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From: PS/Secretary of State
11 January 1995

Mr Brooker - ~~X~~

cc PS/SofS (B&X) - ~~X~~
PS/Michael Ancram (DENI, ~~X&X~~) - M
PS/PUS (B&X) - M
PS/Mr Fell - M
Mr Thomas - ~~X~~
Mr Bell - ~~X~~
Mr Watkins - M
Mr Williams - M
Mr Wood (B&X) - M
Mrs Brown - ~~X~~ 13)
Mr Maccabe - M
Mr Stephens - ~~X~~
HMA Dublin - ~~X~~
Mr Caine - ~~X~~
Mr Lyne, No 10 Downing Street

SECRETARY OF STATE'S MEETING WITH THE DUP ON TUESDAY 10 JANUARY 1995

You were present at the meeting which the Secretary of State held with DUP representatives on 10 January, as was Michael Ancram and Mr Maccabe. The DUP representatives consisted of Dr Paisley, Mr Robinson and Mr Dodds.

2. Dr Paisley started by handing over fresh copies of the DUP paper which had previously been faxed to us, copy attached for ease of reference at Annexe A. Dr Paisley opened by saying that he had welcomed the last meeting held on 6 December 1994. He then went on to rehearse the DUP's earlier concerns about the Government's unwillingness to hold a border poll, which had to some extent been mollified by the Prime Minister's commitment to put the outcome of the talks process to a referendum. However the DUP remained unclear as to how the question would be put to a referendum and what other questions might be subject to the same treatment. He re-stated the DUP's view that the Government should commit itself fully to the principle of consent by the people of Northern Ireland alone:

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- a. on matters which alter Northern Ireland's constitutional position;
- b. on all changes to the means of governance of the Province; and
- c. on the creation of any institutions or structures impacting upon Ulster.

3. He went on to express DUP alarm at recent statements by the ex-Taoiseach about north/south institutions having executive powers, which appeared to have been endorsed by Mr Bruton. He did not believe that confining executive powers to matters such as industry or agriculture would help: these were not small matters but were fundamental to the health of Northern Ireland. He did not regard the Foyle Fisheries precedent as significant; it had very little power and was not an all-Ireland body. He also said that the recent decision by Queen's University Belfast to drop the national anthem had not help settle nerves in the unionist community.

4. Mr Robinson agreed that the last meeting had been very helpful in defining the differences between HMG and the DUP. He also reiterated the three points made by Dr Paisley and what he said at the last meeting that the DUP were not proposing a referendum on every single matter relating to the governance of Northern Ireland. He mentioned the Secretary of State's assurance at the last meeting that a referendum would be needed on "any real, substantial or significant change". (The Secretary of State interjected at this point to say that the phrase he used included the word 'constitutional' - see paragraph 13 below.) Mr Robinson then went on to float the idea of a panel of independent experts as proposed in the last paragraph of the DUP paper. He reiterated that the origins of the DUP's concerns went back to the 1985 Anglo-Irish

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Agreement, where, in their view, a major change in the Government of Northern Ireland had been imposed on the people with no opportunity for a referendum.

5. The Secretary of State repeated the basic principles to which the Government adhered. Any substantial, significant constitutional change in Northern Ireland could not be imposed. People must be consulted and the Prime Minister had made it plain that the outcome of the Talks process would be subject to a referendum. That principle was one of general application, deriving from the common sense judgement that imposition would fail. He then read out the relevant part of the record of the last meeting, viz:

"Dr Paisley then raised the question of whether, after a settlement had been agreed, there would be provision for referenda to be held on further changes in the way that Northern Ireland was governed. The Secretary of State said that the Government's position was that significant, substantial, constitutional change should not be imposed at any time. He envisaged that anything of this kind would indeed need to be subject to a referendum. But we could not have a referendum for everything as this would make Northern Ireland ungovernable. Where to draw the line might be a matter for the Talks."

