

LOYALIST COMMISSION - BACKGROUND

Origins

The Loyalist Commission is an umbrella organisation, comprising representatives of the loyalist community drawn from the churches, the community sector, political activists (including David McNarry, political adviser to David Trimble, reporting directly back to him) and loyalist paramilitary groupings. It held its first meeting in October 2001 after several months of informal engagement, initiated by the churches, at which it had explored the needs of the Loyalist community and the possibility of developing a cohesive structure to effectively address those needs. It meets on a fairly regular basis, and is chaired jointly by Rev Mervyn Gibson (Presbyterian) and Rev Barry Dodds (Church of Ireland).

2. In essence, the Commission claims that it strives to:

- create a safe space for open and honest dialogue, essential in addressing the deep wounds associated with the loyalist feud;
- promote issues of identity, culture and individuality;
- address the deep sense of alienation within the loyalist community;
- build solidarity and trust;
- raise, at the highest levels, the issues and concerns of the loyalist communities; and
- work to address and improve the quality of life in loyalist areas.

Public Statements by the Commission

3. The Commission has sought to publicise its aims and objectives through a number of statements (all three are attached at Annex A), the first of which issued on 14 January 2002 when, in brief, it disassociated itself from unprovoked violence; called for calm and an end to street

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confrontation; urged republicans to end their incursions into loyalist areas; and asked all elements within loyalism and unionism "to co-operate together to articulate the difficulties they faced and to find common ground to evolve strategies that would begin to resolve peaceably the problems they faced". It also called for, and subsequently succeeded in organising, a community convention in the Shankill.

4. A second statement, on 14 June, accused republicans of having broken their ceasefire and condemned republican agitation and aggression aimed at Protestant communities. Nevertheless, this second statement (issued when interface violence was at its height in East Belfast) went on to offer a 'no first strike policy' (although it later became clear that this would be contingent on reciprocation by the Republican movement) in return for various concessions they hoped to win from republicans, including their respect for the "right of expression for British culture and Unionist traditions" and a commitment that they would "halt their politically orchestrated violence and green propaganda towards the Protestant community".

5. The formal republican reciprocation that the Commission sought was not forthcoming and so, despite opposition from some of the more hardline paramilitary members, Mervyn Gibson managed to secure permission to meet Gerry Kelly in the hope of obtaining at least some commitment to a formal response. The meeting, which took place in early August, was disappointing and whilst Kelly apparently agreed to go back to the republican movement to try to establish a formal response, none has ever been forthcoming.

6. On 2 September a third statement was issued, following an appeal for calm at the interfaces, by Archbishop Eames. The Commission welcomed the Archbishop's appeal, and endorsed it, calling on Archbishop Brady to do likewise. They claimed that loyalists acted only defensively and were critical of PSNI handling of the situation. They also called for "honest and sincere communication" across communities and asked again for republican reciprocation of their positive initiative.

Ministerial/Official Engagement within the Commission

7. The previous Secretary of State met the Commission on only one occasion, on 2 July last year. This followed a preliminary meeting at which Dr Reid was introduced by Lord Laird to the two joint chairmen. At that meeting, Reverends Gibson and Dodds were very keen that the Commission should hear direct from the Secretary of State. Dr Reid, in agreeing to such a meeting,

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was careful to deliver the key message that the government was determined to bear down on loyalist violence and criminality, and stressed that political engagement was the only way forward.

8. The meeting with the Loyalist Commission as a whole took place under the auspices of the Methodist Church at the East Belfast Mission. It provided an opportunity for a frank and robust discussion during which Dr Reid made clear HMG's willingness to engage with anyone committed to peaceful and democratic methods. He emphasised the benefits of the Good Friday Agreement for Unionists and challenged the Loyalist Commission to offer an alternative capable of working. The Commission, in turn, was critical of the Agreement and expressed concerns about a slide back to violence. Predictably there was a great deal of criticism of UDA specification (when HMG "refused to act against IRA violence"). At the time Dr Reid agreed to a further meeting. However, since UDA violence subsequently worsened considerably, eventually deteriorating into the feud which is still unresolved, such a meeting did not prove possible.

