



An Chartlann Náisiúnta National Archives

Reference Code: 2021/100/5

Creator(s): Department of the Taoiseach

Accession Conditions: Open

Copyright: National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

this effect along with his ruling on other points (attached).

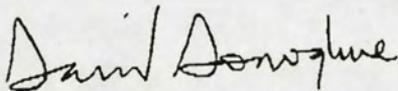
7. Monday afternoon was devoted to bilaterals involving the two Governments, the Chairmen and the parties. The SDLP signalled to us their political need for a statement which would indicate the Garda Commissioner's concurrence with the Chief Constable's assessment of IRA involvement in the recent killings. The Secretary of State (who had also been pressing earlier for a joint indictment of Sinn Féin) lent strong support to this. We emphasised the need for the two Governments to avoid saying anything in advance of our deliberations under rule 29 which might be interpreted as prejudicial to a fair hearing. It was agreed, however, that a low-key indication of the kind sought would be included in the Plenary statement to be made by the Minister for Foreign Affairs.
8. Private contacts with Sinn Féin indicated a potential willingness to disavow not merely the killings themselves but also those responsible for them. The scope for a resolution of the crisis on this basis was discussed with the British Government at various levels. However, although the Secretary of State appeared initially receptive, the idea eventually foundered on resistance from the Prime Minister.
9. When the Plenary opened at 2pm on Tuesday, Sinn Féin sought an adjournment on the grounds that (a) they had been advised by a Senior Counsel that they had a basis on which to take legal action even at this stage; and (b) were awaiting receipt of a second legal opinion on this subject. Adams also referred to a meeting of the Sinn Féin Ard-Chomhairle scheduled for later in the day. Senator Mitchell granted a brief adjournment, following which Adams informed the meeting that they would like a recess for the stated purpose until 7pm. The Senator granted one until 5pm.
10. When the Plenary resumed, Adams said that Sinn Féin were now considering the option of immediate legal action and he passed a copy of the legal opinion to the Chairmen. Following a further brief recess, Adams sought an adjournment so that Sinn Féin could proceed with their action. The Senator refused this, citing the series of adjournments previously granted as well as the substantial notice which Sinn Féin had already received on this issue.
11. The Plenary debate then opened with statements from the Secretary of State and the Minister for Foreign Affairs (both attached). Sinn Féin (McGuinness) followed with a lengthy rebuttal of the British representation which challenged the propriety of the British Government being prosecutor, jury and judge in this matter, the credentials of the Chief Constable as an impartial authority and the fairness of comparisons with the UDP case. Drawing on the legal opinion they had obtained, McGuinness criticised the terms of the "speaking note" and insisted that it provided no basis for the expulsion of Sinn Féin. He also dwelled on the litany of murders committed by Loyalists and, with heavy use of anecdote, on his own personal efforts in the cause of peace. A further theme was the complicity of the UUP in efforts to remove Sinn Féin and the imbalance in their respective contributions to the talks process.

12. In the subsequent debate, Alliance confirmed their earlier circulation of a formal representation against Sinn Féin. Labour, on the other hand, expressed strong opposition to their expulsion, as did the NIWC. The UUP (Trimble) rebutted a Sinn Féin claim that they had shown no interest in the recent killings of Catholics by Loyalists. Trimble recited various quotations indicating Sinn Féin support for the armed struggle, noted that Sinn Féin had not disowned those responsible for the Campbell and Dougan killings and warned that "reliable indications" of their commitment to peace would be needed before they could rejoin the process.
13. The Plenary was adjourned until 9.30am on Wednesday morning. It reopened with the PUP, who said that the UDP precedent required the removal of Sinn Féin. In a forceful intervention, the SDLP (Mallon) held that the rules would have to be applied on a basis which was fair and consistent and drew attention to four key criteria which had been applied by the Governments in previous instances under rule 29. He also emphasised the problems posed for parties who were being required to form judgements without the benefit of information available to the Governments.
14. The remainder of the debate included some sparring between Sinn Féin (Kelly) and the PUP. Alex Maskey pressed the Secretary of State to withdraw her indictment on the basis of the four criteria mentioned by Mallon. He also observed that the Taoiseach had indicated in the Dail the previous day that there was no evidence against Sinn Féin. In a lengthy reiteration of Sinn Féin grievances, he attacked the RUC over the Brian Nelson case, their slowness in responding to recent killings by Loyalists and other matters.
15. Recalling Sir Patrick Mayhew's handling of an earlier representation with a series of "leading questions" designed to exonerate the parties in question, the NIWC suggested to the Secretary of State that it would have been reasonable to handle the present case in the same fashion.
16. The generally rancorous tone of the debate on all sides was briefly interrupted by an uplifting contribution from the PUP's Hughie Smyth. Recalling the history of unemployment and disadvantage in both communities, and paying generous tribute to John Hume's success in resolving Derry's problems, Smyth sketched a vision of a future Northern Ireland built on cooperation and partnership and underlined the historic challenge facing the talks. He also spoke movingly of his personal experience of the Shankill bombing in 1993.
17. The SDLP (Durkan) supported the various calls made for consistency with previous judgements and pressed the Secretary of State to give assurances on this score. After a short recess, the debate resumed at 2pm with a protracted Sinn Féin presentation, first by Maskey and then by Adams. The latter pointed out that he had disavowed the recent killings and, indeed, all killings. He pressed the Secretary of State to indicate how there had been a demonstrable dishonouring of the Mitchell Principles by Sinn Féin. He also hoped that the two Governments would deliver their judgement face-to-face with Sinn Féin.