The Secretary of State did not regard this as new: it was inherent in the constitutional guarantee. The commitment was there and remained valid before, after, or in the absence of an agreed way forward.

6. The Secretary of State went on to say that the important matter of who should decide what constituted a substantial, significant constitutional issue was one that had been raised by other parties as well as the DUP. He felt it needed to be addressed by all the

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constitutional parties, including the issue of a panel as proposed by the DUP. He was not prepared to make any specific commitment to such a course of action, but it was self-evidently one means by which this matter could be dealt with.

7. Dr Paisley said that he had been particularly heartened at the last meeting by the Secretary of State's confirmation that any new Anglo-Irish Agreement would be subject to a referendum. He went on to seek confirmation that discussion on significant constitutional issues and the holding of referenda would be something for the Northern Ireland parties and HMG alone. The Secretary of State confirmed this in respect of matters relating to the government of Northern Ireland. Dr Paisley went on to express a further DUP fear based on SDLP and Sinn Fein opposition to referenda. He wondered if, when it came to the crunch, the Government would renege on the idea of holding a referendum if it were plain that some of the parties would not support the idea.

8. The Secretary of State made the point in response that the United Kingdom was responsible for Northern Ireland, in fact and in law, and HMG had the right to impose solutions, but the Government recognised that this was not a productive way forward. He therefore repeated the commitment to put such issues to a referendum, but said that it would not be possible to compel the parties to participate. A referendum subject to a boycott by one or more key parties would clearly be much less useful, but he felt there was a wider understanding of the need for consent. Michael Ancram added that the issue that consent is required is not for discussion. But the definition of matters that would need explicit consent and the mechanics for doing so were clearly for debate.

9. While noting these assurances, Peter Robinson said that they did not mean anything in 1985. He remained worried about what would happen if the Talks process failed. The Secretary of State said again that the principle still applies in whatever circumstances.

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10. After a certain amount of going over ground already discussed, Dr Paisley raised two new problems. He said that the Labour Party were not necessarily committed to the principle of consent in the same way that Government were and that an election might happen before the current process was complete. There was therefore a need for action to entrench the principle of consent now by the establishment on an independent panel. His second concern was that significant major changes could come about by incremental means, rather than a single change, with each individual step not being significant enough to justify a referendum. The Secretary of State made the point that he made at the last meeting that one Parliament could not bind another. The idea of establishing an independent body which would have some sort of jurisdiction would, he agreed, make it more visible and apparent if a new Government were to pursue a significantly different approach to the issue of consent. He thought that a body which had an advisory role rather than a triggering jurisdiction would have a similar effect. On Dr Paisley's second point, the Secretary of State said it would be reasonable for those concerned about the final step of an incremental process to claim that that step in itself be subject to a referendum because of the cumulative effect it would have.

11. Mr Robinson then asked what would happen if the Talks process failed but the Government saw a case for modest changes in areas where there had been agreement between the parties. Would there be a referendum on those circumstances? The Secretary of State recognised this as a possible scenario and agreed that in the event of failure of the Talks process that it would be sensible to discuss with the parties specific areas where agreement might be reached. This need not rule out the possibility of a referendum on them.

12. Returning to the possibility of a change of government, Dr Paisley recognised the difficulties of handing over Parliament's

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sovereignty and saw the force of the Secretary of State's suggestion that any panel could be advisory and still be effective, because any decision to disband it or not accept its advice would be subject to a debate in the House and would therefore be very conspicuous. The Secretary of State noted this but repeated that he was not in a position today to give a commitment to a panel of any kind. If it were to stick it would need to be discussed with all the parties. He did not think it was possible to take matters much further forward today. He strongly recommended that this idea, along with others, should be discussed in the Talks process, which he hoped the DUP would join.

