

THE COMMITTEE ON THE
ADMINISTRATION OF JUSTICE

**WAYS OF
PROTECTING
MINORITY RIGHTS
IN
NORTHERN IRELAND**

C.A.J. PAMPHLET NO. 7

JUNE 1985

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THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE

The C.A.J. is a non-political and non-sectarian organisation which was set up after a conference in June 1981 with the aim of striving to secure "the highest standards in the administration of justice in Northern Ireland by examining the operation of the current system and promoting the discussion of alternatives". The members come from all walks of life and participate in the campaigns in different ways. By undertaking surveys, holding conferences, lobbying Parliamentarians, issuing statements to the press and publishing pamphlets, we seek to raise the level of public debate and understanding on important social issues. The full Committee operates on the basis of monthly meetings with various sub-committees meeting in the intervening periods. At present the sub-committees are specifically concerned with prisons, policing, emergency laws and a Bill of Rights. The organisation is managed by an Executive, which comprises seven officers and two co-opted members.

Membership is open to any individual who accepts the C.A.J.'s Constitution, whose membership is approved by the Committee and who pays the appropriate membership fee. Affiliation to the Committee is open to all organisations accepting the Constitution and whose affiliation is approved by the Committee. The current membership fee for individuals is £5.00 (waged) or £2.00 (unwaged). Membership entitles the individual to attend the organisation's monthly meetings, to take part in the work of sub-committees and to receive all C.A.J. mailings, including our monthly news-sheet "Just News". Subscription to Just News alone costs £3.00 per annum.

Please make all enquiries about the C.A.J. to:

The Information Officer,
C/o 224 Lisburn Road, Belfast. BT9 6GE.

It is anticipated that as from 1st July, 1985 our address will change to:

C/o 45-47 Donegall Street,
Belfast. BT1 2FG. (Tel. 243920)

Other C.A.J. pamphlets (all priced 50p) are as follows:

- | | | |
|-------|--|------------------|
| No. 1 | : The Administration of Justice in Northern Ireland -
The Proceedings of a Conference.
(out of print, but photocopy available) | (June 1981) |
| No. 2 | : Emergency Laws in Northern Ireland
(out of print, but photocopy available) | (June 1982) |
| No. 3 | : Complaints Against the Police : A working
party report | (September 1982) |
| No. 4 | : Procedures for Handling Complaints Against
the Police | (May 1983) |
| No. 5 | : Emergency Laws - Suggestions for Reform in
Northern Ireland | (September 1983) |
| No. 6 | : Consultation between the Police and the
Public | (June 1985) |
| No. 8 | : Plastic Bullets and the Law | (July 1985) |

FOREWORD

The purpose of this pamphlet is to make people aware of some of the various methods by which the rights of minority groups could be protected in Northern Ireland.

Part One comprises information collected by a sub-committee* within the Committee on the Administration of Justice which was put before a Conference of interested parties held in the Ulster People's College on 23rd February, 1985.

Part Two comprises the papers which were actually presented at that Conference, together with accounts of the discussion and conclusions following each paper.

The pamphlet as a whole should serve to assist the reader in making up his or her own mind as to how best our society should proceed on these issues. The C.A.J. sincerely hopes that individuals and groups will respond in a constructive manner by submitting their own ideas. An early opportunity to do this will be provided on 15th June, 1985 when the C.A.J. holds its Annual Conference on the theme "Beyond the European Convention". But the debate will continue for a long time thereafter and we therefore look forward to receiving views - and proposals for further action - at any time in the future.

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Anne Colville
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PART ONE: BACKGROUND INFORMATION

The subject of a Bill of Rights for Northern Ireland was raised at the C.A.J. Annual Conference in May, 1984. The theme of that conference was the protection of individual and group rights in a divided society. As a result of discussion in the workshops that day, a sub-committee was formed, the terms of reference of which were wide-ranging. They included the drafting of a Bill of Rights.

The sub-committee met regularly during the succeeding nine months. It began its task by researching into two specific areas:

- (i) the views of the Northern Ireland political parties on a Bill of Rights; and
- (ii) the experience of other countries which already possessed some form of Bill of Rights.

On completing this research, the sub-committee felt that at that stage it would be a futile exercise simply to write out a list of human rights which ought to be protected in Northern Ireland. The disagreements which existed related not so much to what should go into a Bill of Rights as to how a Bill should be made part of our law. The sub-committee therefore decided to re-convene the C.A.J. conference on individual and group rights and to present to it its findings to date. That re-convened conference took place in February, 1985. The documents set out in the five sections which follow were presented in advance to all the participants of the conference.

1. The views of political parties

All the main political parties were asked for their views on a Bill of Rights. Information was forthcoming from all of them except Sinn Fein.

(1) The Alliance Party

The Alliance Party has published four proposals which it considers to be primary to a negotiated settlement for N.I. One of these proposals is for a Bill of Rights which would protect the rights of all the people of Northern Ireland who oppose violence.

The rights guaranteed in the document would be based on the European Convention of Human Rights and would be enforced through the courts. A Commission, similar to the Equal Opportunities Commission, would be established to monitor compliance with the Bill. Individuals would bring complaints of non-compliance to the Commission, which in turn would take the case to court. The highest Court of Appeal would be either the House of Lords or the European Court of Justice. In addition, the Commission would report to Westminster on adherence to the Bill.

The party sees two ways for the Bill to be enacted - as an Act of Parliament or as part of a Constitution. A Bill of Rights could be written into a Constitution for Northern Ireland, which would be an Act of the Westminster Parliament and as such could be amended by Westminster only. Parliament might be persuaded to legislate a Bill of Rights for the province independent of a Constitution. In this case the Act could, once again, be amended at Westminster and not by a Northern Irish legislature. Whether the Bill is part of a Constitution or an Act of Parliament, amendments could be made by a simple majority at Westminster.

Finally, in the event that the citizens of Northern Ireland perceive the above methods as not sufficient, certain guarantees could be lodged at the United Nations or the Council of Europe.

(2) The Democratic Unionist Party

An extract from the D.U.P. document entitled "Proposals by the Ulster Democratic Unionist Party, Northern Ireland Assembly Group, for Progress toward full devolution in Northern Ireland, September, 1984" :

Statutory Safeguards for the Minority

Further to the special privileges and safeguards already outlined for minority interests namely:

- a. The Departmental and Other Committees with their special minority participation, and
- b. The provision for weighted votes on a rejected Bill at second reading,

we are prepared to support the following further safeguards for all sections of the community, including the minority -

(i) We accept that the existing safeguards and remedies against discrimination on religious or political grounds as laid down in the 1973 Northern Ireland Constitution Act should be maintained and to this extent would be prepared to accept, in the main, the continuance of Part III of the 1973 Act. We note that Section 17 of the 1973 Act makes void any proposed legislation which discriminates on the grounds of political or religious persuasion and further that Section 18 gives the Secretary of State power to refer any provision of the Assembly to the Judicial Committee of the Privy Council to see if it might be void under Section 17, and that Section 19 outlaws discrimination by public authorities, including Ministers and district councils. As a means of strengthening these statutory safeguards, which in their terms are adequate, we would support a facility whereby a stated minority, say 30% of the Assembly could require the Secretary of State to make a referral to the Privy Council under Section 18.

A Bill of Rights

(ii) The U.D.U.P., while holding that a Bill of Rights is desirable for the whole of the United Kingdom, would be prepared if such is not available to accept a proposal for a Northern Ireland Bill of Rights which would incorporate a range of statutory safeguards against abuse of power. We would point out that the oversight of human rights already rests with an independent agency, in that Section 20 of the 1973 Act established the Standing Advisory Commission on Human Rights. It is our contention that a Bill of Rights along with the existing safeguards in the 1973 Act and those already mentioned can provide all the safeguards that anyone could reasonably require.

(3) The Official Unionist Party

In its document "The Way Forward 1984" the Ulster Unionist Council accepts that a case can be made for the entrenchment of citizens' rights as a component of a package for devolved government for Northern Ireland. The document notes that "without accepting that there is any foundation in reality for any feeling of minority discrimination or disadvantage, the Ulster Unionist Party nevertheless recognises that such a feeling does exist and that it may be in the interests of the people of Northern Ireland as a whole to have the rights of individuals explicitly set out in the legislation of the British Parliament conferring devolved government on Northern Ireland."

