

CONFIDENTIAL

REF: INT 6

FROM: D J R HILL
 POLITICAL DEVELOPMENT TEAM
 20 JUNE 1996

cc PS/Secretary of State (L+B) -B
 PS/Sir John Wheeler (L,B+DFP) -B
 PS/Michael Ancram (L,B+DENI) -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 -B
 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 (L+B) -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, 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
 (w/o enclosure)
 Mrs McNally (L+B) -B

File Note

TALKS: CONFERRING ON PROCEDURAL RULES - 18 AND 19 JUNE

Summary

A story in (so far) two parts. Considerable progress was made on rules of procedure in a series of constructive exchanges round the table on the afternoon of 18 June. Robert McCartney thrust himself onto the scene but ended up being seduced by the intellectual challenge posed by the issues under consideration. On the Wednesday morning, however, Peter Robinson forced the meeting to address the

CONFIDENTIAL

POLDEVT/279

CONFIDENTIAL

issue of whether Ground Rules had any status or not. By the end of the day, a deal was in contemplation under which

- any necessary "procedural" elements of Ground Rules would be imported into the rules of procedure to make them a free-standing "operational" document
- the two Governments would assert their view of the continuing status of Ground Rules
- the Unionists would not be forced to ascent to Ground Rules.

2. This minute does not deal with the various exchanges - bilateral and in the "Committee" - on the agenda for the rest of the opening plenary.

The Morning of 18 June

3. During the morning the Independent Chairmen's staff, discreetly assisted by David Cooney and myself, drew up a composite set of draft procedural guidelines (Annex A). This skilfully blended the written and oral contributions of virtually all the participants, avoided any substantial departure from the Governments' Procedural Guidelines of 6 June, preserved a significant role for the (Independent) Chairmen and utilised a high proportion of language from the UUP submission. It incorporated (paragraph 3) a statement about the arrangements for chairing the various formations in the negotiations, as a way of allowing the Unionists to argue that they had formally adopted Senator Mitchell and his colleagues as Independent Chairmen. An attempt to incorporate in the preamble a reference to the Ground Rules was vetoed by Senator Mitchell on the prophetic grounds that any such attempt would trigger a row. (He expressed mild irritation to Mr Cooney and I that the two Governments had not asserted their position on the Ground Rules in order to head off trouble, though the complexity of the issue was obviously not fully apparent to him at that point.)

CONFIDENTIAL

CONFIDENTIAL

4. Meanwhile the "Committee" debated the delegations' proposals regarding the agenda for the rest of the opening plenary session.

The Afternoon and Evening of 18 June

5. The composite document was circulated to delegations at 3pm and the "Committee" eventually met at 5pm, some delegations having requested more time to study it. The draft won widespread plaudits. Immediate reactions were as follows:

- (a) David Trimble (UUP) said the composite text had moved the debate forward significantly. The UUP had a number of points of detail to raise, particularly concerning the overlap with Ground Rules (eg its provisions regarding participation in and representation at the negotiations); but their main concerns were over the incorporation of a definition of sufficient consensus which would require the support of a majority of the participating parties, and the proposed arrangements for dealing with Strand 3 issues. On the former he felt it was a difficulty that the rule could in theory prevent adoption, by sufficient consensus, of a proposition supported by the UUP, SDLP, DUP and Alliance Party. On the latter, it was essential that the parties were involved in negotiating an alternative to the Anglo-Irish Agreement.
- (b) Robert McCartney (UK UP) then entered to room and delivered a long polemical diatribe, from a prepared script, mainly critical of the powers conferred on the Independent Chairman by the Scenario document of 6 June. In reply, Senator Mitchell commented briefly that the issues Mr McCartney had raised were not within the group's remit and the paper he had referred to had not been tabled or adopted, so the questions he had

CONFIDENTIAL

CONFIDENTIAL

posed were purely hypothetical. Bronagh Hind of the Northern Ireland Women's Coalition, voicing the general feeling of the meeting, protested at Mr McCartney's discourtesy in making such an ungracious and irrelevant intervention after having absented himself from proceedings for the previous day and a half;

- (c) William McCrea (DUP) endorsed Mr McCartney's points and sought confirmation that the Ground Rules and Procedural Guidelines of 6 June had been set aside. He challenged the reference to the Independent Chairmen in paragraph 3, said that the requirement on Chairmen to "consult" delegations (eg in paragraph 7) was insufficient and sought a definition of "agreement";
- (d) Davy Adams (UDP) indicated that his party was generally content and only had a couple of minor clarifications;
- (e) Seamus Mallon (SDLP) gave the document full support, but couldn't resist taking a poke at Robert McCartney for his ill-mannered intervention. He likened him to the town bully trying to steal the ball, aided and abetted (a reference to William McCrea) by the village idiot. After some alarums and excursions, the latter epithet was eventually withdrawn;
- (f) Billy Hutchinson (PUP) explicitly aligned himself with the UUP, but accepted the document;
- (g) Bronagh Hind (Northern Ireland Women's Coalition) made a sensible and supportive speech, incorporating a number of sharp debating points directed at the DUP, drawing attention to points in the draft rules which should meet declared UUP concerns and asserting that procedural guidelines did not conflict with Ground Rules. She welcomes the proposed incorporation in the

