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strand 2*

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NOTE FOR THE RECORD

PS/Secretary of State (L&B)

TALKS 10 MARCH 1998

Summary

A morning taken up with discussing the Independent Chairmen's strand Two "Further Synthesis Paper", which began encouragingly, but later got into difficulties over the underlying purpose of North/South

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structures. **Brid Rodgers'** (SDLP) suggestion these had a primarily political purpose and that they had to have the potential to evolve, implicitly in an all-Ireland direction, provoked sharp reactions from the UDP, PUP, UUP and Alliance. The Unionists parties argued that North/South structures should merely facilitate practical co-operation, while the Alliance saw dangers in a suggestion that any settlement was merely transitional.

The afternoon session was generally constructive without producing any significant shifts in position. Some form of Duty of Service appeared capable of being agreed. Those in favour of specifying the additional functions of the North/South council and the areas to be covered by implementation bodies have been asked to produce lists ahead of the next Strand Two meeting.

Detail: Morning

Meeting with the Chairmen and the Irish

The Independent Chairmen met the two Governments at 10.10. **Senator Mitchell** proposed to invite comments on the "Further Synthesis Paper" circulated that morning. He invited the two Governments to consider how best to handle the discussions over the next few weeks.

There was an inconclusive discussion about alternative venues for the concluding phases of the Talks. Mr Murphy made clear that the UUP were opposed to any location outside Northern Ireland. **Senator Mitchell** said that he had thought of using Disneyworld in Florida, but it was noted that Sinn Fein had already ruled out a "Mickey Mouse" agreement.

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Strand Two

The Strand Two meeting convened at 10.40. **Senator Mitchell** sought comments on the "Further Synthesis Paper" circulated that morning. It was not intended to be exhaustive, but merely reflected the principal issues.

It was agreed to proceed by a separate tour de table on each of the issues identified in the paper.

"Purpose of North/South structures"

Lord Alderdice (Alliance) agreed with the areas of agreement identified under this heading. There was no prospect of an overall settlement without a North/South council. It was crucial that this was accountable, transparent and efficient. There would also need to be specific areas for implementation bodies.

Mr Curran (Labour) agreed that a North/South body was essential to a solution. It should be able to discuss any matter within the remit of the Northern Ireland Assembly. The **NIWC** agreed that North/South structures, with the flexibility to evolve, were essential.

The **PUP** argued that North/South structures which enabled the two sides of the community to work together were acceptable, structures designed to evolve towards a different settlement were not.

The **SDLP** said that North/South institutions were essential to a settlement, but should not be seen as a concession to Nationalists. Talk of concessions reinforced Unionist fears. North/South institutions had both a political and a practical purpose.

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The UDP wanted North/South arrangements to be voluntarily, accountable and transparent and only operate in areas where co-operation was mutually beneficial. They must operate within the context of the Council of the Islands arrangements and resolving Articles 2 and 3 was a prior requirement.

The UUP (Mr Trimble) identified a clear tension between the political and practical purposes of North/South structures. These pulled in different directions. On a strictly practical level there was no need for elaborate North/South structures. Neither the Foyle Fisheries Commission, nor the Carlingford Lough Commissioners had provided good examples of cross border co-operation. A clear source of authority and accountability for North/South structures was crucial. There could be no independent free standing powers. He expressed concern about the question of the remit for the body but was happy with the description in the section "Functions of the Council", paragraph 1 a, b and c.

Senator Mitchell intervened to say that the crucial question was whether functions should be identified at the outset or later.

Mr Trimble made clear that the UUP could not live with arrangements which were regarded as "transitional" and as a vehicle for progress towards a united Ireland. No consensus would be achieved on that basis. The arrangements must be integrated into the wider East/West context.

Mr Murphy believed that a North/South body was essential to an overall agreement. We accepted the SDLP view that this was important for Nationalists expression of their Irishness. He agreed with the UUP about the practicalities and that the arrangements

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should not be designed to appeal to just one section of the community. The detail would have to be thrashed out among the political parties.

Ms O'Donnell reiterated the Irish Government's political requirement for a North/South body. A clear, specific remit must be identified in advance. They accepted that it could only operate by agreement and had to be fully accountable. It might therefore be necessary to resolve the issue in a cross-strand context, in view of its dependence on what sort of Assembly was agreed in Strand One.

Senator Mitchell concluded that everyone agreed that the source of authority for the Northern Ireland participants in a North/South body was the Northern Ireland Assembly, but that clear differences remained on the question of a prior remit.

