

5 27 JUN 1996

INT/86

CONFIDENTIAL

RECEIVED

25 JUN 1996

ASSISTANT SEC
CPL

57b

FROM: PETER SMYTH
TALKS SECRETARIAT
24 JUNE 1996

cc: PS/Secretary of State (L&B) - B
PS/Sir John Wheeler (L,B&DFP) - B
PS/Michael Ancram (L,B&DANI) - B
PS/Malcolm Moss (L,DOE&DHSS) - B
PS/Baroness Denton (L, DED&DANI) - B
PS/PUS (L&B) - B
PS/Sir David Fell - B
Mr Thomas (L&B) - B
Mr Bell
Mr Legge - B
Mr Leach (L&B) - B
Mr Steele - B
Mr Watkins - B
Mr Wood (L&B) - B
Mr Beeton - B
Mr Currie - B
Mr Hill - B
Mr Lavery - B
Mr Maccabe - B
Mr Perry - B
Mr Stephens - B
Ms Checksfield - B
Miss Harrison (L&B) - B
Ms Mapstone - B
Mr Whysall (L&B) - B
Ms Collins (Cabinet Office) via IPL - B
Mr O'Mahoney, TAU - B
Mr Lamont, RID FCO - B
HMA Dublin - B
Mr Westmacott (via RID) - B
Mr Campbell-Bannerman - B
Mrs McNally (L&B) - B

*Mrs McN
OIR*

FILE NOTE

TALKS: AFTERNOON/EVENING 24 JUNE 1996

Summary

Detail

The afternoon session began at 2.20pm with the British team, led by the Secretary of State and Michael Ancram, exchanging views with the Irish side, led by Ministers Taylor, Gleeson and Coveney. The

CONFIDENTIAL

Secretary of State explained that the UUP had submitted a number of amendments focusing on paragraph 17 of the draft Rules of Procedure produced on 20 June. These, however, had now been superseded by a paragraph submitted by Trimble in the bilateral which had taken place immediately before lunch:

"The conduct of the negotiations will be exclusively a matter for those involved: no outcome can be predetermined or excluded: there is no limitation or constraint on any agreement that can be reached: any agreement arrived at in accordance with paragraphs 23-28, shall take precedence."

The initial Irish reaction was that, because this proposal contained a paraphrase of several Ground Rules it represented an attempt to transmute the sacred text and was therefore unacceptable. Their position and that of the SDLP was well known - they could not contemplate attempts by the Unionists to cherry-pick the language of the Ground Rules. The British side explained that the UUP were trying to steer a course away from a DUP amendment which was even more objectionable, but at the same time protect their position against subsequent attacks from the DUP and the UKUP. The Irish side reiterated that the position reached with the SDLP last week was at the outer limits of acceptability - the Ground Rules must remain the dominant text, and no language could be imported into the Rules of Procedure which would conflict with that dominance. In particular, the absence of the first sentence from paragraph 17(a) of the draft Rules of Procedure of 20 June - "Any participant in the format in question will be free to raise any aspect of the three relationships, including constitutional issues and any other matter which it considers relevant." - was of crucial importance. Trimble's proposal represented a clear attempt to substitute paragraph 3 of the Ground Rules to prevent constitutional issues from being brought to the table. It was essential that the two Governments hold the line on this key point.

The British side said that it was precisely this absence of clarity about Unionist objectives which made it imperative for the Irish to

CONFIDENTIAL

talk to the UUP as soon as possible and receive a first-hand account of the Party's thinking. For what it was worth, the British side did not believe that Trimble was attempting to remove the possibility of an open agenda, but this was an area where the Irish, by exploring the matter with the UUP, could receive useful clarification.

The meeting ended at 2.43 pm. By that stage it was not clear if the Irish were prepared to engage in detailed discussions with the UUP, or whether their preference was to explore the ground in advance with the SDLP in order to present a united front against the Unionists.

Immediately afterwards General De Chastelain and Mr Holkeri came in to report to the British side that the SDLP were getting increasingly nervous as well as increasingly frustrated at the lack of progress being made. The Secretary of State and Michael Ancram reported the substance of the previous meeting, emphasising the importance they attached to the UUP exploring with the Irish what room for manoeuvre they thought they had. The Irish were suspicious of the UUP trying to unpick the Ground Rules, and saw Trimble's redrafting as an attempt to frustrate progress. That was why it was important for the liaison between the Ulster Unionists and the Nationalists to develop as swiftly and as strongly as possible. The Chairmen accepted this gloss on recent proceedings, and promised to continue bringing dispatches from the front. The meeting ended at 2.53 pm.