13. Dr Paisley agreed that it was not possible to take this issue any further at the meeting. He said that the DUP were going to release the document at Annexe A to the press. The Secretary of State raised no objections but sought a correction to it to reflect his use of the word "constitutional" in the previous meeting on 6 December. He also felt that the reference to a simple majority in a referendum needed to be linked back to the previous point on the need to gain wide acceptance across all communities in Northern Ireland. The DUP agreed to these changes.

14. Dr Paisley then handed over the other document which he had brought with him, which he explained would not be made available to the press. The document, copy attached at Annexe B, set out the DUP's ideas for political development within Northern Ireland - notably the idea of an elected Northern Ireland Convention to oversee the three-stranded process. The Secretary of State took note of the paper making the point that it was not possible to give immediate comments before it had been studied carefully by Ministers and officials.

15. Dr Paisley then took the opportunity to raise two more concerns:

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cross border institutions with executive powers would not be acceptable in Northern Ireland no matter how apparently innocuous the topics with which they dealt. If the Government, in producing a Joint Framework Document, were setting out their ideas of a solution which would be acceptable to all communities, it should not include this particular proposal;

- b. he was concerned about the reported remarks about HMG supporting Adams, though he recognised and agreed with the Secretary of State's statement that he did not trust Mr Adams.

The Secretary of State stressed once more the Government's intention that the Joint Framework Document should be for discussion rather than a blueprint. He was not prepared to comment further on the other matter.

16. In response to a question from Dr Paisley, the Secretary of State went over the reason for publishing the Strand I proposals at the same time and in the same way as publication of the Joint Framework Document. He said that the Strand I proposals would not contain any real surprises as they would draw heavily on what was discussed in the 1992 Talks, as refined in the Ancram Round. In this vein Michael Ancram said that he would very much welcome it if the DUP were to re-join his talks. Dr Paisley retorted that the DUP were proposing a new Talks process. The Secretary of State said that the main thing was that we wanted the DUP to participate. Dr Paisley finished by saying that he would in due course welcome Government comments on the paper at Annexe B, and that he saw merit in continuing this series of meetings. The Secretary of State agreed.

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Comment

17. The meeting lasted about an hour and although rather repetitious was conducted in a constructive and amicable manner. Dr Paisley was slightly more subdued than last time and there were occasional signs of irritation and impatience from Robinson when he thought that Paisley was straying from the key points. The general line to take with the media about the meeting should be to say that it was a constructive and amicable occasion and that it dealt with similar issues to that discussed at the early meeting on 6 December. On the specific suggestion made in the DUP's paper, the line is that Ministers have noted the suggestion for a panel of independent experts. They have reaffirmed that these concerns and this idea have been raised by other parties and are worthy of further discussion as part of the Talks process. That process would benefit by the presence of the DUP.

