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S1/010

FROM: PETER SMYTH
Talks Secretariat
25 July 1996

INT/22

cc: PS/Secretary of State (B&L) - B
PS/Sir John Wheeler (B,L&DFP) - B
PS/Michael Ancram (B, L&DENI) - B
PS/Malcolm Moss (B, DHSS&DOE) - B
PS/Baroness Denton (B,DOE&DANI) -B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Thomas (B&L) - B
Mr Bell - B
Mr Legge - B
Mr Leach (B&L) - B
Mr Steele - B
Mr Watkins - B
Mr Wood (B&L) - B
Mr Beeton - B
Mr Currie - B
Mr Hill (B&L) - B
Mr Lavery - B
Mr Lindsay - B
Mr Maccabe - B
Mr Perry - B
Mr Stephens - B
Ms Checksfield - B
Miss Harrison (B&L) - B
Ms Mapstone - B
Mr Whysall (B&L) - B
Ms Collins, Cab Off (via IPL) - B
Mr O'Mahony, TAU - B
Mr Lamont, RID FCO - B
HMA Dublin - B
Mr Westmacott (via RID) - B
Mr Campbell-Bannerman - B
Mrs McNally (B&L) - B

NOTE FOR THE RECORD

TALKS: 24 JULY 1996

Summary

1. A very long day, in the course of which significant progress was made towards final resolution of the Rules of Procedure, and the need for consideration of the agenda for the opening plenary was also recognised.

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2. UUP began with bad-tempered allegations of HMG duplicity over the wording of amendments to the Rules; but by the end of the dayhad reached a more accommodating position and stated their willingness to accept the Compromise Text of the Rules put foward by the Chairmen. On the down side, however, they displayed a rather worrying lack of clarity about how the decommissing issue was to be progressed. The DUP were cheerfully pugnacious in their attitude to amending the Rules, but eventually put forward a proposal for the quick and effective resolution of outstanding issues in a plenary session to be held on Monday.

3. The Irish Government continued to display an almost paranoid suspicion of the motives of both Unionist parties, and interpreted their proposals for amendments to the Rules as attempts to emasculate the role of Dublin in the talks. Attempts by HMG to explain how some flexibility in regard to the Unionist position, particularly in regard to the handling of decommissioning, might have positive benefits over the next few months were treated with almost equal suspicion, and generated queries about HMG's commitment to maintaining a genuine political process.

4. In a conferral session, the participants (with very few exceptions) seemed prepared to accept the Compromise Text, until the UKU Party - possibly through a misunderstanding of the procedural implications of the proposal - created uncertainty about the ability of the participants to agree a decision-making process, and were responsible for two hours of the most stultifying debate witnessed in recent weeks.

Detail

5. Following the customary planning meeting, an ill-tempered UUP delegation came to the Secretary of State's room at 10.00 am. Speaking to a paper just received from the Independent Chairmen, Trimble accused HMG of having shifted on amendment GR17 (Rule 29) from the position agreed with the UUP the preceding afternoon. The wording discussed then had just about been acceptable, but changes made since - evidently at the behest of the Irish - unequivocally

spelled out that the expulsion of participants from negotiations was a matter for joint action by the two Governments, and was de facto an acknowledgement of joint authority. Donaldson, in more measured tones, argued that section 2 (3) of the 1996 Act made exclusion from the negotiations a matter for the Secretary of State alone: and, since expulsion of participants obviously fell into the same category, it was inappropriate for the Irish Government to have any role in that function.

6. Michael Ancram pointed out that the wording complained of was in fact a reversion to that which HMG had notified to the Chairmen in June, not a new formulation. The Secretary of State explained that he had always made it clear that expulsion of participants would not be a matter for HMG alone, and discussions with the UUP the previous afternoon had been predicated on their understanding of that position. That meeting had been an exploration of wording which, if it proved acceptable to the other parties, the Government could live with - but it was the Chairman, not HMG, who was responsible for brokering textual changes to the Rules. Trimble refused to accept this explanation. Nor was it acceptable to place responsibility for textual changes on the Chairmen. This was duplicitious.

