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Oifig an Taoisigh
Office of the Taoiseach

SECRET

26 April 1999

Mr. Dermot Gallagher,
Second Secretary,
Department of Foreign Affairs,
80, St. Stephen's Green,
Dublin 2.

Dear Dermot,

I refer to your options paper. We all face the same difficulty trying to square the circle.

Instinctively I would favour Option C (nomination of Ministers to be), unless Option A (de Chastelain's words) can be given some meat. Could de Chastelain explore with Sinn Féin what 'putting guns out of use' involves, and what guarantees, if any, can be given that they will be kept out of use ? This is closer to the spirit of decommissioning.

I enclose a background paper analysing the decommissioning provisions of the Agreement and the at times confusing and contradictory claims made about it.

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Finally, while there is no harm in working out as scenarios statements that might be made by different parties, it would probably be more tactful, if asked, to offer them bullet points or suggested pieces of language rather than fully-fledged draft statements which inevitably will not be written entirely in their style !

With best wishes.

Yours sincerely,

Martin Mansergh

Dr. Martin Mansergh,
Special Adviser to the Taoiseach.

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Secret

What are the Commitments on Decommissioning?

Introduction

There is considerable confusion, arising from claim and counter-claim, as to what parties, particularly those associated with paramilitary organisations, are committed or not committed to doing in relation to decommissioning, under the Agreement but also more generally. This paper brings together the relevant texts.

1. The Irish Constitution

The position in this State is sometimes referred to as a point of comparison. The Constitution very clearly precludes the raising or maintenance of paramilitary forces or the holding of arms by such forces. Art 15.6° states:

'1° The right to raise and maintain military or armed forces is vested exclusively in the Oíreachtas.

2° No military or armed force, other than a military or armed force raised and maintained by the Oíreachtas, shall be raised or maintained for any purpose whatever'.

All major Dáil parties would consider themselves precluded from sharing government with a party with an active armed wing (that moreover claims to be the 'legal government of the country'). Democratic Left only entered Government, after it broke with the

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Workers' Party, partly because of continued perceived links with shadowy but still occasionally active remnants of the Official IRA.

It can be argued that Northern Ireland, unlike the Republic, has never been a normal democratic society, and that therefore the same rules do not apply. On the other hand, the Good Friday Agreement establishes for the first time properly legitimated democratic institutions, and the object of the Agreement is to achieve a transition to a normal democratic society, where ordinary rules will apply.

2. **The Downing Street Declaration**

The Declaration issued on 15 December 1993 by the then Taoiseach Albert Reynolds and Prime Minister John Major stated in the key paragraph 10 :

> 'The British and Irish Governments reiterate that the achievement of peace must involve a permanent end to the use of, or support for, paramilitary violence. They confirm that, in these circumstances, democratically mandated parties which establish a commitment to exclusively peaceful methods and which have shown that they abide by the democratic process, are free to participate fully in democratic politics and to join in dialogue in due course between the Governments and the political parties on the way ahead'.

While Sinn Féin in particular consistently argued that they should have the right to participate in talks and the democratic process exclusively on the basis of their electoral mandate, the two Governments in line with the

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Declaration insisted that lasting ceasefires were a prerequisite for such participation. The quid pro quo for a cessation of violence was full democratic rights and access.

There was an informal understanding reached between the Taoiseach Albert Reynolds and the Sinn Féin leadership from January 1994, after it became clear that a start to disarmament immediately following a ceasefire or as a condition for entering full democratic dialogue would not be acceptable. The terms of the informal understanding as later put down accurately on paper by a key intermediary in 1995 was as follows:

> 'The process of demilitarising the conflict would go hand in hand with the process of resolving it through the all-party peace negotiations as described above. Consequently, issues like weaponry, security presence and surveillance, fortifications, the policing of law and order, prisoners etc. would be settled in the context of reaching an overall agreement on the settlement of the conflict itself'.

In appearance, this is indeed what eventually happened, with sections on all those subjects being contained in the Good Friday Agreement. Some of the issues (e.g. prisoners) have indeed effectively been settled, while the detail of others like fortifications, policing, and above all weapons have not.

