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28 JUNE 1996

cc: PS/Secretary of State(L+B) -B
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PS/Baroness Denton(L,DED+DANI) -B
PS/PUS(L+B) -B
PS/Sir David Fell -B
Mr Thomas -B
Mr Bell -B
Mr Legge -B
Mr Leach -B
Mr Steele -B
Mr Watkins -B
Mr Wood(L+B) -B
Mr Beeton -B
Mr Currie -B
Mr Hill(L+B) -B
Mr Lavery -B
Mr Maccabe -B
Mr Perry -B
Mr Stephens -B
Ms Checksfield -B
Ms Harrison(L+B) -B
Ms Mapstone -B
Mr Whysall(L+B) -B
Ms Collins, Cab Off (via IPL) -B
Mr O'Mahony, TAU -B
Mr Lamont, RID -B
HMA Dublin -B
Mr Westmacott, (via RID) -B
Mr Campbell-Bannerman -B
Mrs McNally(L+B) -B

File Note

TALKS: 27 JUNE 1996

Summary

Hard slog in the "conferring" session, with little progress made. Most of the morning taken up with discussion of amendment by Mr McCartney, aimed at a stricter test for agreement of full outcome than "sufficient consensus". The very brief afternoon session was

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given over to discussion on definition of formats. Neither debate achieved much; nothing was resolved. But conflict over Ground Rules was postponed; the discussion was generally good-humoured. There were signs of a wish to be constructive from the DUP. Bilateral with the Unionists may have yielded a way forward on Ground Rules, and useful progress was made with the Irish.

Detail

Meeting with the Chairman: The day started, just after 9.00 am, with a meeting between the British side (Michael Ancram presiding), the Irish (Mr Coveney present, Mr O hUiginn making most of the running) and the three Independent Chairmen. (Senator Mitchell doing the significant talking.) The question was what the Chairmen should circulate in response to the "examination papers" sought from delegates about the status of Ground Rules. They had prepared two versions of the paper. One consisted simply of a statement that both Governments remained firmly committed to the Ground Rules, but that the political parties differed; there was general acceptance, however, that the Chairmen should be able to conduct business on the basis of a single set of Rules of Procedure; and that the talks might therefore take forward preparation of the draft rules of procedure, and consider whether, without prejudice to views on the status of Ground Rules, there was a workable basis for proceedings. The other draft would also include a more detailed analysis of views on the three questions, and a compilation of responses.

Senator Mitchell asked what effect we thought each version would have.

2. The British position, repeated several times, was that there was no objection in principle to the circulation of responses. But that would open the way to elaborate and unhelpful textual analysis.

Mr O hUiginn made this point with greater emphasis. The dispute over the status of Ground Rules was irresoluble. There were things in Ground Rules unsuitable for transplantation into Rules of Procedure: notably paragraph 17 (on expulsion of parties that

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demonstrably dishonoured their commitments, which the UUP propose to transplant) that was ultimately a matter for the Governments.

Michael Ancram commented that he had ideas about the procedure by which the section might be invoked; which would however leave the decisions to Governments.

3. Senator Mitchell expressed some exasperation at this line, perhaps particularly as set out by Mr O hUiginn. We were blinding ourselves to the existence of the disagreement. Discussion went on for some time. But from an early stage, the Senator agreed that while he doubted the wisdom of the approach, he would not circulate the longer paper if the Government thought it inadvisable. He urged them respectively to sell the approach to the UUP and SDLP.

4. The Chairmen left just before 9.40 am. A message was later received via Martha Pope, effectively apologising for any excess of forthrightness by the Senator: and one of the staffers remarked to me that he had been showing generally over the last day or so the effects of jet-lag.

