Office of the Independent Chairmen

SUMMARY RECORD OF STRAND TWO MEETING - TUESDAY 3 MARCH 1998 AT 1430

CHAIRMEN: Senator Mitchell
                                   Mr Holkeri

THOSE PRESENT: British Government
                                   Irish Government

                                   Alliance
                                   Labour
                                   Northern Ireland Women's Coalition
                                   Progressive Unionist Party
                                   Social Democratic and Labour Party
                                   Ulster Democratic Party
                                   Ulster Unionist Party

1.   The Chairman, convening the meeting at 14.40, stated that before returning to discussing the Strand Two synthesis paper he wished to seek approval of two sets of minutes which had been previously circulated. These were meetings on 10 and 16 February. Hearing no objections, the Chairman declared these minutes approved as circulated.

2.   The Chairman said he now wished to consider response (i) of the synthesis paper. He repeated what he had said in the morning session that the discussion necessarily overlapped the different responses but no one should feel bound by comments on specific points. The Chairman proposed that the session continue until all comments had been received up to and including the final response (n) and then asked participants for comments on response (I).

3.   The NIWC said this was where there was an amount of overlap in terms of the personnel involved in a North/South Ministerial Council and the standing intergovernmental machinery. The party had outlined its position on

this already but with regard to relationships, it wished to particularly highlight the EU dimension and the whole issue of funding whereby a North/South Ministerial Council could take a structured approach to the bidding for funds. The party said it believed some thought ought to be given to a strategic all-island approach through the North/South Ministerial Council. There were also issues of cultural identity which needed to be addressed through the Council as well as through existing governmental machinery inevitably leading to a personnel overlap. The party said that consideration also needed to be given to pilot a scheme whereby civil servants involved in developing policy in each jurisdiction should interleave between North and South to build up practical experience of such work in the other jurisdiction.

4. The SDLP referred to its written response on (i). It believed that relationships between the Council and other institutions should consist of regular briefings across all aspects of activity and particularly in terms of how the North/South Council could promote a co-ordinated approach to the development and implementation of EU policies and administrative matters which had all-island implications. This was, in part, a reference to the future change of status which parts of the island might experience. The SDLP said it placed special emphasis on the need for close contacts and relationships with the EU and while it recognised that representation between the Council and the EU would take place at the highest level, there was also other representation taking place at lower levels and there was therefore a need for a co-ordinated approach across the island to all of this. The Chairman then asked for comments on response (j).

5. The SDLP said that, in the first instance, funding for the Council would be by block grants but other sources of revenue should be explored. The party had in mind the use of VAT receipts and saw merit in exploring other dedicated sources of revenue which could be provided from general forms of

2

taxation. The SDLP said there was a need for an open mind on this issue and the need to explore a range of possibilities other than the immediate and major source of finance. The NIWC said it had proposed a transitional funding package through the EU as well as other external sources such as the United States.

6.   The PUP said that if the body was set up then the British and Irish Governments should fund it. There would also have to be steps taken to ensure that such funding was resourced from additional finances and not from the existing block grant to Northern Ireland. The UUP asked for clarity regarding the SDLP's comments on taxation. The SDLP said it was not suggesting that the North/South Council levy a tax in a direct sense but that a certain segment of existing revenue could be earmarked for Council business, thus providing a demonstration of public support. The party was thinking more along these lines than the concept of introducing direct powers of taxation for the Council.

7.   The PUP said funding should be very straightforward. It should come from the Northern Ireland Assembly and the Oireachtas. No other funding was required. If further funding was needed, the party said it was confident politicians would find a way of securing this. Alliance said it was opposed to any tax levying powers for the Council. It viewed the funding required as coming from the block grant, either on a program by program basis, or from a separate line in the block. The SDLP intervened to point out that it had not advocated tax levying powers for the Council. Alliance said it was very difficult to deal with the funding aspects until decisions were taken on what the Council would do. Funding depended on function. The party said it had questions over the percentage funding contribution between North and South. This needed to be worked out or was perhaps an issue for negotiation between the Northern Ireland Assembly and the Oireachtas. Money was,

however, a key aspect of accountability and the party was sure that both the Assembly and the Oireachtas would be looking at value for money whatever the terms of the respective contributions might be.

