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SUMMARY RECORD OF STRAND TWO MEETING - TUESDAY 10 MARCH 1998 AT 10.41

CHAIRMAN: Senator Mitchell

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 10.41 and stated that in accordance with the schedule previously agreed, the Strand Two session would continue to 13.30 before reconvening at 14.30 and finishing at 17.30 or until the discussion had been completed, whichever was the sooner. The Chairman said at the end of the previous Strand Two meeting there had been a brief discussion on today's agenda. It had been agreed that the Independent Chairmen's staff would prepare a further synthesis paper based on the participants comments from last week. This had now been produced. The Chairman apologised for its late circulation that morning since he had only arrived in Belfast the previous evening. He hoped the document was a concise and accurate reflection of the discussion last week and he apologised in advance for any errors in interpretation however the document had been circulated on the sole basis of getting today's discussion going.

2. The Chairman said it seemed to him that a very good discussion lasting some five hours had occurred at the last meeting. He proposed that to start the session, participants should go through the document and attempt to refine the unresolved areas without in any way limiting the debate to these. The Chairman asked whether participants had any alternative approaches in

mind. Hearing none the Chairman reminded participants that the document was not exhaustive and was based on discussions in previous meetings. Moving to the first of 17 points the Chairman asked for comments on the purpose of North/South structures.

3. Alliance said it hadn't had a great deal of time to study the new document. The party suggested, from a procedural viewpoint, as an alternative to the Chairman's proposal, that it might be better to start with participants clarifying the areas of agreement before going on to areas of disagreement. Alliance said it believed there was a need to ensure that all had an accurate description of agreement, particularly when one had to bear in mind that the process was based on the maxim of "nothing was agreed until everything was agreed".

4. The Chairman said he was content to proceed in this way and agreed with Alliance that its final comment was an important one to bear in mind. The further synthesised document was of course non committal and "areas of agreement" were simply that and nothing more. The Chairman then proposed that Alliance offer comments on the areas of agreement beginning with the purposes of North/South structures.

5. Alliance said it was not asking for cast iron commitments from people on this aspect. It was in full agreement with the "areas of agreement". Furthermore, as regards the final sentence of that paragraph, the party said it was its understanding that nationalists in Northern Ireland would recognise North/South structures as providing an institutional expression of their identity. The Chairman checked with the participants whether they were content to go forward on the basis of Alliance's proposal ie for each party to go through the areas of agreement.

6. The UDP said it wasn't sure about this. The Chairman then suggested going through the document point by point and asked for comments. Alliance said it was content with this and assumed this meant that each section would be commented upon by each participant in turn. The Chairman asked if participants were content with this approach. This was agreed.

7. Alliance said it didn't believe an overall political settlement could be achieved without agreement on North/South Ministerial Council. It was, however, critical that such a structure was accountable, transparent, efficient and effective. The party said that, in terms of establishing other North/South bodies flowing from the Council, there needed to be a number of specified areas indicated whose work would be taken forward by such bodies. Alliance said it was a practical and narrower perspective which dictated that some form of implementation bodies could be averted to with these being accountable to the North/South Ministerial Council as well as to those institutions they represented.

8. Labour said it was trying to view how the process narrowed the differences which were outlined in the paper. Was it a case of looking at the unresolved areas, although it didn't view anything as unresolved with regard to the purposes of North/South structures? There appeared to be agreement on this issue so this was at least a starting point. The Chairman said the first section was general and subsumed specific details. One question, however, was whether such a North/South Council would have a remit in advance or at some later point following the creation of the Northern Ireland institution. This was the kind of specific which needed to be discussed.

9. Labour said its position was well known. It advocated neither a maximum or minimum level of responsibility for the Council but rather an evolving process. The NIWC said there was an agreement to formal

North/South structures. The party said it had listed the broad purposes of such a structure in its paper dated 23 February but believed the purposes should be couched in a flexible way, and, in a broad sense, to allow these to be added to if agreement to do this was forthcoming.

10. The PUP said the purpose of a North/South structure was as part of an overall settlement and part of creating a settlement. There was therefore more than one purpose for having such structures. If these structures were viewed as mechanisms to allow both sections of people on the island to function better, this was fine. If they were viewed by one section as a rolling movement and a concession towards the achievement of an objective which the other side opposed, then such structures wouldn't develop. Given this, the party said it was important to obtain definitions from others to enable more clarity to be produced, which in turn would enable a settlement encompassing the former position to be achieved.

