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From: Independent Chairmen Notetakers
8 July 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES AND
AGENDA FOR PLENARY SESSION - TUESDAY 2 JULY 1996 (15.35)

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 reconvened the meeting at 15.35 and asked participants to focus on the provision contained in the UUP amendment GR17. In addition to the UUP amendment, the Chairman indicated that the Minister of State's amendment to this paragraph should also be discussed at this time. In view of this he then asked the Minister of State to speak to the amendment.

2. The Minister of State commenced his remarks by indicating that he believed the principle contained in GR17 was generally accepted by all. However, this was not the issue at stake. The issue related to the requirement to have a mechanism to allow the principle itself to be exercised in a structured manner. The Minister of State then read out the proposed amendment which was

CONFIDENTIAL

CONFIDENTIAL

attempting to cover the point regarding the mechanism. (A copy of the amendment proposed by the British Government is contained in later papers dated 3 July 1996.) The Minister of State, having read the amendment, stated that it seemed appropriate to have a structured process within the rules of procedure to deal with this eventuality as it allowed the procedure to be followed by all the participants.

3. Mr Empey said that he would like to make some preliminary comments and referred to Section 2.3 of the Act. This, he said, gave the Secretary of State the power to invite nominations as well as the power to exclude those already nominated. Given this position, he wondered what the purpose was of referring any complaint to the two Governments as had been indicated by the Minister's amendment. He thought that the participants were supposed to be in control of their own business and he questioned whether an issue such as this could be left in the jurisdiction of the two Governments. The Minister of State said that Section 2.3 only applied to the stage of the process leading up to the negotiations, ie, the period between the election taking place and the negotiations starting. He referred the meeting to para 8 of the Ground Rules paper. Mr Empey said that he found it rather odd that the Act would deal with such a narrow intervening period as had been suggested by the Minister but yet hadn't made any legislative basis for dealing with the period over the next two years. He added that one might argue that the process of negotiations hadn't even started as yet and he therefore thought that this was a rather odd way of going about things.

4. The Minister of State indicated that this situation had derived from the fact that the Government was looking at the ending of a second cease-fire during this period and therefore this was

CONFIDENTIAL

the intention of the legislation. He stated that he believed the legislation didn't extend into the conduct of the negotiations and so on. Mr Empey returned to the point saying that the Minister of State was on record as saying that the Ground Rules gave effect to the process of negotiations but that the legislation itself was only covering this eventuality for a ten day period approximately. He therefore wondered whether the Government amendment could be left to one side for the time being because he was not satisfied with the Minister's response. He suggested that the process move on and questioned who would take the necessary action (of exclusion) if it wasn't going to be the Secretary of State? In other words, he said, where does the authority come from to put people out of the process? He had assumed looking at the Act that it would be logical for the person who issued the invitation to also be in a position to withdraw it and this seemed to confirm his earlier view of a very narrow definition of the legislation. Mr McCartney returned to para 8 of the Ground Rules and suggested that the word "abide" in the last line of that paragraph seemed to be indicating an on-going/permanent process rather than a short term period which the Minister had referred to. Mr Empey also referred to para 8 of the Ground Rules and the words "establish a commitment" which also seemed to imply a longer passage of time together with the words "which have shown". Given this, he did not see any mechanism in the Government amendment which took account of the passage of time theme which both he and Mr McCartney had been developing. He therefore wished to reserve his party's position because he was not satisfied with the Government response and was happy to await the comments of other around the table on this issue.

5. The Minister of State returned to the point saying that he had been giving the interpretation of the Statute that had been

CONFIDENTIAL

suggested to him by the drafters. He pointed out that exclusion of anyone from the process would not be possible under the statute but that the two Governments may well have some practical involvement in that they would have to deal with the executive act of excluding people. Mr Bleakley commented that the amendment was attempting to deal with a very sensitive area of discussion. He recognised the point that had been made earlier about the participants controlling their own efforts and he believed that the Government amendment seemed to be suggesting that the procedure, in some way, be moved away from the participants. He wondered, even though he realised that this may not find universal favour, why the procedure itself could not be moved on to the Chairman rather than it be as the Minister of State had been suggesting, a responsibility of the two Governments. It might also be the case that perhaps the Chairman would have become by that stage the conscience of the participants and he believed there was merit in putting this idea forward. Mr Bleakley concluded his remarks by saying that even if this suggestion wasn't a possibility in all the participants views, the Government formulation only seemed to be a delaying the process where in these circumstances delay was not the ideal solution. Mr McCrea indicated to Mr Bleakley that if he had been at previous discussions then he would probably not now be making the point regarding the Chairman's role in this issue. He also commented that the Minister of State in submitting his amendment, must have thought more of the process of "consultation" than some of the elected representatives around the table did. Consultation, in his view, meant "absolutely nothing". It was simply not enough on this issue bearing in mind that the two Governments were two of the participants referred to in the text.