18. It would be helpful to have considered advice on the paper at Annexe B and on a further meeting with the DUP.

SIGNED

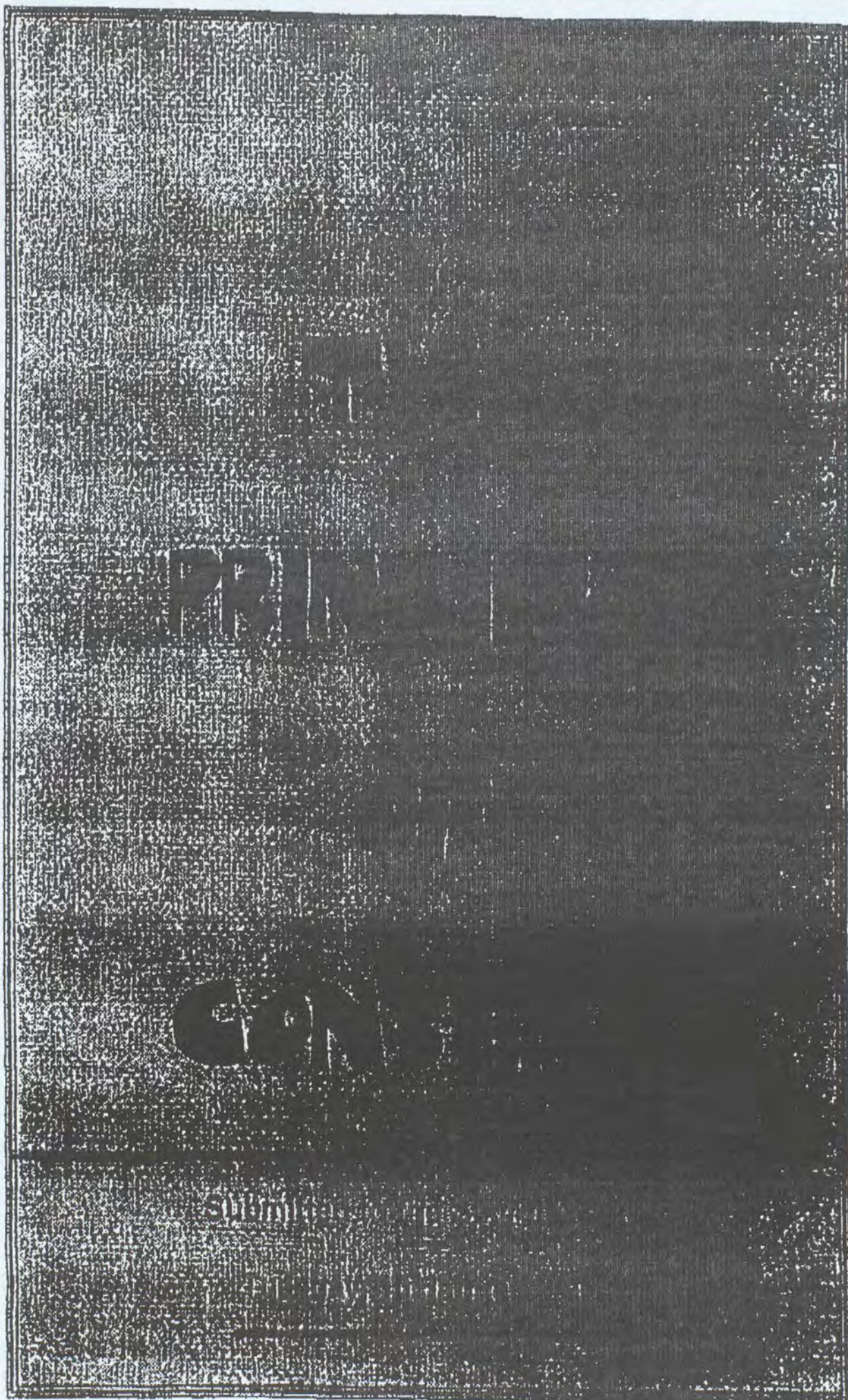
MARTIN HOWARD
Private Secretary

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THE
PRINCIPLE
OF
CONSENT



HISTORICAL BACKGROUND

The traditional "guarantee" given to the unionist community in Northern Ireland has been in the terms of an undertaking that Northern Ireland would remain part of the United Kingdom for as long as the people of Northern Ireland wished. This guarantee has been offered in varying forms including Statutes.

The hollow nature of this guarantee was keenly exposed by the Anglo Irish Agreement of 1985. Here was a deal for which consent was neither sought nor received. If a far reaching deal permitting Dublin to advance towards its all-Ireland goal could happen not only without it impinging upon the terms of the "constitutional guarantee", but while actually referring to the principle of consent in its content, then clearly the "guarantee" was not doing its job.

After signing the Downing Street Declaration the Prime Minister refused Dr. Paisley's request for a border poll saying it was not the right question to put to the people of Northern Ireland.

It became clear that the "traditional constitutional guarantee" was a meaningless warranty which did not apply to each and every step leading towards a united Ireland but only to the final step. The DUP is determined never again to rely upon an undertaking with such transparently qualified provisions. It is essential if the guarantee is to be meaningful that it must afford the people of Northern Ireland the right to give or withhold their consent to any step that might lead the Province out of the UK and not just the final act of severance.

