

DRAFT SUMMARY RECORD OF OPENING PLENARY SESSION -
TUESDAY 24 SEPTEMBER 1996 (14.06)

Those present:

Independent Chairmen	Government Teams	Parties
Senator Mitchell	British Government	Alliance Party
Mr Holkeri	Irish Government	Labour
General de Chastelain		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 the meeting to order at 14.06 and said that the first item of business was the conclusions by the two Governments on the Alliance Party's allegations against the DUP and UUP, copies of which had been circulated the previous evening. He proposed to follow the same procedure as before in relation to publication of the decisions and the associated papers.

2. The DUP wished to know if the documents were confidential. The party had sought guidance on that matter from the Chairman's office the previous evening but none was forthcoming. As there was a doubt over the issue, the party had refrained from making any comments in the media. However, it noted the remarks made by the Alliance Party in the 'Newsletter' which was critical of the Governments' decision suggesting that it had blown a hole in the Mitchell Principles "well below the waterline". The report had also quoted Alliance as saying that "if Drumcree was not a breach of the Mitchell Principles, it is now difficult to see how a

breach of the Mitchell Principles can ever be established." The DUP said it would like some clarification of the position on the confidentiality issue.

3. The Chairman said that this general matter was the second item on the agenda. For the moment, he just wanted to know if the relevant papers could be published as was done before in the case of the DUP allegations. The DUP responded by saying that Alliance, by breaching the confidentiality rule, had stolen a march on the other participants; the story was now of no consequence media-wise.

4. The UKUP said that the problem highlighted the distinction that had to be made in this area. As already stated by the party, confidentiality should only apply to matters connected with the negotiations leading to a settlement, and it used the analogy of documents produced by parties in litigation without prejudice. However there would be other matters such as statements and ruling which would have nothing to do with a settlement which might not be regarded as coming within any such rule. It recognised that this interpretation might be in ease of the Alliance position, but the real question was whether the Governments' decision was covered by the confidentiality rule at all, principally because the subject matter was not in aid of negotiations towards a settlement. Nevertheless, the UKUP felt that it was prudent for the DUP to raise the issue. The DUP said that that was why it had sought guidance from the Chairman's office, but it had got none. The PUP said it wanted to know when a breach arose because the Governments' decision with regard to the complaint made against them was reported in the media very quickly.

5. Alliance said that the allegation made by it and the respective rebuttals were in the public domain in any event and this was also the case with regard to the earlier DUP allegations. Rule 16 was plain in its meaning and it provided for confidentiality surrounding the negotiations. The matter under discussion was not covered by that so it was questionable as to whether there was a breach of rule 16 at all. The DUP said it was not contending that what happened was a breach of confidentiality. They were merely asking for guidance on the matter after a period of discussion on the issue the previous day. It was obvious that they didn't see the matter as being as straightforward as the UKUP or Alliance, but they now had a better idea for the future.

6. There were no objections to making the Governments' determination public and the Chairman then turned to the general question of confidentiality, referring to the paper circulated which attempted to summarise the discussion which had taken place the previous day. The paper was divided into two sections viz, the areas where there seemed to be agreement and the areas where further discussion was necessary. He wondered whether the paper was acceptable to the parties in relation to the five points of agreement outlined on page 1 of the document. The DUP returned to its earlier requests for a ruling from the Chair in relation to the unilateral action by Alliance in going public. It felt that the Chairman should say whether the briefing should or should not have been given to the press so that it knew exactly where it stood on the matter. The Chairman said he would do so in due course and invited comments on the five points as before.

7. The DUP said that point 4 in relation to documents produced by participants as part of the talks process, (with certain exceptions), being confidential, needed interpretation. The

Chairman said that point 4 reflected the comment made by the UKUP the previous day and reflected the fact that there seemed to be general agreement that documents which simply stated points which were already in the public domain should not be covered by the confidentiality rule.

8. The UUP said that there could be other documents that parties might wish to publicise so the proposed guideline might need to be a little wider to accommodate that. The Chairman thought that this would not be precluded by the present wording but the UUP still was of the view that there might be a need to make the distinction clearer. It would not propose any amendment at this stage, but might do so later.

