CONFIDENTIAL

DESK IMMEDIATE

FROM: PS/Mr Murphy
30 January 1998

cc PS/Secretary of State (B&L) - O
PS/Mr Murphy (B&L) - O
PS/Mr Ingram (B&L) - O
PS/PUS (B&L) - O
Mr Steele - O
Mr Thomas - O
Mr Bell - O
Mr Leach - O
Mr Stephens - O
Mr Watkins - O
Mr Brooker - O
Mr Ferguson - O
Mr Hill - O
Mr Maccabe - O
Mr Perry - O
Mr Johnston - O
Mr Whysall - O
Mr Warner - O
Mr Dickinson, TAU - O
Mr Fergusson, RID, FCO - O

As noted Lfaire.

TALKS: POSITION OF THE UDP

Mr Murphy was grateful for your submission of last evening considering a number of matters relating to the position of the UDP prior to that parties meeting with officials this morning.

2. The Minister has said that he is content that officials be guided by the advice contained in your submission when they meet the UDP.

SIGNED

R P LEMON
PS/Mr Murphy

From: **A J Whysall**
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Date: 29 January, 1998

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Mrs Brown
We'll need to consider, with CPL + Mr Steele, the question of how other Ministers + depts. should handle any inquiries for info. within the UGP.
PS/MR MURPHY (B&L)
AJW 30.1

TALKS: POSITION OF THE UDP

1. This note considers several questions relating to the position of the UDP: the possibility of its readmission to talks, and steps on the way. It would be helpful to have a **reaction before officials meet the party in Stormont House tomorrow at 10am**. It would be helpful if you could **notify Mr Maccabe urgently of the Minister's views.**

2. It is preliminary advice. We shall have to work up firmer positions with the Irish, as co-owners of the process. We shall also need to take legal advice.

Key texts: the Ground Rules and the 'judgment'

3. The key text here appears to be the provision in paragraph 8 of the Ground Rules that 'Negotiations will involve the participation... of... all those political parties operating in Northern Ireland which achieve representation through an elective process and which... *establish a commitment to exclusively peaceful methods and which have shown that they abide by the democratic process'*. Paragraph 9 required 'an unequivocal restoration of the [IRA] ceasefire' as a

condition of the admission of Sinn Féin to negotiations. It obviously does not in terms apply to the UDP – the loyalist paramilitaries had a ceasefire in place at the time Ground Rules appeared – but as a matter of construction, paragraph 9 probably needs to be read as a statement of a particular application of paragraph 8, and clearly if we are to appear even-handed has a bearing on our attitude to the UDP.

4. The 'judgment' of this Monday, attached, is also obviously highly relevant to the Governments' position, especially paragraph 16:

> If over a period of weeks a complete, unequivocal and unqualified UFF ceasefire were demonstrated, and established through word and deed to have been fully and continuously observed, the Governments would consider the possibility of the UDP rejoining the negotiations. The Governments would welcome that prospect in such circumstances...

5. We are putting arrangements in place to monitor the resumed ceasefire.

6. The Mitchell principles do not, as the texts stand, have a direct bearing on questions of admission. The legislation which governed the initial entry of parties does not appear to bear on questions of readmission either (that is not however to say that the Governments' actions are altogether beyond the scope of legal challenge).

The Sinn Féin precedent: not an exact one

7. The obvious precedent is the admission of Sinn Féin. Many will be watching it closely. It should be our starting-point in considering the handling of the UDP, but there are differences, counting in the UDP's favour, and against:

   a) against them is chiefly the **highly questionable nature of the UFF's resumed ceasefire**, as described in its statement (annexed to the judgment). The key paragraph is the last: 'The Republican movement must now rein in its dogs of war or the policy of no first strike policy will not remain in force'. A no-first-strike policy even if unqualified is not, clearly, tantamount to the commitment to exclusively peaceful methods required by the Ground Rules. And this policy *is* qualified: there may be first strikes if the Republican dogs of war are not reined in. As the judgment says, 'the ambiguity here must be resolved'. (The IRA ceasefire was perfectly in line with the requirements of Ground Rules). The extent to which words and deeds demonstrate a 'complete, unequivocal and unqualified' ceasefire is bound to have implications for the Governments' attitude to the UDP's readmission, and all the preparatory steps;

   b) on the other hand, the **relationship of the UDA to the UDA/UFF is not quite the same as that of Sinn Féin to the IRA**: they may be slightly less 'inextricably' linked; and the leading figures in the UDA

are widely acknowledged to have worked hard against violence: the leadership of Sinn Féin were not universally viewed in that light.

