Final (25)

CONCLUSIONS OF THE GOVERNMENTS ON REPRESENTATIONS MADE BY THE DUP AGAINST THE PUP AND THE UDP

1. This document sets out the conclusions of the Governments on the formal representations made by the DUP to the Independent Chairmen on 9 September that the PUP and UDP were in breach of the Mitchell principles.

Background: the Rules and Principles, and procedures followed

Rule 29

2. The procedure to be followed is set out in rule 29 of the rules of procedure for the negotiations agreed on 29 July:

> 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:

> 20. Accordingly, we recommended that the parties to such negotiations affirm their total and absolute commitment:
>
> (a) To democratic and exclusively peaceful means of resolving political issues;
>
> (b) To the total disarmament of all paramilitary organisations;
>
> (c) To agree that such disarmament must be verifiable to the satisfaction of an independent commission;
>
> (d) To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or outcome of all-party negotiations;
>
> (e) 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,

(f) To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.

4. The DUP "Notice of Indictment" setting out its representations was given to the Chairmen on 9 September and subsequently circulated. A joint response by the PUP and UDP was circulated on the morning of 10 September. (Both documents are appended to this determination and speak for themselves.) The Plenary session was adjourned for approximately one hour to permit further consideration. In the subsequent session of some three hours, the DUP, and then the PUP and UDP, were each allowed half an hour to speak to their papers. Other participants were then permitted to question them, and to set out views in accordance with rule 29. The Governments then considered the question of appropriate action, in the light of all the material available and having due regard to the views of the participants.

5. The relevant rule requires the complaining participant to show that the Mitchell principles have been "demonstrably dishonoured" by the participant or participants complained against.

6. The terms of the rule, 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.

7. The DUP Notice does not particularise which of the six principles are alleged to have been violated. We believe that principles (b), (c) and (e) are not material to the representations made against the parties. The allegations made must therefore be considered in the light of principles (a), (d) and (f), asserting commitments:

a. To democratic and exclusively peaceful means of resolving political issues;

d. To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course of the outcome of all-party negotiations;

f. To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.

The DUP allegations

8. The DUP document entitled "Notice of Indictment" contains three specific allegations against the PUP and the UDP.

(a) Failure to condemn the CLMC threat (para 6).

(b) Endorsement of the threat (para 6).

(c) Failure to condemn the attack on the Kerr home (para 10).

The PUP/UDP response

9. Having considered the documents tabled on both sides. the oral statements and responses made in the course of the discussions, and the differing views of the other participants, the Governments note that the PUP and the UDP:

- strongly assert that whatever degree of influence they exert on the CLMC has been, and will continue to be, consistently deployed in support of the continuance of the CLMC ceasefire in all its aspects;

- have reaffirmed that they remain fully committed to the Mitchell principles of democracy and non-violence and that they resolutely oppose the threat or use of violence from whatever source;

- consider that particular formulas of condemnation could have diminished rather than enhanced the efficacy of efforts to oppose the use of force and to ensure the practical promotion and defence of the Principles;

- drew attention to a series of statements on the public record which distance their parties from the threat and deprecate it.

We further note that the efforts of the PUP to mediate in the dispute, supported by the UDP, indicate the desire of both parties to see the CLMC threat removed.

Conclusion

10. We have reached the following conclusions:

<u>The failure to condemn the threat</u>

The failure to issue a public and explicit condemnation of the threat in the context of active and continuing steps being taken by the parties to oppose the issuing or implementation of the threat did not of itself demonstrably dishonour the Mitchell principles. We consider further that these steps are not compatible with the establishment of any dishonouring by association.

<u>The endorsement of the threat</u>

No evidence was offered of the alleged endorsement of the threat to Mr Kerr and Mr Wright and it was denied by Mr Ervine. We accordingly believe that this allegation is not substantiated.

<u>The failure to condemn the attack on the home of Mr Kerr's parents</u>

Mr Ervine had made clear (and he reiterated) that 'nothing could justify' such an attack. In the light of this, we believe this complaint is not substantiated.

11. The Governments have accordingly determined that it has not been established that the UDP and PUP have demonstrably dishonoured the principles of democracy and non-violence set out in the report of 22 January 1996. No further action is therefore appropriate.

Notice of Indictment.

The DUP wishes to serve notice on the Chairman of the Multi-Party Talks that certain participants are in flagrant breach of the Mitchell Principles of Non-violence.

These Principles are the basis for entry to the Talks and are supposed to ensure that a level playing field exists for all participants. Any breach, whether reflected in actual violence or the threat to resort to violence for political purposes, poses a real threat to the stability of Northern Ireland and to any prospect of a successful outcome to these political talks.

Any failure to deal with such a threat with a serious and unambiguous response will destroy this process.

The DUP complaint is against those parties which claim to speak for the Combined Loyalist Military Command (C.L.M.C.), namely, the Progressive Unionist Party (P.U.P.) and the Ulster Democratic Party (U.D.P.).

On Wednesday 28 August the C.L.M.C. issued a statement threatening the lives of two other loyalists with expulsion from Northern Ireland or else "summary justice". The statement said: "Failure by either men to comply with this directive will result in summary justice for their treasonable and subversive activities. Anybody supporting these persons in their activities will be similarly dealt with."

When challenged about the statement the main spokesmen for the P.U.P. and U.D.P. refused to condemn it. In fact, some of the public utterances by those same spokesmen actually endorsed the death threats. David Ervine said he would not condemn it even if it meant his party's expulsion from the talks process.