Interface Violence

9. Subsequent discussions with the Loyalist Commission, both at Ministerial level and at official level, have tended to focus on interface violence. Des Browne met in a personal capacity, with Mervyn Gibson in August to discuss his interface initiative. This was followed, on 20 August, by a meeting with a wider delegation from the Commission, which included Rev Gibson, Sammy Douglas (Director, East Belfast Partnership Board) and various more "grass roots" loyalists including John Gregg, and Jackie McDonald. To the fore, was criticism of Sinn Fein orchestration at interfaces and of police handling of the situation. They appeared, at the time, supportive of some sort of mechanism to monitor and report on interface violence, but acknowledged that the absolute lack of trust between communities would be a major stumbling block.

10. Further formal communication with the Loyalist Commission was thwarted for a time by the ongoing feud between the UDA and the LVF, which resulted in murderous attacks on a number of loyalists and the expulsion from the UDA (and the Loyalist Commission) of John White and Johnny Adair. Although David McNarry reported to Des Browne that the Commission remained keen to engage with him on the interface initiative and on the environmental improvement aspect of the Community Action Group the Minister stressed that any future involvement would be contingent on the Commission committing itself to non-violence. He also made it clear that, if a meeting were possible, any delegation would need to be mandated to speak on behalf of the Commission so that there could be scope for product and action. In a subsequent conversation McNarry stressed to the

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Minister that he found contacts with "accredited paramilitaries more useful than the politicians" in terms of getting a feel for loyalist thinking. He indicated, however, that he fully accepted the Minister's need to establish certain ground rules before considering any future meeting with members of the Commission and the need for any meeting to be with those who were mandated to speak on behalf of the group.

Current Position

11. The situation remains that McNarry and others, such as Rev Gibson, are keen to stress the need for Government to recognise the Loyalist Commission. Mervyn Gibson is particularly critical of Government for demanding a commitment to non-violence as a pre-requisite to meeting as, he alleges, a similar commitment has not been sought from republicans. A great deal of work has been carried out recently in relation to "transforming" loyalism, much of which has involved Commission members such as David McNarry and Rev Gibson. In the spirit of this ongoing engagement, Des Browne last met the Loyalist Commission on 31 March.

- The Chief Constable must assess the individual to be under a significant or serious level of threat.
- If individuals have specific concerns about their safety they should, in the first instance, consult with the local Police Commander.
- Applications can also be made for admission to the KPP Scheme.

Background

The only scheme operated by the NIO that affords physical home security measures is the Key Persons Protection Scheme. A significant number of community workers, from both sides of the community, have in recent years applied for admission. Few have satisfied the eligibility criteria.

By way of background, since the early 1970s successive Secretaries of State have operated and financed a limited extra-statutory discretionary Scheme aimed at protecting the homes (and occasionally workplaces) of certain individuals who are considered by the police to be under a significant or serious threat. The purpose in doing so is to provide a measure of reassurance to such

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THREATS TO PROTESTANT COMMUNITY WORKERS – WHAT SECURITY PACKAGES ARE AVAILABLE?

Lines to Take

- The only scheme operated by the NIO is the Key Persons Protection Scheme.
- Applications are considered on merit, but I should point out that the threshold for admission is very high.
- In assessing applications Jane Kennedy will consider the occupation of the applicant, or the role he or she is playing in the wider community and the level of threat the individual is under.
- The Chief Constable must assess the Individual to be under a significant or serious level of threat.
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persons so that they can continue to undertake their public and official duties without undue fear that they and their families will be attacked at home. The Scheme cannot protect all persons in Northern Ireland who may be under some degree of threat, nor can it provide total protection.

In deciding if an individual should be provided with physical home security measures Ministers are required to consider three issues.

Firstly, the individual's job or occupation. In essence, the Scheme provides for those in public service (including elected representatives) concerned with the effective administration of Government or maintaining the democratic framework and those in the criminal justice system upholding law and order.

Secondly, any wider public role which a person may be fulfilling. In doing so Ministers must be satisfied that it can be shown that in such a capacity the individual is making a positive and helpful contribution to the realisation of the objectives of the Scheme.

Finally, and subject to one of the above criterion being satisfied, the provision of physical home security measures is dependent upon advice from the Chief Constable that the person concerned is under either a serious or significant threat of terrorist attack.

