

From: Independent Chairmen Notetakers
19 June 1996

**SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND
AGENDA FOR PLENARY SESSION - MONDAY 17 JUNE 1996 (PM)**

Those present:

Independent Chairmen	Government Teams	Parties
Senator Mitchell	British Government	Alliance Party
General de Chastelain	Irish Government	Labour Party
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

Discussion on Sufficient Consensus

1. The Chairman resumed the meeting by inviting discussion on this topic. He referred to the schedule covering the Governments' suggestions on voting strengths which was drawn from paras 20-21 in the procedural guidelines. The DUP definition is tied to the proportion of participating delegations having at least 75% of the poll; the UDP suggest a threshold of 66%; the NIWC suggest a threshold of a set number of parties. The PUP agree with the Government suggestions but remain open to other ideas.

Mr Robinson asked how the Governments determine representation which indicates broad acceptance as between nationalist and unionist areas. Mr O'hUiginn and Mr Leach said that the parties

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will define that themselves. Mr Robinson said that this meant Alliance could be unionist one day and nationalist the next. Mr McBride responded by saying that Alliance don't classify themselves as unionist/nationalist. They are excluding themselves from either test as a measure of fairness.

2. Mr Curran intervened on behalf of Labour to say that they are neither unionist/nationalist, so they won't be measured by those yardsticks. Democratic consent is measured by the ballot box and they accept the Government's proposals. The ground rules set out the position on unanimity and requires a clear majority of unionist/nationalist communities. Mr Ervine raised a point of clarification: do Alliance/Labour abstain in these circumstances. Surely the Chairman decided on representation, not the parties. Mr Weir said that the parties have a say in whether the proposition will be deemed to have sufficient support - not the Chairman. Mr Ervine said that if we defined what the Chairman has to decide on, he can use the arithmetic.

3. Mr Adams said that the Governments' proposals are too narrow. Two parties say they don't represent either community. So his party has tried to broaden the definition to include such people. The Chairman said that if they exceeded 66% plus the agreement of seven parties that would mean acceptability. Ms Hinds said that the Governments' proposals were favoured by the SDLP and the UDP. The other parties want to add additional parties. Mr Mallon said that we were trying to do the impossible: we can't measure that which can't be measured. The concept of sufficient consensus can tie down the prospect of moving into agreement. Smaller parties must have a role and bigger parties don't mean automatic consensus. The SDLP are asking all parties to look at the Chairmen's collective judgement to create sufficient consensus out of the

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parties deliberations. Otherwise rules might mean suitability one day and not the next. He was putting his faith in that approach.

4. The Chairman said that all parties should consider two related factors which are relevant. If the test involves a percentage of votes, you have to consider the parties who received votes who are not represented at the meeting. For example, Sinn Fein with 15% and others with a small percentage. If you include all votes cast you include a much higher number. The other point in relation to Mr Robinson's question, which is a relevant one, is that the 3 party factor in the case of the non-aligned parties only comes into play where you have to counter the unionist/nationalist question. This wasn't relevant in the case of the other two tests. As to the number of parties present, a declaration by seven is the only affiliation necessary. Mr Robinson said the purpose of the exercise is to leave with agreement - sufficient support in the group will carry Northern Ireland as a whole. Will a referendum require a simple majority or a percentage of electorate as in Wales and Scotland or a weighted majority. A majority from one section of the community is no good. You need a proposal which has roots in both sections of the community and you can do this by setting a percentage figure. (Mr Robinson said that the SDLP are in a powerful position, so they will have to carry the SDLP to gain sufficient consensus).

5. Mr McBride said as to the votes of those not present, they will vote against any proposition as Mr Robinson said. The judgement of the Chairman is extremely important and he agrees with Mr Mallon. Mr Mallon, in response to Mr Robinson, agreed that his party have a veto. But what use is it. It's a burden. They are not interested in that. Other parties outside will make them the whipping boys because, whatever is negotiated, it won't be enough.

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The qualitative decisions count, not how they are reached. Subjective judgements are involved. The Chairmen are in the best position for that purpose and to know what's in the parties heads. Parties are more likely to be open with the Chairman. He advised not to get a sliderule formula, because one day it would catch them out.