The British Government in a secret exchange with Sinn Féin on 5 November 1993 published with other documentation a month later committed themselves to enter exploratory dialogue following a total end

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to hostilities. This would be to explore the basis on which SF would come to be admitted to an inclusive political talks process, to exchange views on how SF would be able over a period to play the same part as the current constitutional political parties in the public life of Northern Ireland, and 'to examine the practical consequences of the ending of violence'. This was code for the discussion of arms disposal. The ending of violence, however, rather than any specific requirement to disarm, was stressed in the months leading to the paramilitary ceasefire. British clarifications to Sinn Féin in May 1994 carefully skirted round the issue.

There was subsequent debate as to whether para. 10 of the Downing Street Declaration simply required an end to violence, or whether ' a permanent peace' and 'a commitment to exclusively peaceful methods' implicitly or necessarily included decommissioning. Sinn Féin and by and large the Irish Government regarded the two as separate issues. The Unionists and the then British Government chose to regard them as tied in together.

Following the IRA ceasefire on 31 August 1994, the then Taoiseach Mr Albert Reynolds, the SDLP Leader John Hume, and the Sinn Féin Leader Mr Gerry Adams issued a Joint Statement at their meeting of 6 September 1994, in which they stated a total and absolute commitment to democratic and peaceful methods and added:

> 'We reiterate that we cannot resolve this problem without the participation and agreement of the Unionist people'.

This is an acceptance that the combined representatives of Irish Nationalism cannot simply impose their will on Unionists.

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3. **The Mitchell Report**

In 1995, intense political disagreement developed over whether, as the British Government and the Unionists insisted, participation in negotiations required a start to IRA decommissioning . Towards the end of 1995, former US Senator George Mitchell was called in to head an International Body and report on how the issue might be resolved. The Mitchell Report of January 1996 stated that 'to reach an agreed political settlement and to take the gun out of Irish politics, there must be commitment and adherence to fundamental principles of democracy and non-violence', and that participants in all-party negotiations should affirm their commitment to such principles, recommending, in particular, that parties to 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'.

All parties to the negotiations eventually signed the Mitchell Principles. As far as (a) is concerned, the parties are held responsible not only for their own actions but for those of associated paramilitary organisations. With regard to (b) and (c), the parties accept the goal of total disarmament, and an obligation to see that actual ('verifiable') disarmament takes place. The IRA made it clear in a statement of 11 September 1997 that they did not consider themselves bound by the Principles, a position not accepted by the two Governments, who made it

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clear that they would hold Sinn Féin responsible for the behaviour of the IRA.

The Report went on to suggest that some decommissioning would take place during the process of all-party negotiations (which did not in fact happen). It stated that 'the decommissioning process should suggest neither victory nor defeat', that it 'should result in the complete destruction of armaments in a manner that contributes to public safety', that it should be 'fully verifiable', and that 'the decommissioning process should be mutual'.

The Report, on which all subsequent commitments and declarations in relation to decommissioning were based, thus makes it clear that it need not involve victory or defeat, that keeping guns silent did not constitute sufficient response, and that decommissioning could not be demanded of one organisation and not of others.

4. **Procedural Motion of 24 September 1997**

This resolution adopted by the parties agreed that 'the resolution of the decommissioning issue is an indispensable part of the process of negotiation, alongside with other confidence-building measures', and all delegations were committed in good faith to work to secure implementation of 'the compromise approach to decommissioning' in the Mitchell Report. Plenary also expressed support for the views of the two Governments on the decommissioning of some paramilitary arms during the negotiations. Sinn Féin did not support this section 2b of the resolution, but did not attempt to block or prevent its adoption.

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5. **The Decommissioning Chapter of the Good Friday Agreement**

This consists of six sections.

The first recalls the Motion of 24 September 1997 'that the resolution of the decommissioning issue is an indispensable part of the process of negotiation'. It would be a reasonable interpretation of this section that the issue was not one that could be brushed aside or ignored. It also asserts that the resolution of the issue requires to be agreed, as part of the overall process of negotiation. Therefore, any unilateral post-Agreement statement by the IRA, for example, that 'there will be no decommissioning' challenges and negates the whole chapter, which presumably represents the resolution of the issue, and the premiss on which the chapter in the Agreement is based.

