of Sinn Fein in terms of the use of particular language of disavowal or disassociation as had been used in past cases would be valuable in enabling the other parties and the Governments to come to a view;
- l. the Chief Constable's assessment merely confirmed what was widely understood in Northern Ireland;
- m. excluding Sinn Fein was consistent with the UDP case; that party could have been excluded even without the UFF statement of 23 January;
- n. Sinn Fein was inextricably linked to the IRA; it had not condemned the killings, or [disavowed] the individuals responsible;
- o. the killings cast doubt on Sinn Fein's commitment to exclusively peaceful means;
- p. the IRA had committed both murders, and in view of the relationship between the IRA and Sinn Féin, this constituted a clear breach of the Mitchell Principles by the latter, analogous to that which had led to the exclusion from the Talks of the UDP;
- q. Sinn Féin should explicitly condemn the murders and those who had committed them;
- r. if the IRA cessation were demonstrated over a period to remain genuine in word and deed, Sinn Fein should, if excluded, be readmitted.

Conclusions

- 14. The Governments have taken into account, in reaching their conclusions, all the information in their possession. On the British side, the Secretary of State was fully

briefed on the circumstances of the two murders by the Chief Constable, and the Prime Minister and she have had the opportunity to examine fully the information and evidence available to him.

15. The Irish Government have taken account of information and judgements given to them by the Prime Minister and the Secretary of State, as well as the assessment of the Commissioner of the Garda Síochána.
16. The Governments have also paid careful attention within the terms of the rules of procedure to the views expressed both by Sinn Féin and by other participants. They have taken fully into account the previous cases under rule 29. They draw attention however to the fact that the circumstances of each of those cases differed from the present one, whether in the gravity of the actions in question, the statements of the parties concerned and the relationships with the paramilitary organisations involved. They have sought to be as fair as possible within the rules and conventions adopted by participants, in the context that the process is a political not a legal one.
17. Taking into account the information in their possession, both Governments conclude that there was IRA involvement in the murders and that this constitutes a clear infringement of the Mitchell principles. They note that the IRA did not in explicit terms deny involvement in the killings. This is in contrast with an earlier case under rule 29, where they denied involvement in the Markethill bomb (Governments' conclusions of 24 September 1997).
18. The Governments have previously made clear (in their conclusions of 24 September 1997) that they would expect the Republican Movement as a whole – that is Sinn Féin and the IRA – to honour the commitment to the Mitchell principles observed by Sinn Féin. They said on that occasion that they 'found it hard to conceive of circumstances where, after a group with a clear link to any party in the negotiations had used force or threatened to use force to influence the course or the outcome of the all-party negotiations, the relevant party could be allowed to remain in the talks'. They characterised the IRA as a group 'with a clear link to Sinn Féin'. That reflects the position that has been taken throughout the negotiations (and which underlay the Governments' requirement that Sinn Féin could only be admitted to the negotiations in the event of an unequivocal restoration of the IRA cessation). Whatever the personal position of Sinn Féin delegates, the Governments believe it remains justifiable and indeed necessary to proceed on that basis.

19. Taking into account the principles and procedures of the Talks process, [including the provisions of rule 29], previous determinations in regard to that rule, the statements by all participants, including Sinn Féin, [the findings of the Governments referred to in paragraphs 17 and 18 preceding,] and all the considerations outlined above, the Governments are obliged to conclude that Sinn Féin should not be allowed to participate in [Plenary, Strand or Committee meetings of] the Talks for the time being.

[The Governments have no doubt that the murders last week are a demonstrable dishonouring of Sinn Féin's commitment to the Mitchell principles. Sinn Féin is accordingly, under the rules, no longer entitled to participate in the negotiations.]

20. The aim of both Governments is to maintain an inclusive process, on the basis that this is the best way to achieve a comprehensive and balanced settlement likely to secure the agreement of all sides. Both Governments remain determined that the deadline of May 1998 as the target date for the conclusion of the Talks shall be met and the end of the process is now approaching. It is particularly important, therefore, that all parties have the opportunity to make their contribution to the Talks during this critical period.
21. The Governments acknowledge the positive contribution that has been made to the peace process by the IRA cessation of August 1994 and its restoration of July 1997. They also acknowledge the very significant and genuine efforts which have been made, and are being made, by Sinn Féin in working for peace. The Governments believe that Sinn Féin can continue, together with the other parties, to have an important role to play in the bringing about of a comprehensive, inclusive settlement, and that the maintenance of the IRA cessation will also be critical in that regard.
22. The IRA statement, as noted in paragraph 10 above, asserts that the IRA cessation of military operations remains intact. Having regard to the fact that the term set for the completion of the process is approaching, [and to the importance of ensuring that all parties have the opportunity to make their contributions to the Talks during this critical period,] it is the [intention] [hope] of the Governments that Sinn Féin's return should [take place by 2 March 1998] [take place at the earliest possible date in March 1998] [be possible by mid-March 1998], [provided that the IRA adhere in word and deed to their declared cessation] [provided that a complete, unqualified and unequivocal IRA ceasefire were demonstrated, and established by word and deed to have been fully and continuously observed]. [Subject to events on the ground,] Both Governments will continue to maintain close contacts with Sinn Féin in the interim, [whether] [both] at

official [or] [and] political levels. The Governments reaffirm that they will uphold at all times the integrity of the process, which depends on the total and absolute commitment of all participants to democratic and exclusively peaceful means of resolving political issues required by the Mitchell Principles.

19 February 1998