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Taoiseach

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This is the final form of the joint governments' clarification to Trimble's points - starting on 3rd page -

HMG's AIDE MEMOIRE OF 13 JUNE: SPEAKING NOTES

16 July 1997

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play this unilateral British response on their Aide-memoire
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17-7-97

A number of questions have been raised about the British Government's Aide Memoire, sent to Sinn Féin on 13 June and published on 25 June. This document is not, of course, formally part of this debate on decommissioning. It is not for negotiation, either here or anywhere else: it simply describes the British Government's position, drawing in particular on the legal requirements governing participation in these negotiations.

But, as we have made clear, we want no genuine doubt or uncertainty to remain as to our position. In that context, I think it would be helpful for the British Government to make clear the following points

The Government is determined to see political negotiations under way from 15 September, as proposed in the possible conclusions tabled by both Governments. It wants Sinn Féin to participate in those negotiations from 15 September which, as explained in the Aide Memoire, means a genuine and unequivocal ceasefire needs to be declared some 6 weeks earlier, with words and deeds matching over that subsequent period. But, as the Government has also made clear, it will proceed with substantive political negotiations from 15 September without Sinn Féin if necessary;

Sinn Féin's entry is governed by the legal requirements set out in paragraphs 8 and 9 of the "Groundrules for Substantive All-Party Negotiations", which must be reflected in word and deed. A decision to issue an invitation under the terms of the relevant Act is for the Secretary of State alone. She is legally obliged to issue an invitation when she considers the requirements are met, having made a political judgement of all the circumstances in the round. But, following the declaration of a ceasefire, the Government would want to consult with all the participants as to the practical implications of it for the negotiations;

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Participants can only take part in these negotiations, in any format, after they have received an invitation from the Secretary of State under the relevant Act. As the Aide Memoire made clear, following a ceasefire declaration a period of some 6 weeks will be needed to assess a ceasefire to see that words and deeds are matching before a judgement can be made as to whether the requirements of the Act are met. But, as the Aide Memoire also made clear, this period of some 6 weeks should be used constructively to take account of the needs of all parties. The Aide Memoire set out a range of activity that would accordingly be possible within this period until the Secretary of State reached her judgement;

The Government takes the view that Sinn Féin and the IRA are inextricably linked. Sinn Féin's participation in these negotiations is dependent on there being an unequivocal restoration of the IRA ceasefire. Once Sinn Féin join the negotiations, the legal requirements having been met, they will first need to make their total and absolute commitment to the six Mitchell principles of democracy and non-violence. Any party which demonstrably dishonours its commitment to the six Mitchell principles will no longer be entitled to participate. The rules provide that any participant may make a formal representation to this effect but appropriate action is for the Governments, having due regard to the views of the participants. A resumption of IRA violence would bring this procedure into play.

16 July 1997

**RESOLVING DECOMMISSIONING: SPEAKING NOTES EXPLAINING THE
TWO GOVERNMENTS' JOINT PAPER OF 25 JUNE**

Introduction

1. The two Governments stand by the position set out in the first part of the paper they tabled on 25 June. They are heartened by the widespread support which the joint paper has received and continue to believe that the "possible conclusions" suggested in the second part of the paper offer a basis for resolving the address to decommissioning to the satisfaction of the talks participants.
2. They accept, however, that this is a complex, sensitive and important issue and that participants need to have a clear understanding of all the proposals on the table before they could be invited to move to a determination on this subject.

General

3. While the two Governments will of course maintain their efforts to seize all illegal weapons, voluntary decommissioning requires the active and willing cooperation of the paramilitary organisations concerned. Realistically, that is only likely to be forthcoming in the context of meaningful and inclusive political negotiations. The concern which naturally flows from that is that the latent threat of the weaponry remaining in the possession of the organisations concerned will be used to influence the course of the negotiations. That is a central and valid concern.
4. That concern could be answered on the following lines:

- (i) the structure of the negotiations makes it impossible for any agreement to be reached without the positive support of parties representing majorities in each main part of the community, of a majority of the parties represented in the negotiations and of both Governments. Given their firm public positions and the political imperatives operating on them, it is difficult to see either Government, or the Unionist or Loyalist parties, or the SDLP, or the Alliance Party, Labour or the Northern Ireland Women's Coalition agreeing to anything which they regarded as unfair or unwise, under the threat of renewed violence;
- (ii) indeed, all the current participants in the negotiations have affirmed their total and absolute commitment to the Mitchell principles, one of which commits them to renounce, and oppose, any effort by others, to use or threaten force to influence the course or outcome of the negotiations;
- (iii) prior decommissioning is simply not a political reality, just as it would be unacceptable to many participants that the issue of decommissioning should be left until the end of the negotiations. The compromise approach envisaged in the report of the International Body offers a realistic way forward, with the prospect of securing both a comprehensive and widely acceptable political settlement and total and verifiable decommissioning.