"Relationship with East/West institutions"

Senator Mitchell said that the key question was whether North/South arrangements should be incorporated into East/West structures or be separate and independent. Previous discussion had indicated a wide measure of disagreement on this issue.

The **Alliance Party** said there was a political requirement for a separate North/South body. Trying to submerge it in the wider body would detract from its critical purpose. **Labour** and **NIWC** agreed. The **PUP** also appeared to accept the need for a separate North/South structure. The **SDLP** insisted that North/South structures must be separate from East/West arrangements. The **UUP** favoured a Council of the Islands, within which North/South structures could be incorporated in ways which were neither "subservient nor separate".

Mr Murphy said that it had been made clear in "Propositions for

..heads of Agreement" that a North/South body should be free-standing within the proposed British-Irish Agreement.

Ms O'Donnell said that incorporating North/South arrangements within East/West structures would defeat their underlying political purpose. The Irish Government had no problem with formalising a "Council of the Islands" arrangements, but the North/South body should not be subsumed within it.

The **UDP** reiterated their difficulties with separate North/South structures. Co-operation should be on an issue by issue basis. There should be no "stand alone" North/South body.

Senator Mitchell concluded that there had been merely a restatement of positions, with no movement towards a consensus.

"Legal basis of North/South Council"

Senator Mitchell said that there appeared to be consensus that the council should be provided for in a new British/Irish Agreement but it was unresolved whether legislation in the Oirachtas and Westminster was also needed.

The **Alliance Party** suggested that the new agreement would be a sufficient basis for the North/South council, but any implementing body would require enabling legislation.

Labour, NIWC and PUP needed legal advice before adopting a firm position.

The **SDLP** said that it was necessary to be clear at the outset about the remit and range of functions for the body.

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Senator Mitchell suggested that the functions of the council would be determined by its members. It might not therefore be necessary to specify particular subjects at the outset.

The UUP would be happy to see discussion and co-operation on any subject within the remit of the Northern Ireland Assembly. They did not think that the North/South council would require a separate legal basis but agreed that this might be needed for implementing bodies. It should not have executive powers and should merely be a framework for consultation and co-operation.

Mr Murphy agreed with the Alliance distinction between the legal basis for the Council and for any implementing bodies.

Ms O'Donnell said that the functions of the body should be specified in a new British/Irish Agreement.

The UUP intervened to ask how the Irish Government saw the body being accountable. Ms O'Donnell said that the source of authority was the Oireachtas and the Northern Ireland Assembly. Accountability needed to be considered alongside the functions of the Northern Ireland Assembly.

Mr Murphy said that how the question of accountability was resolved depended on what was agreed in Strand One.

The SDLP said they would be guided by the two Governments on what legislation might be needed.

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Membership and structure"

The **Alliance Party** suggested meetings at Heads of Government level two or three times a year, with separate meetings on individual subjects. **Labour** argued for plenary meetings at least once a year with discussions on a broad range of issues, **NIWC** for bi-annual plenaries, with other meetings taking place as often as required. The **PUP** saw no need for a fixed timetable for meetings.

The **SDLP** stressed the need for regularity and predictability in the conduct of business. Undue flexibility should be avoided. There would have to be regular review plenaries at Head of Government level. The **Alliance Party** understood the Nationalist need to be sure that the body would meet regularly. They suggested adopting the practice under the Anglo-Irish Agreement, where the IGC met whenever requested by either Government.

The **UUP** were in favour of "practical co-operation, not forced co-operation". Meetings should only occur when they were needed for practical purposes. There should be no fixed meetings or timetables. A North/South council should operate within the framework of the Council of the British Isles.

At this point the discussions became difficult when **Brid Rodgers** urged Unionists to accept that it was an essential political requirement for Nationalists to have substantial North/South structures, with the potential to develop by agreement, so that Nationalists could retain their aspiration to a united Ireland. This provoked sharp reactions from the Unionist parties and the Alliance.

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The UDP could not accept a political requirement for a North/South relationship going beyond the requirement for practical co-operation. They rejected the concept of North/South arrangements as a vehicle for political change. The Northern Ireland Assembly was the only legitimate focus for political change.

The **Alliance Party** rejected the "further instalment" approach to a settlement. Any settlement presented in this way would be fundamentally de-stabilising for Unionists. Unionists were looking for a settlement which would last for the foreseeable future. The **SDLP** countered that they were merely seeking structures which were capable of development by agreement.

The **PUP** thought the purpose was to find structures for promoting cross-border co-operation for mutual benefit, but the **SDLP** now appeared to be seeking more, by establishing arrangements to facilitate progress towards a united Ireland.

