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From: Independent Chairmen Notetakers  
26 June 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND  
AGENDA FOR PLENARY SESSION - TUESDAY 25 JUNE 1996 (14.35)

Those present:

Independent Chairmen	Government Teams	Parties
General de Chastelain	British Government	Alliance Party
Mr Holkeri	Irish Government	Labour Party
		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

STATUS OF GROUND RULES PAPER VIS A VIS RULES OF PROCEDURE

1. The Chairman (Mr Holkeri) he suggested going into the detail of the document before the lunch break and he requested the acceptance of the delegates for that procedure. The purpose of this unofficial look at the documents is to prepare two sets of proposals, one for the rules of procedure and one for the Agenda. The Chairman said that if this meets with general acceptance, then he will propose that the draft rules of procedure document can be examined paragraph by paragraph to obtain agreement. If there are insurmountable problems then they can be parked for the time being.
2. Mr Robinson said that he thought that we concluded this morning's session attempting to reach a consensus on the standing

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of the Ground Rules and whether or not it or any other document had a standing in the process also. He had read the two texts of the interventions by both Minister Ancram and Minister Taylor and he has reached the conclusion that hanging above the whole process is the Ground Rules document. That document and the SDLP amendment, shows that in any question of a dispute between the the rules of procedure and the Ground Rules, the Ground Rules will be the authoritative text.

3. He noted that both Governments' proposals for additions to the rules of procedure taken from the Ground Rules paper also amend the text of the Ground Rules. If the Governments can propose amendments to the Ground Rules, so can the delegates. Accordingly, it should be possible to have one single, composite document to govern the proceedings or, is it the case that someone at some stage can still raise the application of the Ground Rules. He said the delegates have to be clear on the status of the Ground Rules or on any other document.

4. Mr Trimble said that amendments which have been tabled relate to the Ground Rules document and amendments proposed to the rules of procedure also relate to the Ground Rules. Also amendment No 3 in the name of the DUP and the SDLP amendment also concern the Ground Rules document. If we work our way through the Ground Rules paper as well as the proposed amendments, the meeting may find that they will ultimately define the position of the Ground Rules and the rules of procedure. He thought it was best to go through the rules of procedure rule by rule. Ms Hinds endorsed Mr Trimble's comments wholeheartedly. Mr McCartney said that this cannot be done unless the principles are first agreed. Otherwise it would be a sterile process. He felt that you have to define the status of the Ground Rules right at the beginning.



5. Minister Ancram supported Mr Trimble's idea that the amendments do address the issue of the contents. In accordance with the spirit of para 7 of the Ground Rules, the proper way to proceed is on that basis. As to the relationship between the two documents, he has already set out that the Ground Rules are part of the landscape; others see them as a different landscape, but that issue can be addressed in the context of the examination of the rules of procedure.

6. Mr Robinson said he could agree that important work has to be done on the rules of procedure, but he wondered if there was a clear understanding that this does not resolve the issue. The position still is that certain fundamental rules in the Ground Rules, separate from the procedural rules, still exist. That is the position of the Irish Government. Her Majesty's Government has more cotton wool packaging about their view. The Irish Government's position is that there is a corpus of law overruling what delegates do in the rules of procedure. In this regard he drew attention to para 5 of Minister Taylor's submission. This is based on some magical status being accorded the Ground Rules just because they are included in a Command Paper. He wondered if the Irish Government could spell out clearly what are the important fundamental rules which, if not maintained, will lead both the SDLP and the Irish Government to abandon the negotiations. Minister Taylor said it was not necessarily a question of abandoning negotiations. Those negotiations came into being following a process of which the Ground Rules are a key part. His paper sets out the Irish Government's view of the Ground Rules as shared by the British Government. He suggested that Mr Trimble's idea to move forward should be adopted as it was desired by most delegations.



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7. Mr Curran thanked the representatives of the two Governments for their notes and it was his wish that the meeting proceed on the basis of Mr Trimble's suggestion. Mr McCartney said that Minister Taylor's answer was wholly unsatisfactory. Para 5 of the Irish Government's paper is set out in clear terms. It stated that no negotiating process could be envisaged without the Ground Rules. He asked that these rules that are so fundamental to the process be identified. He said he was open to be convinced of their vital important nature.

