

DRAFT SUMMARY RECORD OF OPENING PLENARY SESSION -  
MONDAY 23 SEPTEMBER 1996 (15.47)

Those present:

| <b>Independent Chairmen</b> | <b>Government Teams</b> | <b>Parties</b>                        |
|-----------------------------|-------------------------|---------------------------------------|
| Senator Mitchell            | British Government      | Alliance Party                        |
| Mr Holkeri                  | Irish Government        | Labour                                |
| General de Chastelain       |                         | Northern Ireland Women's<br>Coalition |
|                             |                         | Progressive Unionist<br>Party         |
|                             |                         | Social Democratic and<br>Labour Party |
|                             |                         | Ulster Democratic Party               |
|                             |                         | Ulster Democratic<br>Unionist Party   |
|                             |                         | United Kingdom Unionist<br>Party      |
|                             |                         | Ulster Unionist Party                 |

1. The Chairman convened the session at 15.47 and stated that in accordance with his previous remarks he now understood that the Governments had reached a decision on the Alliance allegations. This would be circulated to all shortly. The Chairman then indicated that he wished to proceed to a discussion of confidentiality as well as determining an agreed schedule of distribution for the formal records. The Chairman stated that both the DUP and the UKUP had already raised specific points regarding the coverage of the confidentiality rule and he now wished to hear from other participants on this issue.

2. The SDLP agreed that it was appropriate for the participants to try and share some understanding of the likely restrictions placed by any confidentiality rule. One of the reasons for holding such a discussion at this point was the frequent door stepping which occurred at the Talks entrance. Parties often had to try to achieve a balance in comment between the message that they wished to get across and having to correct perceptions presented to them by the media following interviews with other participants. As well as this there was, in the SDLP's view, a

need to look at wider issues such as the public profile of the process as a whole. In attempting to relay to the public what was or wasn't going on, in a broad sense, the SDLP suggested that a better briefing or presentation system was required. It seemed that a regular briefing to the media, without giving away party positions, could cover this point as well as reducing the need for parties themselves to brief or counter-brief. The SDLP concluded that some discussion on this proposal and the precise remit of the confidentiality rule was what it was looking for from the discussion.

3. The DUP commented that it wasn't just briefings and statements which had to be taken into account, but the confidentiality of personal party documents and other parties' documents. The DUP said that, under any confidentiality rule, no-one should have the authority to hand over any talks document. But then how would any such rule adjudicate on the handing over of party documents which might refer to or contain other parties' positions in these? The DUP said it assumed it was normal practice not to comment on other parties' positions but how general could a party make its own comments, if asked for an overview statement, while avoiding the contents of individual parties' positions?

4. The UKUP recalled making an earlier distinction between documents which set out a party's negotiating position and those which referred to a statement of a political position or aims and objectives where public analysis of such information was required. The UKUP added that there were two competing principles arising from the discussion. One was the use of confidentiality as an aid to the negotiations; the second was the use of confidentiality as an aid to gaining concessions. The UKUP said there was a requirement for the general public to be aware of the issues under discussion in the process and the position of each party in relation to those issues. Furthermore it was the UKUP's view that each party should be permitted to provide analysis of other

parties' positions from comments made and placed on public record. The real question was where did one draw the line between commenting on information gained from a public source and that gained privately?

5. A further matter in all of this was the "gagging" effect of the two Governments. The UKUP said that the Governments were the architects of the process; they had a declared agenda and public positions. All this placed them in a position of power and influence which was considerably over and above any of the remaining participants. Furthermore the position of both Governments as providers of inside information was also one of extreme strength and this accentuated the position of power and privilege already referred to. The UKUP was therefore somewhat suspicious of the gagging effect brought about by any confidentiality rule if and when a Government introduced some new policy which it did not wish the general public to be aware of. Unlike the USA, the UK was one of the best equipped democracies for subverting and preventing information being made available to the public. These points were important to remember when it came to resolving the confidentiality issue.

6. The UKUP said that, while it shared the SDLP's view that a mix between certain other confidential information and that which was available to the media, could be released in a neutral way to allow a broad public picture to be maintained, it was worried about how any eventual settlement might be handled under such confidentiality rules. Any deal which was simply produced "out of hat" on which no details had been released to the general public in advance as a result of confidentiality, was likely to gain very little acceptance in either community. Avoiding this was even more important when one considered the position facing the pro-union community since 1985 and the lack of trust and accountability in which both Governments were held. Such a situation only generated total suspicion of political activity which was unaccountable, cloaked in secrecy and devious. The

rules of confidentiality should therefore, in the UKUP's view, provide for both confidentiality when it was required and afford access to the media when this was appropriate.

