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From: Independent Chairmen Notetakers
3 July 1996

SUMMARY RECORD OF INFORMAL DISCUSSIONS ON PROCEDURAL GUIDELINES
AND AGENDA FOR PLENARY SESSION - WEDNESDAY 3 JULY 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 welcomed everyone back to the morning session and convened the meeting at 11.10 am. He indicated to the participants that they had now received a document entitled composite draft rules of procedure dated 3 July 1996 consisting of 11 pages. This, he said, sensibly put together the two documents from the previous day, namely one which had listed the draft rules of procedure and one which listed "proposed additions". A copy of the paper is enclosed at Annex A. The Chairman indicated that on a review of the document prior to the meeting beginning he had noticed an error on page 6 relating to the paragraph numbered 15A. He asked that participants note that the last sentence of this paragraph was actually formed from the DU21 amendment rather than part of the Government's amendments to this paragraph. The

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Chairman pointed out of course that the whole paragraph was still open for discussion for, as the type style indicated, it had not yet reached provisional agreement.

2. The Chairman continued saying that if any of the participants detected further errors then he would be grateful if his staff could be informed. Given the fact that the paper had been pulled together during the course of the previous evening and finalised that morning the margin for error in these circumstances could be greater than otherwise expected. The Chairman also indicated that he hoped at some stage during the course of the day's proceedings to present a short memorandum on the participants' views regarding the schedule of business over the forthcoming weeks and months. He hoped it might also be possible to have a discussion on this either that day or at the very latest Thursday (4th). It was, however, vital that this paper was available after lunch to enable the participants to have an opportunity to review it.

3. The Chairman then moved on to the position reached the previous evening on the issue of the status of the Ground Rules. The Chairman said he was anxious to ensure that a full debate ensued on this and he therefore hoped that it could continue, at least to the degree where everyone who wanted an opportunity to speak could do so without necessarily inviting new comments. He asked whether there were any objections to this approach.

4. Mr Empey said that as the Chairman had mentioned errors in the composite document he had just spotted another one on page 7 relating to paragraph 30, where the reference to the decision making paragraphs should read 23-28 not 30-31 as printed. The Chairman indicated that this was correct though he regarded paragraph 28A to be the end of the decision-making section at

present. He moved on at this point to ask whether anyone else had any comments on the status of the Ground Rules.

5. Mr McCrea said that he had heard quite a lot of earlier discussion focusing on the point that the Ground Rules could not be changed. In other words what was there was set in stone or in statute. If one then turned to the other side of the coin, he stated, there could be a view that some people arrived at these negotiations under false pretences - ie, if the Ground Rules were changed. Mr McCrea then read out an extract from the Minister of State's speech on 22 April 1996 during the debate on the Northern Ireland Bill. Mr McCrea said that the language used by the Minister of State in reply to his turning down of David Wilshire's amendment on the Ground Rules was completely different from the tenor of both the Governments' comments and some of the parties around the table during the last few days. He continued saying that Command Paper 3232 was put forward as the best judgement of both Governments; however it also signified that there was the possibility of providing better arrangements and in this context it was therefore better to remove the falsehoods that were around which appeared to indicate that the Ground Rules could not be changed.

5. The Minister of State commented that he was always grateful to those who studied his words very carefully. He believed that Mr McCrea had set out very clearly the reasons why we had been proceeding in this format over the last 3-4 weeks. The Minister continued saying that if Mr McCrea read the Ground Rules then he would see in their preamble that the rules describe themselves very much as the best guess of both Governments. There was therefore nothing inconsistent with what the rules said and what he had been saying in the House of Commons on 22 April. The

