

CONFIDENTIAL

From: Independent Chairmen Notetakers
19 June 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND
AGENDA FOR PLENARY SESSION - WEDNESDAY 19 JUNE 1996 (10.15)

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 10.15 the Chairman welcomed everyone to the meeting and thanked them for their co-operation and promptness. He indicated that as requested the previous evening, a second prepared draft of the rules of procedure document had now been made and had been distributed to all participants a short time before the meeting. Having explained the "legend" of the document, he stated that he hoped everyone had had at least an initial opportunity to review it. The Chairman also indicated that he hoped it would be possible to by-pass the wording which was already agreed although this did not mean that participants could not raise issues on this wording or any other aspect of the document as it stood. Having put these proposals to the participants, the Chairman indicated that everyone appeared in agreement with them.

CONFIDENTIAL

2. The Chairman then moved onto the document itself and asked for any comments on para 1. There were no comments received. Moving on to para 2, the Chairman indicated that there was still an issue with the word Plenary in terms of whether this meant the Opening Plenary or other Plenaries. Mr Robinson suggested that this particular issue be parked for the time being. He continued saying that he believed it more important to look at three key issues. The first of these was the use of the word "consultation" in several paragraphs in the rules, the second was a definition of "sufficient consensus" and the third referred to relationships within Strand 3. He believed that other issues on the rules were less problematical and hoped that these could be resolved and progress made.

3. The Chairman then moved on and asked participants for comments on paras 7-9. Mr Robinson at this point indicated that he proposed to offer an alternative form of words for the word "consult" or "consultation" in the various paragraphs. He suggested the following term "having regard to the wishes of" might be used although he acknowledged that the tense in certain paragraphs may have to be altered to reflect the appropriate grammatical meaning. The Minister of State (Mr Ancram) believed this to be a sensible suggestion. Mr Empey also stated his contentment with the form of words. Mr McBride said that while not instinctively rejecting the form of words, he believed it wiser to look at the suggestion in each context on the paper itself. It appeared that the form of words would have to be used in paras 7, 9, 13, 16 and 28. He also wondered whether a slightly better form of words might be "having due regard to the wishes of". Mr Trimble commented that this form of words might also need to replace the word "co-ordination" in para 10 of the rules document.

4. Ms Hinds commented that Mr Robinsons' suggestion was very helpful but also referred back to a point made by Mr McCartney in a previous session and wondered whether some paragraphs in the current draft of the rules might still need the word "consultation" as opposed to the formulation of "having due regard to the wishes of". Ms Hinds believed paragraphs 9 and 28 might still require "consultation" in them. Mr Robinson intervened saying that he also now wanted to see how the formulation of words actually worked out on paper. The Chairman indicated that he would ask his staff to reproduce the paper as it was going to have to be redone in any event and in doing so he would put in both versions, ie, the original "consultation" and the formulation as suggested by Mr McBride.

5. Mr Robinson then moved on to ask about para 23 of the current draft rules and queried whether after the word "may" which of the two formulations needed to be inserted. Mr Trimble believed that the reference in para 23 (a) was governed by the general provisions of para 9. In other words he believed that para 23 could be regarded as specific suggestions in accordance with the spirit of para 9. He went on to say that if this was okay he believed this got round the drafting point in para 23 raised by Mr Robinson a moment earlier. Mr Robinson said he was happy if the record of today's proceedings covered this last point made by Mr Trimble. Mr Durkan intervened saying that he believed paras 5-9 did in fact relate to the conduct of the Chair generally. Mr Robinson commented that para 9 was a section where "consultation" was still proposed as the appropriate term by the NI Womens' Coalition. Ms Hinds nodded in agreement with this point. Mr Robinson then stated that he still had a problem with this paragraph.

CONFIDENTIAL

6. Mr Trimble returned to his earlier point suggesting that it should be left as it was because the thrust of it was covered in other paragraphs. Mr Robinson stated that he was unsure and unconvinced about Mr Trimble's last point. He added that he was still unsure as to the wording vis a vis the context of "helpful" in this paragraph. Ms Hinds intervened saying that she agreed with Mr Trimble's last remarks. Mr McBride also endorsed the view that para 9 was best left as it was, ie, as in the present document.

7. The Chairman asked if the discussion could move on and sought comments on para 10. There were no comments received on this. Moving on to para 11, the Chairman again asked for comments. Again there were no comments received on this.

