From: Independent Chairmen Notetakers

3 July 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND AGENDA FOR PLENARY SESSION - TUESDAY 2 JULY 1996 (10.15)

Those present:

# Independent Chairmen Government Teams Parties

Senator Mitchell British Government
General de Chastelain Irish Government
Mr Holkeri

Alliance Party
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

1. The <u>Chairman</u> said that he proposed to begin at page 3 on the additions paper and deal with the DUP amendments on page 3 and the joint DUP/UKUP amendments on page 4.

# Amendment DU21

2. Mr Dodds said that this amendment merely restates the position which obtained in the previous process. The Chairman asked whether this was a substitute for para 8 in the rules of procedure or an addition to it. Mr Dodds said it was a substitute. Minister Ancram said that the amendment was unnecessary and he drew attention to para 8 in the 27 June version of the draft rules of procedure and the new para 15A as was discussed yesterday.

- Dr Paisley said at the last talks the Independent Chairman for Strand 2 was bound by this type of rule but there were still breaches of confidentiality from Dublin. A speech of his appeared almost verbatim in a Dublin paper. The Chairman should make a statement at the end of each session if he proposes to make public statements but only if the parties agree. Minister Ancram's statement does not cover the position of the Chairman which is different from the other parties in the process. Mr Mallon said he agreed with Minister Ancram. The Irish Government (Minister Coveney) said that he agreed with Minister Ancram also. The wording in the amendment is unduly restrictive. Paras 7 and 8 in the draft rules of procedure cover the situation adequately. Dr Paisley said that it would be serious if the Chairman could make statements on political matters. Minister Coveney said that it was not what he meant. He intended to convey that the proposed amendment might mean that the Chairman could not comment on politics in his own country.
- 4. Mr Hutchinson said that he agreed with the wording of paras 7 and 8. Such leaks that have occurred have not been from the Chairman. Minister Ancram said paras 7 and 8 referred to participants and the Chairman and we should also look at the new addition and also to rule 15A. Mr Dodds said it is not just a question of the proceedings in the negotiations but it is about other developments and on behalf of people who are not present. It refers to outside events and also refers to Sinn Fein. He would not expect the Chairman of the talks to say anything controversial or make statements or anything that would impact on the talks.

  Dr Paisley said that there is a need to distinguish between the Chairman of Strand 1 which is under British chairmanship but

at the Chairman and his colleagues. There is nothing personal in this but they will be arm twisting and negotiating with delegations and the Independent Chairman in those circumstances should be seen to be independent and not to meddle in Northern Ireland political life.

- 5. Mr McCartney said that there were two issues to consider here. The first is the issue of confidentiality on the matters dealt with in the negotiations. He endorses the existing rules as being sufficient in that respect. The second point, which is the point raised by Mr Dodds, is directed at the making of general observations which are not related to the negotiations.

  Confidentiality should apply there. The Chairman could make a statement for example about the desirability of Sinn Fein being a party to the talks. It was not proper that they should do this and he admitted that it was unlikely to be the case, but he felt that a provision is needed because the position is not covered by the rule as it stands.
- 6. Mr O'hUiginn said Mr McCartney's intervention was helpful but it only gets rid of half of the problem. He said that Mr McCartney had referred to the situation where the Chairman could make gratuitous comments but others could also be responsible for leaks. He was wary about the DUP amendment because it takes away the right of the Chairman to defend himself in face of a vituperative or unwarranted attack on his honour and dignity. These extra rules which apply to the Chairman would be justified if the events put forward by Mr McCartney were likely to occur. He felt that the amendment was unjust but he accepts that that is not the intention behind it.

