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HUMAN RIGHTS.

SUMMARY RECORD OF STRAND TWO MEETING - TUESDAY 10 FEBRUARY 1998 AT 1040 -

CHAIRMEN:	Senator Mitchell Mr Holkeri
THOSE PRESENT:	British Government Irish Government
	Alliance Labour Northern Ireland Women's Coalition Progressive Unionist Party Sinn Féin Social Democratic and Labour Party Ulster Unionist Party

1. The Chairman convened the meeting at 1040 and stated that participants had been contacted over the previous few days by his staff with regard to a proposal that today's session concentrate on Rights and Safeguards - an issue which had been part of the Comprehensive Agenda which itself had been agreed on 24 September 1997.

2. The Chairman said that, subject to his proposal being accepted, he intended to continue the Strand Two discussion on North/South structures carried over from London, in Dublin beginning at 1100 on 16 February. In this regard the Chairman outlined that, in response to his London proposal that participants could provide written responses to a series of questions posed by both Governments, his office had received papers from the SDLP and Sinn Fein. The Chairman said his staff had also received a paper from the UUP but this had now been temporarily withdrawn for further revisions.

3. The Chairman said he would ask those three participants to confirm whether their responses could be circulated to other participants. He

proposed, that on future occasions when papers were sought on a voluntary basis, participants should inform his office if they did not wish these to be circulated, otherwise, in the absence of such a message, they would be. The Chairman asked whether there were any objections to this approach. Hearing none, he proposed that the meeting now proceed with a discussion on Rights and Safeguards, beginning with both Governments, followed by a tour de table and then any general remarks and questioning forming the final phase. Hearing no objections he asked the British Government to start proceedings.

4. The British Government said most participants, except the Independent Chairmen and the Irish Government, had been present the previous day when a useful discussion had taken place in Strand One on the same issue. The British Government said it had taken note of the proposals which had referred to the equivalent protection of rights in the Irish Republic and the important point that rights didn't stop at borders. It was therefore appropriate for such issues to be discussed in both Strands One and Strand Two. The British Government said the meeting in Strand One had discussed the incorporation of the European Convention on Human Rights into a Human Rights Bill in the UK, the provisions of which would apply to Northern Ireland. There was also some discussion about additions to these provisions including a Bill of Rights for Northern Ireland. The discussion had focused on the definition and range of rights as well as dealing with the likely institutions needed and the accessibility and abuse of such rights. The issue of whether any future Northern Ireland Assembly would also have to have additional rights and safeguards built in was touched on as well as a number of other propositions. The British Government said Strand One had decided to reconvene on the basis of synthesising papers produced in advance by participants to enable consideration of the issues in detail as well as taking on board any additional comments from the parties prior to the next meeting.

The British Government said the next meeting would also consider the possibility of introducing outside experts to help the participants.

5. The Irish Government said it regarded the enhanced and systematic protection of human rights as a central element in a comprehensive settlement. The infringement of basic civil and political rights, and the failure to rectify the situation, were major factors leading to instability and conflict in Northern Ireland. The discussion in this format should, however, now focus firmly on the future. How could rights best be safeguarded under new institutions, whatever form they took? The entrenched protection of a range of rights was not only of great importance in itself, but it could also serve to build wider public confidence in new arrangements.

6. The Irish Government said its general approach was set out in the paper it submitted on 7 November. Since then, in the "Propositions" paper both it and the British Government had again expressed the view that an overall agreement should include provision to safeguard the rights of both communities in Northern Ireland, and both had committed themselves to "appropriate steps to ensure an equivalent level of protection in the Republic." Lest there be any misunderstanding, the Irish Government said it would emphasise that the stress on the rights of both communities did not in any way detract from both Governments' equal determination to protect the rights of all individuals as individuals, whether or not they considered themselves to be unionists or nationalists.

7. It was obviously possible to look at rights and safeguards in a very broad way: many institutional and constitutional provisions of a settlement were likely to involve the expression of a right or the establishment of a safeguard. Likewise, there was a range of economic, social, cultural and confidence issues which could be seen as involving rights. But there was

scope elsewhere in the negotiations for these matters to be taken forward. The Irish Government said it therefore believed that discussions under this particular Rights and Safeguards heading were most likely to be productive and focused if everyone concentrated more specifically on the legal dimensions of the matter. It was clear that many complex and detailed issues, both of a political and a technical nature, arose for both Governments and all the parties. These included: the identification of which rights need to be protected; how those rights could best be formulated and most effectively entrenched; arrangements for monitoring and enforcement; and ways in which everyone could foster a culture of human rights throughout the wider society.