7. Maintaining equilibrium, the Secretary of State explained that since negotiations were in the British jurisdiction, the initial seeking of nominations was the responsibility of HMG, but thereafter both Governments had a locus. Trimble reiterated that the language of the previous day had been on the margins of acceptability, fudging as it did the reality of both Governments considering expulsion cases: but the new wording displayed the fingerprints of the Anglo-Irish Agreement and was completely unacceptable.

8. Turning to the proposed agenda, Michael Ancram explained the intention to get agreement to revisions which would have the effect of advancing the consideration of decommissioning, and a deferral of opening statements until September. Assuming imminent agreement of the Rules and the agenda for the opening plenary, attention might focus on securing commitment to the International Body's proposals, following which consideration of decommissioning might be remitted to

a sub-committee (with 6 June terms of reference) for discussion of the mechanisms for further progress, and provision for a report back to the opening plenary in September. Trimble concurred in this, stating that he envisaged consideration of the opening statements would last for at least two days, during which time work could proceed in sub-committees on decommissioning and on developing the agenda for negotiations.

9. This was followed at 10.45 by a meeting with the DUP. Speaking to a paper which turned out to be the Compromise Text drawn up by the Chairmen, Paisley said that the reference to Command Paper 3232 in amendment UK1 had been retained against the DUP's wishes. He saw this as a deliberate attempt to remind Unionists that the original Ground Rules had not been taken off the table. Robinson concurred: the reference was a political, not legal requirement. It was part of the Government policy of appeasing the SDLP, and would be interpreted as meaning that the Ground Rules still applied to the negotiations.

10. Michael Ancram explained that amendments UK1 and UK1A were a recognition of the fact that differences of opinion were always likely to exist on this point. This compromise text allowed both sides of the argument to be stated, while permitting Unionists to say that they had not signed up to the Ground Rules. Paisley commented that it was time HMG came down on the side of Unionists for a change, by removing UK1.

11. Turning to Rules 16 and 17, Paisley feared that the references to "seriously address" "all aspects" and "agreed agenda" was a formula that locked in the particpating parties to negotiate each and every item that anyone wanted to bring forward. Michael Ancram pointed out the distinction which existed between participants raising issues, and the negotiating of those issues. HMG envisaged that the agreed agenda would consist of a number of very broad headings; the commitment to seriously address issues under those headings was not the same as a commitment to negotiate them. Robinson appeared to accept this distinction, but pointed out that the perception that the DUP were seriously addressing the Union, and all aspects of it, would be political suicide for the Party.

Paisley, in a sudden outburst, declared it would be intolerable if the SDLP were to be placed in the position where they could allege that Unionists were negotiating the Union. If this was not resolved satisfactorily, he threatened to bring a halt to the talks. Robinson asked if the Government's minimalist interpretation of what was intended by the phrase "seriously address" applied with equal force when it came to consideration of decommissioning?

12. Brief reference was also made to Rule 29 (amendment GR 17). Again asserting that this was a political, not a legal requirement, Paisley said that the Irish Government should have no authority to expel him from the negotiations. The meeting ended at 11.40.

13. At 12 noon the Irish delegation came in for an update. Michael Ancram reported on the morning's meetings, emphasising that, with the Ulster Unionists in particular, the outlines of a way forward appeared to be emerging. It seemed possible that language could be devised for GR17 with which they could live, opening the way to their acceptance of the Rules as a whole; there appeared to be little between them and HMG on agreeing a comprehensive agenda; there were indications that they would accept delaying the opening statements until September; and that they would accept decommissioning being remitted to a sub-committee after an initial discussion. If these pieces could be fitted together, they would be in a position to begin engagement on 3-stranded discussions shortly after the end of the Summer recess.

