

Forum for Peace and Reconciliation

Meeting of Sub-Committee on Fundamental Rights and Freedoms. 7 July 1995

1. As previously indicated, this meeting will take place at 9.00 am on Friday 7 July. There will be an interim presentation by the consultants retained by the Forum to assist its work in this area (Professor Hadden and Dr Campbell will be present - Professor Boyle will unavoidably be absent on other business), and there will be an opportunity for the members of the committee to offer their views on the work of the consultants to date.
2. An initial working draft of the study is attached. It is described by the consultants as "an extended draft of about half of our initial outline, with a few points bracketed to indicate uncertainty over the precise formulation, and a more detailed synopsis of the remainder." At this point there are no detailed references.
3. The consultants indicate that while they would of course welcome comments on any aspect of the draft, they are particularly anxious for guidance on the following matters:
 - whether it is sufficiently intelligible to non-legal readers;
 - whether the initial statement of principles meets the demand for something of the kind which was expressed at the meeting on 5 May;
 - whether the outline of the remaining sections covers all relevant issues, and in particular whether the consultants should insert their recommendations on the list and/or formulation of rights to be included in any Bill of Rights;
 - whether the list of possible political/constitutional frameworks outlined in the draft of section 7 is considered satisfactorily exhaustive;
 - how best they might take account of the views of other parties to the peace process not directly represented at the Forum.

Members of the sub-committee are urged to consider these matters in advance of Friday's meeting.

4. Those delegations which have not as yet communicated the names of their representatives at the meeting should do so as soon as possible.
5. **It is the responsibility of delegation secretaries to ensure that their representatives are supplied with a copy of the attached material.**

THE PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF
PEACE AND RECONCILIATION IN IRELAND

1. SOME BASIC PRINCIPLES FOR THE PROTECTION OF HUMAN RIGHTS

- 1.2 General principles
- 1.2 Principles of special relevance to peace and reconciliation in Ireland

2. NATIONAL AND INTERNATIONAL PROTECTION OF HUMAN RIGHTS

- 2.4 Civil and political rights
- 2.6 Social and economic rights
- 2.8 Collective rights
- 2.10 The right of self-determination
- 2.11 Minority or communal rights
- 2.14 Rights of individuals and communities in divided societies

3. HUMAN RIGHTS PROTECTIONS IN IRELAND AND THE UNITED KINGDOM

- 3.2 The position in the Republic of Ireland
- 3.4 The position in the United Kingdom
- 3.6 The position in Northern Ireland
- 3.8 The position in Europe
- 3.9 Conclusion

4. TECHNIQUES FOR THE BETTER PROTECTION OF HUMAN RIGHTS

- 4.2 Declaratory protection
- 4.4 Incorporation
- 4.6 Entrenched constitutional protection
- 4.8 Protection by ordinary legislation
- 4.10 Protection by international treaty

5. MONITORING AND ENFORCEMENT

- 5.3 Human rights commissions [outline only from this point]
- 5.10 Human rights courts
- 5.13 International monitoring

6. THE CREATION OF A HUMAN RIGHTS CULTURE

7. IMPLEMENTATION UNDER VARIOUS POSSIBLE SETTLEMENTS

- 7.2 Protection under continuing British-Irish cooperation
- 7.3 Protection on all-Ireland basis without unification
- 7.7 Protection within an all-Ireland state
- 7.8 Protection on combined British/Irish basis
- 7.9 Protection on European basis

8. PROTECTION OF HUMAN RIGHTS UNDER EMERGENCY REGIMES

9. TRANSITIONAL HUMAN RIGHTS ISSUES

- 9.2 Past human rights abuses
- 9.3 Prisoners
- 9.4 Policing

Terms of Reference

As proposed in Secretariat Document F169CC, a sub-committee of the Forum for Peace and Reconciliation was established to oversee work on Fundamental Rights and Freedoms. As a contribution to the work of this sub-committee a study was commissioned from Professor Kevin Boyle and Professor Tom Hadden, and subsequently Dr Colm Campbell. The following objectives for this study were suggested by the Secretariat:

1. to identify rights which might be the subject of entrenched protection North and South;
2. to suggest options for the entrenched protection of these rights within Northern Ireland;
3. to indicate ways in which any deficiencies identified in the range of rights protected in the South might be remedied;
4. to consider the possible relationship between the legal protection of rights, for instance through a Bill of Rights, and the Covenant or Charter envisaged in the Framework Document;
5. to suggest options for the enforcement of entrenched rights, including the scope for North/South cooperation in this area.

In agreeing to undertake the study Professor Boyle and Professor Hadden suggested that the study should be structured as follows, as set out in Secretariat Document F178:

1. General approach of international human rights law
2. Listing rights and freedoms
3. Incorporation of relevant international standards
4. Constitutional protection
5. Legislative protection
6. Internal monitoring and enforcement
7. International guarantees
8. Human rights education

1. SOME BASIC PRINCIPLES FOR THE PROTECTION OF HUMAN RIGHTS

1.1 All parties are agreed that fundamental human rights must be protected under any settlement which emerges out of the current peace process in Northern Ireland. But there is less clarity on precisely what that will involve. This study is an attempt to explain some principles which in our view should be recognised and implemented as an essential foundation for any stable and lasting settlement in Ireland, whatever the future relationships between the two parts of Ireland and the United Kingdom. These principles will be set out in general terms by way of introduction. They will then be discussed in greater detail in the main body of our report along with some suggestions as to how they might be implemented.

1.2 The principles may be divided into two groups, those of general application and those of particular relevance to peace and reconciliation in Ireland. They may be summarised as follows:

General principles

1. The human rights to be protected, embracing civil, political, social, economic and cultural rights, are defined by established conventions drawn up by international consensus within the United Nations and must not be thought of as subject to bargaining between the parties.
2. Some of these rights are defined in the international conventions in precise terms which leave little scope for variation in their implementation; others are enunciated as general principles, leaving it to individual states to decide on the precise means of implementation.
3. Though human rights have traditionally been formulated as individual rights some may equally be formulated as communal or group rights and cannot properly be treated in a different way or considered as any less binding on that account.
4. The most widespread and almost certainly the best means of protecting these rights in national law is to incorporate the relevant international provisions into national law.