Shortly after 3.00 pm, the British side received a delegation from the DUP and the UK Unionists. This consisted of the negotiating teams from both parties. Paisley asked McCartney to speak to the text of the DUP paper which had been handed across earlier (copy attached as Appendix A).

McCartney explained that the four paragraphs in the paper were intended to be inserted into the Rules of Procedure under which any talks would take place. Paragraph 1 was intended to clarify the

CONFIDENTIAL

issue of what ground would be covered by the Rules; paragraph 2 was an attempt to specify who the participants would be at the talks, with reference to paragraphs 8 and 9 of the Ground Rules; paragraph 3 represented an attempt to disapply all the further provisions of the Ground Rules; and paragraph 4 was intended to ensure that the powers of any Chairman would be those granted to him by the Rules of Procedure agreed by the delegates, but not those deriving from any papers produced so far by the two Governments. He recognised that the Irish and the SDLP would be sensitive to these proposed changes, but attempted to suggest that the UUP might make common cause in attempting to define precisely what should be the function of the Ground Rules in the conduct of the negotiations.

Responding, the Secretary of State said that paragraph 3 of the paper in particular gave HMG a difficulty - the Irish and the SDLP attached great importance to the Ground Rules, and he had to say that the British side too recognised that they formed the legal basis for the negotiations. The scope of the disapplication suggested that paragraph 3 was considerably wider in scope than anything the other parties could be expected to accept, and HMG could simply not walk away from the Ground Rules to the extent that was implied in the amendment. It was possible, however, that the concerns of the DUP/UKU could be met in other ways.

Robinson wondered why the Irish and the SDLP were resisting giving up the Ground Rules. Some parts of the Ground Rules were completely unacceptable to the DUP, and clarity was required as to precisely which Rules would apply in the conduct of negotiations. Michael Ancram said that insofar as the nature and character of the negotiations would be defined by reference to the Ground Rules, those Rules formed the basis upon which the talks could go forward; but the actual conduct of negotiations would be for the parties themselves to determine by means of agreed Rules of Procedure. Michael Ancram pointed out that the Ground Rules were predicated on the assumption that the negotiations would operate on a basis of consensus. Paragraph 7 specifically stated that the conduct of the negotiations would be exclusively a matter for those present at the

CONFIDENTIAL

negotiations. Paisley asked if this meant that the Union would be up for negotiation. The Secretary of State said that he interpreted this requirement as meaning that the Union could be discussed, not that it had to be discussed. He pointed out that the same provision would allow Articles 2 and 3 and the Anglo-Irish Agreement to be brought to the table also.

McCartney then made a ponderous interjection to the effect that he was satisfied that, on the basis of the manifesto under which he had stood for election, the Framework documents and the Ground Rules which were a development of them, were designed to preclude any settlement for the future of Northern Ireland within the United Kingdom. Why, therefore, should he sign up to Rules of Procedure based on these offensive documents? The Secretary of State pointed out that the Ground Rules contained only limited reference to the Framework documents and did not require anyone to sign up to them.

The Secretary of State wondered if there was any benefit in discussing issues relating to the Agenda for negotiations. Paisley responded with a tirade against the Loyalist parties. Their refusal to undertake decommissioning unilaterally, and the Government continuing to sanction their presence at the talks table was indicative of the conspiracy to bring in Sinn Fein under a smokescreen. Decommissioning was an issue which had to be dealt with in the Rules of Procedure - moving on to discuss the agenda before the Rules had been finalised was simply not acceptable. Michael Ancram pointed out that the Rules had to be considered along with the Agenda, and therefore it was necessary to view them in relation to each other. McCartney responded that documents such as the "Scenario" paper of 6 June which made the "addressing" of decommissioning a responsibility of the Chairman, was also an attempt by the Governments to allow Sinn Fein maximum room for manoeuvre.

That was why he felt that decommissioning had to be addressed up front in the Rules of Procedure at the very beginning of the process.