189/5

4

18. After further acrimonious exchanges between Sinn Féin and other delegations, John Hume appealed for the current proceedings to be wound up ("three of the most wasted days in my life"). In a brief concluding statement, the Secretary of State repeated some points from her initial "speaking note" and said that it would now be for the two Governments to prepare their determination, taking into account the principles applied in earlier cases.
19. After a brief recess, Adams delivered final remarks on behalf of Sinn Féin which highlighted his party's commitment to a pluralist Ireland and to "making peace with the Unionists". Asking our Government not to support the British indictment, he emphasised Sinn Féin's crucial role in the peace process and, in remarks which were strikingly valedictory in tone, wished all delegations well.
20. The Plenary then adjourned and delegations departed. The two Governments began the process of preparing their determination in the matter with a series of meetings at official and political level which lasted well into the evening. Consultations on a draft text have been continuing today.
21. Sinn Féin's legal action, which was initiated before the High Court yesterday afternoon and involves the Secretary of State and the three Chairmen as respondents, is also continuing. This was the subject of close consultation between the Governments, the Chairmen and legal experts over the past few days.



David Donoghue
19 February 1998

189/6

SINN FEIN AND THE MITCHELL PRINCIPLES, 16 FEBRUARYSpeaking note

1. Chair, it has been the consistent position of the British Government that participation in these negotiations requires total and absolute commitment to the principles of democracy and non violence set out in paragraph 20 of the Report of the International Body. Any party which demonstrably dishonours its commitment to those principles ceases to be eligible to participate in the negotiations.
2. In this connection, colleagues around the table will recall that in their determination of 24 September 1997 the two Government reiterated that they would expect the Republican Movement as a whole to honour the commitment to the Mitchell principles affirmed by Sinn Fein. Applying that same logic, they concluded on 26 January 1998 that the UDP was no longer entitled to participate in the negotiations on account of UFF involvement in sectarian murders.
3. Shortly after 11pm on 9 February two gunmen shot dead Brendan Campbell and seriously wounded his female companion in Brookland Street, Belfast. Just before 1pm the following day a gunman approached a parked car in Dunmurry, Belfast and opened fire, killing the occupant, Robert Dougan, before making his escape in a waiting car. Both murders, like others in recent weeks, were deplorable and inexcusable, and the Government condemns them without reservation.
4. The Chief Constable's firm view is that both these murders were carried out by the Provisional IRA. His assessment is based both on intelligence information available to him, and on evidence obtained in the course of the RUC's investigations to date into the two crimes. Criminal charges have now been preferred in respect of Mr Dougan's murder, and it is therefore not appropriate for me to go into any detail on that. If I were to say any more at this stage it could prejudice the judicial process in that case and put me in breach of the Contempt of Court Act. I can however confirm that the weapon used in the murder of Mr Campbell had also been used in a previous murder - that of Mr Johnston in December 1995 - which was claimed by Direct Action Against Drugs, which the Chief Constable has confirmed is a cover name used by the Provisional IRA.
5. The British Government concurs with the Chief Constable's assessment that the Provisional IRA were responsible for both these murders.
6. I also note that the statement issued by the Provisional IRA on 12 February did not deny that the murders had been carried out by the Provisional IRA.
7. These considerations clearly raise the question of whether Sinn Fein is any longer entitled to participate in these negotiations. I therefore propose that you, Chair, should make appropriate arrangements for a plenary meeting later today at which the parties can express their views on what I have said and on any observations, oral or written, which the Sinn Fein delegation may wish to make.

