DRAFT SUMMARY RECORD OF OPENING PLENARY SESSION - MONDAY 9 SEPTEMBER 1996 (10.10)

Those present:

Independent Chairmen	Government Teams	Parties
Senator Mitchell	British Government	Alliance Party
General de Chastelain	Irish Government	Labour
Mr Holkeri		Northern Ireland Women's Coalition
		Progressive Unionist Party
		Social Democratic and Labour Party
		Ulster Democratic Party
		Ulster Democratic Unionist Party
		United Kingdom Unionist Party
		Ulster Unionist Party

1. The Chairman called this full Plenary meeting to order at 10.10. The Secretary of State said that he was pleased to welcome the Chairman and his colleagues back to the talks. The Chairman said that both he and his colleagues were pleased to be back. He commended Lord Alderdice on what might be termed in America, his promotion, and said it was a well-deserved honour. At that point the chairman noted that he had inadvertently started the meeting in the absence of the UUP delegation, who as it happened appeared in the room just at that time, and he informed them of the proceedings so far. The Chairman said that he wanted to bring to attention of the delegates the text of a statement which he would be releasing later in the day concerning reports in the media about his continued participation in the talks process. The thrust of the statement was that such speculation was unfounded and untrue. It also emphasised that he is deeply and totally committed to the talks.

2. The Chairman then went on to say that at a meeting a few moments ago held at the request of the DUP delegation he was given a document prepared by them consisting of about three pages titled "Notice of Indictment" which alleged that certain participants in the process were in breach of the Mitchell Principles on democracy and non-violence. He said that rule 29 of the agreed rules and procedures dated 29 July 1996 is applicable in these circumstances and he read out the relevant clause in relation to circulation of material in the matter by the Chairman to all the participants and the taking of appropriate action by the Governments having due regard to the views of the participants. A copy of the document will be given to the two parties against whom the allegations have been made to allow them time to prepare a written response and both documents will be circulated to all the participants. Then, if it is the wish of the Government, a meeting of the Plenary will be reconvened at which stage he proposed that the DUP will state the allegations made and the two parties concerned will have the opportunity of replying to them. The other participants will then have an opportunity to express their views. This is a serious matter and it has to be considered thoroughly and treated fairly. The Chairman then asked both Governments for their views.

3. The British Government said that an allegation such as has been made is serious because a body of this character must be satisfied that the parties not only have signed up to the Mitchell Principles but remain committed to them. The procedure for investigating the matter has to accord with that outlined in the rules of procedure agreed on 29 July last and the matter has to dealt with fairly on the point of view of the DUP and the two parties concerned. The procedure as outlined by the Chairman meets those conditions.

4. The Irish Government said that it was fortunate to have Rule 29 to apply in this situation. The procedure outlined by the Chairman accords with that rule and due process should be adhered to. It supported the Chairman's suggestion. The Chairman said that his role was merely to circulate the documents to the participants.

5. The DUP said that the rule provides that the formal representations only have to be circulated. There is no reference in the rule to any reply. The rule then goes on to say that the appropriate action will be taken by the Governments. The DUP then said that earlier in the process, accusations of non-compliance with the principles were made against other parties which had not been brought formally to the attention of the body. The question now was whether the procedure now being followed should apply.

6. The Chairman said that he read the rule as requiring any allegation to be circulated to the participants. The rules do not refer to any timescale, but the principle of fairness and justice means that people must have time to respond to the allegations being made. He thought it fair to have the allegations and the reply to them circulated at the same time. The actual timing he felt was not that important. The two parties against whom the allegations have been made already know the substance of the allegations and are probably considering their response to them anyway.

7. The British Government agreed strongly with the Chairman. It also added the gloss of practical convenience. The rule refers to the views of the participants being taken into account - this includes the two parties against whom the allegations have been made. Once the Notice of Indictment has been circulated the

participants should also get the responses of the parties involved so that the views of the body as a whole can be better formulated.

8. The DUP said that it was not objecting to people preparing an answer to the allegations. But the rule specifies that formal representation must be immediately circulated. If other representations are to be made this could result in the holding up of the whole process. No other party has seen their Notice of Indictment as yet but the rule says that a formal representation must be circulated and the Governments have to decide how to proceed. The DUP also wondered whether the other allegations of non-compliance which have been made still stand and whether they will be dealt with in the same way as the present ones under discussion.

9. The Chairman said that the rule does not say immediately. Furthermore if there are any other allegations extant they will have to be dealt with under the rule and he confirmed that they will be treated in the same way.

10. The UUP said that it was generally content with the Chairman's suggested way of proceeding. The parties concerned have to be given the opportunity of responding to the allegation made. It will make the process easier if both sides are circulated with material beforehand. The UUP had no strong views on the timing of circulation of the documents. The relevant rule said that the appropriate action would be taken by the Governments having due regard to the views of the participants. Any decision in this regard should require consensus.