Approach to decommissioning

5. The two Governments have set out their approach to the issue of decommissioning in the joint paper on 25 June. The first paragraph of that paper contains a formal joint undertaking that they will do all they can to ensure that the decommissioning issue is resolved to the

satisfaction of the participants as an indispensable part of the process. In the circumstances of fully inclusive negotiations the two Governments' proposals envisage due progress on decommissioning alongside progress in the substantive political negotiations. The two Governments have made clear that that is what they will work to achieve, building on the commitments which they suggest all participants should make to work constructively and in good faith with the two Governments and with the Independent Commission to implement all aspects of the report of the International Body, including the compromise approach to decommissioning set out in paragraphs 34 and 35 of that report.

Timetable for decommissioning

6. Various concerns have been expressed about the likely pace of progress on decommissioning, mainly in the form of requests for certainty about the timing of particular developments. It is of course difficult to offer such certainty about a subject which in essence the two Governments believe needs to be tackled in a dynamic way. As progress is made on political issues, progress on decommissioning alongside progress in the substantive political negotiations would, in their view, contribute to the creation of a progressive pattern of mounting trust and confidence which would provide the firmest possible basis for reaching a lasting overall settlement. None of this means exchanging guns for political concessions. It is simply a recognition that any successful political negotiation involving parties associated with paramilitary organisations will require real progress in both areas, creating a benign dynamic capable of leading to a generally acceptable outcome.

7. The two Governments' proposals envisage a series of mechanisms being put in place, both to enable the earliest possible

decommissioning of illegal weapons and to ensure that due progress is made on all aspects of the negotiations. As discussed below, they see the Independent Commission being established under item 4 of the agenda for the opening plenary, that is before the end of July, and in a position to commence work in earnest alongside the start of substantive negotiations in the three strands. The proposed Liaison sub-Committee of the Plenary would be operational on the same timescale. Thereafter they envisage

- regular review plenaries to enable the participants to take stock of progress across the negotiations as a whole and to consider whether the necessary confidence and momentum towards agreement is being sustained;
- a role for the Independent Commission in drawing attention to any case in which it considers that participant has not lived up to its commitment to work constructively and in good faith with the Independent Commission in carrying out its functions;
- a role for the Independent Chairmen in offering their judgement from time to time on the need for progress on particular issues if confidence and momentum in the negotiations is to be sustained.

Establishing the Independent Commission

8. It has obviously been impracticable to take steps to establish the Independent Commission in the absence of agreement on what its role should be. It would in any event have been premature to establish the Commission before the talks had reached item 4 of the agreed agenda for the remainder of the opening plenary session

(“Launch of three-stranded negotiations and establishment of agreed mechanisms on decommissioning”).

9. However, the necessary enabling legislation is in place in both jurisdictions and the two Governments, building on the extensive consultations which they have had over recent months with the parties on the role of the Independent Commission, have made preparations such that if the “possible conclusions” they have suggested are agreed, they will be able to:
 - sign the necessary International Agreement between the two Governments on 29 July;
 - make the relevant Commencement Orders under the Northern Ireland (Arms Decommissioning) Act 1997 and the Decommissioning Act 1997 before the end of July. These can be made by statutory instrument in both jurisdictions;
 - formally establish the Independent Commission under item 4 of the agenda for the remainder of the opening plenary session, on 29 July;
 - nominate a Chairman for the Independent Commission, on 29 July, following discussion with the other participants;
 - engage in consultation with the other participants about other possible members of the Commission, with a view to making the necessary appointments by the end of August if at all possible;
 - make the relevant Orders under the respective Acts (subject only to the negative resolution procedure) to constitute the Commission as a body corporate and provide it with appropriate

privileges and immunities, to come into effect in both jurisdictions by the end of August.

- as part of the wider programme of preparatory activity envisaged in paragraph 5 of the joint paper of 25 June, engage in preparatory discussions with the Chairman and with the other members of the Commission (when appointed) in the period before 15 September;
 - in the same context, invite the Commission to consult the relevant security experts in both jurisdictions in the period before 15 September so that it is in a position to formulate options for draft schemes for decommissioning, in conformity with the Mitchell report and its own terms of reference, which may be available for discussion with all the participants from 15 September;
 - invite the Commission in consultation with those identified in the first tier of its proposed terms of reference to make rapid progress after 15 September in refining those options as necessary and drafting further schemes for decommissioning.
10. A scheme can be made by the Secretary of State without reference to Parliament so there need be no delay at that point. Similarly, under the Irish legislation, the regulations required can be made by Statutory Instrument. Both Governments have given an undertaking that no delay or obstacle in achieving decommissioning will be caused by any lack of Government preparation or provision. In particular they undertake that they will immediately give effect to an appropriate scheme as soon as there is any indication of an intent by a paramilitary organisation to commence decommissioning.