189/7

Multi-Party Talks, Dublin, 16-18 February 1998**Possible Representation Under Rule 29: Speaking Points**

- On behalf of the Irish Government, I want to make clear that we are deeply conscious of the extreme gravity of the situation now confronting the talks and the peace process as a whole.
- We are very sorry that, as on the first day in London, we find ourselves having to turn our attention away from the substantive business of negotiation. But it is clearly necessary.
- The Irish Government is totally opposed to, and condemns utterly, all killings of any person, and for any purpose. We equally repudiate the use or threat of violence for political purposes.
- In addition, the principles of democracy and non-violence are the basis on which the talks are founded, and are fundamental to the integrity of the process. Any charge that they have been demonstrably dishonoured is a most serious one, and requires very careful consideration. Moreover, as we are all aware, this procedure has been invoked on a number of occasions. It is important that our rules are applied equitably and consistently.
- We are anxious to hear the views of all parties around the table on this matter, and in particular that of Sinn Féin. It is important that the party be given every chance to set out its position, including in relation to the two killings in question and to the Mitchell Principles.
- The Governments will then review all the elements involved and decide whether, and if so what, appropriate action may be required.

Office of the Independent Chairmen

189/8

Castle Buildings Stormont Belfast BT4 3SG Northern Ireland
Telephone 01232 522957 Facsimile 01232 768905

STATEMENT BY SENATOR GEORGE J. MITCHELL FEBRUARY 16, 1998

At a Strand Two meeting this morning, the Secretary of State read and then circulated to all of the participants a document entitled "Sinn Fein and the Mitchell Principles, 16 February, Speaking Note." A copy of that document is attached hereto.

In the concluding sentence of that document the Secretary of State asked that the Chair "make appropriate arrangements for a plenary meeting later today at which the parties can express their views on what I have said and on any observations, oral or written, which the Sinn Fein delegation may wish to make."

The Chair then invited each party to express its view on the Secretary of State's request for a plenary meeting, either then and there at the Strand Two meeting, or at a later private meeting with the Chairmen, or both. Following a brief discussion the Chair adjourned the meeting, subject to the call of the Chair.

189/9

The Chairmen then met twice with the two Governments, three times with Sinn Fein and once with every other party.

Sinn Fein made three requests: First, that I not convene a plenary on this issue; second, if a plenary is convened that it not be held immediately as they needed time to prepare their response; and third, that a stenographer be present to prepare a verbatim transcript of discussions on this matter.

I will address each of these requests.

Sinn Fein contends that the Secretary of State's statement is not a "formal representation" within the meaning of Rule 29 of the Rules of Procedure and is, therefore, not a sufficient basis on which to convene a plenary. I believe that it is. But, in any event, a finding that the statement is a formal representation is not a prerequisite to the convening of a plenary.

189/10

Rule 20 of the Rules of Procedure grants to the Chair discretion in the convening of meetings. It reads in part: "The relevant Chairman will have responsibility for convening, re-scheduling and adjourning meetings, having due regard to the views of the Business Committee or, as appropriate, of the relevant participants."

Rule 12 provides that "The Independent Chairman of the Plenary may convene further meetings of the Plenary if he considers such meetings to be necessary in the light of developments across the negotiations as a whole."

Thus, it is clear that the Chair has the authority to convene a plenary, wholly independent of the question of whether or not the Secretary of State's statement qualifies as a formal representation under Rule 29.

189/6

Whether the Secretary of State's statement is sufficient to cause the expulsion of Sinn Fein from these talks is not the question to be decided now. Under Rule 29 that question can only be answered by the Governments. The narrow question I now must decide is whether it is appropriate to convene a plenary to consider this matter.

As noted above, I have received the views of all participants on this question. By a large majority, they strongly favor the immediate convening of a plenary.

The Secretary of State asked that the plenary be held today, Monday, February 16. Sinn Fein asked for more time to consider, first, whether there should be a plenary and then, if one is called, to prepare its response to the Secretary of State. Sinn Fein did not specify the length of time it felt was appropriate.

I have considered the views of all of the participants, and I have reviewed the applicable rules of procedure and the applicable precedents.

189/12

I consider it appropriate to call a plenary for the purpose of considering this matter.

I also consider it appropriate to grant Sinn Fein additional time to prepare its response. Thus, I will convene a plenary session at 2.00 p.m. tomorrow.