8. Moving on to para 13, the Chairman stated that he believed this had already been dealt with. At this point Mr Robinson intervened, referring back to a previous session where he had raised the issue of the Business Committee and the indicative calendar, when some ostensible participants might be involved in some strands of the process but not all of the participants in all of the strands. He referred to the question he had raised earlier, regarding who "the participants" were in these various formulations. Again he commented that this had been a matter which he had attempted to get an answer on previously but to no avail.

9. The Minister of State intervened, saying that he believed the answer was to be found in the original Ground Rules document as these were still an underlying aspect to the process. Mr Robinson came back immediately on this point, suggesting that the Minister of State's comments could be interpreted as there being no such thing as a "blank piece of paper". Attorney General Gleeson made the point using the analogy of scaffolding in the construction

CONFIDENTIAL

process that without the original Ground Rules an essential element of the whole talks process would be missing. Mr Trimble commented that he thought most of the original Ground Rules had been embodied in the new rules of procedure now being worked upon, at least those ones which he believed were appropriate. He pointed out, referring to the Minister of State's statement, that a clear decision must be taken as to what actual rules the process would be operating under during negotiations. Furthermore, Mr Trimble continued, such a decision might also impact on the wording in para 30 of the current draft and therefore this might need amendment. He added that he thought the substantive point made by Mr Robinson regarding strands, formats and participants could be covered by a minor amendment to para 30.

10. Mr Empey believed that there were only one or two sections of the original Ground Rules incorporated in the actual Act. He did not see any point in operating with two books of rules and therefore believed that anything outside the current draft of rules which was relevant needed to be put in to them. One of the aspects he believed would fall into this category were the previous comments and thoughts focusing on the need for a definition of "participation". The Minister of State commented that the status of the original Ground Rules were not fully reflected in the current draft. He suggested that para 1 of the draft rules could be amended to include references to the appropriate Ground Rules and the new rules under discussion and offered a form of words as a suggested amendment. Attorney General Gleeson believed it was not an impossible problem to make two sets of rules consistent. The overall point was however that it was simply not good practice to take bits of the original Ground Rules and incorporate them into new rules of procedure now being drafted.

CONFIDENTIAL

11. Mr Robinson again came back and referred to the "blank sheet of paper" scenario. He had understood that on several occasions in the process to date the analogy of a blank sheet of paper had been used in response to questions from the Unionist side. Was it now the case, he asked, that such a blank sheet of paper did not exist? If the latter was the case, then this had serious implications for the question of "ownership" of the process and this in itself made the whole issue extremely critical. He recalled that during the Westminster debate on the Act, a number of matters had been raised with the Government on the original Ground Rules and indications then had left him with the view that Ground Rules were unimportant, once the process commenced. He was firmly of the view, supported by the Westminster experience, that any new rules now under discussion should supersede the Ground Rules and the latter should be consigned to history.

12. Mr McBride commented that he believed everyone around the room was present as a result of a parliamentary process and an election which had been governed by an Act of Parliament of which the original Ground Rules were an integral part - albeit as set out in Command Paper 3232. As such he did not believe it was a wise move to now get into the rewriting of these rules on the basis of parties concerns or anxieties. Mr Trimble indicated that he thought the process of rewriting had already been ongoing in the last few days. He was also of the view that a comparison with the current draft set of rules and the original Ground Rules demonstrated considerable refinement and amendment. Mr Trimble stated that he believed legislation gave statutory effect to just 2 paragraphs of the original Ground Rules connected with the Act. He gave the example of the recent discussions on the concept of "sufficient consensus" which had been in the original Ground Rules and which had now been developed, as a result of discussions around

CONFIDENTIAL

the table, into much more detail with the opportunity of moving towards an agreement with all the parties. In this example he believed there was no need to refer back to the original Ground Rules on the issue. Mr Trimble suggested that as a way forward it might be useful to look for any other gaps between the original Ground Rules and the new rules of procedure now being drafted. He concluded his remarks by making the point that any such gaps incorporated into the new document would give effect to a new set of rules of procedure which the process could operate under thereby removing any further ambiguity.