11. The SDLP said it hoped the PUP's fears could be addressed as the participants clarified issues during the discussions today. The party said it wished to challenge the PUP's use of the word "concession". The SDLP said such institutions were essential and inherent in the process. Use of the word "concession" only reinforced the fears and apprehensions which the PUP was trying to allay. The party said it recognised the twofold purpose of North/South institutions and these had been succinctly stated by the PUP. The party said it might place the political point in the final sentence of (1) ahead of the practical emphasis but it recognised these as the essential parts of the argument.

12. The SDLP continued saying that it believed the wording of paragraph (1) to suggest that a North/South structure was exclusively addressing the nationalist case. The party recalled that in the previous talks process in

1991/92, some interesting contributions had been made in which the unionists had stressed the Irishness of their identity. The party was raising this because the political case for such structures was not, in its view, exclusively the preserve of nationalists. It hoped that unionists would find some comfort for themselves in a general sense of identity in these institutions and that they would recognise they were not just for nationalists. No matter how minimalist a role the unionists attributed to the North/South Council as giving an expression of their identity in the short term, the party said those institutions would evolve and unionists would be able to acknowledge the Irishness of their identity in them, as they used to do.

13. The SDLP said it understood and acknowledged that the situation of the last 30 years had removed this type of language from the unionist vocabulary. Before then, the party quoted a Richard Rose survey in 1966 where it appeared to be very clear then that unionists acknowledged their Irish identity. The SDLP said it would like to hear the views of unionists on this issue. It didn't, however, wish such North/South institutions to be exclusively addressing the nationalist position. Moving on, the party said it wished to underline the word "indispensable" in paragraph (2) and recognised Alliance's blunt comments on this point earlier.

14. The UDP agreed that there would be a valuable role in developing relationships between North and South. It was vital that the development of these relationships was on a voluntary basis and was mutually beneficial to both jurisdictions. It was also vital that accountability and control of these developing relationships was derived from the Northern Ireland Assembly and the Oireachtas alone. The party said it viewed the development of such relationships as being set within the wider issue of co-operation throughout the British Isles.

15. On the issue of the identity of nationalists, the party said it could see that this was not tied into the existence of relationships but rather the nature of those and the extent of powers etc which North/South structures would have. The UDP said this position needed to be fleshed out more. Co-operation was desirable but only achievable in the context of the position of the Irish Constitution and in particular Articles 2 and 3. This was something it wished to press the Irish Government on during the discussion today. The UDP said it also hoped that the negotiations would not be directed on a different course as a result of Sinn Féin's "minimum requirements" as portrayed at the weekend. It was very clear that that party was detached from the reality of the negotiations. The UDP added that it could conceive of those comments putting pressure in the SDLP and Irish Government to try to achieve an agreement on those terms and it hoped that no back sliding would occur from them as a result. The party said it wanted to resolve the issues but this needed to be achieved in a situation where such arrangements for a solution were politically acceptable to the Northern Ireland people as a whole.

16. The UUP said there was a tension between politics and the practicalities on this issue. If it were not for the political dimension the party said there would be no requirement for North/South structures. It referred to the interesting consensus at the previous Strand Two meeting in relation to the Foyle Fisheries Commission being a failure of cross-border co-operation. There were other examples of problems such as the Carlingford Lough Commission but also successful ventures like the Tyrone Guthrie scheme in Monaghan which was supported by the Arts Councils North and South. The party said it had just received a short memorandum produced by an individual who had experience of North/South co-operation in the past and who had also been involved in the discussions leading up to the proposal for a Council of Ireland in the early 1970's. The party said it wished to highlight the

document (and would circulate it to others) not by means of endorsing the suggestions in it but to take account of the practicalities raised by it.

17. The UUP said that the sources of authority and accountability of North/South structures were absolutely critical. It was also critical that the sources of authority had to be crystal clear and routed through the Northern Ireland Assembly. There could be no independent, free standing powers and accountability also had to be real. The party said that for those who were uncomfortable with this position, it was worth reminding them that the process everyone was engaged in was based on consent and operated by agreement. If people thought otherwise then this was tantamount to limiting consent and the party viewed such a development as untenable and needed to be taken into account. The UUP said it was also concerned with the interpretation, on page three of the further synthesised document, of the functions of such a North/South Council. The party regarded these as comprising 1(a), (b) and (c) under that heading and nothing over and above this. The Chairman pointed out that the further synthesis document was only reflecting the previous week's discussion when a number of potential bodies and examples had been highlighted together with the issue of whether a remit should be designated in advance or after the establishment of a Northern institution.