The role of the Liaison sub-Committee on decommissioning

11. The terms of reference proposed by the two Governments for this sub-Committee build on earlier exchanges among the talks participants and reflect the view that the sub-Committee should be a conduit for a two-way flow of information between the talks participants as a whole and the Independent Commission. The two Governments envisage that the sub-Committee would have an important deliberative role in considering a range of issues relevant to the practicalities of decommissioning, including proposals for schemes for decommissioning which will be drawn up by the Independent Commission, and draft regulations or orders to be made by each Government under the relevant legislation. Any agreed opinion of the Liaison sub-Committee on proposed schemes for decommissioning would of course be passed to the Independent Commission, but the two Governments do not envisage that the absence of any such opinion need block progress.

Role of the Liaison sub-Committee on Confidence Building Measures

12. The two Governments envisage that the Liaison sub-Committee on Confidence Building Measures will constitute a forum in which there can be regular exchanges of views between the participants on the whole spectrum of possible confidence building measures, particularly those mentioned in chapter 7 of the Report of the International Body. It could provide a convenient place to take reports from those with lead responsibility for a particular issue to set out the steps they are taking and the two Governments would be prepared to play a full part in that process. It could also act as a sounding board for discussing specific or individual cases which

one or more of the participants might view as contributing to (or detracting from) the building of confidence.

13. It should be clear, however, from the draft terms of reference, that the Liaison sub-Committee is intended to be a forum for consideration of particular confidence building measures. It would be expected to draw the attention of the Chairman of the relevant strand to any institutional or systemic implications which arose from its consideration of such measures, which would be for substantive consideration in that strand. The Liaison sub-Committee will not seek to resolve longer term substantive issues which fall more properly within the remits and agendas of the strands.
14. On the question of who would chair these sub-Committees, the two Governments envisage that this would be a task for the Chairman of the Plenary, with Prime Minister Holkeri acting as alternate when necessary.

Role of review plenary

15. If any participant has serious concerns about what they may see as the uneven pace of developments in the negotiations, the review plenaries will give them full scope to express those concerns.
16. It is a political reality that the negotiations can only be sustained if there is widespread confidence among the participants that they are moving in a constructive direction, but the two Governments believe it would be unhelpful to introduce specific tests at any one point.
17. The two Governments certainly envisage that the review plenaries will provide opportunities for the participants to consider whether the

necessary confidence and momentum towards agreement is being sustained. If there were genuine and well founded worries on that score their proposals envisage that the Independent Chairmen, as a group, might have a role to play in indicating the need for progress on particular issues in order to sustain the necessary confidence and momentum.

18. In the context of inclusive negotiations the two Governments will be working to achieve due progress on decommissioning alongside progress in the substantive political negotiations. Their proposals envisage that any party invited to join the negotiations would need to affirm its acceptance of a range of commitments relating to decommissioning, as well as its total and absolute commitment to the Mitchell principles. Those principles do of course include a commitment to the total and verifiable decommissioning of all illegal weapons. The two Governments expect all participants to work constructively and in good faith to achieve the necessary progress on decommissioning and in the negotiations, and to contribute to the progressive pattern of mounting trust and confidence which they want to see established.

Implications of any failure to achieve due progress on decommissioning

19. If any participant fails to live up to any of the commitments it has accepted on decommissioning there would be a number of formal opportunities for the other participants to focus on this:

- (i) the Independent Commission would draw attention to any case in which a participant fails to engage with the Commission in carrying out its role;

- (ii) the review plenaries will give those who may be concerned an opportunity to argue that a participant's perceived failure to live up to its commitments meant that the necessary confidence and momentum was not being sustained;
- (iii) the Independent Chairmen might be moved to indicate a need for more progress in a particular area of the negotiations in order to sustain the necessary confidence and momentum towards agreement.

20. Ultimately, however, it is a basic political reality that these negotiations will only lead to a successful conclusion if all concerned negotiate constructively and in good faith and address all the issues of concern to all participants. The two Governments have invited all the other participants to commit themselves to work constructively and in good faith with them and with the Independent Commission to implement all aspects of the report of the International Body and have said that in the context of fully inclusive negotiations they will work to achieve due progress on decommissioning alongside progress in the substantive political negotiations. They look to all the parties to join them in moving the negotiations forward on that basis.