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Failsafe Legislation: Meeting with British Officials, Belfast, 6 July 1999

SUMMARY REPORT

1. A meeting was held in Belfast yesterday evening to discuss legislation providing a failsafe mechanism, in fulfilment of the commitment given in last Friday's "Way Forward" paper. Discussion centred around a revised British paper (attached), prepared following the receipt of our comments on an earlier version.

General

2. The British emphasised the importance of failsafe legislation in offering reassurance to the UUP, who were still a long way from agreeing to the deal. Trimble, in discussion both with the PM and with Paul Murphy, had focussed heavily on this aspect of the package. It was in the Prime Minister's view essential that legislation be enacted before the running of d'Hondt: this would require its very early drafting and introduction into Parliament, most probably on Monday next, 12 July.

3. The British confirmed that, despite Trimble's preferences, there was no question of an exclusion clause. They also fully accepted that the process of review and suspension was a joint exercise of the two Governments.

4. We stressed the need to strike a careful balance between helping the UUP and not damaging the position of the Sinn Féin leadership as it sold the deal to its side. It was emphasised that Sinn Féin's task in doing this should not in any way be underestimated.

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Suspension and the Assembly

5. A clear difference emerged between us on the **role of the Assembly during a review period**. The British have dropped the idea of a pause before suspension, during which the Assembly might meet to consider an exclusion motion. However, they suggested that the Secretary of State should retain the power to convene the Assembly following suspension (in reality for the purpose of running an exclusion motion). This reflects Trimble's view (to which they said the PM is sympathetic) that exclusion is the logical next step after suspension. We argued that the focus must be on the review, which should be allowed run its course, with every effort being made to find a positive resolution to whatever the problem might be. Any attempt to interpose an exclusion move during the review process would simply poison the atmosphere. It would also be quite academic, as the SDLP for one would rule it completely out of court. In this regard, Séamus Mallon had, in his formal statement this week, criticised the Unionists for wanting "to predetermine the outcome of the review". He then went on to say: "No-one can predetermine that. To do so would negate the whole concept of the review process which includes the two Governments and all of the political parties." At the same time, Trimble could take comfort from Séamus Mallon's renewed assurance that the SDLP would not hesitate to act if a review made clear where fault lay.

6. It was agreed that, in terms of the discretion available to the Governments in triggering the suspension, there was something of a difference between a default on decommissioning (which was to be certified by de Chastelain) and one related to devolution, which was more a judgement call. We argued that a way had to be found to balance the automaticity of the suspension procedure (which Trimble wants) as was envisaged in Friday's statement, and the role of the two Governments in initiating a review under the terms of the Agreement. The two aspects had to move in parallel (with action being, as per paragraph 5

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of Friday's text, "in accordance with the review provisions of the Agreement").

Default by Loyalists

7. In relation to default by the **loyalists and other smaller groups**, it was agreed that it would not make sense for the institutions to be suspended for a lengthy period on the grounds of non-compliance by these groups (who will not, of course, be in the Executive). However, we saw no alternative, given Friday's language and the need not to single out Sinn Féin (and the IRA), to calling a formal suspension, during which the Governments and the main parties could very rapidly agree to unfreeze the institutions. It was also agreed that some distinction could be envisaged between the UVF and the UDA on the one hand (the parties associated with which were either in the Assembly or involved in the process), and the LVF, INLA, etc. The British are to work on possible drafting to cover this point.

Suspension of all Members of Executive

8. We made clear our view that **all Ministers (including the First and Deputy First) should be suspended from office** (Trimble has suggested that he and Mallon might continue to hold shadow office as at the moment). Our view also was that all should automatically resume their offices after review, unless resignation or exclusion should make it necessary to re-run d'Hondt. The British (following the Trimble line) appeared to be of the view that, while Trimble and Mallon should return to office without a vote, d'Hondt should be re-run. This, they argued, could be presented to the UUP as protecting them from an automatic reinstatement of the existing Executive by the two Governments following an unsatisfactory review. We argued against creating an unnecessary additional hurdle, and a possible vehicle for further mischief. The logic of automatic reappointment (presuming the problem was resolved in

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the review) should be followed for both Trimble/Mallon and the rest of the Executive.

North/South and East/West Institutions

9. It was agreed between us that the **NSMC** and **BIC** should be immediately suspended. The British side made no attempt to suggest the suspension of the BIIGC, which had featured in their first draft (we had pointed out that the Anglo-Irish Agreement and the Intergovernmental Conference would have lapsed on the entry into force of the Agreement and, therefore, we would be at a serious disadvantage, as against the present status quo, if the BIIGC were to be suspended along with the other institutions).

