

Submission to the Advisory Committee
for
Framework Convention for the Protection
of National Minorities
(Council of Europe)
5th June 2006

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1. Background

Overview

Democrats throughout Europe accept that the foundations for peace and justice are best maintained by effective democracy and a common understanding and observance of human rights. These principles should be applied in order to obtain stability and normality in Northern Ireland (NI). It is noted that politicians can take a subjective position on human rights which reflects their personal political persuasion.

However, this submission aims to be objective, using quotations extensively to reflect the attitudes of the key players: Irish and United Kingdom (UK) Governments and republicans (Sinn Fein and IRA). Unionism's view is more by way of commentary, believing that the norms of international human rights are the basis for progress.

Terrorism has been defined as, inter alia, the possession of weapons aimed at destroying a country. For this reason alone, the decommissioning of weapons was considered by some as important. Both Governments initially adopted a policy of seeking decommissioning during the talks process, then this was replaced by seeking decommissioning together with devolution of power to a NI Assembly. There were several attempts over a five-year period but with no overall long-term success.

The republican movement's attitude is simple. It seeks basic rights and entitlements for Irish people throughout the island, insisting that any solution must be on the basis of an all-Ireland model. Sinn Fein refuses to recognise the legitimacy of the Westminster Parliament. The IRA views the central cause of its legitimate armed conflict as being the British presence in Ireland and thus the island of Ireland requires to be politically united: a policy of secession from the UK.

Over time positions on tactics have modified but not on the desired outcome. The IRA ended its armed conflict and decommissioned its weapons in the belief that it could achieve its objective by way of the agreement reached in April 1998 at the multi-party talks. Both the Irish Government and Sinn Fein share the IRA's belief and its tactics regarding the future. The UK Government acquiesces in this position. Consistent with this belief, both Governments have at times during the process demonstrated a lack of commitment to international norms.

Today, the IRA, Sinn Fein and both Governments have a broadly common position on the way forward. If devolution cannot be restored to NI by 24 November 2006, then another way forward will be implemented, centred on the enhancement of all-Ireland co-operation coupled with minimal input from NI's elected politicians. Unionism, uncertain of both an end to criminality and support by republicans for policing, has suggested a step-by-step approach but without success.

Both Governments use a simple argument: follow the lessons of reconciliation as applied in Europe and all will be well. But is this the true position of both Governments? A consideration both of pronouncements and proposed actions by each Government may assist in answering this question. It is the view taken by this submission that their true position is in line neither with modern Europe nor with international human rights norms, a position that could impact more widely on similar problems elsewhere in the world.

Introduction

The agreement reached at the multi-party talks in Belfast on 10 April 1998 (hereinafter known as ‘The Agreement’ or ‘The Good Friday Agreement’) stated in the opening section that there should be: *“the protection and vindication of the human rights of all.”*¹ It is thus clear that the rights of the resident population within NI are to be protected in both a reasonable and justifiable manner. Prior to agreement, the UK Government indicated that: *“the protection of rights will be of central significance for the achievement of a lasting settlement.”*²

Further, a UK Government minister, at the opening of the new premises for the Equality Commission in Belfast, stated that:

One of the most significant commitments within the Agreement was the promotion of equality and protection of basic rights and freedoms. They are fundamental to the creation of a tolerant and successful society.³

Yet agreement as to the rights to be protected has not been forthcoming. Each community grouping’s representatives within the negotiation process (hereinafter known as ‘the Talks’) has had a different viewpoint as to the concept of the ‘rights’ to be protected. Professor Brice Dickson, the then head of the NI Human Rights Commission, wrote as follows:

In the case of Northern Ireland, the environment in which this holding to account takes place is politically very sensitive. We are all familiar with the phenomenon of politicians taking a view of human rights which happens to accord with their personal political persuasions rather than with a more independent analysis.⁴

Nevertheless, this submission is an earnest endeavour to base an analysis on accepted international conventions. The Ulster Unionist Party’s (UUP) aim during the Talks was to subscribe fully to the principle alluded to by Professors Boyle, Campbell and Hadden, commenting prior to the commencement of the Talks, as follows:

The substance of fundamental human rights is now determined by international agreement and there is an obligation on all States to protect them. To this extent the identification of the human rights to be protected is not a matter for bargaining between the parties to the peace process.⁵

It is for others to judge the accuracy or otherwise of whether any or all parties to the Talks process subscribed to international human rights norms. This submission draws heavily on selected (but hopefully representative) quotations in order to convey inter-relationships during the Talks and up to the present time. The aim is, as far as is possible, to be objective. On occasions there will be commentary.

¹ The Agreement: ‘Declaration of Support’ par. 2. Page 1.

² UK Government: ‘Rights and Safeguards’, paper submitted to multi-party talks on 6 February 1998.

³ Jane Kennedy MP: Northern Ireland Office Minister, 15 January 2001.

⁴ Brice Dickson: Platform Article; Belfast Telegraph, 30 June 2004.

⁵ Forum for Peace and Reconciliation, Dublin: ‘The Protection of Human Rights in the context of Peace and reconciliation in Ireland’; Number Two, May 1996, page 2.

Though this submission focuses on what are considered the key players, there is an additional grouping that should be mentioned. Within the broad viewpoint of unionism there are paramilitaries, commonly called 'loyalist paramilitaries'. This paramilitary element has not featured to any great extent in the protracted negotiations that have been conducted by both Governments, post The Agreement. An example of the latest comment by the International Monitoring Commission (IMC) is as follows:

2.31 There has been some effort by elements of the UVF [Ulster Volunteer Force] leadership to tackle criminality. As with the leadership of the UDA [Ulster Defence Association], we recognise that there are certain people who want to move away from criminality. We welcome this wherever it occurs but at this stage we do not see a significant impact on the behaviour of the organisation as a whole. Nor has there as yet been the positive move to stop targeting nationalists and ethnic minorities for which we called in the Eighth Report. We do not therefore change our overall assessment that the organisation is active, violent and ruthless, and the recent statement from a spokesman that it does not intend to do more before 24 November 2006 is not encouraging.⁶

The reference to 24 November 2006 in the above quotation is in regard to the cut-of date for the Irish-UK Governments' latest initiative on NI (see page 5). The UVF has indicated that it does not plan to make any announcement about its future until the outcome of the Governments' latest initiative is known.

⁶ IMC: 'Tenth Report', 26 April 2006, page 12.

The Irish & UK Governments' Position

Apart from somewhat less than three years of a functioning NI Assembly and Executive, NI has been devoid of self-government since 1972. Consequently, those politicians who take the major decisions that affect NI society are not elected by those who are affected by such decisions.

In addition, no elector in NI has the opportunity to vote for the Labour party - the party that has governed the UK continuously since 1997. It is only recently that a person resident in NI was even allowed to become a member of the Labour Party while, ironically, a person resident in (for example) Singapore could freely and easily join the Labour Party. There has been 31 years of 'democratic deficit'; one might argue a denial of a basic human right.

Yet NI is a region of a country (United Kingdom) that was among the first signatories to the European Convention on Human Rights and with a long-established liberal-democratic form of government.

Against this background, on 6 April 2006 both the Irish and UK Governments launched the latest initiative to try to make political progress in NI. In essence they have said to all NI parties: secure an all-inclusive government for NI by 24 November 2006 or we shall move on without you. Prime Minister Blair (the PM) put it succinctly: "*But be in no doubt. At the conclusion of this period, we either resolve to go forward on the basis of mature democracy or we call time on this and seek another way to go.*"⁷

If devolution is not restored:

The Governments agree that this will have immediate implications for their joint stewardship of the process. We are beginning detailed work on British-Irish partnership arrangements that will be necessary in these circumstances to ensure that the Good Friday Agreement, which is the indispensable framework for relations on and between these islands, is actively developed across its structures and functions. This work will be shaped by the commitment of both Governments to a step-change in advancing North-South co-operation and action for the benefit of all.⁸

This latter scenario has been described by the PM as a "*more rigid will imposed from outside*"⁹ and by Bertie Ahern, the Irish Prime Minister (an Taoiseach), as to "*marginalise the whole political system*"¹⁰ in NI. It is against this background that this submission is brought forward for consideration.

A. Attitude towards the IRA

The Agreement stated that the "*Participants recall their agreement in the Procedural Motion adopted on 24 September 1997 'that the resolution of the decommissioning issue is an indispensable part of the process of negotiation' and also recall the provisions*¹¹ of paragraph 25 of Strand 1

⁷ The PM: Published statement; Armagh, Northern Ireland, 6 April 2006.

⁸ Irish and UK Governments: 'Joint Statement', 6 April 2006, par. 10.

⁹ The PM: Published Statement; Armagh, Northern Ireland, 6 April 2006.

¹⁰ An Taoiseach: Press Conference Transcript, 6 April 2006.

¹¹ Par. 25, Strand 1, page 8 stated: "Those who hold office should use only democratic, non-violent means, and those who do not should be excluded or removed from office." **Note:** this footnote is only added as information for this submission.

above.”¹² The Council of Europe has considered how States should respond to terrorism. It referred to a definition of a terrorist act in the form of a list of “*intentional acts*” and one such act was the “*possession ... of weapons*” aimed at “*seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country.*”¹³

Against this background a consideration of the Governments’ view is presented. After the IRA ceasefire in August 1994, both the Irish and UK Governments indicated:

The Prime Minister and the Taoiseach met tonight. After intensive efforts by both governments, and with the benefit of consultations with parties in Northern Ireland, the two governments have agreed to launch a ‘twin-track’ process to make progress in parallel on the decommissioning issue and on all-party negotiations.¹⁴

So began a process of endeavouring both to remove paramilitary weapons from society and to secure a political way forward. They added the following:

Recognising the widely expressed desire to see all arms removed from Irish politics, the two governments will ask the international body to report on the arrangements necessary for the removal from the political equation of arms silenced by the virtue of the welcome decisions taken last summer and autumn by those organisations that previously supported the use of arms for political purposes.¹⁵

No decommissioning occurred in parallel. However the paramilitary-linked parties participated during the formal period of the Talks (September 1997 - April 1998), some with brief periods of exclusion as a consequence of paramilitary related violence. Nearing the conclusion of the Talks, and in order to try and reassure unionism, the PM wrote directly to the leader of the UUP (David Trimble) stating: “*I confirm that in our view the effect of the decommissioning section of the agreement, with decommissioning schemes coming into effect in June, is that the process of decommissioning should begin straight away.*”¹⁶

Subsequent to the acceptance by the negotiating parties of The Agreement on 10 April 1998 and in the lead-up to the associated referenda¹⁷ on 22 May 1998, concern was still being expressed by many as to whether or not paramilitary weapons were going to be decommissioned. The PM visited NI and delivered what was described as a key-note address on the situation, stating: “*...; all the parties have now committed themselves to the total disarmament of all paramilitary organisations - decommissioning is to be completed within two years of the referendum...*”¹⁸

Both referenda were overwhelmingly approved. Over the subsequent period no decommissioning occurred and devolution to the new NI Assembly was consequently ‘on hold’. In July 1999 devolution took place in both Scotland and Wales and a renewed impetus for progress occurred in NI. Both Governments issued ‘The Way Forward’ paper on 2 July 1999 stating:

¹² The Agreement: ‘Decommissioning’ par. 1, page 20.