CONFIDENTIAL

CONFIDENTIAL

- (1) The definition of sufficient consensus of a requirement to secure the support of a majority of the participating parties;
- (2) (h) Malachi Curran (Labour) welcomed and supported the draft, noting that it was less prescriptive and gave the Chairmen less autocratic power than the Governments' Procedural Guidelines of 6 June. He supported the proposed definition of sufficient consensus, arguing that the new third limb produced a requirement for any proposition to secure 71% support, halfway between the 66% and 75% figures proposed previously. [In fact his maths is wrong: it could be achieved by parties representing only 52.3% of the vote];
- (3) (i) Dermot Gleeson for the Irish Government supported the composite draft;
- (4) (j) Michael Ancram for HMG did likewise, confirming that HMG was happy to accept the draft as a replacement for the Procedural Guidelines of 6 June.

6. The Chairman then invited participants to go through the text paragraph by paragraph. The ensuing debate was constructive, good-humoured and of a high standard. The most active participant was Peter Robinson but his comments and suggestions, although "legalistic" and irritating to some seemed clearly designed to create the circumstances in which the DUP could fully rejoin the process and accept Senator Mitchell and his colleagues as Independent Chairmen. There was a most interesting and genuine debate on the concept of "sufficient consensus". Eventually the Chairmen agreed that he and his staff would produce a slightly revised version of the composite paper, incorporating a few minor changes agreed in discussion round the table and highlighting those few points of disagreement which remained to be considered.

CONFIDENTIAL

CONFIDENTIAL

7. The main points raised in the discussion were

- (1) Peter Robinson's proposal to change the title to "Rules of Procedure" was accepted
- (2) it was noted that "agreement" meant as agreed under the arrangements for decision-taking set out in paragraphs 23-28
- (3) on paragraph 2 (listing the formats of the negotiations) the Unionists weren't keen on the reference to a "plenary" but the two Governments and other delegations supported the idea that there were a number of cross-strand issues and reports from the individual strands [and other sub-committees if any] which could really only be handled in a plenary format. Peter Robinson agreed to "park" the issue
- (4) the debate on the identity of the Chairmen (paragraph 3) was a mini re-run of the previous week although the UUP remained aloof. Peter Robinson worked himself carefully round to the position that if invited to adopt the proposed arrangements the DUP would vote against them but, being democrats, would accept any decision reached by sufficient consensus (thus creating the opening for the DUP to resume full attendance under Senator Mitchell's Chairmanship). Unfortunately, Malachi Curran (Labour) and Seamus Mallon got a little overheated by Robert McCartney's observations on the Chairmanship issue, asserting (correctly, as Sean O hUiginn confirmed) that the appointment of the Chairman had already formally been acknowledged in plenary and pressing for this to be formally accepted again around the table. During a brief adjournment they were persuaded not to pursue the point on the basis that it would force the DUP and (more particularly) the UUP into a difficult corner;

CONFIDENTIAL

CONFIDENTIAL

- (5) there was a general welcome for paragraphs 5-9, on the role and responsibilities of the Chairmen, with Peter Robinson seeking somewhat more from the Chairmen than a requirement to "consult". The following morning he suggested "have due regard to the views of" which seemed generally acceptable, including to Senator Mitchell;
- (6) David Trimble secured support for an amendment making clear that any formation could establish a sub-committee. He also sought (on paragraph 11) to fetter the discretion of the Independent Chairmen to convene a plenary. This was generally resisted. Senator Mitchell made clear privately that he regarded the discretion as of fundamental significance;
- (7) paragraphs 12-14 on the role of the Business Committee gave rise to no difficulties
- (8) paragraphs 15-22 on the conduct of proceedings was accepted subject to the addition of "time" before "limit" in paragraph 19;
- (9) paragraphs 23-28 on sufficient consensus - see below
- (10) the limitation on references to the Forum (paragraph 29) was not challenged. [There was no reference to the omission of any power for the negotiators to take note of any submission they might receive from any source, including the Forum];
- (11) Peter Robinson challenged the proposed liaison arrangements for keeping the Irish Government informed of progress in Strand One (paragraph 30), arguing that this should be conducted via the Business Committee. This was supported by the UDP, but not pursued with any vigour;