9. The UKUP said that insofar as point 4 and the recent judgements on allegations were concerned, there was a pointed example of the distinction between documents and information which were part of the negotiations as against documents which were of a procedural nature. Point 4 referred to documents produced as part of the talks process and that was wide enough to embrace both types of document mentioned. During the recent questioning of the PUP/UDP in relation to the alleged breaches of the Mitchell Principles, the British Government had asked specific questions of those parties to which the UKUP took exception. Those questions had been produced in the transcript of the proceedings in narrative form which reduced their significance somewhat when compared with the verbatim record of the session which the UKUP had kept. It was possible that the UKUP might wish to challenge the mode of questioning by the British Government and the decision of the Governments on the basis that they specifically provided a precedent to allow Sinn Fein into the talks process, and that Sinn Fein could not be expelled even if PIRA continued to cause

explosions and commit murder. The UKUP then quoted five questions and answers from its own record to illustrate the point and said that it wanted the exact script brought into the public domain to highlight the matter. But the problem was that the party's own record might be covered by the confidentiality rule. The position seemed to be that the findings of the two Governments could be made public, but the leading questions for the purposes of eliciting specific answers could not be placed in the public domain. The UKUP view was that its document should be regarded as factual and procedural and therefore not caught by the exclusionary rule.

10. The Chairman stated that the second sentence of rule 16 dealt with confidentiality and it referred to "all aspects of the negotiations". The UKUP had chosen to interpret that as matters leading to an eventual political settlement. However, everything that occurred in the talks process led to negotiations and the participants needed to focus on this point. It was important for the Chairman to know what the participants wished to include or exclude from the ambit of the confidentiality rule. The UKUP had opted for a narrow construction but he wondered whether the participants agreed with such a course?

11. The DUP said that it had been proposed that the documents dealing with the alleged breaches of the Mitchell Principles could be released, but why are the full documents including the record of the questions and answers not being included in this. That seemed to be a form of censorship to conceal carefully the matter carried by the UKUP in relation to the UDP/PUP and by the DUP to Alliance. The DUP agreed that under rule 16 all aspects seemed to be covered by confidentiality but this itself needed to be examined because there was the danger that releasing selected

documents to the media might only give a limited picture of events.

12. The Chairman referred to the point about censorship and said that the allegation was not justified on the basis of what had occurred. The notetakers were following the practices that were followed in the 1991/92 talks. No-one had requested a verbatim transcript of the proceedings to be provided. Furthermore the form of the minutes of the session in questions were circulated on the same basis as before and no objections were raised. It was not correct therefore to imply that this form of notetaking was confined to the particular meeting. It was up to the parties to decide if they wished to have a verbatim transcript of the proceedings and they should make this clear if that was what they wanted.

13. The DUP said that the position with regard to the previous talks was different as there were no trials or breaches of principles involved. It wanted a full and proper transcript of the particular matter so that the whole picture could be placed in the public domain. It felt that the notetakers themselves should have decided that a full record would be required.

14. The Chairman noted that the incident arose as a result of the DUP allegations and it did not request a change in the form of the minutes. The party was now requesting a change after the fact. The DUP said that some parties had a full record of what was said.

15. Labour said that acceptance of the Mitchell Principles was a fundamental requirement for participation in the talks. It requested a ruling from the Chair to confirm that rule 16 did not apply to a breach of the Mitchell Principles because they were not

part of the negotiations proper. It also requested confirmation that rule 16 had to be considered in its entirety which meant that participants were required to negotiate in good faith.

16. The DUP said that it was clear that the party had acted correctly in requesting a ruling. The interpretation was that all aspects of the negotiations included all elements in the process and that took in judgements or rulings by the Governments,. The wording of the Electoral Act also confirmed that the negotiations covered everything as the contents of rule 16 seems to cover everything also. The UKUP said it agreed with that assessment. But what was meant by "negotiations". While the term "all aspects" was all-embracing, it was qualified by what "negotiations" meant and this had to be determined. The UKUP continued saying that when it made a point, it did so directly and not by inference. Accordingly, had it intended to make a direct criticism of the form of notetaking, there would be no doubt about how this would have been phrased. While the party did not seek a particular form of notetaking as a whole, it did advert to the fact that the questions being asked of the PUP/UDP had been delivered from a written text and it had requested that that aspect of the proceedings be recorded verbatim.