8. The Irish Government said there were of course significant differences between the legal situations North and South, above all because the Republic had a written Constitution which was the subject of extensive interpretation by the Supreme Court. There was a great body of jurisprudence elaborating rights stated or inherent in the Constitution. But it repeated that, as it had said in its paper of 7 November, "the Irish Government believes that, to the greatest extent possible, human rights should be assured and protected on a equal basis throughout the island of Ireland. Moreover, this should hold irrespective of whatever constitutional and institutional arrangements are agreed, either in the present talks or at any future date." This did not necessarily require that everyone adopted precisely the same methods in each case: what was important was that everyone achieved a common standard. It said it could assure everyone that it would fully honour the commitments which it had already made and which would come out of the talks.

9. Another question for consideration was that of whether there would be value in adopting a Charter or Covenant, which, as it had said in the

November paper, "would represent a set of political commitments by the democratic representatives of the people of Ireland which would underpin the range of human rights and institutional safeguards legally enshrined in an agreement." This would complement the enhanced legal protection of human rights, but would also embrace key principles in all areas, including the constitutional and the institutional. The Irish Government said it would very much welcome the views of parties on whether they saw merit in such a Covenant, and whether they thought it was something which should be carried forward in the weeks ahead. When it came to future work in this area, however, it remained of the view that the best way to proceed would be through a cross-strand committee. While many of the issues rested, in the first instance, on Northern Ireland, there was, as indicated, a clear all-Ireland dimension. It looked forward very much to this debate.

10. Alliance, picking up on some of the points made by the Irish Government said it was extremely important to have consistent standards with regard to the protection of rights across Ireland. The party said the European Convention on Human Rights was now the accepted standard and it was an important development that the British Government was incorporating this into its law. All participants should welcome this approach. Of course this meant that the only country which hadn't incorporated the ECHR in its domestic law was the Republic of Ireland. Alliance said this step needed to be taken to provide the equal and consistent treatment referred to earlier. The party said this might cause difficulties for the Republic but it recalled the previous British Government had often outlined the "difficulties" as its reasoning for non adoption. The party said incorporation by the Republic was an important and key step in this area. If harmonisation couldn't occur on this matter then it was very unlikely that progress could be made on other issues within the talks.

11. Alliance said it had been disappointed by the Taoiseach s remarks last weekend when he had indicated that the Republic was unlikely to take the ECHR route. The party said there was a need to discuss this issue and the matter of add-ons for Northern Ireland in terms of recognising the diversity of culture and the different traditions here. The party wondered whether some of these add-ons might also apply to the Republic. Northern Ireland was different in a number of other respects in the rights field. There was, for example, a massive array of other legislation on fair employment and it was issues like this which the Republic needed to address in this area too - such as the necessity for prospective teachers from Northern Ireland to gain a qualification in Irish to enable them to teach the subject in the Republic. Alliance said such measures had a discriminatory effect so it was important for the Republic to achieve an equivalent standard on the protection of such rights as would be in the case under the ECHR. Alliance said it had also proposed an enhanced role for an Human Rights Commission in Northern Ireland. There might be merit in a similar body being available in the Republic, thus providing a level of co-operation on an expanded cross-border basis on rights issues.

12. Labour said it had accepted the Irish Government's paper of 7 November as a good starting point. It was important that the protection of rights should be harmonised across borders and states so that there were no loopholes. The party said it recognised the difficulties the Irish Government might have in incorporating the ECHR into its domestic law but it was incumbent on the Irish Government to do everything possible to ensure equality and protection of rights on a consistent basis. Labour stated that matters should now be taken further from the start made in the 7 November document.

13. The NIWC said it also recognised the difficulties which the Republic might face in incorporating the ECHR. Finland, however, had had to go through all its legislation to incorporate the Convention so it certainly could be done. The party said yesterday's discussion had been worthwhile and would be more in depth than today's. There were however some matters which needed to be raised such as the issue of a discrimination framework in both jurisdictions. Northern Ireland had already a considerable amount of legislation in this area to take account of its "unique" circumstances but an overall framework should be considered. On policing, this wasn't an issue for Northern Ireland alone but also for the Republic. The Hayes Report had recommended an independent ombudsman for Northern Ireland but this was perhaps something which the Irish Government should also consider. There was also the issue of emergency legislation. Special Criminal Courts still existed and a return to jury trials was needed.