CONFIDENTIAL

CONFIDENTIAL

(12) Mr Trimble criticised the proposed arrangements for involving the parties in the discussion of Strand 3 issues, only slightly hampered by the fact that the UUP proposals in this regard were less extensive than the Government's proposals which were reiterated in paragraphs 31-34. His criticisms of the previous consultation arrangements were supported by the SDLP and Alliance Party, and Robert McCartney joined in with a lengthy explanation to Senator Mitchell of exactly the pro-Union people of Northern Ireland had no faith whatsoever in the British Government's approach to the negotiation of Strand 3 issues. Mr Trimble exploited a semantic distinction in the Ground Rules and Procedural Guidelines to suggest that inter-governmental issues, including confidential security issues, should be conducted in "Strand 3" whereas relationships between the peoples of Britain and Ireland should be discussed in "Strand 2" format. More generally, he and Reg Empey argued for an input to Strand 3 "as of right" rather than by "grace and favour" and were impervious to arguments that the Governments had already conceded this. Ultimately it was left that the UUP and the two Governments would prepare alternative language overnight;

(13) there was no comment on paragraphs 35-37 (notes of meetings);

8. Mr Trimble registered two additional points which needed to be incorporated in any revision of the document

(14) participation. This had been tackled in the legislation and in paragraph 8 of Ground Rules but was not being applied in the current informal discussions as non-elected delegates were being allowed to speak. The issue of who could represent a party in the

CONFIDENTIAL

CONFIDENTIAL

negotiations needed to be settled. There might also need to be a rule on numbers present in the Conference Room;

- (15) the provision in Ground Rules paragraph 17 about excluding those who demonstrably dishonoured their commitments to the Mitchell Principles needed to be carried forward into the Rules of Procedure.

9. Mr Robinson also raised two additional points:

- (16) the requirement on the Chairmen to observe confidentiality was not sufficiently dealt with by paragraph 8 of the Rules of Procedure;

- (17) there also needed to be a restriction on the Chairmen's contacts with non-participants.

10. The discussion on sufficient consensus was of a high quality, marked by an acknowledgement on all sides of the value of promoting inclusivity and of the important role of the smaller parties; and included some notably more constructive contributions from Robert McCartney. Peter Robinson confined himself to seeking clarity as to what the rule meant: following an observation from Sean O hUiginn it was ultimately agreed that the requirement for a "clear" majority in paragraph 27 was paradoxically contributing to a lack of clarity, and should be deleted. There seemed no disposition to challenge the desirability of a degree of discretion, in order to avoid a situation in which a mathematically sufficient consensus failed to produce a politically sufficient consensus; or the view that the discretion (in paragraph 25) should rest with the Chairmen. There was extensive discussion of the case for and against incorporating a third limb in the definition of sufficient consensus, to require a majority of participating political parties. The SDLP supported it on the general ground of inclusivity but then seemed to be persuaded by the argument put by others, including Quentin Thomas, that making

CONFIDENTIAL

CONFIDENTIAL

it an imperative condition could lead to an outcome which many would find nonsensical. The Alliance Party clearly didn't like the proposal and the UK UP and PUP, despite their small party status, also lined up with the UUP and DUP in the interests of democracy. Labour and, vociferously, the Northern Ireland Women's Coalition argued for retention of the third limb and it was eventually agreed that the proposal should be left for further consideration overnight with the general impression that it would not in the end be carried, and might be downgraded to a relevant consideration.

11. An interesting by-product of the debate was the contrast which Robert McCartney drew between the notion of sufficient consensus and the nationalist attitude that Irish unity should be brought about on the basis of the support of 50% plus 1 of the people of Northern Ireland. Seamus Mallon, rather enigmatically, replied that he sympathised with this and had "consistently made the point that one cannot invoke a mathematical position which one is politically incapable of delivering".

12. At the close of business on 18 June, at nearly 10.30pm, the Chairman announced that his staff would produce a further revision of the composite text, including agreed changes and proposed alternatives and highlighting the few remaining areas of disagreement. Robert McCartney played a handsome tribute to the Chair. Everyone felt very pleased with themselves. Seamus Mallon commented that it was "one of the good days".

Wednesday 19 June

13. On Wednesday the mood changed rapidly. Peter Robinson, having carefully steered around the issue for the whole of the previous day, deliberately ran discussion onto the rock of whether the Ground Rules had any status or not. (This subsequently gave him the press line - for the media who had gathered to cover the planned plenary - that "Today was not a good day for Mr Trimble" [because it

CONFIDENTIAL

POLDEVT/279

CONFIDENTIAL

had become clear that the Talks participants were not working on a clean sheet of paper but were working within the "straightjacket" of the Ground Rules]).

14. The UUP were angry at being ambushed in this way but also made clear that if they were asked to acknowledge Ground Rules they would have to refuse because there were elements in it to which they objected: they were happy that the two Governments should stand by Ground Rules as a statement of their position on various issues, but could not accept it themselves as a basis for the Talks.

