

FROM: PETER MAY
TALKS SECRETARIAT
14 May 1992

Dr J Alderdice

SUB COMMITTEE: SC/8 and SC/9

I attach the minutes of the Sub Committee meetings held on 13 May.
Copies are also attached for those members of your delegation who
attended the meeting.

P. May

PM

PETER MAY

HS/A2/845

SUMMARY RECORD OF A MEETING OF THE STRUCTURES SUB-COMMITTEE
AT PARLIAMENT BUILDINGS ON THE AFTERNOON OF 13 MAY

Those present:

<u>Government Team</u>	<u>Alliance Party</u>	<u>UDUP</u>
Mr Hanley	Mr Morrow	Mr Robinson
Mr Fell	Mr Close	Mr Vitty
Mr Bell	Mr McBride	Mr Campbell
Mr Hill		
<u>Talks Secretariat</u>	<u>SDLP</u>	<u>UUP</u>
Mr May	Mr Farren	Mr Empey
	Mr Durkan	Mr Cunningham
<u>Also present</u>	Mr Haughey	Mr Allen
Mr Smyth		

The meeting began at 15.38 and closed at 20.05.

2. There were breaks from 17.25 to 17.45 and from 18.15 to 18.50. Mr Hanley had to leave the meeting at 18.15 and was replaced in the chair by Mr Fell on the re-commencement.

3. The Government Team opened the meeting by suggesting after the discussion of the DUP paper, a minute summarising the sub-Committee's discussions for presentation to the plenary session might be considered, providing all parties were content.

4. The Alliance Party delegation expressed their recognition of the considerable movement forward the UDUP paper represented. It was a clear attempt to be constructive and to measure up to the Common Themes and Common Principles papers that had been agreed the previous week. There were, however, a number of points on which they wished to have further information. They asked how the UDUP proposals differed from those of the UUP. The UDUP explained that their paper laid great stress on legislative powers from day one. In addition, they wished to divorce the speaker from all political responsibilities, and hence had not given him the role of chairman of the Business Committee as the UUP had. The UDUP also offered three deputy speakers, which might allow the Alliance Party to hold one of those posts. That apart, and apart from the greater detail the UDUP paper went into, there was little difference.

5. The Alliance Party delegation asked about executive power-sharing. The UDUP explained that Unionists had taken a principled stand against executive power-sharing, and secured mandates on that point in the past. They recognised that future generations of politicians may have a different view and that institutions might develop, if all parties were content and the disagreement between them had diminished, into a more cabinet style form of government. The UDUP had deliberately tabled proposals they believed the community could accept. The Protestant community had rejected executive power-sharing before, and no doubt would again if the same proposal was put before them. The UDUP proposals did not rule out a power-sharing cabinet eventually, but it would need to be generated by agreement rather than being imposed.

6. The Alliance Party also asked about the reference to the parties to be involved in the committee structure. The UDUP explained they foresaw all parties who respected the democratic process, rather than undermining it through support for violence, would play a full part in the committee structure. The object was to provide a carrot to encourage all to repudiate violence. The Alliance Party also asked about the trigger mechanism mentioned in paragraph 12 of the UDUP paper regarding how an Assembly might change its own structure. The UDUP explained this trigger could take a number of different forms, one of which was a 70% approval vote of the Assembly.

7. In response to a further enquiry from the Alliance Party about committee structures, the UDUP explained that their proposals would provide a stable start for government. There had been little political contact between the different parties, and the working relationship needed to be developed. This process had begun in the '82 - '86 Assembly which had showed that the parties could work together. They saw the role of the chairman of the committee as a matter for negotiation. The UDUP outlined three decision-taking levels and suggested that a code of practice may be needed to distinguish those administrative features for which the department itself would have responsibility, the day-to-day responsibilities which might fall to the chairman of the committee and the wider policy matters which might be examined by the committee itself.

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The UDUP stressed that this was a matter for negotiation. The UDUP also explained that the committee would scrutinise the work of the department, as well as allowing individual members of the Assembly to ask questions and have adjournment debates.