Mr Donaldson (UUP) said that Unionists did not deny Nationalists' aspiration to a united Ireland but would not agree to structures which were part of a process designed to achieve that objective against the democratic wishes of the Northern Ireland people. They would not support North/South structures which weakened the wish of the democratic majority to remain part of the UK. Unionists' objective was to unite people within Northern Ireland. That was the context in which political change could take place. The "Rodgers scenario" was unacceptable. There was a fundamental difference of opinion and it was not clear that this could be resolved.

The **UDP** also rejected the concept of North/South bodies with the capacity to bring about political change. This could only take place within the Northern Ireland Assembly. There was no prospect

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of agreement on North/South structures with their own political dynamic.

The meeting adjourned at this point.

Afternoon Session

The Strand Two discussion recommenced at 14.40. The Irish Government and Senator Mitchell had successfully sought to defuse the row that had ended the morning session by encouraging no further comments on the matters at issue. Discussion of the Chairmen's Strand Two synthesis paper continued.

Duty of Service

The **Alliance** (Dr Alderdice) suggested the Duty of Service was a replacement for an oath of allegiance. It was a commitment to the settlement, or the institutions which flow from it, and provided the only hurdle to achieving executive responsibility. **Labour** (Mr Casey) said the arrangement should work on trust and there should be no imposition of a Duty of Service. **NIWC** (Ms McWilliams) supported the Duty of Service, strongly advocating its expression in legislation.

The **PUP** (Mr Ervine) said they had concerns about a Duty of Service but found the Alliance position helpful. There would need to be one single Duty of Service rather than two referring to Strands One and Two separately. They remained to be convinced (but appeared willing to countenance the idea).

The **SDLP** (Mr Farren) said they supported a Duty of Service to cover Strands One and Two as a form of commitment by those holding executive authority to each other. This was in tune with their

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Covenant proposal. The UDP (Mr McMichael) had reservations, because although they recognised there was a duty to exercise the policies agreed by the Assembly, they were opposed to the concept of a formal duty. If it was needed, the institutions would have failed already. The UUP (Mr Campbell) agreed with the reservations of the UDP, but concluded by saying they remained to be convinced.

HMG said they could see why safeguards could help, particularly if they stretched across the Strands. They were concerned by the negative association of a Duty of Service and saw some benefit in a combination of the Alliance and SDLP proposals. The **Irish Government** (Ms O'Donnell) said the idea of a Duty of Service was about making a North/South Council workable. It should not be ruined by the removal of co-operation. This prompted an intervention from **Mr Ervine** who alleged the Irish Government were expecting unionists to resile and did not trust them. There followed an unhelpful tangle involving the **two loyalist parties**, the **Irish Government** and **SDLP** in which **Mr Durkan** said he had no trust in unionists and many of the above arguments were repeated. **Senator Mitchell** interrupted to suggest that the difficulty with the Duty of Service was that it might have no substance if the minimum requirement were met but co-operation not given. It was not possible to write in all possible circumstances.

Dr Alderdice said a collective approach was critical - this had implications for Strand One institutions. He saw merit in a Duty of Service for the Republic so they were covered in the event that they refused to co-operate on, for example, cross-border crime. (The **UUP** were gleeful at this prospect.) The need for political will to work the institutions was the theme of a number of interventions, the **Senator Mitchell** once again helpfully intervening to stress the difficulty of anticipating the future and to note that any mechanism

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would need to be based in Strand One because those holding executive authority gained that authority from the Assembly.

Mr Durkan expressed a willingness to change the terminology to Code of Conduct or Pledge of Office and noted the SDLP would be prepared to accept a single commitment. He too noted that collective responsibility applied across Strands.

Ms O'Donnell noted the Irish Government had the functions of Ministers set in statute in the Ministers' and Secretaries' Act. She could see the prospect of a Duty of Service being part of the legislation for an Assembly, and saw no difficulty in adding similar provisions to the Irish legislation.

Senator Mitchell concluded the hour long discussion by noting that there appeared to be an agreement to be had on this issue.

Role, Remit and Functions of North/South Council

All agreed that the key was the decisions "in further designating meaningful areas on integrated action and policy at an All-Ireland and cross-border level" which was proposed. **Dr Alderdice** noted that 'Ministers' would need to carry their elected representatives with them either prospectively or retrospectively. There was therefore a link once again to the role of the executive in Strand One institutions. **Labour** saw no problems with any of the suggestions. The **NIWC** wanted to specify in any political agreement the roles of the North/South Council. They felt it necessary to go further than unionists had in accepting the powers of the Council to take decisions in some further meaningful area.