14. The Irish refused to derive much comfort from these assurances. No amendment to GR17 was acceptable if it meant that the role of the Irish Government was diminished at the behest of Trimble. The failure to engage substantively on decommissioning was also a concern. The scenario outlined by HMG effectively allowed Trimble to avoid any decision on negotiations until September - from Mallon's (and Dublin's) point of view the worst possible scenario. Nora Owen felt that the HMG handling plan which had been proposed would lead the Governments into the trap of allowing decommissioning once more to act as a blockage to political progress. A 2-day debate next week to initiate discussion of decommissioning would serve no useful

purpose. Real decisions had to be made before the recess. O'hUiginn felt that the scenario was acceptable only if the UUP could be compelled to sign up to a decommissioning sub-committee which was capable of making such progress that, when the opening plenary was reconvened in September, there was no longer an obstacle to engagement on substantive issues. Otherwise the suggested programme was "a disaster".

15. Michael Ancram suggested that the prospect of the participants remaining stuck in an endless debate on Rules was a worse prospect. He did not think it was helpful to back the Unionists into a corner over decommissioning by trying to predetermine the outcome of a debate. Decommissioning was a very serious issue for the Unionists, and they have to be allowed some scope for manoeuvre. The handling plan put forward by HMG represented our best guess of what might be achievable, and he felt that, even with the uncertainties, it still seemed better than not starting the debate on decommissioning at all.

16. This analysis was rejected. O'hUiginn complained that the Governments had lost the opening scenario, they had seen Ground Rules undermined, and were now being asked to accept that serious engagement on decommissioning could not take place until after the Summer recess. They were being asked to accept a process of pro-Unionist drift, which would allow Trimble off the hook until the calling of a General Election. If HMG was not fully behind the political process, it was all a waste of time. Nora Owen concurred that the two Governments must trust each other in their endeavours to reach a common goal. It was disastrous for the Unionist agenda to be allowed to dictate the pace of progress. O'hUiginn returned to the idea of flushing out the Unionist position by tabling proposals for agreement at the end of the second day of debate on decommissioning. Both Stephen Leach and Quentin Thomas queried the wisdom of this, and wondered what the next move was if the proposals were rejected. The Irish side saw little possibility of this happening - the positions of everyone on decommissioning were so well-known that the speeches could be written in advance. Given the complexities of the issues, it had taken the two Governments a considerable time to come up with what they regarded as workable proposals: it was inconceivable that

the Unionists in the course of two days could come up with anything radically different.

17. Nora Owen asked if it was a common position between the two Governments that before the recess they wished for completion of the agenda down to the item on agreed mechanisms for decommissioning? Michael Ancram said that it was obviously desirable, provided time was available to achieve it. Mrs Owen was disposed to think that given the amount of debate which had already taken place on these issues, very little more time was needed. O'hUiginn opined that the real test was whether the process was going anywhere - a "pretend process" was no good. The public credibility of the talks process was slipping and the scenario suggested by HMG was a disaster. Michael Ancram pointed out that at the previous week's IGC it had been suggested that an even bigger disaster would be for the SDLP to return to talks in September with decommissioning at the head of the agenda. At the very least, the outline suggested by HMG had the possibility of avoiding that. With little sign of the sun breaking through the clouds, the meeting adjourned at 1.15 pm.

18. At 1.40 pm the meeting with the Irish reconvened, this time with the addition of the Independent Chairmen. Senator Mitchell reported on the outcome of his discussions with the parties. For the UUP the wording of Rule 29 was the remaining sticking point - if an accommodation could be reached there, they would not oppose the adoption of the Rules as a whole. The DUP had more numerous concerns. Initially, Mallon had seemed disposed to show some flexibility in meeting them, but the DUP had pushed too far and Mallon had gone back into his bunker.