The document envisages that such rights would be sufficiently entrenched if Westminster alone retained the power to amend and that such legislation would "provide machinery whereby any action on the part of the Northern Ireland devolved institution conflicting with any listed right would be declared void and any act of the Northern Ireland administration conflicting with any such right would be declared unlawful", but does not suggest what form such machinery might take.

The document refers to the European Convention but comments that it would have to be adapted to the particular circumstances of Northern Ireland, observing that "restrictions on the liberty of the individual citizen may be called for in the interests of society as a whole" and that "although rights may often be expressed in absolute terms the interests of other citizens or the interests of society as a whole may necessitate some qualification of apparently absolute rights, even outside periods of crisis".

The document also notes that it is an essential ingredient of an effective Bill of Rights that it be enforced at the suit of the individual citizen as simply, cheaply and expeditiously as possible through the established courts of law.

(4) The Social Democratic and Labour Party

The S.D.L.P., while supporting the concept of a Bill of Rights for Northern Ireland, has never made the promulgation of this document a major plank in its policy. The party believes that although Britain exercises sovereignty in Northern Ireland, there is no political consensus in the province. According to the S.D.L.P. there are political parties in Northern Ireland that cannot be trusted to exercise power on their own while having the consent of those parties not in power. The absence of political consensus, and the lack of trust among those in power, bring the problem of enforcing a Bill of Rights to prominence. The S.D.L.P. does not believe that such a Bill could be enforced under the current system.

It does want some type of human and civil rights guarantees as part of a settlement for the province. In its 1980 policy document "Northern Ireland - a Strategy for Peace", the S.D.L.P. wrote that a Bill of Rights would be an essential part of a constitutional resolution for Northern Ireland. This Bill would indicate the safeguards for basic human rights necessary to any settlement.

Three years later, in the Report to the New Ireland Forum, further mention was made of a Bill of Rights. In this document, the S.D.L.P. wrote that: "The constitution for a unitary state would contain certain clauses guaranteeing civil and religious liberties to all citizens of the State. Changes or amendments could be made only in accordance with special procedures set out in the document. In addition, there would be reinforcing guarantees from the European Convention on Human Rights with rights of access to the European Court of Human Rights."

(5) The Workers' Party

The Workers' Party has quite clearly accepted the principle of the need for a Bill of Rights. In its Assembly Elections Manifesto it states the following:

"In short we see the Bill of Rights as the cornerstone of democracy, as the guarantor of the civil liberties of all citizens and of the political rights of all political parties and individuals prepared to work through the democratic process."

It has also established what form it would propose this Bill of Rights should take, as can be determined by its submission to the Atkins Conference document, dated January, 1980. In this, the party firstly sets out ten fundamental principles which would constitute a political statement about the nature of any form of institution established to govern Northern Ireland. These are:

1. That any devolved government will be democratic in character and will cater for the economic, social and cultural needs of all the people of Northern Ireland.
2. That any government will uphold the civil rights of all citizens of Northern Ireland without regard to the person's politics, religion or sex and will uphold the right to seek political change by normal democratic procedures.
3. That the government will uphold the right to life and security for all.
4. That the government will ensure that everyone has a right to liberty and security of person, that no one shall be subject to arbitrary arrest or detention and no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
5. That the government will uphold the principle that all persons are equal before the law and are entitled, without any discrimination, to the equal protection of the law.
6. That the government will ensure that all persons shall be treated equally before the courts and shall be tried in a public and fair manner.
7. That the government will protect the right to freedom of thought, conscience and religion.
8. That the government recognises the right of everyone to the opportunity to gain his or her living by work which he or she can freely choose or accepts and will take the appropriate steps to safeguard this right.
9. That the government recognises the right of everyone to an adequate standard of living for him/herself and their family, including adequate food, clothing, housing and to the continuous improvement of living conditions.
10. That the government endorses the United Nations General Assembly's International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights.

A Bill of Rights would elaborate and expand upon the above principles and this would make them specific to the requirements of Northern Ireland.

There would be no derogation clauses in such a Bill. The Bill could not be amended by the local administration and the British Government would be legally bound by all of its provisions. The enactment of such proposals would, the party argues, mean the repeal of all existing emergency legislation etc.

The party also proposes the establishment of a Special Supreme Court, drawn from individuals outside Northern Ireland to deal with any matters relating to the interpretation of the meaning or consequences of the Bill of Rights. It is worthy to note that its general view is that by definition a Bill of Rights is a constitutional document.

The party suggests that in the preparation of a Bill of Rights it should be possible to prepare a specific community catalogue of political, civil, social, economic and cultural rights.

2. The views of non-political organisations

The sub-committee responsible for compiling this background information is aware of at least three organisations which have publicly expressed their views on whether a Bill of Rights should be enacted for Northern Ireland. The views of other organisations are welcome. Please send them to the Committee on the Administration of Justice, C/o 224 Lisburn Road, Belfast. BT9 6GE.

(1) The Northern Ireland Civil Rights Association

The N.I.C.R.A. Bill of Rights was first put forward by the Executive Committee in April, 1975. The Bill had four main aims -

1. to guarantee the freedom for political thought and activity for all citizens in Northern Ireland.
2. to guarantee the end of repressive laws which breach common law and contravene international human rights legislation.
3. to guarantee the outlawing of discrimination against any citizen for reason of belief, religion, politics, sex, race or colour.
4. to guarantee the establishment of law enforcement agencies acceptable to the overwhelming majority of the citizens.

The introduction to the Bill also states that these guarantees must be accompanied by suitable and meaningful machinery for their implementation. The Bill is divided into three parts.

Part 1 makes the Race Relations Act (1968) applicable in Northern Ireland. It also declares that laws must be construed and applied so as not to infringe the Bill of Rights and that any existing laws infringing the Act shall be void.

Part 2 deals with fundamental rights and freedoms. A number of fundamental rights and freedoms in relation to sex equality, religious belief, culture, language and freedom of expression are set out in language similar to that used in the U.N. Declaration of Human Rights.

Section 9(i) and (ii) deal with the right of political expression and are particular to Northern Ireland. (ii) deals with the abolition of the oath of allegiance as a condition of public office or employment. Section 10 deals with the right of assembly and Section 11 establishes proportional representation as a method of election to local government, which presumably includes election to a local Northern Ireland Assembly. Elections to Westminster are not mentioned.

Section 12 establishes freedom of movement in and out of Northern Ireland. Sections 13 and 14 deal with privacy and establish procedures for arrest and fingerprinting.

Section 15 deals with post-arrest procedures and sets out various rights of access to a lawyer and the right to remain silent.

Sections 16-21 deal with trials and establish the right to trial by jury within a reasonable time.

Section 23 establishes certain rights for prisoners to obtain legal advice and to secure parole.

Part 3 deals with enforcement and recommends the establishment of a Northern Ireland Constitutional Court with five judges sitting at the same time. The Court will be available to any person aggrieved by an Act that he or she considers to be in contravention of a provision of Part 2 of the Bill of Rights.

(2) The Standing Advisory Commission on Human Rights

Extract from the response by the SACHR to a query by the (English) Labour Party (re-printed in the SACHR Annual Report for 1980-81, p.20):

"The Standing Advisory Commission on Human Rights was established under Section 20 of the Northern Ireland Constitution Act 1973. As early as May, 1975, it informed the then Secretary of State for Northern Ireland that it was studying the extent to which existing legislation provided adequate protection for human rights and whether a Bill of Rights for Northern Ireland was desirable. The results of that substantive study were published under the title 'The protection of human rights by law in Northern Ireland' (Cmd.7609) in November 1977. The Commission unanimously called for the introduction of a Bill of Rights."

The 1977 paper

By way of introduction the Commission recognises the futility of merely sloganising about the subject, i.e. using the expression "Bill of Rights" as a vague term in the way politicians often use it. The paper takes three main issues for consideration:

- (i) whether there is a need for a new measure guaranteeing fundamental rights and freedoms in Northern Ireland; if so
- (ii) what should be the nature and scope of such rights and freedoms, and
- (iii) what should be the means of enforcing such guarantees?

In Part I the paper looks at the nature and scope of rights and freedoms guaranteed in other legal systems or on an international plane. The UK is different from countries such as the USA, or countries within the Commonwealth or EEC, in that it does not have a written Constitution defining or limiting the powers of the government, nor does it have any administrative code to regulate the misuse of power by public authorities. The sovereignty of the Westminster Parliament is absolute. In countries with a written Constitution the Bill of Rights can be altered only by following special procedures.