When these talks commenced on the June 10 Sir Patrick Mayhew refused to admit the delegates representing Sinn Fein/IRA. The basis for his decision was their categorical refusal to renew its ceasefire and

to condemn the latest IRA atrocity at Canary Wharf. In the immediate aftermath of the opening of the Multi-Party Talks the IRA murdered a Garda Officer and bombed the Arndale Shopping Centre in Manchester, thus confirming the fact that Sinn Fein/IRA, by its own actions, had excluded itself from the talks.

The DUP brings forward this indictment on the basis of parity. Double standards must not be permitted to rule this process. What is more, this Loyalist threat cannot be used as the vehicle to bring Sinn Fein/IRA into the process.

Immediately after the C.L.M.C. statement was published my party demanded that the Secretary of State make clear the basis of entry to the talks. My party statement calling for the removal of those parties who supported this latest threat of violence was backed by a similar statement by John Taylor the Deputy OUP leader. He said: "These parties risk expulsion from the Talks if they fail to condemn the C.L.M.C. statement."

A matter of days after the threat was issued the elderly parents of Alec Kerr were attacked by a bomber in their home. When quizzed by the media the spokesmen for the P.U.P. again refused to condemn this outrage despite claiming his organisation had nothing to do with the bomb attack.

Sir John Wheeler issued the Government's response. He said: "Any threat of exclusions by terrorist gangs, if true, is totally unacceptable in a democratic society."

This continuing threat raises the serious question of the P.U.P.'s and U.D.P.'s continued involvement in the talks. These parties cannot be associated with such threatened violence for political ends with impunity.

The excuses offered by the spokesmen for these fringe parties sound alarmingly like clones for Gerry Adams. In fact Sinn Fein/IRA will be watching this process very carefully as we are in a "dry run scenario" that could open the way to their entry without the ending of

republican violence. If these parties get away with this threat then the door is wide open for the entry of Sinn Fein/IRA.

The fact that 26,000 people voted for the P.U.P. in the May election is altogether irrelevant in the debate over whether a man should live or die, on the judgement of a criminal organisation. Failure to distance themselves totally from the murder threat must signal the immediate expulsion of the fringe parties from Stormont.

What is clear is that their removal is entirely of their own making. They have the power to ensure they remain at the table.

Many opinion formers have expressed their views on this matter. In its editorial on the 30 August the News Letter said: "In taking firm action on this most fundamental matter, the Secretary of State will be responding, not just to the leaders of mainstream Unionism, but to the wishes of the overwhelming majority of people who hold absolutely no brief for the perverted justice of the terrorist organisation, loyalist or Republican".

The Belfast Telegraph backed this call on Thursday 5 September. In its editorial it said: "Death threats are no part of the political process and when, inevitably, the matter is raised at the multi-party talks next week, the only logical conclusion would be the expulsion of the PUP and UDP. Despite their discomfort they have declined to distance themselves from the paramilitaries or even to condemn the threat - just as Sinn Fein has done in the past."

The Daily Telegraph wrote on August 30: "The lesson of the peace process and its collapse is that appeasing terrorists and their associates does not pay. If the PUP is not treated in the same way as Sinn Fein, the Government 's reputation for even-handedness will be badly undermined. Any party that wishes to participate in the democratic process must be prepared, unambiguously, to renounce violence. If the Loyalist parties cannot bring themselves to condemn threats even to someone as unpalatable as Mr Wright, out they must go."

These Talks must be adjourned until a decision is taken on this matter. The evidence is compelling. The fringe parties have it within their own grasp to stay or else put themselves out.

P.U.P./U.D.P. rebuttal of D.U.P. 'Notice of Indictment' 10th September 1996

The authority of this document is that it represents the shared position of the Ulster Democratic Party and the Progressive Unionist Party in relation to specific allegations levelled at both parties.

Both parties totally deny and refute allegations contained in the D.U.P. document in that they are in contravention of the Mitchell principles.

Both parties are represented at these negotiations on the basis of the votes cast for the respective parties in the Forum Election on May 30th this year. These votes were cast in support of the Ulster Democratic Party and the Progressive Unionist Party and not in the name of the Combined Loyalist Military Command.

We have been referred to by participants in these negotiations as 'paramilitary parties'. The U.D.P. and P.U.P. are both constitutional political organisations, committed to the pursuit of political objectives through solely democratic and peaceful methods. Both parties reject the furtherance of political aims through violence.

The P.U.P. and U.D.P., while offering upon request a political analysis to the C.L.M.C., and exerting influence where possible, have no authority over their policies or activities. The facility we offer is a voluntary one. The decision by the C.L.M.C. to either accept or reject such analysis is beyond our control or responsibility. We have no input into internal Paramilitary disciplinary matters.

We have never sought to support acts or threats of violence, and the role both parties have played individually and collectively during this current peace process is clear demonstration of our commitment to democratic methods.

Our analysis to the C.L.M.C. contributed to their announcement of a universal cease-fire on 13th October 1994 and since that time we have consistently argued that the continuance of that cease-fire is in the best interests of all the people of Northern Ireland and even today we implore the Loyalist paramilitary groupings to maintain a non-combative mode.

Both the P.U.P. and the U.D.P. subscribed honestly and sincerely to the six 'Mitchell Principles' in this room and before all other participants. We re-affirm now our absolute and total commitment to the principles of democracy today.

We resolutely oppose the use or threat of violence from whatever source.