14. Moving on, the NIWC said that in terms of developing its vision of a pluralist society, it believed that such a society should apply equally in the Republic. One only had to look at the numbers of asylum seekers etc who were entering the Republic. The Irish Government would have to look at this and other issues in attempting to develop a multi-cultural society. The party said the protection and equality of treatment of rights was a much wider issue in such a society than simply focusing on unionists, nationalists, loyalists and republicans.

15. The NIWC said it had submitted a paper on Rights and Safeguards before Christmas and had considered whether any new North/South institutions would be given the task of drawing up impact assessment statements which might measure the benefits, impact and difficulties that agreed policies in either or both jurisdictions might have on people, communities and policies. Given that many of the decisions would have to be

taken forward in two jurisdictions, this might turn out to be the most difficult issue of all to carry out. The party suggested that on this basis it might be worthwhile using its pre Christmas paper to flesh out the details of what everyone was saying on Rights and Safeguards into a more practical set of proposals.

16. The PUP said it welcomed yesterday's debate and the contribution today. The discussion on rights in Strand Two was, however, rather different, since the party couldn't trust the Irish Government in any shape or form to deal with rights issues. The PUP said the Republic wished to appear as a liberal society yet it couldn't incorporate the ECHR into domestic law. As an alternative it (the Irish Government) proposed a Covenant of Rights. The party said this wasn't on since it was international agreements on the protection of rights which were important and set the standards. The party said its rights were denied as a result of the stated desire of the Irish Government to continue to articulate Articles 2 and 3 of the Constitution.

17. The PUP said more than lip service needed to be paid to this issue for it to change its view of the Irish Government. Unionists looked at the Irish Republic, presently in a transitional phase and therefore developing an opportunity to embark on a new world in terms of the equal treatment and protection of rights for all, and asked what was it doing with this opportunity? Emergency legislation was still present and immigrants had to learn the Irish language to enable them to get a job. Then there was the issue of the protection of rights connected to sexual orientation and abortion. The PUP said that, in terms of the British Government's views on the possibility of a Bill of Rights rollover for Northern Ireland, this was impractical since the issue was not simply one of protecting the rights of unionists and nationalists. The PUP said the Irish Government still had a long way to go to convince it about its intentions for the protection of human rights compared to the lesser

amount of convincing which the British Government needed to undertake with Sinn Féin on this issue.

18. Sinn Féin said it had identified justice, rights and safeguards for everyone as its position in yesterday's discussion. The party said it wished to raise the issue of how things might have been if, 30 years ago, the British Government and unionists had recognised the need to give justice and equality to all citizens in Northern Ireland. There were members of the party present who represented a generation of nationalists in the North who didn't have rights. The introduction of internment was an example of this and the failure to protect human rights was at the root of all the troubles as was the inability of the British Government and the unionists to change society then. Sinn Féin said this was an important message for today. Everyone had to consider how things could have been different if others had reacted differently to events but the reality was that thousands in the nationalist community were denied jobs and equality as a result of their religion.

19. Sinn Féin said it wasn't raising this on a recriminatory basis but to point out to all that it was important not to repeat the mistakes of the past. Everyone had to look to a new future as equals as the party's document had outlined in November - "For a future as equals". Sinn Féin said it was heartened by the discussions occurring in Strand One and Two and that a recognition of equality had emerged. This was progressive and important and credit had to be given to the unionists were facing up to the difficult task of dealing with such a complex issue.

20. Sinn Féin said equality and justice were fundamental rights. In principle they were non negotiable. There was, however, immediate action required to enhance human rights protection. This required constitutional instruction, legal entrenchment and effective institutional underpinning on an

all-Ireland basis. The party said the legal system should ensure equality of all before the laws, programs or activities that had, as their object, the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, gender or creed. The party said there was a clear need to deliver concrete change in the immediate and short term to underpin confidence in the process itself and any agreed outcome which was reached. The rights and safeguards of all had to be recognised and protected. The comprehensive, systematic, effective and entrenched protection of human rights - civil, political, social, economic and cultural - should underpin the establishment and operation of agreed institutions and structures.