18. The UUP said it was still concerned with the terminology at this point since it never viewed "schemes" as being part of the remit or responsibility of a North/South structure. The remit was to encourage discussion, contact and co-operation. The operational aspect of all of this was an entirely different issue. There was no question of attaching functions to a North/South structure and the process needed to focus on this point because the practicalities were significant. Pulling between the politics and the practicalities caused difficulties for the party. It couldn't live with the notion

that such North/South structures were only transitional arrangements. The UUP recalled references made by unionists in 1973 to the proposed Council of Ireland as the vehicle which would take unionists into a united Ireland. The party said it regarded that particular point as one of the lessons of Sunningdale and if North/South structures were portrayed in this light again, then consensus for them would disappear. Another lesson which needed to be noted was the volatility of public opinion.

19. The UUP stated that the political pull was towards institutional expression of nationalists' identity in Ireland. It recognised the SDLP's earlier comments though the terms were, it thought, somewhat slippery since words could mean something totally different from Richard Rose's survey of 1966 and now, so one needed to be careful about the amount of weight attached to them. The party said that if people didn't want institutions to be seen as exclusively addressing nationalist concerns, then future arrangements needed to be properly integrated into the correct context. It was surely possible to design a flexible arrangement in so far as the concerns of nationalists were recognised but the North/South Council was housed within a wider arrangement which encompassed other concerns. If the North/South structure was separated out then this looked like another concession to nationalists and the structure would not be durable.

20. Labour referred to the UUP's remarks about the political dimension of North/South structures not being required because practical co-operation already existed. The party said if the latter was so, why had it been trying for 16 years in South Down to try to achieve practical co-operation between North and South on tourism and had had no success? The party said it had visited Dundalk and had looked for Northern Ireland tourism literature in the Dundalk Tourist Office. Eventually it was given a few leaflets from the bottom of a pile of brochures. The party asked was this what the UUP had in mind

for practical co-operation? Labour said if institutions were established on a North/South basis then as well as considering the political aspects such as the expression of nationalist identity, there was also the goal of real and practical co-operation which delivered benefits to people in both jurisdictions.

21. The UUP considered the Dundalk tourist office had been very rational in its thinking, wanting money spent on its patch as opposed to Northern Ireland! The party said that was why the scope of co-operation was limited. If one wanted to look at the expression of nationalist identity then the place to do this was within the Irish Constitution. The Irish Government needed to address this point when looking at its own Constitution and tackle this in a manner which did not create problems for the unionists. This issues needed further exploration with thought being given as to how it was best addressed.

22. The British Government believed the institution of a North/South body to be essential for an overall agreement. It accepted the SDLP's comments on the past expressions of Irishness by unionists but it also agreed with the UUP regarding its comments on avoiding a settlement which was only acceptable to one side. The same point could be made about a Northern Ireland Assembly. The package had to be acceptable to all communities. The British Government said it viewed the "practicalities" argument as being important, but if the North/South structures could have a positive effect on the people of Northern Ireland then such institutions could have an appeal beyond political expression. At the end of the day the detail needed to be thrashed out between the Northern Ireland parties and the Irish Government. The British Government said it was content for this to occur but it had to be said again that any agreement could not relate to just one section of the people. It needed to be viewed in terms of an overall settlement and have practical consequences in terms of how it affected people's lives in both part of Ireland.

23. The Irish Government said it believed there was some convergence regarding the establishment of a North/South body. There had been a broad acceptance of such bodies having two dimensions and the UUP had gone along with this view today. The Irish Government added that a fair level of incremental progress had been achieved, including agreeing to differ on certain issues. The main problem was that time was moving on and all parties in the process needed to be thinking in terms of producing the contents of a text for each of their constituencies. The problem in doing this was attempting to agree the technical detail such as the remit and functions of the North/South Council. The Irish Government said it believed a remit for the body should be established in advance. It wasn't simply making a political point here but wanted to create a structure which would work in a practical sense. There was no point to establishing a structure which then functioned as a quango and couldn't take decisions. The Irish Government said it supported the SDLP's comments regarding the insertion of the word "indispensable" in paragraph (2) of purpose of North/South structures. It added that such a Council could only operate by agreement and with democratic accountability to North/South institutions of Government. Any other position which did not have the North/South relationship as a central element could not be politically sold to the Irish electorate in a referendum. The Irish Government said it was also clear that several issues in Strand Two, such as the nature of Northern Ireland representation at North/South Council meetings, the question of a duty of service and the issue of the source of authority which had been raised earlier, still needed to be addressed. Such issues, it believed, could be taken forward productively by using the cross-strand mechanism to the greatest possible extent as the process moved towards its crucial final stages. The further synthesis document provided a fair reflection of the present positions but there was still clearly a lot of work to do over the next three/four weeks.