The rights and guarantees differ from country to country, but the common characteristics of Bills of Rights are:

- (i) the rights are defined in positive and general terms,
- (ii) the Bills of Rights establish certain basic values stated as legal principles with priority over other laws and therefore protected from the outcome of elections;
- (iii) the Bills are interpreted by judges, often in constitutional courts;
- (iv) the judges therefore become more active (and possibly controversial) in deciding moral and social issues.

The Commission noted that the UK, unlike several other member states of the Council of Europe, had not made the European Convention part of its domestic legal system, so its provisions were not directly enforceable by UK courts. But it felt that UK courts did at least recognise the import and content of the Convention as a source of guidance.

In Part II the 1977 SACHR paper outlines the arguments for and against a Bill of Rights. The arguments for are:

- (i) at the moment there are inadequate legal guarantees against the abuse of power by central and local government, Parliament or public authorities;
- (ii) a Bill of Rights would remove certain fundamental values out of the reach of temporary political majorities and into the realms of courts;
- (iii) the trend towards decentralisation of powers requires greater protection for civil rights;
- (iv) a Bill would enhance the role of judges;
- (v) incorporation of the European Convention would mean that the UK was conforming with practices of other member states of the Council of Europe;
- (vi) a Bill of Rights would not hamper effective and democratic government;
- (vii) a generally worded Bill would allow it to be flexibly interpreted in line with social changes;
- (viii) a Bill would not replace but supplement more specific statutory safeguards;
- (ix) even some limited guarantees (rather than a complete Bill of Rights) would be welcome; Parliament's sovereignty need not necessarily be fettered.

The arguments against a Bill of Rights are:

- (i) it would increase the uncertainty in the law;
- (ii) it would lead to expectations not being satisfied, which would result in further distress and unrest;
- (iii) it might hamper a government in introducing progressive policies; courts would become legislators and important public issues would become matters of legal, rather than moral or political, consideration;
- (iv) the time is not appropriate since there is an insufficient degree of political consensus;
- (v) human rights are as well protected in the UK in the absence of a written Constitution;
- (vi) it would represent a fundamental departure from the existing legal tradition;
- (vii) it would not be wide enough unless (e.g.) it were extended to violations of human rights by non-governmental persons or institutions;
- (viii) it would generate unnecessary litigation;
- (ix) since existing safeguards (e.g. in the Northern Ireland Constitution Act 1973) have not been relied upon, there is no evidence that a Bill of Rights would change matters.

After publication of the 1977 paper members of the SACHR gave evidence to the House of Lords Select Committee on a Bill of Rights, whose report also endorsed, by a narrow majority, the view that a Bill of Rights should be introduced (H.L. 176, 1977-78). The Commission has held informal discussions with groups (such as the TUC) who have expressed reservations about the introduction of a Bill of Rights.

In April 1980 it organised a conference to allow discussion of the political, legal, moral and constitutional issues involved (see C.W. Campbell, ed.: Do we Need a Bill of Rights?, Maurice Temple Smith, London, 1980). In its 1980-81 Annual Report the SACHR stood over its 1977 paper: "Today the Commission's view remains the same viz. the rights and freedoms of all people living in Northern Ireland require further protection by law, that the best means of achieving this are by the introduction of a United Kingdom Bill of Rights, and this Bill should be based on the substantive provisions of the European Convention on Human Rights. But we reiterate, as we indicated in our Study Report, that there might be circumstances in which a Bill of Rights for Northern Ireland alone would be advisable". (p.21)

In its 1983 84 Annual Report the SACHR remained emphatic in its belief that the UK should incorporate the European Convention (and its First and Fourth Protocols) into domestic law. It was convinced that the organs of the Council of Europe in Strasbourg wanted this to happen as well. It hopes that when the Government enacts a new Northern Ireland (Emergency Provisions) Act it will draft the legislation in a form which shows recognition of the standards laid down by the Convention.

(3) Ulster Defence Association booklet regarding the European Convention

The Bill of Rights as proposed by the U.D.A. and the Convention for the Protection of Human Rights and Fundamental Freedoms are basically similar, in that they both provide for the following rights:-

- the right to life
- the right to liberty and security
- the right to privacy
- the right to equality
- the right to freedom of thought
- the right of expression
- the right to peaceful assembly and association

However, the U.D.A. document differs significantly in that it places fewer restrictions or exceptions on these basic rights and includes more extensions to them, e.g.:

Under the Convention, the right to life has the following exceptions:

- sentence of a court
- use of force which is no more than absolutely necessary
- in defence against unlawful violence
- to effect arrest or prevent escape
- to quell a riot or insurrection

The U.D.A. document, however, gives only one exception, i.e.

- if strictly necessary to prevent an offence endangering life

Additional rights included in the U.D.A. document are:

- the right to participate in public life
- the rights to food, housing, clothing, medical care and as far as possible education and employment
- the right to equality in employment and pay

Both documents contain provisions for suspension of any rights contained therein, but the U.D.A.'s document details the reasons and methods of suspension.

The main differences lie in the fact that the Convention was drawn up by government agencies and therefore seeks to restrict the scope of the Bill of Rights, whereas the U.D.A.'s document was drawn up by a pressure group which apparently seeks to extend the Bill of Rights as far as possible without trying to write all the legislation necessary to carry out the orderly conduct of any community.

The U.D.A. document is also more pertinent to the current situation in Northern Ireland and tends to redress the present shortcomings in the judicial process.

3. Current Laws in Northern Ireland

In trying to find out for oneself the value of a Bill of Rights for Northern Ireland, it is necessary to examine to what extent previous legislative enactments (for example the Government of Ireland Act 1920 and the Northern Ireland Constitution Act 1973) have protected human rights. Unfortunately, as in many Acts of the Westminster Parliament, the distinction between theory and practice is all too prevalent.

The Government of Ireland Act 1920 set up the 'State' of Northern Ireland. Theoretically speaking, Northern Ireland was established as a non-sectarian state in which the basic democratic rights of all were constitutionally guaranteed. The Act did seek to protect human rights, to some extent, by imposing restrictions on the exercise of governmental powers. It contained provisions prohibiting the Parliament of Northern Ireland from legislating in a number of ways. For example, the Northern Ireland Parliament could not establish, endow, prohibit or restrict any religion. However, as Boyle, Madden and Killyard say in their book "Law and State":

"The reality was otherwise. The proud promise of a 'Protestant Parliament for a Protestant people' was effectively fulfilled through the continued stranglehold of the exclusively Protestant Unionist Party in the Parliament at Stormont."

The provisions safeguarding religious equality against legislative or executive abuse were not in practice invoked by alleged victims seeking redress before the courts. Why?

Many reasons have been proffered but the essential reason seems to be that those who suffered discrimination (i.e. Roman Catholics) either refused to recognise the legitimacy of Northern Ireland courts or continued to distrust the whole legal system as the "puppet of the unionists".

The courts, in the few cases taken against the Northern Ireland Parliament, seemed loathe to go against it. Law and lawyers, it is suggested failed to investigate and remedy the grievances of the minority community. However, the specific guarantees against discriminatory legislation in the 1920 Act could well have formed the basis of a challenge to the validity of discriminatory administrative decisions made under Northern Ireland statutes, for instance in the field of housing allocation. But confidence that these guarantees would be enforced by the courts seems to have been minimal.

Turning to the Northern Ireland Constitution Act 1973, the question remains the same - to what extent does it protect human rights? It obviously does not contain a comprehensive Bill of Rights, its legal safeguards for human rights (contained in Part III of the Act) being confined to the prevention of religious and political discrimination in the use of the Assembly's law making powers and in the exercise of executive powers by governmental departments, local authorities and public bodies.

Even these provisions are limited in the sense that the Act provides that if the above are carried out for the purpose of protecting public order, they are not discriminatory.

There have been very few cases concerning Part III of the 1973 Act. Many hold that it is due to the present civil disturbances that the legal safeguards for human rights under the 1973 Act are seriously undermined. This problem would seem to affect the various legislative reforms affecting human rights introduced in Northern Ireland since 1969. Examples of these are the formation of the Fair Employment Agency, the Police Complaints Board and the Standing Advisory Commission on Human Rights. These have been set up by various Acts or Orders of the Westminster Parliament.

