

CONFIDENTIAL



B/L

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

DESK IMMEDIATE

cc PS/Secretary of State(L+B) -B
PS/PUS(L+B) -B
PS/Sir David Fell -B
Mr Thomas -B
Mr Legge -B
Mr Leach -B
Mr Bell -B
Mr Watkins -B
Mr Steele -B
Mr Wood(L+B) -B
Mr Stephens -B
Mr Beeton -B
Mr Maccabe -B
Mr Lavery -B
Mr Perry -B
Mr Currie -B
Miss Harrison -B
Mr Whysall -B
Ms Checksfield -B
Ms Mapstone -B
Mr Campbell-Bannerman -B
Mr Lamont, RID -B
HMA Dublin -B
Ms Collins, Cabinet Office -B

J. M. MERVILL ✓
J. BLACK
A. MERVILL 18/6.

PS/Michael Ancram(L+B) -B

(Signed)

PROCEDURAL RULES AND THE AGENDA FOR THE OPENING PLenary

I attach an analysis of the issues likely to be covered in the process of conferring on procedural rules and the agenda for the opening plenary. I am grateful to Miss Harrison for the table of derivations at Annex A.

2. I trust this will prove valuable to the British Government's representatives at Monday's and Tuesday's meetings. It may be reassuring in that it illustrates that

- the areas of difficulty likely to arise on the Procedural Guidelines are fairly limited, and should be capable of resolution

CONFIDENTIAL

CPLMAIN/AJH/8036

- there may be ways of simply avoiding a crunch on the agenda for the Opening Plenary.

Briefing Note

This could mean that the Committee will be able to complete its work without significant controversy in time to report by Wednesday lunchtime. The DUP and UK UP could still disrupt or delay progress, but if Peter Robinson is the DUP representative that may not happen. possible approach to them.

3. A question for consideration over the weekend, to which we can return at Monday morning's pre-brief, is whether to show this paper, or a shorter version of it perhaps paragraphs 1 to 13 with a brief additional reference to the agenda for the opening plenary) to Senator Mitchell. He has informally asked for such an analysis - from the two Governments. There has not been time to clear anything with the Irish, even if that were the right thing to do; and there are a number of potential downsides. Some of the points in the June paper might be conveyed at the 9.30 meeting on Monday morning with Mr Spring and the Independent Chairmen: I will provide a separate brief. agenda for the opening plenary raises far more substantive questions about the nature of the "address" to the International Body's proposals on decommissioning.

(Signed)

Procedural Rules

D J R HILL

POLITICAL DEVELOPMENT TEAM
EXT OAB 6591

The June Procedural Guidelines apply (except where clearly stated otherwise), including the British Chairmen, in respect of Strand 1 issues and the two Governments in respect of "Strand 3" issues. This should be borne in mind in drawing up procedural rules for the Talks as a whole: they should not be cast in terms which apply solely to the Independent Chairmen.

Restrictions on Procedural Rules

6. Self evidently any rules must be consistent with the Ground Rules which constitute the basis on which people stood in the elections of 30 May, by virtue of Section 2(1) of the Entry to

CONFERRING ON PROCEDURAL RULES

Briefing Note

1. The purpose of this note is to identify the various categories of issues likely to arise in the consideration of procedural rules and the agenda for the opening plenary session; and to suggest a possible approach to them.

Introduction

2. The derivation of the elements of the Procedural Guidelines circulated by the two Governments on 6 June is set out at Annex A.
3. The Irish side and SDLP ought not to get too hung up on the precise text as it was only compiled on the late afternoon of 4 June and reviewed briefly by the Liaison Group on the morning of 6 June.
4. The agenda for the opening plenary raises far more substantive questions about the nature of the "address" to the International Body's proposals on decommissioning.

Scope of Procedural Rules

5. The 6 June Procedural Guidelines apply (except where clearly stated otherwise) to all "Chairmen", ie including the British Government in respect of Strand 1 issues and the two Governments in respect of "Strand 3" issues. This should be borne in mind in drawing up procedural rules for the Talks as a whole: they should not be cast in terms which apply solely to the Independent Chairmen.

Restrictions on Procedural Rules

6. Self evidently any rules must be consistent with the Ground Rules which constitute the basis on which people stood in the elections of 30 May, by virtue of Section 2(1) of the Entry to

Negotiations etc Act 1996. Those Ground Rules were the product of the intensive consultations which took place with most of the parties in March. While it is accepted that the participants in the talks could amend or add to the Ground Rules, this would probably require unanimity.