8. The SDLP said they understood the UDUP to be in favour of the maximum delegation of authority to new institutions. In that case was there not a need for an executive co-ordinating authority to take general policy-making decisions. It would not always be possible to delegate affairs to one committee. The government of Northern Ireland would require a general approach, as well as requiring collective responsibility. The SDLP suggested the UDUP proposals did not accommodate that. The UDUP suggested the SDLP had over-emphasised the need for co-ordination. A Business Committee in the Assembly might be set up to ensure the proper allocation of time in the Assembly for discussion of different matters. Whilst the UDUP did not share the view, it would be possible to see every committee as a power-sharing executive on a small scale. All committee memberships would be proportional to electoral support. The Business Committee would be responsible for allocating business to one committee and one department. If committees failed to take account of the views of others, including other committees, then there would be a battle on the floor of the House. Each committee might report its plans to the Business Committee, to allow them to decide the priority of business. The SDLP suggested the Business Committee was taking on an extensive co-ordinating role. The UDUP suggested it would not be needed to perform such a role frequently.

9. In response to a further SDLP question on how the committee structure would tackle issues such as the Next Step proposals, the UDUP explained that one department would take overall charge of the policy and consult with others as necessary. The committee chairmen may be required to sit down together in such cases to resolve any conflict, but no formal structure was required for this. The SDLP saw a fundamental need for proper co-ordination. The need for informal mechanisms to address major issues implied a flaw in the proposals. The UDUP explained they had sought to avoid making proposals unacceptable to the community. They accepted that a cabinet type structure would be preferable to a committee one, but

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recognised that their preferred option would not be acceptable to the SDLP, and that the SDLP's one would equally fail to be acceptable to them. Issues which would affect all Government Departments would become Government policy through votes of the Assembly. The lead committee would report to the Assembly with proposals to carry that policy forward. Issues such as the budget would need to be examined before a committee of the House.

10. The SDLP suggested that the committee structure proposed by the UDUP required a mechanism to ensure effective co-ordination. The failure to spell these out suggested that the UDUP were failing to face up to the political issues. They surmised the Alliance Party agreed with that. The SDLP believed some executive body was required, otherwise the system of decision-taking would be too cumbersome. The SDLP explained they had sought to frame institutions to address political issues. They had sought to avoid the problem of executive power-sharing through the direct election of Commissioners. The SDLP acknowledged that the UDUP had sought to address the issues but could not see how the co-ordination of policy would work. The UDUP delegation said that if the consequence of the committee structure was a move to a cabinet style government, then the SDLP and Alliance Party would have got what they wanted. Provided that the current arrangements were not offensive to the SDLP, then further examination of mechanisms should follow.

11. The SDLP said the UDUP would have to face up to the question of the executive eventually. The effectiveness of new structures were at issue. A collective organisation was needed to deal with the common framework for policies. If the Assembly had to take all decisions, the arrangement would break down.

12. The UDUP reinforced their opposition to an enforced executive such as that proposed by the SDLP. There was no common political ideology, and therefore no executive ought to be formed. The SDLP suggested that if the Business Committee was to be charged with many of the functions normally falling to the executive, it would be beset by the same problems as those just highlighted by the UDUP. In response to a further question, the UDUP said that the collective responsibility of the Northern Ireland Government would come from

the Assembly itself. The Assembly would take decisions by majority rule, in the normal way. The Alliance Party asked about weighted majorities. The UDUP said it had identified the future development of structures as requiring such a weighted majority, and was willing to consider any other areas the parties felt required such a device. The UDUP also explained that committees would not be subject to collective responsibility. Members of committees would be free to pursue their points on the floor of the House. In response to a Government Team question, the UDUP said their paper on safeguards would be produced in the context of working up an agreed model. That situation had not yet been reached. The SDLP indicated it was not ungrateful for promised proposals on safeguards. The UDUP said it recognised the need to have some restraint on majority rule, if the structures were to be acceptable. Some referral system would be needed, possibly to the Secretary of State.

13. The SDLP explained they believed agreed institutions ought to produce the best outcome rather than avoiding the worst. The UDUP said the different views of what were the best arrangements were mutually exclusive. It was necessary to reach the best possible agreement within that context.