6. Ms Hinds fully agreed with Mr Mallon but considered that we still need to try and obtain as much consensus as possible. As Mr Robinson said about carrying the Province as a whole - you could leave out significant elements who need to be part of the decision/solution. So it is necessary to make the conditions for those parties to be bound into the process. Ms Hinds said she wants a proactive Chairman to bring everyone into the process. Mr Leach commented on Mr Mallon's point about the procedural rules not bringing consensus into being. He does not agree. A percentage gives a good deal of reassurance on consensus to both the Chair and the parties. Mr Attwood agreed that the SDLP could have a veto but he would not like to see that adopted as the traditional route by which issues were determined in the talks. He said that there was no mathematical definition in the South African model but that the issue was left to the discretion of independent chairmen.

7. Mr Robinson said that the Governments' proposal approved of by the SDLP could raise problems in circumstances where you could live with a particular proposal. You have to declare for or against. Mr Attwood said that you need a definition but it's important for the parties to be clear that the SDLP won't play the role of the joker in the process. Mr Robinson said the fact that the Chairman would be able to make decisions on a certain level of support on one day which may not be present on another day will

cause problems. Ms Hinds said that the Chairman can indicate the basis for his assessment of support and that there are a number of methods to accomplish this. Mr McMichael said there has to be a formula to measure consensus to show that there was no manipulation but at the same time it couldn't be something too restrictive.

8. The Chairman posed a question. Mr Robinson had been clear in suggesting a lack of response does not equal agreement. He now wanted an affirmative response on the percentage total of votes cast or total votes of the parties represented here. Mr O'hUiginn wished to know whether Mr Robinson wanted the votes of Sinn Fein excised and also those who didn't get within the top ten. The Chairman replied that Mr Robinson seemed to have in mind the total votes of the parties represented. Otherwise the actual percentage which has to be achieved has to be higher. 66% of total votes cast is higher than votes cast in the room. Mr Robinson said that the unionist parties have 55% (leaving the Alliance out of the equation). The SDLP have 21%, so it was not possible to get 75% unless the SDLP are part of it. If other people are going to come in, it will make things easier, but a lower figure than 75% would be possible. They chose it because the Government chose it.

9. Mr Curran wished to know that if we excluded people who were not in the room, what message would that convey to those people. You have to take into account all the votes, you can't exclude them from calculation; it has to be the total number of votes cast in the election. Mr Mallon said, with reference to Mr Robinson's point, a key issue is that you can't assume the percentage outcome. Sinn Fein got 42% of the nationalist vote in the last election but he questioned the assumption that if Sinn Fein were present that the nationalist agenda would be much fuller negotiated. Neither can you ignore 42% of the population, so he does not think that a

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mathematical equation can deal with the situation; you can't weaken the capacity to get a negotiated settlement. He wished he had a formula, but it's not possible. Implementation would change on a weekly basis. He felt that you can't ignore the Sinn Fein electorate and also the fact that 40% of the electorate don't vote.

10. Ms Hinds said that she would look at the parties in the room and the total valid poll and would have sympathy with the view for not ignoring those who are not represented, but this can't be done. The judgement of the Chair is crucial to the process. Mr Robinson said he could see the difficulties expressed by Mr Mallon about having a precise mathematical formula. But in its absence what is needed is a precise definition. We can't have divergence on what is covered by a definition. He wants to know from both Governments what is meant by a clear majority. Mr O'hUiginn said that the philosophy behind the Governments' text is that majorities are not based on a mathematical design; that leads to great absurdity in the political situation. Sufficient consensus is difficult to define in the abstract but it is clear when it comes into view. If you get sufficient consensus you will get most parties. In relation to the issue between the aggregate of total votes cast versus parties' votes - as a general democratic process is involved it is undesirable to ignore votes cast. If you disregard a significant number of votes which are not represented, you will meet them again in a referendum context anyway: so it's best not to ignore them. The absence of Sinn Fein means the threshold becomes high, 75% translates to 94% requirement, so there are problems. He said that he didn't have a clear idea as to clear majority but he was relying on the Chairman. The relative flexibility of the Government's definition is its strength.

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11. Mr Hill said he wanted the total valid poll as the point of reference. He said that the Governments' approach is a minimum threshold. Mr Robinson said he wasn't impressed by the response from both sides. Mr McBride suggested that we should look at the overall vote. They suggested 66% of the vote cast which would translate to 55% of the total vote. The Chairman said that 55% of votes cast was mentioned already (Robinson). Mr McCrea referred to the terms sufficient consensus and clear majority and wondered if the authors themselves knew what the terms meant. He suggested that the Chairman could be in difficulty in satisfying himself as to either. Mr Leach said that the terms were not defined and that the Chairman has a discretion which has to be exercised prudently.