The Secretary of State will not be materially hindered if the plenary is held tomorrow, Tuesday, February 17. While the delay may be less than Sinn Fein would like, in reality, all of the participants have had a week to prepare for this meeting. The Secretary of State's statement did not come as a surprise. The matter has been widely reported, throughout the United Kingdom and Ireland, for a week.

Sinn Fein has requested that a stenographer be present at further proceedings on this matter. Records of meetings are covered by Rules 43 and 44 of the Rules of Procedure. Rule 43 provides in part that "Records of formal meetings will be prepared by note-takers under the general direction of the Chairman ...". A majority of the participants oppose any change in the process which has been utilised since this

189/13

process began in June 1996; one party had no objection to Sinn Fein's request; another expressed no view. The note-takers have done a fair job of preparing comprehensive summaries of meetings. No persuasive reason has been advanced to change the procedure. In view of the stress laid on this by Sinn Fein, however, I have encouraged the note-takers to be extra careful that the record of meetings on this matter is accurate and complete.

This is not a legal proceeding. It is a political process. The participants are seeking by negotiation to achieve a fair and comprehensive resolution of problems which have existed in Northern Ireland for many years. But proceedings like these, involving Governments and political parties, must combine fundamental fairness and the meeting of the practical need to make progress in these talks. I believe this decision does that.

I am authorised to state that my colleagues in the Office of the Independent Chairmen, General de Chastelain and Prime Minister Holkeri, with whom I have conferred on this matter, share the views I have expressed in this statement.

189/14

SINN FEIN AND THE MITCHELL PRINCIPLES

17 February

Initial Remarks by Secretary of State

- [1. Support Chairman's proposals regarding procedure.]
2. I would like to add to the statement I made at the beginning of yesterday's business; and to address some misconceptions about this process which are going around.
3. First this is not a court of law. These are political negotiations and it is in that context that this procedure arises. The purpose of requiring all participants to affirm their total and absolute commitment to the Mitchell principles was to ensure that there was a level playing field in these negotiations - to create confidence among the participants.
4. I am not acting unilaterally. My actions are governed by the rules of this process - rules which the parties starting this process agreed; and it is the integrity of that process which we all around this table want to protect. In maintaining that integrity it is crucial that everyone is treated fairly and equally. We have done so in the past and are doing so again now.
5. The purpose of requiring commitment to the Mitchell principles is to provide reassurance that these political negotiations are taking place on a level playing field. That is the underlying reason why the participants agreed to incorporate rule 29 in the rules of procedure. The particular procedure envisaged in that rule must of course be applied impartially.
6. I initiated this procedure because it was the British Government which received the information from the Chief Constable that, in his view, the IRA authorised and was responsible for the murders of Mr Campbell and Mr Dougan.
7. If it were possible to go further and share with you the intelligence and all the other evidence on which his assessment was made I would. But I cannot, not least because that could seriously prejudice current court proceedings and constitute a breach of the Contempt of Court Act.
8. However, I can say that the Chief Constable has briefed me fully on the circumstances of these two murders and I and the Prime Minister, Tony Blair, have had the opportunity to fully examine the information and evidence available to the Chief Constable. As a result both Tony Blair and I accept and agree with the Chief Constable's assessment that the IRA authorised and was responsible for these murders.
9. It is now for both governments to consider all the information available and to make a rounded judgement together. It will be a joint decision.
10. Our conclusions will reflect discussions between ourselves and what we hear this afternoon from Sinn Fein and all the parties round this table.

189/15

11. We believe that the procedure you have outlined, Chair, will provide a full and fair basis for the two Governments' eventual determination.

Text of Minister Andrews' intervention

The Irish Government, having considered the assessment made by the Garda Síochána, following the Garda's discussions with the RUC, believe that the IRA has a case to answer in relation to the recent murders of Mr Brendan Campbell and Mr Robert Dougan.

The Government is equally conscious that, under the Rules of Procedure, when a formal representation is made to the Independent Chairman that a participant is no longer entitled to participate in the negotiations on the grounds that they have demonstrably dishonoured the principles of democracy and non-violence - in other words, when they have demonstrably dishonoured the Mitchell Principles, - it is for the Governments to consider what action may be appropriate.

In these circumstances, the Governments are faced with the situation where the party which is the subject of the British Government representation, i.e. Sinn Féin, strongly rejects the suggestion that they have demonstrably dishonoured the Mitchell Principles. In these circumstances the Irish Government considers it to be of fundamental importance that the views of all participants, and especially those of Sinn Féin, should be fully heard, that both Governments reflect very carefully on those views and, having done so, consider what action may be appropriate.

17 February 1998