The C.A.J. must ask itself whether this legislation is sufficient to protect human rights in the North. The Standing Advisory Commission on Human Rights, in its Study Paper in 1977, had no doubts that at that time it was not, but they equally had no hesitancy in identifying the reason:

"As a body of law it is impressive and should not be underrated. But the blunt fact is that what might have succeeded at another time or in different circumstances has not been sufficient to change a situation where violence has become a way of life for some and a perpetual terror for others."

We must ask ourselves today whether, if the legislation is insufficient, it is due to continuing violence or to some inherent inadequacies both in legislators and legislation? Because if a Bill of Rights is to be a viable option, it must overcome any such inadequacies to be sufficient to protect human rights in Northern Ireland.

The legal provisions:

Government of Ireland Act, 1920 S.5 :

5. - (1) In the exercise of its power to make law under this Act.....the Parliament of Northern Ireland shall not make a law so as either directly or indirectly to establish or endow any religion, or prohibit or restrict the free exercise thereof.....

Northern Ireland Constitution Act, 1973, Part III :

S.17 - (1) Any Measure, any Act of the Parliament of Northern Ireland and any relevant subordinate instrument shall, to the extent that it discriminates against any person or class of persons on the ground of religious belief or political opinion, be void.

Under S.19 (1) it is unlawful for a public authority ".....to discriminate, or aid, induce or incite another to discriminate, in the discharge of functions relating to Northern Ireland against any person or class of persons on the ground of religious belief or political opinion."

S.23 - (3) No Measure, Act of the Parliament of Northern Ireland or other instrument and no act done by any person shall be treated for the purposes of this Act as discriminating if the instrument has the effect or, as the case may be, the act is done for the purpose, of safeguarding national security or protecting public safety or public order.

4. Solutions adopted in other countries

(1) The Canadian Charter of Rights and Freedoms 1982

The Charter came into force for the whole of Canada on 17th April 1982. It replaced the earlier Bill of Rights of 1960, but the Charter contains a more detailed list of rights and it can be amended only by special Parliamentary procedures.

According to Section 2, everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression....,
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Sections 3-6 are concerned with electoral and mobility rights.

Sections 7-14 are entitled "legal rights" and include the following provisions:

11. Any person charged with an offence has the right:

- (b) to be tried within a reasonable time;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;
- (f) ...to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or more severe punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

One-third of the Canadian population is French speaking and there is a strong separatist movement in Quebec. Section 15 of the Charter caters for minority interests by providing that:

Equality Rights

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Note that section 15(2) allows for positive discrimination.

Sections 16-23 deal with language and educational rights.

Restrictions on rights. Section 1 of the Charter says that the Charter guarantees rights and freedoms 'subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'. And by Section 33 any Parliament in Canada may expressly declare in an Act that that Act's provisions are to operate (for periods of up to five years at a time) notwithstanding Sections 2 or 7-15 of the Charter.

Enforcement of the Charter: By Section 24(1) it is the ordinary judges who have the final say as to the Charter's applicability. The effect of their decisions can be altered only if the Charter itself is amended. If the Charter is infringed the judges may give "such remedy as the Court considers appropriate and just in the circumstances".

(2) The English and French Bills of Rights

In 1689 Parliament presented to King William III and Queen Mary a declaration that became known as the Bill of Rights. This settled the succession to the throne and limited the powers of the monarch in such matters as taxation and keeping up a standing army. But otherwise the document contains nothing much more than rhetoric. It places restraints on the royal prerogative (now mostly vested in the government of the day), but does not qualify the sovereignty of Parliament.

The modern movement for a Bill of Rights in England really dates from the publication in 1974 of a series of lectures by Lord Scarman entitled "English Law-The New Dimension". This led to the Labour Government issuing a discussion paper in 1976 analysing the issues involved. In 1981 a Bill of Rights Bill was successfully manoeuvred through the House of Lords by Lord Wade; it reached its second reading stage in the House of Commons on 2th May, 1981 but the Government did not back it and the debate was adjourned without a vote being taken. Further all-party discussions have not yet taken place. Lord Scarman has recently tried to introduce another Bill into the House of Lords along the same lines and he has been spearheading a campaign by the Constitutional Reform Centre for incorporation of the European Convention into domestic law.

The French adopted the Declaration of the Rights of Man and of the Citizen in 1789. This attempted to put flesh on the bones of the revolutionary war-cry of "liberty, equality, fraternity". The Declaration guarantees religious freedom, freedom of speech and of the press and personal security. It is referred to in the Preamble to the 1958 Constitution of the present Fifth Republic, which gives it some status as a source of law and allows it to affect the way in which ordinary statutes are interpreted.

(3) The Bill of Rights in the United States of America

The Constitution adopted in 1789 contained few personal guarantees. Some states refused to ratify it without a specific Bill of Rights. James Madison led in the adoption of ten amendments that became known as the Bill of Rights, even though only the first eight amendments guarantee specific rights and freedoms. The Bill came into effect on 15th December, 1791. This day is celebrated as Bill of Rights Day. The Supreme Court has held that under Amendment 14 the Bill of Rights also applied to State Governments.

The first eight amendments to the Constitution contain the fundamental rights and freedoms of every citizen. Amendments 9 and 10 forbid Congress from adopting laws that would violate these rights. But the Supreme Court of the United States has held that these rights have some limits. For example, freedom of speech does not protect a person who shouts "Fire" in a crowded theatre when there is no fire. Yet the Government must respect these freedoms in all but extreme circumstances. The Supreme Court has held that freedom of speech may be limited only when its exercise creates a "clear and present danger" to society.

Each State Constitution contains a Bill of Rights or a Declaration of Rights. It guarantees the fundamental rights listed in the United States Constitution. Some State Bills of Rights are more detailed than the federal Bill of Rights. Virginia adopted the first State Bill of Rights as part of its constitution in 1776.

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 2

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Amendment 3

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

Amendment 4

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

Amendment 7

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Amendment 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

5. The international protection of human rights

(1) The European Convention on Human Rights

1. The European Convention on Human Rights was drawn up by the Council of Europe (not by the EEC) in 1950. Cases alleging that the Convention has been breached are considered first by the European Commission on Human Rights. If that Commission decides that the case is "admissible" it will then usually be considered by the European Court of Human Rights. Both of these bodies sit at Strasbourg in France. The Commission is staffed by 21 Commissioners and the Court by 21 judges -- one from each member state of the Council of Europe. The Commissioners and judges are not always judges in their own countries. It is not uncommon for cases to be settled before they reach the European Court. This happened in the Farrell case (1984), which cannot therefore stand as a precedent for any future case.
2. The UK ratified the Convention in 1953, which meant that from then on the Convention was binding on the UK in international law. Any other state on which the Convention is binding can take a case against the UK if it believes that the UK has laws or procedures which are in breach of the Convention. This is what Ireland did in 1976 when it complained that the use of the so-called five techniques by the security forces in Northern Ireland (wall standing, hooding, subjection to noise, restricted diet and deprivation of sleep) was contrary to Art. 3 of the Convention ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment"). The ultimate decision was that the five techniques amounted to inhuman or degrading treatment, but not to torture.
3. Since 1965 the UK has been one of the states which allows its own citizens to take cases against it in Europe, though this right has been granted for only five years at a time, not permanently. Before any citizen can bring such a case the Convention says that he or she must first exhaust all remedies available in the UK courts. This is what Mr. Malone had to do in 1982 when he alleged that the police had unlawfully tapped his telephone: all the UK courts denied him any relief (even the House of Lords) and he succeeded only when he took the case one step further into Europe: the 'phone-tapping was held to contravene Art. 8(1) of the Convention ("Everyone has the right to respect for his private and family life, his home and his correspondence.")
4. Other rights and freedoms protected by the Convention include the rights to life, liberty, security of person, freedom of expression and freedom of peaceful assembly. The protection is sometimes qualified in that a state may interfere with the rights in order (for example) to preserve national security or public safety. Moreover under Art. 15 a state may, in time of war or other public emergency threatening the life of the nation, take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation. The UK issued notices of derogation in the respect of the Northern Ireland (Emergency Provisions) Act 1978, but it withdrew these in August 1984, claiming that the law in Northern Ireland is no longer inconsistent with the European Convention.
5. More cases have been taken against the UK under the Convention than against any other state. About 800 provisional UK files are opened each year. No other state has had so many cases (80) declared admissible by the Commission, nor lost so many before the Court. Over 30,000 applications have been sent to Strasbourg since 1955, about 400 have been declared admissible and over 80 judgments delivered by the European Court. One reason why people do not obtain adequate relief in UK courts is that these courts are not themselves bound by the Convention: the Convention is not part of the UK's national law. If it were, as it is in several European countries, then people such as Mr. Malone could take a case even in a magistrates court in the UK and successfully argue that the UK law on 'phone-tapping is not to be applied because it contravenes the Convention. The way to make the Convention part of UK national law is to have it included in an Act of the UK Parliament.

