

NATIONAL ARCHIVES

IRELAND



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Petition Presented by Mr. Harold McCusker

Summary of the observations of the Government of Ireland: not to be detached from complete observations

I. THE FACTS

1. The level of violence in border areas has been small in comparison to its overall level in Northern Ireland. The cause of this violence rests, in part, with Northern Ireland institutions and practices, for which the Irish Government have no responsibility.
2. The Irish aspiration for eventual reunification of the country is one which the British authorities recognise as legitimate. Successive Irish Governments have stressed that this aim can only be achieved by peaceful means; they repudiated violence and have outlawed the IRA. They have never made money available for the purchase of arms by that organisation.
3. Extensive and expensive security measures have been taken by the Irish Government, at a cost to the Irish taxpayer three times the level per head of the cost borne by his British counterpart. The British Prime Minister recently said that her security forces "are receiving wonderful co-operation across the border".
4. Exceptional and effective legislative measures have been taken to deal with terrorist-type offences. While there is a Constitutional difficulty with extradition of political offenders, persons who have committed terrorist offences in Northern Ireland can be tried and punished in the State provided evidence is made available. Genocide is not a political offence for the purpose of extradition.
5. The Irish Constitution guarantees each of the human rights mentioned in the petition. The State is bound to observe these rights which are legally enforceable.

II. SUBMISSION ON ADMISSIBILITY

1. The petitioner has not exhausted domestic remedies: he could seize the Irish Courts of his complaints regarding violations of human rights or genocide but has not done so.
2. Responsibility for acts of terrorism or for any breach of an international obligation cannot be attributed to the Government.

There is no causal or agency link between the Government and the IRA's actions. There is no international obligation to extradite offenders in the absence of a treaty basis or where the offence is politically motivated. The Government has taken effective security and legislative measures; it has outlawed the IRA and taken extra-territorial jurisdiction to prosecute offenders. The IRA poses as strong a threat to the institutions of the State as it does to Northern Ireland. The aspiration for eventual reunification of the island can only be achieved by peaceful means and with consent: it does not constitute interference with the internal affairs of another State or conflict with the right of self-determination which applies in the whole of Ireland.

3. The petition is politically motivated and contrary to the provisions of the UN Charter.
4. The petitioner has provided no information showing a causal link between the Government's actions and the effects of violence in border areas, or of the number or names of persons on whose behalf he makes the petition.
5. The issue of non-extradition for political offences has been settled following the enactment by the two countries of aut dedere aut judicare legislation.

Petition presented by Mr. Harold McCusker

The Government of Ireland submit that this petition, insofar as it attributes responsibility for gross violations of human rights and fundamental freedoms in Northern Ireland to the Government of Ireland, is inadmissible and manifestly without foundation in fact and in law.

Violence in Northern Ireland

1. The petitioner attempts to portray terrorist violence in Northern Ireland as a campaign of genocide against a section of the Community.
 - 1.1. While terrorist attacks have taken place on a large scale against the British security forces and the predominantly Protestant members of the local security forces (RUC, RUC Reserve, UDR and UDR reserve), the Catholic community has also suffered grievously from attacks by Protestant paramilitary groups. Of the 2,175 killed in Northern Ireland between 1969 and the end of 1981 over 400 were uninvolved Catholic civilians killed by Protestant groups. The majority of Protestants are killed or injured not because they are Protestants but because they are members of the security forces. A large number of Catholics have also been killed by terrorist members of the IRA or INLA including Catholic members of the security forces.
 - 1.1.1. The level of violence in border areas has been relatively small in comparison to the overall level of violence in Northern Ireland. This can be seen from the number of killings in rural border areas in the years referred to in the petition viz.

<u>Year</u>	<u>No. of Killings</u>	<u>% of total annual killings</u>
1978	12	14.8
1979	42	37.8
1980	19	27.0
1981	16	15.0

The figure for 1979 is exceptionally high due to the death in one bomb attack at Warrenpoint, Co. Down of 18 British soldiers.

