

Monica

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## SUMMARY RECORD OF STRAND TWO MEETING - TUESDAY 10 MARCH 1998 AT 14.42

CHAIRMEN: Senator Mitchell  
Mr Holkeri

THOSE PRESENT: British Government  
Irish Government

Alliance  
Labour  
Northern Ireland Women's Coalition  
Progressive Unionist Party  
Social Democratic and Labour Party  
Ulster Democratic Party  
Ulster Unionist Party

1. The Chairman convened the meeting at 14.42. He said he believed the morning's discussion had been useful and intense, covering four out of the 17 points on the "further synthesis" paper. The Chairman said he hoped it might be possible to get through the remainder of the paper that afternoon. He reminded participants that issues overlapped and therefore debate had already touched on some of the remaining 13 points. The Chairman then moved on and asked participants for comments on the next issue - duty of service. He understood that the SDLP and Irish Government wished to be recognised.

2. The SDLP said it wished to move on with the discussion since it seemed, judging by the morning session, that the debate quite often got drawn back to first principles. The party said before going on it had one brief comment to make on that pre-lunch discussion. The party referred to the analogy of a level playing field and the different interpretations put on this by some of the parties. The SDLP said it agreed that people entered onto the playing pitch as two teams wearing different colours, but rather than playing

against each other, as some parties had alluded to, the participants on the field should be trying to build a single team - albeit still in different colours. The party said it was perhaps possible to change the colours over time. In the interim it proposed that the discussion move on. The Irish Government said it was content for the debate to move to the issue of duty of service.

3. Alliance said there were a couple of issues here. There was a sense of anxiety among nationalists about unionists not participating in arrangements with a full heart. But there was a requirement to give some kind of commitment to the system or head of state, monarch etc in all other Governments and countries. The party said perhaps the way forward on this was that people should undertake to give a commitment to the institutions of a settlement. This meant that there was no requirement for nationalists to give an oath of allegiance and no worry for unionists to become bound into structures which they didn't want or didn't appear to want. Alliance said it believed it was better seeking a commitment to a settlement which everyone else was signed up for.

4. Labour said the issue here was whether to impose or try and get agreement or acceptance of a duty of service. It was clearly better to get agreement but to do this an element of trust was required. It was therefore better to develop trust rather than impose.

5. The NIWC said it was in favour of a duty of service to be written into the founding legislation of the new Northern Ireland institution. Furthermore, anything that existed in one structure should exist in another. The party said the legal basis of the structure should derive from a new British /Irish Agreement, itself implemented through legislation passed in both jurisdictions ie at Westminster and the Oireachtas.



6. The PUP said it considered Alliance's previous comments as fairly logical. One had to remember that the IRA took over 60 years to come to terms with an oath to Parliament. There was to be ownership of a settlement. The party said it certainly would not wish an oath of Parliament and a separate oath to North/South structures. There would have to be something overall, but the PUP still needed to be convinced about a duty of service being required at all.

7. The SDLP said it was in favour of a duty of service in both North/South institutions and new northern structures. Following on from Alliance's comments, if it was developed as a commitment of service to one another then working together within the new structures was a way of representing that commitment to each other and to the settlement itself. The party said personalising the issue might help everybody to understand it better. Such a commitment could also be viewed in the underlying context of ideas on a Covenant. The party said it recognised that this could be too much of an extension of thought but hopefully such views were not too idealistic either.

8. The UDP said it had reservations about a duty of service due mainly to political sensitivities surrounding it. Those representatives who had authority in the institutions had a duty of service to exercise the policy of those institutions and therefore working as a member of a Northern Ireland Assembly would mean that that person could not work against the agreed policy of such an Executive. To write in a duty of service that gave the impression that fulfilling such a role had to be forced could reach a point which suggested that the process and the institutions had failed already. The party was therefore against writing in an actual duty of service.

9. The UUP said it had similar views to the UDP on the issue. If there was an agreement or settlement, then there was a clear moral duty on those

with responsibility to carry that responsibility out. The party was therefore unsure as to the legality of a duty of service, particularly if and when parties currently outside the process came in.