5. The establishment of democratic structures and the rule of law and their protection from the use of force for political ends is essential to the effective delivery of human rights.
6. The protection of human rights is not merely a matter of formal enactment and enforcement but must be built into the formal and informal structures of government at every level and sustained by the active involvement of non-governmental organisations of all kinds in such a way as to create a general human rights culture. j

Principles of special relevance to peace and reconciliation in Ireland

7. The full range of human rights must be protected with equal commitment and effect under any of the various possible political settlements which may emerge from the current peace process.
8. If any settlement envisages the possibility of future change in the constitutional status of Northern Ireland or Ireland as a whole, the same human rights must be protected with equal commitment and effect before and after the change.
9. Given the general perception that human rights and international humanitarian standards have been systematically abused during the conflict in Northern Ireland special attention should be given to the prevention of abuses during any future state of emergency.
10. Given the particular circumstances of the conflict in Northern Ireland and the nature of the current peace process the effective protection of human rights is likely to involve joint British and Irish action and guarantees.
11. Given the fact that both the United Kingdom and Ireland are members of the European Union, have ratified the main human rights conventions within the Council of Europe, and are participant states in the Organisation for Security and Cooperation in Europe the effective protection of human rights is also likely to involve important European dimensions.

12. Any new structures for the protection of human rights should be developed in harmony with existing constitutional and common law protections.
13. Experience in other jurisdictions suggests that the effective protection of human rights will require the creation of one or more independent human rights commissions with sufficient powers and resources to monitor and where necessary to assist in enforcing human rights.
14. Any such commission should also be granted sufficient powers and resources to establish a general human rights culture through education and other forms of promotion.

2. NATIONAL AND INTERNATIONAL PROTECTION OF FUNDAMENTAL RIGHTS

2.1 In the early stages of the development of the concept of fundamental human rights it was usual for a list of fundamental rights to be included in state constitutions, often after the overthrow of an authoritarian or colonial regime. The best known examples were the United States Declaration of Independence and the ensuing Bill of Rights incorporated in the United States Constitution as the first twelve amendments and the French Declaration of the Rights of Man. The list of rights to be guaranteed in these early examples were typically limited to matters of concern in the late eighteenth century. The Irish Constitution of 1937 is an example both of a more developed list of individual rights and also of the recognition of more general social and familial rights based on a particular, though unexpressed, theory of natural law. But there is no formal requirement in international law or otherwise that any fundamental rights should be identified or guaranteed in a state's constitution. Neither the unwritten British constitution nor the written Northern Ireland constitution contain any express or implied provisions as to fundamental rights. As will be seen, however, the United Kingdom is out of line with practice in most other European states in this respect.

2.2 Since the adoption of the Universal Declaration of Human Rights by the United Nations in 1948 and the subsequent opening for signature of the European Convention on Human Rights and Fundamental Freedoms in 1954 and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights in 1966 the situation has changed radically. Decisions on what should constitute fundamental human rights can no longer be regarded as a matter for people in individual states to decide as best they can. The substance of fundamental human rights is now determined by international consensus and in so far as the Universal Declaration is regarded as having attained the status of customary international law there is an obligation on all states to protect those rights. In Europe this obligation has been formally accepted by most states through their ratification of the European Convention on Human Rights. Similar obligations have been accepted by most states in North and South America under the American Convention on Human Rights and in Africa under the African Charter on Human and Peoples Rights. And more than xxx states throughout the world have formally ratified the International Covenant on Civil and Political Rights. Though

there are some minor differences in the precise formulation of some of the rights covered in these various international covenants, there is a remarkable degree of convergence on the essential list of fundamental human rights.

2.3 The rights which states may currently be regarded as under an obligation to respect may be listed in a number of categories: first the individual civil and political rights principally defined and protected under both the International Covenant on Civil and Political Rights and the European Convention of Human Rights; secondly the individual social and economic rights principally defined and protected under the European Social Charter and the International Covenant on Economic, Social and Cultural Rights; and thirdly a number of collective or group rights defined and protected under these same and some other covenants. As will be seen, these rights differ in a number of significant respects, not least in the precision with which they are defined and the way in which they may be enforced. And there are important differences in the priorities which are accorded to them by people with different political perspectives. But it is important to stress that these different categorisations must not be allowed to detract from the fact that states are required under the main international human rights instruments to respect and protect them all.

Civil and political rights

2.4 The main civil and political rights which states are required to guarantee to all individuals within their jurisdiction and the conventions under which they are protected may be summarised as follows:

The right to life	ECHR art 2; ICCPR art 6
The right not to be tortured or subjected to inhuman or degrading treatment	ECHR art 3; ICCPR art 7; UN Convention against Torture; European Convention for the Prevention of Torture
The right to protection from slavery or forced work	ECHR art 4; ICCPR art 8
The right not to be unlawfully arrested or detained	ECHR art 5; ICCPR art 9

The right to fair trial	ECHR art 6; ICCPR art 14
The right to freedom of belief and expression	ECHR art 9; ICCPR arts 18-19
The right to free association	ECHR art 10; ICCPR art 22
The right to privacy and family life	ECHR art 8; art 17
The right not to be discriminated against	ECHR art 14; ICCPR art 26
The right to a remedy for breaches of human rights	ECHR art 13; ICCPR art 2

2.5 Though this list is by now well established, the precise content of each of the rights varies both within and between the major conventions. The right to life, for example, is formulated with much greater precision under the European Convention than the International Covenant: the European Convention specifies a number of circumstances in which the state may legitimately deprive an individual of life, for example in the control of rioting or the protection of others from unlawful violence, provided no more force is used than is absolutely necessary, while the International Covenant merely prohibits the arbitrary deprivation of life. Similarly the elements of a fair trial are specified in great detail under both the European Convention and the International Covenant, while the right to respect for family life and privacy is formulated in very general terms which leave a great deal of discretion to those charged with interpreting or enforcing the right. Under the European Convention, for example, the right to respect for family life and privacy has been interpreted to require the Republic of Ireland to provide legal aid and permit access to contraception and to information on abortion and to require both the United Kingdom and Ireland to remove the criminal ban on homosexual activities in private. The precise formulation of the right not to be discriminated against is also of considerable significance. Under the European Convention, for example, there is no protection from discrimination on the ground of age and the provision covers only discrimination in respect of the rights protected in the Convention and does not therefore cover discrimination in employment. Nor is there any exemption in respect of positive

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]

action to remedy a discriminatory situation of the kind that is included in some other anti-discrimination covenants. There is accordingly a good deal of scope for debate on which of the international models should be adopted and on whether a more or less precise formulation should be adopted in the protection of each of the main rights.