LACK OF POLICING/ POLICE RESOURCES

Background

Lines to take

Current police strength (September 2003)

- Government committed to ensuring the Chief Constable is resourced to deliver an efficient and effective police service. We will not take risks with security.

Full Time Reserve - 1723

- Phasing out of the FTR is subject to a review of the security situation to be carried out next year by the Chief Constable.

Patten recommended a police strength of 7500 Regulars and 2500 Part Time Reserve (PTR)

- HR Strategy, launched last year by the Policing Board, touches on many issues affecting the use and effectiveness of police resources – eg sickness management. While police numbers are important, so too is ensuring best use is made of the considerable resources which are available.

Numbers of regular officers below target 7500

- This is a temporary dip due to severance. It is being redressed progressively with each tranche of new recruits.

More policing is needed in certain areas

- Deployment of police officers is an operational matter, and is solely for the Chief Constable.

Shortage of officers is due to the 50:50 recruitment policy.

- On the contrary – target numbers of recruits have been achieved consistently since the 50:50 arrangements began. Numbers of students officers entering Garnerville have been well in excess of Patten's recommended annual figure of 370.

So why is it necessary to recruit detectives from other forces ?

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- The severance programme has given rise to temporary skills gaps in certain areas – particularly detectives. A very limited exception to the 50:50 arrangements was agreed by the Board to address the lack of constables with specialist policing skills.

Background

Current police strength (September 2003):

Regulars – 7032 (+ 215 student officers)

Full Time Reserve – 1723

Part Time Reserve – 892

Patten recommended a police strength of 7500 Regulars and 2500 Part Time Reserve (PTR) officers, with the Full Time Reserve (FTR) to be phased out. The Chief Constable and the Policing Board have agreed that phasing out of the FTR will begin in April 2005, subject to a review of the prevailing security situation to be carried out next year by the Chief Constable.

Whilst the Regular strength has temporarily fallen below the Patten recommended figure, due primarily to the voluntary severance scheme having taken effect a year before the start of recruitment to the PSNI, this is compensated for at present by the retention of the FTR. Any suggestion that the manpower shortfall has been created by a failure to recruit adequate numbers under the 50:50 arrangements should be rebutted; the response from Catholics to date has been unprecedented, and numbers recruited are well beyond the Patten recommended figure of 370.

The severance scheme has given rise to skills gaps in some parts of the PSNI – particularly detectives. The Board unanimously agreed to a temporary, limited exception to the 50:50 recruitment arrangements, to enable this to be redressed. The PSNI, with the Board's agreement, are in the course of recruiting experienced detectives under these new arrangements.

The PSNI's Human Resources Strategy, published in October 2002, includes a range of measures designed to optimise the PSNI's use of resources. These include a civilianisation programme, as recommended by Patten, which is designed to fill non-operational posts with civilians, thus freeing up more police officers for operational duties.

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SUBSTANTIAL SUPPORT NEEDED FOR RESTORATIVE JUSTICE STYLE SCHEMES**CAUTION**

This is a sensitive issue. Loyalist schemes resent that, as they see it, they are being held back because of lack of progress with republican groups. In practice, we would not regard republican groups as having a veto on progress. Issues which need to be addressed and timing of engagement (particularly with republicans) are politically sensitive.

Lines to take

- ◆ I believe that community based restorative justice schemes can have a role to play in dealing with low level crime.
- ◆ Government remains willing in principle to support schemes which are founded on respect for human rights, are accredited and adhere to standards laid down by Government.
- ◆ Achievement of accreditation cannot automatically be taken as meaning that funding will be made available by Government, however, meeting standards may help schemes access funding from other sources.
- ◆ To help operationalise this, work is ongoing on drawing up guidelines with the Criminal Justice Agencies involved. I cannot say exactly when that will be completed but progress is being made.
- ◆ As schemes develop and become accredited, I would hope they would be able to work with the Youth Conference Service in the same way as other groups which will provide community programmes to the service, with all of the necessary safeguards in place.

Background**Criminal Justice Review**

The Criminal Justice Review said that community restorative justice schemes can have a role to play in dealing with low level crime, provided that there are proper safeguards and that they operate within the Criminal Justice system.