10. The British Government said it understood the reasons why some parties wanted safeguards. There were of course reciprocal safeguards being sought across the Strands. However, it said it would have some concerns about a legal duty of service and it might therefore be better to focus on Alliance's and the SDLP's earlier comments since these might provide a more positive way of achieving a result across the Strands.

11. The Irish Government said it was anxious to ensure that the North/South Council was capable of working and not being rendered useless, particularly if co-operation for its workings was withdrawn from those who were members of a Northern Ireland Assembly. The duty of service proposal was simply a safeguard like those sought in other Strands. The Irish Government said it thought it would have been self evident that people could work together in a North/South body after an agreement but the debate showed the lack of trust which remained. It believed that further thought needed to be given to the issue but a duty of service or something similar was, in its view, required.

12. The PUP said that those who anticipated that unionists would resile from an agreement were not displaying very positive thoughts. The previous statement by the Irish Government was not a very welcome one, clearly implying as it did that it doubted the word of unionists. The SDLP said the PUP was being somewhat unrealistic since the experiences of the process had borne out the lack of trust between participants. The PUP returned to the point and said that the SDLP was making out that unless unionists could handle their undertakings, then they couldn't be trusted. The party had said



the previous week that unionists didn't expect to dissolve their concerns in a glass of trust from the SDLP. Neither side could do this. The party said people had read the issue of a duty of service in one direction - the unionist direction. Unionists saw it applying in Strand One and Strand Two and had raised it whenever the issue of distributing posts in the Northern Ireland Assembly was mentioned. The PUP said that developing the notion of a duty of service and a Covenant could fulfil the concerns on both sides when people were committed to a settlement and to the arrangements flowing from it. It could be viewed as a two way safeguard for people holding office as well as those who did not. Carrying forward a duty of service through Strand One and Strand Two meant that people would be bound by their overall commitment to the working of the agreement and not some other ulterior agenda.

13. The SDLP said a duty of service could also be viewed as people making a pledge to each other that their responsibilities would be exercised on a fair and equal basis with no ulterior motive. It could be applied to everybody thus providing a real commitment to making the agreement work. The party said more than just trust was needed here otherwise the general public wouldn't believe in the likelihood of the arrangements working. One also had to remember that shifts in electoral popularity occurred so the analogy of trusting the status quo could simply become unstuck. The party was quite prepared to see a duty of service on a wide basis such as this. It was an important element and not a one way street. The SDLP therefore found it hard to cope when others said no to these suggestions. It was quite happy to look at other language and gain a wider understanding of the term.

14. The UDP said that insuring any system of government worked was a common responsibility, not just in terms of North/South structures but in a Northern Ireland Assembly as well. Everyone had a dagger at every one

else's throats in making the process work. If the chain of authority didn't adhere to this common responsibility, the system failed. However this wasn't the problem but rather what the SDLP had said. The key question was whether a duty of service was going to serve a useful purpose in any agreement.

15. The Irish Government said it had to think of a North/South Council and the potential withdrawal of support from this from a member of the northern institution who was implacably opposed to that North/South body. If that person was involved in issues which had a North/South dimension, then this could result in the whole body crashing. As the SDLP had remarked, one had to think about changes in electoral position rather than resting on the status quo.

16. The UDP said regardless of who the representative was that person would be working under the policy direction of the northern institution. The party said it didn't think that anyone would be happy to see agreed policy not being implemented. The northern institution would have collective responsibility to do something about this situation but writing a duty of service as a contingency measure into any agreement went beyond political efficacy. The Irish Government said it still believed the issue needed further consideration in the context already mentioned.

17. The Chairman said that even if a duty of service was imposed this could only preserve the form of the structures but not the substance. This was the nub of the problem. It was difficult to see how a duty of service covering all contingency could be written in advance, especially when the basis of co-operation was consensual.



18. Alliance said there was still a need to think seriously about the issue. The critical aspect here was the North/South dimension and the question was about North/South co-operation and trust. Some participants were saying that it would be those from the northern institution who would block co-operation. However it could also be suggested that those in the Republic mightn't work their side all that well either. An example of this could be dealing with ordinary crime. Alliance said it was not a completely impossible scenario whereby the Republic's institutions might not wish to work with the RUC. Then the question for the Irish Government was if there was a Covenant produced on the workings of the northern side, was Dublin thinking about any requirement to commit itself to something akin to a duty of service in the North?

