

Office of the Independent Chairmen

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SUMMARY RECORD OF CROSS-STRAND MEETING - MONDAY 30 MARCH 1998 (14.00)

CHAIRMEN: Senator Mitchell
Mr Holkeri
General de Chastelain

THOSE PRESENT: British Government
Irish Government

Alliance
Labour
Northern Ireland Women's Coalition
Progressive Unionist Party
Sinn Féin
Social Democratic and Labour Party
Ulster Democratic Party
Ulster Unionist Party

1. The Chairman convened the meeting at 14.12. He said that this cross-strand session had been called because some participants had brought to his attention that the Comprehensive Agenda had included three items under the heading "cross strand issues" yet the process had so far only discussed one of these - rights and safeguards.

2. The Chairman stated that some aspects of the other two issues - principles and requirements for the new arrangements to address the totality of relationships; and arrangements for validation of an overall agreement - might well have been discussed in other contexts but he did not want to go into the concluding phase of the negotiations without allowing participants to comment on these in a cross-strand format. The Chairman said the floor was now open for discussion.

3. The British Government said the talks were structured in such a way that they addressed key relationships. Strand One addressed relationships between the two communities. Strand Two addressed the North/South relationships and Strand Three the East/West relationships. Those, taken together, addressed the issue of totality. The British Government said there were a number of principles underlying those relationships such as the principle of consent, the principle of democratic accountability, the acceptability of the new arrangements, moving into a new century with new structures of government in both the UK and EU and the fact that the EU context provided the opportunity for everyone to look at these relationships in that context. The British Government said on this last point that the Northern Ireland Assembly would deal directly with the EU as would the North/South structure. On the East/West axis, it expected that the parliaments of Scotland, Wales and Northern Ireland would be able to collectively discuss the impact of EU matters and policies on their jurisdictions. The British Government said equality of opportunity was also a basic tenet of any new arrangements.

4. The British Government said with regard to validation of any new arrangements, an agreement for these had to be based on agreement at the talks and underpinned by referenda, thereby producing the consent of the people in Northern Ireland and the Republic of Ireland. Furthermore both Parliaments and the two Governments should also approve any new arrangements.

5. Sinn Féin said there had been a lot of discussion focusing on the Irish Constitution, much of which had now been exhausted but much less on the British constitutional position. On rights and safeguards, the party said it didn't believe the same kind of attention had been paid to these by the British Government. Recent submissions from the latter fell far short

of what many people considered to be essential rights and safeguards in any new arrangements. These included equality rights which required the same attention as other aspects of an agreement.

6. With regard to the totality of relationships, Alliance said that the refusal to allow Irish people more say in Irish affairs had produced separatism environment at the end of the last century. To work together in this type of environment meant people had to reinforce the geographical boundaries of the sea which separated Ireland from the mainland. The totality of relationships concept was therefore about trying to mend not only North/South relationships but also a whole network of these which could benefit from an inclusive rather than separatist approach. This was an important point, not in terms of the Republic rejoining the UK, but rather to allow people to begin to build better relationships in these islands. The Benelux and Scandinavian countries demonstrated that the more one works together, the greater the benefit.

7. Alliance referred to Sinn Féin's comments on the British constitutional position. It said that party was right to speak of little discussion of this during the process. The party said it would be very happy to hear from Sinn Féin on its proposals for change in this area. Alliance said it knew what Sinn Féin wanted by way of bottom line constitutional change, but this was unrealistic and its party leader had recently acknowledged this. However if there were other proposals then these should be explored further. Moving on, Alliance asked the Irish Government whether it could yet say how far developments such as its possible incorporation of the ECHR could be mirrored with developments in the UK. It asked this since incorporation in Ireland and the UK would provide a brisk and robust means of creating a human rights framework for the entire island. Alliance asked the Irish Government about the

prospects for incorporation of the ECHR. In terms of ratification of the agreement, Alliance said the key element here was the question that went to the people north and south. The party said there was a principle involved in the same question going to the same people north and south on the same day. Alliance said it recognised this would not be entirely easy but wondered whether the Irish Government could tell the meeting whether this was possible.

8. The Irish Government said with regard to ECHR incorporation that it was looking very seriously at this at present and would let interested parties know the outcome of these deliberations. It was also, however, interesting to note that in the absence of ECHR, the fundamental rights of individuals and their protection were enshrined in the Irish Constitution of 1937 and in particular Articles 40-44. The Irish Government said that that had all the elements and ingredients encapsulated in the ECHR and in some respects went beyond the ECHR. It was continuing to look at ECHR incorporation but those Articles in the Constitution gave adequate protection and had done so over many years.

9. With regard to ratification, Article 29 of the Irish Constitution dealt with this and had been used for ratification of the Treaty of Amsterdam and the Maastricht Treaty. The Irish Government said it thought Alliance's question to be a little surprising at this stage. It considered that the same package of words would be used for the purposes of the referenda north and south but seeking the precise form of words at this stage was somewhat premature.