Social and economic rights

2.6 The Universal Declaration of Human Rights of 1948 made no distinction between civil and political and economic and social rights. But social and economic rights are now protected under a number of separate conventions under which the formulation of each right and the procedures for monitoring are clearly distinguished from those for civil and political rights. The most important are the European Social Charter, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child. Though the list and classification of rights covered in these conventions is not as well settled as in respect of civil and political rights, some of the most important may be listed as follows:

The right to food, clothing and shelter	ICESCR art 11
The right to health	ESC art 11; ICESCR art 12; CRC art 24
The right to education	ECHR Protocol 1; ICESCR arts 13-14; CRC arts 28-29
The right to work	ESC art 1; ICESCR art 6
The right to safe and fair conditions for work	ESC arts 2-3; ICESCR art 7
The right to social security	ESC arts 12-14; CRC art 26

2.7 The most significant distinction in the formulation of these social and economic rights compared with civil and political rights is that states are required only to use their best efforts within the resources available to them to achieve their realisation. In addition the procedures for monitoring state performance are exclusively based on the submission and

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]

discussion of periodic state reports to the relevant supervisory committee of experts. There is no provision for individual complaints or for formal adjudication on alleged violations. These features have led some commentators - and some states - to treat the obligations imposed under these conventions as less serious and less binding than those in respect of civil and political rights. Other commentators and states, however, argue that the effective delivery of basic social and economic rights is a precondition for the delivery of most civil and political rights and that they should therefore be given greater priority. One possible response to this difference in the treatment of the two sets of rights which has been adopted in a number of states, following the lead set in the Irish Constitution, is to provide that social and economic rights should be recognised as 'directive principles of social policy' to govern the interpretation of relevant legislation rather than as rights which may be enforced by individual action in the courts.

Collective rights

2.8 The final category of rights are those which are best described as pertaining not to individuals as such but to groups or communities. The best established of these are granted under the International Covenants. But the range of minority rights recognised by the international community has recently been expanded, notably under the United Declaration on the Rights of Persons belong to National or Ethnic, Religious or Linguistic Minorities adopted in 1993. And though none are included in the European Convention on Human Rights, some have recently been confirmed under a new European Framework Convention on the Protection of National Minorities, which was finally agreed in 1994 and which has been signed though not as yet ratified by both the United Kingdom and the Republic of Ireland. There are also a number of rights of special relevance to communities in divided societies which are not so readily classifiable as peoples or minority rights but which may be equally important to peace and stability. The most important of these collective rights may be listed as follows:

The right of peoples
to self-determination

ICCPR art 1; ICESCR art 1

The rights of [members of] minorities:

to practice their religion, ICCPR art 27; EFCPNM art
use their language and
enjoy their culture

to be taught or educated EFCPNM art 14
in their distinctive language

to participate effectively EFCPNM art 16
in government, especially on
matters affecting them

The rights of [members of]
communities in divided societies:

[to parity of esteem ??????]

to freedom from ICCPR art 20
incitement to hatred

to education in mutual CPDE art 5; EFCPNM art 6
tolerance

not to be treated as EFCPNM art 3
members of a distinct
community against their will

2.9 There is some dispute among human rights lawyers as to whether these rights should be treated as the collective rights of groups or communities as such or as the individual rights of persons belonging to them. But this distinction is not of much practical significance, except in so far as it illustrates the difficulties both in theory and in practice of attempting to draw a strict line between individual and communal rights. The more important issues are how a people with the right of self-determination is to be identified and distinguished from a minority and how the collective rights of either are to be dealt with in the context of the recognition of other human rights. Some of the possible approaches to the delivery of these rights in divided societies will be discussed in the study by Dr Eide. But given the obvious importance of collective rights in the

context of Northern Ireland an understanding of their relationship to other human rights and how they may be handled in any formal bill of rights is essential.

The right of self-determination

2.10 The right of peoples to self-determination is given pride of place in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In practice, however, the difficulty of identifying a people for this purpose and the political implications of doing so has led to a marked reluctance on the part of international bodies to lay down any firm rules on the issue. The United Nations Human Rights Committee, for example, has recently held that the right of self-determination under the International Covenant on Civil and Political Rights is effectively non-justiciable in that it is not open to an individual to make a formal complaint about its violation. It is generally accepted, however, that to qualify as a people with a right to establish a separate state or to merge with another state the population in question must at least have the following characteristics:

1. a distinctive language, religion or culture;
2. a shared history and experience;
3. a commitment to preserving its separate identity;
4. an association with a specific territory.

The difficulty is that the accepted criteria for the identification of a minority, which does not have a right of self-determination, are broadly the same with the possible exception of a specific territorial association. [Thus while the Irish people clearly have a right of self-determination, it is less clear whether either or both communities in Northern Ireland should be treated as a people or as a minority.] Given the essentially political nature of decisions on the right of self-determination, the resolution of the issue is obviously of central concern to the peace process. Any such resolution will need to address not only the question of outcomes, but also the precise basis on which the right might be exercised. It may be noted in this context that both the British and Irish governments have formally recognised the importance of this issue and have

made express provision in the Anglo-Irish Agreement and the Downing Street Declaration, and by reference in the Framework Documents, to the existence of the right of self-determination and to the way in which it might be exercised. It must also be noted, however, that the formulations adopted in these documents have not been accepted by all parties to the peace process.

Minority or Communal Rights

2.11 There is an initial difficulty over the terminology to be used in discussing other collective rights. The use of the word minority has implications which may not be either accurate or acceptable in societies where there are two or more communities which demand equality of treatment. Whether they are described as minority or communal rights, however, their substance is defined in the relevant international covenants in general terms which leave a good deal of discretion to states to decide how they may best be implemented. There are many ways, as will be clear from Dr Eide's study, in which different communities may be facilitated in maintaining their separate identity and culture or in which their right of effective participation in government on matters which affect them may be guaranteed. Whatever legislation or means of provision is adopted to ensure the rights of a particular community, however, it is important that communal rights in all the respects covered in the international conventions should be guaranteed and entrenched in the same way as individual rights. In a divided society the effective recognition of communal rights and the development of a concept of parity of esteem may be as important to the maintenance of peace and stability as the recognition of individual rights in more homogeneous societies. It follows that any entrenched bill of rights for Northern Ireland or other parts of the United Kingdom or for Ireland as a whole should include provisions to ensure that communal rights are effectively guaranteed.

2.12 The best approach in this sphere may be to incorporate the major provisions of the most recent international covenants, notably the European Framework Convention on the Protection of National Minorities, into any new bill of rights leaving the detailed provisions to be worked out in ordinary legislation. A good example of this approach in respect of the Irish language, as an alternative to extending the status of Irish as a state language to the whole of Ireland, would be a combination of a general entrenched right for individuals to use Irish as a minority language and its implementation by specific legislation

along the lines of the Welsh Language Acts prescribing the circumstances in which Irish could be used for official and educational purposes as of right.

2.13 The idea of a right to parity of esteem for the two traditions in Northern Ireland or in Ireland as a whole raises more difficult issues. Some lawyers take the view that any general provision of that kind in a bill of rights would be meaningless or at least of no greater effect than a provision outlawing discrimination on the grounds of religion, political opinion or communal membership. But there are numerous examples in divided societies, as Dr Eide's study illustrates, of provisions recognising the existence or the parity of two or more communities within a given state. And there may be some advantages, as has been argued by the Standing Advisory Commission on Human Rights for Northern Ireland, in a general entrenched provision guaranteeing parity of treatment and esteem for two or more communities both in symbolic terms and as a means of ensuring that all governmental programmes can be effectively challenged as either directly or indirectly discriminatory in their purpose or effect.

