

Problems of implementation

Monica McWilliams and Kate Fearon

Monica McWilliams is a member of the Northern Ireland Assembly for South Belfast, and co-founder of the Northern Ireland Women's Coalition and senior negotiator in the talks leading to the Belfast Agreement.

Kate Fearon is a political adviser to the Northern Ireland Women's Coalition and member of the team at the multi-party talks leading to the Belfast Agreement.

The Belfast Agreement was hailed as a major achievement in the history of relations between the United Kingdom and the Republic of Ireland. It allowed all shades of unionism and nationalism to buy into the vision of a new society. There were also bitter pills to swallow, but these proved to be palatable when washed down with some of the more positive provisions. The Agreement is hugely ambitious and by no means a perfect product, but it has what some have termed a 'protective ambiguity' which provides some freedom of interpretation necessary for it to be sold to the opposing constituencies. When put to the people in a referendum it was overwhelmingly endorsed, but the result was hard won.

It required many different factions who had been hostile to each other to pull together and promote the flawed product to the people in the face of a vociferous 'No' campaign. But the freedom of parties to interpret different provisions to their own advantage at the expense of their enemies, while tactically useful at the time of the initial campaign, has proved to be a double-edged sword. In the short term, in the absence of trust between parties, this was a pragmatic and effective stance. For the long term though, a different strategy should have been embarked upon.

Fulfilling the obligations of the Belfast Agreement required some seventy-four different tasks of varying degrees of difficulty. These tasks were variously the responsibility of the British government, the Irish government, the parties participating in the process, and the new First Minister and Deputy First Minister to complete. Some provisions were not assigned to any named sponsor and therefore depended on individual parties and interest groups to lobby for their implementation.



Negotiating the implementation

Getting the Agreement was only the beginning. As the months after the tough referendum campaign and elections passed and the multiple components began to be put into effect, people realized that the process of implementation would require as much, if not more, concentrated energy as the process of negotiation that produced it. Although the drafting of the Agreement had taken place in the seven months prior to 10 April 1998, most participants had been in the room with each other for the greater part of two years. The question of their entitlement to participate in that process had been carefully constructed. To begin with, and in contrast to past attempts to cut a historic deal, the process had gone beyond the traditional elites for participants. Holding elections to determine entitlement to attend the talks had ensured a process that was grounded in inclusion. Not all participants, however, had been keen to include other parties despite their democratic mandates, but it was not until all interests were represented around the table that things had begun to move.

The political process had been managed principally by the British government together with the Irish government until the onset of multi-party talks in 1996, at which point the independent co-chairs took on the management and facilitation role, always gaining the consent of the participants to do so. Over time the independent chairs, by demonstrating a willingness to provide space without favour to each participant, gained the respect of most participants, and their authority as managers of the process became accepted. This then, was the framework upon which the talks process had been constructed and which was dismantled once the Agreement had been accepted.

The governments, particularly the British government, took on the task of implementing only those areas of the Agreement which specifically named them, or which was clearly their legal responsibility. They continued the inclusive format in the task of translating the various aspects and aspirations of the Agreement into legislation, consulting with all the relevant parties in the summer of 1998. However, they took a distinctly hands-off approach to managing the overall implementation, even shifting their key personnel who had built up real expertise and relationships with the influential players on the Northern Ireland political scene. Their rationale was understandable: the Agreement was supposed to herald the demise of direct rule, and the British government was sensitive to how new locally elected politicians might react to a heavy-handed government in London insisting on running the Agreement. But this stance has cost the process dearly. Even a relatively low-intensity but sustained management role could have greatly aided the implementation process. The British government, as a

sovereign power, has a responsibility to govern both specifically and generally. In the implementation of the Agreement it has governed specifically with regard to its identified commitments. But it has governed only sporadically with regard to its general duty of overall implementation except at crisis points when the local politicians proved unable to execute their responsibilities fully. On these occasions the pattern has been one of short bursts of highest level engagement bringing with it the pressure to succeed quickly and produce results. In engaging at this level, the premiers have diminished their joint credibility and, arguably, become a destabilizing resource instead of a driving force.

