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From: Independent Chairmen Notetakers
19 June 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND
AGENDA FOR PLENARY SESSION - TUESDAY 18 JUNE 1996 (19.05)

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

1. At 19.05 the meeting resumed with discussion on para 3 of the Chairman's composite draft, following the request for a brief adjournment by Mr Curran. Upon resumption, Mr Mallon expressed his thanks for the opportunity to consult with other parties on the matter. They also shared his view that the matter of the Chairman was settled at the discussion on 12 June 1996 and was ratified as item 1 on the agenda of the first Plenary session. Mr Robinson wanted to know if this was an order that was capable of amendment.

2. The Minister of State referred to the paper which set up the agenda for the Plenary group meeting on 12 June 1996 and said that items 1-4 inclusive had been dealt with in the Plenary session.

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3. Mr McCartney questioned how that could be so. The Rules of Procedure had been formulated by the Chairman. He understood that they were for discussion and agreement in accordance with para 27 on consensus. He now was being told that this is an illusion. It seems that force majeure now ruled. He said that the Chairmen were put in place under threat and coercion. The consent of the UUP which was necessary to provide for a scintilla of validity for their appointment was obtained on the basis of a threat that the talks would be collapsed by the British Government.

4. Mr McCartney said that this meeting was the opportunity to give democratic validity to the Chairman's appointment. This would be done in accordance with para 27 which sets out the procedure in relation to consent. But the matter is on hold until para 27 is agreed, and then it will go to the Plenary session on Wednesday for endorsement or refusal. Mr O'hUiginn said that the Irish Government understands that a document may have elements in it reflecting and antecedent facts which don't depend on that document for validity. Certain references to the Forum, for example, come under that heading. Accordingly, he had no problem with it being set aside. Mr Robinson said that they can't agree to para 3 in its present terms, but he accepted others may have a different view and that they may also outweigh him in a vote. It would be hypocritical to do otherwise.

Para 4

5. No comment.

6. Paras 5-9 - Role and Responsibility of Chairmen. Mr Trimble said that these provisions have their origin in the UUP's proposals and he welcomed their inclusion accordingly. With regard to para

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5, he said that the procedural guidelines in para 2 reproduced para 4 of the Scenario document which did not contain provisions about impartiality and in the reference to para 15 of the ground rules they have suggested a lack of impartiality. There is now no trace of para 4. He also welcomed the provisions of para 9. Mr McCartney said that he accepted para 5 in general terms, but the reference to impartiality adds nothing. Para 6 was acceptable. As to para 7, it would be better if agreement was obtained in relation to the Chairman, that he was not only consulted to obtain the agreement of the Business Committee. Paras 8 and 9 were also acceptable.

7. Mr Robinson said that the issue of consultation was crucial and it permeates throughout the entire document. But he would prefer the term "agreement". This means no more than what the Chairman had been doing in the group so far. It shows that ownership of the process is vital. Mr Empey said that we all want ownership of the process. He referred back to the previous procedural guidelines (1992) para 3 in relation to the role of the Chairman which referred to a "consulting" role and "consultations". That adequately served the purpose at that stage and para 7 follows this precedent.

Paras 10-11 - Sequence of Negotiations

8. Mr Trimble proposed a drafting amendment to delete "within the Plenary" in para 10. With regard to para 11, he said it was drawn from para 16 in the UUP draft which he preferred. However, there was a question of a drafting error in the UUP paragraph and the matter was not pursued.

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9. In relation to para 10, Mr Robinson said that "consultation" had been replaced by "coordination" which means no ownership of the process. Mr Attwood said that they had some difficulties with some elements, but they would not pursue them. There is an important point here nevertheless about the Business Committee. Mr McBride said that the power of the Chairman to call meetings of the Plenary in these circumstances is an important one. Mr Thomas said that formulation of para 11 is helpful as it stands. He agreed to delete the three words "within the Plenary" in para 10 as suggested earlier by Mr Trimble.

Paras 12-14 - Business Committee

10. Mr McCartney said that para 13 uses the word "consultation" to which he objects. It should be "agreement". The difference may be more apparent than real in the vast majority of cases, but again the participants should have the power, not the Chair. Mr Robinson made a similar point without repeating the argument. He also said that the Business Committee has at least two delegates, but it will deal across a range of strands. In practice, what right does he have over the Governments deliberations in Strand 3 as compared with the right of the Irish Government in the internal discussions in Strand 1.