CONFIDENTIAL

McCrea then harked back to a meeting the DUP had had with the British side on 11 June. At that time he had specifically raised the question of whether, if no agreement on Rules of Procedure proved possible, the two Governments would impose Rules. Michael Ancram had refused to provide an answer to that question, even though the Secretary of State had replied in the negative at a meeting the previous day. The Secretary of State responded by saying that Governments could propose but not dispose. In practical terms, he could see no means of imposing Rules against the express wishes of the other participants. Agreement on the Rules was essential if progress was to be made.

Shortly after 4.00pm the meeting broke up with a (fairly) good-humoured recognition on both sides that they had failed to reach any significant level of agreement. It was difficult to say whether the attempts to establish whether the Governments would impose Rules of Procedure represented an attempt by the DUP to explore the practical consequences of their walking out of talks. Robinson gave the impression that his probing was a genuine attempt to establish what room for manoeuvre existed. Paisley was obstructive rather than destructive. McCartney continued to give the impression of being engaged on a personal intellectual crusade.

At 4.46 the Irish, accompanied by the two Chairmen, came in to give a read-out of their meeting with the UUP. This had resulted in deadlock. Although no paper had been handed across, the discussion took place with a tacit recognition that the Irish knew at least the substance of the amendment Trimble had tabled at the UUP bilateral with HMG. The Irish had made it clear that any amendment which sought to nullify the first sentence of paragraph 3 of the Ground Rules - "Any participant in the Strand in question will be free to raise any aspect of the 3 relationships, including constitutional issues and any other matter which it considers relevant." - was crucial. The political difficulties of the UUP were recognised - and to be fair, in a very good-tempered meeting, the UUP had recognised the limited scope for manoeuvre possessed by the Irish - but the principle of the open agenda was too important to be

CONFIDENTIAL

sacrificed. The text of paragraph 3 of the Ground Rules had been available for consultation for a considerable time previously, and had not attracted the attention of the Unionists. By the same token, even the DUP had joined the 1991 talks on the basis of an open agenda. It was distressing to think that McCartney was the bete noir who was causing the difficulties now.

The Irish considered if it would be helpful to Trimble if the two Governments were to table the text of paragraph 17(a) of the draft Rules of Procedure of 20 June, which did include the first sentence of paragraph 3 of the Ground Rules? Mr Holkeri said that he was willing to put forward a paper of that nature, and table it for discussion by all the parties.

The Irish were supportive of this; but Michael Ancram wondered whether the Chairman would be compromised by tabling such text, particularly since he had not been party to many of the bilaterals. Perhaps a more helpful way forward would be for HMG to table the Draft Rules of 20 June, extracting from the paper a list of suggested amendments which could be put forward separately for discussion. These could then be discussed by all the delegates in a conferral session. The text, although put forward by HMG, would ideally be supported by the Irish. Mr Holkeri thought that the proposal might be expanded by means of an invitation to the participants to put forward any other amendments they thought were relevant. If that were agreeable he would put it to the conferral session due to begin at 5.00 pm, inviting submission of amendments this evening, and would call a further conferral session for 10.00 am tomorrow to discuss a composite text. On this note, the meeting ended at 5.04 pm.

At 5.06 pm, Mr Holkeri opened the adjourned conferral session. Apologising for the failure to re-convene at 12.00 noon as promised, he reported that the day's bilateral meetings had been unsuccessful in agreeing the points of difficulty in regards to the Rules of Procedure. In the circumstances, therefore, he proposed to issue the draft Rules of Procedure as agreed by the conferral session of

CONFIDENTIAL

19 June, together with the proposals for amendments put forward in the bilaterals of 20 June, as well as the suggestions from today. This composite document would be ready for consideration by 10.00 am the following day, 25 June. His sense was that there was no inclination to discuss the agenda for talks until the Rules of Procedure had been further debated and agreed.