14. The UDUP said they thought it likely that the chairmen of committees would acquire the same status as Ministers. That was what had happened in 1982-86. The SDLP replied that that was purely a media status. Executive status was needed for dealings with other institutions. The UDUP suggested that their proposals provided a greater recognition of the identity of the nationalist people than the SDLP ones, because they provided for SDLP representatives to hold a number of chairmanships and vice-chairmanships. The SDLP proposals would grant them only one Commissioner. The SDLP argued that the UDUP proposals did not provide effective, worthwhile and meaningful power for representatives of the nationalist community. The UDUP said their proposals met all of those criteria. If the SDLP was serious, they should make proposals to the UDUP on how to meet their concerns and aspirations. The experience of the MEPs, and of the consultative Assembly, was that there was little difference between the parties on social and economic policies. This had been agreed by the SDLP before. The SDLP commented that

there was a difference between making decisions and making demands. The SDLP suggested it was not effective decision-taking to discuss public expenditure on the floor of the House. The UDUP suggested the finance and personnel committee would take the burden on public expenditure, leaving the Assembly to decide only the important issues. The Government Team explained that public expenditure was a continuous process, with the need to plan ahead as well as monitor and reallocate expenditure in-year. The UDUP delegation said that the committee structure had worked in the '82 - '86 Assembly. Although that Committee had not had any power, it had taken decisions in the same way as an executive committee.

15. The Government Team then asked about the possibility of safeguards being introduced through legal institutions. The UDUP said they would consider any proposals on that, and had a number of alternatives in mind in any case. These included a quasi-judicial committee or referral to a Westminster body, rather than just the Secretary of State. The Government Team asked whether the chairman of a committee would be constrained in his actions in the same way as a member of the power-sharing executive. The latter scenario had been discussed the previous day. The UDUP said that there would be a number of opportunities for a chairman of a committee to campaign on issues. The private members route would remain open to him if he wished to propose legislation. He would be free to ask his committee to introduce legislation, and he would be free to move amendments to any legislation emanating from his Committee and argue for them on the floor of the Assembly. In addition, the chairman could speak in the House on adjournment debates. In short, voters would be able to see the efforts he had made. He would not however be able to force his agenda on the rest of the Assembly.

16. The SDLP asked about the allocation of chairmanships. The UDUP explained the allocation would be by the D'Hondt Rule. The Chief Whips would ensure the party appointments were made. The leader of the House would co-ordinate this process. The SDLP suggested that if the committees were to scrutinise all Westminster legislation, discuss, introduce and carry through all Northern Ireland legislation as well as looking at day-to-day decisions and the wider policy areas, the Assembly and its committees would either become

over-loaded, scrutinise issues insufficiently well or end up with a severe backlog. The UDUP responded by saying the scrutiny they envisaged would be greater than that currently existing. There would also be greater time to consider legislation.

17. The SDLP asked about the external affairs committee. The UDUP saw it having a role in terms of linking into European institutions. They did not preclude direct contact between committee chairmen and vice-chairmen with the respective Ministers of the Republic of Ireland. Their role in European terms might be to monitor legislation being passed in the EC relating to Northern Ireland, to expand the role of the Northern Ireland Centre in Europe and to become more involved in lobbying.

18. Further discussion on the status of chairmen followed. The UDUP commented that the chairmen of committees could all sit on a Business Committee. The SDLP suggested this would make that a quasi-cabinet. The SDLP asked about the future of the NICS, and who the Head of the NICS would report to in political terms. The UDUP did not see the NICS any differently from the present. It would divide itself into departments, taking account of the committee structure of the Assembly. In response to further questioning, the UDUP commented that the Secretary of State would still have responsibility to Westminster. The Head of the NICS might be responsible to him. The Heads of Department would still report to the Head of the NICS. The Government Team suggested further thought was necessary. There was a distinction to be drawn between the role of Cabinet Secretary and Head of the Civil Service. The UDUP's proposals seemed to suggest the chairman of the Business Committee might need a senior civil servant reporting to him.

