Prime Minister

NEXT STEPS ON OTRs

Summary
Sinn Féin regard last Friday’s extradition announcement as only a partial honouring of the commitment to sort the OTR issue. But we cannot go further without legislating for an amnesty. In present circumstances that is not an option. If decommissioning were achieved and a more secure peace established legislation might be a possibility in the next Parliament. Even then it would be contentious and raise many difficult issues. One possible way forward now would be to announce a review, by a distinguished independent figure of how an eventual amnesty might work. But even this would be highly controversial politically and probably be terminal for the pro-Agreement unionists. I cannot recommend it. If you agree, we need to decide how best to recondition Sinn Féin’s expectations.

Detail
2. Adams believes that he has firm commitments from you dating from last November and repeated in May, that the OTR issue would be “sorted”. The impression created was that we simply needed to resolve a small number of anomalous cases. What we now know is that there are far more cases than we were led to believe; changing our approach to extradition and reviewing the evidence case by case solves only part of the problem; and legislating for a solution inevitably means an amnesty since we could hardly waive prosecution in respect of fugitives while still keeping open the possibility of prosecutions for everyone else.

3. An amnesty would raise much more fundamental issues than the early release scheme provided for in the Good Friday Agreement. To confer immunity from prosecution for many of the gravest crimes on the statute book would, in any circumstances be contentious. In the absence of
decommissioning, disbanding of the IRA or unequivocal evidence that the "war" really was over, it would probably be impossible to get through Parliament. It would also be hard to justify an amnesty in our jurisdiction without parallel arrangements in the Irish Republic.

4. To meet the needs of victims we would have to consider whether, as in South Africa, amnesty should be conditional upon individuals revealing the truth about their crimes. But the South African experience was different in many respects, notably because of the change of regime and the consequent danger which people ran in simply trying to keep their heads down. It is far from clear whether former terrorists could be brought to co-operate with the Northern Ireland version of a Truth & Reconciliation Commission. Sinn Féin would, no doubt, want alleged security force abuses to be examined by such a Commission, but any process which suggested an equivalence between PIRA violence and the actions of members of the RUC or the Army would be repugnant to much of British and Northern Irish opinion.

5. In the long term these considerations may not prove decisive. The longer peace lasts the more the police and the prosecuting authorities might actually welcome being relieved of the burden of having to consider prosecutions in respect of offences from 30 years ago and more. At that point we would also have to review the basis for the present early release scheme under which any prisoners stand to remain under licence for many years — in the case of lifers for the rest of their lives. It would be difficult to justify maintaining a licence regime over those who have paid at least some penalty for their crime while wiping the slate clean for others who had never been brought to justice.

6. If this analysis is accepted we need to decide what to say to Sinn Féin and whether to commission any further work. For Sinn Féin I believe there needs to be an early and frank exchange with Adams in which we would make it clear that the extradition announcement and the Attorney's review of individual cases had, so far as we were concerned, sorted the OTR issue for the foreseeable future. To go any further would involve legislating for an amnesty which we could not deliver until and unless everyone could see that the war was unequivocally over and the arms issue unambiguously
resolved. I think the message would best come from you, though if you preferred I could make it so that I was speaking with your explicit authority.

7. Before we talk to Sinn Féin we need to decide whether, as would be my preference, we simply park the issue for the time being, or whether, we should initiate some further work, perhaps by publicly commissioning an independent figure to produce a report on issues associated with a possible eventual amnesty. Clearly there is further preparatory work which would need to be done if we were eventually to move towards some kind of Truth Commission. But the issues are essentially ones of principle and political sensitivity rather than intrinsic legal difficulty. Moreover, any such move would certainly imperil the NI Executive as well as putting an end to present cross-party support at Westminster for Northern Ireland policy. So I would not recommend a review at this stage.

8. You may prefer to defer reaching a view on this while we concentrate all our immediate attention on trying to save Trimble. But if we do secure the second visit by the inspectors and re-engagement with de Chastelain, we shall need to have an early agreed line for deploying with Sinn Féin.

[Signature]

PETER MANDELSON

♀ October 2000