8. Ms Hinds said that through management of the process the Chairman's proposal at the beginning needed to be tested at this stage. Most delegations would prefer to address it in this way. We should proceed in line with Mr Trimble's suggestion and we can't allow two delegations to frustrate the progress desired by most delegates. She felt that the meeting should test this proposal at this time.

9. Mr Trimble said his idea or suggestion was a convenient way of proceeding. In working through the detail the overall position will become clear. But the Irish Government haven't answered certain questions; this would seem to indicate that they are concerned only with symbols and not fundamental points. Mr McCrea said that the meeting should have an answer to Mr McCartney's question directed to Minister Taylor.

10. Minister Taylor said he thought he had answered the question. The Ground Rules are in a Command Paper and referred to in accompanying legislation. He referred also to para 9 of his statement. The status of the Ground Rules are clearly set out there and this represents the position also of the British



Government. Mr McCartney said Minister Taylor continued to avoid the question, but according to para 5 of his statement there is a clear dichotomy between the two reasons referred to, the second one of which is their fundamental importance to one or other of the delegations so that no negotiation process could be envisaged without them. He wished to know which of the Ground Rules is so fundamentally important.

11. Minister Taylor said all of the Ground Rules are important and each is fundamental. Some are procedural in nature and they can transfer into the rules of procedure. He did not propose to differentiate between the different degrees of importance, but the ones that deal with procedural matters can go in the procedural rules document.

12. The Secretary of State said this was helpful. The question is, can the meeting construct a single self-standing book of rules to allow it to proceed. He thinks there is much merit in Mr Trimble's suggestion to postpone the theological Ground Rules issue. The amendments to the rules of procedure are necessary to fill gaps in the rules of the text which was submitted on 19 June last. As the meeting goes through the amendments and the text paragraph by paragraph, we will be able to know whether the gaps are filled or not. If the status of the Ground Rules is as defined in the Irish Government's para 5 then that allows the meeting to distinguish between the Ground Rules on the one hand and the rules of procedure on the other. It is not necessary now or later to pursue the questions of their theological character. The meeting should close the procedural gaps and then look at the issues remaining in the light of the Irish Government's paper and the statements made by Minister Taylor.



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13. Mr Trimble said he thought that Minister Taylor's latest intervention would clear up the discussion by referring to para 9 and indicating that the wider issues are matters for the two Governments and not the participants. Attorney General Gleeson said that some Ground Rules are important to two delegations. This is a situation that had developed from bilateral meetings which had taken place. It is not for the Irish Government to disclose what views other parties would have in the matter. They will be disclosed in due course during the process of discussion on the rules of procedure. The fundamental position of the two Governments is described in the papers which were read out this morning. He also drew attention to para 5 of Minister Ancram's paper which referred to the Ground Rules forming a key part of the foundations on which the negotiations rest and it being the legal descriptor of the character and nature of the negotiations themselves.

14. The Ground Rules do not depend on being a Command Paper, or in the conclusions of the delegations here acting singly or together. They are frozen in their status or, in another sense, captured by a British Act of Parliament. And are susceptible to renovation only by the same process. The statute is not dependent on his say so or on the say so of any one group or all groups. Their status derives from elsewhere. It was unproductive for the body to act as a debating chamber and waste time. The avenue for further progress in the matter is through Mr Trimble's suggestion. Mr McCartney intervened to say that Mr Gleeson will appreciate that only three portions of the Command Paper are identified in the enabling Act.

15. Mr Gleeson said that that is not the case. He referred to the text of Sections 1 and 2 of the Act. He said that Section 2



relates to the negotiations meaning the 26 paragraphs in their totality, no more, no less. The description of the process can only be gleaned by reading the Command Paper from start to finish. No single paragraph is excluded. So, the Statute directed that elections be held for the process described in the Command Paper as a whole, funds were provided accordingly and an electorate voted for the process as described in the Command Paper. Everything derives from Parliament in Westminster, meaning the negotiations described in the Command Paper. It was not fruitful to conduct this theological debate; he felt it was better to proceed along the lines suggested by Mr Trimble.

16. Mr McCartney said that everyone knows that the negotiations are those set out in Section 2.1 of the Act. All the Command Paper does is direct us to negotiations. Minister Ancram said these Ground Rules are nothing more than the aspirations of two Governments. For example the possible swapping of the Anglo-Irish Agreement for something else (see para 4). There was no reason why this body should be bound by what the Governments prefer or aspire to. Once the rules of procedure identify the negotiations as in the Act, nothing more is required. It should be open to this body to put in place its own rules. The Governments are participants in this process, no more, no less. It can't impose its will on a free and democratic body.

