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FROM: PETER MAY
Constitutional & Political Division
13 March 1998



cc as attached list

DESK IMMEDIATE

PS/Mr Murphy (B&L)

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/6/3/

INTENSIFYING NEGOTIATIONS

This minute sets out a plan of action for the intensification of negotiations from Monday 23 March. The main components will be:

- (i) a series of short papers outlining the key issues;
- (ii) a flexible and creative approach to the style and format of negotiations; and
- (iii) a clear focus on what needs to be achieved and good co-ordinating mechanisms in place.

2. On the face of it, reaching agreement by Easter on the 16 key issues we have identified is a tall order. But the parties are keen to try and the deadline helps to focus minds. Agreement to lengthen the working week and work in the evening will help.

Papers

3. The Secretary of State and Mr Murphy endorsed the proposition earlier this week that a series of short papers on the crunch issues should be tabled some time in the week commencing 23 March. The purpose is to encourage (bilateral) negotiations on those issues, whilst giving the parties a rounded picture of the overall shape of a putative settlement.

4. Work has been put in hand to draft papers covering the following subjects:

- (i) constitutional issues (Mr Whysall);
- (ii) Strand One issues (Mr May) including
 - (a) legislative devolution;

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- (b) executive authority;
 - (c) safeguards;
- (iii) the institutional arrangements for Strands 2 and 3 including
- (a) the relationship between the various institutions (Mr Fergusson);
 - (b) functions, powers and accountability (Mr Brooker);
 - (c) role and remit of intergovernmental machinery (Mr Howard);
- (iv) subjects for implementation bodies of the North/South Council (which Senator Mitchell has commissioned from those parties who wish to specify functions/powers (Mr Ferguson));
- (v) arrangements for the review of the elements of the agreement (Mr Howard);
- (vi) rights and equality issues (Mr Beeton/Mr Watkins);
- (a) rights to supplement the ECHR and enforcement mechanisms;
 - (b) measures to promote equality of opportunity, equity of treatment and parity of esteem including possible Equity Commission;
- (vii) building the peace incorporating:
- (a) prisoners issues (Mr Shannon);
 - (b) policing (Mrs Collins);
 - (c) returning security measures to normal (Mr Leach/Mr Perry);
 - (d) decommissioning (Mr Leach/Mr Perry).

Ideally for the convenience of the parties this would be a single paper, but many need to be 3 or 4. Mr Leach will act as policy co-ordinator.

5. The papers will be short and punchy. A first draft of a paper covering Strand One issues is attached for illustrative purposes. Martin Howard has agreed to act as co-ordinator for the papers to ensure policy and editorial consistency and balance across the

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papers (which are of course to be presented as from various authors depending on the subject matter). The papers will:

- (i) establish the problem;
- (ii) analyse briefly alternative proposals;
- (iii) propose options for resolution, identifying a lead approach.

The Parties

6. There will be an opportunity to begin to warm the parties up to the approach in general terms in the Minister's bilaterals next week (upon which briefing is being provided separately).

The Irish

7. The overall approach was discussed in general terms with the Irish on 10 March. Mr Bell will try to square them on Monday and to fix a meeting, perhaps on Thursday in London, to address the drafts. The papers on constitutional issues, Strand Two and Three institutions and arrangements for review will need to be agreed with the Irish. They should also be talked through the papers on rights and equality (they need to make an input to the rights paper) and the building the peace paper(s) in advance.

Senator Mitchell

8. An early bilateral with Senator Mitchell should be a priority next week. He seemed rather unconvinced by our suggested approach last week, and needs to be signed up - not least because he will be the 'author' of some of the papers. He also could have a valuable role to play in orchestrating bilaterals. We might also see whether a meeting with the Prime Minister could be arranged to reinforce the message, particularly if his depression has not lifted.

Playing in the Papers

9. A suggested timetable for next week is at Annex B. The bilaterals proposed for the late afternoon of Monday 23 March are an opportunity to explain to the parties what we are doing. That could be reinforced at the plenary on Tuesday 24 March (where some or all of the papers could be tabled) and might provide a positive counterweight to the likely complaints about Sinn Fein's re-admission. If necessary, all or the remaining papers could be held back until the Wednesday to allow the work of Strands One and Two to draw to a natural conclusion. The papers could then be tabled through a

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cross-strand meeting or simply through circulation outside any formal meeting, providing all the parties had been warmed up first.

Handling Negotiations

10. The need to move increasingly into bilateral mode is accepted. The Strand One and Two meetings on Monday and Tuesday respectively should be the last in that mode for the week at least. The following measures to encourage contact and facilitate intensive discussions are being introduced:

- (i) part of the main conference room is to be turned into a coffee lounge carefully designed to encourage private chats;
- (ii) the 5th and 4th floor committee rooms are to be supplemented by one on the 3rd floor (the DUP's former offices) and access to a conference room in the adjoining Block;
- (iii) arrangements to extend the availability of catering and make overnight accommodation at Stormont Hotel an option for delegates are in hand;

11. Handling the eight parties so all feel involved yet progress can be made requires careful thought. Options include:

- (a) where there is a clear agenda for bilaterals with all, the Secretary of State and Mr Murphy could operate in tandem;
- (b) the NIWC could be encouraged to re-form their quadripartite meetings with Labour, PUP and UDP;
- (c) encouraging parties to form sub-groups on specific issues when appropriate;
- (d) a British delegation room could be set aside for parties to seek clarification, test pieces of language, etc, whilst other business was proceeding. It would need to be staffed at least most of the time by a senior official to ensure the parties felt it worth using;
- (e) designating officials to take responsibility for maintaining an overview of contact and progress with the various parties;
- (f) good co-ordinating mechanisms would be needed to ensure everyone in the British team knew what was happening and what 'the message' was. Regular debriefs and consultations on the

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VCR would facilitate co-ordination with the London office, FC0 and No. 10. It might also be necessary to dispense with notetakers to keep numbers down and take stock of the main points from meetings regularly instead.