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Mr Smyth for the PUP said the role of the North/South Council should incorporate the work of the six Northern Ireland Departments. If it were set in legislation that would prescribe what was dealt with, exclusively. That might be helpful for unionists and he had an open mind on whether legislation should be used. He later returned to the point to clarify his comments. He was not saying the North/South Council should automatically examine all areas of devolved responsibility, but only those where there was a common interest. It was the capacity rather than the actual remit that he had been talking about. (An ensuing conversation with Winkie Dodds appeared to have brought this clarification to the fore.)

Mr Farren suggested the key was to see how the Council would operate in practice. The remit needed to be specified in any agreement alongside its composition and structure. He agreed the North/South Council's limits should be co-extensive with those institutions set up in Strand One. In terms of the function of the Council, he believed it would be possible to agree on the further designated meaningful areas without transgressing unionist requirements. Authority and accountability rested within the Northern Ireland Assembly, and therefore the authority of a North/South body could not exceed that of the Assembly.

Mr McMichael noted the SDLP's desire to specify the remit. They were content to discuss areas of co-operation and explore viability, but wished to see matters dealt with in a British/Irish context. The UUP noted the remit would be on the basis of Northern Ireland institutions. They had a problem with any suggestion that they might be obliged to find agreement with the Irish Government, but noted the issue of what happened if there no agreement, was dealt with elsewhere. With regard to further designated issues, their

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concern was over who designated them. They stressed the source of authority had to be the Assembly.

The **British and Irish Governments** both noted the need to work out which issues should be considered. The Irish Government suggested a list be prepared.

Dr Alderdice stressed, once again, the difference between the Ministerial Council and implementation bodies. The Council could talk about anything and would be responsible for broad discussion of areas of co-operation and for monitoring the specific work of implementation bodies. He used an example surrounding Agriculture and BSE to show how implementation bodies might actually operate on a statutory basis.

Decision taking

Dr Alderdice indicated he was opposed to a court of appeal to the two Governments. The **Labour Party** agreed. The **NIWC** sought clarification about how the absence of consensus would be clarified if there were no backup. The **PUP (Mr Smyth)** agreed there should be no role for HMG. He did not rule out some alternative method of resolving conflict however.

Mr Farren noted there could be a difficulty in involving the British Government, but the larger difficulty was with the potential for non co-operation. He began to give an example surrounding animal health, when **Senator Mitchell** cut in to say that if the **SDLP** wished to argue the north/south bodies should be separate from those on an east/west basis, it was inconsistent for them to seek a right of appeal effectively to that east/west body. Similarly the **UUP** could

be in the position of arguing the north/south body should be under the umbrella of the east/west one and yet that the British Government should not be used as a court of appeal. That would be a similar contradiction.

Mr McMichael (UDP) said that if agreement could not be reached then the participants should try harder, and failing that work within the Council of the British Isles. He sought to draw a distinction between arbitration and referral to COBI which was not entirely clear. The key issue was that the decision making power should still be the responsibility of the relevant jurisdictions. The UUP agreed with the UDP in terms of the role for the Council.

Ms O'Donnell finally noted that the difficulty came not on specific decisions taken on a north/south basis but if there were persistent failure to co-operate which brought those north/south bodies into disrepair. **Senator Mitchell** concluded that there was no real disagreement on decision making in that case as the fullback arrangements were addressed separately in the paper he had circulated.

Implementation of decisions and implementation bodies

Mr Smyth (PUP) opened by indicating that implementation should be done by bodies North and South separately. He could not see the case for joint action. The **SDLP** noted that in some cases it might be best to do it separately, but others could work better on an all-Ireland basis or in border regions. That was an option for the north/south council to bear in mind. The **UDP** said that implementation should mostly be via the separate departments, but they were not opposed in principle to implementation bodies if they were the most effective way of doing business. They remained to be convinced of the sorts of cases in which that could happen.

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Mr Campbell (UUP) agreed implementation should take place in the most practical manner. If it were proven that an implementation body were best then that would be fine, but those implementation bodies should not be prescribed as part of a settlement.

Mr Murphy noted that bureaucracy should not be created where there was no need, but there could be occasions when implementation would be best done by special bodies. Ms O'Donnell agreed. Dr Alderdice noted that in the field of railways, Civil Servants had previously run the two systems as one in the sort of way he envisaged implementation bodies operating. He believed it essential to identify six to eight areas for implementation bodies in a settlement for Nationalists to sell it to their constituency. He suggested a centre way would be to agree these bodies would be set up in statute within six months of the referendum, leaving open the prospect of Westminster or Northern Ireland Assembly legislation to match that in the Oireachtas.