19. The PUP said this was why it had proposed structural meetings for any North/South Council and on this basis it would be keen to work the system. The party said that having demanded a strong legislative authority in Northern Ireland, if there was to be a sense of duty in working North/South institutions then this should be controlled by a Northern Ireland Assembly. This was the only practical and sensible way of doing it. In effect what all this was pointing to was a situation where unionists could be trusted to work these structures with Westminster but couldn't be trusted to work with them with their Irish counterparts.

20. Moving on the PUP said it had yet to hear from nationalists that there was going to be a settlement ie in a final sense. The party said it was impossible to have a situation whereby a piece of legislation was required to answer fears and anxieties but have no practical benefit beyond this. The PUP pointed out that the 1973 Agreement didn't fail on a duty of service but rather because those people inside the process were confronted by a larger number of people outside it. The NIWC said the issue was about the political

will of those working the arrangement. If there was no political will in Northern Ireland to do this, then the fall back position was to invoke the legislation as a means of self protection. The debate had to be about the protection of institutions, otherwise everyone was simply talking of introducing administrative procedures that could, at the end of the day, be easily overcome. The party said it believed there were difficulties with "service" when working within North/South structures and it might be better to consider some alternative words. In conclusion the NIWC said that until there was the collective political will to take the "duty of service" up and work it, then everyone would have to fall back on the founding legislation which protected them in a collective sense.

21. The Chairman said a balance needed to be struck between the absolute necessity to provide reassurance to the two communities and the fact that there was simply no way that one group could absolutely protect against every potentially negative consequence. He gave an example of legislation passed by Congress in which 98 of 100 pages covered negative contingencies. The Chairman said it was quite impossible to predict everything which might happen. One could go on forever on what could go wrong. Participants had to develop confidence without attempting to anticipate all negative possibilities.

22. The UUP asked whether it was a case of having to have trust to make the system work or did everyone need the system to make the trust work. The party's view was that the latter position was the one that mattered. If someone obstructed the workings of the system, then that person had to be sacked.

23. The UDP suggested that those people deliberately trying to subvert the workings of an institution, be it North/South or an Assembly, should be



handled at the level where the source of authority rested. The party said it viewed the Northern Ireland Assembly as the structure to handle this and consequently this was an issue for Strand One. The obligation to exercise one's responsibilities to a North/South structure had to be dealt with in the relevant North/South jurisdiction where the source of authority lay.

24. The PUP asked what was really meant by the term "duty of service". The party said some of its representatives sat on Belfast City Council with 14 Sinn Féin councillors. Everyone had signed a duty of service but how did this serve any purpose in the Council when Sinn Féin councillors, for example, ignored resolutions for holding two minute's silence for the murder of a member of the security forces. The question here was whether the SDLP was, in fact, looking for two duties of service - one for North/South structures and one for a Northern Ireland Assembly? The PUP said it agreed with the UDP. Whoever was elected would be elected to a Northern Ireland Assembly and hence any duty of service must come from that structure. Alliance pointed out that it had not been proposing a duty of service for all elected representatives, only those who were undertaking executive responsibilities.

25. The PUP said it had never stated that it was opposed to a duty of service but it had said that such a condition needed to be undertaken by the structure to which people were elected. The party said it could recall past examples where the work of Committee had not been agreed by the Head of department and on other occasions Committee members working against agreed policy. A duty of service had therefore to be strictly connected to the Northern Ireland Assembly so that it alone could deal with these types of situations.

26. Labour viewed the introduction of such a safeguard as insurance that no one reneged on a settlement. It wondered, however, whether in the

legislative basis for a North/South Council, there was not an implicit duty of service. In other words would the duties and responsibilities of those exercising executive responsibilities not be included in the legislation and this in turn interpreted as a duty of service. Failure to carry these out would result in that person being sacked by the Northern Ireland Assembly.