Initial progress

Implementation began on a high note. The election of David Trimble of the UUP and Seamus Mallon of the SDLP as First Minister (designate) and Deputy First Minister (designate) respectively on 1 July 1998 was the first step to bedding down the Agreement and the institutions it established. The two ministers were required to produce a report detailing new administrative departments and cross-border implementation bodies. On the face of it, this was a relatively straightforward task and the consultation recreated the inclusiveness of the previous negotiations. It was conducted bilaterally and round-table meetings with all participants did not occur on a regular basis. An initial discussion paper detailing a number of options was produced in August, but as it continued into September and October the process of implementation only served to provide new opportunities to play out old battles. The dual roles of Trimble and Mallon – as Assembly ministers representing all the people of Northern Ireland and as leaders of their own parties – meant that they were unable to focus on overall implementation alone when serving their constituencies as well. In addition, Trimble became vulnerable as other parts of the Agreement, over whose implementation he had no control, began to be delivered. Such an area was the accelerated release of politically motivated prisoners. The unionist analysis was that the Agreement was designed to deliver quickly on issues, including prisoner releases, which were seen to favour republicans. They argued that it was difficult for their constituency to see the value of the Agreement in this context when their favoured part (a working Assembly in Northern Ireland) would not be delivered until later down the line.

These tensions have undermined the whole implementation process and made it impossible to meet the first deadline laid down in the Agreement. By 31 October 1998 the parties were expected to have undertaken a work programme with a view to identifying and agreeing areas where co-operation and implementation for mutual benefit will take place.

How did you vote in the Referendum for the Belfast Agreement?

	All of N.I.	Protestant	Catholic
Yes	74%	64%	89%
No	26%	36%	11%

If the Referendum was held today, how would you vote?

Yes	65%	49%	88%
No	35%	51%	12%

Do you want the Belfast Agreement to work?

Yes	83%	72%	98%
No	17%	28%	2%

Source: The Belfast Telegraph, October 1999

The importance of maintaining an inclusive process was overlooked. Very few round-table meetings were held, and the number of parties involved in the process of negotiating on this part of the Agreement was reduced to just the SDLP and the UUP. There had been no internal or external encouragement to maintain an inclusive implementation process until the Mitchell Review.

Stalling and delay

The nature of these discussions dragged on until December 1998, when the Prime Minister and Taoiseach stepped in and, reportedly, facilitated a deal between the UUP and the SDLP. When they left, however, the deal proved illusory and the next few days were spent in recrimination and blame. This, compounded with non-implementation, led to accusations of bad faith and further engendered mistrust. An inclusive consultative process with an increased number of participants would have made the process more open and transparent and enabled participants to verify any statements made by the parties at the centre of the dispute. Broadening the scope of the discussions would have shifted the focus away from the hostile UUP–SDLP axis, softening the glare of the media spotlight and making it easier to agree details that may have been unpalatable to the main players.

The process picked itself up again and a deal between the SDLP and the UUP, identifying the ministries in the new

Executive, was eventually brokered in the middle of December 1998. The question of how committed some parties, particularly the UUP, were to implementation surfaced again in January 1999 when the First Minister and Deputy First Minister were due to present the deal to the Assembly for endorsement. The UUP, fearing that might result in the automatic establishment of an executive, backed off from the deal because very few people knew exactly what the legislative status or impact of any progress or decision might be. They therefore held back for fear of doing something indirectly that they did not intend to do. A last-minute compromise was brokered to acknowledge (but not formally endorse) the report for a month until the legal position could be clarified. At a tense meeting in February 1999 the report was formally accepted.

In contrast, the process that decided the composition of the Civic Forum, which was to act as a consultative mechanism on social, economic and cultural issues, was conducted in a more business-like manner. A working group was established, comprising one representative of each of the political parties, with senior civil servants forming the secretariat. Representatives on this group tended to be of junior rank, reflecting the lower political importance given to it by the bigger parties, and included more women (four out of seven regular attendees). An initial paper was produced by the secretariat and the representatives discussed and amended it at frequent meetings over a two-month period. This is not to say these negotiations were easier – they were not – but there was a commitment to discuss the issues until they were resolved and as many round-table meetings as necessary were held. When it was completed the report of the First Minister and Deputy First Minister, which outlined the arrangements for the Civic Forum, constituted the largest and most detailed section.