8.   The SDLP said it was talking about the possibility of the Council agreeing to earmark certain aspects of funding from tax revenues. It might also be the case that implementation bodies could bring in some money by charging fees for licences etc. The important point here was to think about the issue in open terms. The party said the whole issue of using fiscal measures to drive more of a wedge between economic activity and the environment might open up the possibility that charges against polluters could also be a source. With regard to the percentage contribution, the party said it could be 50/50 on one issue but on another it might be different. The SDLP said account also needed to be taken of the economy of scale in Northern Ireland and the Republic in terms of what joint action would bring and if this could be achieved, some or all of these resources should find their way back into the Council. The party said it didn't want to be negotiating a budget every year through the Assembly and so on. There needed to be a notion of self funding, otherwise it was highly likely that funding would be provided on a zero baseline every year and it couldn't work on this basis. An incentive was required to adopt more flexible financial arrangements and this also made for good public policy.

9.   The British Government said it believed that resources to support the Council needed to be jointly funded by a Northern Ireland Assembly and the Oireachtas. The funding of specific issues would probably be a matter for the Departments themselves. There could also be areas in which the whole of the island might have to be promoted, for example tourism, so different funding arrangements might need to be considered for such activity. Overall,

4

however, resources from the block would be used to fund support and running costs for the Council.

10.   The UUP said it supported the previous comments from the British Government. There was no need for separate budgets to be created for the Council, save for admin support. The party said it would be up to Departments North and South to fund specific projects but there would be no requirement for predetermined budgets for this.

11.   The Chairman asked for comments on response (k). The SDLP said there was a serious issue to be addressed here. A North/South Council would have to have dedicated admin support. The NIWC said it agreed with the SDLP. Admin support could be seconded from the Civil Service in both jurisdictions. The party reminded participants of its earlier point regarding civil servants being seconded to the alternate jurisdiction to enable policy making functions to be enhanced.

12.   The Chairman asked for comments on response (l). The NIWC said that joint consultative bodies could be established on two fronts, between the Dail and the Northern Ireland Assembly and between members of the Seanad and any Civic Forum that might be established in Northern Ireland. Labour said it welcomed any initiative which promoted dialogue. If this meant joint meetings as suggested by the NIWC or local discussions in border areas or meetings of civil society north and south, so be it. The SDLP said a joint body would remove the fears and apprehensions generated by a Council and the North/South co-operation which was proposed. Such a body would also provide an opportunity for politicians in both parts of Ireland to become more familiar with their counterparts as well as with the aspects and operations of the Council. The party said such a body could also provide a scrutiny role or generate the formulation of ideas for the Council.

5

13.   The UDP questioned the need for such a body. The Governments were already represented in the formats proposed and the issue of accountability was taken care of in the relevant jurisdictions. The SDLP said that even if the North/South Ministerial Council was agreed on its terms, it would still wish to see another body alongside it. The party said it would be looking to advance good public policy through this second body. The North/South issues likely to be raised at Ministerial Council level appeared to revolve around economic co-operation but the party said there also needed to be some North/South democratic restraint to monitor vested interests on both sides of the border, not least in the area of energy.

14.   The SDLP said that, viewed from west of the River Bann, there was some sense that Government decisions were taken with specific locations in mind. Regardless of who sat on the Council, the party said it was important that wider geographic interests were able to get a handle on what was going on within that structure. The SDLP said that activities centred around civil servants or standing government arrangements, which were largely located in the greater Belfast area, might not be enough to ensure equal distribution across the region. It was precisely because of this that there should be the means of scrutiny outside the Oireachtas and the Northern Ireland Assembly. This would allow other interests to improve North/South co-operation. The party said it didn't want Ministers and civil servants to run away with the Council and a second body would enhance the ability of its members to effectively scrutinise what was going on.

