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FROM: S J LEACH
Associate Political Director (L)
13 June 1996

cc PS/Sir John Wheeler (B&L) - B
PS/Michael Ancram (B&L) - B
PS/Baroness Denton (B&L) - B
PS/Mr Moss (B&L) - B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Thomas - B
Mr Legge - B
Mr Bell - B
Mr Steele - B
Mr Watkins - B
Mr Wood (B&L) - B
Mr Beeton - B
Mr Hill - B
Mr Currie - B
Mr Lavery - B
Mr Maccabe - B
Mr Stephens - B
Ms Checksfield - B
Ms Harrison - B
Mr Whysall - B
HMA Dublin - B
Mr Jeffrey, Cab Off, via IPL - B
Mr Lamont, RID - B
Mr Westmacott, via IPL - B
Mr Campbell-Bannerman - B

PS/SECRETARY OF STATE (B&L) - B

NEGOTIATIONS: PROCEDURAL RULES AND OPENING SESSION AGENDA

Introduction

The Plenary yesterday endorsed the Chairman's proposal that, to give effect to the 12 June "Possible Approach" paper which broke the deadlock in the early hours of Wednesday, parties should submit by 3.00 pm tomorrow (Friday) their proposals (if any) for procedural guidelines for the negotiations. A group involving the Chairman and two representatives of each of the other participants (Governments and parties) will then meet at 10.00 am on Monday 17 June to begin "conferring" on the papers received. (Each participant will be represented at these meetings by two out of a panel of three nominated to the Chairman. HMG's panel consists of Michael Ancram, Mr Hill and myself.)

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What is "agreement"?

2. The 12 June paper defines the aim of the "conferring" process as to explore fully "points of concern" on procedural guidelines and the agenda for the opening Plenary session, with a report back to the Plenary by lunchtime on Wednesday 19 June. The paper records that the Plenary "will then agree on the procedural guidelines, the rest of the agenda for the opening Plenary session, and any other outstanding points". In practice, it is likely that further work will be needed beyond 19 June before agreement is possible. It is worth considering what "agreement" means, and, more generally the exit strategy from this phase of the negotiations.

3. The DUP and UKUP have focused on "agreement". They argue that the Chairmanships were imposed on them and that there is similar risk that rules of procedure they find unacceptable will be pushed through against their wishes. They would presumably favour a test of unanimity to endorse the rules, without the fall-back of "sufficient consensus" - a clear majority in both the unionist and nationalist communities - outlined in Ground Rules. (While with their modest vote (3.68%) the UKUP would doubtless always favour unanimity, the DUP with 18.8% might take a different view; but if they consider that they and the UKUP are likely to be in permanent isolation, incapable of forming a unionist majority to block sufficient consensus, they would presumably also favour unanimity.)

4. The straightforward answer to these concerns must be that, since the negotiations are currently operating in a rule-less environment, it is for the Chairman to use his discretion in determining how to interpret the 12 June paper. Since that paper states (paragraph 3) that

"... the procedural and other arrangements for the opening Plenary must be to the satisfaction of the participants"

Senator Mitchell is unlikely to want to railroad through decisions on contentious matters in the face of significant opposition (and

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indeed his demeanor so far suggests a real concern to achieve of the accommodation).

5. In the ultimate, if there were a deadlock on the rules, the Chairman might well need to adopt the strategy which he was prepared - but in the event did not need - to use to achieve validation of his own role in the early hours of Wednesday - ie to put the issue to the participants around the table. On any issue, if all the participants except the DUP and UKUP were content, that would represent a clear majority of the valid poll (the votes of the UUP, SDLP, Alliance, PUP, UDP, NIWC and Labour together total 59.65%) and a clear majority in both communities (since UUP, PUP and UDP support together constitutes 57.03% of the poll in the Unionist community (excluding Alliance)).

6. Proceeding in this way would therefore respect the sufficient consensus test in Ground Rules. (While the 6 June Procedural Guidelines currently have no force, the two Governments would still regard the anterior Ground Rules document as applying - not least because this specifies the three-stranded format for the negotiations which the Irish regard as sacred. It would therefore be difficult for us to accept the Chairman applying a minimum acceptability test requiring less agreement than specified in "sufficient consensus".)

Strategy in this phase would be politically impossible for him to accept the 6 June rules unalloyed. Nor do we have any substantive

7. This analysis points to the likely need, in order to achieve a viable exit from this phase, to find a compromise on the issues under consideration acceptable to the UUP, since without them and sufficient consensus cannot be achieved. The political arguments of course point in the same direction. To neutralise the severe criticism he is receiving from the DUP and UKUP, Trimble needs to secure a resolution of the rules issue which he can present as a success, to demonstrate that he was right to break unionist ranks and that the negativism of the other two parties is a stubborn obduracy ultimately harmful to unionist interests, rather than a staunch defence of the cause.

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8. It follows from this that HMG's position in this phase of the negotiations needs to take account of two contrasting considerations. First, there is the need to maintain our common public front with the Irish. It is unity with them which has enabled us to carry the process thus far - crucially on 11 June, when the Secretary of State called the unionist bluff by making clear that, with Irish support, he would instal Mitchell as Chairman before consideration of the rules, whatever the consequences. This therefore points to the need to support (at least initially) the joint papers which we tabled with the Irish on 6 June - to which they remain committed both for substantive reasons and to avoid being seen to concede any more ground to the unionists (where the SDLP will try to keep them up to the mark even if they are tempted towards flexibility).