11. The PUP also agreed with the formula as suggested by the Chairman. However, the party also wanted an adjournment of 40

minutes to consider the matter. This won't allow them time to prepare a written response, but they want to look at the content and the veracity of the allegations made and to consider how to reply to them.

12. The UKUP said that it agreed with the Chairman's proposals as to how to proceed on the issue on the basis on the rules of natural justice. The party had no difficulty with the rules proposed or the request for adjournment. However it felt that there were some general considerations which need to be stated. The view of the public in Northern Ireland and elsewhere throughout in the United Kingdom was that the format of the elections was designed to allow paramilitary parties (notably loyalists) to participate in the talks process. Their presence at the talks has been the subject of acute public scrutiny. Accordingly, any suggestions of violation of the Mitchell Principles should be subjected to close examination, because it has particular relevance for the possible entry of other parties into the process. This point had already been alluded to at any earlier stage in the process and concerned the mirror image as between the loyalist parmilitaries on the one hand and IRA/Sinn Fein on the other. The distinction was that the loyalist parmilitaries had a cease-fire in force. Accordingly, it is vital that this issue is analysed. The decision is one for the Governments, having due regard to the views of the participants. However, the views of the participants cannot override the duty of the Governments to exclude parties if there is clear evidence of a breach of the Mitchell Principles.

13. The DUP took up the point it made earlier about allegations made about unionist leaders breaching the Mitchell Principles. It suggested that they should now be made formally or withdrawn. The

DUP was also concerned that parties should not be able to hold up the talks process by delaying replies to accusations. The allegations should now be investigated with all haste. It is also relevant to say that some parties have said that they accept the Mitchell Principles but at the same time say that they will not decommission weapons. That itself is a breach of the Mitchell Principles and it appears that there are two rules in operation here, those which are applicable to democratic parties, and those which are applicable to the paramilitary parties who, it must be remembered, were not elected to this forum. The DUP would be dissatisfied with a long delay in replying to the allegations because the Plenary meeting cannot be held up in this way. The Chairman said that he intends to consult with the parties against whom the allegations were made to deal with this matter.

14. The UDP said that it also wanted the issue dealt with as soon as possible. It didn't want a question mark hanging over it. The adjournment would give it the opportunity to see the allegations which are being made and would be able to make an assessment of the timescale involved in preparing a reply. The party does not want to drag the process out.

15. The PUP concurred with those comments. It said that the allegations which have been made probably took same time to prepare. The response could be quite short containing two words - not guilty. But the matter is so serious that a proper defence requires some time. It also seems strange that, having drawn up the rules which govern the situation, that the participants themselves have no say in relation to the matter of exclusion.

16. The DUP said the possibility of people staying in or out of the talks depends on whether or not there is a breach of the

Mitchell Principles. The Plenary meeting cannot continue while the matter is not resolved.

17. The Chairman said that he wanted to be clear about three things so that there would be no misunderstanding. They were that

- there was absolute agreement that the rule would be followed to the letter and the spirit;

- there was absolute agreement that no one wants to delay the process of investigation into the allegations unduly; and

- there was absolute agreement that the decision on the allegations is for the two Governments in accordance with the rules.

18. The PUP said that the comments which had been made about the electoral process were ridiculous and that it needed time to consider the allegations because other people in the party had to be consulted. The DUP said that seemed to be a stalling tactic.

19. The Chairman said that the meeting seemed to be arguing over a problem which probably does not exist. He will meet the two parties against whom the allegations have been made informally and he will discuss with them what is a reasonable period for their response.

20. The UKUP challenged the legal notion that the Irish Government can exclude anyone from these talks. The matter of expulsion is one for the British Government as the Irish

McCartney: Since 1985 NI has been a bureaucrat's paradise.

Government is present as a delegate. The UKUP also referred to the three areas of agreement as outlined by the Chairman and endorsed them. In so far as the last item was concerned it refers to the manner and the criteria for the Governments in taking the decision. This should be on the basis of principles 1 and 4 in the Mitchell Principles. If there is evidence that the parties have breached the rules, then expulsion is automatic. The two Governments have no discretion but to exclude, having taken into account the views of the other participants.

21. The Chairman said that is both fair and appropriate to permit the two parties against whom the allegations have been made to receive, read and review the Notice of Indictment presented to him earlier this morning and for him to discuss with them the time within which a reasonable response might be made. He would adjourn the meeting for that purpose until 12.00 midday. In the meantime the parties could usefully use the time for bilateral meetings on the subject on the Agenda for the remaining part of the opening Plenary session and he encouraged this approach. The meeting adjourned at 11.00am.

Independent Chairman Notetakers
10 September 1996

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