10. Alliance welcomed the Irish Government's comments. The party said it wasn't so much the wording that was of interest to it in terms of incorporation of the ECHR but the whole body of precedents which were

invested with it. On ratification, the party was again not worried about the form of words regarding referenda questions as long as the fundamental question was the same north and south. Alliance said the process was very close to the wire and there were many issues which still had to be sorted out and these were being added to on a daily basis. The party said everyone needed to be in the position of looking at a text within the next few days which also took account of any Sinn Féin proposals flowing from the earlier point in the debate.

11. The SDLP recalled the British Government's comments regarding the principle of consent. It asked how the British Government defined consent. The British Government, in reply, said consent underlined the whole of the agreement. In relation to the referenda questions there had to be support for the agreement though the actual words defining this still needed to be considered. If agreement was reached then the participants were agreeing to a Northern Ireland Assembly, North/South structures and a Council of the Isles plus a range of other issues. The British Government said consent to those arrangements and agreeing by voting was the only way that consent could come about. It was then a case of consenting to a constitutional change in Ireland on that day.

12. The SDLP said the principle of consent had been identified by the British Government earlier in its remarks as a fundamental principle underpinning the three sets of relationships. The party said that that principle, in its view, was more often applied to the issue of the constitutional status of Northern Ireland in that this could only change if a majority of the people in Northern Ireland consented for it to be otherwise. The SDLP asked whether or not there was an overlap between consent and agreement. The party said it consented to the status of Northern Ireland that states should not change without the consent of the

people. But, the party said, it didn't have to agree with what derived from that status. There was therefore an important difference between the principle of consent and agreement. The SDLP asked whether the British Government would take the point that those who subscribe to view the principle of consent as but do not agree with the status of Northern Ireland have the absolute right to change that which they did not agree by totally peaceful means?

13. The British Government said it understood the point. In the referenda in Scotland and Wales a simple majority was gained for change in both jurisdictions. In its view those people had consented to these outcomes but that didn't mean that everyone in both jurisdictions agreed with them. Conservatives worked against a yes vote in Wales and Scottish nationalists presumably advocate an independent Scotland. The British Government said accepting the principle of consent on this didn't mean that people wanted governmental arrangements to go any further than what had been originally intended, either in an increasing or decreasing manner.

14. The SDLP thanked the British Government for its response. It said while there was no convergence in a political sense between consent and agreement, consensus had another meaning and this would be crucial to the generation of new arrangements. The party asked the British Government what was the most fundamental basis on which consensus would be measured.

15. The British Government said the principle of acceptability to the two communities in Strand One was its view of consensus. It said that any arrangement had to command confidence across the board. There was no point in having a Northern Ireland Assembly which lacked unionist or

nationalist consensus, never mind those who were neither one nor the other. The British Government said the two communities needed to be united to make the arrangements work.

16. The SDLP came back on the previous comment and asked the British Government whether consensus across the three strands needed to be clearly defined. It also raised its use of the term "acceptability" and asked whether consensus and acceptability should apply to the unionists, nationalists and any others. In other words, the SDLP said that unless consensus was clearly stated and instantly recognised by the community, the arrangements would not be "acceptable."

17. The British Government said there must be arrangements which were acceptable and there had to be the means to demonstrate how acceptability was measured. There were perhaps different methods available to see how those views could be expressed. There was the theory of commanding confidence. Using both communities as a factor was self evident but the mechanics of maintaining this had to be considered further. The SDLP returned to the principle of consent and asked whether the British Government agreed that the key to this was that this principle, outlined in the Anglo Irish Agreement, the Joint Declaration and the Framework Document should inform any future changes in status if the opinion of the people of Northern Ireland was to change. In other words, would the consent principle as now applied also apply if people in Northern Ireland changed their minds?

18. The British Government said it had no problem with this point. Any major constitutional change had to be underpinned by consent. It was not possible to move into these areas without consent since the UK had no written Constitution. The SDLP asked whether the British

Government agreed that consent had certain obligations. The party said that one of the major changes after the negotiations would be that for the first time the principle of consent would be formalised in relation to the acceptability of arrangements in the whole of the island. Given this the party asked would the British Government agree that unionists had an obligation to those who gave their consent and one of these obligations was for them (the unionists) to give consent to the arrangements across the three strands. If not then was consent a one way train? The SDLP said that a fundamental change in all of this for unionists was that in getting the principle of consent, they were getting a big advantage and therefore they had to reciprocate to those who gave that consent by giving consensus to arrangements elsewhere. The party asked whether the British Government went along with this analysis.

19. The British Government said it wouldn't presume to answer on behalf of unionists on the issue of reciprocity. As the SDLP had pointed out, the conclusion of this process would probably mean that it was the first time that all of Ireland would be consenting on the same question. As to the other point, it suggested that the debate await the comments of the UUP.