Sample Case

As an illustration of how the European Convention works, we set out below a synopsis of a recent case. It is one which the applicant in fact lost.

Stewart v- United Kingdom

A Decision of the European Commission of Human Rights, Oct. 1984

The facts:

In October 1976 Brian Stewart, aged 13, died after being struck on the head by a plastic bullet fired by a British soldier serving in Northern Ireland. At a coroner's inquest held 14 months later, in December 1977, an open verdict was returned. In May 1979 the County Court Judge for Belfast rejected a claim by Brian's mother, Mrs. Kathleen Stewart, alleging negligence and assault against the Ministry of Defence. The Judge found that there had been a riot in progress, that the lives of the army patrol were in peril and that the firing of the baton rounds was justified in the circumstances. Mrs. Stewart appealed to the High Court in Belfast but in March 1982 her appeal was dismissed: the Judge held that the firing of the plastic bullet was reasonable for the prevention of crime in accordance with section 3(1) of the Criminal Law Act (NI) 1967.

The claim:

In August 1982 Mrs. Stewart applied to the European Commission of Human Rights for a decision that under the European Convention on Human Rights she had an admissible case against the UK Government. She was represented by Barbara Cohen (of the National Council for Civil Liberties in London) and by Lord Gifford QC. The claim was based on Articles 2, 3 and 14 of the European Convention:

under Art.2 ("Everyone's right to life shall be protected by law...")

- the widespread use of plastic bullets as a method of crowd control infringed this right;
- the right is infringed even when a person is killed unintentionally,
- in the circumstances of this case the force used was more than was absolutely necessary to defend the army patrol or to quell a riot;
- in the circumstances of this case there was no riot at the time.

under Art.3 ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment")

- Brian Stewart was subjected to inhuman treatment or punishment.

under Art.14 ("The enjoyment of the rights in this Convention shall be secured without discrimination...")

- plastic bullets have been used wholly or predominantly against Roman Catholics or people with republican opinions.

The defence:

The UK Government denied all the claims just mentioned and also alleged that Mrs. Stewart had no right to bring a case in Europe because she had not first exhausted the remedies available to her in Northern Ireland: in particular she had not adduced any evidence in the Northern Irish courts to show a failure on the Government's part to provide means of quelling a disorderly crowd apart from the use of plastic bullets.

The decision:

Mrs. Stewart's application was held to be inadmissible, i.e. she lost. The reasons given were these:

- Mrs. Stewart had exhausted her remedies in Northern Ireland, but the point at issue here was not the use of plastic bullets in general but their use in this particular case;
- Art.2 does cover unintentional killings, but in this case the force used was no more than absolutely necessary,
- this meant that Art.3 was not breached;
- there was no evidence to support a breach of Art.14

Extracts from the European Convention

Article 2

(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary -

- a. in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained,
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a. the lawful detention of a person after conviction by a competent court;
- b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so,
- d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority,
- e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights:-

- a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him,
- b. to have adequate time and facilities for the preparation of his defence;
- c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him,
- e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9

(1) Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15

(1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4(1) and 7 shall be made under this provision.

(3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 57

On receipt from the Secretary-General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of this Convention.

(2) The role of the United Nations

The European Convention on Human Rights and Fundamental Freedoms came into force in 1951. There is also a European Social Charter which deals with economic, social and cultural rights. The American Convention on Human Rights came into force in 1978; it now binds over a dozen Latin American countries, but not as yet the USA.

As regards the role of the United Nations in protecting human rights, the following has been written by Paul Sieghart (of the organisations Justice and Amnesty International):

"Until 1948, the principle of national sovereignty was paramount. How a state treated its own citizens was, as a matter of international law, its own exclusive concern. If the sovereign German nation wished, through domestic laws enacted by its constitutionally elected legislative assembly, to discriminate against its Jewish citizens, that was its sovereign right. No one outside Germany had any legal standing to complain, let alone intervene.

The first major step away from that position came with the United Nations' Universal Declaration of Human Rights, adopted by the world's nations in 1948 without any adverse votes (but the USSR, Czechoslovakia, Poland, Saudi Arabia, South Africa and Yugoslavia, abstaining). That Declaration set out, in unqualified terms, a catalogue of "human rights" - that is, rights inalienably vested in all human beings as against the public authorities of their states.

The status of the Universal Declaration is now disputed. It is common ground that it was not intended, at the time it was adopted, to have the effect of international law, but merely to set standards for national legislatures. However, since then it has been confirmed at an inter-governmental conference at Teheran in 1968, and approved in several other ways over thirty years. Some lawyers therefore argue that it now has the status of customary international law. Others disagree. Fortunately, for many of the world's countries, the question is today academic.

Realising that the Universal Declaration was only a first step, the UN set about converting its content into formal and binding international conventions, which would have the status of international law and be precisely enough worded for legal purposes. The negotiations and the drafting took the best part of 20 years. In 1966, two international conventions of human rights were finally completed and signed: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

Each of these provided that it should come into force when it had been ratified by not less than 35 nations. That process took another 10 years, and the Covenants entered into force in 1976 following the deposit (by Czechoslovakia) of the 35th instrument of ratification. Since then, other countries have acceded to them: the total roll-call today is over 60.

The coming into force of these international instruments has a profound effect. For the first time in human history, the rights of individuals against the public authorities of their states are no longer a matter of opinion and morality (which may differ between people of different religious, philosophical and political persuasions), but a matter of law, and therefore a matter of objective construction and interpretation by lawyers skilled in that art.

Moreover - again, for the first time in human history - those rights are now a matter of legitimate international concern. Everyone today has a

legal standing to complain of infringements of the human rights of individuals by states which are bound by any of the conventions (and here again some lawyers argue that even a state which has neither signed, nor ratified, nor acceded to any of them is still bound by them as representing customary international law).

How such complaints can be made good is another question. In some countries, international conventions are "self-executing" in the sense that they automatically become part of domestic law. Others have "domesticated" them by a legislative act which makes them part of domestic law. (So far, the UK has not, which is one of the issues in the current debate about a Bill of Rights). Where that is the case, convention points can of course be taken in the domestic courts.

The two regional conventions - the European and American ones - have their own supranational system of adjudication, in the form of a Commission and a Court, before whom complaints can be presented, either by another state party to the convention or, where an Optional Protocol is in force for the state concerned, by individual citizens of that state. (The UK has been sued by some of its citizens, sometimes successfully, in the European Commission and/or Court of Human Rights at Strasbourg, and has already had to change some of its laws and administrative arrangements as a result.)

Under the International Covenant on Civil and Political Rights, there is a UN Commission on Human Rights. One of its functions is to study periodically human rights reports from the state parties, or the measures they have adopted to implement the covenant, a process which it has already pursued with some enthusiasm in the few years that it has been functioning. It also has power to receive complaints from state parties that have recognised this possibility (so far 10) and from individuals where an Optional Protocol is in force (so far 27, but not the UK), but its powers of adjudication are more limited than under the two regional conventions.

(3) Outline of international efforts to protect minorities since 1945

This section addresses the question of whether a Bill of Rights of Minority Groups, as opposed to a Bill of Rights for Individuals, would be either feasible or valuable. It is based on a report (No.41) by the Minority Rights Group, a London based human rights group which has published reports on many minority problems world-wide.

During the period since 1945 the international consensus has been to see the solution of minority problems in terms of integration into pluralist or multi-racial societies, rather than separation by secession or self-determination. UN members have been reluctant or unwilling to intervene on behalf of minorities, unless they could be seen as subjects of colonial rule or apartheid. Many developing nations, after gaining independence from their colonial rulers, inherited arbitrary and unnatural boundaries. The result has been that many ethnic groups straddle national boundaries thus leading to tensions and governmental pressures. Since World War II the imperatives of 'nation building' have come to take priority over minority rights and UN intervention to ensure self-determination has been largely eliminated as a result.