Issues Raised by the Procedural Guidelines

7. These might be summarised as

- (a) "purely procedural" (paragraphs 3 to 9, 13 to 15, 28 to 30 of the 6 June Procedural Guidelines). There is, naturally enough, considerable overlap between the paper of 6 June, the procedural rules which applied in 1992 and the proposed procedural guidelines circulated by the UUP on 11 June;
- (b) decision-taking and sufficient consensus (the chapeau and paragraphs 16 to 21);
- (c) specific procedural points relevant to "Strand 1" and "Strand 3" issues (paragraphs 23 to 27) or to the Forum (paragraph 22);
- (d) arrangements for chairing the opening and subsequent plenary sessions and the various other strands of the negotiations (paragraphs 2, 10 to 12).

8. There are references to the role of the Chairman at several places in category (a), (b) and (d), but most should not prove particularly difficult to resolve.

9. The definition of "sufficient consensus" may not prove contentious as between the larger parties (although Unionists may argue for weighted majority); but will spark a lively debate with the smaller parties, especially the Northern Ireland Women's Coalition who have circulated a paper on the subject.

CONFIDENTIAL

10. The cross-reference to the Forum (paragraph 22) may be a sore point for Unionists, but the position is secured in the Entry to Negotiations etc Act.

References to the Role of the Chairman/Independent Chairman

11. In the pre-plenary meeting on 10 June Mr Trimble identified the references about which he had reservations, including

- (a) paragraph 4, first sentence: relevant Chairman's discretion implied by "as he considers appropriate";
- (b) paragraph 4, second sentence: relevant Chairman's discretion to refuse requests for adjournments;
- (c) paragraph 8: relevant Chairman's ability to give final rulings on questions of procedure and order;
- (d) paragraph 12: Independent Chairman's discretion to convene further meetings of the Plenary;
- (e) paragraph 14, second sentence: relevant Chairman's power to "determine" the timing and duration of meetings;
- (f) paragraphs 16 to 19: relevant Chairman's role in establishing consensus and promoting agreement;
- (g) paragraph 21, first sentence: extension of Ground Rules description of "sufficient consensus" to embrace a (subjective?) judgement by the relevant Chairman.

12. Most of these seem unlikely to give rise to any real difficulty:

- (a) and (e) are not major points as consultation with the participants is required or implied; (b) and (c) have already effectively been conceded by the UUP as they were incorporated in the draft procedural rules they circulated on 11 June; the role

CONFIDENTIAL

CONFIDENTIAL

described at (f) may well turn out on examination to be uncontentious; the need for any judgement by the relevant Chairman in the circumstances referred to at (g) is unlikely ever to arise; the discretion at (d) could perhaps be qualified, possibly with a reference to consultation in the Business Committee, but hardly amounts to "dictatorial" power.

and the UUP:

13. Rules on decision-making and "sufficient consensus" are rendered necessary by the fact that the current talks (by comparison with 1992) involve more parties with a much wider range of views, including some with minimal electoral support. A rule of unanimity would probably lead to deadlock: "sufficient consensus" as defined in paragraph 24 of Ground Rules offers a way through. There is no sign of the larger parties being opposed to it as a concept but the smaller parties, especially the Women's Coalition, are likely to press for a supplementary rule that "sufficient consensus" should also require the support of at least a majority of the delegations present. This might be difficult: anything supported by the UUP and SDLP (as will be necessary to achieve sufficient consensus anyway) would be likely to secure support from Alliance and at least two of the smaller parties, but in principle the proposed adaption could prevent acceptance of a deal supported by parties representing over 90% of the electorate.

Agenda for the Opening Plenary Session

14. As Senator Mitchell confirmed to Jeffrey Donaldson on 12 June the discussion of the agenda for the opening plenary will also start from a clean sheet of paper. Besides the two Governments' proposal a rival draft was circulated by the DUP and UK UP, with general UUP endorsement, on 10 June. Discussion may open up discussion of the whole "Opening Scenario" paper, though we should try to resist that as it could lead in to an unproductive reassertion of positions on the decommissioning issue.

15. One approach might simply be to acknowledge that the "Scenario" describes how the two Governments will approach the "address" to the International Body's proposals on decommissioning in the opening

CONFIDENTIAL

CONFIDENTIAL

plenary. Other participants will have their own views: the important thing is to focus on the proposed agenda.