8. The key questions that arise in the near future are following.

Use of Castle Buildings

9. Sinn Féin were allowed in the Castle Buildings almost immediately after the ceasefire. The UDP have, I understand, been advised it would be sensible to remain away from their offices this week. They might be informally advised to stay away next week too, until the Governments consider further, and told that a more reassuring statement on the ceasefire would help here. They will go on being entitled to their offices at the Forum (where there is no non-violence test). They might be allowed in to remove property of theirs from Castle Buildings if they wished; and we might agree if asked to transfer modest amounts of equipment – eg a computer – to their offices at the Forum (we did the same for the DUP, when they left the talks). We might discuss internally and with the Irish next week whether they are formally allowed in the building, and whether if not passes should be removed (Mr McCartney already has a PQ down about passes) and whether they should clear their offices.

Allowances

10. Sinn Féin got no allowances until they formally entered the talks, and that seems right here (though obviously we would cover their costs in London, and their return to Belfast). They will be entitled to forum allowances. There may be some hardship here, but it is hard in principle to justify a different approach.

Meetings with officials

11. Sinn Féin had several formal meetings with officials before they saw Ministers. The fact of each meetings was publicly much discussed. We might try to avoid such a high-profile approach. On the other hand, at least until the nature of the ceasefire is clarified, we probably ought not to give the impression of entirely open access to officials. The public line might be that 'contacts with officials will continue as necessary'.

Access to Ministers

12. Sinn Féin waited about a fortnight. For the message intended to be carried by the expulsion to strike home properly to the paramilitaries, a period without ministerial contact is probably essential. The Secretary of State held the position open at the press conference on Monday. For the time being we should probably take the line that it will be considered, but much will depend on how the ambiguities in the ceasefire statement are resolved, and on the development of the ceasefire.

Return to the talks

13. Sinn Féin were given their date of 'some six weeks' for the judgment on their entitlement to be in talks. We deliberately refrained from setting a date on Monday and it does not yet seem time to do so, unless perhaps the nature of the ceasefire is clarified satisfactorily.

14. The procedure to be followed will need to be explored with legal advisers, but will probably involve the Governments issuing some sort of invitation back in, or statement of resumed entitlement to participate. (When we *do* conclude the requirements of paragraph 8 of the Ground Rules are met, we may be *legally obliged* to allow them in). The texts are not quite in point for readmissions, but the UDP would probably reaffirm their commitment to the Mitchell principles as a first step.

Conclusion

15. We recommend the Minister to agree that officials should be guided by the foregoing when they meet the UDP tomorrow.

A J Whysall

CONCLUSIONS OF THE GOVERNMENTS ON THE POSITION OF THE ULSTER DEMOCRATIC PARTY IN THE TALKS

1. This document sets out the conclusions of the Governments on the position of the Ulster Democratic Party in the talks.

Background: The Rules and Principles, and Procedures followed

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 Chairmen 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.

4. In the light of the UFF statement of 23 January, at the meeting of Strand Two on 26 January the Chairman proposed a meeting of the plenary. The two Governments supported the proposal, the Secretary of State and Minister of State O'Donnell recording that they 'believe the UFF statement, given its relationship with the UDP, and the statement by the UDP in response, raises the issue under rule 29 whether the party has demonstrably dishonoured its commitment to the Mitchell principles'. The Secretary of State's statement was circulated to participants.

5. The position was discussed in the plenary starting at 12.40. The UDP were permitted to make an opening statement; other participants were then permitted to contribute, in accordance with Rule 29; finally the UDP was permitted to reply. The Governments have since considered the question of appropriate action, in the light of all the material available to them and having due regard to the views of participants.

6. Rule 29 requires it to be shown that the Mitchell principles have been "demonstrably dishonoured" by the participant or participants complained against. The two Governments noted in their conclusions on representations considered in September 1996 and September 1997 that the terms of Rule 29, and the gravity of the potential sanction, require a clear and unmistakable demonstration by those who assert it that there has been a dishonouring of the principles. As has also been made clear, however, if it is found that the commitment to the principles of a participant has been demonstrably dishonoured, the participant cannot be allowed to remain in the talks.

Facts raising an issue under rule 29

7. A number of sectarian murders have taken place in Northern Ireland in recent weeks. The Chief Constable on 22 January said that he had no doubt the UFF had been involved in some of the murders. The following day, a statement was issued in the name of the Ulster Freedom Fighters in the terms attached (Annex A). The Ulster Democratic Party the same day issued the statement at Annex B.