What international instruments for protection of human rights have been broadly aimed at since 1945 is that all persons, regardless of category, should be granted common rights and freedoms and that non-discrimination should be a principle governing the whole society. This approach becomes clear if we look at the relevant international agreements:

UN CHARTER (1945): Does not speak of minorities, save an oblique reference in Article 55 to the equalities of rights of 'peoples'. Its human rights provisions rest on the controlling principle of non-discrimination invoked in the Universal Declaration of Human Rights (1948).

EUROPEAN CONVENTION ON HUMAN RIGHTS (1950): Makes no express provision for minorities, apart from Article 14 which applies the principle of non-discrimination to them.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1969): Prohibits discrimination on the grounds of race, colour, descent or national/ethnic origin against "persons, groups of persons or institutions".

UN COVENANT ON CIVIL AND POLITICAL RIGHTS (1976): In addition to the principle of non-discrimination, this contains an explicit provision for minorities in Article 27. The article refers to the freedom of a minority to provide its own culture, use its own language and profess its own religion. However, these provisions are directed at individuals and not minorities as collective units.

The Capotorti Report

In 1947 a sub-commission of the UN Commission on Human Rights was established with the following terms of reference "to examine and define the principles of non-discrimination and the protection of minorities and to make recommendations on urgent problems."

In 1971 Francesco Capotorti was appointed by the sub-commission to produce a report on the implementation of Article 27 of the Covenant on Civil and

Political Rights. Submitted in 1977, with comments from governments, his report was a comprehensive study of the international protection of minorities. Its recommendations are modest. The report urges bilateral agreements between states with a common minority problem but with due regard to sovereignty and non-interference in internal affairs.

In August 1977 the UN Commission adopted the conclusions and recommendations of the report and proposed that the UN Human Rights Commission draft a declaration of minority rights within the context of Article 27 of the Covenant. The Commission established a working group, a Yugoslav draft declaration being taken as a starting point. The proposal appears to be still under consideration.

A draft International Convention on the Protection of National or Ethnic Groups or Minorities

The Minority Rights Group in 1979 submitted a draft convention to the UN Commission for their consideration. It was prepared by Dr. Felix Ermacora.

The following are extracts relevant to the discussion:

A minority group within a State which is party to the Convention would have to apply for legal recognition as a minority to the State and/or UN.

A Bill of Rights would then recognise the minority's

- right to cultural, economic, linguistic and religious freedoms;
- right to participate in the processes and decisions of government and the judiciary;
- right to an equitable share of public funds,

and it would:

- establish a principle of non-discrimination and require a state to take positive action to ensure it,
- incorporate into itself the individual liberties guaranteed in existing Human Rights Conventions;
- provide some means of outside mediation and/or arbitration in the case of an alleged violation of the Convention.

PART TWO

PROCEEDINGS OF THE RE-CONVENED CONFERENCE

(23rd February, 1985)

At this one-day Conference the CAJ considered the four papers which are reprinted as the first four sections of this part of the pamphlet. After some discussion on that day, the organisation decided to support as a minimum the idea of incorporating the European Convention on Human Rights into domestic law. But this by itself was declared to be insufficient. It was felt that in several respects the European Convention was inadequate. The sub-committee which organised the conference later produced a short paper identifying particular defects in the European Convention (see Section 5 below) and was given the task of calling one more conference in June, 1985 based on that paper. It is hoped that the June conference will lead in the near future to the publication by the CAJ of a definite programme of recommended action in furtherance of the protection of individual and minority rights for all residents in Northern Ireland.

1. A Bill of Rights for Northern Ireland

The notion of a Bill of Rights has been around in Northern Ireland for some years now. Periodically, when some group hold a Conference as we are doing today, it manages to grab a small headline in the newspapers before sinking back below the political surface. Like justice and truth and fair play, everyone is in favour of it - without ever specifying exactly what they are in favour of. In fact, there is a certain reluctance to develop beyond the mere phrase "A Bill of Rights" for fear that perhaps we may not be just as much in favour of it as we imagined. Valuable ideas and platitudes pose no threat to the existing order and, with the exception of groups like N.I.C.K.A., the N.U.P.R.C. and the Ulster Citizens Civil Liberties Group, the Bill of Rights has been little more than an idea worthy of support. Every political party is nominally in favour of reducing unemployment but the policies to achieve it vary considerably. Thus it is with the Bill of Rights. Not only would the contents of a Bill of Rights vary between the political parties (assuming that they got down to specifying the contents) but belief in the efficiency of a Bill of Rights varies considerably depending on one's general outlook on civil liberties.

In a paper prepared for the Bill of Rights group within the CAJ, Donall Murphy provided some useful general thoughts on the whole question of a Bill of Rights. In his paper on the American Bill of Rights he says that "the Bill of Rights was the limitation on the absolute power of Government and was an explicit definition of the limitation imposed. It protected certain areas of human behaviour from Government interference - even if such interference is sanctioned by a majority consent of those governed".

The key concept is the notion that the Bill of Rights can limit the absolute power of Government. In other words, there would be certain rights which would be guaranteed and protected regardless of the wishes of the majority. Would this be an important innovation in Northern Ireland or would it be an innovation at all? After all, there are, I understand, articles within the Northern Ireland Constitution Act 1973 which guarantee certain fundamental rights - how effective are they? I think the answer to both these questions depends very much on the nature of the Bill of Rights which is enacted and the machinery that is established to ensure its implementation.

In his paper on the Canadian Bill of Rights, Brice Dickson draws attention to the fact that every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe any of the rights or freedoms of the Bill of Rights. For a Bill of Rights in Northern Ireland to be effective, it would, I believe, have to have a similar standing. This would of course render all existing emergency legislation invalid and would make it unconstitutional (if that is the correct word) to initiate such legislation in the future. We then come to two other thorny problems. Who should have power to amend the Bill of Rights and should the Government have the power to derogate from the Bill in times of emergency? These are points which we are going to debate today and I would like to put forward the opinion that if a local administration i.e. a Stormont Government had power to either amend or derogate, the Bill of Rights would be dismissed by many people as mere window-dressing and no more effective than the 'guarantees' already contained in the 1973 Constitution Act or the 1920 Government of Ireland Act. The whole question of what powers the Westminster Parliament should have over a Bill of Rights enacted for Northern Ireland also needs to be looked at and debated. Some would argue that since it is extremely unusual to introduce constitutional guarantees of fundamental rights in only one part of a country's territory, Westminster should introduce a Bill of Rights for the entire U.K. Others would claim that since the greatest

violations of human rights have occurred in Northern Ireland, the Westminster Government has a responsibility to legislate specifically for this separate area.

We must also look carefully at the question of implementation of a Bill of Rights. If a Bill of Rights was agreed for Northern Ireland, it would obviously have to be enacted and interpreted. This role would be assigned to the courts of Northern Ireland, or would it? Many would argue that the past record of the courts and the judiciary in Northern Ireland make them unsuitable as interpreters or enforcers of human rights. What is required is a new Supreme Court or Human Rights Court with specific responsibility to oversee the Bill of Rights. If such a Court was established we have to ask ourselves how would it be composed and how would it function? What powers would it have to punish violations of a Bill of Rights and what compensation could it offer to those whose rights had been violated? In my opinion the answers to these questions are vital if we are to have meaningful discussion about a Bill of Rights. (Victor Feather, in his introduction to the Standing Advisory Commission's 1977 document on a Bill of Rights, has stated: "Safeguards for the rights and liberties of the citizen are illusory if they do not satisfy reasonable expectations and reflect a popular determination that such safeguards will be upheld").

So far I have not touched on the question of what a Bill of Rights should contain, which is the first on the list of questions which we posted out with the invitations to this Conference. It would be impracticable to list the contents of a Bill of Rights in an introductory talk like this but I think we can sketch out areas of human rights which would need to be included and where very specific guarantees should be laid down. For example, a Bill of Rights should in my opinion contain a section on legal rights which would be very specific about arrest procedures, right to a fair trial, right to bail etc. This is an area within which there have been complaints of abuse of human rights down the years and where a codification of rights could be most beneficial. Likewise, although we have the Fair Employment Act, the Bill of Rights should contain a specific section dealing with Equality Rights similar to that in the Canadian Charter of Rights and Freedoms 1982. If we decide that Northern Ireland should have a Bill of Rights our next task should be to look at various Bills of Rights from other countries and the ones that have been put forward already in Northern Ireland and attempt for ourselves to sketch out the areas that need to be covered. The background paper on the European Convention prepared by Brice Dickson could be a suitable starting point for such a discussion. Are these the important areas we wish to see covered and do we want to be more specific in any of these areas?