17. Mr Empey said that their suggestion was designed to be helpful, because the substantive issues would come up through the process of examination of the rules of procedure. But things have gone down hill. There is a fundamental misunderstanding. The problem is not just legal, but political. There are serious concerns on the unionist side that the Ground Rules contain the policy aims of two Governments, for instance paras 4 and 15 start



with the words "both Governments". The concern of the UUP is to ensure that issues which people wish to raise will not be blocked if people decide on the agenda and also that they do not endorse the views of the two Governments. As a matter of common-sense and natural justice they should not have their deliberations directed or constrained by words they had no part in drafting.

18. If there is a composite document on the rules of procedure to which the Chairman will refer conclusively, that will be acceptable. He cautioned that those who might be in a majority today may be in a minority later on. So it is not just a matter for a show of hands around the table. He felt that we should get the matters of concern identified even in broad terms. His party is now in a position to endorse the Ground Rules not just because the terms in the document are not theirs, but because they also wish to safeguard matters of concern to other delegations. They are wary of an over-arching document which would direct them to a solution which they would not be prepared to countenance. This is primarily a political argument, not a legal one and their fears are based accordingly. The Chairman said he has four names on a list of speakers and he would make a suggestion as how to proceed after those four speakers had made their contribution.

19. Mr Mallon said that he had listened attentively to what Mr Empey had said about not wishing for the Ulster Unionists to adopt a policy which was addressed by both Governments in the Ground Rules. The thrust of their opposition to that course was that those provisions expressed the hopes, policies and aspirations of both Governments. That approach by the Ulster Unionists is legitimate. But there is an inconsistency in their approach. When they put down amendments to the rules of procedure they drew from the 28 February communique. They may say that that is a more



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acceptable source than the Command Paper but many other Unionist amendments put down for consideration were transposed from the Ground Rules paper into the rules of procedure. This approach is remarkable and unacceptable. Mr Mallon posed a question for the Ulster Unionists, namely, which policies on the basis of which these negotiations were established are not acceptable to them. As to Mr McCartney's point about the rights of this body to deliberate, is that not covered by Article 17A in the amendments proposed by the two Governments. If not, what elements of discussion are not covered by 17A. He referred to cherrypicking again as he had earlier on. He said that it wasn't acceptable to take pieces from the Ground Rules document, agree a position to close procedural gaps and then move the whole process back having damaged the Ground Rules document in the process. He remained silent when the Irish Government was questioned on the Ground Rules. Mr McCartney was not here this morning. The SDLP were one of the parties which Minister Taylor had referred to earlier on this morning. He will not apologise or make excuses for that. Any change in the fundamental position of the Ground Rules document will have profound results for his party's attitude to the negotiations. That is as legitimate a point as that of the Unionists and their contrived legal and quasi-political reservations proffered for the present discussion. He said that the SDLP won't be pressurised out of that position by the consistent tactics adopted at the meeting. That should be added to the Irish Government's position. The SDLP feels it has adopted a flexible attitude to the discussions, but in doing so, they did anticipate that some delegations, having gained something from those discussions, would come back for more. But he warned that that tactic won't work again. He felt that the meeting should go on to consider the rules of procedure paper and the SDLP amendment which still stands.



20. Minister Ancram warned against getting bound up in misinterpretations. The aspirations and policy in the Ground Rules relates to the views of the two Governments. Nothing requires the parties to accept them or to sign up to them. The Ground Rules mean that the conduct of negotiations is for the participants who are engaged in this very process at the moment. He said that Mr McCartney fears the outcome of negotiations is premeditated. But look at para 17A - no outcome is predetermined. The significance of the words in the paragraph is important. There are no limitations other than those imposed by the necessity to reach agreement.

21. Attorney General Gleeson said he wished to add to Minister Ancram's statement. Bearing in mind Mr Mallon's concerns, he finds himself in agreement with what Minister Ancram said. The parties don't have to sign up for everything in the Ground Rules. He referred to para 4 in the Ground Rules as an example. Acceptance of the Ground Rules does not mean parties have to sign up to a particular issue. This is especially true of the aspirational aspects of certain ground rules. The Ground Rules themselves make it clear that the outcome of negotiations is not predetermined in advance.