7. The UUP recalled the fact that all participants had signed up to rule 16. The discussion, however, was quite appropriately focusing on the practicality of enforcing that rule. The UUP stated that a confidentiality rule had existed in the previous talks process but documents simply appeared in the press in any event. In fact some individuals, who were totally uninvolved in the last process, were known to have a full set of documents from it. The UUP believed that parties who produced documents should be able to release these to the media. The party said it went along with many of the UKUP's previous comments. In recalling the UKUP's reference to the Forum the UUP said that the main objective of this body was its facility to debate issues which were connected to the talks process. For example there was some likelihood that the Forum would soon debate the conduct of the negotiations to date. The UUP would, in this instance, expect parties to be able to state their positions, so in that sense, rule 16 could not be applied. In other words, in the UUP's view, the issue of confidentiality was better left to the discretion of the parties and rule 16 only used in cases where exceptional circumstances had occurred.

8. Alliance commented that from its experience of what was happening now and what had happened in the past, confidentiality was more often breached than adhered to. The basic question was did the current process want to have confidentiality or a free for all? Rule 16 was in place and had been agreed to. It clearly stated that participants "will maintain confidentiality on all aspects of the negotiations except where they may from time to time agree to publicity." Alliance commented that there was little to be gained from pointing up the difficulties in applying confidentiality rules, but was there any way of getting round these difficulties in order to minimise conflict and establish

trust between the delegates? Alliance agreed that a regular briefing of some description was a good proposal. This might be best undertaken through the chair and perhaps other participants might be in place at that briefing to hear the Chair's comments. The public wanted to be briefed on the process and this should and could be undertaken without endangering the actual negotiations.

9. The Chairman, having listened to the various contributions indicated that he wished to propose a "few small steps". He asked participants whether there was agreement to the non-release, under rule 16, of formal records of meetings. The participants agreed this unanimously. The Chairman then asked whether all participants shared the view that no copies of the formal records should be handed out. The participants agreed this unanimously. In responding to a point from the DUP, the Chairman stated that he hoped everyone would obey the rule of law if a record or extracts of a record needed to be released to the Courts for whatever purpose. In these circumstances it was likely that such a request would come through the chair in any event. The Chairman then asked whether all participants shared the view that no information from the formal records could be released.

10. The UKUP agreed with this with one exception in relation to proceedings in court. The party reminded the Chairman that a record from earlier proceedings involving the hearing of the PUP/UDP allegations and subsequent questioning by the British Government might yet be the subject of court proceedings. It therefore seemed sensible to build this caveat into the confidentiality issue. The Chairman agreed with this while reaffirming the earlier decision that actual documents and their contents should not be leaked. The DUP raised a separate point in relation to the release of formal records to the RUC as evidence. The party recalled comments made at an earlier session when it had been claimed that certain individuals had taken guns away from others during street disturbances. The DUP stated that the RUC might well wish to have the formal record if the circumstances

dictated it. What happened regarding confidentiality in this case? The Chairman commented that if such a situation arose, he would bring it to the attention of all of the participants and seek their views accordingly. He added, however, that there might well be many hypothetical questions which would be difficult to answer in the absence of any specific circumstances.

11. The Chairman indicated that he wished to move on to a further step and asked participants for their agreement to the non release (under rule 16) of documents prepared by the Independent Chairmen for the parties - as occurred during the discussions on the rules of procedure. The Chairman acknowledged that the position with regard to parties preparing their own internal documents was more difficult to rule on but he asked for views and comments on both points. The SDLP stated that it regarded the latter category of document as being part of the negotiating process. The release of such documents might have a direct impact on the positions of others and it was therefore better to regard them as documents associated with the process itself.

12. The UKUP stated that the problem was one of degree. If a party had prepared a document without referring to another party's views and it contained a relatively firm statement of position, this could be distinguished from a document declaring a negotiating policy. If concessions were revealed in a document then that document must either be excluded from release as a whole or the relevant parts excised. The UKUP believed that such a ruling on release was one for the process as a whole to decide on, depending on the specific circumstances at the time. The Chairman proposed that rather than make rule 16 deal with the exceptions in this category, it might be better if it covered all documents which didn't fall into the category of containing concessions or other language likely to affect the conduct of the negotiations.

13. The UKUP agreed with the Chairman's approach with the exception that where a document referring to one party's position

also referred to another party's position, which in itself was based on public information, this should not be bound by the rule of confidentiality. If such information was not in the public domain then the whole document should be regarded as confidential. The SDLP stated that whatever the end formula arrived at, it would have to be reviewed on an ongoing basis. There was no problem categorising sections of documents or whole papers under a set of rules but the process as a whole needed to be careful that the facility did not become the subject of abuse.