Rights of individuals and communities in divided societies

2.14 There is a well recognised danger that undue emphasis on communal rights in divided societies may lead to increased segregation and intercommunal conflict. Though this is as yet an undeveloped area in human rights law there are a number of conventions which expressly recognise the positive values of pluralism and integration and the right of individuals or groups to resist such pressures. The International Covenant on Civil and Political Rights includes the right to freedom from incitement to racial hatred and the United Nations Declaration on Religious Tolerance lays the foundation for a right of mutual toleration between religious communities. The UNESCO Covenant on Freedom from Discrimination in Education and the European Framework Convention on the Protection of National Minorities likewise include a right to education in mutual tolerance. The right of individuals not to be treated as members of a defined community against their will is less clearly expressed in the major conventions. But it is expressly included in the European Framework Convention on the Protection of Minorities.

2.15 The individual right not to be classified or treated as a member of a distinct or separate community is particularly

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]

important in respect of education, in that separatist attitudes and pressures often stem from separate educational systems. The right of individual parents to have their children educated in shared or integrated schools has been granted some recognition in recent legislation both in Northern Ireland and in the Republic of Ireland. But in neither case does it grant an effective right for all parents to have their children educated in shared or integrated schools. Though it is arguable that the provision in the First Protocol to the European Convention on Human Rights which grants to parents a right to have their children educated in accordance with their religious and philosophical convictions could be interpreted in this way, the decisions of the European Court on the issue fall far short of that. There is therefore a strong argument that the interests of peace and reconciliation would be furthered by providing a more specific and enforceable right to shared or integrated schooling for those parents or children who wish it.

2.15 There is a delicate balance between the rights of individuals to resist the segregative pressures inherent in divided societies and the rights of communities or minorities to preserve their identity and culture. Committed members of distinctive communities often demand the right to maintain structures which will enable them to preserve their culture and their identity and which may make it correspondingly difficult for persons born into their community to pursue less exclusive values. But the rights of those who seek to break down communal barriers and to develop a pluralist culture must deserve special attention in the search for peace and reconciliation in Ireland. An appropriate balance between these competing interests must be carefully preserved in the formulation of any bill of rights for Northern Ireland or Ireland as a whole.

3. CURRENT HUMAN RIGHTS PROTECTIONS IN IRELAND AND THE UNITED KINGDOM

3.1 The peoples of the United Kingdom and the Republic of Ireland are committed to democratic values, to individual freedom and to the rule of law. Both as democratic states have accepted common commitments to international human rights standards. Both have ratified the European Convention and the International Covenants and a number of other human rights conventions, as set out in Appendix A. And both have accepted not only the binding force of judgments by the European Court of Human Rights in Strasbourg but also the right of their individual citizens to initiate proceedings against them through the European Commission and Court of Human Rights. In addition as members of the European Union both have accepted binding obligations in respect of certain individual rights under the Treaty of Rome and the Maastricht Treaty of Union. But neither has incorporated the provisions of the human rights conventions into national law. Both have nonetheless claimed in their periodic reports to the United Nations Human Rights Committee that human rights are already adequately protected under their domestic legislation or by common law. Before discussing the various ways in which internationally accepted human rights might best be protected under any of the regimes which might emerge from the current peace process the validity of these claims must be assessed.

The position in the Republic of Ireland

3.2 An extensive list of fundamental rights is entrenched in the Irish Constitution (Bunreacht na hEireann). And Irish judges have repeatedly shown that they are prepared to uphold these fundamental constitutional rights by overruling both legislation and established common law rules where that is necessary to give effect to them. They have also sought to take some account of the social and economic principles in their interpretation of relevant legislation. Although the Irish courts have adopted a dynamic approach to the interpretation of the Constitution, however, the list of rights and the way in which they are formulated differ in some important respects from those in the international covenants. This is due largely to the fact that the Irish Constitution was drafted in the 1930s and reflects the attitudes and concerns of the time. It also reflects a commitment to a particular theological view of the status of natural law as antecedent to all positive law. The most recent

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]

decision of the Irish Supreme Court on the interpretation of the Constitution, however, represents a new departure in that the Supreme Court has affirmed that the people are sovereign, that the Constitution as adopted and amended by the people is the fundamental and supreme law of the state and that the provisions of natural law are not superior to the Constitution.

3.3 There is a continuing potential for conflict between the provisions of international human rights conventions and the fundamental rights as decided by the Irish people in successive referendums on the terms of the 1937 Constitution and subsequent amendments. This has not as yet, however, given rise to any serious problems. The main list of fundamental rights in the Irish Constitution is not inconsistent with current international human rights conventions. And in respect of such matters as divorce, contraception and abortion, though not on access to relevant information, the major international conventions and the bodies responsible for interpreting them have refrained from adopting any very clear position on the ground that individual countries should be permitted a good deal of freedom - 'a wide margin of appreciation' - in accordance with the prevailing moral and religious attitudes of their populations in these spheres.

The most significant gaps in the Irish Constitution are the absence of a comprehensive equality clause, of any direct prohibition of racial discrimination and of any provisions in respect of minority rights, all of which figure prominently in recent international conventions. In relation to the right of self-determination the provisions of articles 1, 2 and 3 of the Irish Constitution will also have to be addressed. Issues may also arise under some potential settlements over the provision in article 9 that 'fidelity to the nation and loyalty to the State are fundamental political duties of all citizens'.

The position in the United Kingdom

3.4 Under the unwritten British constitution there are no fundamental rights. And the doctrine of the sovereignty of Parliament, whether absolute or limited, means that there is nothing in national law to prevent the government from legislating to remove or restrict the rights which the United Kingdom has undertaken to protect by ratifying the major international human rights covenants. British judges have consistently refused to treat the terms of these covenants as a ground for interfering with established rules on the

interpretation of legislation or for altering established common law rules.

3.5 Notwithstanding the absence of entrenched rights, there is an established culture of personal freedom and the rule of law in Britain. And in some areas there are reasonable grounds for the claims made by the British government in its reports to international agencies that in practice fundamental human rights are better protected under ordinary legislation and common law in Britain than under constitutional guarantees in other countries. British legislation on discrimination on grounds of race and sex is well developed. And the common law provides general protection against torture and other forms of physical maltreatment and unlawful arrest. But the claims are less convincing in many other areas. There is no general protection of the rights to free expression, privacy or family life and there is a wide range of statutory restrictions, notably under the Prevention of Terrorism (Temporary Provisions) Act, and administrative infringements of rights which would be regarded as fundamental in many other jurisdictions. This has been amply demonstrated by the large number of cases in which British legislation or administrative practice has been held to be contrary to the terms of the European Convention on Human Rights. It is hard to avoid the conclusion that in many of these areas the unwritten constitution of the United Kingdom fails to secure to its citizens the full range of fundamental rights covered under the European Convention. In relation to the right of self-determination the provisions of the Acts of Union of 1800, the Government of Ireland Act 1920 and the Northern Ireland Constitution Act 1973 will also have to be addressed.