15.   The Irish Government said there was definite merit in another body with perhaps members of it not being members of the North/South Council. Furthermore such a body could also include members of the opposition, thereby providing a wider base for consideration and reflection. The UDP

6

said it was still worried by the need for another body. Was this just another symbolic gesture? The party said it didn't believe it added any value and wondered was it being suggested just to make one side of the community happy? The UDP said it had been told that Council decisions would have to be supported by both the Oireachtas and the Northern Ireland Assembly so why did the process need another body to keep an eye on issues which were, in effect, already passed the post.

16.   The Chairman asked for comments on response (m). The NIWC said that a lot was already happening, particularly at local authority level. The real question here was how was this all to be co-ordinated. The party said it would propose that it made more sense to establish more formal links between North and South representatives and EU bodies such as the Committee of the Regions and so on. The NIWC said that precedents had already been set here with the Irish Congress of Trade Union meetings being held annually in alternative jurisdictions. If there was to be a Council then its secretariat should be given responsibility for networking with civil society, North and South. There were also informal links occurring within academic society. The party said that when the Council was established, certain funding might disappear as the region moved out of conflict and into peace. On this basis the NIWC said that some thought needed to be given to attempts to sustain and facilitate resources. The party also said it felt that there should be a geographical extension of the work supported by Sub-programme three (cross border co-operation) of the EU Special Support Programme for Peace and Reconciliation beyond the border counties and more generally into civil society in both parts of the island. It was not suggesting any formal structures here but it was concerned about the next 10 years and it wanted to ensure that civil society was not the loser in all this development.

17.   The SDLP said that in its experience of the New Ireland Forum, the Forum for Peace and Reconciliation, the Opsahl Commission and the more recent G7 interface with the process, it had been impressed by the intense interest of those who were out there viewing the political environment. The sheer volume of submissions made served as confirmation of this. The party said it was very impressed by civil society and its recent interaction with the political world. Such interaction was important as a sounding board for ideas. There was a need for the process to see its way to ensuring that this interaction worked but what needed to be decided was at what level should this take place. The SDLP referred to the collapse of the political initiative in 1973/74 and said that perhaps wider society in Northern Ireland hadn't been quite prepared for the outcome and this position contributed to the failure. That debate was taking place in broad society now should be welcomed rather than adopting a sceptical attitude towards it. Politicians were present to serve society and they needed to take account and welcome the input of civil society. The party believed there was a need to support this concept and look for ways to keep this going on a formal basis within Northern Ireland and between the North and South. The SDLP said that listening to the comment produced in the Forum for Peace and Reconciliation, one had to be impressed by the public concern to foster North/South relationships. The party said it endorsed what was being suggested in the debate on the basis that it should apply in Northern Ireland and between North and South.

18.   The PUP said there was no need to face up to a decision on this today. It seemed more sensible to wait and allow a Northern Ireland Assembly the opportunity of reviewing this concept. The party said the reason for the collapse of the political initiative in 1973/74 was purely because the Council of Ireland had been pushed too quickly. The general public didn't understand what was going on and it was therefore vital to ensure that the same position didn't arise again. The PUP said there was no

8

point in worrying about setting up all the bodies at one time. The Northern Ireland Assembly and the North/South body would be a huge task to sell to its electorate in the first instance; therefore attempting to establish other structures would be better left for a later time.

19.   The SDLP said it wanted people, who were not politically motivated but yet were opinion formers, to be able to sell such an agreement to the general public. This wasn't a case of a party political carve up. Participants had to face the fact that some of this input had been genuinely positive and some had been on a favoured basis. It was important that people who showed a real and genuine interest, and had shown a resolve to encourage public opinion, had something of a contribution to make so whatever new political arrangements there were, the participants were committed to making these work with the support of those people. The SDLP said there should be ways in which the process could draw on the insight and good standing of those people and use this in favour of any agreement which was achieved. These people were needed and the participants also needed to be realistic on the requirements for getting any agreement through the referendum stage.