A glance through the papers on what the various political parties have to say about a Bill of Rights reveals them all to be basically in favour of such a measure. Some of them, for example the Workers' Party and the Alliance Party, are obviously more committed than others. The Official Unionist Party, is firmly of the opinion that derogations are necessary within the particular circumstances of Northern Ireland whilst the D.U.P., although favouring a Bill of Rights for the whole of the U.K., would be prepared to accept a proposal for a Northern Ireland Bill of Rights. The S.D.L.P. supports the concept of a Bill of Rights but, because of the absence of political consensus, feels that a bill of Rights could not be enforced. N.I.C.R.A., the N.U.P.R.G. and the Ulster Citizens Civil Liberties Centre have all produced Bills of Rights and can be said to be in broad agreement on the need for a Bill and their documents show similarities in content. We have here, I believe a reasonable starting point for discussion on the Bill of Rights. As the discussion proceeds and we begin to answer the questions I raised earlier, many points of difference may arise. That I think will at least move the debate forward because it is foolish to go on

stating that we are all in favour of a Bill of Rights without having some clear idea about what we mean by it. The Standing Advisory Commission warned in 1977 of the futility of sloganising on the subject of a Bill of Rights, but unfortunately, because of a lack of debate and dissemination of ideas on what we mean by a Bill of Rights, little more than sloganising has occurred since. Only last week for example, John Taylor called for a Bill of Rights as part of a settlement in Northern Ireland. Very good, but would John Taylor favour the scrapping of emergency legislation? Would his Bill of Rights envisage such? The C.A.J. can play a useful and important role by initiating reasoned, well informed debate on the subject and, when we have reached our own conclusions on the desirability or otherwise of a Bill of Rights, by campaigning on the issue in the same way as we have on other issues - pamphlets / talks / meetings with government officials and political parties / conferences etc. Such debate over quite a long period will be necessary in my opinion in order to create a climate in which the introduction of a Bill of Rights will be an expression of consensus among a broad section of the community and not either a piece of soon-to-be-forgotten legislation or a stick with which one section of the community hopes it can beat the other.

The Bill of Rights should be a piece of legislation which will enable us to reach "new possibilities of life and society" that Donall Murphy referred to in his paper.

KEVIN SMYTH

(In the discussion which followed Kevin's paper, it was felt that the C.A.J. should help to create the climate for public support for a Bill of Rights NOW. There was a need for education at all levels - among school children, community groups, political parties, even lawyers. The idea of not giving the task of enforcing a Bill of Rights to the ordinary courts in Northern Ireland was strongly supported, as was the need for any derogations from the Bill to be specific, short-term and well backed by sound reasons.)

2. Using bilateral or United Nations treaties to protect group rights

This was a two-part talk. In part one Dominic Gates spoke to the paper printed earlier in this pamphlet at pages 28-29. The thrust of his argument was that existing treaties, whether concluded between particular states or "handed down" by an international organisation like the United Nations, did not go far enough in providing protection for the rights of minorities. The European Convention did not deal specifically with minority rights because at the time it was drafted many of the member states of the Council of Europe had their own troublesome minorities and they found it easier to reach agreement on individual rights rather than to settle their differences over specific groups. As a result the emphasis in nearly every recent treaty has been on guaranteeing individual rights and freedoms and on encouraging governments to adopt policies aimed at eliminating all forms of discrimination against individuals.

Dominic considered the Minority Rights Group's draft international convention on the protection of national or ethnic groups (see page 29 above). He argued that to require minorities in Northern Ireland to apply for official recognition as such would result in institutionalising divisions in our society and thus be counter-productive. He felt that there ought to be a separate domestic Bill of Rights for minorities, a Bill (or Declaration) which would seek to protect the cultural heritage of minorities and their right to participate in the government and in the judiciary. The establishment of such a principle of non-discrimination, and the taking of positive steps to ensure it, would require a considerable degree of political agreement, which would not be easy to achieve. The Bill for minorities would have to extend beyond the religious divide so that it protected as well groups such as homosexuals, Chinese, the handicapped etc.

In part two Tom Madden looked at minorities mainly from a geo-political point of view. He first of all noted that minority rights was already a legally recognised concept (particularly in company law), though obviously there was considerable room for discussing which particular rights and which particular minorities should qualify for protection. On an international level, there was already a significant degree of consensus that in the case of adjacent states which were in dispute over the drawing of a boundary there should be a right of self-determination vested in the people living in the disputed area. This right has been recognised since at least the days of the League of Nations following World War One and has operated in Africa and Asia in the drawing of boundaries between countries which have been de-colonialised.

Once a border has been fixed it is necessary to protect the rights of those people who find themselves in a minority on the wrong side of the border. This could be achieved by the adjacent states entering into a treaty, which would need to embody effective enforcement powers. The treaty would deal with the practical considerations normal in such a situation or peculiar to the particular situation. The rights which would require special attention in a Northern Ireland context would include those relating to education, employment, enjoyment of a cultural heritage, use of languages and the practice of religion.

(In the discussion which followed this two part talk the question was raised as to what would happen if a minority did not accept its position as such. The response was that the so-called minority would, through time, not require to be considered separately from the so-called majority

because the resolution of political differences through the bilateral treaty would lead individuals to work together for an overall higher standard of life for everyone. The example of Upper Silesia was given to show that bilateral treaties (in this case between Germany and Poland) could be effective in such a manner.

There was also some questioning of what exactly was meant by "a right to self-determination", i.e. who would have this right, how often could it be exercised, etc.? Would recognition of this right not re-enforce the "two nations" caricature of Northern Ireland, and if the present minority eventually became a majority, would the right to self-determination remain vested in the group which would then find itself in the minority? It was argued that such problems would need to be resolved when the bilateral treaty itself was being drafted. This would apply also to the question of the precise status of the treaty vis-a-vis the ordinary domestic law of Northern Ireland.)

3. Why the European Convention should be incorporated into domestic law

Brice Dickson spoke to the paper summarised above on page 20. He clarified what it would mean to have the European Convention incorporated into domestic law:

- (i) it would enable cases to be brought and resolved more quickly (and therefore more cheaply),
- (ii) it would bring into the corpus of Northern Irish law all the decisions already handed down by the European Commission and the European Court (even in cases not directly concerned with Northern Ireland);
- (iii) it would not require entrenchment (i.e. made more difficult to amend or repeal) because the European organs would remain as the final arbiters of our law's compliance with the European Convention;
- (iv) it would not prevent our law from providing a greater degree of protection in certain areas than that provided by the Convention.

He felt that the European Convention was worth supporting as a basic minimum. It had flaws (see the Stewart case page 21 above) but the advantages to be gained out of adopting an existing and internationally well-respected body of law were not to be underestimated. The time was now ripe for capitalising upon the publicity given to the Convention's attractiveness in the light of the U.K. Government's bad record in defending cases brought against it under the Convention. As regards the protection of minority rights Article 14 of the Convention already provides protection against discrimination "on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

(During the ensuing discussion the point was made that incorporation might be a futile gesture because the Government could subsequently go against the Convention either by using the power of derogation (in Article 15) or by enacting an amending or repealing statute. The answer to this is that the power of derogation would exist whether or not the Convention were to be incorporated and any later amending statute would itself have to comply with the Convention as interpreted by the European organs. It did remain unclear, however, whether incorporation of the Convention would have the effect of automatically making void such existing laws as demonstrably contravened the Convention's terms. It was also a matter of debate whether the ordinary judges in Northern Ireland should be entrusted with the task of deciding cases alleging a breach of the Convention. In any event the European organs would remain as an ultimate "court of appeal" for such cases; the commissioners and judges were from each of the 21 member states of the Council of Europe and could therefore be expected to be more impartial than judges based in Northern Ireland.)

4. The case against a Bill of Rights

Donall Murphy - to some extent playing the devil's advocate - presented a paper outlining arguments against the European Convention in particular and Bills of Rights in general. He pointed out that whilst the Convention appeared to guarantee absolute protection of some rights - it in fact surrounded them with so many exceptions and reservations that the individual was much less secure than he or she might suppose. For instance Article 2 was so strongly qualified that rather than protect the right to life it might in fact justify a shoot-to-kill policy on the part of the security forces. (Contrast the American Bill of Rights : pages 18-19 above) There was also some distrust of the judiciary in Northern Ireland and a widespread feeling in the community that incorporation of the European Convention would not by itself go very far in changing the attitudes of people. If the Convention were made part of our domestic law the judges here would be called upon to make many more socially and politically sensitive decisions. Is it right (or fair) to impose this task on them?