16. The proposed agenda does of course encapsulate the basic political deal on which there is a reasonable amount of common ground between the Irish (and presumably the SDLP), the Government and the UUP:

- (a) all are prepared, with varying degrees of reluctance inspired by different considerations, to support the "approach" to decommissioning set out in paragraphs 34 and 35 of the International Body's report;
- (b) all accept that there must be a substantive "address" to the International Body's proposals on decommissioning in the Opening Plenary Session;
- (c) all are ready to contemplate the establishment of a sub-committee of the plenary to take forward the International Body's proposed approach to decommissioning;
- (d) all accept that the plenary must provide evidence that a meaningful and inclusive process of negotiation is genuinely on offer; and that this should be reflected in agreement on [procedural rules and] a comprehensive agenda.

17. The key outstanding issues are

- what "triggers" the establishment of the proposed sub-Committee of the plenary, and
- should (d) come before or after the address to decommissioning or (as the proposed agenda for the opening plenary seeks to achieve) should they be done in parallel?

CONFIDENTIAL

CONFIDENTIAL

18. The central proposition in the "Scenario for the Opening Plenary Session" is that

- the Independent Chairmen
- after open discussion in the plenary

20. All this will require an essentially political feel or understanding - should satisfy himself formal consideration of procedural rules and the agenda. Some minor adjustment to the proposed - that there are clear indications of good intent on the part of all the participants to work constructively and in good faith to secure the implementation of all aspects of the [International Body's] Report

Other issues - in the context of an inclusive and dynamic process which builds trust and confidence as progress is made on the issues

21. Mr Trimble identified other specific reservations about the Independent and that's role as set out in the "Scenario for the Opening Plenary Session":

- once he has reported that he is so satisfied the two Governments would move the establishment of the proposed sub Committee, under his Chairmanship
- the Independent Chairman "may" periodically brief the plenary but in any event the progress of the sub-Committee would be reviewed in September.

19. Mr Trimble and other Unionists have made clear that they are not prepared to leave the judgement as to whether there are sufficiently clear "indications of good intent" to the Independent Chairman. However, as the indications have to be given in "open discussion in the plenary", the Independent Chairman's report has to be made to the plenary and the sub Committee can only be established by the plenary, there may not actually be much to argue about (although the

CONFIDENTIAL

CONFIDENTIAL

DUP and UK UP will hold out for a much tougher test and the UUP cannot afford to concede any more than they have already. Mr Trimble has already asserted that he wants to see arms being handed up (? by the time of the September review) before the Talks move on to begin consideration of the substantive political issues.)

20. All this will require an essentially political deal or understanding, probably outside the formal consideration of procedural rules and the agenda. Some minor adjustment to the proposed agenda may be feasible, but it will be important to ensure that the opening plenary concludes by launching substantive political discussions in the three strands so that there is not an exclusive focus on decommissioning in the period before September.

Other Issues Arising on the Scenario Paper

21. Mr Trimble's remarks to the pre-plenary on 10 June also identified other specific reservations about the Independent Chairman's role as set out in the "Scenario for the Opening Plenary Session":

(a) paragraph 4, fourth sentence: the Independent Chairmen are invited to assist the two Governments in giving effect to their joint commitment under paragraph 15 of the Ground Rules to "ensure that all items on the comprehensive agenda are fully addressed in the negotiating process and ... [to do so] with a view to overcoming any obstacles which may arise";

(b) paragraph 4, final sentence: the Independent Chairmen are able to propose alternative options (for chairing different aspects of the negotiations) to the two Governments in the light of the requirements of the negotiations or as circumstances warrant;

CONFIDENTIAL

(c) paragraph 9, third sentence: the judgement as to the acceptability of the comprehensive agenda appears to be left to the Independent Chairman;

(d) paragraph 11, first sentence: see above;

(e) paragraph 13, final sentence: the Independent Chairman appears to be given discretion over when to report to Plenary on the progress made in the Sub Committee.

22. Point (d) is discussed above: the others should be capable of resolution. The invitation at (a) is a matter for the two Governments and arguably not contentious. Point (b) is perhaps overtaken by the acknowledgement by the two Governments on 11 June that arrangements for chairing the negotiations should be acceptable to the participants. As to (c) it is already acknowledged that the comprehensive agenda must be adopted by plenary. Point (e) should not be a problem as all the parties will be represented on the sub Committee and plenary will in any event express a view on when it wants to receive reports from the sub Committee: however, it could be desirable all round for the Independent Chairman to have discretion to report, eg, unexpected developments.

Handling the Discussion

23. The most contentious issues arise on the agenda for the opening plenary so it would probably be better to encourage the Chairman to take the procedural rules first.

24. As to the procedural rules, a majority of the delegations may well express at least broad support for the Procedural Guidelines of 6 June, which might justify a proposal to take that as the base document. However, reservations will be expressed by

- all the Unionist and Loyalist parties about the role of the Chairmen/Independent Chairmen

CONFIDENTIAL

- the smaller parties about the definition of sufficient consensus.