19. In response to a question from the SDLP, the UDUP said it envisaged any links between chairmen and ministers in the Republic of Ireland as being on an ad hoc basis. There may be further relationships as a consequence of Strand II discussions. The SDLP said the recognition of Irish identity was not simply a Strand II issue. Criticisms of their proposals had centred on the absence of references to the Secretary of State and links to British institutions which implied the British identity was being ignored.

However, the UDUP proposals failed the same test with regard to the Irish identity. The UDUP said its proposals gave a significant role to the SDLP, one which was equivalent to their popular support. They had shown respect to the Irish identity through that. They asked what more the SDLP were seeking.

20. The SDLP commented it could not afford to wait until it saw proposals which would come in Strand II before judging whether the UDUP respected both identities. It was concerned that the UDUP proposals continued to avoid any appearance of Unionists working with the other tradition. The UDUP proposals on internal Northern Ireland issues specifically reflected the British identity in the direct association of Northern Ireland institutions with the British Government through the Secretary of State. In response to a question from both unionist parties, the SDLP said they accepted the reality that Northern Ireland remained within the UK. However, they also believed (as the DUP had acknowledged) that two identities reached out beyond Northern Ireland. If the Unionists could express their British identity in their paper, why had the SDLP been criticised for expressing their Irish identity in their paper. The UDUP said they would consider any proposals the SDLP had to enhance their identity within their proposed Northern Ireland institutions. They asked again what more was required.

21. The SDLP explained that in their view the DUP proposals did not meet the test of representation of both identities in the sense of real executive functions. All the committees would have a Unionist majority. The UDUP suggested that, on the experience of 1982-86, there would not be one simple unionist majority but different coalitions on different issues. The SDLP acknowledged that may be the case on practical matters, but not on wider ones. The UDUP suggested that participation in structures was a means of expressing identity. The SDLP acknowledged that participation was significant, but it was not simply a matter of safeguards (although that was also necessary). They saw great benefit in partnership, with the two communities working together to create an improved society. Part of that partnership would be how external organisations were affected.

The UUP had said they would not accept their own proposals under the aegis of Article 4 of the Anglo-Irish Agreement which demonstrated that - to Unionists too - the context was more important than the content.

22. The Government Team suggested there was a separate issue of symbolic recognition which the UDUP had not answered to the SDLP's satisfaction. This was separate from the pragmatic arguments. The SDLP commented that their proposals had provided recognition of the wider Irish context. The internal arrangements proposed by the Unionist parties were very British-based. The Unionist parties agreed that Strand I proposals were not the sum total of the expression of the Irish identity. It might be further expressed in Strand II. The SDLP said that at best they were being asked to suspend judgement. The UDUP suggested that the SDLP's concerns on identity might be met fully in the other strands. They were covered, in the meantime, because nothing was agreed until everything was agreed. The UUP reiterated the need to look at the total package. There might be further steps within the Strand I structures which could better express the Irish identity. But it would be difficult to move on to Strand II if there was no outline institution in Strand I. The whole approach to Strand II had been that it would discuss how a Northern Ireland Assembly would link with the Irish Government. If proposals resulting from the whole process were still unacceptable, the SDLP were free to walk away. The UUP believed the people of Northern Ireland would rather see its own representatives dealing with their affairs. At this point the Government Team called a break, and the meeting reconvened at 17.45 with the same cast.

23. The Government Team suggested the Committee consider how to report back to Plenary. Mr Hanley said he had to leave at 18.15 but was willing for the Committee to continue to meet under Mr Fell's chairmanship were that considered appropriate.

24. The SDLP asked whether they could clarify their position from the earlier debate, as they feared it had not been fully understood by the other participants. The SDLP explained that they saw themselves as exclusively Irish, and identifying with the Irish

State. They believed that that identification conferred the right on the Irish Government to the involvement in the affairs of Northern Ireland. That was reflected in Common Themes, paragraph 6. The Anglo-Irish Agreement recognised the right by virtue of the role granted to the Irish Government. They had tabled proposals, through an Irish Commissioner, to realise that right as part of an alternative to the Anglo-Irish Agreement. The SDLP emphasised their proposals were based on the basis of consensus, with the Commissioners working together. Those who had been directly elected would have influence over the appointed Commissioners in the process of consensus-making. That was what they meant by expressing the Irish identity through the institutions of Northern Ireland. The UDUP responded by saying that that was not an expression of identity, but an attempt to reach a political goal through a gradualist process. The Anglo-Irish Agreement was now being described in terms that were different from those used to justify it in the aftermath of the signing of the Agreement. There seemed to be an incremental role for the Irish Government, with the SDLP proposals suggesting an executive role in Northern Ireland, now this effectively amounted to joint sovereignty. The UDUP were concerned that the SDLP could not conceive of circumstances in which they would be representatives of the nationalist identity, but would need the Irish Government to carry out that function.