24. The Chairman recalled that the UUP had suggested that it was essential that the sources of authority and accountability were to be placed with the Northern Ireland Assembly and the Oireachtas alone. He asked participants whether anyone had any disagreement with this. Hearing none the Chairman stated that that dealt with one of the UUP's points. The second UUP point focused on whether the Council's prior remit should be established in advance of institutions in the North being created. This proposal had been supported by the Irish Government and a couple of other participants including the SDLP. The Chairman indicated that the UUP disagreed with this proposal, suggesting instead that the Council's remit and function be taken forward on a rolling basis with its remit agreed at a later time. He asked for further comment on this.

25. The SDLP said that it was the principle of the issue which was being stated. The nature of institutions in the North and how accountability and authority would be vested were all matters which needed elaboration. There was no problem with the principle but there were areas which could affect the way in which accountability and authority were to be exercised.

26. The Chairman noted that this illustrated the inter-dependability of the Strand negotiations. If consideration was being given to the format etc of North/South structures, then Strand Two needed to know about details in Strand One. The Chairman then asked participants to move to page two - relationships with East/West Institutions - which raised a further UUP point. Should a North/South Council be set within a Council of the Isles framework or should it be clear and have a distinctive institutional identity? The Chairman asked for further comment, noting there was disagreement on this.

27. Alliance said it viewed the North/South Council as being a distinct and separate body. The rationale for this statement flowed from paragraph (1) a - purpose of North/South structures and the basic position that one couldn't run away from the political requirement outlined in that section. The party said to try and disguise it only detracted from the original purpose of establishing North/South structures. Labour agreed with Alliance, as did the NIWC. The PUP said it didn't agree with the three previous parties. Unionism was not going to have a political day release scheme for East/West relationships in much the same way as the SDLP didn't wish for such a mechanism in North/South structures. The party said that neither set of relationships should be separate but rather combined in the wider web of a North/South East/West structure.

28. The SDLP said the PUP was taking advantage of its (the SDLP's) earlier remarks when it had said that the best way of taking account of unionist views in a new agreement was meshing together the East/West and North/South dimensions. The SDLP said there was a political immediacy and practical requirements which underlined the case for the distinctiveness of the North/South institutions. Any suggestion of these being subsumed in some wider web would be strongly opposed. The UUP said it saw value in a Council of the Isles as well as seeing value in a North/South Council as part of this operating on an equal basis, rather than being subservient to it.

29. The British Government said the "Propositions" paper had proposed a new British Irish Agreement from which a North/South Ministerial Council, new East/West arrangements and new inter Governmental Council machinery would flow and which would all be separate within that Agreement. The Irish Government said a North/South body couldn't be presented as a feature of East/West arrangements. This simply defeated the political purpose of such a body. The Irish Government said it agreed with the SDLP. A North/South

body could not be subservient to East/West arrangements and must have a clear and distinct institutional identity.

30. The UDP believed that people could not deal with co-operation, within a web of relationships, on a completely individual basis. It was not possible, in this context, to suggest that a North/South body should operate on its own. Co-operation was required not just on a North/South basis but on a wider framework and there had to be a structure designed to deal with this situation. If a Council of the Isles was to be part of an Agreement, then there would be enormous difficulty for the party to explain to its community that North/South co-operation was effectively separate from a Council of the Isles structure. This position simply wouldn't sell. The party said in areas of activity where there was a wider need for co-operation, beyond the North/South relationship, then those relevant jurisdictions should meet to discuss this in a Council of the Isles context.

31. The party said it also believed that co-operation could take place on an issue by issue basis. However it was not possible, in its view, to have a North/South body which was stand alone and not part of the wider set of relationships and had different rules for establishing co-operation than other regions. The UDP said there was a need to have a balance of political sensitivities on this point. The Chairman said it was clear there was no agreement and asked participants to move on.

33. The SDLP said, listening to what the UUP and UDP had said, it was in no doubt that a connecting thread existed in these relationships but such a connection didn't negate the need for distinct and separate institutions in each part of that relationship. If unionists accepted this then one couldn't have arrangements which subsumed the North/South relationship to a degree which was not possible for the party to accept. The SDLP added that it had

to be remembered that elements of the East/West relationship were not yet in existence. While the party recognised their potential, much of the institutionalised dimension of that concept had to await further developments on devolution with the UK.

34. The Chairman proposed that the debate move on to the legal basis of a North/South Council. He reminded participants that no final position had been formulated on this but no difficulties had arisen in terms of the areas of agreement. The Chairman then asked for comments on paragraph (2) under this heading.