20.   The SDLP continued and said, in relation to the failed initiative of 1973/74, that much comment had already been made about those arrangements coming out at a time when the general public did not have a sufficient grounding in them to support the proposals. The party said that it was therefore important to reduce any such gaps in the current process. Serious mistakes were also made in that period when decisions were taken to close down other bodies and leave all the issues to the politicians. The party recalled, as an example, the decision to close down the non government Community Relations Council because a Community Relations Department had been set up as one such error. The party said that people on the outside were then rejected by such arrangements instead of being able to identify

9

with them. At the end of the day, the party said there was nothing significant or formal about such a proposal, but if either (l) or (m) was not set up, then it was likely that civil society would itself set up its own forums and elected politicians would be in danger of seeing these structures carry more weight than those established on the political side.

21. The PUP reiterated its view that such bodies did not have to be decided at this point. The UDP said it was still unsure about this whole element. It was not sure, for example, whether all the elements of civil society would be interested in a settlement at this time and to look at it from the other side of the coin, going down this route now could fuel another level of division which had to be avoided. The Chairman asked for comments on response (n). The UUP said it was important to get a handle here on how North/South structures were likely to fail. The party understood that the issue of decision making powers in an Assembly had not yet been discussed in Strand One but despite this it therefore questioned the need to introduce further mechanisms in this area. The PUP quoted the response in the synthesis paper and said the issue had already been dealt with earlier. If the arrangements failed at a North/South level then nationalists, if they so desired, could operate in role reversal mode and make them fail at a Northern Ireland Assembly level. At that point it then became the responsibility of the British Government to come in and help. Beyond this the party said it was dubious about fail safe mechanisms. If the participants left the conference room to sell an agreement and were not seen to be determined to carry it through, this would generate a very dangerous position. Alliance said there was no differences between responses (n) and (f). It added that any "big brother" effect such as handing the problem over to the Governments would have a total destabilising effect on the situation.

22.   The PUP said that if there was disagreement at North/South level then surely this would have occurred in either the Northern Ireland Assembly or the Oireachtas beforehand. The party said if a safety net was established then it would be reached for everytime. It was therefore against such a device. The NIWC said consensus would hopefully be the order of the day. In terms of the relationship between the standing intergovernmental machinery and the North/South Council, if there were matters which were outside the remit of the Council then these would be addressed by that intergovernmental machinery. The party said it had to be remembered that the transition through all of this would be a painful period and there was therefore a need to think about the guiding principles and requirements for such a period during which progress towards effective North/South arrangements had to be planned and benchmarked. The NIWC said the process should therefore be looking at a strategic plan for the development of North/South arrangements to be in place for the 2000-2006 period to monitor performance and to act as a monitoring mechanism.

23.   The PUP said one of the best ways of assessing performance would be through the views of the electorate. If the process could reach agreement and in effect change the body politic in Northern Ireland then everyone would be reviewed on this basis. On the other hand if an agreement was set up and then everyone looked to see what should be done when it didn't work, this was simply debilitating. The NIWC said the PUP's comments were almost suggesting that the agreement wouldn't work unless checks and balances were an integral aspect of it. The PUP said it was about people taking responsibility. The NIWC used an example of the introduction of staff appraisal mechanisms to university life and the fact that initially staff saw this as negative. However it was later recognised that it could be used to take criticism on board and be in a position to do something better in future. The party was advocating introduction of such monitoring arrangements for this

same reason. The PUP illustrated its disagreement with this by providing the example of the Taoiseach saying he represented nationalists. If unionists behaved in a manner which nationalists didn't like then nationalists talked to the Taoiseach. The Taoiseach then talked to the Prime Minister who in turn talked to unionists. The party said this was the practical politics of the situation and this would continue to happen. Setting up a safety net or a fail safe mechanism only developed distrust.

24. The UDP said the issue of safety mechanisms could create a negative appraisal of what was taking place. Each community had a dagger at the other's throat in the institutions which were being created - if one fell all would fall. The onus was on those within the institutions to make them work. It would cause difficulties of faith to put a punitive structure in place. Parties were talking of when it failed not if it failed.