¹³ Council of Europe: ‘Guidelines on human rights and the fight against terrorism’ - adopted by the Committee of Ministers, 11 July 2002 (pages 16-17).

¹⁴ Irish and UK Governments: ‘Joint Communiqué’, 28 November 1995 par. 1.

¹⁵ Ibid. par. 8.

¹⁶ Letter to David Trimble from the PM: mid-afternoon, 10 April 1998.

¹⁷ Within the island of Ireland, a referendum was held in each jurisdiction on the same day.

¹⁸ The PM: Balmoral address, Belfast, 14 May 1998.

3. The Devolution Order to be laid before the British Parliament on 16 July to take effect on 18 July. Within the period specified by the de Chastelain Commission, the Commission will confirm the start to the process of decommissioning, that start to be defined as in their report of 2 July.

4. As described in their report today, the commission will have urgent discussions with the groups' points of contact. The commission will specify that actual decommissioning is to start within a specified time. They will report progress in September and December 1999, and in May 2000.

5. A "failsafe" clause: the governments undertake that, in accordance with the review provisions of the agreement, if commitments under the agreement are not met, either in relation to decommissioning or to devolution, they will automatically, and with immediate effect, suspend the operation of the institutions set up by the agreement.

At this time the UUP was not secure in the knowledge that decommissioning would occur and consequently devolution to the Assembly did not occur.¹⁹ A further review occurred (known as the 'Mitchell Review') regarding the 'twin track' of devolution coupled with decommissioning. This 'twin track' replaced the earlier 'twin track' of talks about devolution coupled with decommissioning. For example, an Taoiseach stated:

The Review was about finding an agreed basis both for the achievement of devolution and the establishment of the institutions, and for the achievement of decommissioning. It has long been clear that both are essential if the Agreement is to work. That is why I particularly welcome and endorse Senator Mitchell's key conclusion, in which he said that he believed *'that a basis now exists for devolution to occur, for the institutions to be established, and for decommissioning to take place as soon as possible.'*²⁰

On this occasion, following a meeting of its ruling council, the UUP decided to participate in an Executive²¹ including Sinn Fein (the political party associated with the IRA), this being formed in late November 1999. There was no decommissioning following devolution and the Executive was suspended in February 2000. The then Secretary of State (SoS) for NI indicated that: *"I am now publishing the International Commission on Decommissioning report of 31 January. It will be seen from this report that Gen de Chastelain cannot say whether the IRA will agree to decommission, and if so, how and when."*²²

Again, further negotiations occurred regarding the 'twin track' of decommissioning and devolution. Both Governments endeavoured to resolve the matter, stating:

3. The governments now believe that the remaining steps necessary to secure full implementation of the agreement can be achieved by June 2001, and commit themselves to that goal. They have drawn up, and are communicating to the parties, an account of these steps.

¹⁹ Cross-community support is required (both nationalists and unionists) in order to 'trigger' devolution.

²⁰ An Taoiseach: Statement, 23 November 1999.

²¹ The Social Democratic and Labour Party (SDLP) and the UUP were then the largest nationalist and unionist parties respectively.

²² Peter Mandelson MP: SoS for Northern Ireland; Statement issued, 11 February 2000.

4. Subject to a positive response to this statement, the British government will bring forward the necessary order to enable the Assembly and Executive to be restored by May 22nd, 2000.

5. With confidence that there are clear proposals for implementing all other aspects of the agreement, the governments believe that paramilitary organisations must now, for their part, urgently state that they will put their arms completely and verifiably beyond use. Such statements would constitute a clear reduction in the threat. In response, the British government would, subject to its assessment of the level of threat at the time, on which it will continue to consult regularly with the Irish Government, take further substantial normalisation measures by June 2001. ²³

Devolved government was restored in May 2000 and continued until October 2002. During that period there were two acts of decommissioning by the IRA (October 2001 and March 2002). In September 2002 the UUP's ruling council served notice that in the near future its members would no longer participate in the Assembly's Executive if progress on the problem of paramilitarism was not properly addressed. Events overtook this UUP decision: amid speculation of an IRA spy-ring within government, suspension of the government institutions occurred in October 2002. To date, the institutions remain in existence but without any devolved power. The PM stated on 1 May 2003 that:

We are now 5 years on from the Good Friday Agreement. 5 years ago it was in my view acceptable for us to say to David Trimble [UUP leader and First Minister], look the IRA is going through a process of transition, you should be prepared to be in government even though that process of transition has to work its way through. I think it is not unreasonable for him to say after 5 years that the process of transition has to end, and actually from the two governments' point of view it is important to us as it is to him. We need to know that if there is going to be a devolved government in Northern Ireland it is on the basis that every single party sitting in that government is fully, completely committed to exclusively peaceful means, and so are the organisations associated with them. ²⁴

There was a third act of decommissioning in October 2003. However, political progress was not made due to lack of confidence on the part of the UUP in both the clarity and composition of this latest act and lack of knowledge of the completion date. There were new Assembly elections in November 2003 at which the Democratic Unionist Party (DUP) and Sinn Fein became the largest parties from the unionist and nationalist communities respectively. In June 2004 both Governments made clear the conditions for progress:

With that in mind, intensive political dialogue, led by the two Governments, will resume at the beginning of September to finalise agreement on all outstanding matters with a view to restoring the full and inclusive operation of the political institutions as soon as possible. Agreement is required on:

- a definitive and conclusive end to all paramilitary activity;
- the decommissioning, through the IICD, of all paramilitary weapons, to an early timescale and on a convincing basis;

²³ Irish and UK Governments: 'Joint Statement', 5 May 2000.

²⁴ The PM: Transcript of Press Conference; 10 Downing Street, 1 May 2003.

- a clear commitment on all sides to the stability of the political institutions and to any changes to their operation agreed within the Review; and
- support for policing from all sides of the community, and on an agreed framework for the devolution of policing.²⁵

There was another attempt to obtain both decommissioning and devolution in December 2004. It was again unsuccessful but for a different reason: the requirement by the DUP that the decommissioning be photographed and that the photographs be published. Clarity, however, was given on the completion timescale.

Subsequently, a final and complete act of decommissioning took place in September 2005, the IRA having declared in July 2005 that its military campaign was at an end. Just as decommissioning fades as an issue to be resolved, policing and criminality come into the equation as key outstanding issues. Building upon the above statement of 2004 in this regard (footnote 25), the then Secretary of State for NI made clear:

Unionists and nationalists need to know that republicans are committed to exclusively lawful means. They need to know that all paramilitary activity, including criminality, has ended. The Independent Monitoring Commission is the body that will make that assessment. They also need to know that there is unequivocal support for the Police Service of Northern Ireland and the rule of law.²⁶

During the first three months of 2006 there were yet more negotiations. In April 2006 the PM made clear that the way forward for republicans is as follows: *“I equally am quite sure that Republicans believe that the only way forward now to pursue their particular objective of a united Ireland is through the context of the arrangements set out in the Good Friday Agreement.”*²⁷

At this time a similar view, with a different emphasis, was expressed by an Taoiseach:

The culmination of our shared achievement in the twentieth century was the Good Friday Agreement. This was the unique instance in Irish history of a revolution without a rebellion. It was a milestone on the road to peace and justice on our island. It provides the legal basis, by way of an international treaty, for the peaceful reunification of the island of Ireland with consent and by exclusively democratic means.²⁸

Some weeks later, the following views were expressed by an Taoiseach:

Just weeks before the Rising, James Connolly penned what subsequently became clear was a declaration of intent. In his newspaper, the Workers Republic, Connolly wrote in February 1916:

‘The peaceful progress of the future requires the possession by Ireland of all the national rights now denied to her. Only in such possession can the workers of Ireland see stability and security for the fruits of their toil and organisation. A destiny not of our fashioning has chosen this generation as the one called upon for the supreme act of self-sacrifice to die if need be that our race might live in freedom.’

²⁵ Irish and UK Governments: Statement following political talks at Lancaster House, London, 25 June 2004.

²⁶ Peter Hain MP: SoS for Northern Ireland; House of Commons, 11 January 2006.

²⁷ The PM: Transcript from press conference; Armagh, Northern Ireland, 6 April 2006.

²⁸ An Taoiseach: Speech at Easter Rising Exhibition, 9 April 2006.

Because of the sacrifices and courage of Connolly, his fellow 1916 leaders, and their brave political heirs in the War of Independence, we are indeed fortunate that no-one in this generation need die for Irish national rights and freedom. In our time 'the peaceful progress of the future' to borrow Connolly's phrase requires steadfast support for the Good Friday Agreement.²⁹

Having initially sought decommissioning before Sinn Fein entered the NI Executive the Governments moved to seeking it after devolution. Similar moves (see below) are currently taking place with respect to Sinn Fein's support for policing. And in any event, according to the Irish Government, today there is no need for an armed rebellion, as was necessary in 1916, since the same outcome can be progressed by way of the Good Friday Agreement. This is an attitude (in coded language) of aggressive nationalism that has been repudiated in 21st Century Europe, but apparently not by the Irish Government - an attitude tacitly accepted by the UK Government.