35. Alliance said there were a number of elements to this and also some apparent confusion. The party said it believed a North/South Ministerial Council would be established by a Treaty and therefore it was unsure as to the legislative needs of such a mechanism. Implementation bodies probably did need to be set in legislation since they would to be established by an Act of Parliament in both jurisdictions. The key question here was whether such legislation should be enacted in the North by a Northern Ireland Assembly or at Westminster. A secondary question was whether any Agreement should specify where that Act should be placed. The party said it was very well aware of SDLP's comments about not taking things "on account". It also recalled unionist comments that the Northern Ireland Assembly was the accountable structure and that powers couldn't simply be "parachuted in".

36. Alliance illustrated that in an Agreement a North/South Ministerial Council could perhaps talk about any issue within its functional areas and could perhaps also discuss issues outside its functional areas but legislatively this was where implementation bodies were needed. It could also be said that in six months' time bodies needed to be established in these functional areas. However it would be for the contracting parties at a high level (the two

Governments) and at a lower level (the Northern Ireland Assembly and the Oireachtas) to agree the actual technical requirements and detail. Alliance said part of this whole issue was a technical problem and part of it was down to fear and mistrust. There was a differential between the North/South Council and the implementation bodies; there was no legal bond on the North/South Ministerial Council but implementation bodies would have a specific remit and would have a legislative basis.

37. Labour said it needed to be guided by legal and institutional lawyers on this one. If the North/South body had executive functions, how would these be discharged? The NIWC said the North/South Council must have a legal basis from any Agreement. It was unsure as to whether Alliance's proposal of waiting for six months and letting the Northern Ireland Assembly have its say was the correct method or proceeding.

38. Alliance said that if there was to be an election to an Assembly by June there was absolutely no prospect of the legislation going through Westminster to set it up within that timescale. The party said an enabling Bill could be passed to establish the Assembly election. As to any Agreement from the process, this would be enshrined in a Treaty and a subsequent Act would be needed in the North and legislation in the Oireachtas to set up both ends of the North/South Ministerial Council. The question was whether you had one Act or more than one Act to establish this.

39. Alliance said that by the time of the Assembly election it was unlikely that all the legal aspects would be in place so the legislation would therefore be post hoc. The question here was how could one make sure the legislation matched the Treaty. The party said the unionist requirement was that such legislation should go through a Northern Ireland Assembly. Nationalists feared that the legislation could be different to the contents of the Treaty.

Alliance therefore was proposing a six month time frame for the legislation to be got through since the North/South body wouldn't have form and legal contract at that stage. Alliance then sought confirmation as to whether its analysis was correct and asked the Governments for comments. The NIWC said the Council needed to have a legal basis but an answer was required to Alliance's point.

40. The PUP said it went along with Alliance's analysis. There would surely be quite a lot that would not be completed and agreed in the short term. The party said it would be better seeking legal views on this since it had no experts in this field. If participants held on to the maxim of "nothing being agreed until everything was agreed" there would ultimately be a lot of work done on trust and this was an element which was in short supply.

41. The SDLP said it recognised that following a settlement and election there would be a settling in period. But it seemed as though the process was now back to the analogy of the "empty house" and the question of trust. The SDLP said it wanted to be clear that there should be a remit and a range of functions for the Council which would permit it to gain credibility. It couldn't be seen to be sitting around. The party said people would have to be guided by the types of legislation in the UK and Republic's Parliaments in terms of the basis for a North/South body. However, with regard to a Treaty, the party said the broad shape, remit and functions needed to be spelt out so that people had a credible institution in place even though it would take time to settle down. The party couldn't accept a remit based on "something in the nature of" on some sort of "account". The party had no difficulty with the prospect of subordinate legislation being enacted as the institution evolved. This was something which could occur in the northern institution but the party sought a North/South institution which had credibility and a clear job to do from the beginning.

42. The Chairman posed a question to the SDLP following on from Alliance's earlier comments. He asked if a North/South Council was established and its members were identified as being the appropriate members from the Governments, was this not by definition, identifying the areas of responsibility for the Council? Furthermore the Chairman suggested that this approach also satisfied the need for prior specificity while accommodating the unionists concerns about defining whole separate areas of responsibility.

43. The SDLP went along with the Chairman's analysis. But the problem was what happened on day one when consultation began and working together commenced. The party said it needed to know what could be remitted from the Irish Government since it didn't have its hands on the levers of power. The Irish Government was a sovereign Government and it would want to ensure that the responsibilities of a North/South Council would be discharged properly. The same would go for the Northern Ireland Assembly. There was therefore a need to know from the experts what was viewed as practical and what type of legislation was needed to ensure that the transfer of responsibilities was conducted appropriately.

