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FROM: A J WHYSALL/STEPHEN WEBB
4 December 1996

cc PS/Secretary of State (B&L) - B
PS/Sir John Wheeler (B&L) - B
PS/Michael Ancram (B&L) - B
PS/Malcolm Moss (DHSS, DOE & L) - B
PS/Baroness Denton (DED, DANI & L) - B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Thomas - B
Mr Steele - B
Mr Bell - B
Mr Leach - B
Mr Watkins - B
Mr Stephens - B
Mr Wood (B&L) - B
Mr Beeton - B
Mr Priestly - B
Mr Hill (B&L) - B
Mr Lavery - B
Mr Maccabe - B
Mr Perry - B
Ms Bharucha - B
Ms Mapstone - B
Mr Whysall (B&L) - B
Ms Collins, Cab Off (via IPL) - B
Mr Dickinson, 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: 3 DECEMBER 1996

Summary

A day of modest promise.

The Chairman made a ruling to the effect that while each participant had a right to raise any issue and be heard, that did not include a right to have a vote held - whether a proposition was voted on was a matter for the participants.

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Consequently, Mr McCartney had no right to insist that his motion on decommissioning (which he appeared to have drafted either to recruit the UUP to a hard line, or embarrass them by having to vote against it) should be put immediately to the vote. Mr McCartney advanced the argument that in consequence, while the question of the Union could be raised in the Talks, the holding of a vote about its maintenance could forever be blocked by the SDLP or Irish (since without them there would be no sufficient consensus). Dr Paisley took up this line, and delivered a lengthy, uncompromising and splenetic denunciation of the ruling.

Senator Mitchell then proposed that the Independent Chairmen should conduct bilaterals with the parties, with a view to finding a way forward on decommissioning that might achieve agreement. Finding a large measure of support, he adjourned the plenary until 12.00 on Tuesday.

We took the Chairmen through our possible compromise on decommissioning, drawing attention to the surprisingly modest adaptations proposed by the UUP (Mr Maginnis' paper of the previous night). Senator Mitchell appeared to see some promise in our paper for arriving at a way forward.

Detail

British/Irish Meeting with Chairmen, before plenary

At a short pre-brief (11.50) with the Chairmen (led by Senator Mitchell) and the Irish (led by Mr Coveney and Mr O hUiginn) the Senator presented a copy of the ruling he was to give on the question of the rights of participants in the talks to offer motions and insist on a debate and a vote on them (following on from Mr McCartney's insistence on a vote on his motion on decommissioning). Pressed by both Governments not to encourage a debate, he showed his usual reluctance to stop people speaking, on grounds that it created a sense of martyrdom, and that it was in any event very difficult to stop them, but thought a time limit might be appropriate (in the end there was no substantial debate).

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Mr O hUiginn expressed his concern about mischievous motions: for example, Dr Paisley might seek to put one down precluding further motions "imperiling the Union". Motions for vexatious purposes should be avoided: the participants' duty to seek consensus was perhaps the ground for resisting them.

Moving on, the Secretary of State implanted the thought that it would be appropriate after that for the Chairmen to announce that they intended to take a role in the process of bilaterals on decommissioning, with a view to coming forward with a proposal of their own. If there was criticism of further delay, a programme of activity might be outlined, directed to bringing forward a proposal next week. The Chairmen might also solicit the help of the parties. The Senator said that the parties had (other than Mr McCartney) indeed all suggested, or indicated they would be receptive to, the Chairmen coming forward with a proposal (a course of action authorised by Rule 30A). Mr O hUiginn, whilst welcoming the proposal in principle, wondered whether the Chairmen should pledge themselves to finding a solution before it was clear that there was one available. The Senator said he thought it was worth the effort. General de Chastelain had drafted a proposal. We would have advance sight of anything the Chairmen came up with.

Plenary: before lunch

Plenary began at 12.10 pm, with the approval unamended of minutes for the sessions of 25 and 27 November.