Discussion with Irish

5. The Irish remained, and discussion ensued about a number of outstanding issues. Mr Hill's note of 27 June entitled "Rules of Procedure: Possible Amendments" covers the details. As to paragraph 17 of Ground Rules, the British side suggested that one way of dealing with the UUP amendment was to include a mechanism in the rules triggering it. We could say to the UUP that, while maintaining that the rule of entitlement to participate was in the Ground Rules, we acknowledged there was an issue about how it operated, to be covered in rules of procedure; the UUP might then be persuaded to withdraw their amendment. Mr O hUiginn stressed that the Ground Rules must not be unpicked; but on the question of how effect might be given to paragraph 17, he cited at the precedent of the agreement in the 6 June papers by which, if the party had not subscribed to the Mitchell principles, the Chairman might report it to the Governments. (We have now - 1 July - put to the Irish Annex A4 of Mr Hill's note of 27 June.)

6. Discussion moved to Rule 30 (Strand One liaison). Mr Thomas said he assumed we would maintain close contacts as the process developed; but the formal provisions on liaison concerned what was to be done when progress was achieved. After some discussion, the formula set out at A2 of Mr Hill's note was arrived at: it incorporates a suggestion of Mr O hUiginn's effectively creating two responsibilities, one to keep the Irish Government informed, and the other to report progress which participants in Strand One agreed had been made (tabled today, 1 July). Mr O hUiginn said that they would decline to receive information in the Business Committee.

6. Discussion moved to rule 17A, (nothing excluded, etc) proposed by the British and Irish Governments, and paragraph UU1, by Mr Trimble, which qualified the reference to "agreement" as "agreement arrived at in accordance with paragraphs 23 to 28". Michael Ancram said he did not want to go to the wall with Mr Trimble on this if it was unnecessary. The Irish took note of these formulations. Mr Cooney suggested, however, that there might be a need for generic reference to the effect that "agreement meant agreement under sections 23 to 28"; the impression was otherwise left open but there were other routes to agreement. This was generally agreed.

7. The final area of discussion was a possible alternative to paragraph 15 (agenda), set out at A1 of Mr Hill's note, concerning agenda: it would entitle any participants to raise significant issues of concern to them, "to receive a fair hearing": without actually obliging others to negotiate with it about them, which would get into Unionist concerns about negotiating the Union. The Irish agreed the text (tabled today, 1 July).

8. Discussion moved to the meaning of contingent agreement (Rule 28A). The present text left open the question whether "consensus" meant "sufficient consensus". It was agreed that there might be an amendment substituting "by agreement" for "solely on the basis of consensus".

Discussions with UUP

9. The Irish left, and a UUP delegation arrived, invited by us, composed of Mr Trimble, Mr Empey and Mr Weir. Mr Trimble opened by pronouncing the Chairman's memorandum, (which had by then been circulated to colleagues under cover of Mrs McNally's note of yesterday) as "not particularly satisfactory". Mr Empey reiterated the need for the Chairman not to operate from more than one rule book. Michael Ancram set out our general line: the Ground Rules were the descriptor of the negotiations in the legal sense: the firm advice was that they were the formal basis of the talks (Mr Empey said he was not arguing); but we were content that the agreed procedures should govern the negotiations. What, Mr Empey asked, if there were a dispute, or something which had been overlooked? The negotiations, he believed, should be able to resolve it: it would be wrong for people to go back to the Ground Rules "to lord it over the agreed rules". Michael Ancram agreed there should be no automatic reference back to Ground Rules: if such a problem arose, it might be for the Chairman to refer the matter to the Governments, to resolve in consultation with the parties. That would be a "conferral", such as was going on at present. Mr Trimble objected it would not: at present the Governments and parties all were conferring; rather than Governments resolving something, in consultation with parties. Mr Thomas suggested that that might be distinction without a difference, but drew attention to Rule 12A by which the Business Committee could address some resolved issues. This appeared to appeal to Mr Trimble, as making the rules self-contained.

10. The general question of Ground Rules was reverted to, Michael Ancram reiterating that there would be no statutory basis for the negotiations without them (Mr Empey assenting); but that no-one would need to sign up to the Ground Rules - Mr Gleeson's earlier remarks on this should not be taken as an authentic interpretation. Mr Trimble urged that we should go gently: it was a very live possibility that Mr McCartney would go to the courts on a "construction summons". Michael Ancram took a dim view of his chances.