14. The Chairman said that the whole subject would have to be reviewed. It was a relatively easy matter to set out general principles, but there could be a difficulty in applying them to specific circumstances, and the future could not be anticipated. Also, he did not wish to create a whole new set of rules of conduct with associated sanctions for alleged breaches. The next issue to be considered by the meeting was oral statements and this issue was perhaps more problematic. He felt that if such statements were the verbal expression of written material then the principles which applied in relation to documents should also apply to them.

15. The UKUP said the central principle that oral statements should be regarded in the same way as written statements was correct. However, it felt that the problem with both categories was not so much in defining what was confidential but in establishing what was the source of the leak. Also the leak of a written document as opposed to an oral leak would be easier to determine. It would be an impossible task to stop such leaks. In reality, there has to be an element of trust as was referred to earlier by the Alliance Party. The UKUP felt that it was better to approach the matter by drawing up a set of ethical guidelines and regard any breach of confidentiality by oral statement as a breach of the rule on confidentiality. The Chairman suggested that his staff could prepare a summary document on the matter

which, he wryly remarked, could very well be the first test of the process.

16. The DUP suggested that often the value of rules was not so much for the text but for the consequences of a breach. What should these be? The Chairman said that he proposed to address that very issue in the written document. His own opinion was that a set of standards to reduce leaks and their effectiveness would be useful. He asked for comments on what the consequences of a breach of the rules might be? The DUP suggested that the matter should not be left to the two Governments as nothing would happen. The UKUP made the same point saying that even Sinn Fein would be welcome at the talks eventually so the prospect of exclusion was unlikely. It suggested that perhaps a committee appointed by the Chairman, or perhaps the Independent Chairmen themselves, could determine the issues involved and the possible sanctions.

17. The SDLP felt that it was not helpful to draw up a menu of sentences. This view was shared by the Chairman who said he did not favour what he termed sentencing guidelines. The SDLP suggested that the matter of sanctions be left over for the present until such stage, perhaps, as an actual breach occurred. It had to be remembered that Governments could also be the prime suspects in this area. Perhaps the Chairman could consult with the Business Committee at his discretion? Leaks could also emerge from a party and not directly through participants at the talks process - a secondary leak, so to speak.

18. The UKUP suggested that the Chairman should bear in mind in his report, the fact that Governments could be involved in putting a "spin" on statements about the talks process. Parties might feel obliged to challenge a particular "spin" and rule 16 might be considered relevant in that regard. The party wondered whether the rule envisaged the agreement of all the parties being required or could a dissenting party maintain its position. Alliance wondered whether individual or collective responsibility would



apply in the case of a breach. Whatever guidelines were eventually drawn up, they should be adhered to as far as possible. The SDLP suggested that a regular briefing to satisfy media interest could be established, but not in any detailed way. Sometimes confusions could arise on particular issues and the involvement of Governments could lead to greater confusion. So there might be a case for having a broad, general briefing session, subject to a test of its workability.

19. The UKUP said that a difficulty with this suggestion was who would be involved in such a task and would the views of the participants be taken into account? Briefings could be bland and meaningless. Who would assess the nature of the information to be given and the position of the talks process itself? It foresaw problems arising. The meeting should try to issue clear, general guidelines - broad zones of operation. If there was a complaint about non-compliance then the Chairman could request an explanation. There was no point in getting tied down in too much detail and any guidelines should avoid leading to the very abuses which it sought to avoid. The SDLP still felt it was important to have some common denominator in the process and that it would be useful to have a broad general line which could be given to the media through the neutral facility of the Chairman who would himself be bound by the same rule.

20. The DUP said the greatest source of leaks was through Government briefings to the press. The Chairman wondered whether the rules and the standards of behaviour suggested also applied to the Governments as well as to the participants? The DUP said they had to apply to the Governments in view of the situation which obtained during the previous talks where statements were issued to Dublin newspapers. The real culprits were the two Governments. This led to parties having to respond and this, in turn, exacerbated the problem. Everyone must be bound by the same rule. The UUP agreed and referred to the terms of rule 16 which referred to participants; that meant the Government parties also. The SDLP

intervened to say that this had reinforced their argument for the kind of structured regular briefings it had suggested.

21. The British Government said it believed self regulation was the best way to deal with the issue and it considered itself to be a participant. However, it also had to be remembered that Ministers had to account to Parliament. The Irish Government said that it regarded itself as a full participant and considered it as bound by the provisions of rule 16.

22. The DUP said its approach in the matter was based on a "no first strike" agreement. If there was a breach of the rule, the party reserved its right to respond. The UKUP said that it would be helpful to have a commitment from the two Governments and the SDLP that details of the proceedings would not be passed on to IRA/Sinn Fein. The DUP took up this point and said that it wanted assurances that the minutes of meetings wouldn't be given to IRA/Sinn Fein as happened before.

