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B/f.

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

3157.
POLITICAL AFFAIR
DIVISION

27 JUN 1996

cc PS/Secretary of State(L+B) -B
PS/Michael Ancram(L+B) -B
PS/PUS(L+B) -B
PS/Sir David Fell -B
Mr Thomas -B
Mr Leach -B
Mr Bell -B
Mr Watkins -B
Mr Stephens -B
Mr Maccabe -B
Mr Beeton -B
Mr Lavery -B
Mr Whysall(L+B) -B
Miss Harrison(L+B) -B
Ms Checksfield -B
Mr Budd, Cab Off, via IPL -B
Mr Lamont, RID -B
HMA Dublin -B
Mr Campbell-Bannerman -B

J. McKERRILL ✓

R. SMYTH

J. BLACK

A. McVEIGH

File Note

RULES OF PROCEDURE: POSSIBLE AMENDMENTS

The 27 June version of the draft rules of procedure and proposed additions contain a number of points of potential difficulty. We have developed a few alternative formulations which may help to get round some of those difficulties, and agreed some of those with the Irish.

2. For reference the main difficulties and suggested alternative formulations are as follows:

Draft Rules

- (a) the UK UP proposal to require a higher level of agreement, than "sufficient consensus" for a final decision on a comprehensive agreement
- we may need to draft a statement for the plenary record

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- (b) the Government's amendment to rule 33 has been accepted and should be substituted for draft rule 33; and the square brackets can be deleted from rules 31-34.

Proposed Additions

- (c) para 2: the definition of the strands
we may need some new language to meet UUP concerns while not running foul of Irish/SDLP fears
- (d) 15: commitment to negotiate
several formulae are on the table. The Irish would be content for us to table the alternative at Annex A1
the Irish have prepared an acceptable formula stating
- (e) 17A: the UUP may propose importing their language (from UU1) into the second sentence
the mechanisms in paragraphs 23-27.
- (f) 28A: contingent agreement
(Signed)
the Irish are content for us to propose "by agreement" in place of "solely on the basis of consensus"
- (g) 30: strand 1 liaison arrangements
the Irish would be content for us to table the formula at Annex A2
- (h) DU1/DU3/SDLP: relationship with Ground Rules
we have floated the text at A3 with the Irish, pointing out that purely procedural issues can be resolved by the Business Committee under rule 12A. They have reservations about the third paragraph but

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accept the desirability of avoiding a direct reference to Ground Rules. The UUP would also be likely to prefer that any issue unresolvable by the Business Committee should be tackled by renewed "conferring" rather than at the initiative of the two Governments

(i) GR17: exclusions

we forced the Irish to acknowledge that a rule was necessary and that this had already been conceded in the "Scenario" paper. We need to try the text at A4 on them. A more elaborate formula, which we might pursue with the Irish if necessary, is at A5

(j) definition of agreement

the Irish have prepared an acceptable formula stating that wherever the word "agreement" occurs it is to be read as meaning "in accordance with the mechanisms in paragraphs 23-27".

(Signed)

D J R HILL
POLITICAL DEVELOPMENT TEAM
EXT CB 22317

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ANNEX A

A1. Possible alternative to paragraph 15

The negotiations in the various formats, committees and sub-committees, will be on the basis of a comprehensive agenda for the negotiations as a whole, adopted by agreement in the opening plenary. Without prejudice to any participant's negotiating position, that agenda will be such as to enable each participant to raise any significant issue of concern to them and to receive a fair hearing for those concerns without their ability to do so being subject to the veto of any other party in the negotiations. Participants may, by agreement, develop or refine the comprehensive agenda.

A2. the participants, any appropriate action.

30. The British Government, as Chairman of Strand One, will keep the Irish Government informed through liaison arrangements agreed between the two Governments and will report the progress which Strand One participants agree has been made.

A3. To replace current Rule 1:

1. The negotiations to which these rules of procedure refer and whose conduct they are intended to govern are, as provided for by Section 2(1) of the Northern Ireland (Entry to Negotiations, etc) Act 1996, the negotiations referred to in Command Paper 3232 (Ground Rules for Substantive All-Party Negotiations) published on 16 April 1996.

2. The conduct of these negotiations is exclusively a matter for those involved in the negotiations. These rules of procedure are adopted for that purpose as the single integrated set of rules of procedure to which the Chairmen shall refer in conducting the negotiations. These rules can only be amended by agreement, in accordance with the decision-making process outlined in paragraphs 23 through 28.

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3. In the event that an issue concerning the conduct of the negotiations cannot be resolved by reference to these rules, the relevant Chairman shall refer the matter to the two Governments who, having due regard to the views of the participating political parties, shall bring forward a proposal for dealing with the issue.

A4. Possible Exclusionary Rule

If it appears, on the basis of any representations made, that any participant has demonstrably dishonoured the principles of democracy and non-violence, and is therefore no longer entitled to participate in the negotiations, the Independent Chairmen will report this to the two Governments for their consideration and, after consultation with the participants, any appropriate action.

A5. Fallback Exclusionary Procedure

If any participant wishes to claim that a party has demonstrably dishonoured its commitment to the principles of democracy and non-violence, it shall present in writing the supporting evidence to the Chairmen, the two Governments and the other party concerned. The Chairmen shall invite the other part to respond similarly in writing.

If, following whatever consultations the Chairmen may convene, the two Governments agree that a party has demonstrably dishonoured its commitment, the Governments shall jointly present a written proposal to the participants that the relevant party be no longer regarded as entitled to participate in the negotiations, together with such evidence as they consider necessary. The party concerned shall be entitled, within 24 hours, to circulate in writing to the participants any response they wish to make. Thereafter, at the first available opportunity, the Chairmen shall put the Governments' proposal to the participants for decision.

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The Chairmen shall immediately establish whether there is agreement or, failing that sufficient consensus on the proposal. If so, the party concerned shall no longer be entitled to take part in the negotiations. If not, the issue will be closed.

Mr Boston - B
Mr Hall - B
Mr MacGill - B
Mr Stephens - B
Mr Harrison - B
Mr Lamont, RID - B
HMA

Mr Whysall - B
CPL

NID BELFAST

CONSTITUTIONAL ISSUES

1. In paragraph 4 of your minute of 24 June to Mr Bell, you suggest that RID might investigate the UWP assertion that the Irish territorial claim in Articles 2 and 3 is in violation of international law and OSCE principles.

2. We have looked into this question a number of times before and consulted FCO Legal Advisers. Their views may be summarised as follows:

The Irish territorial claim has no validity in UK domestic law or in international law. The maintenance of a territorial claim by one state over another is not, however, in itself contrary to international law as long as the claim is pursued exclusively by peaceful means. Neither is a territorial claim contrary to OSCE principles. Principle 1 of the Helsinki Final Act provides for the possibility of changes of frontier by peaceful means and by agreement. References in other Principles to the "territorial integrity" of states and the "inviolability of frontiers" relate to any attempt to change frontiers by force.

(Signed)
R C Hallett

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