The position in Northern Ireland

3.6 In formal terms the position in Northern Ireland is similar to that in the rest of the United Kingdom, though the continuing instability and internal conflict there has produced more legislation than in Great Britain both to protect and also to restrict certain fundamental rights. To begin with Northern Ireland has a written constitution with express provisions invalidating legislation or governmental action which discriminates on the grounds of religion or political belief. But this protection covers only legislative or administrative action on devolved matters, and provides no protection against discriminatory legislation enacted at Westminster or discriminatory administrative action authorised under it. The

Westminster Parliament also has unrestricted power to suspend the Northern Ireland constitution or to introduce emergency legislation. Wide-ranging provisions restricting the rights protected under ordinary legislation or the common law have been enacted under the Prevention of Terrorism (Temporary Provisions) Acts and the Northern Ireland (Emergency Provisions) Acts. It has also enacted legislation which provides greater protection for some fundamental rights in Northern Ireland, such as the provisions on discrimination in employment under the Fair Employment (Northern Ireland) Acts, than is available in other parts of the United Kingdom. And Northern Ireland is the only part of the United Kingdom with a permanent official commission, the Standing Advisory Commission on Human Rights, which has formal responsibility for monitoring the effectiveness of human rights protections. In the context of the current peace process issues may also arise over some continuing provisions of Northern Ireland law on such matters as the use of the Irish language and the oath of allegiance required of certain office holders.

3.7 It would be impossible to sustain a claim that in practice fundamental human rights have been effectively protected in Northern Ireland under this regime. Throughout its existence as a distinct unit of government both the Stormont and the Westminster Parliaments have been able to maintain and to use emergency powers of arrest and search, detention for interrogation, internment without trial, censorship and wide ancillary powers to control movement and requisition property regardless of the level of paramilitary violence and without effective judicial control. In the period since 1969 there have been numerous well-attested allegations both of the abuse of these powers and of wholly unlawful activity, notably the physical abuse of those under interrogation and the unjustifiable use of lethal force, on the part of the security forces. But only in a handful of cases have those responsible for proven abuses been brought to justice. And almost all the many recommendations of the Standing Advisory Commission on Human Rights for the improvement of safeguards against abuse have been rejected by successive governments. The international procedures have not always been much more successful. A number of interstate and individual complaints under the European Convention on Human Rights have resulted in findings of ill-treatment by state forces and set some limits to the use of some of these emergency powers. And recent reports by the United Nations Committee on Torture and the European Committee on the Prevention of Torture have expressed concern about recent

interrogation practices. But in many cases the actions of the government and the security forces have been held by the European Commission or Court in Strasbourg to have been a justifiable response to paramilitary or terrorist activity.

The position in Europe

3.8 As members of the European Union both the Republic of Ireland and the United Kingdom are subject to a wide range of additional obligations in respect of the fundamental rights of individuals. Though these were initially formulated primarily as economic rights, the rights to equal treatment, to freedom of movement and to freedom of access to services have had significant implications in both states. For example, European law has been held by the Irish Supreme Court to prevail over the Irish Constitution in respect of access to abortion services in other states. And the decisions of British courts in respect of a number of issues involving the rights of women to equal treatment in respect of work and pension rights have been overruled by the European Court of Justice. The position in respect of these rights differs significantly from those protected under the European Convention on Human Rights in that under European law these rights have direct effect in all member states and have thus been automatically incorporated into Irish and British law.

Conclusion

3.9 It will be clear from this brief assessment that there is scope for the better protection of human rights in all three jurisdictions. In the Republic of Ireland there is a need for the fundamental rights listed under the Irish Constitution to be brought into line with those in the major international covenants. In the United Kingdom as a whole there is a need for more comprehensive protections in national law for the full range of accepted human rights obligations. In Northern Ireland under whatever regime emerges from the peace process there is a need for new legal structures through which accepted human rights obligations can be more effectively entrenched and enforced both under settled conditions and in the event of any renewal of paramilitary or terrorist activity. And constitutional provisions in all three jurisdictions will need to reflect any agreement which may emerge from the peace process on the exercise of the right of self-determination in accordance with current political realities.

4. TECHNIQUES FOR THE BETTER PROTECTION OF HUMAN RIGHTS

4.1 The primary defect in the current regime for the protection of human rights in all three jurisdictions is the fact that international human rights norms are not enforceable in national law. The straightforward remedy for this, as indicated in the general principles outlined at the start of this study, is to incorporate the substance of those norms into national law as has been done in most other European jurisdictions. But there are a number of different legal techniques through which this objective might be achieved under each of the various possible future regimes which might emerge from the peace process. It may help to clarify the more detailed discussion of the practical means of protecting human rights under these various regimes to summarise the advantages and disadvantages of these legal techniques. The main options, though they are not mutually exclusive, are:

1. a formal declaration of commitment to human right as proposed in the Framework Documents
2. direct incorporation of the European Convention or other international covenants into national law;
3. entrenched constitutional protection of fundamental human rights;
4. comprehensive legislative protection of fundamental human rights;
5. protection under bilateral or multinational treaty.

The significant features of each will be discussed in turn.

Declaratory protection

4.2 The idea of a joint declaration by the British and Irish Governments of their commitment to the protection of human rights throughout Ireland was initially raised in 199x and has recently been reiterated in the Joint Framework Document of February 1995 in the following terms:

50. ... both Governments envisage that the arrangements set out in this Framework Document will be complemented and underpinned by an explicit undertaking in the Agreement on

the part of each Government, equally, to ensure in its jurisdiction in the island of Ireland, in accordance with its constitutional arrangements, the systematic and effective protection of common specified civil, political, social and cultural rights. ...

51. In addition, both Governments would encourage democratic representatives from both jurisdictions in Ireland to adopt a Charter or Covenant, which might reflect and endorse agreed measures for the protection of fundamental rights of everyone living in Ireland. ...

4.3 Though the reference in paragraph 51 to a declaratory charter or covenant must be read in the light of the commitment by the two governments in paragraph 50 to other techniques of binding legal protection under national law and by bilateral treaty, the practical value of any such declaration must be questioned. There are numerous precedents for the adoption of non-binding declarations on human rights within the United Nations, for example the 1981 Declaration on the Elimination of Intolerance and of Discrimination based on Religion or Belief. But this is usually regarded as the first step towards the adoption of a formally binding convention. In the context of the peace process in Northern Ireland the adoption of a non-binding declaration, whether by the two Governments or by the parties involved in discussions on future regimes, would be seen more as an indication of their inability to agree on binding commitments. This would not rule out a declaration of intent by the parties to the Forum or by others involved in the peace process to adopt binding human rights commitments as part of a general settlement. But it should not in our view be regarded as a viable long term option since it would have no legal effect and might serve only to bring the concept of human rights into disrepute. The opposition to any form of enforceable bill of rights which is prevalent in some quarters in Britain should not be allowed to determine the form of human rights protection in either part of Ireland. This approach will not therefore be further discussed in the analysis which follows.