27. The SDLP said it had no difficulty in looking for another term other than "duty of service". Perhaps code of conduct, pledge of performance, oath of office, were all possibilities. The party pointed out that it had raised the issue not only during this debate but also in Strand One. The SDLP said it was not saying that two separate and distinct duties of service were required. It viewed one flowing from the other. The PUP sought clarification on this point and asked whether the SDLP was saying that if a duty of service was drawn up for the Northern Ireland Assembly, it was also applicable to a North/South structure.

28. The SDLP believed there could be a crossover on this because a duty of service for an "SDLP Minister" in Strand One became a collective responsibility for him/her in Strand Two. People couldn't do their own thing in one area and something else in another. The party said whatever agreement was reached would have to be defended in a referendum. Questions would be asked about rights and safeguards and so on. A lot of questions would arise; therefore it was important that people could point to a "pledge of office" so that that office couldn't be abused for the sake of ulterior motives. The party believed such a mechanism to be important because it was not enough, in the public's eyes, to be saying that everyone could work together. It would give people a greater measure of hope and positiveness which could then be transmitted to the process. It had to be remembered that it wasn't just about those working towards and supporting an agreement, but those who would be



undermining it as well. That was why it was important to have something which created certainty.

29. The PUP again asked the SDLP whether it was it advocating one duty of service. The SDLP said it might be better to view it as an omnibus duty of service which could well be built into an agreement for the northern institution. The UUP stated that the focus wasn't just on northern institutions but also North/South structures. Could the Irish Government bind its successors into operating a North/South structure properly and in good faith?

30. The Irish Government said it agreed with the earlier remarks from Labour that a duty of service in Strand One could be incorporated in the tasks and responsibilities of those discharging executive responsibilities. It pointed out that Ministers in the Republic were covered by the provision of the Ministers and Secretaries Act together with additional obligations above and beyond ordinary members of the Oireachtas.

31. The Chairman said that proposals on this from Alliance, the NIWC and SDLP could be worked up into a formula acceptable to all. He then asked participants to take the next two items together - role, remit and functions of a North/South Council.

32. Alliance said, in terms of the text under - functions of the council (1) Areas of Agreement - that this appeared to give a narrowing which wasn't necessary. It was surely the case that all of those with executive responsibility in the northern institutions could meet with those carrying similar responsibility from the Republic's corresponding institution. No particular boundary was required in terms of what would be discussed. This left paragraph 2(b) as being the only one to resolve. In terms of how to take decisions and where the power for these was housed, Alliance said that the

power lay with elected representatives to carry their people on both sides. The party said the more it looked at this issue, the more it had implications for Strand One.

33. Labour said it believed all matters were up for discussion. Was there really any problem with this? In pursuing the issue along these lines, the party said it was hopeful that economies of scale could be derived with mutual benefits for both sets of people on the island.

34. The NIWC said the role and remit of the Council would be specified in a new political agreement. It didn't disagree with any of the functions listed in the synthesised paper. On 2(a) the party queried the meaning of "Policy" and also had a question over the words "further designated" in 2(b). The NIWC said if these issues could be resolved then everyone would have arrived at the core of Strand Two. The party said it had outlined various formats during the previous week's debate and all of these remained meaningful.

35. The PUP said the remit of the North/South Council should focus on the six departments within the Northern Ireland Assembly. Whether this position needed to be placed in legislation was another matter although it would give the party great advantage if it occurred. The PUP said everyone needed to be honest with each other. The functions of a North/South structure had to be focused towards healing the wounds to the benefit of all the people of Ireland.

36. The SDLP said these questions had been discussed several times. In order to get through the unresolved issues, it would be best to look at some working models, and also to get some sense of the Ministerial Council. The party wanted to see the general remit of the Council specified - some agreement as to what this body was intended to do, its general membership and structure. On practical questions about functioning, it would be helpful to



begin talking about specific working models, such as the BSE example mentioned earlier. As regards 2(b) the party said it should be possible to devise ways of stopping Ministers going too far.