19. Michael Ancram said he believed there was room to accommodate the UUP on Rule 29. Following this morning's meeting, he was of the view that the Party could live with the reality of the two Governments running the talks process, provided they were not obliged to sign up to language which made this explicit. It should be possible, therefore, to devise language which allowed everyone to give their own interpretation of the role of the two Governments. The Irish side found this totally unacceptable. The role of the

Irish Government as joint sponsors of the talks process was not going to be emasculated by the Unionists. The wording of Rule 29 must be such that Trimble was left with no scope for giving a public interpretation which undermined the status of the Irish Government. Silence in Rule 29 on the role of the two Governments was preferable to any ambiguity. Indeed there might be an argument for saying the Rule itself ought to be deleted.

20. There followed a protracted and informal drafting session in which various propositions were considered. The HMG suggestion of "appropriate Governmental action" was rejected on the grounds that it might be interpreted as action by the appropriate Government - something which would allow Unionists to emphasise the primacy of HMG. Other alternatives were suggested, involving statements by either the Chairman or the two Governments as to what was meant by the wording of the Rule, but none of these were found to be acceptable either. Senator Mitchell said he was prepared to broker with the UUP any wording the two Governments could agree in advance. The meeting ended at 2.50 pm with Nora Owen speculating that the rationale for the Unionists' insistence on compromise wording, even if unknown, must be sinister.

21. Over the following few hours, a series of short meetings were held - an Alliance delegation discussed Forum issues (minuted separately); the Chairmen recorded the UUP's acceptance of the revised wording on Rule 29 agreed between the two Governments; and at 5.00 pm Empey called in briefly to provide a personal update on the UUP's position. His basic point was that the UUP did not intend to table amendments to the Compromise Text of the Rules tabled by the Chairmen, provided the SDLP did not do so either. The Party would support certain of the amendments which would be tabled by the DUP and UKUP, but would not go to the wall if there proved to be insufficient consensus for these to be carried. Overall, there was every reason to believe that the Rules could be approved during the conferral session scheduled for later in the evening. With regard to the agenda for the resumed opening plenary he was content for opening statements to be deferred until September, and for decommissioning to be addressed in a sub-committee in the interim.

22. Following his departure, however, some concern was expressed that Empey may not have fully understood the import of HMG's suggestions for the initial consideration of decommissioning, and at 5.30 pm Empey returned, accompanied by Donaldson. The Secretary of State explained that item 5(c) on the proposed agenda - "consideration of mechanisms necessary to enable further progress to be made on decommissioning alongside negotiations in 3 strands" - might result in a sub-committee being tasked with considering mechanisms during the recess. Item 8 on the agenda - "establishment of agreed machinery to carry forward work on decommissioning" - might lead to a further sub-committee being established, and the putting in place of the agreed mechanisms, together with arrangements whereby reports would be made to plenary sessions in parallel with negotiations proceeding on the 3-standed agenda. This gave Empey cause for concern. He had understood the arrangements would provide considerably more clarity on the possible outcome of the decommissioning process before 3-stranded discussion was initiated.

23. Donaldson, on the other hand, was clear that the proposals as outlined by HMG had been fully understood and had been accepted by Trimble and Maginnis. The mechanisms proposed would place so many obstacles in the way of Sinn Fein joining the process that he was satisfied there was no prospect of them being given a free ride, irrespective of when they chose to join the negotiations. The substance of this had been discussed at a meeting between HMG and Maginnis last week, and he was clear that the latter was satisfied with the arrangements proposed. Empey remained unconvinced, and wished to clarify the situation with Trimble.

24. With regard to consideration of the agenda for negotiations Donaldson thought the idea of a sub-committee meeting during the recess would be helpful to the Loyalist parties, enabling them to point out that decommissioning was not the sole focus of political activity.

25. At 6.00 pm the British side visited the Irish delegation room. There was a brief discussion on the "Proposition" from the two

Governments setting out their thoughts on the progress it was hoped could be made before the summer recess, and tabling a proposed agenda for when the opening Plenary session resumed in September. It was agreed that, while it was desirable for this "Proposition" to be tabled that night, to enable the parties to discuss it the following day, it was desirable to play it in such a way that it did not impede progress on the consideration and possible adoption of the Rules.