17. The British Government offered the view that para 4 of the "points of agreement" was slightly tightly drawn. The wording needed to take account of both Governments and parties continuing to issue policy statements which were of public interest. Similarly it was unlikely to be prudent to restrict party or Government statements outlining specific positions. This seemed to suggest that a broader approach should be adopted with a revised form of words being found to cover these points. The

Chairman invited comments from the other participants in relation to the language of para 4.

18. The UUP said that it was preparing a form of words to be used as a rule and read out a draft proposal. It said that the British Government had gone a little further in proposing that statements of position could also be accommodated in any revised language. The UUP acknowledged that this was unlikely to present them with any difficulty as it recognised the need for parties to respond and reaffirm their positions for public consumption. The SDLP stated that it was content with the UUP's outline form of words, but everyone needed to be clear on what the confidentiality rule was there for. It was available primarily as an aid to the talks process by reducing the likelihood of leaks and hence distraction from the key issues. It was also important, however, that rulings of breaches by the Chair, if this occurred, also caused as little distraction for the overall process. In other words the Chair in this instance should be likened to a football referee, rather than a judge, for the former's objective was to keep the play moving while adjudicating on breaches of the rules. The SDLP was therefore content to go along with the views of some of the participants that the issue of confidentiality and breaches of it should be left to the Chair at its discretion. In cases where breaches could be identified and proved, it would then be for the Chair to issue suitable cautions rather than operate from a series of sentencing guidelines.

19. The DUP stated that if rule 16 was going to be adjusted, consideration needed to be given to the UKUP's earlier point regarding the definition of "negotiations". For example, if the Government was negotiating with one party and not the others, did this mean that those who were not involved in those negotiations

were not bound by confidentiality? The DUP said that there was a need to have guidelines in place to avoid ambiguities and define the exact context of "negotiations". The party would not be negotiating with Sinn Fein; other participants might wish to do so, but it could be deemed that the party could, under this interpretation say anything to the media on this and not breach confidentiality. The DUP referred to the words "talks process" in para 4 and asked whether this was a reference to "political negotiations". If this was so then "political negotiations" should be used in the revised language being drawn up.

20. The Chairman proposed that the formulation in rule 16 be used, ie "in the negotiations". The DUP agreed with this provided that a narrow definition was given to "negotiations". The Chairman stated that work on para 4 would attempt to flesh this out. Following a point of clarification, the DUP stated that they would be producing a document by close of play, which would cover certain aspects of the rules of confidentiality. The Chairman welcomed this and indicated to the remaining participants that his office would accept any proposals on the issue of confidentiality up until close of play that evening. The Chairman then asked for comments on any of the five points on page 2 of the memorandum.

21. The UUP stated that relationships between the parties and the media did not go well during the 91/92 talks process. The media had a job to do and it was worth bearing in mind that on occasions an informed media was worth having as opposed to one running on a fairly thin mixture. The UUP then proposed that consideration be given to conducting briefings on lobby terms i.e. on a non-attributable basis. This proposal was a better alternative to the type of slapstick approach of both the 1992 and the current processes. The Chairman asked for comments on this suggestion.

The DUP sought clarification as to who should carry out such briefings. Would it be the Chairman or a task for others? The UUP responded and said that it would be up to each party to brief selected journalists. The DUP thought this approach to be unworkable.

22. The NIWC said that it supported the concept mentioned the previous day of regular briefings being undertaken by the three Independent Chairmen. This would stop some of the frenzy at the entrance gates and could also take away some of the fears which had appeared over the last few months. The DUP sought clarification as to the type of briefing that was being proposed. The party thought the NIWC proposal to be useful but it could also prove problematical for the Chairmen. On this latter point it was likely to be difficult for the Chairmen to find the right phraseology which would satisfy all the participants all of the time.

23. The UKUP endorsed the DUP's comments. It stated that the Chairmen needed to be beyond suspicion in the negotiations and it was therefore not in the interests of the Chair to get into this type of activity. The UKUP stated that such briefings would only bring the Chairmen into the heat of the battle rather than remaining above this. There was no doubting the ability of the Chairmen to perform the function properly, it was simply a case that NI politics were unlikely to allow those involved in the facility to retain their credibility. The DUP stated that if there was merit in the NIWC proposal, it might best be implemented by the Chairmen periodically preparing a progress report which could be viewed and agreed by the Business Committee before release. In this way, the Chairmen didn't take responsibility for what was released whereas the Business Committee did.