6. Mr McCartney endorsed his party's view that the Government amendment was unsatisfactory. He continued saying that in

CONFIDENTIAL

discussions on the Ground Rules some parties had been insisting that they (the Ground Rules) remained in place. If one followed this position through, said Mr McCartney, the Chairman would have to decide on his position if that view of the Ground Rules went against the wishes of the greater majority of participants. Mr McCartney commented that GR17 was put forward as a basis for a UUP amendment and one which he viewed as falling into the category of those Ground Rules which could be changed because they were dealing with the conduct of the negotiations rather than the substance. He therefore wondered whether the Government amendment on this which contained the words "in the conduct of" was also designed to bring it into the category of a Ground Rule which could be changed. The Minister of State intervened suggesting that the word "during" could be used rather than "in the conduct of" which might satisfy Mr McCartney on his earlier point. Mr McCartney, commented that this was satisfactory on that particular point but he wondered about the amendment as a whole in referring to the words "a formal representation is made". This seemed to Mr McCartney to indicate that some care needed to be taken regarding who in fact was putting whom out and the obvious dangers in just one participant undertaking this task.

7. Mr Mallon said that the present discussions were focusing on a mechanism to put people out. However the way things were going so far in overall terms there might well need to be mechanism to get people in! Mr Mallon continued saying that this particular issue seemed to be one of the procedural "gaps" identified by the UUP in previous discussions. He had no problem accepting this position and he believed it was absolutely consistent to introduce a mechanism such as this. He did, however, believe that the original form of words proposed by the Minister of State was satisfactory. However, said Mr Mallon, now we were seeing the

CONFIDENTIAL

parties arguing against this particular mechanism some two weeks later. Mr Empey returned to the debate saying that the UUP were not necessarily arguing against the Government's current amendment but, as he had stated earlier, the party did want to hear the debate from the other participants so that it could better understand what other people had to say on the issue. He very much hoped that Mr Mallon would accept the fact that the UUP had put forward a read-across proposal to which the Minister of State then introduced an amendment. Mr Empey indicated that the UUP were prepared to listen before formulating a response and therefore wanted to try and allow the debate to continue. Mr Mallon said it was fine to listen to the debate but he had concerns about the situation whereby a gap in procedures had been identified and some parties were now trying to use an amendment to fill it. He also did not think it wise that when the Minister of State provided a mechanism by way of a Government amendment, the same party didn't want to speed up the process in agreeing with it.

8. Mr Empey returned saying that on a genuine basis, the UUP did not realise that the Act didn't cover this point and therefore didn't provide a mechanism. Then, he had heard the Minister of State affirming this position. That was why they were now reserving their position on this issue. The bottom line for the UUP was that just because an amendment came from the Minister of State, it didn't mean that it was right. Mr Mallon said there had been good legal advice from both Mr McCartney and the Minister of State and he therefore thought that the gap had been closed but he wondered why the UUP were reserving their position. Was this because it was concerned about the procedural or legal aspects of the issue? Mr Mallon asked for a response on this point. Mr Empey commented that as to the legal side, there were far too many experts around the table for him to provide a response to

Mr Mallon's question. He did, however, accept that the two Governments would have a role to play on the ground in an executive manner, as had been referred to earlier. However, in accepting this, stated Mr Empey, it didn't mean that others were to be left out because the issue of participation in the decision to exclude was itself important. He said he wasn't being dogmatic about this but the UUP simply wanted to continue listening and hear the views of others. Mr Mallon questioned the point as to whether "representation" mentioned in Ground Rule 17 had come from the parties around the table. Mr Empey nodded in the affirmative. Mr Mallon wondered whether there was a problem in terms of the participants being "consulted". Mr Empey said there was, because he was somewhat worried about the interpretation of "consultation" which he believed on past evidence was not sufficient.