13. Mr Wilson commented that the UKUP had never accepted the original Ground Rules as a basis for entering the talks process. Referring back to earlier remarks from the Irish Attorney General, he continued saying that it might well be the case that the Governments' saw the original Ground Rules as the scaffolding supporting the building of the process, but, in his view these rules were the gallows. Mr Durkan indicated that he believed some participants had already cited the original Ground Rules in making revised or new proposals. He believed it was important to go back to the original issue from whence this whole debate had arisen when Mr Robinson raised the question about the various formats in the strands and the connection with these and the Business Committee; and how an indicative calendar could be arranged with the various participants. He went on to say that some suggestions had been made around the table as to how to handle this and he therefore believed it was appropriate now to deal with Mr Robinson's point of clearly identifying the participants in the strands. Mr Trimble also indicated that this position should be resolved now.

14. Mr Roche indicated that Mr Robinson's point was a substantive issue in its own right. The obvious status of the original Ground

CONFIDENTIAL

Rules, he commented, had now been brought to the fore. In his view there was no ambiguity about the original Ground Rules and what mechanisms should therefore govern these proceedings. The Chairman agreed that this issue, having now been raised, needed to be resolved as soon as practicable. The Minister of State set out a further explanation of his earlier comments. He added that the basis on which the elections on 30 May took place was clearly based in the original Ground Rules paper, themselves enshrined in Command paper 3232. In his view the combination of both documents set the scene for "negotiations" and if the Statute said this, as he believed it did, then everyone had to accept this.

15. Mr Attwood claimed that if one went through the original Ground Rules document, one would find nearly every paragraph referring to the word "negotiations". For example, "negotiations" was referred to in Section 2.1. What was now under discussion was a set of rules of procedure. He therefore wondered whether the rules under discussion should state their clear objective and purpose at para 1. He added that if participants were not proposing that issues in the original Ground Rules which were presumably not in the draft rules but now should be, then no-one would ever leave the room for a long time.

16. Mr Ervine commented that the Chairman had been asked about "a blank piece of paper" on several occasions throughout the process to date. He believed the Chairman had genuinely answered on each of those occasions that "a blank piece of paper" was all that was in front of him. He therefore believed that comments from Alliance earlier and also the Minister of State's comments were a disappointment in terms of contradicting the Chairman's earlier assertions.

CONFIDENTIAL

17. Mr Robinson indicated that he tended to agree with Mr Ervine. He added that perhaps there was "a blank sheet of paper" on the table but perhaps there was another sheet of paper below it. He claimed there was nothing sacrosanct about the original Ground Rules and indicated that the Minister of State's assertion that they still had life was incorrect. He added that the debate on the legislation at Westminster had not given life to any proposals in the original Ground Rules, only the negotiations linked to the Act. This was why the DUP proposals didn't just link into the procedural guidelines but also included alternatives to the original Ground Rules. He commented that he now saw why these parts of the DUP proposals had been missed out.

18. Mr Trimble commented that he was very disturbed by the Minister of State's views on the original Ground Rules made some moments earlier. He claimed that one had to return back to the principles of law on this issue. Mr Trimble suggested that Command paper 3232 had no legal effect at all. The Act was the only statutory basis. Mr Trimble made reference to the Act in Section 2.3 and in paras 8 and 9 of the original Ground Rules. These, he believed, formed part of the rule forming procedure. The reference in Section 2.1 of the Act did not, he believed, confer any wholesale effect on the original Ground Rules per se. Mr Trimble continued saying that a basic point of principle was at stake here which focused on whether the "negotiations" belonged to the participants or whether they were being driven forward by the two Governments. He believed that the original Ground Rules were now being superseded by the collective wisdom of the participants. In this situation he thought it wise to get rid of any of the outstanding issues from the original Ground Rules and have them incorporated in the new draft text.

CONFIDENTIAL

19. Mr Durkan reminded all participants of the reasons for coming to the meeting this morning, ie to conclude the drafting exercise on the rules of procedure. In more general terms, he continued, by offering the view as to the wider democratic and community reasons for being present and commented that they were not there to negotiate the original Ground Rules. He acknowledged that Mr Robinson had identified a possible omission on the rules of procedure and that this issue had started the debate on the wider point. He also accepted Mr Trimble's point regarding the earlier statement made by the Minister of State. However, he believed that the meeting should deal with solvable rather unsolvable problems.