Minister also quoted the contents of paragraph 7 of the Ground Rules and again indicated that it was on this basis that everyone was present discussing draft rules of procedure. Again there was nothing inconsistent with this and what he had said in the House. He therefore believed that the participants, including the British Government, were working in accordance with both the Ground Rules and his speech in the House of Commons. However he did reserve the right to add to previous comments if this was felt desirable on the Government's part. Mr McCartney commented that he could not accept the Minister of State's words then as they were not the same as what he had been saying in this discussion over the last few days. Mr McCartney stated that Mr Wilshire had, during the debate in the House, been attempting to move the Ground Rules into the statute to give them some legal affect. He recalled, however, that both the Attorney General in the Irish Government and others seemed to be suggesting that the Ground Rules already had legal status. Mr McCartney then referred to the Minister of State's recent comments in the discussions and the comments which Mr McCrea had read out to the meeting and described the Minister as acting out a "humpty dumpty" scenario where words meant one meaning in one place and then meant something else in another place. He wondered what purpose the Ground Rules served for the Minister of State today and would this purpose be the same if he was asked again tomorrow. Mr McCartney continued suggesting that if one looked at the DUP/UKUP submission on the status of the Ground Rules as requested by the Chairman, and in particular paragraph 2 of the second section, it was clear that the position of both parties was that the "conduct" of the negotiations could not be separated from the "character" of them. Mr McCartney continued saying that paragraph 7 of the Ground Rules was the only rule which could be universally accepted on a democratic basis because it involved a statement to the effect that the

negotiations belonged to all of the participants. He said far from taking comfort from the Minister of State over recent days and during recent discussions he believed the DUP/UKUP argument was on all fours with the Minister's earlier remarks in the House of Commons on 22 April.

6. Ms Hinds said that she did not intend to go over old ground but she did believe that Mr Empey's input from a previous meeting had been useful. She recalled that at that time Mr Empey and his party had become worried about the superiority of the Ground Rules over the draft rules of procedure and she acknowledged that Mr Mallon had tried to distinguish between the Governments and the political parties in terms of the amount of emphasis/input each had to the process. Ms Hinds said that she believed that the Governments had the primary role in setting the content of the negotiations and that the Ground Rules were therefore a basis for this as well as being a basis to which the parties agreed to participate in the negotiations. Mr McCartney intervened saying that he wanted to make it clear that the UKUP did not agree to enter the negotiations on the basis that the Ground Rules would be superior to any others that were agreed and produced by the participants in the negotiations.

7. Ms Hinds returned to her earlier saying point that that was not the issue she was addressing. She continued saying that the Ground Rules were published as a document for a basis for negotiations and therefore one could not negate the intention of the Ground Rules which was after all to be holistic, comprehensive, and working to achieve a solution. She agreed with Mr Empey's point of the previous evening regarding the collective ownership of the process. However she said that the Ground Rules seemed to be bound to a process of procedures which some did not

want to be bound to. The Ground Rules were also bound to an outcome according to some, despite the clear indication in the Ground Rules of no pre-determined outcome. She also stated that she did not read anywhere in the Ground Rules that certain issues which appeared to be of concern to the Unionists had to be bound to a pre-determined outcome. Ms Hinds drew attention to remarks made by the British Government in their response to the Chairman regarding the status of the Ground Rules. She also stated that her party went along with paragraph 3 of the DUP submission to the Chairman on the same issue. She had also read through the UUP submission but had not "read", in relation to paragraph 4 of that document, any UUP objections concerning the Government's drive towards a pre-determined conclusion. She did however believe that the Government should be providing assurances on this issue but this had not been happening. If this did occur, she commented, then the NIWC would go along with the UUP point provided that the basis of the Ground Rules as put forward by the NIWC was not wiped out. On reading further extracts from the Government's submission and in particular the paragraphs referring to the resolution of difficult issues, Ms Hinds commented that she believed there needed to be a pragmatic way forward on this issue rather than people getting caught up on hooks when there was no requirement to get caught up on them.

8. Mr Empey began his remarks by saying that some distillation of the debate thus far must occur sooner rather than later. He indicated that the UUP would not sign up to the Ground Rules and he anticipated that everyone around the table knew this. There was no point in his party accepting or attempting to accept what was blatant political manifesto language in the original Ground Rules. What was important was to seek an answer to the question as to whether there was a willingness from each participant around

the table to commit themselves to a single text of rules under which the negotiations could proceed. Mr Empey continued saying that he realised that there was a certain "chicken and egg" situation regarding not only the status of the Ground Rules but also the draft rules of procedure under discussion and the finalisation of the Agenda. He wondered, however, whether it was possible to reach a position where his party could be clear about everyone accepting the principle of an agreed set of rules in a single text and, if there was any dispute in terms of these rules and their application, then it could be referred to the Business Committee. Mr Empey continued saying that there had to be a basic starting point and that was what he was searching for. There was no point continuing to produce a circular argument over the status of the Ground Rules. He recognised they existed, he recognised why participants were present, but this was all a red herring. The point at issue here was whether everyone around the table accepted the principle he had just outlined.

