

Suggested observations and Amendments to

## Executive Summary and Issues of Relevance

To be presented to Dr Asbjorn Eide

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Paragraph 2

Secretariat amendment unnecessary, leave text as originally written by Dr Eide.

Paragraph 5

Amend last two sentences:

“When reasonable and moderate claims are accepted by the **authorities**, compromises are worked out making it possible to move forward to a more satisfactory solution in the next step. If, on the other hand, even reasonable claims are rejected **and/or are met with state violence and/or violations of human rights**, the outcome is likely to be a further polarization and confrontation, leading to a slippery downward road **toward violent confrontation.**”

Observation:

Paragraph 61 contains a more balanced presentation of this topic.

Paragraph 7

Add after last sentence:

“**Such a comparison would conceivably be directly applicable in the context of a sovereign United Ireland in relation to the rights of the unionist minority.**”

Paragraph 8

Add after last sentence:

“**In the context of Ireland and Britain there is the added factor that there is no such entity as a British “nation” (there are three nations: England, Scotland and Wales), nor is there any separate northern Irish national identity.**”

## Paragraph 14

Amend first sentence:

“Since it is essential for all states to develop a satisfactory social and ethnic contract in society, at least **four** concerns should be simultaneously pursued in their domestic policies: (a) to safeguard and enhance equality between all members in society; (b) yet tolerate and promote group diversity by respecting their separate and preferred identity ; (c) **refrain from the use of violence, repression or non-democratic means which undermine equality in order to maintain the territorial integrity of the state;** and (d) and do this in ways which consolidate and advance stability and peace.”

Amend last line by deleting last 6 words of last sentence, which now reads:

“.... undermine [...] political independence.” [....]

## Paragraph 17

Amend paragraph (one sentence):

“In the case of Ireland, the Joint Declaration of 1993 and the proposals of the British and Irish Governments, as agreed in “A New Framework for Agreement” of 1995, include an express recognition by the British government of “self-determination by the people of Ireland” (Framework, para 16) and a recognition that (in legal terms) the “people of Ireland” (para 1), living on “the island of Ireland” (para 2, also see para(s) 5,6), are distinct from the People of Britain, living on the island of Britain. As distinct from any other part of the British state, people living in the North of Ireland are granted the right of seceding from that state, albeit given certain conditions.”

## Paragraph 18

Amend paragraph to read:

“In 1920-21, the right to self-determination, although promoted initially by President Woodrow Wilson’s 14 points address and enshrined in the covenant of the League of Nations, only came to be recognised as an enforceable right of peoples after the colonial revolt of subject peoples had become irresistible after World War II. Having emerged as a right of peoples it has been understood to provide a right to separate statehood only to non-self-governing territories.”

## Paragraph 19

Amend paragraph to read:

“The island of Ireland as a whole, which was always a single administrative unit up to the imposition of Partition by Britain, was a non-self-governing territory. A factor

relevant to a negotiated solution, achieved by reference to guidelines provided by international law, is, in the opinion of Professor Richard Falk,<sup>1</sup> “the degree to which the partition of Ireland does represent an instance of a ruptured process of decolonization, and therefore unsatisfied claims to exercise the right to self determination remain relevant”. The current status of the entity of Northern Ireland is akin to that held by Gibraltar or Hong Kong which are also ruled by Great Britain or Ceuta and melilla, enclaves on the Moroccan Coast ruled by the Spanish state. In all four cases there is local majority against incorporation into the adjoining national territory. In one case, that of Hong Kong, the colonial power, Britain, is not adhering to the wishes of the population, before handing the territory back to the territory from which it was annexed, namely China.”

Paragraph 20

Delete paragraph.