The section also recalls the provisions of paragraph 25 of Strand 1, which states 'that an individual may be removed from office on a cross-community basis for failure to meet his or her responsibilities, including, inter alia, those set out in the pledge of office'. This cross-reference between a clause dealing with the maintenance in or removal from office and the issue of decommissioning asserts at least some linkage, even if its exact nature is not specified, between holding office and decommissioning. This para. 25 referred to in Blair's letter to Trimble of 10 April 1998 clearly provides for the situation, where an Executive is formed and decommissioning does not (afterwards) take place. Trimble presumably regarded the linkage as too weak, and the

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sanction, depending on cross-community consent, as potentially too weak.

The second section notes ' the progress made by the Independent International Commission on Decommissioning and the Government in developing schemes which can represent a workable basis for achieving the decommissioning of illegally held arms in the possession of paramilitary groups'. On any reasonable construction, parties are therefore accepting that progress has been made on schemes that can be workable, and this would be inconsistent with claims, were they to be made by any party, that decommissioning is in all circumstances completely unworkable.

The third section states first that 'all participants accordingly reaffirm their commitment to the total disarmament of all paramilitary organisations'. Parties could not claim on that basis that this was impossible or that it could never happen. A commitment to an aim is a conviction or determination that it should happen. This commitment is not time-limited or restricted to two years. Parties obviously cannot or should not enter into commitments which they cannot deliver, or still less which they know that they do not believe in. They were reaffirming what had previously been described as 'a fundamental principle of democracy'. The IRA subsequently stated it was a matter for them alone (i.e. not for Sinn Féin).

The section goes on to state:
'They also confirm their intention to continue to work

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> constructively and in good faith with the Independent Commission, and to use any influence they may have to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement'.

The extent to which parties have continued to work constructively and in good faith with the Independent Commission or used 'any influence that they may have' is a matter of argument and judgement. Achievement of the decommissioning of all paramilitary arms within two years, while it could be compatible with a firm assurance that it would and could be done at the end of the period, in the absence of such an assurance, would more reasonably be interpreted as meaning that it would be carried out gradually over the period, an interpretation also supported by Section 4, and by the phrase 'in the context of the implementation of the overall settlement', which echoes the phrase 'during the process of all-party negotiations' in the original Mitchell Report.

While it is true that participants could 'use any influence they may have' and fail to achieve the complete result, that is to say 'the decommissioning of all paramilitary arms within two years', it would be more surprising if they failed to achieve the decommissioning of any paramilitary arms within two years. This would invite us to believe that Sinn Féin has no influence at all, at least in this matter, with the IRA (or the Loyalist parties with the UVF, UDA and UFF), even though they are the only parties likely to have such influence to any real degree. In other contexts, we are regularly advised that SF are the best guide to the IRA. Indeed, the alleged lack of influence would be particularly absurd, if there were in fact significant overlap in the leaderships of the IRA and Sinn

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Féin or indeed on the Loyalist side between the leaderships of political parties and paramilitary organisations. Realistically interpreted, it is not, as is sometimes claimed, a reference to all parties, not just Sinn Féin, to use their influence with paramilitary organisations, but a reference to these parties to use any influence they may have individually, accepting that there may also be secondarily a more general collective obligation.

Section 4 states: 'The Independent Commission will monitor, review and verify progress on decommissioning of illegal arms, and will report to both Governments at regular intervals'. This can only be interpreted as meaning an expectation that the process will be spread out over the two year period, rather than happening at one time at the very end.

Section 5 states: 'Both Governments will take all necessary steps to facilitate the decommissioning process to include bringing the relevant schemes into force by the end of June'. This can only be interpreted as meaning that the decommissioning process should be ready to start from that date. Although there is no explicit linkage, the end of June was also when the Assembly was expected to meet, and when it could have proceeded to form a Shadow Executive. Strand 2 of the Agreement further refers to a transitional Administration identifying and agreeing subject areas for cooperation and implementation by or under the North-South Ministerial Council by 31 October 1998. It is clear therefore that the Agreement facilitates and envisages the commencement of decommissioning in advance of the formation of the full Executive, and in no way precludes it. Indeed, Prime Minister Blair wrote to Trimble on 10 April to confirm that it is the British Government's view that 'the effect of the decommissioning section of the Agreement, with

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decommissioning schemes coming into effect in June, is that the process of decommissioning should start straight away'. That is clearly a reasonable interpretation of the Agreement, though not necessarily the only possible one. Indeed, the same letter deals with Trimble's concern that an Executive be formed and decommissioning does not take place, even subsequently, so two quite different scenarios, presumably both consistent with the Agreement, are dealt with in the one letter. There may be some query as to whether 'decommissioning' and 'the process of decommissioning' are exactly the same thing, or the latter formulation a little softer.