25. At this point the Government Team explained the timetable was now extremely tight. They apologised for the pressure on time, caused by Mr Hanley's need to vote in the House of Commons. The SDLP asked if they could make a further short intervention. They explained that those with an Irish identity felt part of the Irish nation. It was not just a question of kinship. It was the feeling of living in their own country, the common life of which was embodied in the Irish State. The effect of Northern Ireland affairs impacted daily on the rest of the island. The South had a legitimate interest in what occurred in Northern Ireland. The Agreement expressed that input into the decision-making process as did the SDLP proposals. They emphasised once again the spirit of consensus and the European framework within which those proposals had been drawn up. The problem was that Unionists disagreed with the Agreement. They also disagreed with the SDLP's proposals.

There was little point in their asking for further models in which the Irish identity might be incorporated, because Unionists disagreed with the principle of involving the Irish identity. The DUP sought to respond, but in a ruling from the chair, the Government Team suspended discussion, due to the time constraints. It suggested that in reporting on the work of the sub-Committee, it should be made clear that discussions had not been completed, and that Plenary should be invited to agree to further meetings of the sub-Committee taking place, perhaps on Friday. After discussion it was agreed that this sub-Committee was a more appropriate forum for the continued discussion than Plenary or the Identities sub-Committee. Whilst it was agreed it would not be appropriate for the sub-Committee to continue to discuss substantive matters under Mr Fell's chairmanship following the departure of Mr Hanley, it was also agreed that it would be sensible for the sub-Committee to reconvene to discuss a draft paper outlining the report back to the Plenary of the work of the sub-Committee had completed thus far.

26. After a break for the parties to consider the draft document, the sub-Committee reconvened. The parties were represented as before; the Government Team was represented by Messrs Fell and Hill only, with Mrs Pyper in attendance. The sub-Committee discussed the draft paper produced by the Government Team, a final version of which is attached. It was agreed this would form the provisional report back of the sub-Committee to the Plenary session on Friday morning. A press statement was also agreed.

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Report from the sub-Committee established on 11 May

1. Acknowledging that other issues besides institutional arrangements may arise in Strand I of the Talks and that the issues addressed in Strand I, both those agreed and those deferred, will ultimately need to be assessed alongside the outcome of the other Strands of discussion in the Talks process, the members of the sub-Committee set up on 11 May to consider the papers tabled that morning by each of the four Parties have considered possible ingredients in a new institutional framework for Northern Ireland. This paper represents the sub-Committee's provisional report back to Plenary.

2. The members of the sub-Committee explored in some depth the institutional arrangements at the heart of each Party's papers tabled on 11 May, and tested each of those proposals against the Common Themes and Common Principles documents agreed in Plenary on 4 May and 5 May respectively.

3. Each team of Party representatives on the sub-Committee had the opportunity to explain their Party's proposals, to clarify points of detail in response to questions from other members of the sub-Committee and to defend their proposals against points made by other members of the sub-Committee. Each set of proposals was subjected to a sustained and measured critique. Each team of Party representatives had full opportunities to explain why they believed aspects of the other Parties' proposals were inadequate when measured against the Common Principles. A fuller record of the discussions is provided by the minutes of the sub-Committee meetings.

4. The members of the sub-Committee noted that, in general terms, it was agreed by all the Parties that any new political institutions for Northern Ireland should involve:

(a) a body with Province-wide executive responsibilities;

(b) a single Assembly of about 85 members elected for a fixed 4 or 5 year term (though the DUP sees a case for increasing the number of members to about 100);

- (c) elections to that Assembly by a form of proportional representation;
- (d) the executive authority having responsibility for at least all "transferred" matters in Northern Ireland, as defined in the Northern Ireland Constitution Act 1973, leaving open the option of moving some currently "reserved" matters into the "transferred" category; and
- (e) legislative as well as executive/administrative powers.