44. The Chairman said every Government in the world had a Department of Agriculture. If Agriculture was a function devolved to a Northern Ireland Assembly then why define it further since anything beyond this resulted in a more narrow definition? The Chairman asked the SDLP whether its position would not be better served by this definition, thereby reducing the prospect of any disagreement since a general subject heading was being used. The SDLP acknowledged the Chairman's point. The British Government said the Chairman's point was also covered under "Functions of the Council" and

paragraph 1(a) a statement which had been accepted by the UUP. The Chairman suggested participants move on to the next heading.

45. The UDP said it was still not sure about all of this and wished to reserve judgement. The party said that, in relation to the "empty house" scenario raised earlier and previously by the SDLP, the process had to decide whether to outline specific areas of co-operation and how these were going to be progressed. The process also had to be guided to where the scope of this co-operation could be as it was important to view the benefits of such activity. The UDP said the SDLP had spoken about East/West co-operation occurring when there were developments elsewhere in the UK but the party (the UDP) was trying to be generous in viewing this aspect of the arrangements as part of a comprehensive settlement. The party said it also agreed with the Chairman's point regarding the narrowing of definitions, though the narrower it was for unionists, the easier it would be to deal with in electoral terms.

46. The UUP said it broadly agreed with some of Alliance's comments regarding the North/South Ministerial Council. It was not a question of devolving powers to it but rather it was the range of subjects to be discussed as well as co-operation on a range of matters devolved to a Northern Ireland Assembly which would be the Council's remit. The party said it didn't wish to see restrictive remits. A North/South Council set up by agreement and Treaty would provide it with some form of legal authority. A different question was how to take forward co-operation and this required more thought since there could be issues which might arise subsequent to an Agreement. The party said there was a need to be clear in what was being agreed. In other words if there was a need for subsequent action this should be flagged up. It was happy to see the proper level of co-operation in a North/South Council but the party said it also wished to hear from the Governments on their views

regarding the legislation which needed to be put in place to ensure such arrangements could take shape.

47. The British Government said it was correct to make a distinction between the Ministerial Council, which would be established by Treaty, and the implementing bodies, which would be established by legislation. The Act to set up the Assembly would probably refer to the need for enabling legislation to set up joint bodies with the Irish Government. The Irish Government imagined the functions of the Ministerial Council would be clarified in the Agreement and this would be reflected in the Treaty. The Chairman's earlier suggestion concerning individuals and their areas of responsibility was interesting. The composition of the Ministerial Council would depend on the areas which it was decided the Council would deal with. However, the North/South body had to be more than a putative body, dealing with areas to be decided by the Assembly. It had to have powers to make decisions, although it would be accountable back to the Assembly/Oireachtas. In answer to a question from the UUP, the Irish Government said this accountability would probably take the usual forms - parliamentary questions, etc. The UUP said this would not allow the Assembly to stop a decision which had been made. The Irish Government said that decisions were only by agreement. The source of authority of decisions would be the Assembly or Oireachtas, while the source of authority for establishment would be by Treaty and legislation. One view of the Council was to say it could discuss anything it wanted, although in terms of clarity the electorate might want to know what would be discussed there. The Council would be interfacing with the Assembly, and would deal with those areas which had been devolved to the latter.

48. The PUP said it presumed that when a Northern Ireland Minister went to the Ministerial Council, he would already have got the agreement of the

Assembly/Executive to what he intended to do. The Irish Government agreed that Ministers would have to have some authority to decide, or every single decision would have to be referred back. The UUP said that the Assembly would have to ratify decisions, to ensure that Ministers had not overstepped, and the PUP agreed. The Irish Government said that accountability in the Assembly was really a matter for Strand One. The British Government agreed that the form of accountability would depend on the system in the Assembly. Ultimately, the actions of any Minister depended on his/her ability to command the support of parliament and defend his/her actions. That would have to be resolved in Strand One. The British Government said it also wished to clarify what it had said about enabling legislation. This would involve Westminster giving the Assembly authority to enter into agreements with Dublin on implementation bodies.

49. The SDLP said that the exercise of authority and accountability would need to be seen in the light of how the broad nature of the remit of the Ministerial Council was decided. If Ministers were meeting just to consult, there was no need for oversight by the Assembly. If Ministers were going to make decisions, this would normally, in any system of governance, be preceded by contacts with the other side and by internal consultations, clarifications etc., including as appropriate approval from the Cabinet or the Assembly. Ministers might be answerable in a number of different ways, to allow for the varied possibilities of the exercise of Ministerial office. The UDP thanked the Irish Government for keeping Strand Two off the workings of the Assembly. The party envisaged a Ministerial Council would have a remit including both consultation and decision functions. Decision making would be applicable to projects, following consultation, which would be presented to the relevant jurisdictions. The party did not envisage northern representatives being mandated to take decisions without scrutiny. Ultimately they would be accountable to the full legislature.