24. The SDLP said that while there may be many pitfalls with the NIWC proposal it still could add a greater degree of purpose and dignity to the process. If over-briefing occurred, then the individual could quickly be brought to book. What was important, however, was the need for someone, independent of the proceedings, to give the public a sense of what was happening. Briefings to the press, whether on a non-attributable basis or not, would go on in any case. If the Chairmen did this, however, at their discretion, and the process entrusted the task to them rather than involving the Business Committee, the NIWC proposal was worth supporting.

25. The UKUP said that this was now the second day of discussion on the issue of confidentiality. What was the wisdom in all of this taking place? Why was the process trying to find mechanisms which effectively could lead to the public gaining no knowledge of what was happening in the process? The UKUP stated that the NI electorate knew that the talks delegates were working on their behalf and this work was based largely on publicly released manifestos. Unless there was going to be considerable renegeing of these public commitments, the UKUP questioned whether all this discussion on confidentiality and consequent sanctions was feasible. It was certainly not going to help the debating process, but rather wreck it if secrecy was applied.

26. The British Government stated that it was interested in the DUP's earlier suggestion and that there could be some merit in engaging the Business Committee within it. The proposal should not be dismissed out of hand but it did require more flesh to be put on the bones. The Alliance Party, in referring to the UKUP's previous comments, stated that the whole purpose of the talks was

to negotiate a settlement. Such a settlement wouldn't occur if the negotiations took place in public. If the process was to be a success then it required movement and compromise from everyone involved. Attempting to do this in a public environment was simply not possible. Alliance did, however, have sympathy with the UKUP's comments on the need for rules as there was effectively no remedy to the breaching of information. The bottom line for all in the process was developing mutual trust. If the delegates couldn't handle this then the process would fail. Similarly if trust wasn't forthcoming this rendered the current discussion academic. Everyone had to face the crucial test of trusting one another and stop skating round the main problems which had been occurring thus far.

27. The SDLP stated that its intention was not to tighten up the rules of confidentiality. By the same token the party didn't want rules which were nonsensical and impracticable. The SDLP said that it believed the parties could cover their own positions without betraying the positions of others. If some regular briefing of the media was undertaken by the Chairmen, as already proposed, then this would provide an important aid to the release of information on the process. The SDLP stated that regular briefings could not be divorced from para 5 on page 2 of the memorandum. It was better to have the Chairmen undertaking this briefing; all of them were politically adroit and could be trusted with this task. If any consultation was required then the Business Committee was available but the SDLP didn't consider that the Chairmen should only carry out what the Business Committee's wishes happened to be.

28. The DUP stated that it thought the Chair was to operate "with due regard to the views of participants". The party believed that

a greater sense of realism was required on this subject. There were clearly going to be difficulties for the Chair in such briefings when participants at some point did not wish to go along with the briefing line conveyed by the Chairmen. This required more careful thought as to how this might be resolved/avoided. The Alliance Party commented that there was a great danger in everyone becoming bogged down in the detail of the issue. There appeared to be a consensus that briefings should be undertaken by the Chairmen and conducted on a weekly basis. Alliance said that the DUP suggestion was worth serious consideration. The Chairmen should take on board the views of the Business Committee and undertake such briefings.

29. The PUP proposed that such briefings by the appropriate Chairman be supported by having two representatives from the larger parties and one each from the smaller parties in attendance. Although this seemed like a large number of people it might send a strong signal to those outside the process who might view it as weak, unimportant and holding out little hope for success. The DUP stated that there were those within the process who would have to alter their presentation and language to the media if the perceptions mentioned by the PUP were to change. The party also confirmed that it would be working up a more detailed proposal to that which was outlined earlier in the discussion.

30. The Chairman asked for further comments. On hearing none, he stated that his staff would attempt to prepare a new document, including changes to para 4. In summarising the discussion he acknowledged the comments of the Alliance Party and concluded that agreement on the various aspects of confidentiality was limited around the table and that at the end of the day a much greater reliance on everyone trusting each other was what was required.

The Chairman reminded participants that his office was available to receive any further comments on the issue by close that evening. The session was then adjourned, subject to the call of the Chair, at 15.28.

Independent Chairmen Notetakers
24 September 1996

OIC/PS14