

Strand 2: Human rights and security aspects.

1. The protection of human rights.

1.1 In Strand 1 we advocated the incorporation of the European Convention on Human Rights in Northern Ireland's domestic law. We noted the high international standing of the Convention, that it has highly regarded institutions and a well developed case law, and that both Britain and the Republic are signatories of the Convention and are bound by it in international law through neither has yet incorporated it in domestic legislation. We proposed that the Convention should simultaneously be adopted into the domestic law of all three jurisdictions, noting that 'the effect of all three jurisdictions simultaneously committing themselves to the adoption of the Convention would be a very powerful one indeed.' We now place that proposal before Strand 2.

1.2 There should be no need to stress the obvious benefit of all three jurisdictions committing themselves to the same standards of human rights protection in this very visible way, with the possibility of appeal to the European Court of Human Rights to ensure consistency of standards. There may be some need to mention that the series of cases of miscarriages of justice in recent years, such as those of the Birmingham Six, the Guildford Four, the Maguires, and Nicky Kelly, suggest that the problem of confidence in the administration of justice should not necessarily be confined to Northern Ireland.

1.3 This joint adoption of the same basic human rights framework would make at least conceivable the creation at a latter stage of a joint human rights court, embracing two or three of the jurisdictions involved, and dealing exclusively with issues relating to the Human Rights Convention. The already existing possibility of appeal to the European Court of Human Rights on convention issues, which would continue to provide a form of appeal if such a joint court was created, would do much to alleviate the great difficulties, of jurisdiction and

indeed of sovereignty, which would be caused by any attempt to create any other form of joint courts.

1.4 In addition to the incorporation of the European Convention we would propose (serious consideration should be given to) the creation of a Human Rights commission embracing both parts of Ireland. Such a body, whose role might be similar to that of SACHR though extending to both parts of the Ireland, and which might be closely linked to SACHR, would promote education and research on human rights issues North and South, and would lay reports before the Dail, the Northern Ireland Assembly and such other bodies as might be appropriate.

1.5 Similarly a Commission might be created to promote respect for cultural traditions and diversity in both parts of Ireland.

2. Security.

2.1 Security is clearly a vital issue for all concerned in these talks. It is a matter of great concern for both governments because atrocities have been perpetrated in their jurisdictions and because their security forces are heavily committed in fighting terrorism, at great cost both in lives and in resources. It is of vital interest to all northern parties and to everyone who lives here, because of the threat which terrorism continues to pose to the whole community in Northern Ireland.

2.2 We would not anticipate that substantial authority over security matters, at least in their anti-terrorist aspects, would be devolved to a Northern Ireland Assembly in the near future, though it would be essential that such a body, or more particularly an executive based on it, would have a direct and significant role in the shaping of security policy. In some aspects that would be a matter for regular contacts between the Secretary of State and representatives of the Northern Ireland Assembly or Executive (and it may be worth stating here that we see the particular importance and difficulty of security issues, and the need to find an agreed approach, as one of the main reasons for

favouring an executive based system for Northern Ireland rather than a looser arrangement). But given the shared interest of all three jurisdictions we would see security as being a matter which should be particularly within the remit of a tripartite body along the lines we have already indicated, involving the two governments and a Northern Ireland Executive.

2.3 Measures to promote greater co-operation and co-ordination between the police and security forces themselves, including institutional frameworks, might be considered at a later stage. A joint intelligence or anti-terrorist co-ordination body, or a form of cross border regional crime squad, might be contemplated.

2.4 Extradition has long been a vexed issue between the jurisdictions. It is essential that a common front against terrorism be clearly seen to be presented, and progress in this area is vital. We note that the Irish government has indicated its intention to deal with difficulties revealed by recent judgements.

2.5 We would see virtually insurmountable difficulties in regard to any proposals for courts with North-South jurisdiction, other than in the special case already referred to in respect of the European Convention on Human rights.

2.6 We would see no useful purpose to be served by joint North South courts in the form of having Southern judges sit with Northern judges on Northern cases. Northern courts and judges already deservedly enjoy a good reputation for fairness in the most difficult of circumstances; complaints tend to be about the law rather than about specific decisions. With no disrespect to Southern judges adding them to Northern benches could damage that reputation for impartiality by introducing or appearing to introduce political influences. A much more satisfactory approach, as we have already indicated, would be to commit all three jurisdictions to the same independently monitored standard of human rights protection.

SMcB.