THE NEED FOR A REFERENDUM

In each meeting we held with the Prime Minister, following the Downing Street Declaration, we pressed for a definition of "consent" as referred to in the Joint Declaration. In particular we asked:-

"Is such consent required simply for the final act of severance - the legal act of removing Northern Ireland from the United Kingdom, or does it cover the need for approval from the people of Northern Ireland to set up any institution relating to the Province or to any change in Northern Ireland's means of governance?"

We believe it is essential that you explain, in terms that the people of Northern Ireland can easily understand, what limits you place on their right to be consulted about changes in the arrangements under which they are to be governed.

The issue of consent is a fundamental issue which, if it is not clarified satisfactorily, increases unease and uncertainty and fuels the belief that deals can be concocted affecting the future of the people of Northern Ireland whilst those most affected will be given no say on the changes affecting their lives."

At a special Policy meeting in Dungannon we made "The principle of consent" our priority and resolved to press it when the Parliamentary Party next met with the Prime Minister. In the delegation's submission read to John Major during the brief encounter we had with him at Downing Street last year, the main issue dealt with was the principle of consent. We asked if the Government is prepared by declaration to commit itself fully to the principle of consent by the people of Northern Ireland alone:-

1. on matters which alter Northern Ireland's constitutional position;
2. on all changes to the means of governance of the Province, and
3. on the creation of any institutions or structures impinging upon Ulster.

ONE SMALL STEP

When the Prime Minister, on 16 September, travelled to Northern Ireland he made direct reference to the principle of consent.

He said:-

"So for the avoidance of any doubt, I want to make clear today that the Government will submit the final outcome of the three stranded process of talks to the electorate in Northern Ireland for approval in a referendum. That is to say, we shall consult the people of the Province on the full package of proposals as a whole. The details of such a referendum will rightly be for discussion with the parties. Let me say to all the people of Northern Ireland: the referendum means that it will be your choice whether to accept the outcome. My commitment means that no one can go behind your backs. Not today. Not tomorrow. Not at any time. You can forget this talk of secret deals. It will be for you to decide."

We welcomed the Prime Minister committing his Government to the principle of consent, even though the statement only expressly applied it to one set of circumstances - the outcome of the three stranded talks process. We recognised that the Prime Minister had accepted the principle and indeed there was the further suggestion, in his remarks,

"my commitment means that no one can go behind your backs. Not today. Not tomorrow. Not at any time."

that the commitment, while given to apply in one set of circumstances, might apply in all sets of circumstances and for all time. We sought confirmation that this was the Government's position and that the principle of democratic consent would apply to any future change in Northern Ireland's constitutional position, its governance and any new institution or structure which are to be set up affecting Northern Ireland.

MEETING WITH SECRETARY OF STATE

At our last meeting with the Secretary of State we outlined several scenarios which would not be covered by a narrow interpretation of the Prime Minister's speech. Such interpretations are possible if one is to accept the letter rather than the perceived spirit of Mr Major's remarks.

Sir Patrick either in his own contributions or in reply to questions said:-

- The referendum referred to by the Prime Minister related to the outcome of a three-stranded Talks Process which had resulted in agreement.
- There was no question of imposing a "solution" in the event of no agreement.
- There had to be wide acceptance across the community.
- The question posed in a referendum would need more than a simple majority in support.

- > That he felt the 3-point criteria suggested by the DUP was too wide.
- > A referendum would be needed on "any real, substantial or significance change."
- > It would be a vote of the people of Northern Ireland alone.
- > The referendum would be held before proceeding with the elements it was proposed to change.