12. The Chairman suggested that what Mr Leach and Mr Hill meant was that the Chairman could not declare a majority where it didn't exist. He would also have the discretion not to declare it if the decision was, say, positively marginal. Mr Weir said that his party wanted the matter settled mathematically: they don't want different propositions which would lead to different application of the same rules. Mr McBride said a technical majority may exist. In that context the Chairman might not decide to move forward and not allow people to hide behind a majority. The Chairman said that a variety of formulations had been presented - the majority of total votes cast - the majority within each community - a specified number larger than the bare majority of parties represented at the meeting. As to the actual figure Mr McBride had suggested 55%, the UUP had suggested 66% and the DUP had suggested 75%.

Item No 22 - Reference to Forum

13. Mr Robinson referred to item 34 on the compilation list and said that in the tenth line "or" should be substituted for "it".

Mr Mallon wondered if there were direct references to the subject in the ground rules document and Mr Leach said that the Act sets out the rules in relation to the Forum. Mr Close wondered about the last sentence in the DUP's proposal. He wondered where the initiative lay. The Act does not stop the Forum from considering anything. This group has the power of determining the issue. Mr Leach also said that the Governments' procedural guidelines has a reference to this particular contingency - see para 22 therein. Mr Robinson wondered what would be the position if a trade union were to send in views to this group. The Forum should have no less a role. Mr Mallon suggested that it was tantamount to sending messages to ourselves.

14. The Chairman said that para 20 of the DUP proposals suggested that the Chairmen must confine themselves to certain submissions which might exclude such outside reports. Mr Robinson said that if Sinn Fein were to send in a paper it would have no status until the group decides to look at it. The Chairman said that there might be a need to add a clause to para 20 in the DUP proposal to make it clear that consideration could be done in this group. Mr Robinson will consider the position. Mr Attwood asked for clarification of the UUP's proposals in paras 29 and 25. One refers to "by agreement" and the other says "consensus".

Item 23 - Liaison with Irish Government

15. Mr Empey said that in 1992 a point came when the discussion moved from Strand 1 to Strand 2 and it was felt that the Irish Government had to know something about the Strand 1 discussions. Accordingly the persons in Strand 1 were invited to send documents to the Irish Government, the point being that the participants had ownership of the documents and were consulted about handing over

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the documents to the Irish Government. The procedure didn't obstruct the necessary passage of material with the overlap of the two strands. Both parties had to agree to the move. Mr Robinson said that the procedure will depend on how the strands are operated. The Chairman said that meetings were held before in parallel but not simultaneously.

Item 24 - Meetings between the Governments and the Political Parties in relation to Strand 3

16. Mr Empey said he was unhappy with the Governments' proposals and this was central to resolution of their difficulties. This matter never took off in 1992. It was a badly developed strand. There is no improvement in the latest proposals as the parties would be virtually excluded except for a grace/favour type liaison arrangement. They need to be informed. The Governments' proposal restricts their ability to raise matters which are important to them as a party. He accepts that the Governments have rights of negotiation in this matter but they must be more open and flexible and that they must not act in a prejudicial way. Mr Durkan agreed with Mr Empey that in the 1992 talks Strand 3 was under-developed as regards input and information. They are happy though with para 24 of the Government paper. He felt that the UUP's suggestion regarding liaison through the medium of the Business Committee may not be an improvement - probably the reverse. The Government are offering more substantive and relevant arrangements this time around. The parties can put forward views and he felt that the spirit of Mr Empey's proposals is better found in the Government proposals.

17. Mr Close emphasised the points made by Mr Empey and Mr Durkan. The matter was poorly done in 1992 but he takes comfort

from the Government paper. It says "will" not "may", or "might". It also provides for a meaningful role for the parties and regular meetings. Mr Empey suggested that the definition of liaison depends on how it is done. He suggested that the parties look at paras 31 and 32 in their document for the overall picture. There was no commitment to popular arrangements in 1992. Mr Leach felt that the two Governments had laid themselves open to comprehensive consultations this time around. He couldn't see what is in the UUP document that is not already in the Government paper.

18. Mr O'hUiginn remarked that the Irish Government knew all about exclusion and that he understood the fears of the unionists in that regard. This arose from the previous arrangements in relation to Strand 1 and the minimum arrangements for briefing for the Irish Government. In relation to Strand 3 there were matters which were appropriate to the two Governments alone most notably in relation to security matters. There was concern that the system did not work well in 1992 and specific attempts have been made this time for it to work better. If the arrangements don't work they can be improved upon. A serious attempt has been made to make good the defects which existed in 1992. Mr Robinson said there were some parallels between the position of the parties in relation to Strand 3 discussions in 1992 and the Irish Government now in relation to the Strand 1 issues. The Business Committee has a role in this regard. There may be further views from the DUP on the issue and they may make further proposals on the point. The Chairman accepted that proposals may be coming. Mr Empey referred to para 32 of his party's proposals as reflected in the compilation document. The word "relevant" is missing from the third line.