37. The Chairman noted that the SDLP and the NIWC had said they wished to see the remit of the Council spelt out in the Agreement. There were six Government Departments in Northern Ireland. He asked was that not therefore the remit - the subjects coextensive with the Ministries in Strand One? It had been agreed that the source of authority was the Assembly, so the area covered by the Ministerial Council could not exceed the Assembly. Would including the six Departments, and any others set up under Strand One, not cover everything? The SDLP and NIWC broadly accepted this, so long as it was not exclusive. EU affairs, for instance, were an important additional area where a common approach might often be beneficial. The Chairman suggested that all areas of EU policy, other than defence and security, seemed to be covered by those Departments. The British Government agreed, noting, for instance, that EU funding came under the Department of Finance and Personnel. It was expected that the devolved administrations in Scotland, Wales and Northern Ireland would have a role to play in EU matters, just as Northern Ireland Ministers did at present.

38. The UDP noted that the SDLP wished to see a more specific remit outlined, and said it was happy to get into discussion on particular areas where co-operation might take place - to explore viability and need etc. The Chairman recalled a remark by one participant some weeks earlier that when the discussion moved into specifics a lot of apparent disagreements would turn out to have little substance. The UUP felt the remit was *de facto* on the basis of the Northern Ireland Departments. It said the phrase "seek to agree" in 2(a) was redolent of the Anglo-Irish Agreement, but that this question (reaching agreement) was covered elsewhere. Under 2(b) the question was



who designated the areas? The Chairman said that since the Parliaments would be the sources of authority, it would presumably be them. The British Government said the remit would obviously be the matters devolved to the Assembly. The Irish Government agreed, and said it would be useful to start exploring the specific areas.

39. Alliance said that there was a complete muddle among participants between the Ministerial Council and the implementation bodies. The Ministerial Council could discuss anything at all it wished, but it could exercise control only over what was controlled by the Ministers. The implementing bodies would be agencies, established by statute. The party said it was important to start designating possible implementing bodies. Possible areas might include tourism, waterways, railways, fisheries, food safety, animal health, a North/South economic corridor etc. When Ministers met they would want to discuss broad areas of co-operation and review ongoing work in the relevant implementation body. The PUP said that not specifying areas of responsibility - leaving it open ended - would allow opponents of the settlement to suggest that constitutional issues would be discussed in the North/South bodies. Alliance said it believed that specifying the implementation bodies would show that they were dealing with real issues, and make them less frightening and more innocuous to people. On BSE, for example, a common policy might be agreed on a North/South basis, but the regulations would still be made by MAFF. In the Ministerial Council, on the other hand, which could *discuss* anything it wished, specifying its areas of interest would conversely make it appear bigger and more threatening. The SDLP said many of these points were helpful. On implementation, the party would want to see a number of these bodies outlined from the outset.

40. The Chairman moved on to the next heading - Decision Taking. Alliance, Labour, NIWC and the PUP all said agreement should be by



consensus, with no big stick to be wielded by the Governments in the event of disagreement. The SDLP agreed that decisions should be by consensus. On paragraph (2) there might be some need for a means to break deadlocks, if measures needed in one jurisdiction were blocked by disagreement. Alliance felt it was incorrect to assume that the existence of a North/South body prevented each administration from taking its own measures in that area if it needed to. The SDLP wondered about, for instance, EU programmes which were agreed to run through a North/South body but which then became deadlocked. The Chairman suggested it was inconsistent to argue that North/South structures had to be separate from east/west ones, and then bring in an east/west dimension when there was disagreement.

41. The UDP said decisions should be by agreement. If there was no agreement, that would presumably reflect a disagreement between the two jurisdictions. The two sides could either drop the matter, or try harder for an agreement, or look at it in the Council of the British Isles - not as arbitration, just in a wider context. The UUP restated its view that agreement should be by consensus. The Irish Government agreed that decisions should be taken by consensus. It was a question of workability. Normally, if there was no agreement, there was no decision to implement. It did not envisage an appeal court for every decision. The Irish Government said it would be concerned in the case of a persistent failure to agree so continual as to make that part of the settlement inoperative - that would be a problem for everybody, including the Governments. The same would be true of the Assembly- the Governments might be concerned not about specific issues but by a persistent failure of the institution to work. The Chairman noted that this question was covered under heading 17 - fallback arrangements - and that there appeared to be no disagreement on decision taking.