9. Mr Mallon said that surely if the situation of exclusion arose and proper consultation hadn't taken place on it, then the parties would not be too long in shouting about this. Mr Empey indicated that the two Governments might well have their own agenda and wider connotations to consider and that the "consultation" might only be cursory. Mr Mallon accepted the point of the wider context of the Governments' role and he suggested that the problem under discussion here was not a procedural one, it was more about the role of the two Governments on this matter. Mr Empey claimed that the UUP had attempted to recognise the rights of the smaller parties in developing the draft rules of procedure to the point that they (the small parties) almost had a veto in terms of the decision making process. He continued, saying however, that the two Governments did not have to comply with the "sufficient consensus" factors. Mr Empey said that he was trying to ensure that the other parties had a role in this process but, in this context, it had to be all the participants rather than just the two

Governments. Mr Mallon then indicated that he supported the Government amendment. Mr Weir commented that Mr McCartney's point was worthy of note insofar that it raised a question mark over who should be taking the decision to exclude. He also indicated that there seemed to be a certain amount of logic about all the participants being involved in the decision making process on this issue. He, like Mr Empey, was worried about the interpretation of the word "consultation". He also noticed that the final words in the Government amendment had changed from those in the UUP version. He wondered therefore whether "any appropriate action" meant that the two Governments were simply able to give the offending party a slap on the wrist and say "don't do it again". In other words, Mr Weir believed that further changes to the text should be made.

10. Mr Ervine commented that he probably couldn't help with any revised wording at this stage, but wondered why the amendment should not be scrapped in its entirety. Given the number of legal people around the table, he asked why the amendments did not seem at any stage to be asking for evidence on which to base the act of exclusion. In his view any exclusion seemed to be simply down to assumptions and he believed that the rules of procedure on this issue needed to refer to the actual evidence to hand. Mr McCartney believed Mr Ervine to be right on this point but thought it might be difficult in attempting to pin the actual blame on the protagonists in question. Mr Ervine said that he didn't really believe life was like that, in that it may end up in a situation where the participants of that party were present at the talks but they were not the people the process needed to exclude. Mr McCartney said he recognised the analogy of the soft and hard guys. He continued saying that it mustn't be forgotten that the election had produced political parties with terrorist connections at the table. They were therefore not present by accident. He

CONFIDENTIAL

continued saying that they were present because the British Government had organised an election to get them to the table and that the rules had been somewhat distorted to achieve this. He indicated that previous rules drawn up for the election had proposed that those parties come along as observers. Mr McCartney continued saying that if one looked at Ground Rule 13, it was interesting to note the following quotes "at the beginning of discussions" and "also need to address at that stage". In looking at these words, stated Mr McCartney, it would be safe to draw the conclusion that this meant that parties had to address their proposals on decommissioning right at the beginning of the process. His basic objection to this was that there were parties around the table who had never been asked about this. He then quoted some extracts from the debate in the House of Commons on the Act during 22 April when the Government had said that this issue was going to be left with the democratic participants. Mr McCartney said that he wasn't going to read the Secretary of State's response in full, but he believed the Chairman should, and he indicated that he believed this was not simply an issue which might arise between the elections taking place and the talks being convened. It was more to do with minds concentrating on participants arriving at the talks and then addressing the issue of decommissioning. However three weeks further on and the process had still not reached the decommissioning issue. Mr McCartney believed the Chairman had to decide how to resolve this situation one way or the other now. He suggested that those "front men" already around the table with paramilitary connections were "the ticket" to those who were not yet in the process to come into it.

11. Mr Hutchinson intervened saying that the elections didn't suit the PUP nor were they set up for his party. He recalled that in the election itself in North Belfast the DUP had got 20% of the

CONFIDENTIAL

vote and the PUP had got 10% of the vote; however when it came to seats, the DUP got 40% of the seats and the PUP got nothing. He wanted to remind Mr McCartney that he, like the PUP, was a fringe unionist and that some of his party nominees had got fewer votes than he himself had received. He concluded his comments by saying that he knew exactly why everyone had been around the table for the last three weeks - and it was nothing to do with decommissioning. The PUP were happy to talk about decommissioning at any stage. The Minister of State agreed with Mr McCartney's earlier points regarding the non-agreement of the Agenda which in itself would have dealt with the decommissioning point he raised. He went on to say however, that the reason why there was no Agenda agreed was because there was no rules of procedure agreed. He suggested that, referring to remarks which Mr McCartney had made regarding the Minister's speech in the House, he had been talking about the legal standing of the debate on this issue. There had, he said, been no intention to create a difference which was why he had now proposed the word "during" instead of "in the conduct of". The Minister of State continued, referring to the word "consultation" and said that perhaps this did need to be consistent with the earlier views put forward. In referring to Mr Ervine's point regarding evidence, the Minister of State pointed to the word "demonstrably" in the Government's amendment and said that he believed this covered Mr Ervine's point.