25. It may therefore be easier to take the discussion forward by considering in turn

- (a) the "purely procedural" elements of the 6 June procedural guidelines, alongside parallel texts (1991/92 rules, any UUP proposals etc)
- (b) decision taking and "sufficient consensus" (the chapeau and paragraphs 16 to 21 of the 6 June Procedural Guidelines alongside other proposals, eg from the Northern Ireland Women's Coalition)
- (c) specific procedural rules for "Strand 1" and "Strand 3" issues and the link to the Forum (paragraphs 22 to 27 of the 6 June Procedural Guidelines and any equivalent proposals from the parties)
- (d) any remaining issues covered in the 6 June Procedural Guidelines or raised by other delegations.

The British Government team could encourage or support any such proposition.

26. Discussion of the agenda for the opening plenary session may open up the "Scenario", although we should try to resist that. Ultimately there seems very little room for manoeuvre: the hope might be that given an opportunity to explain and probe positions and seek reassurances and understandings the deal encapsulated in the Scenario and the proposed agenda will stick, at least so far as the Irish Government, SDLP and UUP are concerned.

Political Development Team
NIO
14 June 1996

PROCEDURAL GUIDELINES FOR THE CONDUCT OF SUBSTANTIVE ALL-PARTY
NEGOTIATIONS - 6 JUNE 1996

CONCORDANCE

GUIDELINES

ORIGIN

Format

Paragraph 1

Paragraphs 18, 19, 20, 21 and 22
of Ground Rules for Substantive
All-Party Negotiations.

Chairing the Negotiations

Paragraph 2

Quote from Paragraph 4 of the
"Scenario for the Opening Plenary
Session."

Committees and Sub-Committees

Paragraph 3

Paragraph 6 of the Ground Rules
(see also Paragraphs 19 and 20).

Conduct of Proceedings

Paragraph 4

Paragraph 8 of Procedural
Guidelines for the Conduct of
Strand Two - 4 June 1991.

Paragraph 5

New.

Paragraph 6

Based on the first part of
Paragraph 2 of the 1991 Guidelines.

Paragraph 7

Paragraph 12 of the 1991
Guidelines.

Paragraph 8

First Sentence

Paragraph 13 of the 1991
Guidelines.
New.

Second Sentence

Paragraph 9

Second sentence of Paragraph 11 of
1991 Guidelines.

Reference to the Forum

Paragraph 22

An elaboration of Paragraph 7 of
Ground Rules.

Opening of the Negotiations

Paragraph 10

Reference to Paragraph 12 of the Ground Rules and "Scenario for the Opening Plenary Session."

Paragraph 11

Paragraphs 12 and 13 of "Scenario for the Opening Plenary Sessions." and item 10 on Agenda for Opening Plenary.

Paragraph 12

New. But see Paragraph 14 of "Scenario for Opening Plenary".

Agenda

Paragraph 13

See Paragraph 9 of "Scenario for the Opening Plenary Session", item 7 of Opening Plenary Session Agenda and Paragraph 14 of Ground Rules.

Paragraph 14

An elaboration of Paragraph 22 of Ground Rules.

Paragraph 15

Paragraphs 19, 20 and 22 of Ground Rules.

Decision-taking

Paragraph 16

Derived from Paragraph 24 of Ground Rules but with new procedural additions.

Paragraph 17

Paragraph 7 of Ground Rules.

Paragraph 18

Paragraph 24 of Ground Rules.

Paragraph 19

Paragraph 15 of Ground Rules, last sentence.

Sufficient Consensus

Paragraph 20

An elaboration of Paragraph 24 of Ground Rules.

Paragraph 21

Drawn from Paragraph 24 of Ground Rules, with some elaboration.

Reference to the Forum

Paragraph 22

An elaboration of Paragraph 7 of Ground Rules.

RESTRICTED - POLICY

Liaison Arrangements with the Irish Government
in relation to Strand One

Paragraph 23

Paragraph 19 of Ground Rules.

Meetings between the Governments and Political Parties in relation to Strand Three

Paragraph 24

Paragraph 21 of Ground Rules.

Paragraph 25

Paragraph 21 of Ground Rules.

Paragraph 26

Paragraph 21 of Ground Rules.

Paragraph 27

Paragraph 21 of Ground Rules.

Record of Meetings

Paragraph 28

Paragraph 14 of 1991 Guidelines.

Paragraph 29

See Annex to 1991 Guidelines on Staff in Strand Two.

Paragraph 30

New.

RESTRICTED - POLICY