21. On the issue of culture, the party said at yesterday's meeting it had raised the part played by it in promoting the Irish language - not as a political weapon - but on the basis that culturally, the Irish language was the language of Ireland. Irish, however, had been spoken on the island for over 2,000 years and well into the 19th century but its decline had come about as a result of neglect and discrimination. The Irish language question had been removed from the 1921 census in the North and officially the Irish language did not exist. The party said, however, that it was heartened to read recently that women in the Shankill Road area were learning the language and travelling throughout Ireland to appreciate its different dialects.

22. Returning to basic rights, Sinn Féin again said these were non negotiable. Human rights and safeguards had to be on an equal basis throughout the island of Ireland and these should hold irrespective of whatever constitutional and institutional arrangements were agreed, either in the present talks or at a future date. The existence of an extensive body of individual and communal rights formulated in international covenants provided a useful basis and appropriate guidelines. But there was a clear need to go

beyond the minimal standards which these represented and to codify and entrench rights and safeguards which met the specific needs of a divided society. In addition to the enhanced protection of human rights in the legal order, there could be value in the adoption of a Charter or Covenant which might reflect and politically endorse agreed measures for the protection of the fundamental rights of everyone living in Ireland. This could be overseen by an all-Ireland Human Rights Commission.

23. Sinn Féin said it was not sufficient to agree that human rights should be available and should be protected. It was necessary to focus on monitoring and delivery. While a variety of terms had been used such as 'entrenchment', 'enforcement', 'impact assessment', 'creating a society framework', or 'protection and safeguards', participants from across the political spectrum had argued for specific measures to be agreed and implemented which could guarantee adherence by state institutions and provide recourse for those whose rights were infringed. No one in the discussions had argued that equality of treatment or full human rights protection should not be guaranteed. Therefore, there should be immediate action on a range of impact assessment and arbitration measures which could ensure the effective delivery of civil, political, social, economic and cultural rights, independent of the negotiations.

24. The party said action on these matters need not await the outcome of discussions on any other item or in any other format as both Governments were already obliged in consequence, both of domestic legal obligations and international commitments, to protect human rights quite independently of the course and outcome of the talks. Effective measures to achieve this should include: an effective arbitration system which could prevent state institutions acting in a biased manner; the establishment of a common platform of human rights throughout the island; the establishment of an all-Ireland Human Rights

Commission and consideration given to the establishment of an all-Ireland Human Rights Court; an effective system of monitoring the enforcement of the whole range of human rights in administrative practice and in the operation of legislation, whether new or existing; clear legal enforcement of a human rights agenda, with an international dimension to provide an area of appeal if domestic law failed to provide adequate protection; and effective human rights training for everyone involved in the administration of justice.

25. Sinn Féin said all of this went to the very heart of the conflict during the last 20 years and more. There was now a great opportunity for everyone to be part of trying to resolve the problems of the past. There was considerable agreement around the table on the issues of rights and safeguards and credit was due to all the participants for this. The party said it hoped that there would be the ability to use this common view as a launching pad to bring an equal society throughout Ireland.

26. The SDLP said the context in which Rights and Safeguards were being discussed had changed from Strand One to Strand Two. The issues, however, hadn't changed substantially and the session was beginning to rehearse many of the issues debated the previous day. Given this, the party wished to reinforce its view that there needed to be a cross-strand mechanism to address such issues. The party said it had listened carefully to Sinn Féin's contribution and in particular the points made about the opportunities to reach agreement which were now being presented. The SDLP said this was all very well but the process needed to get beyond this stage and hammer out what exactly should be included on the rights agenda following a settlement. This type of debate had to be conducted in a cross-strand context since it was here that the interplay of how rights would be enforced, entrenched etc in both parts of Ireland, as well as questions regarding the institutional requirements such as the role of any Human Rights

Commission would be tackled. The party said there was, in its view, a need to get on to these issues rapidly and concentrate on the subsequent detail.

27. The SDLP highlighted the recommendation in the Framework Document in relation to a Charter or Covenant (paragraph 51) and said it viewed such a device as a political commitment to protect the rights of everyone in the island. With regard to the recommendations in paragraph 52 of the Framework Document, the party said it also viewed a commitment to the principle of consent in the relationships between the two traditions in Ireland as very important. The fears of both unionists and nationalists being trapped as minorities were frequently highlighted. But paragraph 52 invited everyone to identify the principles which would endure in any constitutional framework. It was important that these principles were enduring in whatever realm they applied since they would have the effect of protecting against those fears induced by change. The SDLP said the concept of a Convenant should be given urgent consideration as the talks proceeded. The articulation of actual rights was missing. Precision on these matters, in working on a broader basis towards a settlement, was something which now needed to be addressed so that participants could agree and sign up to the requirements involving legislation, institutions etc sooner rather than later.