22. Mr Robinson said that the issues that go to the heart of this question have been set out - they are legal, political and practical. As to the legal issues, Attorney General Gleeson is stretching it beyond elasticity to suggest that a reference in the Act covers paras 1-26 of the Ground Rules. Parliament just meant those regulations set out in the preamble to the Act. If courts were asked to decide, they would not go beyond that, especially when the Ground Rules can be amended by the negotiators. As to the



political issue - Mr Mallon summed up the matter when he said that the Ground Rules were a carrot or a sop to bring the SDLP into the electoral process. There is nothing wrong with that, but if we have to agree that consensus in the Ground Rules binds everything, this is tantamount in effect to saying that what we have we hold.

23. Mr Mallon intervened to say that these negotiations are novel and we need to have them clearly defined in the Ground Rules. It would be foolish for a nationalist party to go into negotiations without clearly defined ground rules. They are a must.

Mr Robinson said that they were informed by the Secretary of State and Minister Ancram in the House of Commons that they would be consulted on the Ground Rules. However, that did not occur. What they want is a level playing field and their aim is not to disadvantage the SDLP. They see elements of the Ground Rules as a nationalist agenda. It is clear from Minister Taylor's statement that he can divide the Ground Rules into two dimensions: firstly, certain fundamental rules not for transposing into the rules of procedure and not amendable, and secondly, rules that govern the internal conduct of the negotiations (para 7 in the Ground Rules document) which is a matter to be worked out pragmatically by the participants. Let us identify those which the Irish Government say can't be amended.

24. Mr Empey said that the Attorney General had stated that there were a number of matters which were the exclusive property of the two Governments which they could not amend and which were not even endorsable by the delegations. There is thus a third category - matters which are exclusively the property of the Governments.

25. Mr Robinson asked if we could identify those Ground Rules transposed in whole or in part in amendments proposed by the two



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Governments. They clearly fall within para 7 of the Ground Rules as being a matter for those involved in the negotiations to determine. The second section or areas of the Ground Rules which offer the Governments' views or opinions or policies which they have not attempted to import into the rules of procedure but which don't have any application to the process and which the delegations are not bound by. The third category is that which the Attorney General indicated, namely, that there are some areas which are exclusively the matters proper to the two Governments and not germane to discussions by the negotiators. He wanted those defined. He then said that we were left with some fundamental rules and the question remains whether any of those are so important as to exercise the meeting or for them to be concerned about it.

26. The Chairman said we have a clear impasse which could delay us in moving forward. We have questions on the Ground Rules which remain outstanding. He wondered if he could suggest moving forward if we accept that important questions on the Ground Rules remain to be answered. In the meantime the negotiators could move to discussion on the rules of procedures paper to see how far we could go. Mr Wilson said that that was a suggestion by Mr Trimble, it wasn't really a proposal. The Chairman said this was his proposal now.

27. Mr McCartney made a further suggestion. He saw merit in Mr Robinson's proposal which outlined 1) some Ground Rules that have already been imported in the rules of procedure by the two Governments; 2) the Ground Rules which are the property of the two Governments that participants are not involved in (aspirational); and 3) the ground rules which have been identified by the Irish Government and the SDLP as being so fundamental that we have come



to an impasse over them. He suggested taking an adjournment to look at the nature of these fundamental issues to isolate the problems contained in this blockage.

28. Ms Hinds proposed to adopt the Chairman's proposal to proceed. She maintained that you can't proceed as Mr McCartney suggested because we don't have sufficient clarity on the issues of substantial disagreement. She felt that the meeting had to address the rules of procedure first.

29. Dr Paisley said that the meeting won't get anywhere by not facing up to the issues. They shouldn't park the issues and put them aside. It was a ludicrous idea that we will tackle them later. These issues won't go away. We can locate the three areas involved. Some we can move on quickly, some we will have difficulty with and there will be others where there will be considerable difficulty. Ms Hinds raised a point of order. She said that her proposal was to proceed in this way. Dr Paisley said that it was felt that this was pure escapism. He felt that the issues were not being faced and that there are tougher issues ahead. The Chairman said as to his proposal that the thought it would be close to Mr Robinson's position but in fact it seems to be the opposite. Now it seems that almost everyone except the DUP and the UKUP want to move on now. The meeting adjourned at 16.00 for 15 minutes.

[Signed]

Independent Chairmen Notetakers  
26 June 1996

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