20. The UUP said the SDLP had asked in what context did consent fit in to Principles and Requirements. The context was the status of Northern Ireland, but of course this status was not accepted as the same around the table. From a UK perspective, law and practice said Northern Ireland was part of the UK, but in the Republic law said one thing and practice another. The question of whether Northern Ireland remained part of the UK was a major constitutional issue, beside which the proposal for a Mayor of London, for instance, was an institutional issue within the UK. The UUP took the point that "consent" did not mean "agreement to".

It was a legitimate right for nationalism to seek to change the status of Northern Ireland. What unionists disputed was the contention that this legitimate aspiration had to be manifested in political institutions - in this case in an institutionalised North/South dimension. The right of the citizen was to political equality in terms of participation within the State as constituted. The SDLP asked if, at a time in the future, a majority in Northern Ireland voted for a united Ireland, would the UUP subscribe to consent in the same way as nationalists were being asked to now? The UUP said it would. No border or State was sacrosanct. But the way in which nationalists were being asked to subscribe to consent included the principle of equality within the State as constituted. The SDLP said this was not the same: the UUP were trying to assert that two sovereign Governments did not have the right to make an agreement as to how these matters should be addressed.

21. The UUP said the SDLP had said nationalists' acceptance of consent was a great gain for unionism. It should also be recognised that the form of Government which unionists were prepared to accept in Northern Ireland was a great gain for nationalism. The party welcomed the emphasis on totality of relationships, a phrase that dated from 1980 but which was now at last being fully realised. On validation, the party felt that something more than 50% + one was needed. A referendum gaining only that level of approval would be a very bad start, and thought should be given to a threshold level for acceptability. The party had seen a media report of the Taoiseach speaking, in Cavan, of a five year period for border polls. This would be very destabilising: the existing border poll legislation had only been used once. On timing, the UUP wanted to have the referendum as soon as possible after the Agreement, and wished to assure participants that it did not see the internal UUP consultation process, which had been referred to in the media, as giving rise to any

delay in this regard. The party would also like to see any new British-Irish Treaty in place as soon as possible after an Agreement, with the minimum time delay. The Irish Government said the Taoiseach had been speaking at the British-Irish Inter-parliamentary Body meeting in Cavan, and said these meetings had been enormously valuable in breaking down the reserve between parliamentarians in both countries. He thought that the Taoiseach had probably given a speculative response to a question, rather than a considered statement of policy. The British Government said it did not envisage regular border polls, and agreed with the UUP on the need to minimise any delays in the timetable.

22. Sinn Féin said discussion of constitutional issues had been focused almost entirely on the Irish constitution. British constitutional legislation claimed and aggressively enforced jurisdiction over the six counties, and the party had seen no proposals from the British Government on how it intended to address this area. Alliance said that the British, Irish and Northern Ireland Governments had made an agreement in 1925 which had been basically set aside by a subsequent Irish Government in 1937, and similarly unionism had been unable to deliver on an agreement in 1973/4. In each case the splinter group in opposition had gone on to become the majority. This was the background to the distrust both sides felt. The party agreed that it would not be desirable if a referendum were only carried by a small majority, but 50% + one was the only tenable position as regards requirements. On the British-Irish Treaty, the party assumed this would be signed at the same time or shortly after the Agreement, although ratification could take somewhat longer.

23. The UDP said the benefit of North and South referenda would be the opportunity for a clear and unambiguous agreement in both jurisdictions - a common understanding of the present reality and of the

conditions for changing the status in the future. The principle of co-determination ran through the heart of the process, and there would be an ongoing requirement for consent within the institutions. It made no sense therefore to leave the most contentious decision of all to a simple majority. The party did not think that 50% + one should be sufficient in any referendum. The SDLP said this was the acid test of unionism. Consent meant one thing when it was nationalists who were supposed to give it, but when the possibility of others giving it arose, immediately there was talk of thresholds etc. The goal-posts were shifted. If a threshold was needed, why was it not needed now? Northern nationalists and successive Irish Governments had agreed to consent, but there had been no recognition of that and no political reciprocation.

24. The UUP said unionism had agreed to arrangements in Strand One where all parties could participate fully and equally, and had agreed to a Council of Ministers with the Republic of Ireland. This was a concession beyond accepted international practice in cases of a divided society. Nationalism had only been asked to draw back on one thing - to operate within the jurisdiction of each part of Ireland. The UDP agreed that in a divided society more elaborate and complex structures were needed than would otherwise be the case. Those structures should require a broader level of acceptance than a simple majority. Alliance said the UDP's idea could not be carried out in a referendum unless each voter was registered as either a unionist or a nationalist. The UDP said it was not suggesting a sufficient consensus - a idea which it generally disliked - but a weighted majority to ensure that decisions were not being exercised by just one community. The threshold could be discussed - perhaps 60%. The SDLP noted that this discussion had related to the future status of Northern Ireland, rather than validation of an Agreement, which was the issue to

hand. In summing up, it said unionists should address these questions on a "do unto others" basis.

25. The Chairman said the meeting was now concluded. His meeting with the party leaders would now be at 16.45. He adjourned the meeting at 15.48.

Independent Chairmen Notetakers
2 April 1998