28. The UUP said it wished to concentrate on a narrower dimension than some of the previous contributors had covered. The fact that this was a Strand Two discussion provided the party with an opportunity to put some issues to the Irish Government since it (the UUP) had genuine concerns and hopes on human rights issues. The UUP said it wished to find a solution to all of this and the party was on record as saying that human rights was a fundamental building block in solving the situation in Northern Ireland. The party said it also noted the Irish Government's earlier comments that the rights issue was "a central element in a comprehensive settlement". It also

noted that both Governments had commended the Framework Document as a basis for a settlement and it recalled the Taoiseach saying that it was also a central element to the process. Yet, said the UUP, that document was very clear in its handling of the issue of human rights in so far as the wording used. Each time the document talked about the protection of rights, it described this in a very off hand way using language such as "having regard to". The UUP said its experience of other International Agreements was that they spoke about such matters in terms such as "in accordance with". The former description reinforced the impression, in the minds of the UUP, that the Irish Government paid scant regard to human rights; it simply noted such matters and passed on.

29. The UUP said it had a particular concern on human rights which both it and the Irish Government agreed was a central element in any settlement. This issue focused on the SDLP's reference to there being the need for a political expression of the nationalist tradition. The Framework Document had stated that "any new political arrangements must be based on full respect for, and protection and expression of, the rights and identities of both traditions in Ireland". From the unionist perception, the UUP said it could respect the nationalist tradition and embrace the protection of this but the problem arose in the expression of the nationalist tradition. Such a position was encapsulated in the expression "parity of esteem" to which both Governments often referred. The question here was what was the right of unionists in the context of "parity of esteem". From the UUP's perspective, it agreed that both communities in Northern Ireland had the right to be either unionist or nationalist. From an international perspective, unionists live in a country called the United Kingdom, therefore their rights were those as citizens of the UK. The rights of nationalists in such a context were a mere aspiration to change the constitutional status of Northern Ireland within the United Kingdom and in doing so this raised the issue of the legality of the state.

30. The UUP said that, since 1992 and the previous talks process, there had been a blossoming of human rights law on an international basis, following the demise of the USSR and developments in the wider European scene. In developing this theme, the party said the right of self determination in the context of North and South gave it a further concern. The UUP said the United Nations Vienna Declaration and Programme of Action of 1993 had made this clear, that the right of self determination is not absolute but circumscribed within a state. The UN had said that the right of self determination was not a right to secede. Moving on to the right of political expression, the UUP said that the Framework Convention on Minorities had now been ratified by the British Government and would be effective from May. This dealt with the rights of minority communities and had been adopted by the Council of Europe in 1994, had been open for signature since 1995, yet no mention of this had been made in the Framework Document. The UUP said part of the reason why the Framework Convention was not mentioned in the Framework Documents was that it acknowledged the territorial integrity of states as a fundamental principle of international law.

31. The UUP asked was it any wonder why unionists, in general, had suspicions regarding the Irish Government's motives in devising written words from which it wished to proceed to a settlement of the process?. The party moved on and referred to the Forum for Peace and Reconciliation, at which unionists were not present. The UUP said the Irish Government had concluded at the Forum that any decision on what should constitute fundamental human rights could not be regarded as a matter for individual people to decide but rather it had to be decided by a broader consensus. The UUP said it was for each state to recognise rights "in accordance with" its international conventions rather than mere "regard to". The party viewed the nationalist minority as the Framework Convention articulated - a group of

persons who resided in or were citizens of a state in which that group was lesser in number than another group in that state not as a group of displaced persons or refugees. This position described Irish nationalists since they were a smaller grouping in Northern Ireland. The party recalled the killings of three people in Gibraltar in 1988. The Court hearing the evidence had described them as Republic of Ireland and United Kingdom citizens resident in Belfast. This was not a description of people who were different. The UUP said it did not wish to deny political equality to anyone and had already spelt out, in previous meetings, its view of the Framework Convention and the provisions in its Article 4 which it fully supported. The question here was what was equality in a political sense.

32. The party referred to the right to full participation in the political process in the state in which you live. The UUP said it genuinely wanted to have this. Unionists had moved away from more entrenched positions on this issue. They wanted everyone to play a full part in the government of Northern Ireland in relation to the political strength of each party. This position was in accordance with all the human rights legislation. Such legislation also referred to cross-border co-operation but there was no legal basis to support the view that political linkages should exist to permit a political right to be exercised!