9. Mr Empey continued saying that the basic UUP point on the Ground Rules was the effect they would have on his party's ability to negotiate. If this point was addressed then this laid to rest the legitimate concerns which the UUP had over the Ground Rules. Following a short intervention from Mr Mallon regarding previous comments on Unionist's paranoia, Mr Empey said that everyone was not going to agree on the status of the Ground Rules. This was an obvious fact around the table but from the UUP's view point they could not endorse or be constrained by them. However other participants held the opposite view and therefore a circular argument would simply continue without any conclusion being reached. The problem at the end of the day, as Mr Empey stated, was the effect that the Ground Rules had on the procedures of substance. Again he returned to his earlier point suggesting that

if people could accept a single text for the participants and the Chairman to conduct proceedings then he thought the process could move forward. He realised that there was of course a secondary issue to this, referring to the "chicken and egg" position but, he argued, the only way that the process and participants could tackle this issue in totality was to go on with the rules of procedure, finalise their drafting and move to the Agenda items. Then everyone could view the entire scenario and decide from that perspective. Mr Empey continued saying that there were major issues such as the role of the Chairman coming up under the Agenda discussion. He was trying at this stage to focus on one objective. The UUP believed the process needed to establish the basic principle of whether everyone could accept a single text of rules under which everyone conducted the negotiations. If this was not possible then it appeared the only way to go forward was to continue with the drafting of rules and parking issues from time to time.

10. Mr McCrea commented that the Ground Rules represented nothing more than a preamble. They were not an authoritative text for the rules of procedure in the negotiations. He continued saying that he believed it important to have the confidence in each other's ability rather than to be taken along by a text set by the Governments who were dictating how the process would proceed. Mr McCrea read a further extract from the Minister of State's speech to the House of Commons on 22 April. Mr McCrea highlighted the fact that the Minister had indicated that there was no purpose in having hard and fast rules. Mr McCrea continued saying that for the participants to be bound by the Ground Rules was a false position. No one had asked the DUP to sign up or be bound by the Ground Rules or even to the election itself because it was clear that the Ground Rules were only the two Governments' best efforts

at that time. He did however believe that the debating time on this issue had not been wasted and returned to an earlier point saying that he did not think it was beyond the participants' ability to move towards a single text of rules of procedure. Finally he said there was no way that the DUP were accepting two texts; there needed to be a single text agreed by all the participants.

11. Mr McCartney indicated that he agreed with much of Mr Empey's earlier comments. The issue, in his view, was the effect that the Command Paper 3232 had on the freedom of the body to establish its own procedures to which it would be bound. Mr McCartney continued saying that Mr Empey's point was the right one. What was at issue here was the effect of the Ground Rules on the negotiation process. Mr McCartney then referred to DU3 and read it aloud to the meeting. This he said simply attempted to put into perspective what Mr Empey had been saying some moments earlier. Above all else the paragraph identified that the participants decided what was fit for this body in terms of rules of procedure. Mr McCartney again made the point that the DU3 amendment made this clear and that was all it was saying. Mr McCartney continued saying that he had read the Ground Rules and wondered why people such as the two Governments and the SDLP wanted to keep them. He suggested that everyone around the table needed to find out the reasons for this and that these issues then needed to come out of the woodwork. Again he posed the question as to what made the Ground Rules "invaluable", what purpose did they serve? He was quite content that if these questions could be answered he would address the issues in a democratic and rational manner and would seek to compromise if possible. However what he was not going to do was to go into discussions on the basis of which he did not understand.