50. The Chairman moved on to the headings of Membership and Structure, and said the unresolved areas here did not seem to be very significant. Alliance said there would need to be meetings at Head of Government (or Executive) level twice a year, and a minimum level of meetings at Ministerial level should be set to reassure people that this Strand was not being forgotten. Two meetings a year each for relevant Ministers would be needed to set down what had been agreed and to follow it up. In addition, ad hoc meetings at Ministerial or official level could be called at short notice to respond to a situation or opportunity. Minimum numbers of meetings might more properly be set out in the political understanding, rather than the legislation. Labour said it envisaged a Plenary meeting at least once a year, perhaps over several days. The level and frequency of other meetings would depend on the nature of the issues under discussion. Some issues would cross departmental lines and require more than one Minister. The NIWC envisaged three tiers, with biannual plenaries, regular meetings of sectoral Ministers and regular meetings at administrative level.

51. The PUP said there was no disagreement on the membership, which would be Ministers/Heads of Department. It was however in no one's interest to have meetings just to be seen, with nothing coming out of them. The party believed in meetings between Ministers, or parliamentary committees, as often as they wished. Most co-operation would be at Head of Department level. There might be a need for Plenaries, but there was no need to fix terms for these. The party warned of the lessons of Sunningdale, where a power sharing Assembly that might have worked was brought down because the idea of a Council of Ireland was pushed too hard and too quickly. There should be co-operation by all means, but at a committee or Departmental level in the mutual interest.

52. The SDLP said one way of allaying fears about a Council was to have openness and regularity in the conduct of its business. People would know when meetings were coming up, who they were between, and about what. This would be transparent, and be more credible than ad-hoc meetings. The UDP said meetings could be held when and at what level was appropriate, either Ministerial or Plenary. The Council could discuss broad areas of policy. The party would see similar sectoral meetings taking place in a British Isles context. Alliance intervened to say that while it understood and agreed to the idea of meetings embracing Scotland and Wales etc., it wasn't sure if there was any need to institutionalise these, as presumably Edinburgh or Cardiff would always be happy to meet on matters of mutual interest. Also when unionists said the Council could meet as appropriate, nationalists understood this to mean it was being put on the shelf. There was a need to give reassurance on this. The UDP said it was quite open about this, it just wanted meetings to have real business. The party had no big problem with biannual meetings. To some extent, to take the example of the Intergovernmental Conference, the party was more interested in ongoing official meetings than in the occasional Summit. Alliance thought that in the IGC there was agreement that a meeting would be held whenever either side asked for one - perhaps that would be a way to do it?

53. The UUP said it should be recognised that acceptance of a North/South Ministerial Council would be a major concession for unionism, and there would have to be a significant period of building up trust in operating it. This trust would come from proper ratification procedures by the Assembly or committees. The question of the membership of the Council overlapped with Strand One. The party was in favour of practical co-operation - for example on transport - but not forced co-operation. The structure should allow meetings as and when necessary, or when the Assembly/committees thought one useful. BSE was an example of an issue

where it would have served everyone's interests to have a structure which allowed Agriculture or Health Ministers to meet at short order. The party envisaged a sectoral format, and didn't see the need for a Plenary format. The UUP said there was also the question of the position of the Ministerial Council in the wider context. Food safety, for instance, was an issue which was becoming increasingly important but which was to be dealt with on a UK wide basis, rather than being devolved. Co-operation in this area would therefore be more appropriate to a Council of the British Isles.

54. The SDLP said all of the Unionist parties seemed prepared to accept North/South structures based on specific practical needs, but there seemed to be no recognition at all of the political requirements of nationalists in this area. The PUP had said it could not be part of a rolling process, but equally the arrangements could not be set in concrete. A settlement which precluded any further evolution could not be sold to nationalists. It was not enough to allow nationalists their aspirations so long as they could never hope to realise them. A structure which was just an add-on or an empty house would not be seen as creating a level playing field. It could not be a talking shop on one side placed against an Assembly and the Union on the other. The party wanted structures which could bring people together, a settlement which was fair to both sides. This would allow unionists the freedom to persuade nationalists that the settlement achieved was the best arrangement for ever more, and nationalists to try to do the opposite.