33. The UUP then referred to the Pact on Stability in Europe - an initiative led by French Prime Minister Balladur in 1983 and adopted by the EU as its contribution to human rights at that time and subsequently taken on board by the OSCE for implementation. The party said this document also incorporated fundamental principles of human rights in terms of recognising borders and accommodating groups within states. In terms of the "uniqueness" of the Northern Ireland situation, the party said it had much sympathy for the EU model on conflict resolution as espoused by the leader

of the SDLP ie the blurring of borders. The party said it accepted the reality of this. The border between North and South was only a line in the map. What had to be addressed was the borders in hearts and minds. The real problem of human rights in Europe is interregional, between states and regions. These principles are: where there is aggressive nationalism the current border is to be respected by way of the institutions of government: disagreements are to be settled by arbitration; where there is dissension within a region of a state regarding the validity of that state, autonomous regional government is developed and arrangements are expected to be created within that state in order to protect all ethnic groupings; where there is tension and a lack of trust across borders within Europe, co-operation is encouraged and expected to be built up slowly from the base of the already existing situation; where there were states that had an ethnic affinity with a group of people in a neighbouring state, the only legitimate interest of that state is was to ensure that their kinfolk across the border flourish under conditions of good government.

34. The UUP said that none of these principles were being applied in Northern Ireland. What was therefore "unique" about Northern Ireland was not its problems but the solutions. The party said it would shortly be producing a document to try to resolve the conflict. Strand One can easily be resolved, as can Strand Two to a certain extent. The central problem is Strand Two. The party said what was really needed was for nationalists to reflect on the international principles on human rights previously mentioned and reconsider cross-border executive powers as their principal prerequisite. If they could draw back from that one little problem, they would reflect the principles and practices of international human rights law in the context of Strand Two.

35. The Chairman then opened the discussion to the floor. The UUP said that no one had a monopoly on claiming past injustices, and every party could sit and recall a litany of injustice. It was more important to look to the future. Equally, it was wrong and unhelpful to suggest that one side was entirely to blame for the conflict. Most importantly, the party did not accept that any of the instances of discrimination which had been mentioned could justify the taking of a human life. The right to life was surely the most basic right of all. The objective of the process was to try and construct a political settlement which created a culture of respect for rights.

36. The UUP said that Parliament was now dealing with legislation to incorporate the ECHR (European Convention on Human Rights) into domestic law, which put the UK well ahead of the Republic of Ireland in the protection of human rights. The party noted the difference between the willingness of the British Government to investigate Bloody Sunday, and the lack of an Irish Government investigation into the funding of the IRA by some of its senior members in the early 1970s. The UUP said that, like the PUP, it was interested in international protection of human rights rather than some Covenant or Charter between the Governments. The PUP quoted paragraph 50 of the Framework Document, which said that each Government would ensure the protection of rights "in accordance with" its constitutional arrangements, but used the weaker phrase "having regard to" its international obligations. The party said it would be useful to have a paper from the Irish Government on which human rights instruments it had not yet ratified, or proposed to ratify.

37. The SDLP said it was sure the Irish Government could speak for itself, but the party did not read the phrase "having regard to" as superficial or gestural. This phrase, which appeared in the participants' own Rules of Procedure, indicated that significant account would be taken of, in this case,

international standards. The party said that there were many international examples of local, regional agreements dealing with rights in specific ways appropriate to those regions. Directly justiciable instruments were a comparatively recent development, and the ECHR was probably the strongest in this regard. However, the Irish Government was bound by the ECHR just as much as any other signatory, albeit perhaps via a different procedure. The Irish Constitution, which many criticised, and the jurisprudence based on it, had certainly stood the test of time in the protection of individual rights, especially in the last decade. There needed to be some sense of actualities here, and not just superficial analysis.

38. The SDLP thanked the UUP for its detailed exposition of international conventions. It suggested, however, that the two Governments in the Anglo Irish Agreement (Article 1) and the Downing Street Declaration, and the Irish Government in the Forum for Peace and Reconciliation, had addressed the question of self-determination in a way which was quite in conformity with the international approach to this issue. The very useful report by Professor Eide, for instance, bore this out. The SDLP expressed great surprise at the UUP's contention that under international law the kind of North/South political arrangements under consideration were not permitted. The two sovereign Governments, and many of the political parties, had subscribed to a political approach to deal with a situation. The party asked where did international law forbid such an arrangement?

