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From: Independent Chairmen Notetakers
1 July 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND
AGENDA FOR PLENARY SESSION - THURSDAY 27 JUNE 1996 (11.10)

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 (Senator Mitchell) opened the discussion by announcing several matters for the participants' consideration relating to the timing of the proceedings. Concern had been expressed about the day to day basis of the present arrangements. He suggested that the participants should devote a brief amount of time to consideration of the schedule for next week. So far the pattern had been to conduct discussions on Mondays to Thursdays. Would some other schedule be preferable? Obviously it would be useful for the participants to have some advance indication of the schedule for the discussions.

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2. A second question had arisen in connection with the questions posed to the participants by the chair. The Chairman said that he had not stated in advance whether or not the information supplied by the individual participants would be made available to all of the participants. He felt that in the absence of such a statement from the chair it would be inappropriate for the chairman to release the information. He welcomed any guidance from the participants on this point.

3. Mr Robinson said that there would be no objection from the UK Unionists or the DUP to their contributions being circulated to other participants. Mr McCartney said that this was very appropriate. He felt that the purpose behind the questions had been to benefit all of the parties. Because there had been no forthcoming answer from Mr Taylor to a question put by himself he thought that the purpose of the questions was to enable the chair to inform the participants at large of the position taken by the various parties.

4. The Chairman said that Mr McCartney had made a good point and said that he would encourage each of the parties to the discussions to supply their answers to the questions to each of the other parties. In relation to today's proceedings he proposed that the participants agree to remain not later than 15.00, reserving the last 15 minutes for discussion of the schedule for the incoming week. He then suggested a way of proceeding on the current day's business. With one exception, he didn't propose to go over the entire draft rules of procedure document; differences between the parties remained but these were not likely to be resolved easily or quickly. The exception was para 27. The previous evening the UKUP had met with the Chairmen and asked whether a higher standard of consensus would not be appropriate for certain aspects. The

Chairmen had told the party that it would be appropriate to raise this matter with the other parties in the discussions.

5. Mr Robinson said that his party was content to remove its block on rule 12 and that it was possible that rule 26 could be readily agreed with suitable amendment, everything after "all decisions taken in" being removed and "in any format" being substituted. The Chairman asked if anyone had any comment on Mr Robinson's proposal. Mr Mallon asked if the amended rule would be intended to apply to a format dealing with the decommissioning aspect. Mr Robinson responding in the affirmative, Mr Mallon then enquired about Strand 3. Mr Robinson said that it seemed that when his party made a concession it was attended by suspicion on the part of others. It was his understanding that the rule would apply to every committee and subcommittee of the talks. The Chairman enquired if the Governments would need time to consider the proposed amendment. This was unnecessary.

6. Mr Mallon asked if he could take it from the Chairman that a decommissioning committee would be a subcommittee of Plenary. the Chairman responded that on the basis of his interpretation of the proposed amendment he would rule that any committee or subcommittee of the talks would come within the ambit of the rule in question. Mr McCartney said that this was without prejudice to the Plenary. The Chairman said that the amendment to rule 26 was self-contained and didn't impact on the issue of whether or not there would be a Plenary after the present deliberations on the rules were concluded. He emphasised that the rule, as amended, simply stated that if a format existed, then the rule would apply to it.

7. The Chairman pointed out that the reason why para 12 was in brackets (ie, not yet agreed) was linked to para 26 and noted

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Mr Robinson's withdrawal of objection. He asked if there was any further objection to para 12. There being none he announced that para 12 was now approved as well as the amended para 26.

8. The Chairman now turned to para 27 and invited comment. Mr McCartney referred to the original debate and said that there had been some discussion about a fixed percentage for consensus. He and Mr Durkan had thought that there had to be a political majority for agreement in each area. However, he saw the need for an additional rule to apply when it came to consider the overall conclusions of the talks. He read out a proposed amendment which had been supplied to the Chairmen and the other parties. Its purpose was primarily to stimulate discussion. He emphasised that any agreement emanating from these talks would have to be of a kind that it could be offered to the country with the endorsement of the participants.

9. Dr Alderdice acknowledged that Mr McCartney was pointing towards a legitimate problem, and there was the further problem that there were those members of the community who were not represented at the talks. He said that it would be very difficult for the participants to judge what the political scenario might be at the later stages of the talks and was uncertain about the wisdom of attempting to govern the deliberations of the participants then by an additional rule on the lines proposed.

10. Mr McCartney said that the word "substantial" was better than "clear" in that it had the nuance of being more than a bare majority. There was no difficulty by any of the parties in understanding what was meant by "clear", and he himself had no objection to the use of the word "clear" provided that it was used only in the context of the procedure of the talks. He did have

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reservations however in its application to the overall outcome of the talks.