5. The members of the sub-Committee also noted other areas where, although there was broad agreement in principle (some reflected in the Common Themes paper), further detailed consideration would be necessary once the broad shape of the key institutional arrangements was clear. These included:

- (a) an acknowledgement, consistent with paragraph 2 of the Common Themes paper, that the United Kingdom Government and Parliament would continue to have sovereign responsibility for all matters for which responsibility was not transferred to any new political institutions in Northern Ireland;
- (b) an acknowledgement that the Secretary of State would continue to be wholly accountable to Parliament at Westminster for the exercise of any powers and responsibilities which he would retain, coupled with a general concern (expressed in particular by the UUP and DUP) to ensure appropriate Parliamentary scrutiny of and accountability for the exercise by the Secretary of State of those powers and responsibilities;
- (c) the need to make arrangements to secure a local political input to the exercise of those powers and responsibilities, especially in respect of security matters (if they continued to be the responsibility of HMG);

- (d) the need to define a clear relationship between any new political institutions in Northern Ireland and EC institutions;
- (e) what should be the precise nature and role of the Assembly and any Committees thereof, including in respect of legislation;
- (f) a requirement for arrangements for determining expenditure levels in Northern Ireland, allocating resources and ensuring a strong role for the Assembly in the scrutiny of budgetary proposals, together with a consideration of the extent, if any, to which any new political institutions might have revenue-raising powers; and
- (g) machinery to deal with and correct grievances and to entrench individual and community rights, including the possibility of a Bill of Rights.

6. The members of the sub-Committee noted that each Party, and the Government Team had papers to table or more detailed proposals to make in several of these areas.

7. The sub-Committee was not charged with resolving the differences between the key institutional elements of the Parties' proposals and invites the Plenary to consider how that matter should be taken forward.

8. It may, however, be helpful to the Plenary to indicate that:

- (a) there was support from the DUP, the SDLP and the UUP for the view that there were grave difficulties inherent in any model in which a "Cabinet-style" Executive was dependent for its existence on securing widespread support within any Assembly. This has led the UUP and DUP to propose systems in which power was vested in Departmentally-related Committees of the Assembly, the chairmanship and membership of which were distributed on a proportional basis; and the SDLP to propose a system in

which there was a separation of powers between an Executive Commission and Parliamentary Assembly, albeit with the latter having a powerful role in scrutinising executive actions, budgetary proposals and draft legislation;

- (b) while there was general support for the proposition that any new political institutions should be such as to give expression to the identity and validity of each main tradition, there was a difference of view on the question of whether this required any new political institution to have features reflecting the wider context. The SDLP's proposals recommend such features. The representatives of the other Parties suggested that these features, in the manner proposed, were undemocratic and would prove unacceptable. Instead, they pointed to the extent to which their proposals incorporated measures to ensure that representatives of both main traditions were represented on an equitable basis at the highest level and indicated that they would have proposals to make in relation to Strand II of the Talks which would further acknowledge and accommodate the identity of the main minority tradition in Northern Ireland. The DUP further argued that the SDLP proposals would be unworkable, unstable, did not provide all constitutional parties with an opportunity to achieve a role at each level and did not provide adequate public accountability;
- (c) the UUP and DUP expressed the belief that the establishment of Assembly Committees on a proportional basis with chairmanships also distributed in proportion to party strengths would provide representatives of the minority community with influence proportionate to their electoral support. The Alliance Party and the SDLP argued that the proposals, as presented, provided insufficient assurance that the interests of minority parties would not be consistently overridden; and the SDLP further argued that they were unworkable, not least in that they would not provide for the effective discharge of executive

responsibility and did not enable an adequate expression of the Irish identity of the nationalist community;

- (d) three parties (Alliance, DUP and UUP) made proposals for excluding those who condone terrorism from various levels of the structures which they had proposed.