THE PROBLEM

We considered this meeting very useful, not least, in that it helped to identify and isolate the area where HMG and the DUP differ. We are not tied to any particular wording but we are tied to the principle summed up in our wording. Of course we do not require a referendum for a change of Minister or the setting up of a minor committee in any future Assembly. What we want is in the Secretary of State's words - a referendum on "*any real, substantial or significant change*" in the means of governance of Northern Ireland or on any closer association with the Irish Republic. The potential problem will be found when determining whether a change is considered to be real, substantial or significant and who should make such a ruling.

A SOLUTION

Our constitutional experts tell us that it is perfectly feasible for the government to set such a criteria and appoint a Panel of respected constitutional, judicial and political experts and empower it to make such a determination and authorise it to trigger a referendum where and when the panel judges it appropriate. In the event of a Labour government the Panel would still be in place. The Panel would make by-passing the people of Northern Ireland more difficult and more conspicuous. We consider that a government acting in good faith in these matters would not be unwilling to accept this proposal.

DUP formula for Political Progress

The need and advantages of a new, fair and operable negotiating process

10 January 1995

Policy Document

THE LAST TALKS PROCESS

On 26 March 1991 the then Secretary of State, Peter Brooke, outlined to the House of Commons the basis for a Talks Process which had the agreement of all the leaders of the participating parties. This was the culmination of negotiations stretching over several years. The negotiations had begun as a result of the two unionist leaders seeking to secure satisfactory conditions in which dialogue could take place.

The principles that guided their endeavours are just as relevant in today's circumstances as they were then.

After the imposition of the Anglo Irish Agreement unionists were invited to talk. The game-plan of our opponents was obvious. They were attempting to set the parameters for future agreement within the confines of a Diktat to which unionists had not subscribed. The unionist goal was equally obvious. Unionists needed to ensure the Diktat was set to one side and was not permitted to form the basis for talks, and just as vital, other participating parties were not so bound to the Diktat that they were unable to consider and accept an alternative outcome.

In the 26 March 1991 "Rules for the Talks", the important sections for unionists were:-

"For their part, the two signatories of the Anglo Irish Agreement - the British and Irish Governments - have made it clear that they would be prepared to consider a new and more broadly based agreement or structure if such an agreement can be arrived at through direct discussion and negotiation between all the parties concerned.

To allow an opportunity for such a wider political dialogue, the two Governments have agreed not to hold a meeting of the Anglo Irish Conference between two pre-specified dates. All the parties concerned will make use of this interval for intensive discussions to seek the new and more broadly based agreement which I have just described.

As the conference will not be meeting between the specified dates the Secretariat at Maryfield will accordingly not be required for that period to discharge its normal role of servicing conference meetings provided for in article 3 of the Agreement."

This section of the Brooke ground-rules met both the joint unionist conditions and the Talks proceeded. When in November 1992 the Dublin Government for the second time insisted on a meeting of the Anglo Irish Ministerial Conference they were *ipso facto* insisting that this Talks Process be brought to a halt again - this time permanently. The Joint Talks Statement agreed by all the

participating parties on 10 November 1992 clearly signified that the Talks Process was at an end. Phrases such as:-

"Talks delegations today held a plenary session at the end of a process that began in Strand 1 on 9 March, "

and more precisely by the paragraph:-

"The Talks have been held, as the statement of 26 March 1991 envisaged, during a period between meetings of the Anglo Irish Conference arranged for that purpose. Since the next meeting of the conference has been set by the two Governments for 16 November the present Talks now come to an end."

show beyond peradventure that the last Talks Process was wrecked by the Dublin Government with the acquiescence of HMG. That Talks process is therefore dead. Those who suggest that we should reconvene the Talks have made a faulty analysis of the situation. What needs to be considered is whether a new formula for negotiating can be found .

CONCERN

The Ulster Democratic Unionist Party believes that all parties should be acutely aware of the potential downside to starting new negotiations. Failure to reach agreement brings despair and damages the democratic process. We therefore wonder is agreement more likely today than it was in 1991/92? Is there anything in the attitude of participating parties that suggests agreement can now be achieved?