Senator Mitchell asked that those who favoured the identification of implementation bodies to provide a list for the next meeting. It was agreed a separate list should be produced which would specify the additional designated areas raised under the functions of the council by those favouring such an approach.

Just before discussion concluded the NIWC noted they had not been asked for their opinion, and quoted the example that the Institute of Public Health which was jointly funded by both Governments and acted as a good example of how an implementation body could operate in practice.

Senator Mitchell concluded the business of the day at 17.23 noting that the next meeting on Strand Two to conclude the remaining seven

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areas in the synthesis paper would be at the call of the Chair but would be expected to take place on Tuesday 24 March at 10.30.

The Independent Chairmen and Irish Government

The Independent Chairmen led by Senator Mitchell, the Irish Government led by Mr Andrews and British Government team led by Mr Murphy met at 18.10. They noted that some progress had been made in Strand Two but that there had generally been a re-statement of positions rather than substantive progress. **Mr Andrews** noted that on 23 March he would be unavailable, but Ms O'Donnell would be free. It was agreed to pencil in a Strand One meeting for that day.

Mr Andrews asked whether it would be possible for the talks to leave Castle Buildings for a couple of days to another venue before returning and then leaving permanently towards the end to try to do a deal. **Mr Murphy** suggested intensifying the working week from 23 March to include a longer day, to add Thursdays and to become increasingly bilateral driven as time went by. He proposed officials discuss the programme next week. He noted Unionists would not leave Northern Ireland, and the Alliance Party were now reluctant to leave Castle Buildings. He proposes adapting the Conference Room to a more coffee bar style. **Senator Mitchell** indicated his preference also to move to a different venue if possible, and **Mr Hill** noted that possibilities within Northern Ireland were being examined.

Mr Andrews suggested working through the Easter weekend, but was rebuffed. The Irish delegation noted the trade-offs were simply not happening. **Mr Gallagher** said the timing of a draft agreement and the way it was put into the system were the key issues. The paper could appear at bilaterals involving the main parties. **Mr Murphy**

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stressed the importance of flexibility not to tie down the format too much. There would need to be a mixture of meetings starting with Strand One on the Monday and Strand Two on the Tuesday but allowing for bilaterals as well as round table discussions. He believed there were a few key issues in each Strand which could be addressed.

Senator Mitchell pressed strongly on the need for a paper. The timing of it was for the two Governments but they would need to produce it. It would not be possible to reach agreement without a draft. Experience in this process had taught him that there was huge gulf between apparent agreement and actual agreement, and the people needed to see things written down. There was not much time left. An overall document was needed well before 8 April. That paper needed to address the key issues head on, by attempting to resolve issues one way or another but in a balanced fashion overall.

Mr Murphy and British Officials stressed the importance of getting all the issues on the table, but the need to do more work through the Strands initially. A series of documents could be produced in the week beginning 23 March addressing these

Mr Andrews was sceptical. **Senator Mitchell** argued people needed to see the whole picture in order to be able to take issues forward. It was not possible in this process to take decisions in isolation. He believed a paper had to be in people's pockets by 30 March, even if it was a "semi-final" paper for amendment and discussion. He said the Chairmen would be happy to put something together on the basis of selected bits of drafts produced by the two Governments.

The **Irish Government**, led by Mr Andrews, remained keen on producing a joint document. The **British Government** resisted, in line with

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instructions, and it was ultimately agreed that the week beginning 23 March would be marked by a series of short papers by each of the Chairmen of the Strands setting out the key issues and allowing discussions already scheduled to be completed. **Senator Mitchell** appreciated there was a presentational issue about the two Governments producing a final draft. However, he remained uneasy at the lack of time remaining before Easter and the amount of time parties took to absorb new documents and address them substantively.

In further discussion on an away week, **Senator Mitchell** indicated his preference to hold back until the week beginning 30 March to go away. He felt if there had been intensive discussions in the week commencing 23 March on Monday and Tuesday, with bilaterals for Wednesday and Thursday, it would be better to wait until the week following when there was the prospect of achieving something substantive. He did not want to waste a valuable opportunity, given the lack of options available. There followed a brief discussion about moving to heads of delegation mode, where the sheer numbers were seen as a difficulty.

Before the meeting concluded at 19.00, there was a brief discussion about the need for a plenary once Sinn Fein re-enter Talks to allow them to reaffirm their commitment to the Mitchell Principles. It was agreed a plenary might be pencilled in for early Tuesday morning (24 March), in line with the UDP precedent.

(Signed)

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