- 7. Dr Alderdice said that the matter of concern here related to trust. The Chairman has made public comments already which have been well received. If he did make contentious comments then trust in him would be lost. Another action might be possible by the participants. He would prefer to leave things as they are rather than put restrictions on the Chairmen. He admits that he takes a rather freer view of the situation, but if the trust was broken, this could be dealt with in the negotiations.
- 8. Dr Paisley said this matter is so important as to have special rules setting out the position in advance; otherwise, as Dr Alderdice says, there could be disputes over what was said by the Chairman in the meeting. He also understood Mr O'hUiginn's point but then of course the Chairman was his nominee. He felt it was better to keep the Independent Chairman in a state of subjection. There is a desire to give a license to the Independent Chairman, but this is not acceptable. Dr Alderdice said Dr Paisley referred to the role of the Independent Chairman and the amendment would reduce that very independence. Dr Paisley said he sees it the other way around, perhaps a bit like the speaker of the House of Commons. That is true independence. The two Governments might want the Independent Chairman to make statements about decommissioning and the admission of Sinn Fein.
- 9. The <u>Chairman</u> said, as to his public statements over the weekend, that they were not related to the present process. The events which he attended were on the basis of invitations made and accepted a long time ago, even before he knew that he would be involved in these talks. Even in the absence of a rule of confidentiality, he said that he would not talk about the matters under discussion. There would be no public comments or leaks of documents to the press. He felt that past behaviour is the most

reliable indicator of future behaviour - but of course it's not a guarantee.

- 10. Mr Dodds said that his party had no difficulty with recent public statements by the Independent Chairman but the issue should be dealt with in the rules. The position about confidentiality is covered clearly for the participants but there is a gap in the rule in relation to statements by the Independent Chairmen which relate to the present process and possibly about who should be present at the talks. He felt that rule 8 and rule 15A and the DUP amendment should be examined to find a form of words which would be acceptable to everyone. Dr Paisley intervened to say that he didn't raise the matter of the Chairman's recent comments.
- 11. Mr McCartney said that insofar as the three Independent Chairmen are concerned, he has confidence in their integrity and probity. The proposed rule in fact offers protection to the Independent Chairman, perhaps even from the Governments. His quarrel is not with the chairperson or Senator Mitchell but the Governments and the US Government. All three have an interest of some kind from their own point of view but that may not coincide with that of the participants. The position of statement on collateral matters to the talks needs special rules as referred to by Mr Dodds, and the Chairmen may need the protection of such a rule. In the event of an attack on the Chairmen which is unjustified this related to Mr O'hUiginn's point party loyalty would certainly not prevent him from defending the particular chairperson.
- 12. <u>Ms Sagar</u> said para 15 as far as they are concerned covers the position adequately. The <u>Chairman</u> said that he accepted Mr Dodds suggestion to move on to make progress. <u>Dr Paisley</u> said perhaps a

different wording should be added to para 15A and he suggested the following formula "for the duration of the process, the Independent Chairpersons will not be permitted to make any public comment on the talks unless allowed to do so by the participants". The Chairman suggested that this should be typed and considered for an updated document.

# Amendment DU22

Mr Empey said he sees a similarity between DU22 and UU2 on page 6. Mr Dodds said the two could be taken together as the thrust of both is the same. Minister Ancram said that looking at rule 7 which has been agreed on the basis of a UUP proposal, he felt that this covers the point in question. In fact para 7 goes further because it involves the Business Committee. It is more comprehensive, constructive and relevant. Mr Empey said that the tabling of these amendments preceded the agreement on rule 7. Dr Paisley said he wants to have a further look at the two amendments together and how they impinge on rule 7. Mr Dodds agreed with that. The involvement of the Business Committee may be helpful but he wondered if he could add the words "the role and function" in rule 7. Minister Ancram intervened to say that para 7 adequately covers the position. Mr McCartney asked the Minister can he have any objections to further elaboration on para 7 to make it plain that the Chairman operates within the rules and does not stray outside them. Minister Ancram said the word "within" excludes "out with" and he really does not wish to add unnecessary words. Mr Mallon agreed with Minister Ancram. Mr McCartney noted the congruency of interests between the two Governments, the SDLP and certain fringe parties and he said that this indicated a particular mindset which is significant. Mr Weir said the additional words may be regarded as unnecessary but he asked