11. Mr Thomas queried the basis of Mr McCartney's amendment. A political point was being set against a procedural test. If for example a conclusion of the talks passed the three tests of para 27, would it be right to consider withholding it on the grounds that it did not meet some further test which would be difficult to define. Mr Weir said he recognised what Mr McCartney was proposing. He noted the ambiguities of para 27 and was in favour of seeking clarity, however he thought that the wording of the amendment tended to muddy the waters.

12. Mr Robinson said that the proposed amendment was a statement of political reality. Yesterday the participants had recognised the difficulty of reconciling consensus at the talks with consensus among the people. The proposed amendment was an attempt to address this difficulty.

13. Mr Mallon said that if there was a situation of consensus in the three strands becoming conditional upon a different form of consensus which couldn't be satisfactorily defined, difficulty would arise in arriving at conclusions. Mr McCartney said that he was grateful to Mr Thomas for revealing the mind of government. If he had thought that that was the Government position with regard to para 27 he would never have consented to the paragraph. Mr Mallon said that it was a principle of the talks that nothing is agreed until everything is agreed. Mr McCartney said that Mr Thomas considered that there were three sole tests for consensus yet each of them had unacceptable defects in the area of consensus; for example a majority of five parties might well represent a small fraction of the electorate and a majority of the unionist and

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nationalist communities might constitute 51% of the electorate. He would not be prepared to agree to a rule of procedure based upon a bare majority in the circumstances envisaged by Mr Thomas. He made reference to the 75% figure which he understood to be inherent in the US Constitution for consensual matters affecting the States. He said that he would like to register a protest at the British Government interpretation of the implications of rule 27.

14. Mr Ervine said that Mr McCartney's proposed amendment was necessary, however he would rather not have the debate on it today and would propose to move on and return to it at a later stage. The Chairman said that it was clear that agreement on para 27 would not be reached today.

15. Mr Thomas said that Mr McCartney had asked for a particular view to be recorded. The three tests of para 27 had to be applied together. He suggested that if the participants reached a particular outcome on the basis of the these three tests it would be wrong to withhold it. He did not believe that the present issue was a significant one. Mr Robinson's amendment to para 26 made it clear that the sort of political test proposed by Mr McCartney would apply throughout the talks.

16. Mr Durkan said that it was important to note that rule 27 didn't stand alone. Sufficient consensus was an enabling rather than a disabling qualification. It was in any case a device of last resort. The participants were not bound to follow it and all realised that it may be politically impractical to impose sufficient consensus. He didn't believe that the participants could develop a form of words which could give effect to Mr McCartney's proposal; there would have to be a knock-for-knock basis to the talks if progress was to be made and it might well be

impossible to get beyond "sufficient consensus" on some issues. It was difficult to envisage how the actual process of consensus could be translated into a precise procedural rule, a difficulty which Mr McCartney himself recognised. The expression "political efficacy" used in his proposal might well not be helpful in the process of achieving consensus.

17. Mr Mallon said that "sufficient consensus" just didn't apply to procedural matters; that had already clearly been agreed. Decisions on non-procedural matters had got to be made. Dr Paisley said he thought it unwise to proceed on the basis that the concept of consensus should be assumed to have sufficiently clear meaning to the participants, that the need for consensus was merely something to be kept in mind; the British Government, for example, keeps what it like in mind. Mr McCartney's proposed amendment had a practical significance which was important to the achievement of consensus.

18. Ms Hinds said that she agreed with the SDLP on this issue, however Mr McCartney was reminding all of the participants to keep in mind the issue of consensus in the community at large. She agreed with Mr Thomas that the three tests had to be taken together. In relation to "political efficacy" it was important for the participants not to overlook their own role as political leaders. Mr Robinson said he was not so sure that there was such a political chasm on this issue. Everybody seemed to agree that a political test was necessary. The dispute was over whether or not it should be a rule of procedure. Mr McCartney's proposal purported to apply a final test; whether or not the result of the talks was going to pass in the country. Dr Paisley had made the point that perhaps when the time came a party to the talks might

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not be able to carry its community behind it; perhaps after an election a particular party's status might be reduced.

19. Mr McCartney endorsed Mr Robinson's points. He said he was not concerned about Mr Thomas' support for Mr Mallon who was insisting that rule 27 should apply in the manner stated by Mr Thomas. He said that it was a reality that the pro-union cause was up against a combination of the nationalists and the two Governments; the British Government didn't care about Ulster or its people. He said that rule 27 couldn't be made to apply to the referendum stage which would follow; the majority in Northern Ireland would reject any outcome which did not have the support of its elected representatives.

20. Mr Trimble said that there was general agreement that the final outcome of the talks, if indeed there was an agreement, would require more than a bare majority. The outcome had to be endorsed by the people of Northern Ireland and this pre-supposed the application of some form of special test at the appropriate stage. With regard to the phrase "political efficacy", he said that the Anglo Irish Agreement fell into this category. Mr McMichael noted that the participants had yet to discuss the subject of the referendums. He said that the entire area of safeguards in this area had yet to be considered.