12. The Chairman asked whether "any" should be taken out of the last line of the Government's amendment. Mr Weir asked whether this was a proposal because he thought that the whole paragraph might need to be rejigged. He was, however, interested in the context of the word "any". The Minister of State commented that he was unsure as to any context of the word "any". Mr Empey stated that the amendments to this Ground Rule which were doing the rounds

CONFIDENTIAL

certainly required consideration. He believed that most of the major points had now been made and therefore thought that time was required to reflect on these. He believed it might be useful to conclude the discussion at this stage and allow everyone an opportunity to reflect. Mr English referred to Mr McCartney's remarks regarding "front men". Mr English continued saying that the only organisation that he fronted was the UDP of which he was the Chairman. He continued saying that the UDP had assumed authority from the loyalist paramilitaries by hard work and political analysis, etc. He therefore did not like the description of "front men" and suggested that it not be used again. Mr English concluded by saying that he should be regarded as a legitimate political representative and not a "front man" for any subversive organisation. Mr Mallon asked the Chairman whether there was going to be a redraft of the Government's amendment as he would like to see the changes which had now been fully written up.

13. The Chairman indicated that he wanted to combine both the draft rules of procedure document and the proposed additions document into a single composite version. In doing so, this would then reflect the status of each of the paragraphs and although he realised that there had not been much agreement on the "proposed additions" he would try to ensure that all were accommodated in a single format. The Chairman continued by proposing that participants move on to a discussion of the status of the Ground Rules while the composite paper, to which he had just been referring, could be produced overnight. Mr Mallon intervened asking whether any paragraph in the new composite document was still amenable to another amendment. The Chairman indicated that this was correct. He continued saying that hopefully the process was moving towards a resolution of the rules but it hadn't quite reached that position yet. There were some 16 out of the 36

paragraphs which still required resolution and, at this stage, there was no requirement for the participants to move towards a total agreement of the paper. He continued saying that he realised that this could mean that incessant amendments might arise but if one was to look, as some had suggested, at the totality of the exercise including the draft rules, status of the Ground Rules and the Agenda, then hopefully no new amendments would be brought in at this stage.

14. Mr Mallon intervened saying this was the actual difficulty which the Chairman had now put his finger on, ie, the scope for continuous amendment. The Chairman indicated that it was of course open to participants to always express the view that no new amendments should be taken. He believed, however, that that position had not yet been reached. Mr Dodds made reference to the amendments on GR17 and suggested that the discussion should not be limited on these. He returned to the word "any" and also to the words "appropriate action" and asked for clarification as they appeared to him to be too vague in their original terms. Mr Weir reminded the Chairman that an earlier UUP amendment which had been present in the "columns" document of two weeks previous had now been lost in the current texts. He wondered if it was possible to include this in the new composite document. He made reference to the fact that it had focused on the scheduling of business during negotiations, ie, three days a week. He also indicated that perhaps in that amendment the word "normally" could be omitted as to allow some flexibility in line with other previous remarks around the table. Mr Weir pointed that he hoped this would not be categorised as an entirely new amendment.

15. The Chairman commented that it would be included but he wanted to make it clear that the reference was to the actual

CONFIDENTIAL

negotiations whereas this format was focused on informal discussions. He therefore took the UUP proposal as one which focused on the rules of procedure for the negotiations. The Chairman continued saying that now that the participants had got through the proposed additions he wanted to suggest proceeding on the following basis. Mr Mallon asked about the position of the UU1 amendment on page 6. The Chairman indicated that this would have to go into the category of "not yet being agreed" and sought assurance that his view was correct. Mr Empey indicated that it was. The Chairman then recapped on his earlier proposal to have a 30 minute break and then return to discuss the status of Ground Rules. On hearing no further comments on this proposal the Chairman adjourned the meeting at 16.50.

[Signed]

Independent Chairmen Notetakers
8 July 1996

OIC/37