whether Minister Ancram has any objection to them. Minister Ancram said the Business Committee can suggest under rule 7 that matters relating to the rules operate in a particular way. Mr Dodds said this shows the unwillingness of the Government to take on board amendments when there is no real objection to the words involved. He saw this as a worrying development in relation to the talks process itself. Dr Alderdice said it was correct to say that there are differences of view on these matters. These are based on how people see the role of the Chairmen. His party sees it as being valuable and important that the Chairmen have freedom and are not hide bound by rules so that they can have the freedom to be creative and imaginative. Mr McCartney said a basic principle of these negotiations is to build mutual confidence and trust. amendment itself is innocuous - not world shaking. He also referred to Minister Angram's statement that it is superfluous. Mr McCartney asked why, if it doesn't do any harm and if it would encourage confidence in the proposers of the amendment, it can't be accepted; otherwise, it creates suspicion. The British Government have a record of perfidious behaviour over the past 20 years, so he does not trust them. Mr Mallon said it is possible to amend ad infinitum. This issue has been debated before and we have an acceptable form of words in para 7 and we should proceed.

14. Mr O'hUiginn agreed with Mr Mallon. He said we should avoid imposing on the Chairman a duty or onus that we don't accept for ourselves in the process and he should have a right to be able to defend himself. He didn't agree with Mr McCartney that if something is true there is no harm in saying it. The point is that to insert something as proposed which represents exceptional rules for the Chairman dealing with matters of integrity above and beyond the norm, it carries the implication and signals an expectation that the normal principles will be violated. We have extensive

rules already in force for the Chairmen and to insert something extra to deal with an expectation that integrity will not be observed is wrong. Mr Weir said we should keep on until we get general acceptability of those rules. He is happy with Mr McCartney's amendment. He noted that the Government feels that the amendment is unnecessary, but he wondered as to their reasons for opposing it. Mr Dodds said Mr Mallon stated this had been dealt with before, but we haven't been over this ground before and the form of the words as they appear in para 7 is not acceptable to the DUP. As to Mr O'hUiginn's point, it has to be accepted that the Chairman, if anybody, is in a different position; there are always special rules for chairmen. Different rules apply necessarily to them. The Independent Chairman is not a participant. He felt that the debate on the point was constructive as it shows the intention of the Government as to how it is going to deal with amendments which are worthwhile and helpful.

15. Ms Hinds began her remarks by referring to the rules which had been agreed by the participants in setting up the informal discussions, ie, that three representatives were nominated with any two of those being in attendance on the front bench. She continued saying that she was sorry that it appeared that some people were not obeying those rules and that in particular some of the DUP participants (inference to Mr Dodds) had not been briefed on where discussions stood thus far. Ms Hinds commented that the informal process was set up to allow a full and frank discussion of the rules of procedure to be applied and that a considerable amount of time had been spent thus for in debating the issues. She did not appreciate some participants apparently disrespecting the time spent. In her view there had been plenty of discussions on the role and functions of the Chairman and she agreed with Dr Alderdice's earlier comments that many of the issues had been

debated extensively already. From the NIWC perspective her party continued to see a positive, proactive and facilitative role for the Chairman. It followed therefore that the NIWC was very happy to see this facilitative role being demonstrably set out in the rules of procedure. Ms Hinds said she did not like the way in which some people appeared to want to control the process as opposed to being owners of it. Ms Hinds returned to her earlier point saying that a facilitative role for the Chairman was right for all the participants. She therefore believed that the role of the Chairman flowed directly from the rules of procedure.