Paras 15-22 - Conduct of Proceedings

11. In relation to para 16, Mr Trimble suggested that "or" might be changed to "and" and in relation to para 19 he said that this was drawn from the UUP proposal. They had said "time limit".

12. Mr McCartney said para 15 refers to a comprehensive agenda. They will not be involved in the debate on the constitutional

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issue. There is no consent by the majority to this matter being debated as the election results showed. Mr Attwood referred to Mr Trimble's point on para 16. The primary basis is consultation with the Business Committee, but there may be occasions to change the arrangements and it might be necessary therefore to consult with delegates. Mr Trimble accepted the point. Mr Attwood asked would he accept para 16 as it stands? Mr Thomas said Mr Attwood was helpful; leave the paragraph as it is. Mr McCartney agreed that Mr Attwood was right.

Paras 23-28 - Decision Making

13. Mr Trimble said that in taking action, presumably the Chairman will take the provisions of para 9 into account in relation to consultation with the relevant delegations (notably for the provisions of paras 23 (a) and 28). With regard to the phrase in para 27 "which also constitutes a majority of participating political parties", he said this would be okay normally, but the parties here have not come through the normal electoral procedure. So where some marginal parties have come into the system with "derisory electoral support" through the mechanism, they are not equal to other parties. Mr McMichael said that we shouldn't suggest that everyone here is equal. If 5 of the lower parties lined up, they would have to command a majority of the total valid poll. Mr Trimble's argument is misleading. The provision allows for participation by the smaller parties in the process.

14. Mr Durkan said he was content with the addition of the requirement for the majority of parties and he referred to the South African process in this regard. Also, for the Alliance and Labour parties who are neither unionist nor nationalist in outlook, it is necessary to give them a say outside of the normal binary

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allocations. People with derisory mandates had made an important contribution. Mr McCartney said that we should bear in mind the electoral mode which got people here - they also are in the derisory category. But if the election had been conducted on the basis of STV, the result of it would have been different perhaps. It would be a slap in the face for the major parties to have their hands tied by parties such as his. This is undemocratic however. This subject is against his interest perhaps, but he is a democrat. He endorses Mr Trimble's proposal.

15. Mr McBride said this adds a fourth test and ensures small parties are not neglected.

16. Mr Robinson made the point with regard to para 27 that they had a (d) clause for matters to be referred to the Forum. It was excluded because it was left to the competence of the Chair. However the alignment of the parties may change. It was important that the definition of "sufficient consensus" can't change and it is not defined. We cannot fudge the issue. Mr McMichael agreed with Mr Robinson regarding the definition of clear majority (sufficient consensus). Mr Thomas said that para 27 broadens the range of those parties to support a proposition. It will work benignly because you can meet the first two hurdles anyway. It operates to override the first two tests if successfully met in the hard case. Mr Thomas then made a suggestion; could we acknowledge the third test in a particular way. Para 25 proposes that the Chairman may propose certain things - perhaps we could follow this up.

17. Ms Hinds understands Mr Trimble's concerns about a possible blockage and the SDLP point. But we have to work to win consensus; this involves respecting minority interests. Para 27 is a good

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lesson in that. Small parties have to feel that they have made a valid contribution to the process. She takes heart from the ground rules and the rules of procedure which involve working towards unanimity. She wants it to remain in the paragraph.

18. Mr McCartney said there are difficulties in giving in to minority groups. The views of majority groups must be listened to reflecting the popular votes cast for them. We are talking about fundamental decisions here. It was permissible to take minority groups into the general consensus, but it would not be right to introduce the provision providing for them as a third test because those parties reflect a relatively tiny proportion of the electorate and this is against the democratic principle.

Mr Trimble said that Mr Thomas summed up the matter well. The situation is unlikely to arise, but it is possible and the formula could cause difficulties. Mr Ervine asked had we not decided on a definition of sufficient consensus. He was surprised by the reasonable attitude of the big parties to small parties.

Mr Robinson said that it may be possible that down the road the involvement of smaller parties would be a good idea. He is still interested also in the definition of a "clear majority".

19. The Chairman said that there are two separate issues involved here. The first was a definition of clear majority and the second was the issue of whether to include the third test of the majority of participating political parties.

20. Mr Adams wondered whether we could decide on a clear majority as in para 27. This however could fill up the whole discussion.

21. Mr Durkan said it was important before specifying what clear majority meant. No-one has suggested changing "may" to "shall".