FURTHER OBSTACLES

Since the last Talks new obstacles have emerged. In the 1991 ground-rules a method of setting aside the Anglo Irish Agreement was negotiated by the joint unionist leaders and agreed by all the parties, this is still necessary but in addition the British and Dublin Governments have committed themselves to the Downing Street Declaration which contains articles which its signatories describe as "foundation principles". These same parties are in the act of agreeing a *Framework Document* which, when it was first heralded, was, as its name suggests, to be the framework upon which agreement was to be constructed.

OUR GUIDING PRINCIPLES

All the participants in the 1991/92 Talks subscribed to the view that the principles agreed by two of the parties in the Anglo Irish Agreement should not be imposed on others and should be set aside during the Talks. The DUP still opposes the Anglo Irish Agreement and does not accept the cardinal principles contained in the Downing Street Declaration. Moreover, we do not intend to have our negotiating base limited or defined by the terms of any agreement reached behind our back.

We should not be constrained or steered by any agreement to which we have not been a party and we are not bound by any agreement which we have not freely signed. We need clarification from HMG in relation to a number of matters:-

- ☐ Will the talks be based on the principles contained in any of the three Dublin/London deals - the Anglo Irish Agreement, the Downing Street Declaration or the Framework Document?
- ☐ Is the DUP expected to accept the program or principles from any of the deals in order to participate in the process?
- ☐ Are any of the other participants so bound by these agreements that they are not prepared to consider or agree alternative outcomes - ones which do not contain these ingredients?
- ☐ Will the Anglo Irish Agreement be set aside as in 1991?
- ☐ Will HMG and the Dublin government publicly state that they are prepared to consider and agree alternative principles to those contained in the Downing Street Declaration?
- ☐ Will the two parties presently negotiating the "Framework Document" state that it is a guide which can be used or discarded as the participants wish?
- ☐ Does the "nothing is agreed until everything is agreed" maxim apply to the new Talks?
- ☐ Does a "nothing is agreed unless all parties agree" dictum apply, and if not what level of agreement constitutes sufficient consensus?
- ☐ Does the government still hold to its stated policy of refusing IRA/Sinn Fein entry to the Talks until it has given up all its weapons?

- ☐ In the event of the HMG commencing negotiations with Sinn Féin what will the government's attitude then be in the event of an IRA shooting or bombing?

Naturally, our publicly stated refusal to engage in negotiations with the mouthpieces of the IRA's murder-gangs still stands. Our willingness to enter discussions with the Dublin Government is predicated by their willingness to address the illegal territorial claim contained in their Constitution. We were, in the past, told by the Prime Minister, John Major, that this latter issue will be dealt with in the Framework Document. Time will tell.

The over-riding issue is whether we can establish a Talks Process where no pre-conditions have been set by agreements to which we were not a party. Equally, it must be clear that none of the key issues have been settled by some of the participants before the process has begun. A Talks process designed and structured to allow only one end product is not acceptable.

We will not be corralled in a process which does not give us the freedom to argue for an outcome satisfactory to those we represent. There must not be a pre-determined outcome. We seek a level playing-field.

A BETTER ALTERNATIVE

HMG faces a number of problems in launching a new Talks Process. We wish to tender an alternative that overcomes a number of these difficulties and, in addition, offers other benefits that might make it attractive to them.

We suggest a modification of the proposal we put to the Prime Minister in September 1993 in our document *Breaking the Logjam*. We propose that an election be held to a Northern Ireland Convention. The Convention would be charged with considering issues relevant to all three strands and would be empowered to consult with HMG in relation to matters relevant to all three Strands and with the government of the Irish Republic, where appropriate, in relation to Strands 2 and 3. The Convention would provide a forum for active politics in which every party would be represented according to its strength. This proposal places no time limit on negotiations, it fills the political vacuum, it engages Ulster

politicians in positive and practical mode and permits them, in a less pressurised set-up, to make steady progress.

We contend that a duplication of a failed process is not a route to progress.