As mentioned above, the UK Government's attitude with respect to Sinn Fein's approach to policing has very recently been modified compared with the above statements in both June 2004 (footnote 25) and, most recently, in January 2006 (at least from a timing perspective). Rather than "*unequivocal support*" for policing being a seemingly present requirement (footnote 26), the Secretary of State indicated:

But there is a difference between wanting to resolve difficult issues like policing, for example, and erecting new barriers to power-sharing. The point is that they are more likely to be resolved quickly if there is a stable political framework in which the whole community can share.³⁰

Independent Monitoring Commission and the IRA³¹

The Independent Monitoring Commission (IMC) was set up by the Irish and UK Governments on 7 January 2004. Its purpose is to help promote the establishment of stable and inclusive devolved government in a peaceful NI. It does this, inter alia, by reporting to the Governments on activity by paramilitary groups and on the normalisation of security measures in NI. The four Commissioners are independent of both Governments. They view their task as non-political and the conveying of facts. "*It is for politicians and the public to draw their own conclusions from our reports.*"³² In February 2006 it reported (for the period September - November 2005) as follows:

3.21 There are indications that in some areas PIRA units have been closing down criminal operations and clearing stocks of contraband goods, and we have no reports of PIRA sanctioned robberies in the period under review. However, members and former members of PIRA continue to be heavily involved in serious organised crime, including counterfeiting and the smuggling of fuel and tobacco.³³ As in the past, we are not able to say confidently to what extent the substantial proceeds of crime are passed to the organisation.

²⁹ An Taoiseach: 'Fianna Fail Arbour Hill Commemoration' speech, Dublin, 23 April 2006.

³⁰ Peter Hain MP: SoS for Northern Ireland: Platform Article; Belfast Telegraph, 15 May 2006.

³¹ There are several factions to the IRA: the IRA referred to in this submission is properly termed the 'Provisional IRA', or sometimes PIRA. It sometimes uses the name Óglaigh na hÉireann, the name used also by the Irish Government to call its defence forces.

³² IMC: Tenth Report, par 6.1, 26 April 2006.

³³ "*Overall, taking the activity of paramilitary and other organised crime as a whole, there appears to be no diminution in the amount of these illegal goods.*" [Note: this is an IMC footnote]

3.22 PIRA continues to raise funds and we also believe that it looks to the long term exploitation of the proceeds of earlier crimes, for example through the purchase of property or legitimate businesses. Some senior members are involved in money laundering and other crime. Money has become a strategic asset. There has been some restructuring in the finance department, possibly in reflection of the changing circumstances. PIRA also seems to be using experts and specialists able to assist in the management of illegal assets. ³⁴

In April 2006 (for the period September 2005 - February 2006) the IMC reported as follows:

1.9 ...In the case of PIRA we have found further welcome signs of the organisation moving in the direction indicated in its July 2005 statement, and we remain clear that the leadership is committed to following a political path.

2.16 ... We have no reason to amend our earlier view that money is a strategic asset and that the organisation will look to the long-term exploitation of discreetly laundered assets which were previously gained illegally. ³⁵

Finally, and in the context of the above, the Irish Minister for Justice Law Reform and Equality has been, over time, critical of the IRA. Two comments are cited below:

Sinn Fein remains a party ideologically committed to the IRA ...I believe the IRA is in possession of a massive amount of money for the purposes of the Provisional movement. Those purposes now - post-Jihadist terrorism - are to get power by political means ... The Army Council of the IRA still exists and the funds that the IRA put in are still in place ... Their resources are very substantial. They are available for the subversion of democracy. They are one of the wealthiest organisations around. ³⁶

A recent comment related to a hijacking:

The real problem is that it is very unhelpful to the creation of trust on both sides of the border and in both communities in Northern Ireland. As long as the IRA continues to exist, then all of these problems arise. As long as the constitution of the IRA remains treasonable and subversive to the authority of the Irish state, all of these problems continue to arise. ³⁷

B. North-South relations

(a) Rationale for North-South Arrangements

During the Talks the aspect of North-South relations was the most sensitive political issue to be addressed. All participants recognised that an accommodation was required. The UK Government's view at the outset was clear:

³⁴ IMC: 'Eighth Report', 1 February 2006.

³⁵ IMC: 'Tenth Report', 26 April 2006.

³⁶ Michael McDowell TD: News Letter, 27 March 2006.

³⁷ Michael McDowell TD: News Letter, 11 April 2006.

This Government is fully committed to the approach set out in the Downing Street Declaration. I believe the Joint Framework Document sets out a reasonable basis for future negotiation. We must create, through open discussion, new institutions which fairly represent the interests and aspirations of both communities. ³⁸

The “*Downing Street Declaration*” (an Irish-UK joint Governmental statement) referred to an acceptance “*that such agreement may, as of right, take the form of agreed structures for the island as a whole ...*” ³⁹ And, the “*Joint Framework Document*” (properly called ‘The Framework Documents’ and comprising two sections: ‘A New Framework for Agreement’ and ‘A Framework for Accountable Government in Northern Ireland’) referred to “*guiding principles...[including] 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.*” ⁴⁰ The UK Government stated:

The Government believe that there would also be strong support for the propositions that each individual and community in Northern Ireland has the right to define their own identity; that that right and identity should be respected; and that any new political institutions should be such as to give expression to the identity and validity of each main tradition. ⁴¹

However, the Governments stated that their views represented: “*...a shared understanding between the British and Irish Governments to assist discussion and negotiation involving the Northern Ireland parties*” adding that “*it was not a rigid blueprint to be imposed but both Governments believe it sets out a realistic and balanced framework for agreement ...*” ⁴²

The Governments’ message was clear: North-South institutions were an essential requirement in order to give expression to the Irish aspiration for a politically unified island of Ireland. This requirement was not accepted by the UUP: North-South arrangements for the purpose of co-operation on mutually beneficial matters were acceptable, but not for the purpose of giving expression to an Irish aspiration. This view was expressed publicly on numerous occasions. For example:

International human rights law - in particular the protection of minorities - has been determined by international consensus within a range of bodies including the United Nations and Council of Europe. Just as each citizen should abide by domestic law so each sovereign state should abide by accepted principles of international law.

Though often misrepresented, the Ulster Unionist Party bases its approach squarely on the principles of international law and practice. It responds positively to international consensus on the treatment of minorities. The UUP says yes to participation in government at all levels by all constitutional parties and yes to full co-operation with Dublin on matters of mutual benefit to both jurisdictions. ⁴³

There was a clear divide on this issue. Both the two Governments and nationalists wished for North-South arrangements to serve the purpose of giving expression to an aspiration, as the principal

³⁸ The PM: Speech, Belfast, 16 May 1997.

³⁹ ‘Joint Declaration: Downing Street’: 15 December 1993, par. 4.

⁴⁰ ‘A New Framework For Agreement’: 22 February 1995, par. 9.

⁴¹ ‘A Framework for Accountable Government in Northern Ireland’: 22 February 1995, par. 4.

⁴² ‘A New Framework For Agreement’: 22 February 1995; introductory comments and par. 8.

⁴³ Dermot Nesbitt: Platform Article; Belfast Telegraph, 19 September 1996.

requirement. Unionism on the other hand wished for such arrangements to serve only the purpose of mutually beneficial cross-border co-operation, as is normal international practice.

(b) International Obligations

During the Talks process neither Government seemed to wish to fully acknowledge their international obligations. For example, in The Framework Documents it was stated that Governments would have regard to their international obligations rather than act in accordance with such obligations:

They will discuss and seek agreement with the relevant political parties in Northern Ireland as to what rights should be so specified and how they might best be further protected, having regard to each Government's overall responsibilities including its international obligations. ⁴⁴

The UK Government was challenged, both within the Talks and publicly, to ratify the Council of Europe's Framework Convention for the Protection of National Minorities, as follows:

Firstly, the new Labour government has the key responsibility. It already has made proposals to incorporate into UK law the 'European Convention on Human Rights', which it views as a valuable step in protecting basic human rights.

It needs to go further for Northern Ireland by ratifying and implementing the 1995 'Convention for the Protection of Minorities'. This could best be done by incorporation into a Bill of Rights for Northern Ireland.

Both conventions, developed by the Council of Europe, conform to the 'European model' for solving the problems of a divided society. Since introduction in 1995, countries such as Estonia, Hungary, Romania and Slovakia have already ratified the convention: the question to London is, why are you delaying? ⁴⁵

From the perspective of a citizen of the UK, it was surprising that the UK government, in considering the matter of the protection of rights, indicated ⁴⁶ that "*there may be some existing models*" or that "*the provisions of certain international instruments on human rights might contain elements*" relevant to NI. The UK Government clearly seemed to have had a 'blind spot' regarding its international obligations to all who reside in NI.

However, subsequently as part of The Agreement the UK Government agreed "*to legislate as necessary to ensure the United Kingdom's international obligations are met in respect of Northern Ireland.*" ⁴⁷ This submission is seeking to address the issue as to whether or not the UK government is fulfilling its binding international obligations to residents in NI.

Incidentally, the UK Government stated also that it would "*protect the rights of individual prisoners under national and international law.*" ⁴⁸

⁴⁴ A Framework For Agreement: 22 February 1995, 'Protection of Rights' par. 50.

⁴⁵ Dermot Nesbitt: Platform Article; News Letter, 5 June 1997.

⁴⁶ UK Government: 'Rights and Safeguards', paper submitted to multi-party talks, 6 February 1998.

⁴⁷ The Agreement: Strand 1, 'Democratic Institutions in Northern Ireland', par. 33 (b), page 9.

⁴⁸ Ibid: 'Prisoners', par. 1, page 25.

(c) Reaching a final settlement on North-South arrangements

As the Talks proceeded both Governments published ⁴⁹ their best estimate as “*a basis for discussion*” which they hoped “*could help the talks' participants move towards agreement*” and that it derived “*in a very real sense from the views of all parties on the various issues which arise in the talks - expressed both in bilateral meetings and in the round table discussions which have taken place.*” The two Governments suggested:

A North-South ministerial council to bring together those with executive responsibilities in Northern Ireland and the Irish Government in particular areas. Each side will consult, co-operate and take decisions on matters of mutual interest within the mandate of, and accountable to, the Northern Ireland assembly and the Oireachtas respectively. All decisions will be by agreement between the two sides, North and South. ⁵⁰

Both Governments issued a further document on the North-South issue. It stated that they “*intended to facilitate open and meaningful negotiations in Strand 2 by identifying what seem to be the key issues requiring decision in Strand 2.*” Again reference was made to the notion of taking “*decisions on matters of mutual interest*” and they posed the question: “*What broad purpose or purposes should formal North/South structures serve?*” They also re-emphasised their position:

For their part, the two Governments remain firmly committed to the positions in the Joint Declaration, and to those set out in A New Framework for Agreement as being their best assessment of where agreement might be found in the negotiations. ⁵¹

At the conclusion of the Talks, The Agreement was clear as to the rationale for North-South co-operation. It was for the mutual benefit/interest of all and any action within the North-South arrangements followed from the approval of both nationalists and unionists.