Senator Mitchell gave his ruling. (The full text, along with the questions put to participants by the Chairmen on these questions on 27 November, and the responses received, has been circulated separately). The Senator noted that all participants appeared to agree on the rights of each participant to raise an issue. But only two had argued that this included an absolute right to have a vote taken. A number had emphasised that the talks were about negotiation, not a legislative process nor "the provision of a

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debating facility". These participants placed the emphasis on processes which encouraged consensus and enabled the negotiations to progress towards their objective, which was also the spirit of Rules 30 to 36. The Senator quoted with approval the British Government's submission that it was for participants as a whole, if necessary by sufficient consensus, to determine whether and when an issue should be put to a vote. There was, he went on, no evidence or persuasive argument that there was any fundamental right for a participant to obtain a vote. The talks were a negotiating body, not a parliament; but even if they had been the latter, neither in the British Parliament nor the United States Congress accorded any such absolute right, and no example had been given of any such right elsewhere.

Accordingly, Senator Mitchell concluded, each participant had the right to raise any significant and relevant issue of concern, and to receive a fair and reasonable hearing; but there was no absolute right to have a vote on each issue, which was a matter for participants as a whole to decide.

Dr Paisley immediately interjected to demand an adjournment to read the "very far reaching" statement. His electorate would have laughed in his face had he told them that there would be no right to have a vote in the talks. It was agreed to adjourn to 1.15 pm.

Plenary: after lunch

After lunch (at about 1.15), the parties discussed the Chairman's ruling that there would be no vote taken on McCartney's proposals on decommissioning. While accepting the Chairman's authority to make such a ruling, Mr McCartney stated he had a number of difficulties with it. The issue of decommissioning had been discussed at considerable length, so it was surprising not to allow a vote. Taking the principle in the ruling to its logical conclusion, any participant could put the status of the Union on the table; but even if all the Unionist parties were in agreement on an issue, they

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would not be allowed to vote on it, for lack of sufficient consensus, if the SDLP or the Irish Government alone resisted.

The Chairman stressed that his ruling was on a specific question, and he refused to be drawn on hypothetical scenarios.

Dr Paisley wanted the ruling published, on the grounds that the rules of procedure were public, and this interpretation would in effect become a general principle under the rules. He felt the ruling was unnecessarily restrictive compared with House of Commons procedures which allowed only two members to force a vote, and he wanted to know how consensus could be determined without a vote. Had he been told there would be no votes and tiny groups could have a veto even preventing votes being held, he would never have stood as a candidate. He was surprised to see the Official Unionists not objecting. This ruling would mean that they had no power to vote proposals on the constitutional status of Northern Ireland off the table.

Mr Empey commented that the fact that there was no agreement on the subject of decommissioning covered by Mr McCartney's original motion was obvious enough. He added the Official Unionists had no intention of participating in any votes on the Union.

The Chairman suggested that since there was clearly disagreement on decommissioning he would consult with the parties over the next few days on ways forward, in line with rule 30.

This won the broad support of the other parties, although Mr McCartney repeated his determination both to oppose attempts by the two Governments, the SDLP and Sinn Fein to cobble together a deal elsewhere, and to restore negotiations to their proper forum.

The Secretary of State agreed with the Chairman's proposal, commenting that procedures in rules 30B and C were not appropriate at present, and recommended the Chairman now resorted to 30A.

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After a short spat between Mr Durkan and Dr Paisley, Mr Durkan having accused Dr Paisley of wanting to adopt "procedural graffiti", the talks adjourned for consultation between the Chairman and the parties. It was agreed plenary would reconvene on Tuesday at 12.00 noon.

Bilateral with Chairmen, afternoon

The Secretary of State and officials met the Chairmen around 3.15pm, and handed over our paper (presented to the Irish on 14 November, and subsequently to the UUP) setting out new suggested conclusions to the address to decommissioning. The Secretary of State said that it was clear that the joint proposals of 1st October were not going to find agreement, hence our new proposal. The UUP, having seen it, had come forward with some recasting: but it was nothing fundamental, and in some ways an improvement. But we emphasised that it was still not clear how far the UUP might in addition persist, with their demand for the handover of a tranche of weapons before Sinn Fein's entry into the talks. Subject to that, there seemed to be a marked convergence of attitude with the party.