The report on departmental structures, North–South bodies and the Civic Forum was finally endorsed by the Assembly in February 1999. Attention then turned to the remaining component of the Agreement which was the sole responsibility of the Assembly participants: the establishment of an inclusive executive to which powers could be devolved.

Getting bogged down

UUP members of the Assembly had followed Trimble’s leadership line in voting for the report. The vote illustrated that he and the pro-Agreement unionists still commanded a majority over anti-Agreement unionists in the Assembly – but by only one vote. The UUP had demanded that IRA decommissioning of weapons take place before Sinn Féin representatives could assume their seats in government, though no such demand was in the

Agreement. Indeed, Sinn Féin representatives stated that if it had been they could not have delivered any weapons or the referendum 'Yes' vote. The British government also had a specific role to play as the Secretary of State had the responsibility for calling a meeting of the Assembly to run the d'Hondt election procedure (by which parties would nominate their ministers to serve on the executive). It therefore began to play a closer role again. Mo Mowlam, the Secretary of State, had in January set a target date of 10 March for the d'Hondt procedure to be run. On 17 February, the day after the Assembly formally agreed the report of the First Minister and Deputy First Minister, both governments announced that over the next fortnight there would be a new drive to break the decommissioning deadlock. On the same day, the first party-to-party meeting took place between Sinn Féin and the UUP. This was indicative of part of the problem. The people who were negotiating around that table, even though they had been in a talks process for over two years and had been on the same side for the referendum campaign, did not know each other. During the process steered by Mitchell, there had been structured and facilitated listening, if not dialogue, between parties but the process had never required them to form personal relationships. Trips abroad sponsored by international non-governmental and inter-governmental organizations had provided opportunities for interpersonal contact, but the potential, certainly between Sinn Féin and UUP members, was not realized on returning to Northern Ireland. Given this context, the meeting appeared to be a relative success. After it was over though, Trimble sidelined the Secretary of State and travelled to Downing Street to lobby the Prime Minister. Blair was to continue in this vein over the next few months, becoming the facilitator in bilateral discussions about acceptable arrangements to allow the implementation of the agreement with Sinn Féin, the SDLP and the UUP. On occasion, the Irish government would also be present in Downing Street.

These meetings culminated on three occasions (April, May and July 1999) in intensive negotiations held at Hillsborough, Downing Street and Stormont involving the two premiers. At the same time, the Secretary of State and her Minister of State convened a parallel process in Belfast, holding round-table meetings with all participants. These became problematic for a number of reasons. Firstly, while the SDLP and Sinn Féin sent high level delegations (Hume and Adams appeared at least once), Trimble never appeared for the UUP. This and personnel changes to the UUP delegations caused Sinn Féin to stop sending its top people. Secondly, the government, which chaired and participated in the meetings, was reluctant to have parties commit their positions to paper. Thirdly, the governments did not prepare an agenda. The round-table meetings tended to

be open sessions for re-stating initial positions on the subject and were undermined by a sense that the 'real business' was being conducted at Downing Street with a much narrower range of participants.

To and fro

On 8 March the Secretary of State indicated that it would be pointless to activate her previous plans to run the d'Hondt procedure on 10 March. The unionists were not ready to establish the executive in the absence of progress on decommissioning, and so she put off the deadline until 'no later than the week beginning 29 March'. The shuttle back and forth to Downing Street and the round-table meetings at Stormont continued sporadically, but the axis of communication was between the governments and individual parties, not between the parties themselves. With little progress having been made as the deadline loomed, Blair and Ahern travelled to Hillsborough Castle, the Secretary of State's residence in Northern Ireland, to embark on yet more fire-fighting. The pressure cooker atmosphere had worked well in the context of the talks with the setting of a deadline paying off for Mitchell, and the two premiers felt it would serve them equally well. But they mismanaged the process.

Mitchell had been working within an ongoing process for many months, but the two premiers had not – the round-table talks at Stormont were illusory in this regard. Initial discussions were conducted between the UUP, SDLP and Sinn Féin. Other pro-Agreement parties were not involved until the negotiations had been going on for almost a day. The two governments did not on that occasion recall the lesson from the writing of the Agreement that people are much more likely to support something they have had a hand in creating. Additional pressure was created by the fact that both premiers, by becoming so directly involved, were putting their reputations on the line. They needed a result no matter what and could not return to their parliaments empty handed.