6. Conclusions

1. There is a clear requirement for decommissioning or at the least an agreed resolution of the issue in the Agreement. A resolution cannot be agreed (or dismissed) by unilateral decision.

11. This requirement is linked to the fundamental principles of democracy.

111. While decommissioning prior to or parallel with or soon after the formation of the Executive is not explicitly required by the Agreement, it is certainly envisaged by it.

1V. To rule out decommissioning a priori is to rule out the operation of a part of the Agreement, that is described as an indispensable part of the process of negotiation, and to make the schemes and Independent Commission essentially redundant.

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V. Decommissioning is both workable and need not involve surrender. It involves more than guns remaining silent.

VI. Sinn Féin made a commitment in the Agreement to the total disarmament of all paramilitary organisations. They now claim that it is a commitment on which they cannot deliver and that they have no influence with the IRA on this matter. Nor do they accept any obligation to do other than use their influence, which may continue to be nil, by the year 2000, regardless of progress in implementing the rest of the Agreement. The IRA have effectively placed a veto on implementation of the entire decommissioning section of the Agreement, which shows no sign of being lifted, and have put it up to the Governments and the other parties to operate the Agreement, on the basis that the decommissioning section is likely to remain a dead letter. There may well be a calculation that the gains from the peace process, including elements of the Agreement already implemented, are more valuable than the institutions of the Agreement which 'lock them in', and also that other parties at the end of the day will value the rest of the Agreement too much to sacrifice it to the decommissioning requirement.

V11. If one party to an Agreement either directly or by proxy makes it clear that it declines to fulfil some of its commitments or interprets them in the most rigorously minimalist fashion, not in keeping with the spirit of the decommissioning chapter, it must not be surprised if others decline to fulfil other parts of the Agreement, or will only do so on the basis of certain preconditions.

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V111. The Hillsborough Declaration, proposing a collective act of reconciliation, was not in any respect a breach of the Agreement, but simply a proposal as to how it might be implemented. The idea of synchronisation of political progress with decommissioning, which is echoed at the end of Section 3 by the phrase 'in the context of the implementation of the overall settlement', is central to the approach of the Mitchell Report, which was endorsed by parties to the negotiations in September 1997 and again in the Good Friday Agreement. The prior decommissioning envisaged in section 6 of the Agreement is not insisted upon in the Hillsborough Declaration. 'The placing of some arms beyond use' is explicitly connected to further moves on normalisation and demilitarisation. The concept of a one-sided process of demilitarisation and disarmament, in which the forces of the State demilitarise, but the IRA (and perhaps the Loyalists) do not at any stage, makes a nonsense of a concept that has for a long time been central to Republican rhetoric.

IX. Of course, the peace process is about far wider issues than decommissioning. It would in fact play a fairly subordinate role, if there were clear and unmistakable signals from the IRA and Loyalists that the war was over and would not be resumed. The decommissioning issue has assumed such importance, because the paramilitary organisations have stood aside semi-detached from the process and regard the obligations of the Agreement as not necessarily binding upon them.

X. Any relief from the obligations of the Agreement, which would allow the institutions to move forward, could only be based on huge efforts to

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create greater trust across the community, or the willingness of Unionists and other purely democratic parties to trust to the healing effects of the implementation of the Agreement to make the decommissioning issue fade into the background. There is little concrete evidence of either approach. The SDLP have proposed an agreement that parties would be automatically expelled, if associates returned to violence (John Hume), or expulsion from the Executive in the absence of any decommissioning by the deadline (Mallon). So far, both Ulster Unionists and Sinn Féin have had reservations about this type of approach, the first because if does not go far enough and perhaps because of scepticism about the SDLP's ability in practice to turn against Sinn Féin. Sinn Féin have so far resisted anything that in their view departs from a strict construction of the Agreement.