20. The Chairman indicated that he believed the discussion had now got beyond the initial point raised by Mr Robinson. He also indicated that Mr Trimble's earlier comments had proposed a number of paragraphs (5) which were to be included in the new rules of procedure. He had also listened carefully to the Minister of State who earlier appeared to be suggesting that all 26 paragraphs of the Ground Rules should be included in the new document. In concluding these remarks and accepting that the discussion had moved beyond Mr Robinson's earlier point, the Chairman indicated that some determination had to be made with regard to the status of the original Ground Rules. Mr Durkan suggested that Mr Trimble had seemed to indicate, in earlier comments, that this matter would be covered within the Agenda of the Plenary session and not in this informal forum. Mr Trimble responded to this by saying that he believed that the substantive points raised should be dealt with now.

21. Mr McBride went along with Mr Durkan's comments. He added that the whole process in the last few days had focused on the discussion of procedural rules, in itself a fairly narrow subject

CONFIDENTIAL

in comparison to some of the issues to be addressed. He claimed that participants were now seeking a broadening out of this discussion almost to a degree where negotiations were starting to take place. He believed this situation should be coming somewhat later on in the proceedings. He therefore thought it would be helpful if the present process avoided extraneous arguments and issues and concentrated on identifying those parts of the original Ground Rules which needed to be inserted in the existing draft so that the rules discussion could be satisfactorily resolved. This operational mechanism, he added, needed to be resolved before extensive debate was commissioned on the more substantive subject matter.

22. Attorney General Gleeson agreed with Mr McBride's point and suggested that the discussion on the current draft rules be concluded. He also believed that Mr McBride's second suggestion vis a vis identifying those aspects of the Ground Rules which might be included should also be tackled there and then. Attorney General Gleeson then began an exposition with regard to his assessment of the status of the original Ground Rules. He believed that the status of these was quite explicit and no-one should have difficulty in determining it. Returning to an earlier point, he commented that 23 out of the 26 paragraphs of the original Ground Rules referred to "negotiations". Only paras 4, 6 and 10 did not mention this word. He continued saying that if anyone was to learn about the basis for the process then all they had to do was to go to the Statute and to the Command paper 3232. In his view the original Ground Rules were an integral part of the process and could not therefore be disregarded or fragmented into another document.

CONFIDENTIAL

23. Mr Roche suggested that the meeting try to reach agreement on the current draft rules of procedure and then perhaps discuss the wider point which had been raised. He concluded that the Attorney General's comments had not actually settled the issue, but the issue must be settled before the process went any further. Mr Neeson commented that the Attorney General's earlier analogy of "scaffolding" had been a good one. For his part scaffolding contained a lot of interchangeable parts and it was very easy to arrive at different interpretations for it being required around a building. Similarly words and language connected to the documents were also very easy to interpret differently and he believed this was what was happening now with regard to certain parties. He continued saying that word playing could develop into a farcical situation and that a number of the participants would get war weary if this were to continue. They hadn't come to the process to participate in this way. The original Ground Rules, in his view, were produced impartially by the two Governments. Now considerable time had been spent attempting to change these for certain delegations to give effect to their concerns and anxieties. The process, he believed, was now getting to the stage where it was being drawn out too much in an attempt to resolve these points of concern.

24. The Minister of State commented that he wondered whether participants were that far apart in the real analysis. He commented that the original Ground Rules did exist and had been referred to in the Statute. The purpose of this discussion was to develop new rules. Mr Trimble was proposing to adopt certain parts of the original Ground Rules and was attempting to achieve the same purpose, ie, a new set of rules. The Minister of State referred back to the original point raised by Mr Robinson which focused on a gap in the present draft rules. He explained the background to

CONFIDENTIAL

this and confirmed again that the answer to it was to be found in the original Ground Rules. The Minister of State concluded saying he believed there should be no difficulty in accepting rules of procedure being amended as the process went along. Therefore, perhaps, the best approach was to try and identify gaps and incorporate them in a non-contentious way as everyone looked at the document. Mr Empey believed there was work to be done on this and sought an adjournment from the Chairman to give effect to this work. The Chairman acceded to this request, commenting on the fact that whilst there were no formal rules of procedure agreed, parties submissions had indicated a certain format on the adjournment issue which appeared to show a consistency and no disagreement. On this basis he was happy to proceed and suggested that the meeting reconvene at 11.45. The meeting therefore adjourned at 11.20.

[Signed]

Independent Chairmen Notetakers
19 June 1996

OIC/10