Paragraph 21

Delete paragraph

Paragraph 22

Add after last sentence:

**“The enactment of ‘parity of esteem’ or equality of treatment in the North of Ireland implies that the national and constitutional rights of all of its inhabitants must have equal weight before the law and must have an equal right of expression written into law.**

Paragraph 23

Amend paragraph to read:

**“An egalitarian ethic must be developed in relation to participation in all aspects of civic society in the North of Ireland. This ethic, which does not constitute a national identity, will allow people with different approaches to constitutional jurisdiction to work together for the better development of all the area’s inhabitants.”**

Paragraph 24

First sentence, as amended by Secretariat, OK. Re-draft from 2nd sentence on:

**“The creation of the state of Northern Ireland on the basis of the communal identity of the majority of the inhabitants of part of the province of Ulster should not be compounded by any measures leading to further physical separation. As in other parts of**

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<sup>1</sup>Albert G Milbank Professor of International Law and Practice, Princeton University

the world, for instance the attempts by a local majority of Serbs in parts of Bosnia to establish a physical separation based on an ethnic or religious identity, this process leads to a frightening escalation of tension, brutality and violence.”

Paragraph 25

Agree with Secretariat proposal to delete.

Paragraph 26

Add after last sentence:

**“Such an arrangement might be relevant to proposals leading to a new, agreed and sovereign Ireland.”**

Paragraph 28

Amend first sentence to read:

**“All of these areas give useful lessons, but they have one aspect in common which does not apply to the situation in the North of Ireland: the absence, within the autonomous area of a colonial history based on the principle of ‘divide and rule’, which exacerbated population divisions.”**

Paragraph 29

Add to Secretariat amendment the following sentence from Eide’s original para 30:

**“This principle should also apply [.....] if in the future a sovereign agreed Ireland was established.”**

Paragraph 33

Add after quotation:

**“Thus the unionists behave as a national minority which is allied to an outside entity. The focus of unionist concern is thoroughly Irish, based on a perception of a threat to their position, compounded by a fear that they will be subject to the same treatment in a united country that was meted out to nationalists in the partitioned North of Ireland.”**

Paragraph 34

Redraft second sentence:

**“Among them have been the arbitrary powers of arrest, detention and imprisonment, ill-treatment of detainees, forms of internal and external exile, the use of lethal force by**

**the state in highly questionable circumstances and systematic discrimination in housing, employment and expressions of identity.”**

Observation: the original sentence said that “the tension surrounding the advocacy of political change” was a “human rights problem”!

Amend last line of paragraph by deleting “either side” and inserting:

**“...on nationalists in the North of Ireland or unionists in an agreed Ireland for asserting, democratically and peacefully, their respective preferences.”**

Paragraph 36

Secretariat amendments OK.

Paragraph 37

Observation: It is disturbing to note that Britain is considering withdrawing totally from the European Convention and that Britain has said in bellicose terms that it will not abide by the recent Court judgement on the Gibraltar killings.

Paragraph 38

Observation: We are fully in agreement that these conventions should be incorporated into domestic law. The recommendation is central to the Dr Eide’s work and should be strongly endorsed by the Sub-Committee in its eventual report to the full Forum.

Paragraph 39

Add after quotation:

**“The enactment of such a provision in the North of Ireland would defuse much of the difficulties surrounding the provision of funding to Irish language schools and the right of use Irish in official transactions between citizens and the state.”**

Paragraph 40

Redraft second last sentence:

**“Measures aimed at equality of treatment must be consolidated and further improved irrespective of any proposals favouring local rule which might be tabled by any party during the course of all-party talks.**

Paragraph 42

Redraft proposals, first sentence:

**A comprehensive set of statutes must be adopted, in accordance with the requirements of international human rights law,..... [etc, etc].”**

Paragraph 53

Delete paragraph.

Observation: there is no possibility of creating a Six County “national” identity. The attempt to manufacture such an identity is part of the original problem. Adding a new layer of “identity” will only confuse matters further. There are currently two main identities, nationalist and unionist, in Ireland. That is enough to be going on with.

Paragraph 54

Observation: this is an admission that the discrimination suffered by nationalists in the North of Ireland constituted a form of racism. This is compounded by the acceptance by British authorities that Irish people in Britain have been subject to forms of racist treatment.

Paragraph 60

Observation: we agree with the suggestion of Alex Atwood of the SDLP that the UN Convention on the police should also be considered for incorporation into domestic law. We would, however, like the Sub-Committee to hear some discussion on the details of this Convention.