The Hillsborough Declaration, which was drawn up after an all-night negotiating session, envisaged a way forward which would see some weapons put 'beyond use' together with a timetable for running the d'Hondt procedure and a collective act of reconciliation. But there was never a first, let alone a final, round-table discussion where all parties could gauge the feasibility of the deal. The governments met all parties individually and then went out to announce the deal to a waiting world media on 1 April. The deal, however, quickly fell apart, as the realization dawned that not all the consent the governments claimed for it was actually there. All parties except the UUP and SDLP rejected Hillsborough on these grounds.

Back to the drawing board

The series of directionless meetings continued in Belfast alongside the discussions in Downing Street between the three pro-Agreement parties due to sit in the executive. These discussions culminated on 15 May in a declaration from Downing Street which was allegedly agreed by the SDLP, the UUP and Sinn Féin and again brokered by Blair. No other parties were involved. Both the SDLP and Sinn Féin believed that they had just agreed a deal with the UUP. It turned out that they had agreed a deal with Trimble, who had real problems selling it to his colleagues in the Assembly who rejected it, undermining his leadership further. More recriminations followed and the relationship between Trimble and his Deputy Seamus Mallon, having been sorely tried by the postponement of their report in January, soured substantially. The Prime Minister, to his credit, signalled his intention not to let this latest setback become an insurmountable obstacle. He announced a new 'absolute' deadline of 30 June – a difficult date to understand except that devolution to the Scottish Parliament and the Welsh Assembly was due to take place on 1 July. In Northern Ireland terms it was right at the beginning of the marching season when tension over Orange Order parades is at its height. However, instead of working in a sustained fashion up until that time, the Northern Ireland parties, so used to not working until the premiers were around, did not seriously engage again until they returned.

This time there were greater preparations. All parties (including the anti-Agreement parties who had not been involved in prior negotiations) were given offices in Castle Buildings, Stormont. On Friday 25 June, the two governments began with bilateral meetings and got the consent of all pro-Agreement parties to three principles that would form the foundation of further negotiations after the weekend. These were an inclusive Executive exercising devolved powers, decommissioning of all paramilitary weapons by May 2000, and decommissioning to be carried out in a manner determined by the Independent International Commission on Decommissioning (IICD). Thus for the first time all parties were starting out from the same position. There was, also for the first time, an agreed interpretation of what the outcome of the paragraph on decommissioning meant. It was a promising start.