11. Mr Trimble found the additional words proposed in rule 15 'not helpful', diluting the concept of an agreed agenda. Michael Ancram said he understood the concern that some would have about 'negotiating' on everything that appeared on the agenda. Mr Trimble said his particular concern was the agenda headings in Strand One; a way round the difficulties might be to have a general agreement at the start on the question of consent. The UUP left at 10.50.

Conferring: Morning Session

12. The 'conferring' session started under Senator Mitchell's chairmanship at 11.10.

13. On the Ground Rules 'examination paper', Senator Mitchell said he had not stated in advance that participants' views would be circulated. As an operating principle for the future he suggested - and in the absence of dissent took it as agreed - that where there was no such stipulation, there should be no circulation. As for the papers prepared by the delegations, those willing to do so should circulate them to others. He encouraged delegations to make their submissions available. Mr Robinson and Mr McCartney let it be understood they had expected something more, but did not make difficulties.

14. Mr Robinson removed his delegation's reserve on rule 12 (Business Committee to comprise [up to two] representatives of each delegation), on the understanding that the Business Committee operated by sufficient consensus. There being no dissent, the Chairman pronounced the rule agreed.

15. Mr Robinson also declared himself willing to lift the block on rule 26 (where sufficient consensus may apply) if the listing of formats were replaced by 'in any format' - thus circumventing the argument about whether the plenary was continuing. Mr Mallon asked whether that included a committee relating to decommissioning; Mr Robinson said that there was none, but protested, apparently

fearing the others doubted it, that there was no sleight of hand in the DUP initiative. The Chairman, hearing no dissent, said that the rule as amended should apply to any committee, sub-committee or other group set up as part of the process. Mr McCartney stressed it was without prejudice to the question whether there should be a continuing plenary; and Mr Trimble added that it would apply to an informal gathering.

16. Mr McCartney introduced his amendment qualifying rule 27 (definition of sufficient consensus):

While rule 27 defines sufficient consensus for the purpose of decisions in each format, it shall be necessary in the case of any determination of the outcome of these negotiations as a whole to obtain such a substantial level of consensus as will give political efficacy to any final action on a comprehensive agreement.

17. He said that it would be inadequate to put forward a settlement that scraped home with a minimal level of agreement: it must be of a strength likely to command endorsement. A numerical test raised problems, of a sort already discussed, hence the formulation of his rule. He would be happy to do without it, however, if he could be assured that rule 27 covered procedural matters only, not any final determination.

18. In a long debate, he attracted sympathy for the underlying sentiment but no real support for embodying it in a rule of procedure. Dr Alderdice agreed that a certain level of support in the talks would not necessarily translate into a similar level outside; but the judgment was a political one, not capable of being governed by a rule. Mr Thomas agreed. If the point of agreement was reached, participants would have well in mind the need to achieve adequate support outside: that would influence attitudes. It was doubtful whether any rule would help; and in particular whether this rule achieved its purpose. In any event, there was a question

whether, if the three tests in rule 27 were met, it was right to withhold any outcome from decision by the people of Northern Ireland. The nature of the referendum, and the test to be met for a proposition to be endorsed, might be a subject for discussion later in the negotiations; the point underlying Mr McCartney's rule might be noted as a significant issue to be considered at the appropriate time.

19. Mr Weir, for the UUP, again had sympathy with the underlying idea, but thought the proposed rule would muddy waters, rather than clearing them. Mr Robinson described it as a statement of a political reality, that was however difficult to pin down in text. He suggested an amendment, substituting for 'to obtain' the words 'for the participants to exercise a political judgment as to whether any agreement reached achieves...'. Mr Mallon saw difficulties where the test in each strand was sufficient consensus, but another, more severe, test, was introduced at the end of the process.

20. Mr McCartney came back with some indignation: he was grateful to Mr Thomas for revealing the mind of the Government: it appeared, from his reference to rule 27, that a bare majority would suffice to endorse an agreement. He wished to protest at this in the strongest possible terms. One of the rule 27 tests was the agreement of a majority of parties represented: that would permit agreement by parties representing a tiny fraction of the electorate. It seemed that Mr McCartney might be taking the rule 27 tests as alternative, rather than cumulative: Mr Thomas made clear that the latter was the case. He also stressed that he was not suggesting that an outcome would need only a bare majority of the people of Northern Ireland.