25. The SDLP said it had listened to the points made by the PUP and UDP. All parties had limits on how much they were believed, no matter how much they reiterated points. It was true that if there was too much regalia of checks and balances it would hide the structures being created, so the party was suggesting building them into the arrangements, not adding them on top. The loyalist parties were suggesting a "suck it and see" approach, but parties could not be expected to go in on blind trust. Arrangements would have to be built in that took account of distrust. The SDLP had been trying to set out what it needed but also to build in the calculations of what other parties could agree to. In fact the party had taken some criticism for not coming in with its own maximalist line. The party did not know whether it could believe the PUP or other Unionist parties on this matter. Last week it had been told it was a question of not would there be North/South bodies but of working out the details and not front-loading the agreement too much. But today one participant were saying there was no need for North/South bodies at all, while

12

another was saying that nationalist fears were not rational. The fact was that even if the SDLP trusted the PUP, for example, it could not rely on it, and vice-versa. Trust was not enough: questions would be put to parties and they would have to answer them. The electorate would not be impressed by a referendum slogan of "Trust the other side". The party accepted that a panoply of safeguards lessened the degree to which parties could emancipate themselves and step into new politics, and negative perceptions would have to be minimised as much as possible. The parties needed these arrangements not just to ensure respect for their own side but also to restrain themselves.

26. The SDLP, for example, did not want the temptation or the ability to run away with Strand Two and down tools in Strand One, nor to risk being trapped in Strand One waiting for Strand Two to start. However, the impression given by the unionist parties today, with everything in Strand Two to be looked at later or left to an Assembly, obviously reinforced the party's concerns. If nationalists were to swallow an Assembly etc., they were entitled to ask what was up front in the agreement for them. The SDLP had stressed before that Strand Two was not just a political day release for nationalists. Unionists were already guaranteed that in the outcome of these talks they would continue to be able to participate fully and proportionately in their right to political expression of their identity. Nationalists did not have that. If nationalists could say that an agreement was not ideal but it did make an allowance for them, allowing them to work both with unionists in Northern Ireland and with their fellow nationalists in the rest of Ireland, they would be able to see what was in the agreement for them. However, if Strand Two was effectively on hold, it would be impossible to sell an agreement within the party, never mind on the streets.

13

27.   The PUP said it understood nationalists' desire for a proper political link with the rest of Ireland. But nationalists would have an effective veto in an Assembly, while the unionists would supposedly have a corresponding safeguard in that decisions in cross-border bodies would be by consensus. The party doubted the strength of this safeguard, as a genuine disagreement on an issue in these bodies could lead to a threat by nationalists to bring down the Assembly if unionists did not give way. Potentially that was possible, if there was a mechanism forcing the parties to agree. The SDLP said there seemed to be some confusion as to what was under discussion. It was not a question of a mechanism to enforce agreement on specific items, but rather the possibility of a continuing failure to reach agreement, amounting to a failure of Strand Two to operate. It had been accepted that on individual items, propositions would fall if they could not command a consensus. If the only fail-safe mechanism was to bring the whole house down, that was not very satisfactory. The party wanted to be positive, but there had to be checks and balances. An agreement could not just rely on undertakings or trust among the parties here, as party strengths could change greatly over time. The PUP and the UUP both stressed that it was in the interest of their communities to reach an agreement. They would honour their responsibilities in any agreement. The SDLP said again that an agreement needed more than trust. Even if parties could trust each other, they could not rely on each other. The UDP said Unionism had a deep reluctance to see a mechanism put in place whereby the two Governments acted as adjudicators when unionists misbehaved. It was in unionists' interest that the agreement work, but there was no need for a sledgehammer to crack a nut. Rather than concentrating on how to force agreement, it might be better to ensure that the arrangements provided no incentives to parties to block agreement.