Incorporation

4.4 The most straightforward means of ensuring that internationally agreed human rights are enforceable in national law is to incorporate the express terms of the relevant conventions into national law. There are two broad techniques by

which this can be achieved: by a general provision making all state commitments under international law an integral part of domestic law, as in Germany; or by a specific constitutional or legislative provision incorporating the terms of a particular convention into domestic law. One or other of these techniques have been adopted in most European jurisdictions in respect of the European Convention of Human Rights. Following the recent decision by Denmark to incorporate the United Kingdom and Ireland are now the only major states in western Europe in which the terms of the Convention are not directly enforceable in national courts. And though the European Union has not formally incorporated the terms of the Convention into European law, the European Court of Justice has held that the norms of the Convention must be regarded as part of the common law of Europe in the sense that the Convention is accepted as a source for the general principles of European law.

4.5 There are two major advantages in direct incorporation: first that there can be no conflict between the provisions of international human rights law and national law; and second that any relevant issues can be argued and decided in national courts, though the final decision in the highest national court remains subject to an appeal to the European Commission or Court at Strasbourg. One of the principal arguments for incorporation in the United Kingdom has been that many of the large number of adverse decisions against the British Government in the European Court could have been avoided if British courts had been able to take account of the Convention in reaching their own decisions. The only significant difficulty is that for incorporation to achieve this effect the terms of the Convention must be given superior force to those of national legislation. As will be seen this has been raised as an objection to incorporation in the United Kingdom by those who believe in the absolute sovereignty of the Westminster Parliament. But it should not cause any difficulty in states, like the Republic of Ireland, in which it is accepted that national legislation can be held to be invalid if it infringes any fundamental constitutional principles. Nor should it prevent the subordination to the European Convention of legislation adopted by any future subordinate legislature in Northern Ireland.

national law

Entrenched constitutional protection

4.6 The objective of making the terms of international human rights conventions enforceable in national law may equally be

achieved by the adoption of an entrenched bill of rights which includes all relevant international provisions. This will usually be entrenched as part of the state constitution, as for the fundamental rights under the Irish Constitution, though that is not essential. The main advantage of this technique is that it permits a more specific formulation of those rights which are expressed in very general terms in the European Convention, such as the right to life or the right to privacy and respect for family life, to take account of prevailing national attitudes on such matters as abortion and contraception or divorce. The freedom of states to maintain their own interpretations of such general rights has been accepted by the European Court of Human Rights and other international bodies on the ground that states must be granted a good deal of discretion - 'a wide margin of appreciation' - in the implementation of international norms in areas of individual and social morality. This technique also permits states to include in an entrenched bill of rights specific provisions in respect of minority or communal rights which are not covered in detail or at all in the European Convention.

4.7 The main drawback to this technique is the potential for conflict between the terms of a national bill of rights and those of relevant international conventions. It is not permissible for any member state of the Council of Europe to maintain a provision in its constitution or bill of rights which has been held to be inconsistent with the corresponding provisions of the European Convention. The best approach may therefore be to incorporate the precise wording of relevant international conventions into any national bill of rights and to limit additional provisions to those matters which are not covered in the international covenants with sufficient precision.

Protection by ordinary legislation

4.8 There is no requirement in any of the international conventions that human rights should be protected under national law by an entrenched bill of rights. It is equally acceptable for protection to be provided by ordinary legislation, by common law rules or even by administrative practice. In some areas in which the international norms are expressed in general terms detailed legislation may be the most appropriate means of implementation. The use of ordinary legislation in this context is formally recognised under the European Convention in the general provision that any limitations on relevant rights in the

interests of such matters as public order, public health or national security must be 'provided by law', which has been interpreted by the European Court of Human Rights as including not only formal legislation but also established common law rules provided they are sufficiently clear and precise.

4.9 This means of implementation is clearly of particular relevance in the United Kingdom for those who claim that the principle of parliamentary sovereignty makes it constitutionally impossible for any entrenched bill of rights to be adopted which is proof against future repeal or amendment. But it is equally clearly open to the objection that to secure the enjoyment of fundamental rights by laws which can be repealed or amended at will by a simple parliamentary majority fails to provide the level of confidence in the protection of those rights which is arguably necessary to secure the consent of all sections of the population in a divided society.

Protection by international treaty

4.10 None of these forms of protection for human rights under national law is proof against subsequent amendment or repeal. A decision to incorporate the European Convention may be reversed and constitutional provisions may be amended, whether by a weighted majority in a parliamentary vote or by a simple majority in a popular referendum. Ordinary legislation may be repealed at any time. And the procedures for challenging alleged breaches of the terms even of the European Convention are notoriously long drawn out and the enforcement mechanisms notoriously weak. They may be strengthened, however, by means of bilateral or multilateral treaties with other states mutually guaranteeing the maintenance of agreed internal structures for the protection of human rights under national law. This approach has been formally endorsed in respect of minority rights under the European Framework Convention for the Protection of National Minorities, which requires the parties to 'endeavour to conclude, where necessary, bilateral and multilateral agreements with other states, in particular neighbouring states, in order to ensure the protection of persons belonging to the national minorities concerned' (art. 18(1)). The Anglo-Irish Agreement of 1985 is a good example of an attempt to initiate this approach in respect of the nationalist minority in Northern Ireland. But there is clearly scope for further development of more precise commitments in respect of the full range of human rights throughout the British-Irish isles.

4.11 The advantages of this strategy are that the commitments under a bilateral treaty can help to entrench agreed measures for the protection of human rights by increasing the political and diplomatic costs of a decision to abandon them on a unilateral basis. They can also provide further support in international law for particular measures which go beyond the general obligations under the major international covenants. But they do not provide protection against agreement by future governments of the states involved to make substantial changes. Given the natural tendency of minorities to fear that their interests may be sacrificed to other state or governmental concerns, the involvement of external guarantors in any bilateral agreement may give added confidence to all those involved.