XI. The Irish Government in particular has gone to great lengths to find any acceptable resolution of the problem, which has to be negotiated. The whole Agreement depends for its implementation on cross-community consensus, as the larger parties possess vetoes de jure or in Sinn Féin's case de facto. The Agreement cannot be implemented at all against a Unionist veto or inclusively against a Sinn Féin one. Neither can impose their view on the other, nor can the two Governments do more than propose or press a resolution, which, if it is not agreed, cannot succeed.

XII. There are two possible interpretations of the negotiations on this subject to date. One is that the hard line expressed at repeated intervals all along is for real, notwithstanding the possibly large political cost of losing the

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Agreement. This would be, despite occasions, when people have appeared temporarily to be more polite, silent or diplomatic, or given an appearance or hints of some flexibility . In general, Sinn Féin is reluctant to commit themselves any further than they consider is set out in the Agreement, or to translate any of its provisions into action, relying on the out clause ('use any influence they might have'). They could plausibly argue that it is we, most of the time , who have been refusing to take their stated position literally and who have been needlessly giving ourselves the run-around. In our defence, it could be said that we cannot quite bring ourselves to believe that the Republican Movement intend to disregard completely this section of the Agreement and hope to get away with it.

The alternative interpretation is to believe that people have been working very hard in good faith to find a solution, but unfortunately have not been able to do so, because the conditions have not been right, and because of general difficulties, dangers of splits etc. It has been said to us in more benign moments that their intention was that if everything got up and running and was working well they had then hoped to be in a position to persuade people to change their minds. It is difficult to judge what reality this was. One would have to face the possibility (? probability) that the moment of truth would prove to be an ever-receding mirage.

XIII. In seeking solutions, we have to be realistic and pragmatic, not legalistic or unrealistic. But we need to analyse the position clearly, and to be able to judge the truth of the claims made. The balance of political

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forces, not just the intrinsic merits of competing points of view, will determine the outcome. A settlement of the argument either way (either decommissioning begins to happen or it is accepted that it will not, at least not now - and in either event the institutions are formed), or any other modus vivendi, would in many ways be preferable to the prolonged stand-off, which on present indications we seem to be facing.

XIV. The 'precondition' argument has been so built up, and extended to include any form of synchronisation, that its bypassing, if it were possible, would leave relatively few arguments, other than 'do not disturb what has been achieved', to avoid subsequent delivery on decommissioning.

XV. The Governments and parties hold Sinn Féin and the Loyalist parties responsible for any return to war by associated paramilitaries. At this point in time, the Unionists are determined to hold them responsible for absence of movement on decommissioning, as they do not accept any real distinction between Sinn Féin/IRA. The Taoiseach's formulation 'two sides of the same coin' is significantly more nuanced. The dilemma posed today, from the point of view of others, is to what extent should Sinn Féin be held responsible for a lack of movement by the IRA to date, and, separately, should they be held accountable, if there is no movement either by May 2000, assuming everything else were in place, or does that depend to some degree on circumstances at the time ? It is evident, that, unless the Agreement collapses (or becomes indefinitely stalled), that this will be a matter for intensive negotiations, and potentially as big a crisis, in 12 months' time, if we overcome the present one.

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XVI. Neither the Unionist interpretation of the Agreement nor the Sinn Féin one, while finding some textual support in the decommissioning chapter, is a completely fair presentation of what the Agreement says. The Agreement is nonetheless sufficiently ambiguous to allow both plausibly to maintain their interpretations without fear of refutation or ridicule. Neither are prepared to acknowledge the truth, which is that the Agreement did not completely resolve the issue. Is there anything that could by general consent absolve Sinn Féin, at least for now, of fulfilling the requirements of the Agreement ? Alternatively, can the Republican Movement be persuaded to give some content to General de Chastelain's Report, so that he would in fact report 'progress' under the terms of the Agreement, for example, by defining what 'putting out of use' involves, and what guarantees can be given that they will remain out of use ?

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