9. Second, however, it is indisputable that the UUP move has considerably changed the dynamic of the negotiations. There is now a clear need to ensure that, having broken with the DUP and McCartney, Trimble is not deprived of the political credibility he needs to maintain his freedom of action and perhaps ultimately make possible a negotiated settlement with majority unionist support. This points to the need for an element of flexibility on the issues in the 6 June papers. On procedures, for example, Trimble has justified his acceptance of Mitchell by virtue of the opening he thereby gained to modify the rules of procedure under which the Chairman operates. It would be politically impossible for him to accept the 6 June rules unalloyed. Nor do we have any substantive interest in preserving the procedural proposals if there is a consensus in favour of alternatives. The Irish will of course need to be persuaded that some compromise on the procedural rules, and perhaps also on the issues in the agenda, will be necessary to achieve an effective exit strategy from this phase of the negotiations - and that they will need to deliver the SDLP to this approach. The events of this week suggest that direct contact between the UUP and the Irish may be the most effective way of achieving a compromise; but HMG will clearly also have a role to play (and, indeed, Mr Bell has already started to soften up Mr Donoghue).

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10. Flowing from this analysis, our opening position on the procedural rules must clearly be to table the guidelines circulated on 6 June. The line to take in the Committee on Monday would, I suggest, be on the following lines:

"The procedural rules for the negotiations are by definition about procedure, not substance. The Guidelines circulated on 6 June flowed from careful consideration by the Governments and represent our agreed best effort to provide impartial and comprehensive rules which would help to optimise the operation of the negotiations. We therefore continue to recommend them for this purpose.

It is also true that the Guidelines themselves envisaged the possibility that participants might seek to amend them. If strong arguments are made for changes, then the Government would certainly consider very carefully whether in our view any proposed new rules would be as effective as the 6 June procedures in enabling the negotiations to function smoothly - and a very important indicator of this would, of course, be whether there was a convergence of support from other participants on particular procedural alternatives. The Government does not therefore have a closed mind on this issue - but we start from the position that we have confidence that the 6 June rules would fulfil the necessary function effectively and uncontentionally."

To preserve a common front with the Irish, this line may need to be slightly adjusted when we are clearer what they intend to say at the 17 June meeting.

11. On the agenda for the opening Plenary session, it would seem best for the Government to let other participants make the running. The key area for unionists (probably all three parties) is likely to be decommissioning: they may well wish to promote this item above the consideration and adoption of the comprehensive agenda, and to toughen up the handling of the issue proposed in paragraphs 11 and 12 of the 6 June "Scenario" paper. On the other side, the Irish on

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past form are likely to refuse to contemplate any toughening in this area. Unlike the procedural rules (where little is really at stake except **amour proper**, and the Irish might be brought to accept changes in the interests of furthering the process) the decommissioning issue bears very substantively on Irish (and indeed our) hopes of achieving a renewed IRA ceasefire and therefore bringing Sinn Fein into the process.

balance of interests.

12. Our initial negotiating stance on the agenda should therefore presumably be to **support** the 6 June opening Plenary agenda (ie items 5-11, since the others have now been completed) with no suggestion of give. But if there was **agreement**, there would be little ground to resist changes to say, the **order** of the agenda. The **substance** of how decommissioning is handled, as set out in the paper, is however a different matter: that represents what is acceptable to **us**, not our assessment of what others may converge on. The Governments have set out their clear view; others will have the opportunity to do the same when the relevant agenda items are reached: the current agenda makes provision for that debate and certainly does not preclude it. (However, if all the unionist parties argue that the current **phrasing** of the agenda unfairly constrains their consideration of the issue, we may need to consider where flexibilities might be engineered in the wording of the agenda as well as the order. It is hard to predict this before the negotiations get underway.)

Recommendation

13. The Secretary of State is **recommended** to agree that:

- (i) the Procedural Guidelines circulated on 6 June should be put forward to the Chairman for consideration at Monday's meeting (I would arrange this);
- (ii) in addressing the issues during the negotiations the Government team would be guided by the lines set out in paragraphs 10-12 above;
- (iii) we should aim to maintain a common front with the Irish, but seek in private contact to persuade them that **flexibility** on procedural issues will clearly be

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needed to enable the negotiations to progress, and that we should therefore jointly try to identify areas of possible "give"; but

- (iv) we should rebut any attempt in the negotiations to unpick the substantive handling of decommissioning in the "Scenario" paper, which represents a delicate balance of interests.

14. Subject to the above (and conscious of the Chairman's concern that participants in Monday's meeting should have the authority to take decisions) officials will of course aim to operate **ad referendum** in these negotiations.

15. I attach for reference (for the Secretary of State only) a copy of the 6 June Procedural Guidelines.

Signed

NOTE FOR THE RECORD

S J LEACH
Associate Political Director (L)

I attach the internal record of Wednesday morning's non-plenary session.

[signed DAL]

D A LAVERY

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