Subsequent statements by both Governments accepted this position; after all, The Agreement had been accepted, through referenda, by all the peoples of the island of Ireland. The UK Government referred to The Agreement containing “*a promise of co-operation across the border where it is in the mutual interests of both sides to do so.*” ⁵² The Irish Government indicated that:

It follows that all the political institutions must function and be allowed to function in a manner which faithfully reflects the underlying principles of the Agreement. It means a Northern Ireland Executive where Ministers discharge their proper mandate. It means a North-South Ministerial Council and British-Irish Council that are allowed to operate to their full potential, subject only to the test of mutual benefit and democratic agreement. ⁵³

(d) An enduring wider perspective

Yet a wider reading of the Irish Government’s position indicates that it still retains the viewpoint, regarding the rationale for North-South co-operation, that is neither in accordance with the sentiments of the last mentioned quotation nor with The Agreement. An Taoiseach stated: “*I know*

⁴⁹ Statement by Irish-UK Governments on ‘Propositions on Heads of Agreement’, 12 January 1998.

⁵⁰ Irish-UK Governments: ‘Propositions on Heads of Agreement’, 12 January 1998.

⁵¹ Ibid: ‘Strand 2: North/South Structures’, 27 January 1998.

⁵² The PM: Address at Waterfront Hall, Belfast, 3 September 1998.

⁵³ An Taoiseach: Address at Bodenstown, Co. Kildare, 17 October 2004.

that there is a degree of public concern about the fact that the institutions have been suspended so quickly after the irreversible amendment of Articles 2 and 3. I understand the frustrations which have been expressed."⁵⁴ This statement was in light of the political institutions having functioned since November 1999, then suspended in February 2000.

In addition the Irish Foreign Minister stated: *"We should not forget that the North/South dimension was a key priority for this Government in the negotiations on the Good Friday Agreement, given that in endorsing the Agreement, we were also removing Articles 2 and 3 from our Constitution."*⁵⁵

The above statements reflect the Irish Government's demonstration of accountability to the Oireachtas (the collective name for both the upper and lower houses respectively i.e. Seanad and Dail) regarding North-South relations and their bearing on the Irish Constitution. The original Articles 2 and 3 of the Irish Constitution represented a *"dejure claim to the territory of Northern Ireland."*⁵⁶ Under the terms of The Agreement this territorial claim was replaced by a declaration of will:

It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island.⁵⁷

The intrinsic nature of the Irish Government's position is clear. They supported the removal of a territorial claim on the basis that this would be replaced by North-South institutions. In essence it could be argued that, from an Irish Government's perspective, the North-South dimension is a requirement in order to both represent and give expression institutionally to the aspiration for Irish unity in order to balance the withdrawal of the constitutional territorial claim to the whole island of Ireland. Such a perspective is underlined by the Irish Government's Foreign Minister's statement: *"The scale and ambition of the Agreement is reflected in a number of its key elements: it provides [inter alia] for structured North-South cooperation as an expression of the commonalities and affinities on this island."*⁵⁸

Assuming that the above interpretation is accurate, in this context the same Minister wrote recently how The Agreement has been interpreted in the wider world:

Internationally there is a sense of disbelief that the North continues to tread water. I regularly meet political leaders from other parts of the world who see The Agreement as an example of how long-standing conflicts could be successfully overcome... For them The Agreement is an example for other parts of the world to follow.⁵⁹

A question comes to mind: is the outworking of The Agreement as interpreted by the Irish Government indeed an example for others to follow, mindful of the international norms now applicable?

⁵⁴ An Taoiseach: Statement on Northern Ireland to the Dail, 15 February 2000.

⁵⁵ Dermot Ahern TD: Statement to the Seanad, 2 February 2006.

⁵⁶ Report submitted by Ireland pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities, 13 November 2001 (under the heading of Art. 2, FCNM).

⁵⁷ The Agreement: Irish amendments to the Constitution, Article 3, page 4.

⁵⁸ Dermot Ahern TD: 'Implementing the Agreement: towards completion', UCD, Dublin 10 May 2005.

⁵⁹ Dermot Ahern TD: Platform Article; Belfast Telegraph, 11 April 2006.

(e) The ‘aspirational’ dimension within The Agreement

How is the aspiration for a united Ireland managed within The Agreement? The word ‘aspiration’ (a hope or ambition) appears on THREE occasions. On one of these occasions it refers to the new British-Irish agreement, as part of the overall agreement, as follows:

The two Governments ... affirm [inter alia] that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities. ⁶⁰

The other two references are: first, that the participants: “*acknowledge the substantial differences between our continuing, and equally legitimate, political aspirations. However, we will endeavour to strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements.*” ⁶¹ Secondly, that “*the parties affirm the right to pursue democratically national and political aspirations.*” The latter included “*the right to seek constitutional change by peaceful and legitimate means.*” ⁶²

The UUP, during the Talks process, accepted fully the right of aspiration to a united Ireland as exemplified by the following:

From a unionist perspective, the legitimacy of Irish nationalism is not rejected in the sense that it is entitled to wish for a united Ireland, though unionism does not accept the validity of the nationalist argument. The real problem is the extent to which the nationalist aspiration is to be given expression within the structures of government.

Both the United Kingdom and Irish governments view unionism and nationalism as equal. This is a fundamental flaw in principle. For example, they view in an equal manner the viewpoints that unionists will not accept a united Ireland while nationalists will not accept Northern Ireland within the United Kingdom. ⁶³

Each viewpoint has equal legitimacy as a viewpoint but legally they are entirely different. The legal position accepted by international law is that Northern Ireland is part of the United Kingdom whereas the status of the SDLP’s all-Ireland viewpoint is that of a legitimate right to wish for a change in Northern Ireland’s legal position. ⁶⁴

The Agreement, in its whole outworking, has addressed those with an Irish aspiration that reside within NI. As well as the right to pursue the political aspiration of Irish unity by being free to advocate constitutional change and to have an equitable proportion in the Government of NI at all levels, other aspects within the arrangements were agreed. For example:

⁶⁰ The Agreement: ‘Agreement between UK/Irish Governments’, Art 1(v), page 28.

⁶¹ Ibid: ‘Declaration of Support’, par. 5, page 1.

⁶² Ibid: ‘Rights, Safeguards and equality of Opportunity’, par. 1, page 16.

⁶³ The PM returned to this theme in his address on 6 April 2006, regarding the way forward for NI (See footnotes 7, 9 and 27 for this implied position) **Note:** this footnote is only added as information for this submission.

⁶⁴ Dermot Nesbitt: Platform Article; News letter, 8 January 1998.

All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required. ⁶⁵

They [the participants] also believe that this agreement offers a unique opportunity to bring about a new political dispensation which will recognise the full and equal legitimacy and worth of the identities, senses of allegiance and ethos of all sections of the community in Northern Ireland. They consider that this opportunity should inform and underpin the development of a police service representative in terms of the make-up of the community as a whole and which, in a peaceful environment, should be routinely unarmed. ⁶⁶

Its [Commission] proposals on policing should be designed to ensure that policing arrangements, including composition, recruitment, training, culture, ethos and symbols, are such that in a new approach Northern Ireland has a police service that can enjoy widespread support from, and is seen as an integral part of, the community as a whole. ⁶⁷

The above subscribe to the principle as indicated by Asbjorn Eide: “... *group accommodation must be effected within the limits of existing territorial integrity of States unless all parties agree to a voluntary territorial change.*” ⁶⁸

Put simply, from a UUP perspective, had North-South co-operation been described in the final document for consideration during the Talks as being for the purpose of giving expression to an aspiration for a united Ireland (as the initial documentation from both Governments indicated - footnotes 38 to 41) it would have been rejected. The UUP held to the norms of international law in regard to the limits of accommodation deemed appropriate.

In the light of the above, consider the following statement by the PM addressed to unionists in April 2006:

There can be no way forward that does not recognise the legitimate aspiration of nationalists and republicans for a united Ireland; and give expression to it, through partnership, North and South. In other words, the essence of the Good Friday Agreement is valid. ⁶⁹

The intrinsic meaning of this statement reverts back to both Governments’ pre- Agreement position and consequently repudiates the central elements of the North-South arrangements that were endorsed by referenda on 22 May 1998. The phrasing of the above quotation gives pre-eminence to the first sentence and consequently dilutes the central importance of The Agreement. ⁷⁰

⁶⁵ The Agreement: ‘Rights, Safeguards and Equality of Opportunity’, par.5, page 20.

⁶⁶ Ibid: ‘Policing and Justice’, par. 1, page 22.

⁶⁷ Ibid: ‘Commission on Policing for Northern Ireland’, Terms of Reference, page 23.

⁶⁸ Asbjorn Eide: ‘Consultancy Studies Number Three’; Dublin Forum for Peace, July 1996, page 70.

⁶⁹ The PM: Statement at Armagh, 6 April 2006.

⁷⁰ However the ‘Joint Statement’ issued on the same day by the Irish -UK Governments referred to: “*North-South co-operation and action for the benefit of all.*” This may possibly be a case of carefully constructed mixed messages, in an attempt to satisfy all parties.

(f) An historical and European perspective

In the context of North-South co-operation both the PM and an Taoiseach have invoked both historical ties and the example of the EU. The PM has stated:

Our ties are already rich and diverse: in trade unions, professional bodies and the voluntary sector, our people work together to help their communities; in culture, sport and academic life there is an enormous crossover. Our theatres are full of Irish plays. Our television is full of Irish actors and presenters. Your national football team has a few English accents too; above all, at the personal level, millions of Irish people live and work in Britain, and hundreds of thousands of us visit you every year ... I want to forge new bonds with Dublin. Together we can have a stronger voice in Europe and work to shape its future in a way which suits all our people. It is said there was a time when Irish diplomats in Europe spoke French in meetings to ensure they were clearly distinguished from us. I hope those days are long behind us. We can accomplish much more when our voices speak in harmony. Our ministers and officials are increasingly consulting and coordinating systematically. We can do more. I believe we can transform our links if both sides are indeed ready to make the effort. For our part, we are. None of this threatens our separate identities. Co-operation does not mean losing distinctiveness.⁷¹

Some time later, an Taoiseach stated:

Let us not forget what binds Europe together in the first place. As a community of shared values, the Union is uniquely placed to play a stronger role in support of peace and security, human rights and development ... I think we should also remember, as John Hume has so correctly highlighted, the extent to which the European Union is itself probably the most successful example of conflict prevention in history. The EU came forward in a Europe recovering from the horror of two global wars. Out of the devastation of war we created a unique union dedicated to peace. As such, the EU is a remarkable experiment in collective action to address problems that are beyond the reach of any one country to solve ... Our common membership of the European Union has provided a new teamwork within which Ireland and Britain have been able to address their relationships. And never has there been a more opportune time to make progress. Ireland, North and South, can take real advantage of the tides in world affairs if we act promptly and constructively.⁷²

After both the PM and an Taoiseach launched the latest proposals in April 2006 for moving the process forward, the PM left all those residing in Northern Ireland with a concluding thought as follows:

So the coming months will see a decision taken. One concluding thought: If it was a sense of the futility of the past and a desire to be part of the future, that has taken us this far; reflect please on how much more relevant that sense and that desire is today. Look at Britain and Ireland. Today, we are allies. Today we engage in common purpose in a new Europe. Today our rivalry is found in a healthy competition for which economy is more vibrant. Today there is a confidence and vitality in our relationship that has enabled us,

⁷¹ The PM: Address to the joint Houses of the Oireachtas (Irish Parliament), 26 November 1998.