15. The SDLP, by contrast, asserted the complete inviolability of the Ground Rules (although Mark Durkan signalled the pragmatic way forward of incorporating in the rules of procedure any procedural points from the Ground Rules which might be necessary to make them self-sufficient). The Irish Government also asserted the fundamental significance of the Ground Rules and their continuing moral and legal significance for the negotiations. In a memorable but not very effective intervention the Irish Attorney General (Dermot Gleeson) upheld the sovereignty of the UK Parliament (!) as part of his submission that the reference to the Ground Rules in the Entry to Negotiations etc Act rendered them immutable. Debate degenerated into a series of running battles around these themes, with periodic salvoes from Robert McCartney raising the temperature within the Unionist camp and around the table generally.

16. During one of a series of adjournments the Secretary of State met David Trimble, John Taylor and Reg Empey and eventually drew from them the acknowledgement that if the Rules of Procedure could be made self-contained, through the incorporation in them of any necessary procedural points from the Ground Rules, they would be happy not to press the "theological" question of the status of the Ground Rules. They subsequently tabled a document (timed 1.10pm) listing those paragraphs of Ground Rules they wanted to incorporate in the Rules of Procedure. Privately they signalled, including to the Irish, a readiness to consider other bids.

CONFIDENTIAL

CONFIDENTIAL

17. It proved more difficult to sell this to the Irish. After a short formal plenary and a further brief session of the "Committee" the Secretary of State had a word with Mr Spring and subsequently the two Government delegations had a lengthy meeting. Sean O hUiginn adopted the hardline position that even if, "for the convenience of delegates", some paragraphs of Ground Rules (he argued for 15 or 20 of them) were reproduced in the Rules of Procedure, it would have to be accepted that they were completely unamendable, so that there was no question of the Ground Rules being put in issue. His flank was turned by pointing out that several of the Rules of Procedure already agreed represented elements of Ground Rules which had been modified, adapted or expanded; and that the two Governments' Procedural Guidelines of 6 June explicitly acknowledged that the Ground Rules could be amended by agreement. Irish Ministers, deplorably undisciplined, subsequently seized on paragraph 7 of the Ground Rules as putting beyond doubt the ability of the negotiators to draw up their own rules for the conduct of proceedings. The British Government Team attempted to soften the blow of any decision to make the Rules of Procedure self-contained and avoid forcing the issue on the status of Ground Rules by offering to make a statement making clear HMG's view that the Ground Rules provided the essential basis for the negotiations and defined their "character". Ultimately, the Tanaiste seemed to accept the proposition.

18. However, the Irish did not manage to engage with the UUP until mid evening. That followed a further resumption of the "Committee" during which there were further hardline statements of position from the UK UP and DUP but which gave Reg Empey an opportunity to challenge some of Robert McCartney's propositions; to signal the UUP's readiness to accept that Ground Rules were "there in the background" while not being able to sign up to them; and to suggest that the constructive way forward would be to work on developing the Rules of Procedure. Michael Ancram sought an adjournment on that basis and after a re-run of the previous meeting

CONFIDENTIAL

CONFIDENTIAL

with the Irish, who had by then seen the text of the draft statement HMG had offered to make as part of the end-game, they were sent off to see the Unionists.

19. By then the Tanaiste had left but the six (!) remaining Irish Ministers subsequently reported a constructive exchange with the UUP which had appeared to result in a basis for agreement on broadly the lines proposed. It did not appear that any Irish officials had been present and the precise nature of the understanding was not clear. It seemed to be the case that the two sides had agreed that it was either unnecessary or undesirable to incorporate the exact language of the relevant paragraphs of the Ground Rules into the Rules of Procedure, but that the concepts should be incorporated using other language. [The Irish have now confirmed that this was indeed what was discussed and that they are content to proceed on that basis - DJRH 20/6] The question of the agenda for the rest of the opening plenary session also remained open and had a bearing on the various players' positions.

20. The "Committee" then resumed for the last time that day, at about 9pm. Robert McCartney neatly dissected the Attorney General's interpretation of the British constitution. Steve McBride expressed the general concern of the other delegations about the lack of progress, lack of information and lack of opportunity to have a general plenary debate on important recent developments, ie the Manchester bombing, and supported the notion of resuming work on the detail of the rules of procedure. Peter Robinson quoted extensively from Michael Ancram's remarks during the passage of the Entry to Negotiations Bill to illustrate the proposition that the negotiators had the right to draw up their own rules for the conduct of the negotiations and then, in a markedly more constructive mode than he had employed all day, drew the conclusion that "the Command Paper has no standing in terms of how our proceedings are conducted" and supported the idea of working towards a single comprehensive set of rules of procedure.

CONFIDENTIAL

CONFIDENTIAL

POLDEVT/279