21. Mr Mallon said that the present discussion related more to an aspiration than a rule. If a referendum was going to be held then it would qualify the degree of consensus. Dr Paisley said that he was alarmed at Mr Mallon's idea that rule 27 should apply to the strands and then automatically apply to the result without further consideration. He could not accept rule 27 on that basis. He

would be interested to hear from the British Government what its views were on the referendums.

22. Mr McCartney said that his proposed amendment had not been instigated by the thought of referendums. He had been naive enough to think that the parties at the talks could go out and advocate a course of action. His real purpose was to avoid the situation whereby proposals might be accepted at the talks on the basis of rule 27 yet parties would feel obliged to go out and canvas against the proposals in a subsequent referendum. He considered that rule 27 should be for procedural purposes only.

23. Dr Alderdice said that it was very unwise to anticipate elections. He had little doubt that some of the participants would campaign against certain decisions made at the talks. He said that the participants had earlier agreed that rule 27 was not simply about procedures; it was about "proceedings". He considered that if proposals passed the rule 27 tests it would be ill-advised to apply a further test. Whatever the participants agreed the people might decide against. Dr Paisley requested the Chairman's permission to address Dr Alderdice and then asked if Dr Alderdice considered that a particular proposal should be adopted on a bare majority. The latter replied that the participants had yet to address the issue of size of majority.

24. Mr Adams said that Mr McCartney's proposal was a good aspiration, but it would be virtually impossible to reach unanimity on the matter addressed. It would, however, be a recipe for civil war if Northern Ireland's status was changed on the basis of a 51% vote. Dr Paisley said that such a change was provided for in the Anglo-Irish Agreement.

25. The Minister of State said that the participants had entered the talks with a desire to achieve broad consent. He assured the participants that the British Government had no desire to steer the talks in a particular direction. At this stage the British Government, like the other participants, had no idea what the outcome might be. Mr Robinson said that the outcome might be that there is no agreement. The Minister of State said that he expected that there would be an agreement.

26. Mr Mallon asked the Chairman if rule 27 had been accepted and whether it applied to all formats. The Chairman said that the definition of sufficient consensus remained under consideration in the context of an amendment proposed by Mr McCartney. He said that he understood that Mr McCartney was not trying to make a distinction between procedure and substantive results achieved within the formats. Although rule 27 had been previously considered it was permissible to revisit it until the stage was reached when the rules had been agreed in total.

27. Mr Mallon enquired of the Chairman if Mr McCartney's amendment really related to rule 27 at all or to something that might come later. The Chairman said that he thought that Mr McCartney was seeking to achieve a closer definition of the phrase "sufficient consensus" which appeared in several locations in the rules. It seemed clear that the discussion was not readily going to achieve agreement on the issue. He now had five persons recognised and after they had spoken he proposed to allow a break. This was agreed.

28. Mr Close said that he was becoming concerned that there was a danger of unravelling what had already been achieved. The revisiting of issues raised the possibility of the discussions

going backwards. The Chairman said that he respected Mr Close's expressed alarm and affirmed that a distinction would be drawn between genuine debate and delay. He said that the time would come when decisions would have to be taken. His practice would continue to be to give participants the opportunity to put forward their views. He would recognise attempts to delay the proceedings and so far these had not occurred. Mr Close said that he respected and accepted the Chairman's views.

29. Ms Hinds made a plea for the discussion to be kept to the point, feeling that the issue of the referendums was not relevant to the present issue. Dr Alderdice asked if rule 27 would be put in brackets in the next amended version of the rules. The Chairman replied in the affirmative.

30. Mr O'hUiginn said that it seemed there was much common ground. The issue relating to Mr McCartney's proposal was that it was both a rule of procedure yet sought to transcend the rules of procedure. He felt that the political representatives would make the necessary political judgements at the appropriate time, and wondered if the present impasse on rule 27 might not be resolved by expressing an appropriate qualification at Plenary - to be recorded in the minutes - which would meet Mr McCartney's very valid point and alleviate the concern.

31. Mr Robinson raised the issue of the definition of "unionist" and "nationalist". His understanding was that the former term embraced the UUP, DUP, UKUP, UDP and the PUP whereas the SDLP was the sole standard bearer of the nationalist people. The Chairman said he would like to give the other parties sufficient time to reflect on the matter and asked the Alliance, Labour and Womens'

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Coalition parties to inform him within a week of their position in the matter.

32. Mr Durkan raised the matter of the Chairman's role (para 25) and sought the Chairmen's view about the necessity for the rule. The Chairman said that he and his colleagues would jointly consider the matter.

33. The Chairman adjourned the discussion at 13.30 after setting the resumption time of 14.00 for discussion of the Proposed Rules paper and allotting the period 14.45-15.00 for discussion of next week's schedule.

[Signed]

Independent Chairmen Notetakers
1 July 1996

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