⁷² An Taoiseach: 'The European Union: A Force for Peace in the World'; University of Ulster, 4 March 2004.

after almost 70 or 80 years of mistrust, to work together to carry this process forward. And do so not as surrogate leaders of warring tribes, but as friends.⁷³

The UUP's response to the above quotations concerning the relevance of Europe to NI is clear. Most people in NI wish to live in harmony and peace while recognising the right of others to be different from a cultural, linguistic, educational or religious basis. However, to achieve such a situation requires the acceptance of majority democratic rights alongside inclusion and the rights of minorities.

The message conveyed above by both Prime Ministers is a simple argument - follow the lessons of reconciliation applied in Europe and all will be well. Both portray themselves as modern thinking Europeans, wishing to embrace the European methods of conflict resolution. But is this the true situation?

I suggest, that when it comes to NI, there is only an impression of being both modern and moderate, while at the very core of the Irish Government's policy is a form of nationalism long since rejected throughout 21st century Europe. The UK Government acquiesces in this scenario: the PM referred above specifically to Britain and Ireland which, with intent, excludes NI. And this relationship between Britain and Ireland, which the PM and an Taoiseach champion, is helped no doubt by Ireland not having the "*firm will*" (footnote 57) to bring about secession of any part of Britain.

More importantly, both Governments, by continuing to ignore the reality of genuine conflict resolution procedures within the wider Europe, have contributed to the lack of political progress. I readily accept that borders have become blurred by the pooling of sovereignty among the countries of the EU. Since Ireland and the UK are both EU members this situation already exists within the island of Ireland.

However, the European model is not about two sovereign countries, for example Ireland and the UK, encouraging a region of one of these countries, NI, to work towards being integrated into, and becoming part of, the other country. Jean Monnet and others who believed in a 'new Europe', had the concept of integrating European economies so that each country became dependent on each other and thus war would become unthinkable. From the discipline of economics came the 'law' of comparative advantage (or customs union theory) that gave a clear rationale to this worthy project.

So there should be full co-operation within the island of Ireland but not quasi-secession. The Irish Government (as do the IRA and Sinn Fein) refers only to the 'people of Ireland' or to the 'peoples of Ireland and Britain' but not to the wording 'peoples of Ireland'. The last mentioned wording is not used since it would give recognition to at least two distinctive peoples on the island of Ireland. Such a political process of movement towards secession, presented as normal European co-operation, is anathema within modern Europe and will only perpetuate division and tension.

(g) Other aspects

(i) Human Rights and Equality

In addition to the formal North-South political arrangements other aspects of co-operation were envisaged in The Agreement. For example:

⁷³ The PM: Statement made at Armagh, Northern Ireland, 6 April 2006.

It is envisaged that there would be a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of human rights issues in the island of Ireland. The joint committee will consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.⁷⁴

This element has been developing and has been reported upon through the British-Irish Intergovernmental Conference. However, while conducting a document review for this submission, I stumbled across the following statement:

A common commitment exists in Ireland and Northern Ireland to the equality of opportunity and the search for equality outcomes. This commitment is embodied in the creation of the Equality Commission in Northern Ireland and the Equality Authority in Ireland. Both institutions are focused on an integrated equality agenda that includes the grounds inter alia race and membership of the Traveller community. Both will work together in conceiving and implementing this agenda. The equality agenda will be managed by a joint working group meeting on a regular basis. Co-operation on a North-South basis will be complemented by co-operation on an east-west basis. This will involve engaging with the range of equality institutions in England, Scotland and Wales.⁷⁵

This refers to an equality agenda that is conceived, implemented and managed on an all-island basis. This was neither endorsed, nor mentioned for consideration, at any time in the overall deliberative process with the UK Government. Several questions spring to mind. Who suggested such a process? Have both Governments agreed to this development? Who knows anything about this development? I am unable to answer these questions, but certainly the above quotation has no bearing at all on the concept of good neighbourliness and the operation in good faith of bi-lateral treaties, at least from the perspective of some of those affected.

(ii) Oireachtas - European Affairs' Committee Representation

The Orders of Reference for the Oireachtas Joint Committee on European Affairs state:

(c) The following persons may attend meetings of the Joint Committee and of its sub-Committee and may take part in proceedings without having a right to vote or to move motions and amendments - (i) Members of the European Parliament elected from constituencies in Ireland (including Northern Ireland); (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe; and (iii) at the invitation of the joint Committee or of a sub-Committee, as appropriate, other members of the European Parliament.⁷⁶

The above enables MEPs from NI to participate, as of right, in the deliberations of a Committee of an elected body from another jurisdiction. No other region of the UK is afforded the same opportunity. This Committee comprises representatives from both houses of the Oireachtas and it may consider,

⁷⁴ The Agreement: 'Rights, Safeguards and Equality of Opportunity', par. 10, page 18.

⁷⁵ Report submitted by Ireland pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, Art 2 comments; 13 November 2001.

⁷⁶ Dail Eireann: 'Joint Committee Orders of Reference' par. 2 (c), 16 October 2002.

for example, “*such acts of the institutions of the European Communities as it may select*” and “*consider such other matters as may be referred to it from time to time by both Houses of the Oireachtas.*”⁷⁷

Following enquiries by the UUP, this formal participatory ability became known after a Sinn Fein MEP had stated that:

It is deeply ironic that as an MEP for the people of the six counties I am entitled to address the Oireachtas, yet my 18 Westminster colleagues are not. As Irish Republicans we strive to see our electorate treated with equality and respect. It is unacceptable that they continue to be seen as strangers in their own land.⁷⁸

Agendas for meetings of the Joint Committee have always been forwarded to the UUP’s MEP (and other NI MEPs) but the political implication of these notifications was not apparent. Consequently, they have been accepted for information and noted accordingly: it is not unique to receive agendas of meetings for information.

This participatory aspect for NI’s MEPs derived initially from a motion brought before the Dail by the Irish Government on 28 April 1993. At that time it applied to the Joint Committee on Foreign Affairs.

The Irish administration was requested by the UUP to be “*apprised of any correspondence/communication with those from within the United Kingdom jurisdiction, in relation to the decision to include representatives from Northern Ireland, prior to or since it became operational.*”⁷⁹

The response from the Department of Foreign Affairs’ (DFA) most senior official was that:

While I do not recall any specific discussions on this matter (and an examination of the relevant records appears to bear this out), I suggest that the likely motivation was the obvious one, namely the close commonality of interests between North and South on EU matters.⁸⁰

One wonders: does such a formal relationship on this basis, initiated unilaterally, conform to international law?

(iii) Oireachtas - Other Committee Representation

An Taoiseach wrote to members of the Oireachtas concerning a proposal to have NI MPs participate, from time to time, in Dail deliberations with regard to issues concerning NI and The Agreement. He stated:

For my part, I would propose, in the context of developments that lead to restored trust and confidence that Northern Ireland MPs be invited to make periodic presentations regarding Northern Ireland and the Good Friday Agreement in a committee of the whole House and participate in exchanges on these matters in keeping with existing committee

⁷⁷ Ibid: 2 (a)(iii)(I) and 2 (a)(iv) respectively.

⁷⁸ Bairbre de Brún MEP: Sinn Fein Statement, 23 February 2006.

⁷⁹ UUP: Letter to Deputy Deasy, Chairman of Joint Committee, 20 March 2006.

⁸⁰ Secretary General (DFA): Letter to UUP, 18 May 2006.

procedures which facilitate input from outside membership of the Dail...Of course I fully agree with the All-Party Committee that participation should take place on a cross-community basis with parity of esteem for the different communities in Northern Ireland.⁸¹

He further reported to the Dail that: *“It is obvious the House will not agree to anything other than Northern parties attending committees to make presentations and discuss issues in the normal way.”*⁸² Sinn Fein viewed this statement as not fulfilling an obligation on the issue. Analogous to Bairbre de Brún above (See: footnote 78), Gerry Adams stated:

There is no possible excuse for the British and Irish governments to not fully and faithfully implement the Good Friday Agreement. This means the Irish government actively promoting the rights and entitlements of all citizens, including those in the north. The Taoiseach's decision this week to renege on his commitment to proceed with northern representation in the Oireachtas is not acceptable.⁸³

Yet the above comments by an Taoiseach did not alter the fundamental position he had adopted many months previously regarding Dail participation by NI's MPs. Notwithstanding the above comments by Sinn Fein, the UUP has consistently objected in principle to the Irish Parliament discussing NI's affairs and involving NI elected representatives. This matter remains unresolved.

(iv) Future Developments

Today the structured political relationship between the two parts of Ireland is as follows: North South Ministerial Council (presently suspended) with associated Implementation Bodies; British-Irish Intergovernmental Conference with the possibility in the future of an all-island Parliamentary Forum together with an all-island Civic Forum.

At present, both Governments are busy considering/developing an all-island economy together with a commitment to *“a step-change in advancing North-South co-operation and action”*⁸⁴ should devolution of government not return to NI by 24 November 2006.

Sinn Fein's Economy spokesperson stated the following:

The argument about strengthening the all-Ireland approach across a range of areas including economy, health, the environment, transport and infrastructure has already been won. The six counties is not a viable political or economic entity. Even Peter Hain [Secretary of State for NI] recognises this. The real threat to economic well-being is partition and Direct Rule.⁸⁵

Compare this with the level of co-operation between NI and Britain (the East-West dimension). In answer to a Parliamentary question on this issue the following was offered by a NI Minister:

⁸¹ An Taoiseach: unpublished document on the 'All-Party Oireachtas Committee on the Constitution; Seventh Report', 27 October 2005.

