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From: Independent Chairmen Notetakers
2 July 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND
AGENDA FOR PLENARY SESSION - MONDAY 1 JULY 1996 (14.12)

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 before going on to deal with para 15 he wanted to deal with the relationship between paras 10 and 13. He suggested making an amendment to para 10 so that the final sentence would read "Negotiations in each strand will open on the same day and proceed consistent with the provisions of para 13". He said that Mr Dodds objection to para 10 on the other ground would remain nevertheless, but he said that his proposal would get over the procedural difficulties. The meeting agreed and the wording was changed accordingly.

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Para 15

Conduct of the Proceedings

2. Dr Paisley said that he didn't really have enough time to discuss the new amendment put forward by the Government. He is concerned about the amendment because it says that "negotiations will be on the basis of a comprehensive agenda for the negotiations as a whole, adopted by agreement in the Opening Plenary". He said there was party in the Opening Plenary, that is the Irish Government, who have no say in the discussions in Strand 1. How can they be in a position to agree to an agenda with which they are not involved? The only people to set the agenda for Strand 1 are the participants in that strand and similarly for Strands 2 and 3.

3. The DUP are opposed to the Irish Government having any say in drawing up a comprehensive agenda for Strand 1 or in the associated committees and subcommittees. They would find such a situation intolerable. This is all about getting the question of the union on to the negotiating table. The law says that the union cannot be changed except by a majority in a referendum. The Anglo-Irish Agreement also provides for this. He said that there is a distinction between constitution and constitutional issues. The DUP were informed that the union would not be on the table for negotiation. If the British Government has changed its mind on this issue it should say so. He said furthermore that there was a loophole in the process because notwithstanding an agreement for a comprehensive agenda there may still be a way to get around that agreement through the Opening Plenary session by which the Governments can place other items on the agenda which have been rejected by the other parties.

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4. Mr McCartney said that it needs to be appreciated that what the unionists regard as a constitutional guarantee, in other words, no change without the consent of the majority, that needs to be confirmed. This is a fundamental constitutional principle. The Irish Government do not share that view nor do the SDLP - who also refer to it as the unionist veto. Pro-unionist parties consider that this issue is not negotiable. This was paramount in the 1992 talks. So they regard the documents under discussion with cynicism. They have no trust in the British Government.

5. They have to look at the whole situation in the context of the Ground Rules and the fact that the two Governments, together with the SDLP and some other small parties, think that there is no harm in the Ground Rules agenda. But Ground Rule 2 refers to full and comprehensive negotiations and Ground Rule 3 means that the parties are free to raise any aspect including constitutional issues. If these are retained as being in some way superior to the rules of procedure agreed by the negotiating body, then the agenda will be beyond the control of the participants in that body. The Ground Rules deal with the nature of the agenda and the content of the agenda, so in cases of conflict the Ground Rules will prevail.

6. He has not indulged himself in this issue in a fabian way. It is a fundamental problem. The South African experience shows that the fundamental requirement is that participants alone should own the negotiating procedures and have full control of the process. This simply won't happen if the two Governments set up the rules of procedure or the Ground Rules. The Ground Rules provide the means whereby the union can be put on the agenda. As Dr Paisley says, the people outside of Strand 1, namely the Irish Government, will be involved in it. What is its purpose only to allow them to dictate the agenda in Strand 1.

7. He said the meeting should look at the second sentence of the proposed para 15 and the matter should be teased out. Any participants, and by this he meant Sinn Fein, the SDLP or the Irish Government, can raise the union issue on the agenda without a veto. If this was a procedural matter all the parties could vote that this item should be excluded from the agenda by way of a majority. But this would not prevent the two Governments placing the union on the agenda under the Ground Rules since they seem to be superior to the rules of procedure drawn up by this body.

8. Mr McCartney directed the attention of the meeting to the UDP amendment on page 5 inserting "by agreement" as highlighted in bold type. He speculated that if a bare majority decided that the union was not on the agenda would this preclude it from being negotiated further. He thinks not. If any argument arose, the two Governments would say that the Ground Rules prevail in the matter.

9. On the substantive issue of the Ground Rules being supreme, the delegations should realise that the selection of the agenda is not simply a matter of choice for the participants. The Ground Rules represented the negotiating process desired by the two Governments and he felt that the participants should not let them have their own way in this matter. Rule 15 can only be discussed in the context of the overall question and that is what is the substance of the Ground Rules? This issue will arise in the discussions relating to rules of particular importance and that delegations should have their eyes open as to the possible effects.

10. Mr Empey then referred to the original document dated 27 June and drew attention to the amendments by the Women's Coalition and the UDP on page 5 of the additions paper. The common phrase is

"area of competence". This deals with the matter as originally raised by Dr Paisley.