These figures illustrate that speculation on the part of the petitioner that the violence emanates from the Irish side of the border, as distinct from within areas of population under the jurisdiction of the British Government, is without foundation.

1.1.2. The figure of 275 people killed in border areas since 1969 must be seen against a background of 2,175 killed throughout Northern Ireland in the period 1969-1981. The deaths in border areas were part of a much wider campaign of terrorist violence and counter violence which has gripped Northern Ireland since 1970 and which focused mainly on Belfast and other parts of Northern Ireland.

1.1.3. In contrast with other countries, where parties with opposing views can alternate in Government, it has been impossible for more than 60 years for representatives of the minority - comprising about one third of the population - to obtain any part in Government in Northern Ireland. The minority could not, therefore, express their fundamental aspirations within any normal political framework. This resulting sense of alienation has been aggravated by positive discrimination against the minority in housing, jobs and other administrative areas. These are factors for which the Irish Government have and could have no direct responsibility. They are completely internal to Northern Ireland. They have contributed to the violence of which the petitioner complains. This is not to justify the violence but to explain it.

1.2. The Irish Constitutional aspiration and Governmental policy.

The Government of Ireland have consistently opposed the use of violence as a means towards the reunification of the country. Articles 2 and 3 of the Irish Constitution reflect the deeply held view of the majority of the Irish people that Ireland should one day be reunited. Article 2 states: "The national territory consists of the whole island of Ireland, its islands and the territorial seas". Article 3 states: "Pending the reintegration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the

laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Eireann and the like extra-territorial effect". The result of this Article is that, while the division of Ireland continues - and the Government recognise that this division can only be ended through peaceful means - laws of purely domestic import enacted by the Irish Parliament will not apply to Northern Ireland.

- 1.2.1. Article 29, paragraphs 1 to 3 of the Constitution provide
1. Ireland affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality.
 2. Ireland affirms its adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination.
 3. Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States".

In accordance with the tenor of those Articles, the fundamental objective of Government policy on Northern Ireland is the achievement of a united Ireland by peaceful means, through agreement and reconciliation of the two major Irish traditions with full safeguards for the rights of all sections of the community. The Government of Ireland unreservedly reject violence as a method of bringing about political change.

- 1.2.2. Those who would point to Articles 2 and 3 as serving to legitimise the actions of the Provisional I.R.A. violate the sense of those Articles and ignore the fact that the entire Irish Constitution and the Irish State are totally repudiated by this and related organisations. They are the last people to appeal to the Irish Constitution in any context.
- 1.2.3. The Provisional I.R.A. is an organisation declared unlawful in this State under legislation formally enacted by the Irish Parliament. It has no legitimacy in fact or by implication to speak for the Irish people, who have frequently repudiated them, wherever they have stood for local or national elections.

2.4. The Irish Government would therefore reject the contentions that any part of the Constitution of Ireland has in any way sustained or contributed to the violence in Northern Ireland. The articles simply express the aspiration of the Irish people for the reunification of Ireland by peaceful means. Indeed the British Government and Parliament of which the petitioner is himself a member recognises the wholly legitimate nature of this aspiration and supported its legitimacy in the legislation establishing Northern Ireland as a separate entity. The Government of Ireland Act, 1920, expressly provides

"With a view to the eventual establishment of a Parliament for the whole of Ireland, and to bringing about harmonious action between the parliaments and governments of Southern Ireland and Northern Ireland, and to the promotion of mutual intercourse and uniformity in relation to matters affecting the whole of Ireland, and to providing for the administration of services which the two parliaments mutually agree should be administered uniformly throughout the whole of Ireland, or which by virtue of this Act are to be so administered, there shall be constituted, as soon as may be after the appointed day, a Council to be called the Council of Ireland".