21. In continuing debate, Mr Ervine described the proposed rule as embodying 'common sense'; but its implications would have to be considered. Mr Durkan said that all parties recognised that sufficient consensus had a 'health warning' attached. A party might agree a particular proposition, but think the use of the sufficient consensus mechanism undesirable: it was permissive, not mandatory.

It would be wrong to create a pattern of winners and losers: in previous talks, there had been 'knock for knock' arrangements. Mr Mallon disagreed with any suggestion that rule 27 applied only to procedural matters: it applied to all matters.

22. Dr Paisley was not comforted by the suggestion that the point underlying the amendment should simply be noted. It should be remembered that by the time the negotiations reached a conclusion, there might have been at least two elections (parliamentary and local) in Northern Ireland, and the votes recorded on 30 May could no longer be taken to reflect the views of the electorate. Several speakers picked up this theme. Later, Dr Paisley asserted that HMG had not declared itself on what proposition it would put to the people: the negotiations would have no say.

23. Mrs Hinds said briefly that she agreed with the SDLP; and urged the parties to show leadership. She showed impatience with the way debate was being drawn out. Mr McCartney spoke again, essentially on the theme that HMG 'did not care about pro-Union people': the pro-Union cause was under attack from them, the SDLP and the Irish Government (this truth was apparently confirmed when Mr Thomas was seen to nod - in a 'vigorous manner' - at Mr Mallon's point about rule 27 not being of purely procedural significance).

24. Mr Trimble detected general agreement that the outcome of the negotiations would need more than a bare majority to be acceptable; but Mr McCartney's amendment did not help. Shameful actions of the Governments had had 'political efficacy'. The solution lay in the referendum: it must embody some sort of special test, whether similar to that applied to the 1970s devolution referendum [at least 40% of the electorate assenting, in the Scottish case], or otherwise. Mr McMichael agreed: it was wrong to suggest that 50%+1 would suffice. Mr Adams (UDP), in the same vein, said no-one would imagine the status of Northern Ireland could be changed by such a majority: that would be a recipe for civil war.

25. Michael Ancram hoped that there would be a broad measure of support for any agreement, and that these questions would not arise. The agenda put forward by the two Governments envisaged an item in the concluding plenary about arrangements for approval. As to the referendum, it was the outcome of the negotiations that would be put to the people.

26. Mr O hUiginn saw considerable common ground in the discussion. But Mr McCartney's point was a political fact of life, not material for a procedural rule. It might be best if the text of Mr McCartney's rule, incorporating Mr Robinson's alternative text, were read into the record when the formal plenary resumed.

27. Mr Robinson proposed a variant on Mr O hUiginn's formula: the text might be adopted as a resolution of the plenary. Mr Durkan suggested that a text might instead be circulated as a memorandum by the Chairmen. Senator Mitchell said that the three Chairmen would consider the matter: there discussion ended, at about 1.30 pm.

28. During the discussion, Mr Mallon asked for the Chairman's ruling on two points. First, what was the extent of application of rule 27? Senator Mitchell said that, with the DUP amendment to rule 26, it would apply to all decisions in any format. He was not taking Mr McCartney to make any distinction in this context between procedural and substantive matters in strands [it was by no means clear this had been Mr McCartney's line, but he did not comment]. Mr Mallon's second point concerned the question whether delegates could continue to put down amendments to rules already provisionally agreed. Senator Mitchell said that until the rules were agreed in their entirety, anyone could continue to put forward issues about them, even if this meant revisting issues already considered. He added that there was often an imperceptible line between debate and delay; but his overriding concern was that everyone should be able to express his or her view.

29. During the discussion, Mr Robinson raised the definition of 'unionist community' and 'nationalist community' for the purposes of rule 27. He had taken it that the unionists were represented by the UUP, UKUP, DUP, UDP and PUP; the nationalists by the SDLP; Alliance and Labour belonged to 'neither camp or both'; the NIWC had not declared. Senator Mitchell said he did not view the comments made on first hearing to be binding on the parties. Alliance, Labour and the NIWC could submit to him their definitive views, within a week.