39. The UUP responded to points raised. The phrase "having regard to" could indeed mean different things, but it had surely not been used casually in such a carefully crafted work as the Framework Document. The PUP had pointed out the stronger formulation used for constitutional implications. There was no reference in the Framework Document to the principle of the territorial integrity of states. As regards self determination and the Anglo-Irish

Agreement, the party had referred to the UN's 1993 definition of self-determination. It might be noted that unionists also did not enjoy that right under the existing political arrangements in Northern Ireland. As regards what international law permitted, the UUP accepted of course that there was not a coherent body of international law, and that any agreement between governments could be said to be international law. But there was no convention in international law giving a precedent for the type of solution being suggested here: the clear international consensus was for the territorial integrity of states. The Framework Convention on Minorities described it as a fundamental principle. The Dublin Government, on the other hand, claimed to speak not just for Irish citizens, which would be correct, but for Irish nationals, wherever they may live. This was clearly interference in another state and a breach of a fundamental international principle.

40. Sinn Féin referred to the UUP's point that there was no sense in indulging in mutual recriminations. The party said that there had been many other conflicts around the world where each side had begun by doing just that, but had eventually moved forward to making a positive contribution. Participants could either focus on the future or find excuses not to talk to each other. Sinn Féin commended the erudition of the UUP, and its ability to drag everyone to the further reaches of eastern Europe for examples, although the description of Irish nationalists as a national minority was insulting. The message sent out, however, was that the UUP believed that its own Government had denied unionists basic democracy and was engaged in an enterprise with the Irish Government, in contravention of international law, to sell unionists down the river. If the UUP really believed that, what did it say about their relationship with the British Government, and did it not lead the representatives of unionism to re-evaluate their situation? If the British Government did not want unionists, Sinn Fein said that it, the SDLP and the Irish Government had made it clear that they did want unionists to be part of a

dynamic future, and as equals, not humiliated or dominated. If there was no real engagement and agreement between the parties, the talks would go nowhere, leading to a situation where the Governments produced something without the parties.

41. The PUP wondered, if unionists were giving allegiance to a Government that didn't want them, how was it that Sinn Féin in 1986 had accepted a Government they had previously wanted nothing to do with? Sinn Féin was speaking as if it was the guardian of nationalism, but when the SDLP tried to address the needs of unionism, they were accused by Sinn Féin of a sell-out. Sinn Féin said that as a party it had long accepted that a solution to the conflict would require a process that involved the two Governments, and the party had been talking to the British Government, as everybody knew, for years. The party would decline the attempt to start an argument between it and the SDLP.

42. The UUP accepted that unemployment in Derry was the highest in the UK, but the city also had the highest birthrate and the highest rate of job creation. It was too simple just to say that high unemployment indicated discrimination. As regards the Government, governments changed, both in composition and in attitude. There was a new British Government which was devolutionary in practice, which placed human rights at the center of its foreign policy and which was bringing in the ECHR. The party wanted to engage with this government and persuade it. Many of the international instruments referred to were quite recent, having been elaborated in the context of the break up of the Soviet Union, and had not been around at the time of the 1991 talks. The UUP said it had tried to define the sense in which it was using the term 'national minority' to show that no insult was intended. Unionists, on the other hand, continually heard references to 'the people of

Ireland' or 'the peoples of Ireland and Britain', expressions which gave no recognition at all to their existence.

43. The SDLP said it was important to state clearly that it did not see the rights and safeguards in Strand Two as entirely unrelated to those discussed in Strand One yesterday. There were not some rights in Strand One and others in Strand Two. The party viewed the sort of rights which had been discussed in Strand One as requirements that would apply equally to any decisions of institutions in Strand Two, and even Strand Three. This underpinned the need for a cross-Strand discussion of this issue. The SDLP said answers to the problems were not going to be found by rummaging through the international conventions catalogue. Measures would have to be tailored to fit the requirements. If the parties were to reach an agreement and go out to solicit public support for it, the people would not want to know about international precedents. They would judge an agreement on the basis of what they knew - would one side or another run away with Strand One, or Two, etc? The issues had to be addressed in ways that met the real political concerns across the community. The safeguards we devised would have to be built in to the political arrangements, and not just be trimming alongside them.