Co-ordination with No. 10

12. Mr Hill's minute of 12 March floated proposals for taking account of the Prime Minister's contacts with the Taoiseach and other parties. Co-ordination will be important to ensure activity is complementary and it may well be that the two exercises will come together at some points, especially if the Prime Minister (and Taoiseach) were available to join the final stage of negotiations.

Single Text

13. There remains Senator Mitchell's strong desire for a single text agreed by the two Governments to be in place by 30 March. It could be that the papers proposed taken together, amended according to reactions and drawn together, could perform that task - but at this stage it is no more than supposition. It is, however, the only realistic way of achieving such a text. Last week's difficulties in agreeing a Strand 3 text with the Irish show how tricky these negotiations can be and to try to address all elements of talks in a joint paper from scratch would take months rather than one or two weeks.

14. Accordingly, Mr Murphy is asked to:

- (i) agree to the plan of action proposed;
- (ii) note the papers being prepared (for Ministerial clearance no later than 20 March) along the lines of the Strand One draft at Annex A;
- (iii) note the steps to be taken to facilitate an intensive negotiating process;
- (iv) note the timetable at Annex B for the week commencing 23 March.
- (v) begin to warm the parties up to this approach next week in general terms.

(Signed)

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E X A M P L E

STRAND ONE: KEY ISSUES

1. Executive authority

Issues: The way in which those exercising executive authority operate.
The relationship between them and committees
How work is co-ordinated and the extent of collectivity of approach.

Analysis: These matters have been extensively discussed. Two main models have been advanced. Both see proportionality as the basis of appointment.

- (a) Committee chairmen are Head of Department Committees have executive powers, but chairs have some delegated authority. Co-ordination is achieved via the Assembly and there is no collectivity of approach.
- (b) Executive members form a 'cabinet' or executive council operating under collective responsibility. Executive held to account by powerful scrutiny committees but are not members of those committees.

There is also the Welsh model of chairmen appointed proportionally and Assembly Secretaries acting as the executive and meeting separately to co-ordinate business.

Lead Option: If the committee system is adopted, a co-ordinating or general purposes committee would need to be formed to co-ordinate business and provide, as a minimum, that different parts of the Government machinery do not adopt opposing policies or approaches.

Any alternative to the committee system would imply some sort of governing coalition and thus make it difficult to continue to adopt inclusivity as of right.

2. Extent of Legislative Powers

Issues: The extent to which devolved institutions should have legislative powers over the areas of responsibility devolved.

Analysis: All parties (except Sinn Fein) have accepted at least some legislative powers should be devolved. The argument is over the degree. The UUP argue for restrictive powers only.

Lead Option: Full devolution of legislative powers in all areas devolved reflecting the view of a majority of parties. This approach does not, of course, preclude replication of Westminster legislation.

3. Safeguards

Issues: How to ensure minorities are not subject to majority rule. How to build cross-community consensus on critical issues.

Analysis: The spectrum of opinion stretches from no formal, additional safeguards other than legislative ones (such as a Bill of Rights/incorporation of the ECHR) to a requirement for weighted majority voting on all issues.

Lead Option: The provision of some formal additional safeguard to decide on, for example, changes to written constitutions is common place.

Special voting majorities might be required for:

- (i) the appointment of the presiding officer;
- (ii) adoption of, and changes to, standing orders;
- (iii) budgetary provisions;
- (iv) any measure where 30% of the 'Assembly' formally require a 'special' majority.

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The special voting majorities are proposed to be:

- either (i) a weighted majority of 70% of those voting supporting the measures;
- or (ii) a majority of the representatives of each community supporting the measure.

If either of these conditions is met, the measure would pass.

4. Assumptions

There are, of course, many other important issues to be resolved in Strand One. The Government's view is that these can be sorted out if the three issues addressed above are resolved. To provide some indication, other measures might include:

- (i) initial devolution of the work of all six Northern Ireland Departments;
- (ii) initial oversight of Home Department functions with devolution to follow at a time agreed by the Secretary of State and 'Assembly';
- (iii) elections using STV, if necessary requiring some 'top-up' provision;
- (iv) fixed four year terms;
- (v) potential for a consultative council (but not a formal second chamber) if support warrants it;

Policing issues are dealt with in a separate paper.

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ANNEX B

TIMETABLE

WEEK COMMENCING 23 MARCH 1998

[22 March eve Mr Murphy dinner with Ron Davies, Welsh Secretary (including Messrs Trimble and Hume)]

23 March 1100 Strand One Seminar addressed by Mr Davies on
-1230 Welsh Assembly Model of executive powers

1330 Strand One meeting to address second synthesis
-1630 (further discussion) paper

1700- Bilaterals with all parties to explain approach
to be taken

24 March 1030 Plenary - Sinn Fein to reaffirm commitment to
Mitchell principles

+? Senator Mitchell to explain importance of
current stage, papers to be tabled, etc.

1100 Liaison Sub-Committee on confidence building
measures

1200 Strand Two Meeting (dependent on Plenary) to
1330 address remainder of Strand Two synthesis

1430 Strand Two meeting to conclude synthesis paper
1630 discussion

? pm Issue of papers

25 March ? am Issue of papers

pm Bilaterals/Clarification

26 March Full round of bilaterals to gauge party
reactions, assess issues of greatest importance
to reach and begin to get a feel for trade-offs.

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