11. Minister Ancram said that the words "area of competence" should also be read into the Government amendment circulated today. They should be inserted after the first sentence of that draft. They were omitted due to an oversight. Mr Empey said that he would like to consider the matter further and he wondered did the Irish Government accept that they are not involved in the agreement process on the agenda. Dr Paisley asked about the Opening Plenary session when the Irish Government will be involved. Is it a case that when there is discussion at the Opening Plenary on the Strand 1 agenda, the Irish Government will not be present or indeed at the closing Plenary session on this particular issue.

12. Mr O'hUiginn said that this raised a logical point. It is essentially a matter for the participants in Strand 1 to decide on the negotiation of the agenda. The Irish Government is not involved. But the Irish Government would be present at the Opening Plenary session. Dr Paisley wondered if the present amendment dealt with this problem. The Irish Government would be at the Opening Plenary session. How can the parties set the agenda for Strand 1 in those circumstances. Is it the case that there will be two sessions, one with the Irish Government present and one without them being present. The Irish Government cannot be a party to any agreement on the agenda for Strand 1.

13. Mr McCartney said that Dr Paisley had emphasised the change between now and the 1992 talks. The overall Plenary session and the non-sequential talks have the effect of blurring the distinctions in the separate strands. That is the cause of the metaphysical problems which the meeting was now discussing. How

can the Irish Government have a role in setting the agenda for Strand 1. Unionist fears in this regard cannot be dismissed as procedural nit-picking. If the issue is not deal with now it will continue to haunt the whole process. Mr Empey said that the overall issue is not resolved. However, he said that in relation to the sequential nature of the strands, the view of some is that the 1991/92 procedure could be improved upon. But he felt that the meeting was trying to deal with the problem "on the hoof". People might wish to take time to reflect to ensure that the paragraph has clarity in the format that is to be used. The Irish Government wants to be involved in arranging the agenda as a whole but not for the strands. How do you deal with this? Do you have a two-tier agreement? This needs further thought. Everyone knows the argument and he felt that the delegations should reflect on them. They want more time to discuss the rest of para 15. The Women's Coalition amendment is probably more attractive because of its simplicity.

14. Mr Dodds said that Mr Empey talked about the difficulty in formulating textual changes on the amendment. As to the first paragraph of para 15 in the additions paper and the question of the area of competence, the agenda does not relate to the adoption of the agenda. It is more about how you proceed. The adoption of the agenda is left for the agreement of the Opening Plenary. The Irish Government have no role in Strand 1 yet it seems to have a major role in the adoption of the agenda in Strand 1. The addition of the words "area of competence" is not relevant at this point. The Women's Coalition amendment together with the UDP amendment on page 5 of the additions paper are attractive, but he noted that the UDP amendment is not included in the wording. The Chairman said that was the case. The UDP amendment was not reflected in the wording and that we would deal with that when we came to it and he thought

that he had made that point clear. Mr Dodds said that Mr Empey had referred to the fact that both parts of para 15 need to be looked at carefully. Mr Close wondered whether the words in the phrase "as it relates to their area of competence" applied to all participants.

15. Mr Mallon said that he does not regard himself as being present merely as a participant but as responding to an invitation to negotiations. He feels this is an attempt to solve the political problem by semantics. The entire meaning of the paragraph has been changed. He instanced the removal of the words "will negotiate" and their replacement by the words "be addressed" in the draft of 27 June. And in the drafts just circulated by the Government dated 1 July, both of those formulations have been replaced by "people getting a fair hearing". The SDLP didn't come to the meeting for a fair hearing but to negotiate the future. That diminution is disappointing to put it mildly. Mr Mallon said that Mr McCartney regarded consent as a constitutional guarantee. Consent is given willingly and freely by those who are not unionists, yet they are not allowed to negotiate. This is not a sound basis for a peaceful resolution of problems. This is a fatal flaw in unionist thinking. Consent is two-sided. The need for consent is to ensure that constitutional change will be brought about by peaceful and democratic means. The unionist responsibility on consent is to ensure that each party has the right to negotiate freely and to pursue democratic change peaceably. Para 15 of the 27 June draft was said to be imperative in tone and was criticised on that basis. Yet Mr McCartney has said today that the unionists must have full control. That is why Northern Ireland is in the state that it's in. The SDLP want to negotiate. As Mr McCartney says the union is not negotiable and that it will not be on the agenda, speaking for three unionist

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parties. However, he should remember that there are other parties at the meeting who also have rights and responsibilities in this area.

17. Mr Wilson said that when Mr Mallon objects to the language in para 15 he has to realise that the unionist community will not accept lectures in the way they should proceed. Mr Mallon claimed that he was merely answering the points made by the unionist parties. If the provisions of the paragraph were changed from "to address" all matters to a "fair hearing" he suggests to the other parties that they look at this carefully. No semantic change will bring about a dilution in negotiations. This discussion has arisen many times before and it cannot be ignored.