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The updated implementation plan holds to that position, emphasising issues of Human Rights and willingness of schemes to work with statutory agencies and to seek accreditation. To date, no schemes are accredited but to facilitate accreditation we are drawing up guidelines with other Criminal Justice Agencies.

There were particular sticking points on the police's side but they have in the margins indicated that they are willing to move ahead with the process of agreeing key principles and guidelines. DPP and police are already working together to consider the kinds of offences which might be suitable for referral. The wider political issue is that schemes operating in loyalist areas say that they are willing to work directly with the police, those in republican areas indicate that they are not.

Funding

Schemes in loyalist areas, generally operating under the umbrella organisation Northern Ireland Alternatives, have in the past been funded by an American source known as Atlantic Philanthropies, the Lottery Fund and the Esmée Fairbairn Trust. But this money appears to be drying up. Recently NIA have complained about BRO money from DSD no longer being available.

Other Points

The Loyalist Commission to try and play up the bona fides of schemes in their areas, may say that the police on the ground do work with them to some extent in some areas. They may also refer directly to the "Impact" scheme in Bangor which operates in the Kilcooley area. Lady Hermon is strongly supportive of the scheme and appears to have made a personal donation. You may be aware that Des Browne declined to attend the launch of this unaccredited scheme.

- All prospective PSNI recruits go through a rigorous vetting procedure. Any candidate who is deemed unsuitable due to previous convictions will not be appointed.

Standard of Catholic recruits

- Regardless of community background, all recruits must attain the high standards of the merit pool before being considered for appointment. There is absolutely no question of sub-standard candidates being appointed simply because of their community background. Indeed since the introduction of 50/50 over 95% of Catholic applicants have been unsuccessful.

50/50 – Review and consultation

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50/50 RECRUITMENT

Lines to Take

50/50 represents discrimination against members of the Protestant community

- We have never denied that the recruitment arrangements are discriminatory. However they are justified as a temporary means of rectifying an historical imbalance.
- Through the Belfast Agreement, representatives from both sides of the community expressed the desire for a police service which was “*representative in terms of the make up of the community as a whole*”. The only practical way of achieving this aim is through temporary use of 50/50 recruitment.
- Whilst the practice does discriminate it is worth noting that since the introduction of 50/50 the yearly intake of Protestant applicants has actually risen due to expansion in overall numbers of new recruits.

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50/50 – Review and consultation

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- The 50/50 arrangements have always been seen as a temporary means of achieving the goal of a more representative police service. Last month we announced a review of the effectiveness of this policy.

- As we embark upon this consultation period your points are both helpful and welcome.

- The Commission will be formally established once the international Agreement between the two Governments is signed. In the meantime it is working in shadow format. Members getting to know each other and the context, and working out how they will approach their work.
- The Commission will be expected to produce reports on the incidence of paramilitary activity every 6 months, or in response to specific requests by the Governments. It will also report on claims by Assembly parties that other Ministers or parties are not committed to peaceful and democratic means, or the other terms of the pledge of office. Finally, will report twice a year on any programme of security normalisation undertaken if the necessary changes occur in the security context.
- Where complaints that a Minister or party is in breach of the pledge of office relate to the operation of the Strand One institutions of the Belfast Agreement, only the two UK-appointed members will be involved in reporting on it.
- In its reports on paramilitary activity and on breaches of the pledge of office, the IMC will have discretion to recommend both remedial action, and what steps the Assembly might take against the Ministers or parties in question. It is then for the Assembly to consider this, and act accordingly by cross-community vote.
- The action the Assembly may take includes exclusion of individual Ministers or parties from Ministerial office for varying periods up to a year, withholding of pay; and withholding of party allowance. In the event that the Assembly attempts to implement an IMC recommendation by cross-community vote but fails, it then becomes open to the Secretary of State to take the step himself, as a last resort.
- Don't know yet when first IMC reports will appear. For the Commission to decide how it will approach its work. But we would expect producing an initial report on paramilitary activity to be an early priority. Clearly the Commission cannot report on complaints regarding pledge of office until the institutions are restored, nor on normalisation until the Government commences a programme - which will not happen until we are satisfied that the security context justifies it.

Defensive points

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INDEPENDENT MONITORING COMMISSION

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Defensive points

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What will the Commission say about linkages between paramilitary groups and political parties?