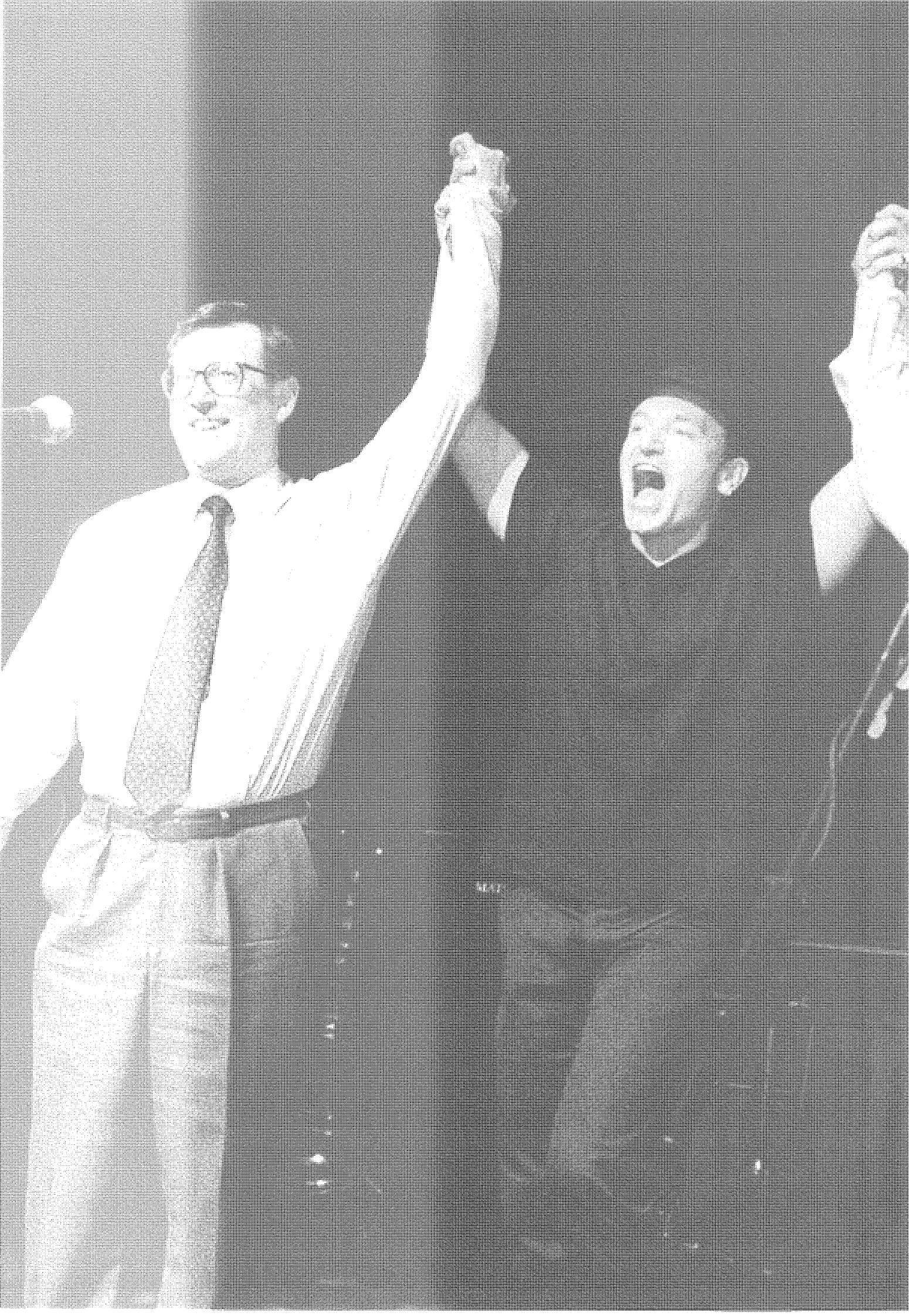
During the following week's negotiations the governments reported substantial, even seismic progress being made. But, again, there was no way for the other parties to confirm this. There was no round-table meeting until the Thursday – a day after the 'absolute deadline' had been reached. But it was here that things began to speed up as parties committed themselves to paper, so that the extent of the reported promises could actually