18. Dr Alderdice said that the purpose of establishing procedures is to assist the meeting in the substantive negotiations. Procedures can be set up to protect views of delegations. The hermetic sealing of certain strands is a case in point. The Irish Government does not have competence in Strand 1. There is no dispute in that. It is absolutely correct to point to differences of competence and involvement. He agrees with Mr Empey that the meeting won't get a solution to the problem "on the hoof". But there is a danger that the Governments will act unilaterally anyway, and there is also a danger that it will become a long term problem. As to the union being on the table, it is always going to cause problems. These are political negotiations and issues cannot be ruled out.

19. Minister Ancram said the latest amendment was an attempt to meet earlier concerns. The wording "adopted by agreement" was new to show that the two Governments weren't imposing an agreement. As to the timing of amendments, Minister Ancram said that Mr McCartney

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himself had put forward amendments to para 27 without notice. He felt that as to what should be on the agenda that you can't always go back to the situation in 1991/92. The then Secretary of State in launching the process said that the union with the United Kingdom will not change without consent. In relation to Strand 1 he said that it was open to each party to raise constitutional issues and relevant matters. The Strand 1 agreed agenda started with, as item 1, the constitutional position of Northern Ireland. That was so that discussion and consent in the matter could be established fairly early on. The British Government regard consent as a vital part of the agenda and were committed to that principle. He requested Mr Mallon to look at para 15A which dealt with the commitment to be shown by participants. He felt that you can't coerce people into negotiations. The important thing is to get commitment. Mr Mallon said the Minister's memory is good going back to 1991/92 but he wondered if it went back to last week when a clear distinction was made between discuss and negotiate. He directed attention to para 15A and the reference to "good faith". This changes the whole process. At the next adjournment he wondered if we could have a look at "negotiate" rather than "take part". Minister Ancram said that Mr Mallon's distinction was a narrow one. Para 15A offers the assurance that he wants. The second part was in response to the point that the agenda should be an open one. It will be such as any significant issue can be raised for the purposes of getting a fair hearing. He said the Governments were looking for a balanced formula and he believed that they now meet Mr Mallon's concerns.

20. Mr Empey said the UUP is reserving its position for further thought. No-one wants to stop people raising issues - that's in the nature of the process. But the concept of an agreed agenda and the possibility that it could be overridden later on was their main

concern. Minister Ancram said that he would look at the agendas tabled on 6 June 1996 - they are general, not specific. So general issues are what are envisaged here. Minister Ancram also said that Mr McCartney felt that he would not be able to raise his concerns. Now he has the opportunity to do so by virtue of the provisions of para 15/15A and he is free to raise all issues of importance. Mr Mallon said as to the 6 June agenda and the careful way the paragraphs were redrafted and amended, he accepts the Minister's reasons for the amendments which were put forward today, but he wants to reflect on the unionist refusal to negotiate the union.

21. Dr Paisley wondered what Mr Mallon meant when he said "we are required to negotiate". What does that mean? Mr Mallon said this was as demanded by the unionist parties. Dr Paisley said that he had always maintained that they would not negotiate the union. That meant the 1920 Act and the Act of Union. The Minister was very choosy about what he said in relation to the last talks.

22. Mr McCartney said he objects to the two Governments organising or setting parameters in the particular area in which the participants conduct their procedures and arrange their agenda and negotiate. The negotiations belong to the participants. As to the issue of consent, he means that the consent of the Northern Ireland people has to be obtained before there can be a change in the status of Northern Ireland. That is said to be recognised by both Governments. But when he reads the decisions of the Irish Supreme Court on the principle of the recognition of consent, he is concerned. What it does not mean is that it is by grace and favour of the majority on the entire island of Ireland. He does not understand it to mean that the free consent of the Northern Ireland is subject to this grace and favour type arrangement. The SDLP say it is a question of a pro-union majority and consent by that

majority has to be on the table to be considered in the context of an all-Ireland. This is a matter for the Northern Ireland people alone. It is for parties to decide the rules here and he will abide by them but until the rules are decided upon by the parties he will withhold his consent.

23. Ms Hinds referred to the earlier references in relation to time-wasting as reported in the media. She said she did not agree with that view but this is time-wasting now. As to who owns the process, the issue is in fact, she felt, more complex. She finds a facilitatory approach to be the best way to pursue it. She didn't like the idea of a restrictive agenda. She felt that what was missing is common sense. The basis of negotiations in the three relationships needs decisions to be taken on the agenda only. She also referred to a grammatical problem with the word in the phrase "as it relates to their area of competence" in the first sentence of para 15. She said that people can't be forced to negotiate, but the negotiations themselves are mandatory under the terms of the Act. Her party didn't believe that "will" in para 15 was mandatory but their amendment was designed to be helpful. They shared Mr Mallon's concern about "fair hearing" and the change from "have to be addressed". But if there is good faith as set out in para 15, things might work out. The italics in para 15 represent an opening out of the term "comprehensive" as referred to earlier. The term "relevant" is also important in this context.