- The IMC has a clear remit to report both on the incidence of paramilitary activity and – where it feels it is justified – to **make recommendations about what action the Assembly might consider taking** against Ministers or parties in the light of its findings. It will be **for the IMC to determine in each case the nature of any relationship between a given paramilitary organisation and a party** represented in the Assembly.

Allowing Irish/US members to report on whether Assembly Ministers are in breach of commitment to peaceful and democratic means lets the Irish in Strand One?

- **No.** Convention is that **operation of the internal institutions of Northern Ireland is an internal matter for the UK**. Agreement establishing the IMC is quite clear that **where complaints that a Minister or party is in breach of the pledge of office relate to the operation of the Strand One institutions, only the two UK-appointed members will be involved in reporting**. [If pressed: Quite legitimate for the whole body to offer an opinion on whether an individual or party is not committed to peaceful and democratic means – that is a matter that goes to the heart of the Belfast Agreement.]

Background

The Loyalist Commission have asked to discuss the role of the Independent Monitoring Commission. The suggested line to take is designed to give them a brief account of how we intend it, and the revised system of measures against Assembly parties or Ministers, to work. Given that the Loyalist Commission includes representatives of three loyalist paramilitary groupings – the UDA, the UVF and the Red Hand Commando – the Loyalist Commission are likely to be particularly interested in hearing when and how the body will report on paramilitarism. Essentially, the message here is that it is for the body to determine its working methods and timescales, and we should certainly avoid getting into the detail of what the initial report might say.

They may raise the question of what the IMC will say about linkages between paramilitary groups and political parties, either from the perspective of the links between the PUP and the UVF; or taking the line that Jeffrey Donaldson and others took in the debates on the Westminster legislation (“will Sinn Féin evade steps being taken against them because they will simply say they are not PIRA?”). We should not speculate on these issues, but stick to the line that the IMC will need to

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make its own judgements. They may also echo the concerns of some unionists that the "international" character of the membership gives the Irish Government (by proxy) a role in the Strand One institutions for the first time.

Defensive lines on both these questions are set out above. A more detailed background note on the IMC, plus some selected Q&A, is attached.

3. The members of the Commission are Lord Grieve, formerly a senior officer in the Metropolitan Police; Lord Alderdice, the first Presiding Officer of the Northern Ireland Assembly (both appointed by HMGO); Joseph Brannan, former Secretary General of the Department of Justice in Ireland (appointed by the Irish Government); and Richard Kern, former Deputy Director of Central Intelligence in the United States (appointed jointly by us and the Irish). They, and the Commission, are independent.

4. The Commission's functions will be:

- i. monitoring and reporting on the incidence of alleged paramilitary activity;
- ii. at its discretion, investigating claims by Northern Ireland Assembly parties that individual Ministers or Assembly parties are in breach of their commitments under the pledge of office in the Belfast Agreement;
- iii. reporting on the progress of any formal programme of security normalisation undertaken by the British Government in the context of acts of completion by paramilitaries.

5. In its reports on paramilitary activity and breaches of the pledge of office, the Commission may recommend both what remedial action might be taken in cases of breach; and what measures it considers that the Northern Ireland Assembly might consider taking to encourage future compliance. These measures are limited to those provided for in UK legislation (see para 7 below). The International Agreement also makes clear that, insofar as a complaint about a breach of the pledge of office relates to the operation of the internal institutions of Northern Ireland (the "Strand One" institutions of the Belfast Agreement), only the two UK-appointed members of the

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The Independent Monitoring Commission – background note

Significant progress has been made (end September 2002) with putting in place the monitoring and compliance arrangements outlined in the Hillsborough package.

2. On 4 September the Governments published the draft International Agreement establishing the Independent Monitoring Commission, and announced its membership. The International Agreement will require formal signature and ratification before it comes into effect. Legislation is also necessary in both the UK and the Irish Republic to confer immunity from suit on the body and make funding arrangements. In the meantime the IMC is working in “shadow” format.

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Commission will investigate and report on it. This maintains the doctrine that Strand One issues are an internal matter for the UK; and was a key point for unionists.