4.12 There may be a role in this context for the Council of Europe, the European Union, or the Organisation for Security and Cooperation in Europe or for individual European states or the United States as guarantors of a new British-Irish treaty. The Council of Europe as the sponsoring body for most European human rights conventions is the most obvious candidate. Though it has not as yet sponsored any bilateral treaties or acted in any way as a guarantor, the members of its Council of Ministers approved the proposal under the abortive Vance-Owen plan that judges from the European Commission or Court of Human Rights might share in adjudications on any minority rights which might have been agreed by the states of the former Yugoslavia. This might be used as a precedent for a similar involvement in the protection of human rights under any new British-Irish Agreement. The assistance of the European Union might also be sought in giving further multilateral support to such an agreement. Though there may be objections to any direct involvement by the European Union or Commission in the internal affairs of any member state on a unilateral basis, it would not be impossible for an agreement between the United Kingdom and Ireland to be entered as a protocol to the Treaty of Rome, the Maastricht Treaty of Union or any future inter-governmental agreement of a similar kind and thus to involve all other member states in the acceptance of its terms and at least in theory of any future amendment. There are already a number of precedents for this in the form of very specific and limited protocols under the Maastricht Treaty in respect of Danish and French dependent territories. Provided the initiative came from the British and Irish governments there should not be any formal difficulty in accepting a similar protocol in respect of Northern Ireland. There may also be a

role for the Organisation for Security and Cooperation in Europe in providing diplomatic support for the adoption of a new British-Irish Agreement based on the principles of democracy and human rights which have been developed in successive OSCE Documents. But since the OSCE has not as yet become involved in promoting formal conventions, its major contribution is likely to be in monitoring future performance under any such agreement, as discussed below. Finally the United States or individual European states with an interest in promoting a settlement over Northern Ireland might agree to become external guarantors of a new British-Irish Agreement and to offer their good offices in the resolution of any disputes which might arise over its interpretation.

5. MONITORING AND ENFORCEMENT

5.1 The effective protection of human rights requires more than the acceptance of international standards and their incorporation into national law. The experience in many jurisdictions is that the formal acceptance of a bill of rights or constitutional guarantees of human rights may have little immediate impact, whether as a result of a lack of experience in the legal profession or the judiciary or a lack of commitment to change by governmental agencies. In Ireland it took several decades for the full impact of the fundamental guarantees in the 1937 Constitution to become accepted. In Northern Ireland and Britain, as has often been pointed out, there is an even stronger tradition of judicial deference to governmental decisions, especially where issues of national security or public order are involved, and little direct judicial and legal experience in the implementation of fundamental rights in national law, despite the increasing experience of litigation under the European Convention. The success of the European Convention, however limited, is in large part due to the effectiveness of the procedures for the investigation of complaints by the European Commission of Human Rights and for final adjudication by the European Court of Human Rights.

5.2 The creation of effective structures for monitoring and enforcement of any new fundamental rights which may be established as part of the peace process may therefore be as important as the enactment of the rights themselves. This is likely to involve three distinct elements:

1. the creation of one or more Human Rights Commissions to monitor and assist in the enforcement of the full range of fundamental rights in the relevant jurisdictions;
2. the establishment of court structures and procedures for the selection of judges which will command public confidence in each relevant jurisdiction;
3. the development through education and training of a general human rights culture in all governmental agencies and in society as a whole.

Whether these structures should be established on a North/South basis, on an all-Ireland basis or in some other way will clearly depend on what emerges on a broader constitutional front. But

there are some general issues and principles which can be discussed before setting out some of the major options.

Human Rights Commissions

5.3 The idea that a state funded human rights commission should be established to monitor and assist in the enforcement of human rights is well established in most common law jurisdictions. But there is considerable variation in the ambit and powers of such agencies.

5.4 In Britain the practice has been to establish single purpose agencies to monitor and assist in enforcing the law on discrimination: currently these are the Commission for Racial Equality in respect of racial discrimination and the Equal Opportunities Commission in respect of sex discrimination. In Northern Ireland similar agencies have been established in respect of religious and political discrimination, currently the Fair Employment Commission, and sex discrimination, the Equal Opportunities Commission for Northern Ireland. There is also a general purpose agency, the Standing Advisory Commission on Human Rights established in 1973 under the Northern Ireland Constitution Act, though it differs from the standard British model in being purely advisory without power to make findings or pursue legal action in respect of individual cases. In the Republic of Ireland a similar approach has been followed only in respect of sex discrimination by the establishment of the Employment Equality Agency and the Commission on the Status of Women. In Canada and Australia the tendency has been to establish general purpose human rights commissions, both at a federal and state or provincial level, with similar powers and duties in respect of the full range of human rights and discrimination.

5.5 There has also been some variation in the precise powers granted to these human rights and discrimination agencies. Initially, both in Britain and elsewhere, it was usual to give powers to the agencies to investigate complaints and make findings of discrimination or breaches of rights. But this gave rise to some conflict over their proper role. In so far as they were established to promote human rights or to prevent discrimination they were expected to encourage individual complainants to come forward, to give them assistance in pursuing their claims and to carry out research on patterns of violation or discrimination. But this often made it difficult for the

*reposed
auto -
incrimination
legislation*

agency to act as an impartial adjudication body since it was likely to be perceived, especially by defendants, as being inherently biased in favour of the complainant. The tendency in recent years has been to remove powers of adjudication from the agencies to independent tribunals or courts, thus leaving the agency free to pursue a positive policy in promoting the interests of victims of human rights violations or discrimination both in general terms and also in assisting individual complainants to pursue actions for compensation or redress in the courts. This is the current position in respect of all the discrimination agencies in Britain, Northern Ireland and the Republic of Ireland, with the exception of the Standing Advisory Commission on Human Rights in Northern Ireland, which has no powers either to investigate individual complaints or to take action on behalf of complainants or even to assist them in doing so, though it has been permitted to make submissions as amicus curiae in respect of certain cases before the European Court of Human Rights.

5.6 The idea that all states should create official human rights commissions with powers to act independently of government has been given further support by the Principles relating to the status of national institutions discussed within the United Nations in the context of the Vienna Conference on Human Rights in 1994. These principles leave a good deal of discretion to states on the precise competence and powers of human rights commissions, but emphasise that they should have as broad a mandate as possible 'to promote and protect human rights', including the power to make recommendations to government, and to investigate and report on both general and specific violations. They also emphasise that any such commission should be completely independent of government, should be pluralist and representative of society as a whole, and should have adequate funding so as not to be subject to any governmental or financial control which might affect its independence. It may be noted that while the Standing Advisory Commission on Human Rights for Northern Ireland does have a broad mandate to promote and protect human rights it fails to meet a number of these principles, notably in that it has no power to investigate specific cases, in that its secretary has close links with its sponsoring department, the Northern Ireland Office, and in that it requires official approval for all major items of expenditure.

5.7 Any new human rights commission or commissions which may be established as part of the current peace process should clearly

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]

comply both with these general internationally agreed principles and also build on the experience of anti-discrimination agencies in both parts of Ireland and in Britain. The essential requirements for any such human rights commission may be summarised as follows:

1. It must be independent of government and its members must be broadly representative of the society on whose behalf it is to act.
2. It must have power to investigate and report on both general and individual violations of human rights.
3. It must have power both to initiate legal proceedings either in its own right or on behalf of individuals or groups and to assist individuals and groups to initiate proceedings.
4. It must have power to engage in general promotional and educational activities.
5. It must have sufficient resources free from detailed governmental control to carry out its functions effectively.