Mallon queried what amendments had been put forward on 20 June? The SDLP certainly had received notice of no such proposals. The composite paper which the Chairman suggested should issue on 25 June would be the third attempt to revise Rules of Procedure. What, he asked, would be the fate of this paper? Was it for discussion and subsequent decision, or would some other form of proceedings be applied? This was a point of "considerable interest" to the SDLP. Great patience had been shown on all sides so far, but patience was not infinite. He needed certainty on this point so that the SDLP delegation for tomorrow's meeting could be appropriately instructed. Mr Holkeri said that he would need to see all the amendments before taking any decision on the best means of proceeding. He suggested that it was best to convene a conferral session and decide how to proceed in the light of the views received from the various parties when they had seen the proposals for discussion. He thought it would be helpful if his staff could receive all contributions by 7.00 pm tonight. Paisley asked if that deadline could be extended until 8.00 pm? Trimble agreed that 8.00 pm was preferable but asked if the document could be made available for 9.00 am tomorrow morning before the 10.00 am meeting. This was agreed and the meeting adjourned at 5.25 pm.

At 5.30 pm Trimble and Empey came in to compare notes with the British side. Empey explained that, as he assumed was already known, the SDLP was not prepared to meet the UUP. He asked whether, on the basis of what the British side knew, the SDLP would be prepared to show more flexibility if the UUP consented to restoring the first sentence of paragraph 3 of the Ground Rules? Michael Ancram said that this was almost certainly the case. Empey then explained that the UUP objective was to distinguish between the

CONFIDENTIAL

outcome of talks, which the Party fully accepted could not be limited in advance, and the substance of the negotiations, which he felt equally strongly had to be defined in advance by agreed procedures. He acknowledged that this position was not far from that of HMG. The difficulty was that the Irish took a considerably broader view and seemed to want matters of substance to be prescribed within the procedural framework.

Trimble handed across a single paragraph amendment (text not available) which he said was a response to paragraphs 3 and 4 of the DUP paper. It also was an attempt to meet the Irish desire that Ground Rules language should be avoided wherever possible in the Rules of Procedure. Reading the text, the Secretary of State said that he recognised the UUP's need to use language which would protect them against subsequent attacks from Paisley and McCartney. Nevertheless, any attempt to preclude constitutional matters from being put on the table would be seen by the Irish and the SDLP as a substantial rolling back from paragraph 3 of the Ground Rules, and would be resisted. He suspected the latest UUP amendment would be judged in that light.

Trimble said it was important for the Government to appreciate the UUP position. The talks in 1991 had been conducted under flexible rules of procedure which had the added benefit of also taking care to reaffirm the constitution and position of Northern Ireland. The texts issued by the Governments since then were considerably more prescriptive in their nature. Paragraph 15 of the draft Rules of Procedure of 20 June and the Ground Rules themselves both carried a very strong implication that any matters raised by any of the participants would find their way onto the agenda and would be negotiated. The UUP recognised the reality that participants would have to be free to raise whatever issues they felt were appropriate: but what had to be avoided at all costs were Rules of Procedure which deemed that any issue raised in this way found its way as of right onto the agenda and therefore became negotiable.

Chairman Holkeri, the meeting broke up at 5.12 pm.

CONFIDENTIAL

Michael Ancram wondered if the language in certain of the Ground Rules - eg paragraph 14 - might be modified in the Rules of Procedure to make it clear that the references to "will" were not construed as "shall", and to provide that the content of the agenda would be decided by agreement. He himself had not realised that the use of "will" would be read in a prescriptive sense. The British side had always envisaged that the initial agenda would include significant items under broad general headings, and that these would be broken down into more detailed individual agendas by agreement. Empey repeated that the UUP recognised that all manner of issues were liable to be raised (and as a teasing example referred to the possibility of Gerry Adams raising constitutional matters): what they objected to was being obliged to negotiate and each agreement on any issue which might happen to be raised.

Michael Ancram thanked him for that clarification of the Unionist position. In view of this he recognised that paragraph 15 of the draft of 20 June might be particularly sensitive to the UUP. He thought it might be possible to re-jig the language to make it clear that the act of raising an issue did not automatically ensure that it was transferred onto the agenda. What was needed was a mechanism which would filter the issues raised in the context of discussions, to ensure that only those agreed subsequently appeared on the agenda for negotiation.

Empey said it was important for the Government to realise that the Ground Rules and the earlier documents from which they had been derived seemed to Unionists to imply a certain context, and to impart in advance a certain momentum to a process which was dedicated to achieving a particular outcome. Trimble said he was satisfied in the light of the discussion that HMG now knew where the sensitive areas were for the UUP, and that amendments to paragraph 15 of the June 20 draft could be considered in that light.