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By setting a quota for a clear majority, we are actually doing this. In South Africa, sufficient consensus was never used to get a fixed pattern of winners/losers. There are dangers in defining the term and it will work against the spirit of the negotiations. Mr McCartney warned about being careful about introducing inappropriate analogies like South Africa. The problem in allowing a floating idea of sufficient consensus means that it will be applied differently. Different application of the rules will lead to a sense of injustice. Look for the golden mean in this process.

22. Mr McBride said clear means clear. The alternative is a mathematical formulation which is problematic. One should avoid rigidity. We need flexibility. Mr Curran said that his party got a derisory vote. He said that Mr Robinson had stated yesterday that 75% would be a majority. How could you obtain this in the room. Mr Mallon said there is no mathematical way of doing this. There is no way of anticipating what set of circumstances will arise to determine what sufficient consensus might be. He referred to Mr McCartney's refusal to deal with the constitutional position of Northern Ireland. He does not think that we will have problems with this formula, so why manipulate this. Mr O'hUiginn said it was right to spend time on the point but the group was going over yesterday's ground. He suggested that the matter be left for reflection. His concept of how it operates is on the basis of Mr Thomas' and Mr Mallon's suggestions with inherent safeguards against abuse. He has sympathy with the cogent point made by Mr Robinson and Mr McCartney about clarity. The problem is the word "clear". A solid majority is what is required. Maybe the word clear should be reconsidered. Perhaps we should reflect on it overnight. Mr Robinson said the issue of "may" at the beginning is of concern to him because it may give rise to uncertainty. He would nearly prefer a simple majority rather than a clear majority.

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23. Mr McCartney referred to para 27 and said "may" is precatory, not the mandatory shall. They are concerned about the power being given to the Chairman rather than to the group. The issue of what is true consent is what is at the core of the problem. Mr Trimble said he understood Mr O'hUiginn to say that if clear is omitted the problem disappears. By removing it you have clarity. As to the use of the word "may" mentioned by Mr Robinson, there is an element of discretion. If the decision is taken to apply rule 27, it should be definitive and "may" would be "shall".

24. Mr Durkan said there could be difficulties with "shall" because there could be times where it would be better not to force the decision. He had no problem with deleting "clear" in the two places it occurs in para 27. Mr Trimble said there was no difference between him and Mr Durkan on this. Mr McCartney said the first issue in para 25 is whether or not you apply sufficient consensus. In para 27 you must have a fixed and mandatory view on what constitutes sufficient consensus.

25. Mr Robinson said the participants have to decide whether to apply sufficient consensus in para 25 which also says the Chairman may propose that negotiations may proceed on that basis. Mr Durkan said that participants have the power under paras 25 and 26 because the Chairman only proposes. Mr McBride said he was happy with the amendment suggested by Mr Trimble. Mr Durkan said that "may" is used in paras 25 and 26. For para 27 he suggested that "would be deemed" be used.

Para 29 - Referral to Forum

26. No comments.

Para 30 - Liaison arrangements with the Irish Government

27. Mr Robinson said the Business Committee's role is dropped so they can't keep an eye on what is going on in Strand 1. Mr McMichael said the UDP preferred the DUP suggestion regarding the role of the Business Committee here.

Paras 31-34 - Meetings between the Governments and the political parties in relation to Strand 3

28. Mr Trimble said that the structure here is not acceptable because the parties are excluded. Also because of the 1992 experience both Governments will regard their relationships on particular issues, for example, security matters, as confidential, but this is a relatively small element in that Strand. The relationship between the two Governments also involves the people of the islands and the participation of the parties should be included for that reason.

29. Mr McCartney said that the British Government has its own interest - as reflected in the Anglo-Irish Agreement and the Joint Framework Document. Those interests don't correspond with the views of the vast majority of pro-union people in Northern Ireland. The present inter-Governmental arrangements involving unaccountable politicians with representatives from the Irish Government are of intense interest to pro-unionists. He endorsed what Mr Trimble said. The third Strand should not be conducted in isolation. Certainly there are Government to Government issues, but insofar as there are political interests, there has to be a conduit for the involvement of the parties.