12. The Minister of State commented that had he accepted the David Wilshire amendment minus paragraph 7, then clearly the participants including himself would not have got any further in the process. It was for this clear reason that he did not accept the amendment and still did not. The Minister of State continued saying that paragraph 7 was important and that he did not subscribe to the earlier "humpty dumpty" analogy applied by Mr McCartney. He believed that despite the difficulties and the doubts which existed around the table with some parties he thought that there were some areas of agreement. He stated that he also agreed with the contents of the memorandum from the Chairmen, dated 27 June. He continued saying that the Government's position was set out very fully in the speaking note of the previous week and also in the answers to the Chairmen's three questions. The Minister of State then quoted certain extracts from his address on the Ground Rules (copy available in earlier papers) and then suggested to the Chairman that there was an urgent need to try and find a basis of moving forward, despite the positions of opposition that were clearly there. The Minister of State listed a number of areas where he believed that agreement was universal:- firstly no one had suggested that the reference in section 2.1 of the Act should be deleted; secondly the Governments stated that everyone should have to sign up to any new rules of procedure; thirdly he indicated that those who supported the Ground Rules did not have to accept the position of those who were against them and vice versa; fourthly a single set of rules needed to be self-contained and the difficult issues arising out of the single set required a mechanism to provide resolution of these; lastly it seemed that no one was saying that there were any new ideas required in the rules. The Minister of State suggested that while there was still some way to go in terms of resolving the entire

picture on the rules he believed that if a single set could be produced then the participants should work towards this as a single source of reference for the negotiations. He also recognised the "chicken and egg" situation in terms of other issues which required resolution but he wondered whether it might be useful to produce an amendment which would attempt to list the common areas of agreement following this debate and circulate it to the participants to enable progress to be made.

13. Mr Bleakley commented that he had been listening to Mr McCartney and had also been reading the Chairman's memorandum dated 27 June. He added that this had been a very concise paper and was likely to become vital as the time went on. Mr Bleakley said that he viewed it very much as an attempt to square the circle which was difficult in itself. In attempting to do so the Chairmen had covered the various positions very carefully over the four points set out in their paragraph two and he believed that the paper represented a fair summary, was self evident and was a statement of reality. Mr Bleakley referred to the last paragraph of the Chairmen's memorandum and in particular the final number of words in it which appeared to end on an optimistic note. He wondered whether Mr McCartney would accept this statement as a reasonable squaring of the circle. Mr Bleakley indicated that it would be helpful if Mr McCartney could respond to this.

14. Mr McCartney responded by saying that if all the parties or participants were of equal standing then he believed Mr Bleakley's proposition would find favour in the UKUP camp. However this was not the position in reality, simply because two of the participants, namely both Governments, could square the circle in any way they desired. Mr McCartney continued by giving an example of the plenary discussions on 10 and 11 June which focused on the

identity of the Chairman within a free-standing body. He continued saying that this discussion seemed to be proceeding on a reasonable basis until one of the participants, namely the Secretary of State, said that it did not really matter about the identity of the Chairman because Senator Mitchell was going to be installed "come what may". With regard to the position on the draft rules of procedure and the Ground Rules, Mr McCartney suggested that what could be a further example of the Government's power was that they might well be prepared, with some reluctance, to say that the process could set up its own rules and proceed under these but that the Ground Rules document could still be invoked if anything happened which might make the process fall off of the rails. Mr McCartney said that the early demonstration of the Governments' naked power (ie, the appointment of the Chairman) had left an indelible mark with some of the participants and, he believed, that was why Mr Bleakley's suggestion would have found favour with him if only all the participants conducted themselves in the process on a equal basis. Mr Bleakley asked Mr McCartney whether he thought the Governments were either knaves or fools. Mr McCartney responded saying that the Governments were the ultimate pragmatists. They could either take forward issues by consultation or through discussion, etc, or they could simply take forward things by using their own power. Mr Campbell stated that he did not have any difficulty in going along with the Minister of State's earlier proposal to produce an amendment which might list the common areas of agreement following the debate on the Ground Rules. However he was a little bit concerned about the Minister of State's focus on paragraph 7. Mr Campbell suggested that this paragraph was viewed by the Minister as a key foundation and final touch stone to the process and in this context he was worried that some delegations could be allowed to close their eyes to it in

order to move the process on, but this he believed was not a solid basis for future success.