44. The SDLP said there seemed to be some confusion about the suggestion of a Charter or Covenant. This was meant not as an alternative to the ECHR or other measures, but as representing a political compact between all the participants on the rights and safeguards to be protected and promoted. In the 1992 talks one participant had claimed that safeguards for rights would last only until there was a nationalist majority, and then be forgotten, but this was not the case. Given that any agreement had to provide for the possibility of change based on consent, political arrangements to cover that were needed. The party was approaching this on a "do unto others"

basis, a sort of Covenant of Honour. The SDLP would not be seeking anything in the current context which it would not see as automatically applying to unionists if the position was reversed. This was a way of adding to the consent principle. It would also apply to Strand Three - including arrangements for the political expression of the British identity of unionists if there were in the future a united Ireland - and this again suggested the need for a cross-Strand approach to this issue.

45. The SDLP said that nationalists had a fear of entrapment in relation to Strand One, and so readily understood that fear in others in relation to other Strands. This was one reason why the party favoured the concept of duty of service as an inbuilt political safeguard, providing protection both for and from political representatives. The party said that the fears expressed in this discussion reflected our experiences and apprehensions, and went to the heart of the debate. International standards should not be ignored, but they would not be uppermost in the minds of the public. The party said there had been a degree of grandstanding in today's discussion. It would be helpful to import some of the practical tone that had been in evidence in Strand One the previous day.

46. The Irish Government said that the human rights protections in its jurisdiction already equalled and exceeded those in the ECHR, and were directly justiciable. Equivalent did not mean identical. Nonetheless, the Government had heard the views expressed about incorporation of the ECHR into domestic law, and officials would be actively re-examining this question. The Government was committed to introducing any legislation necessary to give effect to whatever settlement was agreed here. The Government was committed to balanced constitutional change, including Articles 2 and 3, in the context of an overall settlement. The suggestion of a Human Rights Commission in the Republic would also be considered positively. The Irish

Government believed that the suggestion that international precedents on self-determination constrained the two Governments constituted the adoption of an overly academic argument for a political problem. If the problem was really just one of a majority and minority within the borders of a state, perhaps it would have been solved long ago, but in fact there were two majorities and two minorities. The Irish Government said it would be useful to be more focused on the substance of these negotiations, rather than questioning their very basis. Ten people had been murdered in the last month, and no-one had that academic luxury.

47. The Irish Government said that the questions of allegiance and identity were at the heart of the problem. Northern nationalists did not define themselves as a national minority in the UK. The Government agreed that international instruments were rapidly evolving in the area of rights, and would have a role. But the accepted principle was that such specified rights were a floor, not a ceiling, and it was perfectly proper for countries to build upon them. Governments could make new arrangements and devise new settlements. The performance of the British and Irish Governments in working together to face their problems was a model for other governments. The British Government had recognised the three Stranded approach as the way forward and had expressed its views on self-determination in the Downing Street Declaration. The Irish Government suggested that the UUP recognise that its own Government had agreed to deal with self-determination in this way, and accept the status of the negotiations.

48. The UUP said that for unionists the situation was indeed one of a majority and a minority, within the UK, and a failure to accept this was at the root of the problem. The Anglo-Irish Agreement certainly was not a model for unionists. On the question of unionists' relationship to the British Government, the party said that Governments come and go. The UUP's duty

was to ensure that the British Government stood up for the rights of its citizens.

49. The Chairman said that concluded the discussion. Strand Two would meet again at 1100 on Monday in Dublin, and at 1000 on Tuesday. On Wednesday Strand Three would meet at 1000, but this did not preclude a further Strand Two meeting on Wednesday afternoon. It had been agreed that all discussions would conclude by 1700 on Wednesday. The Chairman said he had received replies to the questions posed by the Governments from the UUP, SDLP and Sinn Féin, and asked which other parties intended to submit replies. Before this, the Chairman asked those three parties whether their responses could be circulated to other participants. Sinn Féin said it had no problems with this proposal. The SDLP and the UUP said they would reserve judgement on this. NIWC and Labour said they did not intend to submit further replies, the PUP said it would submit a paper shortly, and Alliance said it had replied orally at Lancaster House. Sinn Féin asked if the Governments intended to give their views on the questions they had posed. The British Government said the Governments had already put out their views on a number of occasions, and were not intending to do so again. The Irish Government said the Governments had put the questions to the parties, and were interested in seeing their answers. The Chairman adjourned the meeting at 1315.

Independent Chairmen Notetakers
24 February 1998