42. The Chairman moved on to the next two heading - Implementation of Decisions and Implementing Bodies. The PUP suggested that where decisions were reached they would be implemented separately by bodies in the North and the South. The party did not see joint implementation taking place, and did not think it was required or practical. The SDLP approached implementation of decisions on the basis of whatever made best sense. Some decisions would be implemented through Departments, in some areas it would be appropriate to set up dedicated agencies by agreement on an all-Ireland or a localised basis. The party would want in an Agreement to be able to point to some specific bodies which had been agreed. The bodies needed to be accountable, both to Parliaments and perhaps to an inter parliamentary body. There was no suggestion that they would act without proper scrutiny.

43. The UDP said decisions should be implemented by the most appropriate means, which in most cases would be by existing Departments. The party was not opposed, in principle, to implementing bodies if this was the most effective method, but remained to be convinced. The UUP said decisions should be ratified by the Assembly and the Oireachtas, and implemented in the most practical and efficient manner. If an implementing body was the best means in a given area, the party had no problem with that, but it did not see them being prescribed in the Agreement. The British Government agreed that bureaucracies should not be created where they were not needed, but there might well be cases where a separate body was best. The Irish Government agreed that a combination of methods was best, and said there did not seem to be disagreement on this.

44. The Chairman asked what would an implementing body be - how would it be described? Alliance said it would have to describe a particular function. Railways would be an obvious candidate, where the key route on the island was a cross-border one. An implementing body might have



appointees from North and South, it would meet on a regular basis, and be set objectives by the Ministerial Council - Ministers having presumably already consulted according to their parliamentary procedures. The Ministerial Council would expect reports from the implementing body, and generally keep an eye on what it did, and oversee the fulfilling of its plans and objectives. The body would be accountable to the Ministerial Council and to both Parliaments, perhaps through committees. In this respect it would function like any public sector body, except that it would be accountable in two places. It would have to address a specific area. Tourism was another obvious example. Alliance that six - eight such bodies would have to be designated in the Agreement to show that this Strand was real. Unionists had said they preferred to do this through the Assembly, so the party had earlier suggested its idea of listing areas where bodies were to be set up, and allowing six months for this to be done.

45. The Chairman said it was useful to get into specifics. Words could put people off, and those uncomfortable with this area were entitled to have an identification of what was really being talked about. He proposed that those who favoured such bodies should produce a list for the next meeting of specific bodies which they would propose. This was agreed, as well as a suggestion that there be a similar document on the Ministerial Council. Labour said it was a huge task, beyond the expertise and timescale available, to determine what would be the most effective implementing mechanism in a whole range of policy areas. Like the UDP, the party had no problem in principle with implementing bodies, but felt they should be set up where they were the best approach. It would need a lot of work to satisfy that requirement. The Chairman said that was an argument to be made against specificity in the Agreement, but said it would be useful to put examples before the participants. It had been agreed that two separate documents would be prepared: on the functions of the Ministerial Council, and on the

implementing bodies - what they would be called, how they would be organised etc. Those who wanted something specific in the Agreement should write it down as they would want it. There were two weeks before the next meeting, and the papers should be submitted a few days before that.

46. The NIWC said it thought some parties had adopted an intermediate position. The PUP had suggested designating areas for co-operation, and Alliance had proposed designating the bodies but leaving their establishment to the Assembly after the Agreement. The party suggested there might also be some bodies which could be free standing, and not subsidiary to the Ministerial Council. It would also be useful to include the examples of existing bodies. The Chairman recalled that the Governments had circulated a paper in January setting out existing areas of co-operation. The PUP clarified that it had not suggested that all features of an Assembly be put in a North/South structure since there may well be areas that have nothing to do with the Irish Government.

47. The Chairman noted that participants had covered ten of the areas set out in the synthesis paper. He noted that participants were tiring and proposed leaving the remaining seven items to the next meeting. He adjourned the meeting at 17.27, to reconvene, subject to scheduling by the Business Committee the next day, on 24 March.

**Independent Chairmen Notetakers  
23 March 1998**