26. At 6.15 pm the meeting was joined by the Independent Chairmen. Senator Mitchell reported that Peter Robinson had approached him with a proposal for the handling of business over the course of the next few days, and he was inclined to accept. The basis of Robinson's proposal was that no decisions should be taken on the Rules at that evening's conferral session. At the resumed Plenary session on Monday, the first item of business should be the adoption by unanimity of Rules 30-35. This would establish the only procedure by which decisions could be made. The rest of the Plenary would then be taken up with the consideration and adoption of the other Rules. The DUP had a number of amendments to put forward, and would table thom by the following morning. They would accept time-limited debate on each of these, and fully realised there was no realistic prospect of them being accepted by all the other participants. These proposals had the agreement of the UUP and the UKUP. The Chairman explained that the practical consequences of this were that, while no decision would be taken on the Rules at that evening's session, he hoped to collect at least statements of support from all participants. That would free up the session planned for Thursday to discuss the agenda. The risk of delaying final agreement on the Rules until the following Monday seemed to him to be acceptable if it avoided a protracted debate on amendments. Overall, he was inclined to trust the DUP on this.

27. The Irish reaction was predictable. Delaying the ratification of the Rules until the following Monday was evidence of further slippage. The intention always had been for the Rules to be agreed in formal session, with a rubber-stamping of decisions in Plenary. The other delegations would be intensely frustrated at further delay,

and would assume - as did the Irish - that the Unionists were merely procrastinating for some devious purpose of their own.

28. While less sceptical, the British side was also cautious. While Robinson might well be in earnest about signing off the Rules a short, controlled session in Monday's Plenary, could he deliver his own colleagues, never mind the other participants? There was also the fact that the UUP felt that completion of consideration of the Rules was possible in that evening's conferral session - should that opportunity be gambled away? Mr Holkeri acknowledged that the DUP proposal could be a trick, but he did not see that it made sense to regard it in that way. Senator Mitchell repeated that he preferred to see it in a positive rather than a negative light. Given the imminence of the conferral session, the meeting terminated at 6.32 pm with O'hUiginn predicting that Mallon would be outraged at the idea of the DUP being facilitated at the expense of the other parties.

29. The conferral session began at 6.40 pm. The Chairman introduced the Compromise Text, with apologies for the delay in their distribution. He invited comments.

30. The Secretary of State said that, while it was appropriate for complex issues to receive adequate discussion, it was now time for decision. He welcomed the Compromise Text, and had no hesitation in offering HMG's full support. Roche (UKUP) felt adequate time had not been given for the consideration of the Text and announced his intention of asking for a 20 minute adjournment. Robinson suggested that those parties able to comment on the Rules should do so in this session, while others could wait until the following day. Mallon drew attention to the "pious aspiration" embodied in the statements made on 12 June about progress on the Rules. Empey felt that since no final decision was possible until the Plenary session the following Monday it was appropriate for a general discussion to take place at present. Paisley concurred. Roche withdrew his application for an adjournment on the grounds that time would be available for debate the following day. Empey outlined the strategy whereby the Plenary on Monday could as its first item of business adopt Rules 30-35 as the basis of the decision-making process.

31. Mrs Owen, on behalf of the Irish Government, gave a general endorsement to the Compromise Text. McBride did the same for the Alliance Party and was followed by Labour, Women's Coalition and PUP. Mallon gave his Party's support for the Rules as tabled, and announced the intention to oppose any amendments. He wished to see the Rules approved immediately in the conferral session. McMichael accepted the Rules on behalf of the UDP, and supported the DUP/UUP proposals for decision-making in the Plenary session.

32. Robinson then stated that the DUP found 35 of the Rules to be acceptable, but had difficulty with the remaining 9. He denied any attempt to block progress on agreement of the Rules - he was perfectly content to accept strict time limits on the discussion of the amendments his Party would be bringing forward. He suggested that a resumed conferral session the following day could look at final amendments to the Rules, for resolution at Monday's Plenary, with the rest of the time devoted to discussion of the Agenda, again with a view to ratification at the Monday Plenary.