At the Sunningdale Conference, between the British and Irish Governments and the parties involved in the then Northern Ireland Executive (Designate) held in December, 1973 the following declarations were made by the British and Irish Governments:

The Irish Government fully accepted and solemnly declared that there could be no change in the status of Northern Ireland until a majority of the people of Northern Ireland desired a change in that status.

The British Government solemnly declared that it was, and would remain, their policy to support the wishes of the majority of the people of Northern Ireland. The present status of Northern Ireland is that it is part of the United Kingdom. If in the future the majority of the people of Northern Ireland should indicate a wish to become part of a united Ireland, the British Government would support that wish.

The British Government's White Paper published in April, 1982 entitled "Northern Ireland A Framework for Devolution" recognises that:

"There is also a substantial minority within Northern Ireland who think of themselves as Irish, whether in terms of their identity, their social and cultural traditions, or their political aspirations. Many of them support political parties which would like to see a united Ireland in some form".

It also acknowledges that:

"the sense of two different identities is an important and continuing reality of social and political life in Northern Ireland."

- 1.2.5. The Government of Ireland have never made money available for the purchase of arms for the IRA. The Government disclaim any responsibility for the campaign of terrorism being waged in and against Northern Ireland and for any breaches of human rights and fundamental freedoms alleged on this account. This campaign is, of course, totally repugnant to the Government and has been condemned by them in the strongest possible terms on numerous occasions.
- 1.2.6. Acts of terrorism, irrespective of by whom committed or against whom they are directed, constitute a violation by the perpetrators of the most basic of human rights, the right to life. The campaign of terrorist violence in recent years by Republican groups and other paramilitary groups some of which support the union with Great Britain has had an incalculable effect in terms of suffering, economic costs and disruption of community life which has been felt not only by members of the Protestant population in Northern Ireland as cited in the Petition, but at least as harshly by the minority community in Northern Ireland, among whom levels of unemployment and deprivation, accentuated by the violence, have, on average, been higher than among the Protestant population. In fact the effects of violence have been felt by all sections of the community both North and South of the Border - in the Republic for example some 42 people have died as a result of largely indiscriminate terrorist violence. It is in the defence of these human

rights that the Government have made plain their condemnation of such acts and have spared no effort in combatting them by all available constitutional means, whether by political action, security measures or through the judicial system, as will be outlined below, in order to ensure that terrorists are prosecuted and terrorism vigorously repressed.

- 1.2.7. The Government therefore reject the contention of the Petition that actions by terrorists in Northern Ireland are in any way the responsibility of the Government or can be regarded as a breach, either direct or indirect, of the Government's obligations under international law.

Security measures

- 1.3. Contrary to what is alleged in the Petition, the Irish Government and security authorities are fully committed to the maintenance of security in the border areas, to the apprehension of suspected terrorists and to the prosecution of any persons against whom there is sufficient evidence of criminal offences.

- 1.3.1. Since the outbreak of the present troubles in Northern Ireland successive Irish Governments have devoted considerable resources of men, materials and money to the maintenance of security in border areas. In dealing with the problem of security and in particular border security there has been close and constant liaison with the security authorities in Northern Ireland and both those authorities and the British authorities have frequently expressed their satisfaction at the degree of co-operation that exists in the area of border security. Indeed the British PM as recently as 10 November, 1981 told the House of Commons "we are receiving wonderful co-operation across the border concerned with catching terrorists wherever they commit their offences and trying them either in the North or in the South". Security costs directly attributable to the situation in Northern Ireland have accounted in recent years for a big percentage of the State's total expenditure on the Army, police and prison service. The projected expenditure for 1982 at Ir£111 million, in respect of the extra costs of these services alone, directly accruing out of the Northern

Ireland situation represents more than 2.5% of the Irish Government's tax revenue and is about 3 times per head of population more than the equivalent cost to Britain. The expenditure is being incurred at a time of serious economic difficulty.