⁸² Dail Debate: 15 February 2006.

⁸³ Gerry Adams: Address to the Sinn Fein Ard Fheis, 18 February 2006.

⁸⁴ Irish and UK Governments: 'Joint Statement', 6 April 2006, (See also footnote 8).

⁸⁵ Mitchel McLaughlin: Sinn Fein Press Statement, 2 June 2006

Since 14 October 2002 Northern Ireland has continued to develop and improve East-West relations by contributing fully to the work of the British Irish Council. This has resulted in valuable co-operation and sharing of information between the BIC member administrations across each of the sectoral areas: the misuse of drugs, the environment, social inclusion, telemedicine, tourism, transport, the knowledge economy and minority languages.⁸⁶

The East-West dimension within the British-Irish Isles has been much less developed compared with the North-South dimension within the island of Ireland. It is the view of this submission that both the Irish and UK Governments have adopted a position towards NI that is neither in line with modern Europe nor international human rights norms. These developments may impact more widely on similar problems elsewhere.

⁸⁶ Angela Smith MP: Parliamentary Question [61618], 29 March 2006.

The Republican's Position

The following is an extract of an interview conducted with Martin McGuinness (Sinn Fein Chief Negotiator) in 2003:

Martin McGuinness: No I think you can't say that, I think that Gerry Adams' remarks will be hugely important. They will be of great significance because I think we have reached a defining moment in this phase of the peace process and I think people should just be patient for an hour or two and all will become clear.

Interviewer: Yes, but you see you have always said in the past that you don't speak for the IRA so in that context Gerry Adams' remarks, while you are saying they are going to be hugely significant, won't have the significance that even under your premise suggests?

Martin McGuinness: Well I've listened to Unionist leaders in the past proclaim Gerry Adams and myself as the top people in the IRA over the course of the last 25 years. So, Gerry Adams is the leader of Irish Republicanism and I think whatever Gerry Adams will say this afternoon has to be taken very seriously by everyone within our community.⁸⁷

The above identifies Gerry Adams not as President of Sinn Fein, but as the leader of the Republican movement. This movement has two elements: IRA and Sinn Fein. That is the context for this section of the submission.

On 31 August 1994 the IRA issued a ceasefire statement. It indicated that there would be "*a complete cessation of military operations. All units have been instructed accordingly.*" It further commented that;

We are therefore entering into a new situation in a spirit of determination and confidence, determined that the injustices which created this conflict will be removed and confident in the strength and justice of our struggle to achieve this. We note that the Downing Street Declaration is not a solution, nor was it presented as such by its authors. A solution will only be found as a result of inclusive negotiations.⁸⁸

So began a process that as yet is unfinished: an IRA determined to remove the causes of the conflict by inclusive negotiations.

On 9 February 1996 the IRA stated that:

It is with great reluctance that the leadership of the IRA announces that the complete cessation of military operations will end at 6pm on February 9 ... Time and again, over the last 18 months, selfish party political and sectional interests in the London parliament have been placed before the rights of the people of Ireland ...The resolution of the conflict in our country demands justice. It demands an inclusive negotiated settlement.

⁸⁷ Ulster Television (UTV): 'Sunday Issue' transcript, 27 April 2003.

⁸⁸ IRA: Ceasefire Statement, 31 August 1994.

That is not possible unless and until the British government faces up to its responsibilities.⁸⁹

On 19 July 1997 the IRA stated that:

The IRA is committed to ending British rule in Ireland. It is the root cause of divisions and conflict in our country. We want a permanent peace and therefore we are prepared to enhance the search for a democratic peace settlement through real and inclusive negotiations ... So having assessed the current political situation, the leadership of Óglaigh na hÉireann [IRA] are announcing ... the unequivocal restoration of the ceasefire of August 1994.⁹⁰

A brief political background to the above IRA statements sets the context. In June 1996 elections within NI were held to establish a 'Forum for Political Dialogue'. From the membership of that forum were drawn 'negotiating teams' from each political party represented but during the following year little substantive negotiation occurred. Following the reinstatement of the IRA ceasefire in July 1997 Sinn Fein was admitted to the Talks. A substantive and structured Talks process commenced in September 1997 that led to The Agreement on 10 April 1998.

Like the IRA statement of August 1994, subsequent statements have been made in regard to the contents of the Talks. For example:

The leadership of Óglaigh na hÉireann do not regard the 'propositions on Heads of Agreement' document [See footnotes 49 & 50] as a basis for a lasting peace settlement. It is a pro-unionist document and has created a crisis in the peace process ... The responsibility for undoing the damage done to the prospects for a just and lasting peace settlement rests squarely with the British government.⁹¹

When The Agreement was signed, and before the referenda on 22 May 1998, the IRA issued the following statement:

The leadership of Óglaigh na hÉireann have considered carefully the Good Friday document ... Viewed against our Republican objectives or any democratic analysis, this document clearly falls short of presenting a solid basis for a lasting settlement ... The IRA commitment to assisting the search for justice and peace is a matter of public record. This commitment remains. Let us make it clear that there will be no decommissioning by the IRA ... We are aware also of those who will resist any dynamic for change. They need to face up to the reality that peace demands justice, equality and national rights for the people of Ireland.⁹²

There were further IRA statements coupled with no political progress until November 1999, at which time an inclusive Executive was formed together with a functioning Assembly. Shortly before this political development the IRA issued the following statement, reproduced here in its entirety:

⁸⁹ IRA: Statement ending the Ceasefire, 9 February 1996.

⁹⁰ IRA: Ceasefire Statement, 19 July 1997.

⁹¹ IRA: Statement in Response to the 'Heads of Agreement', 21 January 1998.

⁹² IRA: Statement on The Agreement (termed 'Good Friday document'), 30 April 1998.

The IRA is committed unequivocally to the search for freedom, justice and peace in Ireland. In our view, the Good Friday Agreement is a significant development and we believe its full implementation will contribute to the achievement of lasting peace. We acknowledge the leadership given by Sinn Fein throughout this process. The IRA is willing to further enhance the peace process and consequently, following the establishment of the institutions agreed on Good Friday last year, the IRA leadership will appoint a representative to enter into discussions with General John de Chastelain and the Independent International Commission on Decommissioning [IICD].⁹³

With no decommissioning, and the consequent loss of confidence by the UUP, the Executive was suspended on 10 February 2000.

Shortly before suspension of the NI Executive, the IRA stated that it:

...wants a permanent peace, that the declaration and maintenance of the cessation, which is now entering its fifth year, is evidence of that, that the IRA's guns are silent and that there is no threat to the peace process from the IRA.⁹⁴ [And also that] The British Secretary of State has accused the IRA of betrayal over the issue of decommissioning ... Those who have once again made the political process conditional on the decommissioning of silenced IRA guns are responsible for creating the current difficulties and for keeping the peace process in a state of perpetual crisis. The IRA believes this crisis can be averted and the issue of the arms can be resolved. This will not be on British or unionist terms, nor will it be advanced by British legislative threats.”⁹⁵

Ten days after the suspension of the Assembly the IRA stated that “*the leadership of the IRA have decided to end our engagement with the IICD. We are also withdrawing all propositions put to the IICD by our representative since November.*”⁹⁶

Subsequently the IRA made a substantive statement:

The leadership of the IRA is committed to a just and lasting peace... Republicans believe that the British government claim to a part of Ireland, its denial of national self-determination to the people of the island of Ireland, the partition of our country and the maintenance of social and economic inequality in the Six Counties are the root causes of conflict. The maintenance of our cessation is our contribution to the peace process ... For our part, the IRA leadership is committed to resolving the issue of arms... The political responsibility for advancing the current situation rests with the two governments, especially the British government, and the leadership of the political parties. The full implementation, on a progressive and irreversible basis by the two governments, especially the British government, of what they have agreed will provide a political context, in an enduring political process, with the potential to remove the causes of conflict, and in which Irish republicans and unionists can, as equals, pursue our respective political objectives peacefully. In that context the IRA leadership will initiate a process that will completely and verifiably put IRA arms beyond use... We will resume contact with the Independent International Commission on Decommissioning ... We look to the two governments and especially the British government to fulfil their

⁹³ IRA: Statement in full, 17 November 1999.

⁹⁴ IRA: Statement, 1 February 2000.

⁹⁵ IRA: Statement, 5 February 2000.

⁹⁶ IRA: Statement, 15 February 2000.

commitments under the Good Friday agreement and the joint statement... In this context, the IRA leadership has agreed to put in place within weeks a confidence-building measure to confirm that our weapons remain secure. The contents of a number of our arms dumps will be inspected by agreed third parties ... The dumps will be re-inspected regularly to ensure that the weapons have remained silent. ⁹⁷

This marked a step change in approach by the IRA and became a template for future IRA statements. Namely: implementation of the political process will provide a basis where unionists and republicans can pursue peacefully their political objectives. The Executive was re-established again in late May 2000. There were further periods of uncertainty with the Assembly and Executive suspended again in October 2002 and reinstated (but without any power) on 15 May 2006. During this period of suspension a major attempt was made to restore the political institutions. As part of a sequence of statements on 21 October 2003, the Republican viewpoint was expressed by Gerry Adams:

The IRA leadership wants the full and irreversible implementation of the Good Friday Agreement in all its aspects and they are determined that their strategies and actions will be consistent with this objective. Implementation by the two governments and the parties of their commitments under the Agreement provides the context in which Irish republicans and unionists will as equals pursue their objectives peacefully, thus providing full and final closure of the conflict. ⁹⁸

The IRA issued a statement shortly after Gerry Adams delivered his speech saying that: *“The leadership of the IRA welcomed today's speech by Sinn Féin president Gerry Adams in which he accurately reflects our position.”* ⁹⁹ Later that day a second IRA statement said that *“The leadership of Óglaigh na hÉireann (the IRA) can confirm that a further act of putting arms beyond use has taken place under the agreed scheme.”* ¹⁰⁰

The lack of confidence on the part of the UUP in both the clarity and composition of the latest act of decommissioning and also the completion date for decommissioning caused the agreed sequence to be halted. Political progress was not made. Assembly elections were held in November 2003 and further negotiations followed.