24. Dr Alderdice said that there is no suggestion that Dr Paisley is going to negotiate away the union. That would be patent nonsense as well as being mischievous. However, this is not the same as talking about the issues that are involved. The reasons for the talks was that there were fears that the union had been modified by the Anglo-Irish Agreement. That is why Dr Paisley came

into the 1991 talks. Details of the relationship with Westminster were discussed then and the word "negotiation" is appropriate to describe the process. They wanted to create a better union, perhaps even in the context of the European union. He feels that there is a possibility of negotiating about the form of the union and this was done before in 1991.

25. Mr Mallon said Mr McCartney quoted the Anglo-Irish Agreement in terms of constitutional status. Status is certainly the issue, but none of the basic documents such as the Anglo-Irish Agreement or the Framework Document refer to the constitutional status. He accepts that they can give meaningful consent on the basis of peaceful and democratic talks. But if people are excluded from negotiating future constitutional change, what hope is there for that society. Mr Mallon also wondered about the situation if there was to be a change in the consensus and he asked Mr McCartney would he accept the Anglo-Irish Agreement on the status of Northern Ireland. Mr McCartney said that he didn't understand the question. Mr Mallon pressed the matter and Mr McCartney said that no responsible politician would even pose the question since the hypothesis is ludicrous.

26. Dr Paisley said the Women's Coalition contribution does not address the root problem. He has a binding commitment to 142,000 voters. He is here as a negotiator. Mr Mallon boycotted the Assembly and he did not negotiate then. He (Dr Paisley) would not negotiate the union because it is not in the hands of anyone at the negotiations. Dr Paisley referred to the debate in the House of Commons on 17 February 1994, page 1052 of Hansard, when he asked the then Secretary of State a question dealing with the previous talks, when neither the union nor the Government of Ireland Act was on the table. At that time the Secretary of State said that as

decided during the talks process (first meeting) it had always been perfectly clear that the British Government would rise from the table just as much committed to the union as they were when they sat down. That was because there was no prospect in the medium term of people deciding otherwise.

27. Dr Paisley said that he was here to negotiate but that does not mean negotiating the union. The Secretary of State had also said at that time that democracy only and nothing else will decide Northern Ireland's future and that there were also exchanges of letters along these lines. It seemed strange that it's possible to get an agreed agenda, but then it can be overturned. Why is the Irish Government so keen to be at the Opening Plenary when they have no part in the discussions in Strand 1. He saw this as the loophole by which they mean to introduce into the agenda another item - the Act of Union and the 1920 Government of Ireland Act.

28. He despairs of the British Government coming clean on the issue. He said that Minister Ancram was choosy in relation to what he had said earlier today. He will decide on the basis of his mandate whether he will sit at a table where the union is up for negotiation. He was not sent here on those conditions. To say that he is mandated to negotiate the union is nonsense. The Opening Plenary will decide the complete agenda agreed for Strand 1 and the Irish Government will be part of the delegation. It is not right to bring in people at that point who have a constitutional imperative to destroy Northern Ireland under Articles 2 and 3 of their constitution. Yet the Women's Coalition amendment would give them the key.

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29. Ms Hinds said Dr Paisley's interpretation of her remarks was wrong in relation to the phrase "mandated to negotiate". Dr Paisley said the union is not up for negotiation. They are not competent to do so, only the people can decide. He said the Anglo-Irish Agreement did not spell out the status of Northern Ireland as part of the UK. The Irish Government would not have signed it otherwise. In fact, he said there were two Anglo-Irish Agreements, one signed by Garret Fitzgerald and the other signed by Margaret Thatcher. The unionists want to replace the Anglo-Irish Agreement because it has impinged upon the union. This body has the difficulty hanging over it of the standing of the Ground Rules. Are the Ground Rules infallible like the Pope? Or are the rules of procedure the rules? The Irish Government say the Ground Rules is the final court of appeal and the British Government say the same and so does Mr Mallon and the Alliance Party. Dr Paisley wondered where the clean sheet had disappeared to. The Prime Minister said on the opening day that the procedures in the negotiating body belong to the participants, but they don't. this is one of the crunch issues. The Framework Document and the rules of procedure were designed to hem the pro-unionists in. The meeting adjourned at 1600 until 1700. _

[Signed]

Independent Chairmen Notetakers
2 July 1996

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