- 16. Dr Paisley remarked that it was very strange for people to attack others who were putting down amendments. In his view this was a legitimate amendment, it had been recognised by the Chairman and was in the correct order to be discussed. He understood and acknowledged that Ms Hinds didn't like the contents of the amendment but, unfortunately, that was life. Dr Paisley continued saying that he was not going to stand for legitimate amendments being attacked. He did not object to attacks on the contents of the amendments but in terms of their procedural integrity, Ms Hind's type of comment could not be permitted.
- 17. Ms Hinds in response said that in clarifying her remarks she had only objected to the fact that the process had spent considerable time already on the issue and it was in this sense that she objected to the content of the amendment. She had not objected to the rights of others or the procedural requirements being met in present or future amendments.
- 18. <u>Dr Paisley</u> reinforced his view that the discussion was entitled to deal with this amendment now. He added that in terms of "control" he believed it was the two Governments who were

attempting to exercise control rather than anyone else simply because they had developed the original Ground Rules. Dr Paisley continued saying that the Ground Rules had been produced as a bait by both Governments and considerable amounts of time had been spent by them discussing and formulating these rules. There was therefore no point lecturing him or his party about spending time discussing amendments to those rules now. Dr Paisley added that the discussion had already heard, at an earlier session, from the SDLP who were encouraged to enter the process as a result of the Ground Rules. However, whenever the DUP, attempted to produce a different version of those rules, like now, they were told that the time was precious and that they shouldn't be discussing minor amendments presumably because such amendments might be viewed as derailing the Government's pre determined plans. Dr Paisley said it was not possible to say now that there wasn't enough time to discuss amendments just because the process of dealing with those amendments happened to be reaching a conclusion.

19. In developing this point further, <u>Dr Paisley</u> returned to the earlier exchange between the Minister of State and Mr McCartney regarding the amendment the latter wished to place in a further version of DU22. It seemed to Dr Paisley that while Mr McCartney did not receive a response from the Minister of State to his amendment, whenever the Unionist amendments were tabled this was viewed by the Governments as an attack on their selection of a Chairman. <u>Dr Paisley</u> restated his party's earlier view that the Chairman was not present to be a facilitator nor indeed a wheelerdealer in the process. He did not wish for the Chairman to carry out the pre-determined plans of both Governments and did not wish to be part of this exercise. The Chairman, however had to be fair and impartial throughout as the Unionists were trying to put forward their views in an attempt to ensure that the ownership of

the process was in the hands of the participants. Dr Paisley concluded his remarks by saying that the DUP would be failing in its duty if it did not seek to amend the Ground Rules. This was incumbent on it for the reasons defined earlier. He thought that people did want his party to be a participator in the process but on the evidence of the last discussions, he was now less sure on this.

The Minister of State commented that it was unfortunate that the word "within" did not carry the agreement of the participants when offered a little earlier in the discussion. He then suggested that perhaps another way forward would be to look at para 7 of the draft rules and offer an amendment here. He then read out a suggested amendment. (Text appears in later papers) Mr McCartney commented that the Minister of State had not yet answered Mr Weir's question from earlier. He wondered why this was so and began to think that there must be something more important for the Minister of State not to accept the earlier Unionist proposal. He wondered whether the draft rules of procedure now under discussion were the only rules of procedure that the process was going to operate under. The Minister of State then suggested to Mr McCartney that he look again at the words proposed. He believed this formulation covered the concerns that had been raised earlier by the Unionist parties. Mr McCartney returned to the point commenting that the basic issue here was the relationship of the original Ground Rules to the draft rules under discussion. If the original Ground Rules were in some way "above" the draft rules, then it is possible, in his view, for the Chairman to operate above the draft rules of procedures and under those which were set out "in another place". He recalled the comments of the British Government the previous week on their position regarding the status of the original Ground Rules. In the context outlined by the British Government the

Chairmen could operate within the draft rules but that the two Governments could also claim that there were other rules to work within. Mr McCartney then referred to para 15 of the original Ground Rules and also to para 4 of the Opening Scenario paper and suggested that these words were the reason lying behind the Minister of State's objection to the earlier Unionist amendment. He continued saying that when one read these two paragraphs it became clear that the possibility still existed that the Chairmen could have powers as granted by the original Ground Rules or from the Scenario document (paras 9-13).

