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From: Independent Chairmen Notetakers  
24 June 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND  
AGENDA FOR PLENARY SESSION - WEDNESDAY 19 JUNE 1996 (21.00)

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. The Chairman said that he would resume the meeting with the two speakers which had offered to contribute just before the adjournment, Mr McCartney and Mr McBride. He wanted to make a brief report himself on how best to proceed and he invited comments on his suggestions. He was advised that a series of bilaterals had taken place during the adjournment. The Chairmen did not participate in them. Further bilaterals will occur tomorrow. All parties involved are encouraged to participate. He did not propose to continue with the meeting this evening. Also some of the parties can't be present tomorrow; therefore we won't have a full meeting tomorrow. He will conclude the meeting now and adjourn until Monday at 10.00 when the meeting will resume discussions on the draft rules of procedure on the basis of the compilation document already circulated.

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2. The Chairman said that we had got as far as page 3 when the discussion went off on another track. He hoped to complete the review of this document and when it was completed then go on to deal with the agenda. He will not be present on Monday due to other commitments, but he will return on Tuesday afternoon. Mr Holkeri will be in the Chair in the meantime. The Chairman said he had tried to figure out a better way to keep parties informed during the adjournments. There is uncertainty during these periods but people should be informed of what is going on. They will try to work out something so that parties won't be greatly inconvenienced.

3. Mr McCartney said that the thrust of the discussions at the break was how the Ground Rules paper of 16 April and the powers conferred on the Chairman by paras 9-13 of the Scenario paper could be married to the rules of procedure being drafted by the group. It was necessary that these two separate sources of power should not exist in the ether without being tied into rules that applied consistency to the deliberations of the group. He had some further observations on his earlier views of Command paper 3232 containing the Ground Rules. It does not have the authority of an Act of Parliament. It is merely a mode of setting out Government policy and the Government has done that in the Ground Rules. But it is not, he suggested, as Attorney General Gleeson had inferred, that these deliberations are based on a blank sheet of paper and cannot ignore the Ground Rules. The Statute is silent on other procedures in the Ground Rules. It refers to other regulations but that is merely to identify the subject matter of the Statute. It doesn't allow the Government to set powers in stone.

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4. Attorney General Gleeson has a curious concept of Parliamentary sovereignty under the British constitution. Parliament is sovereign, but if it exercises its sovereignty in a foolish way, it is not. Mr McCartney referred to Sir Thomas More, Lord Chancellor, challenging Parliament in the absolute sense when he said to his interlocutor Richard Rich "can Parliament make a man a woman" (pace Robert Bolt). Mr Major had said that these would be all-party negotiations and that you can't have talks without all the parties. If that was applied here it would make these not all-party talks because some people are absent. If despotic powers are used to force agreement, that would be a fraud and no citizen would tolerate it. He said that Mr Robinson will deal with the debate on the Bill which will be illuminating. In referring to an attempt by D Wilshire, MP to have the Ground Rules put in an appendix to the Act, Mr McCartney said it showed that the ideas and notions advocated by Attorney General Gleeson are not those which he submitted to be the case.

5. Mr McBride expressed appreciation for the Chairman's comments to try to keep people informed. It was regrettable that we didn't have a Plenary session today as proposed. On the main issue itself, it is correct to say that the Ground Rules do not have the force of law but the Act does and it uses the Ground Rules paper to define the negotiations. Persons could go to court on this issue as the history in Northern Ireland shows frequent recourse to law. A judge would look at the Ground Rules procedures and he felt that we would set them at nought at our peril. It is unfortunate to say that we went off the intended course. He felt it was best to return to deal with the matter in hand.

6. Mr Robinson said it was unfortunate because progress was being made but it was on a false assumption that nothing else would

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impede the proceedings. However, as regards his consultations, there were none. But he will be present tomorrow and they have been feeling neglected. As to how to make progress, Mr Robinson felt we would need to have a composite document as proposed by Mr Trimble and Mr Empey on the subject. They already proposed those elements of the Ground Rules which they considered to be worth saving. He also thought that the group should have a look at the parked sections of the composite document and the powers of the Chairman.

7. We should also proceed to examine the basis on which we arrived at the present stage. This was on foot of an Act of Parliament which allowed entry through the elective process. Minister Ancram was precise in the House of Commons during the course of debate on the Bill. There was an attempt made by D Wilshire, MP to insert the whole of the Ground Rules as a schedule to the Bill to be helpful to Unionists to amend it. He had argued when moving a new clause to allow Parliament to debate and change and this was also to ensure that it would get Parliamentary approval for the arrangements with the Irish Government. It is of interest what Minister Ancram said at that time and it will raise a question about where the 6 June document came from. Mr Robinson then quoted from Hansard of 22 April 1996 (copy relevant extract attached). The substance of the debate was that in response to a question by Mr Trimble, Minister Ancram said that the Ground Rules were not part of the legislation. Once negotiations take place the parties will conduct their own negotiations and they should not be construed by Statute. All will wish to start on a clear understanding. The Command paper was the British Government's own best judgement and the rules contained therein do not have statutory force because they were not established by Statute. The key message is to be found in para 7 of the paper which referred to

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the conduct of negotiations being exclusively a matter for those involved in the negotiations.

8. Mr Robinson said that Minister Ancram had also stated that we must be clear before 10 June about procedures. We shouldn't lay down hard and fast rules and there was a commitment to proceed on the basis of consultations with the parties before the negotiations take place. Mr Trimble said there were no consultations with the DUP in breach of that promise. The problems that are arising now could have been avoided if they had. The Minister made it clear that there is no legal force in the Ground Rules and it shows that the conduct of the negotiations is exclusively for those around the table. The Command paper exists but it does not have the force of law as to how proceedings are conducted. Elements of it may be included within the rules of procedure and a single composite document is required.

5. There were no other speakers so the Chairman adjourned the meeting until 10.00 on Monday. There will be a series of bilaterals tomorrow. He will take up the question of the rules of procedure at the point where the discussion stopped today. It's up to the participants to set the time for their own bilateral discussions. The Chair is not involved in these negotiations or in organising the meetings. Minister Ancram indicated that he will be available tomorrow for discussions as also did Mr McCartney.

[Signed]

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24 June 1996

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