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30. Mr Durkan referred to the UUP paragraphs 31-32 which were not consistent with Mr Trimble's point. He sees a great improvement here over the 1992 arrangements and they were better than what the UUP proposed. Also para 34 provides for the outcome of Strand 3 discussions to be considered with other elements of the negotiations as a whole. Mr Thomas said that Mr Trimble recognised this as an area where two Governments could reserve matters for their own consideration. Para 34 means that issues have to be brought back to the parties to get as wide an agreement as possible. The proposal to distinguish the three Strands is interesting - it might be heroic. The two Governments proposed a draft providing for discussion of a comprehensive agenda - as regards consideration of the meaningful role in Strand 3, perhaps it should be considered there. He suggested that the meeting shouldn't try to resolve the issue tonight.

31. Mr O'hUiginn said that there is no issue at stake regarding the capacities of the parties to engage. The structures envisaged or those which can be devised will provide for that. There is no issue of doubt on the provision of a meaningful role for the parties. In 1992 the consultation procedures didn't work well and consequently an improvement is necessary. Changes have been introduced and the role of the parties has been enhanced. Governments have to deal with each other as governments. Security is also a wider consideration. Notwithstanding Mr McCartney's point about adequate concern, the two Governments are entitled to speak on behalf of all their respective electorates. Therefore what's at issue is not the capacity of the Governments to interact meaningfully. The existing provisions take on board the need for better communications and if they don't work they can be improved. Mr Empey said that Mr Thomas' intervention has added to his sense of anxiety, particularly the grace and favour nature of exchanges

envisaged under this strand. These matters have a relevance also in Strand 2 and Strand 1 and he was anxious to ensure that the parties have a right to have issues raised legitimately, not on a grace and favour basis.

32. Mr McCartney said that the position of the Irish Government is clear. Under Articles 2 and 3 it has a constitutional imperative to recover Northern Ireland territory. The British Government's position under the joint declaration of 1993 is that it has no selfish strategic or economic interest in Northern Ireland. That is why there is distrust by the unionist community with the British administrators. He said that the SDLP is a nationalist party with the same objective as that of the Irish Government and it is constantly fed with up to date information by the Irish Government. It is well known that the contents of the Anglo-Irish Agreement were known from the Papal Nuncio to President Reagan in advance of publication. That is why the unionist people want to know what is going on. But the British Government will be sphinx-like because they have no interest in Northern Ireland, and that is why there should be clear access to information on this strand. Mr Paisley, Jnr concurred strongly with the UK Unionist Party. A limited input is objectionable. He would also contend that they have an interest in security and extradition particularly. Mr Thomas said he was concerned at what Mr Empey had said. In relation to the point about grace and favour he referred to para 32 which suggests that the two Governments shall meet and that the parties will submit views. He thinks that the problem really is a matter of drafting more than anything else. Mr Trimble asked why should the Governments be so anxious to protect their own position. The parties can't impose anything on them. Mr Durkan said Strand 3 is sensitive. The Governments have improved the position since 1992 and he does not understand how the UUP

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proposals improve the situation. Mr Trimble said he has made his point about the lack of consultation consistently since 1992. He submitted a text to the Minister of State some time ago on these very matters. The Chairman asked Mr Trimble to present an alternative text for consideration. Attorney General Gleeson said that he would also like to see a draft. Mr Close said a lack of trust and suspicion is the basis for this debate. Paras 31-34 have gone some way to remove this suspicion. We could have another text or have a new look at the existing one.

Paras 35-37 - Records of Meetings

33. There were no comments under this heading.

34. Mr Trimble said he had two additional matters to be considered for the rules. The first arose in relation to participation and in this connection he drew attention to paras 8-11 of the ground rules. The second point refers to the need to do something in relation to para 17 for those who act dishonourably. Mr Robinson said that the latter point was dealt with under their agenda. Their points in the document at paras 21 and 22 are not reflected properly. He would also like to raise their comments in relations to chairpersons in paras 8 and 22 in relation to the setting up of panels.

35. The Chairman at this stage raised the question of how the delegates wished him to proceed. There is a scheduled meeting of the Plenary group tomorrow at 12.00 to report on proceedings. He felt that it would be impossible to prepare a document which would include everything in the time available. One way would be to end the meeting now and come back in the morning at 10.00 to discuss the question of sufficient consensus. Mr Thomas thought we had

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gone far enough in the meeting tonight. The parties who had difficulties over aspects of the text could offer amendments to it or the chair might offer compromise formulas on the significant points. The Chairman said he would attempt to have a document prepared for 10.00 in the morning. Mr Robinson said he was content with that. The two key issues to be dealt with are 1) the fact that consultation should be replaced by agreement wherever it occurs and, 2) the point about sufficient consensus.

[Signed]

Independent Chairmen Notetakers
19 June 1996

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