Item 28 - Records of Meetings

19. Ms Hinds drew attention to an apparent contradiction in relation to paras 30 and 45 of the DUP proposals which seemed to provide for two contradictory methods of approval of records of meetings. Mr Robinson said that he wants records of the Plenary and other meetings also. Mr Attwood drew attention to para 34 of the UUP proposals in the compilation document and asked for clarification in relation to the proposal that it would be the Business Committee that would be responsible for and approve the minutes of the meetings of the group. He said that this was a departure from the normal practice whereby the people who participated in the meeting approved their reports. This was a matter of good practice.

20. Mr O'hUiginn suggested that he felt it was proper for the Business Committee to approve the minutes of Strand 1 meetings. Mr Attwood referred to the UUP point in para 33 in relation to notetaking arrangements for meetings falling outside of the formal meetings. He wondered what was envisaged. Mr Robinson said that an example would be the inter-delegation meetings. Mr Empey suggested it was for reasons of flexibility.

21. The Chairman wondered why it was being suggested that some group outside of the meetings would approve the record of the meeting. Isn't it the case that participants would normally approve their own records. Mr Robinson said that the British Government during the last process had some similar arrangement - if you had objections you brought the issue outside of the group. He also said that it should be remembered that under the role for the Business Committee the Irish Government would be involved in the question of approval of Strand 1 discussions. The Chairman

made the point that he had arranged for minutes of the previous meetings to be taken under the arrangements under which we were operating at the moment. He had no authority to give copies for approval to the delegates. He won't do so now in the absence of authority of the group. This situation obviously applies in the period prior to the formal adoption of the rules of procedure.

Para 35 - Alteration of Rules of Procedure (UUP)

22. There were no points arising on this item.

Para 36 - Timing of Negotiations (UUP)

23. Ms Hinds said that the meetings may have to go on on other days also and she questioned whether there should be regular hours stated. However, she would not wish to break the dynamic which may be established. She also wondered whether the group was going to break for the period over the summer. She didn't particularly want that. Mr Robinson said he had no objection to establishing a general principle of working on certain days and hours and if necessary depart from that rule exceptionally. However he didn't want to trespass on the Business Committee's area of competence. His main point was to agree a general pattern but also allow for exceptional circumstances. He wondered when there would be a break and said it would be helpful if the decision was taken possibly in advance of the discussions of the Business Committee.

24. The Chairman light-heartedly warned against the group taking decisions on vacation already. It would be an early matter for the Business Committee to decide.

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Para 18 - NIWC Submission in relation to participation of non-elected persons

25. Ms Hinds said the proposal was self explanatory and would respond to points made by delegations. Mr Robinson said the declaration in the Act required elected representatives to be the teams involved in negotiations; others are prohibited. It might be permissible in the Business Committee possibly, but in negotiations he must have elected representatives. Mr Ervine said that representation for them is problematic and he would appreciate goodwill from the other delegations who were in the position of being able to rotate attendance. Mr McBride said that the position was fixed by the law; he had sympathy for the position of the smaller parties and maybe the way out of it was that the Business Committee should schedule meetings sensibly.

26. Mr Durkan accepted the legislative position but he said that he would be happy to be flexible; certainly sensible scheduling will help. Mr Ervine said he appreciated the reasonable attitude of the SDLP and Mr Robinson as opposed to the view expressed by the Alliance Party. Mr Leach said that legal rules apply here so the procedural rules would have to be adhered to. The proceedings were not open to participation by non-elected representatives.

27. Also the Business Committee cannot deal with the substance of negotiations. Mr McMichael said he agreed with what had been said about the use of imagination and flexibility in this matter. We must ensure the highest quality of debate. Mr Robinson said that outside of the formal meetings most of the burden will be by way of attending at informal consultations and the non-elected representatives can be there. After a brief discussion the Chairman decided that he would finish the meeting at that point and

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adjourn until tomorrow at 10.00. His staff will prepare a discussion document on the points of agreement in relation to today's discussion on the procedural guidelines. Tomorrow's discussion would start on the compilation document in relation to the agenda.

[Signed]

Independent Chairmen Notetakers
19 June 1996

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