Conferring: afternoon session

30. The afternoon session began at about 2.25, having been delayed for 25 minutes by the absence of the DUP, apparently in discussion with Mr Trimble. The two Governments' addition to rule 2 (definitions of formats) was discussed.

31. Mr Thomas said that the clause filled a gap. Mr Trimble said again that the definition of the third Strand was unsatisfactory; there was a contradiction between paragraph 26 of the Ground Rules, which said the purpose of the negotiations was to achieve a new beginning inter alia between the peoples of the islands, and the fact that Strand Three only involved the two Governments.

32. Mr Thomas pointed out that other rules provided for the involvement of the parties, albeit not as members of negotiating teams; he wondered whether the subject matter of Strand Three might be defined as "relationships between the British and Irish Governments, and between the people of these islands". Mr O hUiginn, whilst having sympathy with Mr Trimble's suggestion, wished to be clear that Mr Thomas' proposed amendment had no implications for the membership of Strand Three; that should be confined to the Governments. If it went beyond, parties in the other jurisdictions within these islands might also have a claim to be involved.

33. Mr McCartney spoke at length. The relationship between the Irish Government and the nationalist community - for which it was a frank and unashamed lobbyist - was closer than that between HMG and the Unionists. The British and Irish Governments were members of the European Union. EU arrangements indicated that they should both respect national boundaries. But HMG had made no move to deal with the Irish claim on Northern Ireland. Irish involvement in Northern Ireland violated international legal principles about minorities within a host state, as set out in a report prepared for the UN in 1979 (? the Capo Torte Report?)

34. Mr Mallon, though declaring himself opposed to amendments offered within meetings, said that he could agree the proposed texts, subject to agreement on matters yet to be discussed. Mr Robinson briefly denounced the Irish claim and said he wanted a clearer definition of what the island of Ireland was. He also brought up again his earlier reserve that "plenary" should be taken to mean "opening plenary". And he stressed the negotiations on Strand One issue were not for all parties.

35. Mr Trimble said there was no logic in the line that intergovernmental issues were involved in Strand Three, but parties should be excluded. Everything under discussion in the negotiations concerned at least one Government. Seeking to decide matters between Governments about relationships with the new institutions, with only consultation with the parties, would lead to difficulties: as they attempt to launch the negotiations without properly involving them had done. The most important issue in the negotiations about Union was to find an alternative to the Anglo-Irish Agreement, and he did not wish to be a spectator to that process. He also alluded to Government's (lack of a) regional policy: they would find it was not possible to have different policies for Northern Ireland from other regions.

36. Dr Alderdice said that the discussion was clearly not directed to moving on; rather about unstitching the understandings upon which all previous sets of discussions since 1991 had taken place. The political parties in Northern Ireland should realise that if this continued, the Governments would remain in place, with the Anglo-Irish Agreement operating, it was they who would be left out.

37. Mr Trimble said that he did not want to hold discussion up; but he reserved his position on the proposed rule.

Arrangements for future meetings

38. Senator Mitchell made a number of points about arrangements for future meetings. He would, for the future, attempt to begin every meeting as close as possible to the time set down; with grace period not to exceed a maximum of 10 minutes, unless there was a compelling reason to the contrary. This was agreed.

39. Following earlier consultation on the following week's schedule, and some discussion in the group, it was agreed that proceedings on Monday should begin at 1pm; on Tuesday and Wednesday at 10am; and at 10am on Thursday, running through until 2pm. Since none of the DUP negotiation team would be in Northern Ireland on Thursday, it was agreed that there would be no negotiations in plenary format that day. At the suggestion of Mr Smyth, it was agreed where possible proceedings would finish by 7pm on Monday to Wednesday.

40. Senator Mitchell asked that by the close of the session on Monday, delegations should submit suggestions for the schedule further ahead. Decisions could be made during the week.

(Signed)

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