The Sinn Fein President, Gerry Adams, delivered an address at a Dublin conference in February 2004. These selected quotations represent Sinn Fein's policy over time.

The British state in Ireland is a contrived political entity. It was created and moulded to ensure a permanent unionist majority. It is entirely unionist in its ethos, symbolism and management. So any attempt to bring about equality is bound to be very difficult.

In fact the IRA leadership clearly put its position on the public record in May last year when it said that the full and irreversible implementation of the Agreement and other commitments will provide a context in which it can proceed to definitively set aside arms to further its political objectives.

⁹⁷ IRA: Statement, 6 May 2000.

⁹⁸ Gerry Adams: Balmoral Hotel, Belfast, 21 October 2003.

⁹⁹ IRA: Statement, 21 October 2003.

¹⁰⁰ IRA: Second statement in full, 21 October 2003.

But threats, ultimatums, or the imposing of preconditions can be no part of this. Holding up a process which is essentially about basic rights and modest entitlements is totally counter-productive.

Two of the great challenges facing us nationally are to get a British government to embrace a strategy to bring an end to the union and to work with the representatives of the people of this island to bring about a united and independent Ireland.

The Irish government in particular should know that nationalists and republicans look to them to persuade the British government on these matters. The Irish government is a co-guarantor of the Good Friday Agreement and that Agreement is both an international treaty and a part of the Irish Constitution.

Most importantly the right of Northerners to have representation and participation in political institutions in Dublin continues to be withheld.

But the DUP also knows that if it wants a return to sustainable devolved administration that it will be with Sinn Féin in government and it will be with the all-Ireland model contained in the Good Friday Agreement.

(And on a wider European context)

It is an outrage that the occupation of Iraq continues, it is an outrage that the conflict in the Middle East continues and that the suffering of the Palestinian people continues to be largely ignored. The apartheid wall is a human rights outrage. It is contrary to international law and it must come down.

So, we want to be part of a European Union that leads by example on human rights, on demilitarisation and conflict resolution. We want a mandate to argue that the European Union should promote and work towards the full spectrum of national, collective and individual rights. ¹⁰¹

Regarding a central issue of policing in NI, Gerry Adams stated:

But if the outstanding issues around policing, which are mainly about achieving civic policing and democratic control of policing are dealt with, as I believe they can be, then I would be prepared to go to our Ard Chomhairle to ask for a special Ard Fheis to discuss this matter.

There should be no underestimation of the scale of shift in republican and nationalist thinking for Sinn Féin to be involved in policing, not only because of the emotions involved, not only because of the nationalist experience of policing in the north, but also because our country is still partitioned. For this reason the transfer of powers on policing and justice away from London to Belfast within a short timeframe is crucial. ¹⁰²

No such Ard Fheis has yet been called by Sinn Fein to discuss this matter. Gerry Adams commented three days later on the general way forward:

¹⁰¹ Gerry Adams: Sinn Fein's Ard Fheis (Party Conference), Dublin, 28 February 2004.

¹⁰² Gerry Adams: Platform Article; Irish Times, 10 August 2004.

The British Government must advance and accelerate the agenda of change set out in the Good Friday Agreement. It must stop filtering basic rights and entitlements through the prism of negative unionism. The Good Friday Agreement was endorsed democratically by the majority of the Irish people, north and south.

But the process of change must not be frozen if unionism cannot come to terms with new political realities. The political leadership of unionism cannot be allowed to continue to veto the fundamental rights and entitlements of citizens or to veto other changes necessary to the development of a society at peace with itself. ¹⁰³

And regarding Sinn Fein's non-participation in the workings of the Westminster parliament, the following reason is given:

Under our party constitution, Sinn Fein candidates in Westminster elections are pledged not to 'sit in, nor take part in, the proceedings of the Westminster parliament'. That is because we believe the Westminster parliament has no right to legislate for any part of Ireland. ¹⁰⁴

There was another attempt to obtain both decommissioning and devolution in December 2004. It was again unsuccessful but for a different reason: the requirement that decommissioning be photographed and that the photographs be published. Clarity however was given on the completion timescale.

The IRA stated:

More than ten years ago, an IRA cessation publicly heralded the onset of the Irish peace process...In the context of the work to conclude a comprehensive agreement, the leadership of Óglaigh na hÉireann decided...to support a comprehensive agreement by moving into a new mode which reflects our determination to see the transition to a totally peaceful society...the IRA leadership also decided that we will, in this context, conclude the process to completely and verifiably put all our arms beyond use...we instructed our representative to agree with the IICD the completion of this process, speedily, and if possible by the end of December... to further enhance public confidence we agreed to the presence of two clergymen as observers during this process.

The IRA leadership decided to contribute in this way to a comprehensive agreement to resolve all outstanding issues, including those of concern within unionism. For his part, Ian Paisley [DUP leader] demanded that our contribution be photographed, and reduced to an act of humiliation.

This was never possible. Knowing this, he made this demand publicly as the excuse for his rejection of an overall agreement to create a political context with the potential to remove the causes of conflict. As the IRA leadership has said before, this is a context in which Irish republicans and unionists can, as equals, pursue our respective political objectives peacefully.

¹⁰³ Gerry Adams: Platform Article; Irish Times, 13 August 2004.

¹⁰⁴ Caoimhghin O Caolain TD: Platform Article; Irish Times, 20 September 2005.

We restate our commitment to the peace process. But we will not submit to a process of humiliation. ¹⁰⁵

After a further period of negotiations, with Westminster elections in May 2005 intervening, the IRA issued a statement:

The leadership of Óglaigh na hÉireann has formally ordered an end to the armed campaign... All IRA units have been ordered to dump arms... The IRA leadership has also authorised our representative to ... complete the process to verifiably put its arms beyond use ... The army Council took these decisions following an unprecedented internal discussion and consultation process with IRA units and Volunteers... The outcome of our consultations show very strong support among IRA Volunteers for the Sinn Féin peace strategy... The overwhelming majority of people in Ireland fully support this process... our decisions have been taken to advance our republican and democratic objectives, including our goal of a united Ireland. We believe there is now an alternative way to achieve this and to end British rule in our country... We reiterate our view that the armed struggle was entirely legitimate. ¹⁰⁶

In September 2005 the Independent International Commission on Decommissioning (IICD) reported that the IRA had put all its arms beyond use. The relevant statement by the IRA, in its entirety, is as follows:

The leadership of Óglaigh na hÉireann announced on 28 July [2005] that we had authorised our representative to engage with the IICD to complete the process to verifiably put arms beyond use. The IRA leadership can now confirm that the process of putting our arms verifiably beyond use has been completed. ¹⁰⁷

In April 2006 the IRA stated:

The leadership of Óglaigh na hÉireann believes that it is possible to achieve the republican goal of a united Ireland through the alternative route of purely peaceful and democratic means... The onus is on the two governments and the political parties to ensure that this happens. The Irish Government in particular has a duty to see beyond the current phase of the process. Its responsibility is to promote an end to partition and to create the conditions for the unity and independence of Ireland. ¹⁰⁸

Sinn Féin's position on the way forward at this time is also clear:

I have written to both the Taoiseach and the British Prime Minister outlining an approach which Sinn Féin believes will advance the political and peace process and determine whether the DUP is up for joining a power sharing government with all of the other parties.

This involves the two governments meeting the parties and setting out a timetable to lift suspension and form an Executive. This should be completed before the summer and well in advance of the Orange marching season.

¹⁰⁵ IRA: Statement, 9 December 2004.

¹⁰⁶ IRA: Statement, 28 July 2005.

¹⁰⁷ IRA: Statement, 26 September 2005.

¹⁰⁸ IRA: Statement, 13 April 2006.

If the DUP rejects this then the governments, on the basis of joint government decision making, should get on with implementing those many parts of the Good Friday Agreement for which they have direct responsibility. This would include action to give effect to the provisions of the Good Friday Agreement on Equality and Human Rights, Irish Language, Victims, Symbols and Emblems along with an expansion of the all-Ireland elements of the Agreement, including the areas of co-operation and the number of implementation bodies.¹⁰⁹

In contrast unionism has been seeking a more modest development in the time ahead. For example, extracts of the UUP's stated policy position is as follows:

Tony Blair said at Lancaster House in June 2004 that he would lack credibility if he continued to claim that more work was necessary to achieve agreement after all this time, and the status quo would be allowed to continue. The Ulster Unionist Party believes that the Prime Minister was right to say this, and it is up to him to ensure that there is a positive outcome that brings the current suspension to an end, without rewarding those who have consistently failed to honour their obligations.

However, we cannot under-estimate the damage republicans have done to the ability of the pro-Union community to tolerate an all-inclusive Executive. It is immense and deep seated.

This fact has led us to consider what steps HMG [Her Majesty's Government] could now take to break the deadlock, see the ending of suspension and provide the public and the taxpayer with a proper service and value for money.

We are proposing that given the Government's current inability to re-instate the Executive, the Assembly should be allowed to exercise its legislative and financial powers as before, but with the Secretary of State and his Ministers continuing to administer the Departments, pending a transition to full devolution.¹¹⁰

It is perhaps worthy of consideration, in the overall context of this submission, in what way the two Governments' proposals of 6 April 2006 match, or do not match, each of the above two different approaches as to the way ahead (compare with footnote 6 & 7).

A wider European Union dimension

(i) Serbia and Northern Ireland

In January 2005 the murder of Robert McCartney outside a Belfast bar had wide resonance throughout the community and in particular within the republican constituency. The IRA issued a statement on 16 February 2005 saying that: "*The IRA was not involved in the brutal killing of Robert McCartney.*" Subsequently Gerry Adams issued the following statement:

At a meeting on Thursday 24th February the family gave me a list of people who they allege were involved... As party president I immediately instructed the leadership of Sinn Féin in Belfast to establish if any of those named by the family were members of

¹⁰⁹ Gerry Adams: Press Statement, 7 March 2006.

¹¹⁰ UUP: 'Breaking the Deadlock: A Legislative and Financial role for Stormont', January 2006.