5.8 The extent of the mandate of any such commission or commissions is a difficult issue on which there are strong vested interests. As has been indicated, the practice in Britain and Northern Ireland has been to respond to political pressures as they have emerged by creating a separate commission or agency to deal with each distinct form of discrimination. There was strong opposition from all those involved in Northern Ireland to a governmental suggestion that the various discrimination agencies and perhaps also the Standing Advisory Commission on Human Rights should be combined in a single Human Rights Commission on the ground that the issues involved in sex and religious and other forms of discrimination were different and that separate single purpose agencies were required to deal effectively with each of them. On the other hand there is no theoretical reason to oppose and some practical and financial arguments to support the creation of a single human rights commission with responsibility for all aspects of human rights, which might then establish specialised units to deal with each major area of activity. There are certainly examples of effective all-purpose human rights agencies in Canada and Australia. Ultimately this is a matter that can be resolved only through the political process rather than by technical legal arguments.

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]

5.9 The precise jurisdiction of any human rights commission or commissions can similarly be resolved only in conjunction with decisions on the broad constitutional structures which may emerge from the peace process. The most straightforward approach would clearly be to establish a human rights commission to monitor and assist in the enforcement of the rights guaranteed under a bill of rights in any distinct jurisdiction, whether in Northern Ireland, the Republic of Ireland and Great Britain as separate units or on an all-Ireland or British-Irish Isles basis. But it would not be impossible, if it were politically acceptable, to create a single or joint human rights commission with jurisdiction over two or more separate jurisdictional units.

Human Rights Courts

5.10 The role of courts in adjudication and enforcement of fundamental human rights - the position of national courts in relation to state responsibility under international conventions - the drawbacks to separating the procedures for adjudication on human rights and other legal or constitutional issues

5.11 Possible structures for adjudication within Northern Ireland, on all-Ireland basis, or on British-Irish basis - the potential involvement of European judges as a means of increasing

5.12 The role of the judiciary in human rights protections - the need for appropriate training and development - the advantages and disadvantages of broadening the selection process for a human rights court as opposed to other courts

International monitoring

5.13 The role of international institutions in monitoring national performance in the delivery of human rights

5.14 The role of Council of Europe institutions - the possible extension of existing mechanisms under the European Convention on Human Rights to other European conventions - the specific role of the Committee on the Prevention of Torture and possible future developments

5.15 The role of the Organisation for Security and Cooperation in Europe - the procedures for monitoring under the Vienna, Copenhagen and Moscow Documents - the potential role of the High

Commissioner for Minorities in monitoring the implementation of communal rights

5.16 The role of United Nations institutions in monitoring state human rights - the work of the Human Rights Committee, the Committee on Torture and Special Rapporteurs - the potential contribution of United Nations institutions to a settlement

6. THE CREATION OF A HUMAN RIGHTS CULTURE

6.1 The importance of education and other governmental actions in the creation of a human rights culture - strategies for the training of judges, public officials, police and others in the recognition of human rights obligations - the role of human rights commissions and non-governmental agencies

6.2 Practical arrangements for development of human rights education in Northern Ireland, the Republic of Ireland and the United Kingdom

7. IMPLEMENTATION UNDER VARIOUS POSSIBLE SETTLEMENTS

7.1 Discussion of the possible use of these various techniques under each of the potential constitutional regimes which might emerge from the peace process:

1. the development of current constitutional arrangements with continuing British-Irish cooperation, involving separate human rights protections in the United Kingdom as a whole or in Northern Ireland and in the Republic of Ireland;
2. development of common British-Irish authority over Northern Ireland;
3. an all-Ireland regime without formal unification;
4. an all-Ireland regime under a unitary, federal or confederal all-Ireland state;
5. a single regime for the [British-Irish Isles][two islands].
6. a European regime under a 'Europe of the Regions'

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]

Protection under continuing British-Irish cooperation

(a) United Kingdom dimensions

7.2 Main options of incorporation and introduction of written constitution - recent legislative proposals at Westminster - discussion of political constraints and their accommodation

(b) Northern Ireland dimensions

7.3 Discussion of options for entrenching a bill of rights for Northern Ireland alone: 'ring-fenced' protection of devolved powers; the special constitutional status option - the effects of a formal referendum; protection by new British-Irish Agreement

(c) Republic of Ireland dimensions

7.4 Discussion of options for parallel protection within Republic - mechanism for incorporation with or without add-ons - relationship with fundamental rights in Irish Constitution

(d) provision for protection in the event of constitutional change

7.5 Discussion of possible mechanisms for continued protection of agreed rights in the event of future constitutional change

Protection on all-Ireland basis without formal unification

7.6 Discussion of mechanisms for protection of rights on all-Ireland basis without formal unification - internal entrenchment of parallel rights in both jurisdictions with provision for joint monitoring, adjudication and enforcement - potential role of European institutions

Protection within an all-Ireland state

7.7 Discussion of mechanisms for protection of rights under a unitary, federal or confederal Ireland

Protection on combined United Kingdom/Ireland basis

7.8 Discussion of possible mechanisms for protection of rights throughout the [British-Irish Isles][two islands]

Protection on a European basis

7.9 Discussion of potential developments under a federal Europe or a 'Europe of the Regions'

8. PROTECTION OF HUMAN RIGHTS UNDER EMERGENCY REGIMES

8.1 The background to emergency regimes in Ireland and the tradition of paramilitary activity - discussion of the importance of making advance provision for protection of human rights in the event of future challenges to democratic institutions by paramilitary bodies and others

8.2 The rules of internal human rights law on derogations - the major principles of exceptional threat, formal declaration, proportionality and safeguards - the principle of advance provision and international supervision

8.3 How national safeguards may be improved - defining the roles of the executive, the legislature and the judiciary

8.4 Discussion of implementation of these principles within Northern Ireland, on an all-Ireland basis, or on a British-Irish basis

8.5 Potential role for European institutions - the current and potential role of Council of Europe - the role of the OSCE and monitoring missions

8.6 The position in international human rights and humanitarian law and practice on the responsibility of non-state bodies for human rights violations - how these rules might be strengthened and implemented

9. TRANSITIONAL ISSUES

9.1 A discussion of human rights aspects of some issues of concern in the developing peace process

9.2 Dealing with past human rights abuses - amnesties and indemnities and the limits imposed by human rights and humanitarian law - the right to truth and the role of truth commissions

9.3 The treatment of prisoners - amnesties and early release programmes

9.4 Policing under transitional and permanent regimes - meeting international norms for law enforcement

[INCOMPLETE WORKING DRAFT - NOT FOR PUBLICATION OR QUOTATION]