- 1.3.2. In view of the extent of the border (450 km.) and the absence of any physical barriers along almost all of this length, it will readily be appreciated that total security surveillance is not a practical possibility. However the border is patrolled by the Irish police and Army and a high percentage of the total strength of the Irish security forces is involved in border security on a 24 hour basis. This border policing and patrolling is backed up by a vast network of cross-border communication links. These links enable the security forces on both sides of the border to relay information instantly to each other regarding cross-border incidents and so enable immediate remedial action to be taken.
- 1.3.3. The Irish Army pursuant to its role of rendering aid to the Civil power, provides assistance to the Gardai (Irish Police Force) as required. Between 1 November 1981 and 30 June 1982 over 11,700 military parties were supplied by the Army in border patrols with the Gardai (Irish Police Force). The Army were also involved in setting up 9,300 joint Gardai/Army checkpoints in border areas. In the same period over 4,900 Army patrols were sent out into the network of roads along the border from the permanent military posts which are maintained in border areas. Aircraft surveillance is provided as requested and helicopters are on permanent stand-by.
- 1.3.4. An indication of the successes achieved by the Irish security forces in the seizure of firearms and explosives in border areas is that in the period January 1981 to March 1982 a total of 150 guns, 59,733 rounds of ammunition, 72 detonators and a large quantity and variety of homemade and commercial explosives were found.

1.3.5. While it would not be in the interests of security to disclose details of police or Army deployment in border areas one factor that highlights the Irish Governments commitment to dealing with criminality in border areas is the fact that in 1982 permanent police strength in those areas shows an almost 300% increase on the strength that existed in those areas in 1970. This strength is frequently supplemented by members of the Garda security Task Force a new unit which was set up in 1978. Units of this Task Force are constantly deployed on border operations. It has also been necessary to increase other Garda units dealing with serious crimes to combat the unpar^{al}led increase in armed robberies that have occurred within the jurisdiction of the State since 1970 - 11 in 1970 increasing to 286 in 1981.

1.3.6. It is obvious that there has been a significant campaign of murders, attempted murders and other terrorist activity in border counties of Northern Ireland in recent times. There have been suggestions in a number of cases that the perpetrators recrossed the border but little by way of evidence has been produced to substantiate these claims or to enable prosecutions to be taken. In many of the cases the perpetrators are normally resident in or are natives of Northern Ireland. In any event, while the gravity of these incidents is a matter of the greatest concern, border incidents constitute only a small proportion of incidents as a whole in Northern Ireland. The number of killings in border areas in 1981 was 15% of the total for Northern Ireland, as a whole. While therefore it is not contended that the border does not play a part in the campaign of the Provisional IRA and other paramilitary organisations in Northern Ireland, the extent of its significance is sometimes greatly exaggerated.

Legislative and other measures

1.4 In addition to the above-mentioned security measures, successive Irish Governments have introduced extensive legislation to deal with the problem of serious crime including the type normally classed as terrorist crime.

1.4.1. Particular reference can be made to the following enactments in this field:

(a) Offences Against the State Acts 1939 to 1972

These Acts provide inter alia for the prohibition of membership of unlawful organisations and for the establishment of Special Criminal Courts to prosecute offences scheduled by Government Order.

The IRA is an unlawful organisation in the Republic. It was so declared by the Unlawful Organisations (Suppression) Order, 1939 which was made pursuant to the Offences Against the State Act, 1939.

The 1972 Act amended and strengthened the law dealing with unlawful organisations.

Pursuant to the 1939 Act a Special Criminal Court was established in May 1972 following a Proclamation by the Government declaring that it was satisfied that the ordinary courts were inadequate to secure the effective administration of justice and the preservation of public peace to prosecute a range of scheduled offences including murder, firearms and explosives offences, malicious damage, membership of an unlawful organisation.

/ From its establishment up to end-February 1982 a total of 1,642 persons were tried before the Court, of whom 1,219 (74%) were convicted and 423 (26%) were acquitted.