33. The Chairman said this threw a spotlight onto Rules 30-35. He asked if there was likely to be any impediment to their adoption in the Plenary on Monday? Roche indicated that the UKUP would be tabling an amendment to Rule 33, plus 9 others. The Chairman explained that if Robinson's interpretation was right - ie, that the conferral session had no powers of decision-making, and that only by the Plenary unanimously adopting Rules 30-35 could any decisions ever be reached - then it effectively meant that any single party could block progress by refusing to endorse the decision-making process. He invited the participants to consider the implications of that position. Roche indicated that he would be content to see Rules 30-35 adopted as the first action of the Plenary, but since amendment 27A, which bit on Rule 33, had not yet been discussed he wished to reserve his position. The Chairman pointed out that amendment 27A had been extensively discussed at earlier sessions, and agreement had been reached that it was more appropriate for it to be adopted as a Resolution rather than made part of the Rules of Procedure.

34. At 7.55 pm the session adjourned to allow the UKUP to consider further its position.

35. At 8.15 pm the UKUP/DUP delegation met British officials in the Secretary of State's room. In the course of a very confused exchange, Roche at first seemed prepared to accept - under some pressure from Paisley - that he should sign up to the adoption of Rules 30-35 on Monday, and then, after the Rules had been approved, put forward a Resolution embodying amendment 27A for consideration by the Plenary session. He then changed position, and wondered whether the Resolution, if put forward in advance of the adoption of Rules 30-35, stood a chance of being accepted by unanimous decision. Failing that, he queried if a guarantee could be given that, if the UKUP agreed to support the adoption of Rules 30-35, they could be given an assurance that their Resolution would subsequently be adopted under the new decision-making procedures.

36. This dilemma had not been resolved when the conferral session resumed at 8.35 pm. Roche stated that the "present intention" of the UKUP was not to vote against Rules 30-35, but since he had not yet seen a text of the Resolution, the Party wished to bring forward, he wanted to reserve his position. Neeson pointed out it was important that those who sat at the table should be empowered to represent their Party's position, and suggested Roche was not so placed. Paisley suggested that since amendment 27A had been accepted earlier as suitable for a Resolution, the Chairmen might be able to bring forward wording to which the UKUP could sign up. Mallon pointed out that since the proposed Resolution was not intended to be a Rule of Procedure, it should not be discussed in the present session. He suggested that the Chairman, now being fully informed as to the views of the parties as to the acceptability of the Rules, should move ahead and get agreement on them immediately. Paisley objected that he would not be pressurised into giving voting rights to the conferral sessions, and threatened to withdraw and seek legal advice on this if pressed. Various speakers then alluded to the fact that Roche's statement about no "present intention" to vote against Rules 30-35 had very serious implications. Ervine said in terms that the Talks were being held to ransom.

37. The Chairman then suggested that if the participants had any further amendments to make to the Rules, they should be notified by 11.00 am the following day, and that none would be accepted thereafter. This was agreed to. He canvassed views on the acceptability of a 5-minute limitation on discussion of these amendments. Empey had no difficulty on behalf of the UUP; but Roche once again reserved his position on this issue.

38. At 10.00 pm, the Chairman announced that he had drafted a form of words for the proposed Resolution which he hoped would meet the approval of the UKUP. He asked Roche for permission to circulate this among the other participants. Once again, Roche reserved his position, and said he was unwilling to see a text circulated before he had discussed it with the Chairman. Protests were raised from other participants, who pointed out that the Resolution, however worded, was still subject to amendment when it was brought before the Plenary.

39. After agreeing that the conferral session should reconvene the following morning at 10.00 am for discussion both of amendments to Rules and issues connected with the agenda, the meeting was adjourned at 10.20 pm.

Signed.

P SMYTH