Incorporation might however be valuable as one part of a larger political and legal settlement of the Northern Ireland problem. The lesson to be learned from the current legal position (see pages 14-15 above) was that merely having a law on the statute book was insufficient to ensure its effectiveness : there had as well to be a general will to make the legislation really work. There needed indeed to be a proper degree of confidence in the impartiality of the workings of the legal system as a whole.

Donall also wondered if the C.A.J. was not in danger of supporting the idea of a Bill of Rights without giving proper consideration to alternative ways forward. A Bill of Rights might turn out to be a short-term expedient rather than a long-term solution. He felt that the onus of proof lay on those who sought endorsement of the idea of a Bill of Rights. They had to show from facts and not just opinions that the existing legal system was deficient, that a Bill of Rights would be the best way of remedying the defects and that a Bill of Rights would not itself create even greater defects. Changing the legal system merely for change's sake was not in itself the most persuasive method of gaining support from any right thinking community or group. Any changes might even play into the hands of extremists and fanatics.

Is it the law which is to blame for Northern Ireland's problems? Is man's inhumanity to man going to be cured by the enactment of a Bill of Rights? Are politicians and paramilitaries merely using the notion of a Bill of Rights as something which is in vogue, with no evidence that it will be anything like an immediate panacea? If we were to incorporate the Ten Commandments or the Sermon on the Mount into our domestic law would that by itself alter the attitudes of people to one another in Northern Ireland. It certainly would not resolve the perpetual economic problem of how to bridge the social chasm between "the haves" and "the have nots". Maybe it is the social inequalities in our society which need to be resolved more urgently than the defects which those in favour of introducing a Bill of Rights would seek to remedy. Maybe it is because the law takes itself so seriously, and because lawyers and judges so earnestly believe in their own importance, that we are urged to the conclusion that the breakdown in our society has as its root cause a defect in the legal system. The root cause probably lies within ourselves and not within the law. At the moment there is only a small degree of general consensus in our society, as to how, or by whom, we should be governed, while this is so it remains doubtful whether a Bill of Rights, however well conceived, could contribute to a resolution of the constitutional problem.

(In a general discussion at the Conference, the view was put forward that the whole Bill of Rights issue was irrelevant unless and until a political solution for the province was found. But it was agreed that whether or not such a view was correct there was still considerable scope for the C.A.J. and others to engage in educational work on the issue. There needed to be a heightened awareness of the issue at all levels of society - debates ought to be promoted, essay writing competitions organised, politicians and persons of influence lobbied, etc. It might be wise to set up a proper body such as a Human Rights Agency to which individuals could have direct access to ascertain whether or not their human rights had been violated. The members of such an agency could even take over the role of judges when deciding such matters. The existing Standing Advisory Commission on Human Rights might be interested in campaigning for such a remit.)

5. Respects in which incorporation of the European Convention would not be enough to satisfy C.A.J. concerns

- (1) There are some important rights which the Convention does not protect at all:
 - social, economic and cultural rights (these are catered for in the draft 8th Protocol, which the UK will probably not ratify);
 - group rights, i.e. individual rights which a group may wish to have protected, as well as rights which are special to groups;
 - rights listed in Protocols to the Convention which the UK has not yet ratified (e.g. liberty of movement within a state, or compensation for miscarriages of justice);
 - specific legal rights, such as trial by jury for serious offences or immediate access to a legal adviser.
- (2) The protection granted by the Convention to some rights is not clear enough, i.e. many phrases in the Convention are ambiguous (e.g. does the right to life in Article 2 protect unborn children? what are "civil rights and obligations" in Article 6? how far does "family life" extend in Article 8?)
- (3) Many articles in the Convention are unduly qualified (e.g. Art. 9(2): "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others") Sometimes the protection granted by ordinary domestic laws is stronger than that provided by the Convention (e.g. the admissibility in evidence of confessions, governed by Article 3). Above all Article 15, which allows for derogation from some important parts of the Convention, gives governments too easy a let-out for not complying with its terms.
- (4) The Convention is not precise enough in providing adequate remedies to individuals and groups for breaches of its articles.
- (5) The Convention does not provide adequate sanctions against states which are held to have violated its articles; the only existing sanction is the drastic one of expulsion from the Council of Europe.
- (6) The procedures for taking cases to Europe are cumbersome:
 - requirement to exhaust local remedies,
 - requirement to have the application declared "admissible",
 - division of labour between the Council of Europe's Commission, Court and Committee of Ministers;
 - cases can easily take more than three years to process.
- (7) All applications must be submitted to the Commission within a period of six months from the date of the final local decision (Art. 26); this period is far too short.
- (8) Since 1965 the UK has not guaranteed the right of individual petition to the Commission for all time - only for five years at a time.

- (9) The Convention is unclear on the question of whether rights are enforceable against parties other than public authorities (so-called third-party applications, e.g. against the press under Article 8, or against discriminating sporting associations under Article 11).
- (10) The Convention (unlike the American Bill of Rights) has no article declaring that the Convention is not intended as an exhaustive list of human rights.
- (11) Ordinary courts and judges in Northern Ireland are probably not the appropriate bodies to hear cases alleging a breach of the Convention.
- (12) The Convention makes no provision for the establishment of a permanent Human Rights Commission in member states. Such a Commission - with wider and more specific terms of reference than those of the existing Standing Advisory Commission on Human Rights in Northern Ireland - was recommended for the province by the Devolution Committee of the Northern Ireland Assembly in October 1984.
- (13) The Convention may not adequately protect the right to campaign democratically either for the reunification of Ireland or for the independence of Northern Ireland: Art. 10(2) says that the exercise of the right to freedom of expression (including the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities) may be subject to such restrictions as are in the interests of national security, territorial integrity or public safety, or for the prevention of disorder or crime.
- (14) Other international treaties and declarations are more protective on some specific issues (e.g. use of plastic bullets, treatment of prisoners - see the UN Convention on the Prevention and Punishment of the Crime of Genocide, and the UN Minimum Standard Rules for the Treatment of Prisoners).

APPENDIX

Further literature worth consulting

- Charles L. Black "Is there already a British Bill of Rights?" (1973) 89 Law Quarterly Review p.173
- Colin M. Campbell (ed.) "Do we need a Bill of Rights?" (London 1980)
- J. E. S. Fawcett "A Bill of Rights for the United Kingdom" (1976) 1 Human Rights Review p.57
- House of Lords Select Committee Report on a Bill of Rights (HL 176, 1978)
- Joseph Jaconelli "Enacting a Bill of Rights" (Oxford, 1980)
- Lord Lloyd "Do we need a Bill of Rights?" (1976) 39 Modern Law Review p.121
- David R. Lowry and Robert J. Spjut "A Bill of Rights for Northern Ireland" (School of Law, University of Warwick, 1977)
- Arthur S. Miller "A Bill of Rights to Protect our Liberties?" (1976) 47 Political Quarterly p.137
- The Minority Rights Group London Report No. 2, The Two Irelands (Harold Jackson and Anne McHardy)
Report No.36, Constitutional Law and Minorities (Claire Palley)
Report No.41, The International Protection of Minorities (J.E.S. Fawcett)
- Northern Ireland Civil Rights Association "Bill of Rights (Northern Ireland) Act 1975"
- Lord Scarman "English Law - The New Dimension" (London, 1974)
- Paul Sieghart "Problems of a Bill of Rights" (1975) 125 New Law Journal p.1184
- Standing Advisory Commission on Human Rights "The Protection of Human Rights by Law in Northern Ireland" (Cmd.7009, 1977)
The SACHR 10th Annual Report (1983-84), HC 175 (February 1985) pp 6-15 and 46-52
- Ulster Civil Liberties Centre A Proposed Bill of Rights - Prepared for submission to the people of the United Kingdom (1975)
- Wallington and McBride Civil Liberties and a Bill of Rights (Cobden Trust, 1976)

For Parliamentary debates on a Bill of Rights for Northern Ireland see:

- H.C. Debs. vol. 817 col. 384 (12 May 1971) - Arthur Latham
- H.L. Debs. vol. 320 col. 538 (15 June 1971) - Lord Brockway
- H.L. Debs. vol. 332 col. 531 (23 June 1972) - Lord Brockway
- H.L. Debs. vol. 369 col. 818 (25 March 1976) - Lord Brockway