Aware of the 8.00 pm deadline for the submission of amendments to Chairman Holkeri, the meeting broke up at 6.12 pm.

CONFIDENTIAL

Although Empey did most of the talking, Trimble was noticeably more relaxed and forthcoming in the absence of Taylor than had been the case at the earlier meeting. The meeting provided a valuable opportunity for the UUP to explain their position in a manner which was frank without being confrontational, and which gave the British side a much better appreciation than formerly of their scope for manoeuvre on a crucially important issue.

1. The negotiations to which these rules of procedure refer and whose conduct they are intended to govern are those referred to in clause 2(1) of the Northern Ireland (Entry to Negotiations etc) Act 1996 (hereafter referred to as the "Act").
2. The terms of delegates participating in such negotiations shall be those who from time to time comply with the requirements of Clause 2(3) of the Act, as defined in paragraphs 8 and 9 of Command Paper 2231.
3. Command Paper 2231 sets out the rules of procedure which apply to the negotiations by which these rules of procedure will apply (paragraph 1) and the requirements which apply to the respective negotiations teams which comply with the requirements of paragraphs 8 and 9 of the Act. The rules of procedure which apply to the negotiations for shall be determined by the body in determining the conduct of the negotiations on any particular matter.
4. The duties, functions and powers of the body shall be only such as are granted to it by the Act and as determined by the body in determining the conduct of the negotiations on any particular matter. The rules of procedure which apply to the negotiations for shall be determined by the body in determining the conduct of the negotiations on any particular matter.

DRAFT

New rules to be inserted into the rules of procedure that will regulate the Talks process.]

1. The negotiations to which these rules of procedure refer and whose conduct they are intended to govern are those referred to in Clause 2(1) of the Northern Ireland (Entry to Negotiations etc) Act 1996 (hereafter referred to as the "Act").
2. The terms of delegates participating in such negotiations shall be those who from time to time comply with the requirements of Clause 2(3) of the Act, as defined in paragraphs 8 and 9 of Command Paper 3232.
3. Command Paper 3232 save insofar as it identifies the negotiations to which these rules of procedure will apply (paragraph 1) and the requirements with which the respective negotiations teams must comply in order to participate (paragraphs 8 and 9) shall have no force or binding effect upon the negotiations nor shall it offer any limitations upon it as a body in determining its own rules of procedure for the conduct of the negotiations and the extend of their subject matter.
4. The duties, functions and powers of any chairperson will be only such as are granted to him by these rules of procedure as determined by the teams of delegates participating in the negotiations acting as a body in accordance with these rules of procedure only and any duties, functions or powers purported to be given to any chairperson by the papers dated 6 June 1996 (Scenario for the Opening Plenary, Procedural Guidelines for

CONFIDENTIAL

the Conduct of All Party Negotiations and Draft Agenda for Substantive All Party Talks), or in any other documents shall be of no force or effect save insofar as any of them may be incorporated into these rules of procedure in accordance with such procedure for obtaining the necessary agreement of the parties for so doing.

Mr. Bell - B
Mr. Legge - B
Mr. Leach (LAB) - B
Mr. Steele - B
Mr. Watkins - B
Mr. Wood (LAB) - B
Mr. Beeson - B
Mr. Currie - B
Mr. Hill (LAB) - B
Mr. Lavery - B
Mr. Maccabe - B
Mr. Perry - B
Mr. Stephens - B
Ms. Checkfield - B
Miss Harrison (LAB) - B
Ms. Mapstone - B
Mr. Whysall (LAB) - B
Ms. Collins, Cdb Office via IPL - B
Mr. O'Mahony, TAO - B
Mr. Lamont, RID - B
HMA Dublin - B
Mr. Westmacott (via RID) - B
Mr. Campbell-Bannerman - B
Mrs. McNally (LAB) - B

FILE NOTE

TALKS: MORNING OF 24 JUNE 1986

SUMMARY

Pursuit of revised Rules of Procedure further complicated by the introduction by the DUP of various possible formulations to ensure that the nature of the negotiations cannot be predetermined and will take precedence over any previous agreement. Delayed resumption of full conferral meeting. DUP to pursue their suggested amendments with the DUP and Irish.

CONFIDENTIAL