- 21. Mr McCartney believed the Chairmen could operate fully within these rules as granted by the two Governments. He further believed that this was why an apparently "innocuous" amendment was not that "innocuous" because the Government felt that it needed to keep all its options open in terms of the rules. Mr McCartney said that if one looked at the Minister of State's formulation for resolving the point, it didn't tie it down with the issue he had raised and this was why the Minister would not give a straight answer to Mr Weir.
- 22. Mr Wilson asked whether the Minister of State was in a position to provide a response now. The Minister did not reply. Mr Wilson continued saying that this reinforced the earlier view of Mr Dodds when he had highlighted the Unionist resentment of the Irish when they had dismissed ideas of further debate on this item. Mr Wilson also referred to earlier comments from Mr Mallon which he said supported the view of dismissiveness. Mr Wilson continued saying that he understood the reasons of the SDLP's and Irish Government's impatience with the Unionists. Put another way, he said, Mr Mallon seemed happy to let the Unionists have their fun now because it was only a matter of time before the process got to the point where the business would be progressed under the original

Ground Rules. Mr Wilson referred to previous comments saying that Unionists had been told about a "blank sheet of paper" but this was not reality at all. He continued saying that the impatience from the Irish was based primarily on the position of recognising that a blank sheet of paper had never existed. This also explained the smaller parties' restricted input into the rewriting of the original Ground Rules because they realised that the two Governments, at some point further down the road, would take a decision to proceed with these and scrap the draft rules. therefore saw the current exercise as being completely academic because a point would be reached sooner or later where the original Ground Rules would be imposed. He continued saying that the Prime Minister's words on 10 June now rang hollow because it was neither of the two Government's intention nor the SDLP's intention to do other than impose the original Ground Rules thereby not allowing "the negotiations to be exclusively a matter for the participants". This was why the Irish Government were impatient with the present position. Mr Dodds returned to Ms Hinds earlier comments and pointed out that the particular amendment presently under discussion hadn't been debated before. The issues had been debated and, as Mr Dodds pointed out, the issues themselves would come up on numerous occasions as the discussion proceeded through the draft rules paper. He then returned to the substantive point raised by Mr McCartney regarding his amendment which the Minister of State had shown reluctance to accept. He wondered whether adding the word "exclusively" or "only" might be a way to resolve the earlier impasse. He then asked whether the Minister of State had any comments on this.

23. Mr Mallon stated that the specific point of the discussion had focused on the Chairman not operating beyond the powers of the rules of procedure. Yet, he said, the debate had in fact covered a

much wider range of issues and this pattern was similar to each and every day of the talks thus far. Mr Mallon continued saying that the issues being raised were not technical to the rules at all. He said he didn't disagree with this nor was he impatient. He assumed it was actually quite possible for anyone in the process to technically amend the rules at any time and to go on technically amending them. He recalled and paid tribute to Mr Robinson's skilful approach in proposing amendments during the course of the previous week's business. At the end of the day, commented Mr Mallon, there was an urgent need for these discussion to reach a conclusion and to curtail the extensive raising of issues beyond the rules of procedure. He wondered whether the present "extended" discussion was really getting the process moved forward at all. also questioned whether instead of hearing about wide ranging issues and the parking of other issues, some time might be devoted, sooner rather than later, to deciding on the actual procedures for taking the process forward.

24. The Chairman commented that it was clearly not going to be possible to reach agreement on the draft rules without at some point defining the status of the original Ground Rules. He therefore thought it best, at this point, to continue the discussions with the draft rules so that at least everyone had an opportunity to put forward their point of view. Mr Empey suggested that the various proposals which had been outlined during the discussion thus far could be typed up by the Chairman's staff. Dr Paisley indicated that he was still awaiting a response on the proposal put forward by Mr Dodds regarding the use of the words "exclusively" or "only". Dr Paisley indicated that there was simply no point in typing up amendments unless the Minister of State was, in the first instance, going to provide a view as to the worthiness of those amendments already verbally suggested.