16. Mr Coveney said that he was encouraged by Mr Empey's contribution and he hoped that the British Government would take up his point and both Governments would view it constructively. He continued by referring to the previous evening's discussion when Mr Dodds and Mr Ervine had referred to the use of the word "parameter" during remarks that he (Mr Coveney) had made. He indicated that neither he nor the Irish Government intended any sinister meaning of the word. He believed that he had provided a clear and sufficient response which allowed recognition to any participant who wanted to raise issues of concern and that no marginalisation of any views would therefore occur. He looked forward to receiving the British Government amendment as indicated by the Minister of State. Mr McCartney intervened and referred to Mr Coveney's suggestion of assistance and constructiveness made a moment earlier. Mr McCartney referred back to Mr Taylor's address on the Ground Rules the previous week and read certain extracts from that (a copy in previous papers). He said that he had sought for some time to elicit which Ground Rules were fundamental to the process and essential to the negotiations. Until now he had not got a particularly clear answer on this but he wanted to bring out an earlier point regarding issues which could be given clarity which could then be addressed, as opposed to trying to do business within a situation which he did not understand. Mr Coveney returned to Mr McCartney's point and said that what was fundamental or not fundamental with regard to the Ground Rules and the Irish Government position on this had been represented in the submission to the Chairman. In short this had referred to the Ground Rules being an overall fundamental package for the negotiations.

17. Mr McCrea asked whether he could hear from others around the table as to what their views were on the fundamental issues which would negate a single set of rules of reference for the negotiations. He also asked whether there was a clear indication from others around the table as to what rules needed to be transposed from the Ground Rules to the draft rules of procedure in order to allow the former rules to become null and void. He said he needed an answer to both these points to enable the debating and considerative process to move forward. Dr Alderdice responding to Mr McCrea said that, from the Alliance view point, their lengthy paper addressed to the Chairman and the previous day's discussions had covered the answers to these question in some detail and it was unfortunate that Mr McCrea had not been present to hear the previous day's discussion. Mr McCrea intervened saying that he was present the previous day but he was still waiting for an answer to the questions that he had posed. Dr Alderdice restated his point with regard to the previous day's discussion and said that as far as his party was concerned it had provided appropriate answers to Mr McCrea's questions. The Chairman indicated that by asking three questions last week regarding the status of the Ground Rules he had tried to elicit this very information from the participants. He believed that this had been largely successful with the exception of one or two "legal" submissions. He also believed that the debate now being held and which commenced the previous day had been truly exhaustive in terms of the number of new points that were coming through. However he did not want to cut off or deny anyone the opportunity to provide comment. He did however believe that most people would agree that the debate had been useful but was now beginning to become repetitious. He asked whether the participants agreed that the debate on the status of the Ground

Rules had now run its course. Mr McCartney said that he understood the Minister of State would be producing a draft amendment. He wondered whether it would then make sense to break the discussion now and return after lunch at 14.00. The Minister of State intervened saying that this was a helpful suggestion and that he hoped to be able to circulate the British Government amendment in around 30 minutes. Mr Mallon intervened to pose the question as to what rule and number the amendment was going to be tabled against. The Minister of State said that he hoped to be able to find room for it in rule 1. The Chairman again asked the Minister of State when the amendment was likely to be circulated. The Minister of State indicated that he hoped to have it with the delegations by 13.00. The Chairman on hearing this suggested that participants accept Mr McCartney's suggestion. Mr Mallon asked the Chairman whether all the amendments relating to paragraph 1 on the rules of procedure would then be dealt with at 14.00. The Chairman said that he had not expressively stated this but considering that the Ground Rules debate was now over it seemed sensible to start at paragraph 1 of the draft rules and deal with all the issues arising from that when the meeting reconvened. There being no further discussion, the meeting was adjourned by the Chairman at 12.29.

[Signed]

Independent Chairmen Notetakers
OIC/42

3 July 1996