6. Regular reports on paramilitarism and normalisation will appear twice-yearly; further reports on paramilitarism will appear at the IMC's discretion or at the request of the Governments. Reports on breaches of the pledge of office will be undertaken at the Commission's discretion in response to complaints by parties.

7. The Northern Ireland (Monitoring Commission etc.) Act received Royal Assent on 19 September. As well as conferring the necessary immunities, this puts in place the other key element of the Hillsborough agreement, by amending the Northern Ireland Act 1998 to provide the Assembly – and in the last resort the Secretary of State – with a broader range of measures to respond to any reported failure by Assembly parties or Ministers to comply with the commitment to peaceful and democratic means or other terms of the pledge of office.

8. Under the Act, the Assembly may exclude parties or Ministers from holding Ministerial office for 6-12 or 3-12 months respectively; withhold pay from parties or Ministers; withhold state-funded party allowance; or pass motions of censure. In all cases, the penalty requires cross-community support, as defined in the Belfast Agreement, to be carried. In addition, the Secretary of State is given a reserve power to act. This becomes available where the IMC has made a recommendation, and the Assembly has attempted but failed to give it effect: in such circumstances the Secretary of State is empowered to do so. A reserve power of this sort was a key requirement for unionism, although a power without these prior conditions on its exercise was unionists' firm preference: its inclusion in any form was difficult for the Irish Government.

9. We expect that the IMC members will meet in early October to discuss their working methods and the timing of their initial report on paramilitarism. Reporting on normalisation activity will not get underway until a programme has begun on the basis of appropriate commitments on an end to paramilitarism; however, another early task for the Commission will be the production of a historical report on normalisation activity in recent years.

Key Q&A

But Irish and US members are still involved in judging whether Assembly parties and Ministers are committed to peaceful and democratic means. A Strand One matter?

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- The key point is this. On matters relating to the operation of the internal, Strand One, institutions of Northern Ireland, the British members alone will examine the issues and report their conclusions. The whole Commission will have a role in reporting its view – where it is asked to - on whether particular politicians are genuinely committed to peaceful and democratic means. But that is a basic requirement of trust and confidence – nothing to do with the workings of the internal institutions.

Why is the Secretary of State's power to exclude parties conditional on the IMC having recommended it and the Assembly having first tried and failed to do so?

- Taking any of the proposed measures against a Minister or Assembly party - especially exclusion - is a major step. We have always maintained that NI politicians should have the chance to manage their own affairs. That is why the Act sets the prior conditions that the IMC must have made a recommendation on action against a Minister or party, and that the Assembly has tried and failed itself to impose such a measure by cross-community vote, before the power becomes available to the Secretary of State.

But Assembly can impose measures without waiting for an IMC report? Why can't SoS do so?

- True that the Assembly can do this: but that is already the position under the 1998 Act in relation to exclusion. It is not our intention that the SoS should step in to the operation of the institutions on regular basis: very much a last resort. That is consistent with our wish to see the devolved institutions take responsibility and manage their own affairs wherever possible.

Multinational IMC constraining SoS power is a breach of sovereignty?

- The IMC is not "constraining" or otherwise controlling the Secretary of State's exercise of his power. Its exercise once available is at the discretion of the Secretary of State, subject to Parliamentary approval.

Does Article 5 of the International Agreement mean that the normalisation programme is expected to be completed by April 2005?

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- The timetable for security normalisation set out in the Joint Declaration was illustrative, and was set out on the basis that appropriate acts of completion occurred at the time of its publication. As Article 15 of the Agreement makes clear, the programme of security normalisation and the timetable associated with it will be determined once the British Government is satisfied that appropriate commitments have been given on an end to paramilitary activity.

Why will the IMC's reports be considered by the Implementation Group of pro-Agreement parties, but motions be voted on by the whole Assembly? Undemocratic to exclude DUP – what if they are accused of not fully co-operating in Agreement institutions?

- The IMC would report on whether the parties are living up to their commitments, which is part of the process of full implementation of the Belfast Agreement. So right that the Implementation Group should consider in the first instance any report from the IMC that such commitments are not being honoured. But final decisions on application of measures to promote compliance would, of course, be for the whole Assembly. We expect that in the course of events all voices would be heard.

Sure that the IG will want its processes to be seen as fair and above board.

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