28.   The PUP said it disagreed that today had not been a good day. If contributions had been made with the same passion six months ago,

14

agreement might already have been reached. Discussions were still talking round and round an agreement, but were getting very close to it. Last week parties had been discussing what they needed to sell an agreement. Many of the bigger difficulties had been overcome, and what was left to be agreed was probably not what anyone would have foretold a year ago. The SDLP said it was surprised by the intensity of the discussion on this item, which was only one of 14 questions considered. All of the other questions had concentrated on how to approach North/South co-operation in a positive way and make it work. It was only prudent that some reference be made to the possibility of the Council failing. How would any commitments entered into under the Council be managed if it failed - presumably by the Governments? Everyone had to recognise the great negative ability of each side - proven in 30 years of vetoes - to stop things happening.

29.   The Chairman asked the SDLP how they dealt with the contention which had been made that if the agreement included explicit provision for the eventuality of failure, that would make failure more likely? What advantage of making it explicit offset the greater likelihood of making it a self-fulfilling prophesy? The SDLP said it imagined it would not be unusual in an international treaty to make clear what happened if the agreement ceased to operate - was there a return to the *status quo ante*? For the party, the political requirement to make it explicit was stronger the less specific the agreement was. In other words if parties committed themselves to specific arrangements in Strand Two the need was less strong, but the more Strand Two was left as dots to be joined up later the more the party would need explicit provision for failure of the Strand to operate. The Chairman observed that it was another instance of the interdependence of the arrangements.

30.   The UDP said it did not want the two Governments as adjudicators. How could the Irish Government adjudicate on disagreements in North/South

15

bodies when it was a direct participant? The UUP did not think treaties usually contained provision for failure, although they often contained provision for review. Alliance felt the debate was a bit confused. Surely the SDLP would presumably not agree to a package that did not put meat on the bones of Strand Two, so the need for explicit fail-safe provisions would presumably not arise. The party could not contemplate North/South structures not working if they were part of an overall agreement. Some individuals might not fulfil their duty of service, but they would not last long. The SDLP pointed out that parties had not agreed the concept of duty of service, nor the remit of the Council, nor the implementing bodies, and generally did not seem to want to write in very much. So the party naturally worried about a failure of Strand Two to operate, not least after the backsliding evident in the negotiations in recent weeks. The PUP noted that the discussion was now about the failure of the structures to operate at all. The party did not see this as in any way likely, and called for a more positive outlook. The difficult part was reaching agreement: once in place the party was confident that the structures, including North/South bodies, would work well. The SDLP said it wanted to be positive, but others needed to be positive and comfortable about what they were prepared to write in to an agreement. The party had to assume there was a political reason for not wishing to include things, and it had plenty of experience with parties who said it was not the spirit but the letter of an agreement which counted.

31.   The Chairman said that concluded the itemised discussion of the synthesis paper. There had been a good deal of discussion, which gave a basis for revising and narrowing the paper. He had gained a much better understanding of the positions of the parties and felt the differences had narrowed. He would ask his staff to refine the paper. It had been an encouraging discussion: candid, and based on the assumption of an agreement and the need to persuade the public to support it. The discussion

provided a solid basis to focus more closely on how to bridge the gaps and accommodate parties' positions without sacrificing principles. The Chairman said it was also very important for the parties themselves to consider what steps they could take to accommodate the needs of others. He had also noted the practised skill displayed by parties in antagonising each other through use of key words and phrases, and appealed seriously to parties to use the same mastery of language to avoid arousing antagonism instead. The UUP asked about the status of any revised paper. The Chairman said he had nothing particular in mind. The paper discussed today had tried to synthesise the parties' responses to questions put to them by the Governments. He thought to use today's debate to try to refine that paper further. He would consult with the notetakers as to what had been said, and ask his staff to prepare a revised synthesis paper. This would obviously have some repetition, but would hopefully help move things along. He was open, of course, to alternative ways to proceed if parties wished to suggest them. Hearing no further comments, the Chairman adjourned the meeting at 16.52. Strand Two would meet again at 10.30 on Tuesday 10 March.

Independent Chairmen Notetakers
9 March 1998