Asked about Irish attitudes, we said frankly that they did not like our paper in itself: they feared that the Commission offering a "judgement" was too great a departure from the Mitchell compromise "internalising" the decision among the parties. But they had also made clear that if the UUP could accept our paper as part of a package that would open the door, they would want to consider it very seriously.

Much of the meeting was given over to simple explanations of aspects in our paper, which the Chairmen had only been able to scan briefly. But several points emerged of which we may hear more.

Senator Mitchell took the object of the proposal to be to "punt [the decommissioning question] down the field". Each time we did this, however, it got harder. We acknowledged there might still be

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difficulties. But, once negotiations got into the strands, we hoped - and indeed his Report looked forward to - a "benign dynamic" animating the talks process. The acceptance of the paper by the participants to a large degree implied acceptance of the analysis in the Mitchell Report. The Commission would not pronounce ex cathedra on decommissioning dates: it would reach its conclusions in the light of close contact with the Liaison Committee.

Senator Mitchell asked about the origins of the remit on the Commission to "offer a judgement" on the start of decommissioning. We explained that it came from us, as a possible way round the irreconcilable positions of the UUP on the one hand, and the SDLP and Irish on the other. The Senator volunteered the suggestion that "opinion" or "recommendation" might be truer to the intention than "judgement".

He suggested that the paper might be more saleable to the Irish if it more explicitly brought out the gains that they were achieving, - a date for Strands to start, and decommissioning after the start of substantive negotiations not before - though he acknowledged that this was likely to have corresponding presentational disadvantages.

General de Chastelain raised concerns expressed to him by the UUP that the setting up of the Independent Commission would take a considerable time. Might this work not start, he asked, before the end of the opening plenary? We pointed out that the Irish and SDLP would be very reluctant to contemplate anything of this sort. Later in the discussion, Senator Mitchell raised the suggestion that the carrying out of such preparatory work might, (assuming that the opening plenary had been concluded before the Christmas break) offer a useful pretext for a long recess, which might be useful in the context of co-ordination with arrangements for any entry by Sinn Fein. The Secretary of State said that the end of January would be the appropriate date in this context.

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There was some discussion of the last possible date for the talks to continue before the election. We agreed with Senator Mitchell that they were very unlikely to go beyond March 30th. It might be appropriate to have some sort of review plenary; whereafter the talks might be mothballed until after the election.

The Senator, concluding, said that he had found the discussion very helpful (indeed at an earlier point he spoke of his "admiration" for our proposition - or anyway our ingenuity). He would conduct plenaries with other parties, and come back to us.

(signed)

A J WHYSALL

Mr Wood (BAL) - 2
Mr Denson - 2
Mr Priestly - 2
Mr Hill (BAL) - 2
Mr Lavery - 2
Mr Macrae - 2
Mr Perry - 2
Mr Stephens - 2
Mr Thompson - 2
Mr Watson - 2
Mr Whysall (BAL) - 2
Ms Collins, C&G Off (via RFD) - 2
Mr Dickinson, T&P - 2
Mr Lamont, RFD PCD - 2
WGA Dublin - 2
Mr Westmacott (via RFD) - 2
Mr Campbell-Bannerman - 2
Mrs McNally (BAL) - 2
Mr Holmes, Ro 10

NOTE FOR THE RECORD

TALKS: SUMMARY 22 OCTOBER 1995

A rather lacklustre day. At the morning plenary there was a lengthy discussion of procedural issues, prompted by pressure from the DUP to defer the handling of the remainder of the discussion of decommissioning to the Business Committee. This was a reprisal of a previous argument on this subject. The counter argument - that the Business Committee has no business to consider until the movement into substantive & structured negotiations - again prevailed. It

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