23. The UKUP stressed that this was an important matter. While they had no wish to attack the Governments, the dogs in the street knew that they (the Governments) would do everything they could to get Sinn Fein into the proceedings. An Irish Government adviser said as much when he commented that the talks weren't worth a penny candle without the presence of Sinn Fein. Accordingly, both Governments might feel an irresistible temptation to reveal details of the talks. This was the reality. It had to be remembered that it was previously stated that there were no Government contacts with terrorists in the past, yet it emerged that there were such contacts. In relation to the issue of decommissioning in particular, the Government might, for example, wish to disclose what was happening.

24. The SDLP remarked on the fact that one speaker from the UKUP inferred that the SDLP were involved in leaks to IRA/Sinn Fein whereas the other speaker omitted to refer to them in that

context. The UKUP responded by saying that there was a real problem here and the point was not an acerbic accusation of bad faith nor was it introduced in an adversarial way. After all, the leader of the SDLP had had associations with the leader of Sinn Fein. The SDLP responded by saying that it would not transmit documents or leak information to Sinn Fein or anyone else. The party leader gave no accounts to Sinn Fein during the previous talks; neither was information given in relation to bilateral discussions with unionists at that time. It was not in the interest of the SDLP to behave in this way.

25. The DUP said it was glad to note the SDLP's remarks that no information was passed to Sinn Fein. It had received a paper during the previous talks from the British Government with the comment that the leader of the SDLP had approved it. Yet it later emerged that he had not seen it at all. How would parties have faith in Governments when that happened?

26. The Irish Government said that it had listened carefully to the UKUP's statements in relation to the requirement on the Irish Government to keep the negotiations confidential vis-a-vis Sinn Fein. It was ironic therefore that, in two recent instances, one concerning an article in the "Newsletter" by the leader of the UKUP, the other relating to a press release by the leader of the DUP, sensitive matters had been addressed in an apparent attempt to weaken the position of the UUP with regard to the decommissioning issue. The UKUP responded by saying that the article in question was based on information which was almost entirely in the public domain and was not sourced from within the talks process. All such public sources were quoted. Insofar as the allegation that it was designed to embarrass the UUP, the position was known to the media anyway and again it was in the public arena. The UKUP said that if that sort of comment was to be suppressed, it would not remain in the talks. That would be an end to democracy. It felt that the remarks made by the Irish Government had no bearing in the debate.

27. The DUP said it was at a loss to understand why these comments were made. It thought that the whole content of the discussion so far was based on the recognition that the issue of confidentiality had not been dealt with. The DUP could give a catalogue of breaches of confidentiality in the whole talks process but it was time to draw a line now and move on.

28. The Irish Government said it made the statement because the point was being made that the two Governments were likely to leak information in relation to decisions. The reality was such allegations could be made against other parties and the confidentiality rule was in operation all the time. The DUP said that it had been the subject of homilies from the British Government on this matter, yet Sinn Fein/IRA had documents from the British Government including a full document from the talks. It contended that the answer from the Irish Government was specious as the meeting has not even begun to discuss the

decommissioning issue. The UUP said that the two documents referred to by the Irish Government were not covered by the guidelines which were now envisaged in any event. Both Governments were bound by the confidentiality rule like the other participants. A point that also needed to be addressed was the duration of the rule on confidentiality. Would it apply after the duration of these talks and not just during them? The DUP said that the UUP leaked a DUP paper after the 1991/91 talks were over.

29. The Chairman said that the matter would be dealt with in his paper. The SDLP took up the statement by the DUP about its 'no first strike' policy. It said that this could create a serious situation if, say, a leak occurred on a Wednesday when the talks would have adjourned till the following Monday. If the SDLP found itself compromised in this way, it felt that it might be better to have the Chairman deal with the matter on behalf of the talks collectively. The Chairman said that the discussion showed the difficulty of interpreting the rule on confidentiality. His paper would attempt to address the issue raised and it would be prepared overnight to be ready for circulation next morning.

30. The UUP raised the question of the decision on the Alliance allegations against the DUP and the UUP. The Chairman said that he was advised that the Government's decision in the matter was ready and was available for distribution to the parties in their rooms. The DUP raised the question of having a discussion on the findings. The SDLP queried the position with regard to its suggestion on media briefings by the Chairman to which the Chairman replied that there was no general agreement on the point, so it would be included as a proposition in his paper. The

meeting was then adjourned at 17.29 subject to the call of the Chair.

**Independent Chairmen Notetakers  
26 September 1996**

OIC/PS13