Sinn Féin...I was informed that seven of those named are members of Sinn Féin. All were immediately suspended from the party. This is on a without-prejudice basis...As a political party Sinn Féin is not in a position to carry out an investigation which would adequately establish the facts surrounding the killing of Robert McCartney, but those named by the family are suspended from membership and from any involvement in Sinn Féin activity pending the outcome of the legal process. ¹¹¹

There followed a statement by the IRA:

Representatives of Óglaigh na hÉireann met with Bridgeen Hagans, the partner of Robert McCartney and with his sisters ...Our investigation found that ... of the four people directly involved... two were IRA Volunteers. The other two were not. The IRA knows the identity of all these men.... The IRA representatives detailed the outcome of the internal disciplinary proceedings thus far, and stated in clear terms that the IRA was prepared to shoot the people directly involved in the killing of Robert McCartney. The McCartney family raised their concerns with the IRA...the family made it clear that they did not want physical action taken against those involved. They stated that they wanted those individuals to give a full account of their actions in court. We [IRA] have urged any witnesses who can assist in any way to come forward. That remains our position. ¹¹²

To date no one has been before the courts for the murder of Robert McCartney.

In a different setting, Serbia is currently seeking membership of the EU and had until 30 April 2006 to arrest and transfer Ratko Mladic to The Hague. Serbia failed and accession talks with Serbia scheduled for 11 May were cancelled. Olli Rehn (EU Enlargement Commissioner) stated: *“The issue is about the rule of law ...Serbia must show that nobody is above the law and that anyone indicted for serious crimes will face justice.”* ¹¹³

Olli Rehn had previously indicated his philosophy while on a visit to Serbia: *“Prospective members of the EU have to respect European values and, most importantly, to practise them. This concerns particularly the rule of law in all spheres of life.”* ¹¹⁴

While one does not make any direct comparisons between the Robert McCartney murder and the activities of Ratko Mladic, it does make one consider certain values. The Irish and UK Governments' viewpoint is that if the Republican movement simply stops acting at variance with the rule of law then that is enough to secure Sinn Fein at the centre of governing NI. It seems not unreasonable to question: are the rules for admission to the EU different from those that apply to countries who are already members?

(ii) The Basque region and ETA

When the IRA announced a ceasefire on 31 August 1994 it used the phrase *“complete cessation of military operations.”* (footnote 88) The word ‘complete’ presented much difficulty during the unfolding political process that followed. Did it mean permanent? It turned out not to mean permanent, since this ‘complete cessation’ ended for a period from February 1996 and was not restored until July 1997.

¹¹¹ Gerry Adams: Press Statement, 3 March 2005.

¹¹² IRA: Statement, 8 March 2005.

¹¹³ Olli Rehn: ‘New Europe - The European Weekly’, 10 April 2006.

¹¹⁴ Olli Rehn: ‘The next steps towards Europe’, Lecture at Belgrade University, 18 April 2005.

When Euskadi Ta Askatasuna (ETA) announced a ceasefire on 22 March 2006, it did not cause the same uncertainty since the phrase used was a “*permanent ceasefire.*”¹¹⁵ It is unlikely that this was by chance: Sinn Fein has close working relationships with the separatist movement in Spain. Gerry Adams stated:

Sinn Fein has been in dialogue with all of the Basque political parties and in particular Batasuna... Sinn Féin's objective has been to promote conflict resolution and to assist in whatever way we can the development of a peace process. I welcome today's news from the Basque Country.¹¹⁶

ETA's statement was published on the Sinn Fein web-site. Such phrases used included:

The objective of this decision is to encourage a democratic process in Euskal Herria [Basque country] in order to build a new framework in which the rights as a people which correspond to us can be recognised and looking to the future assuring us the possibility of the development of all political options... The Spanish and French states must recognise the results of such a democratic process, without any type of limitations... ETA makes a call to the Spanish and French authorities to respond to this new situation in a positive manner, leaving repression to one side.¹¹⁷

There are similarities in these phrases with those contained in both IRA and Sinn statements. Suffice to state that this is likely to be only an example of collaboration among separatist groups. Surely this points to the maxim that the benchmarks for progressing a political process, in NI as elsewhere, are founded in international norms: deviation in one situation becomes a new paradigm to be built upon in another situation.

¹¹⁵ Euskadi Ta Askatasuna (ETA): 'Message from ETA to Basque People', 22 March 2006.

¹¹⁶ Gerry Adams: Sinn Fein Press Statement, 22 March 2006.

¹¹⁷ Euskadi Ta Askatasuna (ETA): 'Message from ETA to Basque People', 22 March 2006.

3. Questions

General Considerations

Knowing that:

Ireland and the UK are participating States of the United Nations, the Council of Europe and the Organisation for Security and Co-operation in Europe (OSCE) and each must therefore respect all associated commitments including those related to minorities; and

the UK has not stipulated any reservation in regard to implementation of minority protection therefore it is committed to respect both the full letter and spirit of its commitments within its jurisdiction by giving practical effect to protections guaranteed internationally.

Mindful that:

the UK has given an internationally binding commitment in The Agreement to legislate as necessary to ensure the UK's international obligations are met in respect of NI and four such obligations are:-

- “The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority” ¹¹⁸
- “The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them” ¹¹⁹
- “The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels” ¹²⁰
- “The Parties shall 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. Where relevant, the Parties shall take measures to encourage transfrontier co-operation;” ¹²¹

any person belonging to a national minority:-

- “...shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.” ¹²² and that this is interpreted to mean that: “...national minorities are required to respect the national constitution and other national legislation.” ¹²³

¹¹⁸ Council of Europe: ‘Framework Convention for the Protection of National Minorities’ Article 4.

¹¹⁹ Ibid: Article 15.

¹²⁰ Ibid: Article 17.

¹²¹ Ibid: Article 18.

¹²² Ibid: Article 20.

¹²³ Ibid: ‘Explanatory Report’ Section III, Article 20.

Questions to the Advisory Committee

- 1.** Mindful of the participatory (and cross-community dimension) agreed by referendum in NI on 22 May 1998, regarding both governance within NI and cross-border co-operation, would the Advisory Committee comment on the UK Government's fulfilment of its international obligation under Article 15, in the light of its stated position of 6 April 2006 that the governance of NI could be driven possibly by a "*more rigid will imposed from outside*"? (footnote 9)
- 2.** Mindful of Article 15's terminology that parties "*shall create the conditions necessary for effective participation*", is the UK Government not avoiding a clear imperative to provide a form of participation (however limited) by opting for an all-or-nothing approach in its Joint statement with the Irish Government on 6 April 2006?
- 3.** Mindful of the terms of cross-border co-operation contained within The Agreement; supplementary documentation to The Agreement; the requirement "*to ensure the protection of persons belonging to national minorities*" (Article 18); and the rights that are guaranteed under such protection - would the Advisory Committee comment on the appropriateness of the rationale for such cross-border co-operation being for the sole purpose of giving expression to an aspiration for a united Ireland?
- 4.** Assuming that a section of residents in NI do not support the Irish Government's unilaterally initiated linkages between the Oireachtas and elected representatives from NI, what is the Advisory Committee's opinion, in respect of Article 20, regarding such present and proposed linkages between the Oireachtas and elected members from NI?
- 5.** Noting that Sinn Fein does not recognise the Westminster Parliament as having jurisdiction over NI and consequently does not respect the Parliament of the UK, what is the Advisory Committee's opinion of this non-recognition in the context of Article 20 and the associated explanatory note contained in the Framework Convention?
- 6.** Mindful of the UK Government's non-submission of its Second Report, would the Advisory Committee request from the Government, as a matter of urgency, how it anticipates discharging its responsibilities to residents in NI, in all foreseeable circumstances, particularly in regard to giving effect to Articles 15 and 20?

Supplementary Questions

The following supplementary questions are both an aid to discussion and also in order to indicate the nature of the main concerns contained in this submission.

1. Effective Participation

(a) In the absence of a functioning NI Assembly does the UK Government not have a general responsibility to construct a 'forum', from among elected representatives mandated by residents in NI, in order to provide effective participation in public affairs by way of the decision making process regarding these matters that, consequent on a non-functioning Assembly, fall to the responsibility of the UK Government?

(b) In fulfilment (both in letter and in spirit) of international obligations, including those contained in The Agreement, regarding the decision making process in respect of North-South co-operation which requires cross-community support for all decisions: does the UK Government not have a particular responsibility to construct a 'forum', from among elected representatives mandated by residents in NI, in order that they participate in, and contribute to, the decision making process and accountability regarding such North-South co-operation?

(c) If the Governments of Ireland and the UK were to create new North-South structures, or to continue the development of existing structures, and to act in such a manner as to impose from outside a position on such issues, consequently marginalising NI politicians, does this not place residents in NI both at a disadvantage and in a vulnerable state, in comparison with residents' normal expectation of democratic accountability at every jurisdictional level?

2. Rationale for North-South co-operation

(a) Considering relevant documentation that preceded The Agreement, the content of The Agreement and subsequent documentation and practice, is it the correct interpretation that North-South arrangements were and are created for the sole purpose of securing mutual benefit for all?

(b) If the Governments of Ireland and the UK were to view the creation of North-South structures as having the intrinsic value of being the expression of Irish nationalism's aspiration (for example by conveying some characteristics of a 'united Ireland') and such expression being a justifiable reason alone for the creation of such structures, how would this be viewed from a wider international perspective having regard to kin-State and kin-minority relationships in the context of the home State?

3. Rights of all citizens

If the UK Government formulates and practises arrangements of governance that are not in accordance with the wishes of a majority of those directly affected as expressed by referendum, does this not set a new paradigm for governance in regard to minority rights (with wider repercussions) which is, in an effort to promote the rights of one section of the community, a demonstration of the UK Government both acting in disregard of its international commitments and also disregarding and alienating the majority residing in NI?

4. Good neighbourly relations

(a) In consideration by the Irish Government of its relations with neighbours, and any actions flowing from such relations, should the attitudes and impact of the region most affected by any action not bear heavily on the Government's consideration of such matters?

(b) In considering the extension of North-South relations within the island of Ireland, is the Irish Government, by suggesting participation by NI elected representatives in the Oireachtas, not going beyond guaranteed rights to protect and promote the legitimate interests of the Irish community in Northern Ireland and therefore acting contrary to good neighbourly relations and international norms, with resulting wider international implications?

5. Individual choice and discrimination

Is the Irish Government, by suggesting institutional North-South political linkages, not both acting in disregard of the principle of an individual's right of choice and also discriminating against other residents of the country?

6. Wider legal dimension

In the event of both the Irish and UK Governments consenting, for example, to a new explanation for North-South political structures in NI (or management of such structures) by way of no negative comment to disavow such developments from either Government: (a) has this the same legal affect as if a new bilateral treaty had been signed and (b) if such a new treaty goes unchallenged at a national or international level, could it be interpreted as setting a new paradigm for international relations that other national minorities may utilize to advance their own case for similar developments?

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