10. On the **Implementation Bodies**, there was an acceptance on their side that, for practical reasons, it would be impossible immediately to suspend their operation (although they felt that this would take some selling, both to Trimble and to Blair). It was agreed ad referendum that a reasonable course of action would be (a) assumption by two Governments jointly of the role of NSMC in relation to the Bodies (b) an undertaking that, while the Bodies would continue to exercise their statutory functions, there would be no fresh policy initiatives and (c) an agreement that, should the period of suspension last more than a given time, the Governments would within a specified period work to transfer the Bodies' functions to Departments or agencies North and South (while keeping them legally in being, in anticipation of a breakthrough at some stage in the future).

11. It was noted that there would have to be a fresh supplementary agreement between us, amending the British-Irish Agreement and the supplementary agreements signed in March, to allow for suspension. This might take the form

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of an exchange of letters. The British undertook to prepare a draft, and we agreed to reflect further on the implications.

Articles 2 and 3

12. We signalled our concern that, once the British-Irish Agreement enters into force, the amendment of Articles 2 and 3 would be irrevocable, notwithstanding what might or might not happen thereafter. This was beginning to give rise to some public and political comment, and this would inevitably grow. We might have to reflect further on this. (It was noted in passing that this was a factor of which Trimble might be able to make political use within his party, in selling Friday's text).

Next Steps

13. The British said that Paul Murphy would be meeting the parties on Wednesday 7 July to talk them through thinking on the legislation. The Prime Minister would be keeping in touch with Trimble. They would try as quickly as possible to produce drafts of the legislation and the new international agreement between us.

Key Issues

14. It was agreed that it would probably be necessary for the Prime Minister and Taoiseach to talk. The key issues needing to be addressed at political level appeared to be (a) how the possibility of exclusion at, or close to, the start of the review should be handled, and (b) the implementation bodies. Other outstanding, but less difficult, matters were (a) how to address defaults on decommissioning by groups other than the IRA, and (b) whether or not there was a need to re-run d'Hondt following a review.

Rory Montgomery

7 July 1999

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ATTENDANCE

British side: Bill Jeffrey, Jonathan Stephens, Peter Bell, Tony McCusker, Robert Crawford, David Brooker, Kate Udy (NIO), June Milligan, Paul Berman (FCO), John Rankin (Embassy Dublin), Dennis McCartney (Legal Adviser to NICS)

Irish side: Dermot Gallagher, Jim Hamilton, David Donoghue, Tim O'Connor, Ray Bassett, Caitlín Ní Fhlaitheartaigh, Rory Montgomery

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REVISED DRAFT

THE WAY FORWARD:
OUTLINE OF A BILL TO PROVIDE A FAILSAFE MECHANISM

1. This note summarises in non-legal terms the approach followed in the Bill now being drafted to provide the 'failsafe clause' outlined in the proposals of the Prime Minister and Taoiseach of 2 July 1999.

Criteria for suspension

2. The Secretary of State would be under a duty to act if:

   a) the Decommissioning Commission produced a report that indicated that a party or organisation had failed to honour commitments in respect of decommissioning arising under the Good Friday Agreement or fulfil steps laid down by the Commission bearing on that party or organisation; or

   b) she had any other reason to believe that a party in the Assembly had not met its commitments under the Good Friday Agreement in respect of devolution or decommissioning.

3. In those cases she would notify the Assembly of her intention to make a suspension order.

4. Unless within x days of receiving the notification, the Assembly passed with cross-community support a resolution to the effect that suspension was not appropriate (which might follow a resolution to exclude a relevant party from holding ministerial office, currently or in the future, under section 30 of the Northern Ireland Act 1998), the Secretary of State would make the order, which would be subject to negative resolution in Parliament.

5. At the same time, she would take steps, with the Irish Government, to establish a review.

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Effect of suspension

6. Subject to discussion with the Irish Government (with whom an international agreement will be necessary, since suspension cuts across the agreements in place under the British-Irish Agreement), under the suspension order:

a) **Ministers** in the devolved administration would cease for the time being to hold their posts, and the Northern Ireland administration would come under the control of the Secretary of State, as under direct rule;

b) the **Assembly,** its committees, etc, would not meet, and there would be powers of legislation by Order in Council, also as under direct rule;

c) the **NSMC and BIC** would be suspended (the Bill would itself suspend powers for Northern Ireland representation in these institutions; the new international agreement would complete the suspension process);

d) subject to considerations of practicality, the operation of the **implementation bodies** might be suspended (essential pre-existing statutory functions passing in Northern Ireland under the aegis of the Secretary of State).

Power to end suspension and restore devolved government

7. The Secretary of State would have a power following a successful review to resume devolution by Order subject to affirmative resolution in Parliament (unless during recess, when it would be subject to later approval). The Assembly would meet again, the legislative powers by Order in Council would fall away, and Northern Ireland Ministers would take over executive functions (subject to any exclusion resolution, which would be followed by a running of d'Hondt); the NSMC and BIC could meet again, and the implementation bodies would function normally.

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