The plenary discussion

8. In the plenary, the UDP said it participated in the talks on the basis of its elective mandate. It had sought to develop a voluntary relationship with the paramilitaries, so as to persuade those associated with physical force to desist. But it had no direction over those people. During the recent killings, it had acted, and the killings had ultimately stopped: but it could not say how influential its arguments were in reaching that conclusion. The party's commitment to the Mitchell principles had been, and remained, unequivocal.

9. In discussion:

   a) delegations expressed their abhorrence of the recent killings;

b) some believed the UDP should not be removed, arguing that the party itself had made great efforts to oppose violence, had not itself committed any violation of the principles, and had been honest;

c) others believed the UDP should be removed, without delay. It was suggested the talks could not proceed if a breach of the Mitchell principles had been committed; the UDP had not disowned the perpetrators of recent killings; there should be no double standards;

d) some of those who favoured the removal of the UDP made clear they had confidence in the good faith of its representatives in the talks; some also indicated their willingness to go on talking to them while outside the talks;

e) it was also suggested that the UDP's removal would not necessarily be definitive; if the UFF ceasefire were demonstrated over a period to be genuine in word and deed, the party might be readmitted.

10. Responding, the UDP made clear that it was non-selective in its opposition to violence. It had at times gone to extreme lengths to exert influence against violence. A possible consequence of its expulsion was a reduction in its influence.

Conclusions

11. The Governments regard the UFF involvement in sectarian murders, which has been well attested by information in the security forces' possession, to be admitted in their statement. The statement itself asserts that these murders were a 'measured military response' to 'Republican aggression'. If this was the motivation of the perpetrators it is all the clearer that the murders constitute a manifest breach of the first Mitchell principle of democratic and exclusively peaceful means of resolving political issues. We find the UFF's use in this context of terms like 'military response' outrageous, unsustainable and deeply offensive to the families and friends of their innocent victims.

12. The Governments accept that the Ulster Democratic Party may have sought to use its influence to oppose the violence of the UFF, and take full account of the acknowledgment by other participants of the UDP's efforts.

13. But there is also no doubt in the Governments' minds that there are close links between the Ulster Freedom Fighters and the UDP, and that the question whether the party has demonstrably dishonoured its commitment to the Mitchell principles has to be considered in the light of that.

14. The Governments are obliged to conclude that by reason of the UFF murders, there has been the clearest breach of the UDP's commitment to the Mitchell principles. The UDP is therefore no longer entitled to participate in the negotiations. The UDP has now withdrawn from the talks, which in view of the course of events seems to the Governments an appropriate gesture.

15. The UFF statement indicates that its involvement in killings has for the present come to an end, in that what it terms its military response is now concluded. The statement leaves room for doubt, however, as to how unequivocal the restored ceasefire is. The ambiguity here must be resolved.

16. If over a period of weeks a complete, unequivocal and unqualified UFF ceasefire were demonstrated, and established through word and deed to have been fully and continuously observed, the Governments would consider the possibility of the UDP rejoining the negotiations. The Governments would welcome that prospect in such circumstances. With that possibility in mind they, with their advisers, will keep the situation under the most careful review. The Governments will, of course, do nothing incompatible with 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.

ANNEX A

UFF STATEMENT ISSUED 23 JANUARY 1998

"On August 25th we adopted a policy of no first strike: since the Canary Wharf bomb the UFF has endured severe provocation from the Republican movement without response.

The current phase of Republican aggression initiated by the INLA made a measured military response unavoidable.

That response has concluded.
We note that all media and political attention has focused on the UFF while ignoring the accusation by the RUC Chief Constable that the IRA has engaged in military activity under a cover name.

That selectivity is a matter of concern.

The UFF wishes to make it clear that it remains committed to the search for a peaceful resolution of the conflict and supports the efforts of the UDP to secure a democratically acceptable political agreement.

The UFF recognises the importance of ending the current crisis and is prepared to fulfil its responsibility.

The Republican movement must now rein in its dogs of war or the policy of no first strike policy will not remain in force."

ANNEX B

UDP STATEMENT, 23 JANUARY 1998

We will continue to use all our influence both inside and outside the negotiative process in a wholly positive manner.

The opportunity remains for the peace process to be stabilised and for the emergence of political agreement. It is vital that the UDP remains in a viable position to contribute to the negotiating process.