- The Chairman proposed that everyone who had proposed amendments during the course of the discussion should give these to his staff so that they could then be typed up. He said he wanted to try and ensure that the "proposed additions" document could be got through as soon as was practicable to enable a single document to be produced in due course. He indicated that he had two other speakers on his list who had sought recognition and after both of those addressed the meeting he would propose a 30 minute adjournment. Following this he would then ask the Minister of State to respond to all the earlier proposals. Mr Mallon asked whether the amendments about to be typed up would be taken as new amendments on DU21 and DU22. He asked if these were going to be put on a single sheet of paper and then be considered in the order of the existing list of amendments. The Chairman reaffirmed his earlier comments that he would attempt to get the proposals from the day's business so far put on a single sheet of paper. Then, he said, a 30 minute break would be convened following which the Minister of State would respond to these proposals. The Chairman said to Mr Mallon that the paper containing new amendments would then be placed at the back of the "proposed additions" paper and dealt with in that order. Dr Paisley said that he didn't like this approach because they were not new amendments. He said that the DUP had only been trying to accommodate various points of view and that it was Mr Dodds who had originally asked for more time to consider certain points arising out of the discussions that morning.
- 26. Mr Ervine then intervened saying that he had been attempting to address the meeting for some 40 minutes and now that he had got

his opportunity, he found that Mr Empey had made the same remarks that he was going to make. Mr Ervine continued saying that the meeting now seemed to have three verbal amendments before it and Dr Paisley wanted to try and deal with these immediately. Mr Dodds intervened at this point saying that that wasn't quite the position. The DUP were quite happy for these amendments to be discussed after the break when they had appeared in writing. Mr Ervine commented wryly that he was considering asking for adjournments on every future occasion a verbal and written amendment was tabled. He also respectfully suggested to the Chairman that any amendments should be tabled at the beginning of the session so that there was then an opportunity to look at these over time and provide an informed response. Referring to earlier comments from the UKUP delegation Mr Ervine asked whether it was possible for a definition to be provided by them regarding which of the smaller parties had not participated in the process thus far.

27. Mr Wilson responded to this saying that he hadn't been thinking of a particular party at the time he made the comments. He was simply making an assumption that the smaller parties had concluded that there was no real need for serious debate on these rules because they believed that the Governments would take a decision to invoke the original Ground Rules, sooner rather than later. Ms Hinds intervened at this point saying that she had followed the debate avidly and had been taking everything seriously. She therefore asked that the NIWC be left out of the inference made by Mr Wilson.

- Mr Wilson said that he was merely routing out that the smaller parties were the lackeys of both Governments. Mr Ervine interjected saying that people who were silent were not necessarily disinterested. Mr Coveney for the Irish Government, in response to Mr Wilson, said that he was not sure how he (Mr Wilson) had reached his conclusion that the Irish Government were being impatient or intolerant. His Government were not here to close the process down, they were here to agree the rules for the negotiations. Dr Paisley referring to the earlier issue of several verbal amendments said that this situation had no parallel with yesterday when amendments were distributed around the room during the discussions. He also made the point that Mr Mallon has objected to this process yesterday, rather than he. Mr Mallon intervened saying that he also objected to ad hoc amendments being made as well as amendments being distributed during discussions yesterday and he agreed with Mr Ervine's earlier point on releasing amendments at the beginning of daily business. Dr Paisley then stated that he was quite happy to accept the point made by the Chairman regarding an adjournment but he did not wish to be accused of "hypocrisy" in a total different situation to that of the previous day.
- 29. The <u>Chairman</u> then asked participants to try and use the break for focusing comments on amendments in an attempt to get through the "proposed additions" document during the day. He also indicated that he would try to get all the comments on DU21 and DU22 together on a slingle sheet of paper and when the meeting reconvened he would call on the Minister of State for comments on

all earlier proposals. It was then his intention to move on to DU1, etc. The <u>Chairman</u> then adjourned the meeting as previously indicated for 30 minutes at 11.46.

[Signed]

Independent Chairmen Notetakers July 1996

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