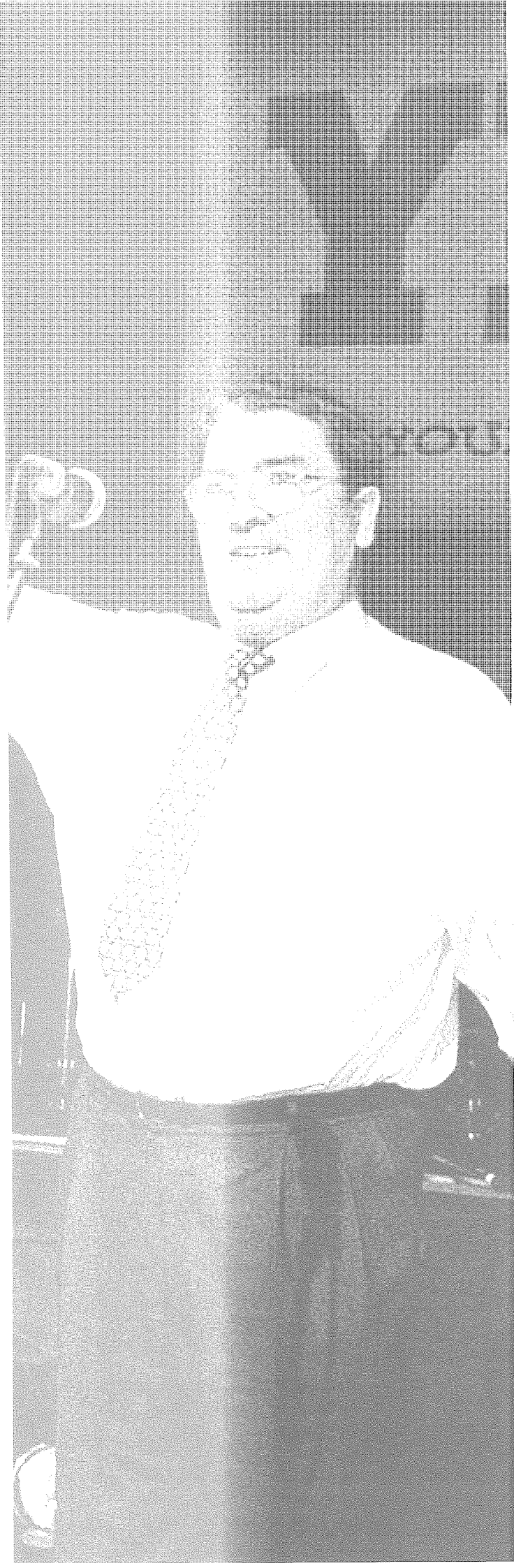
be verified. The result was the Way Forward document, issued on 2 July 1999, which committed the British government to introducing a legislative 'fail-safe' mechanism as a guarantee that if the IRA did not begin to decommission 'within days' of the creation of an executive, the institutions of the Agreement would be suspended. A timetable setting the date for the d'Hondt procedure to be run on 15 July was laid down. On 12 July the Bill which offered the fail-safe mechanism was introduced in the British parliament but the UUP party in the Assembly did not look as if they would accept it. On 15 July the Secretary of State called a meeting of the Assembly as envisaged in the Way Forward document. The UUP boycotted the meeting and as a result it was universally agreed to have been farcical in the extreme. The only moment of dignity in the proceedings came with the resignation of Deputy First Minister Seamus Mallon. The governments immediately announced that Mitchell, the chairman of the original talks, would conduct a review of the Agreement.

The way forward

The trajectory of transition has not cut a clean arc. Anti-Agreement unionists have claimed that there has been a loss of confidence in the Agreement among unionists since April 1998, though this is only partly reflected in opinion poll data. There has been an actual loss of confidence by pro-Agreement unionist representatives who have to deal with the vociferous anti-Agreement unionists. Each attempt to break through the issue of the establishment of an executive has resulted in further loss of faith in the Agreement by the UUP members in the Assembly. It is true to say that some issues were not addressed explicitly at the time the Agreement was negotiated. But it was hoped that the process of implementation would provide all parties with the opportunity to become part of a shared project and enable trust to be built up sufficiently so as either to make the issue of decommissioning less important or to make it easier for both parties to move. But for that to happen, and for the Agreement to be implemented fully, greater sustained overall management, not fire-fighting, was required.

The Mitchell Review of the Agreement (September–November 1999) was able to address this very issue. It had been intended to be a brief review, with most observers predicating that it would last for around a month, but as the weeks unfolded Senator Mitchell became convinced that it should be given more time. Trust, as one UUP delegate put it, 'was creeping in'. The value of the review was that it provided enough sustained contact between parties to enable them to respond positively to the opportunities for mutual





David Trimble, Bono and John Hume, May 1998

understanding that its final phases provided. The improving relationship between the UUP and Sinn Féin was consolidated in week ten when Mitchell invited all the parties to London to spend some time informally at the residence of the US Ambassador to Britain.

The final phase of the Mitchell's review was designed to create trust-building opportunities that could be reciprocated immediately. When the parties, especially Sinn Féin and the UUP, saw that taking small risks, like issuing helpful statements, fostered the build-up of trust, they realized that, collectively for the first time, they could prepare the ground on which bigger decisions had to be taken. The series of incremental steps worked like closing a zip fastener, locking in each stage inter-dependently. Thus, when the time came to make bigger decisions about the establishment of an executive, the party leaderships were more convinced of each others' honest intentions and more prepared to sell the deal to their respective constituencies. Once this process started it rapidly developed momentum and, as Christmas approached, the new institutions came to fruition and the new political processes seemed as if they had long been the norm. As Senator Mitchell stated in his final report, the relationships between the various parties 'may not be trust yet, but it's an important start'. The establishment of the Executive is a momentous step, and in providing regular, even mundane, opportunities to work together and build trust has the potential to truly transform Northern Ireland from conflict to democracy.