55. The UDP said it was trying to grasp the political requirements. The party was prepared to see political structures allowing for change if it occurred through democratic structures, ie the Assembly. The difficulty was that nationalists seemed to see the North/South institutions as the engine for political change. Unionists saw these institutions as the embodiment of an agreement on North/South co-operation, and were very wary of an intention

to devolve power to these structures to give them power of themselves. Where would be the limits to practical co-operation? The remarks by the SDLP underlined unionists' suspicions. Alliance said it felt the playing field image was unfortunate, as it suggested opposing teams aiming for victory. What the SDLP had said brought up a fundamental issue. It was a question of emphasis. If the agreement was represented as not really a settlement, but as a further instalment for nationalism, then it was doomed. Equally, if it was seen as definitively blocking nationalists' political aspirations, it was doomed. The party recalled a remark by the UUP at Lancaster House that the process should be seeking to achieve a settlement for this generation, and whatever future generations did was up to them. If unionists were uncomfortable with many of the details of a settlement, how could they be expected to buy into it if they were also given the impression that nationalists saw it only as an instalment?

56. The SDLP said North/South arrangements should be open to evolution, but only by agreement. So long as nationalists' aspirations were not institutionally closed off, they would be prepared to take their chances. Unionists might be able to persuade them to accept their status in the UK. Alliance said that when nationalists spoke of an agreement evolving in any direction, unionists saw that as disingenuous, since it was evident the Republic would never rejoin the UK. The party understood that a settlement should not create impediments to the pursuit of a united Ireland, but it was important that the post settlement scenario was dominated by what both sides could do together. Creating a level playing field on which all could live together was one thing, but there was no reason why unionists should agree to creating a level playing field to serve as a base from which to pursue a united Ireland.

57. The PUP felt the SDLP's remarks had been very enlightening. The party had been working, foolishly, on the basis that North/South bodies could be of mutual benefit to both sides, but was now being told there was something more, a political element. It seemed there had to be a game plan which allowed nationalists to move step by step towards a united Ireland. At least Sinn Féin made it clear where they stood. The PUP would have nothing to do with a return to Stormont. It did not want anything more for the Shankill than for nationalists in Portadown. It wanted to demonstrate that nationalists were better off with an equal partnership in Northern Ireland. However, it would enter into no arrangements which gave one side a leg up, and would not allow people to think it was going south for meetings which were damaging to Unionist aspirations. The party had no problem with the possibility of change - perhaps have referendums every 10 or 15 years to let the people judge had the Assembly changed things, were the arrangements still satisfactory? The party still felt agreement could be reached. It was, however, important to reassure the minority that there was no question of a return to Stormont.

58. The UUP said that even if it was possible, no one present sought to deny nationalists their aspirations. But they were not going to agree to the establishment of structures which were an instalment in a process to realise that aspiration, against the democratic will. The party was concerned here about the need for consent being bypassed. Unionists would be undermining their own aspirations if they agreed to powerful, dynamic, executive all-Ireland bodies. Unionists did not have a level playing field now, with the Anglo-Irish Agreement. Nationalists had a special relationship with the Irish Government which unionists did not have with the British Government. Nationalists were in a win-win situation: if there was no agreement they reverted to the Anglo-Irish Agreement. There was a fundamental difference in that nationalists saw the solution in terms of uniting the people on this island, and these structures had

the objective of achieving that. The UUP saw the objective as uniting the people of Northern Ireland. The conflict was between the people of Northern Ireland, and that was where political change had to take place. No one could prescribe in advance where a settlement might lead, but the party could not agree to structures which undermined the reality that there was a democratic majority for the UK. It was not clear if parties could find sufficient ground on which to resolve that.

59. Labour said the meeting had seemed to be making progress but, as so often happened, had now taken two steps back. It was a pity it could not bank what had been agreed and move on. The UDP did not think the discussion had gone backwards, as it had exposed the core issue. The party was not trying to beat down the arguments of the SDLP or the Irish Government here. It was trying to ensure that when everyone emerged from the room they were agreed upon what they had done. The party believed there would be mechanisms which would allow the Irish people to work together to their mutual benefit. There were limits to that, and it seemed those limits might not satisfy the SDLP. There were not going to be North/South bodies that *of themselves* made change possible. Change would be possible, and facilitated, in a Northern Ireland Assembly. The UDP saw the Assembly not as a block to nationalist aspirations, but as the level playing field in which anything would be possible provided it was pursued democratically. This would be open to anyone. The settlement might be considered perfect, or it might be revisited in future. Attitudes could change. A consensus needed to be developed about what was being created. If North/South structures were seen or sold as the vehicle for political change, there was not going to be agreement. The UDP said the game really lay in the Northern Ireland institution. At a basic level, both the North/South body and the Council of the Isles were political window dressing. The party, like

others, would judge what it could or could not sell, but it was essential that participants be clear among themselves about what they were creating.

60. The Chairman adjourned the meeting at 13.35, to reconvene at 14.30.

Independent Chairmen Notetakers
20 March 1998