(b) Criminal Law Jurisdiction Act, 1976

This Act provides, inter alia, legal machinery for the bringing to trial in the State of persons accused of committing crimes of violence, however motivated, in Northern Ireland. Its provisions are based on the principle of aut dedere aut judicare - the alternative of extradition or trial within the jurisdiction of arrest.

The Act makes it a criminal offence in Irish law to commit in Northern Ireland certain scheduled offences which if committed within the State would constitute an offence here. The scheduled offences include murder, manslaughter, arson, kidnapping, false imprisonment, possession of explosives, robbery, possession of firearms, hijacking. The Act also inter alia makes it an offence in Irish law:

- for persons charged with or convicted of scheduled offences to escape from lawful custody in Northern Ireland;
- for an Irish citizen to cause or conspire to cause explosions outside the State.

To date there have been seven successful prosecutions under the extra-territorial provisions of the Act. (See list at Annex A). The Act represents an exception to the "territoriality" principle, which generally prevails in Irish law. In this respect it is comparable with the Offences Against the Person Act 1861 which provides that the offence of murder is proscribed wherever committed.

(c) Criminal Law Act 1976

This Act makes a number of amendments in respect of the criminal law and powers of enforcement and investigation. It provides for increases in maximum penalties for a number of offences and creates certain new offences in respect of incitement to join unlawful organisations, of aiding escapes

from lawful custody and of giving false information (e.g. bomb hoaxes).

(d) FIREARMS ACT, 1971

This Act, enacted in 1971, tightened up statutory controls on the lawful possession of firearms and increased substantially the penalties for the unlawful possession of firearms other than "sporting firearms". In particular, it enabled the Garda Síochána (Irish Police Force) to deal more effectively with the unauthorised possession of military type weapons. A particularly significant feature of the act is that its provisions in relation to the unlawful possession of firearms or ammunition with intent to endanger life or cause serious injury to property apply to lives and property outside as well as inside the State. This feature was built into the Act as a deterrent to any persons or groups who might contemplate using the territory of the State for unlawful armed activities outside the jurisdiction.

In August, 1972 an order was made by the Minister for Justice obliging every person residing in the State to hand over to the Gardai pistols, revolvers and heavy calibre rifles (i.e. calibre over .22). This policy has continued to apply making Ireland's firearms regulations more stringent than those that apply in any other European country.

(e) Explosives

In the light of developments in Northern Ireland the Irish Government took exceptional measures to ensure that explosives from this State would not be used to cause death or injury in that part of the island.

Arrangements were made to store all explosives for civilian use in Army barracks or posts except in a small number of locations (explosives factories and mines) where adequate

military guard or full-time police protection was provided. Military escorts are provided during the transport of explosives and for incoming shipments between docks and storage locations. This involves heavy demands on military personnel and transport.

All overground usage of explosives is supervised by the Garda Síochána. This may be illustrated by pointing out that for instance, a farmer anxious to improve his holding by blasting rocks or boulders in a field cannot have the job done unless there is a member of the Garda Síochána present to supervise the expenditure of the explosives. This causes a heavy drain on Garda manpower in rural areas.

The tight control on commercial explosives forced terrorists to turn their attention to substances in wide use such as the fertiliser ammonium nitrate and sodium chlorate. The Government, in August 1972, made an order designating these substances as explosives and this brought them under strict control. In September 1972, a similar order was made in respect of nitro benzene. The stocks of Ammonium Nitrate and Sodium Chlorate that were in the State were impounded and compensation paid at considerable cost to the Irish taxpayer.

1.4.2. The Extradition Act 1965 is based on the Council of Europe Convention on Extradition to which Ireland, but not Britain, is a party. Accordingly the Act contains a separate section providing a simplified procedure for the backing of warrants issued in Britain and Northern Ireland, and parallel legislation exists in Britain. Irish law in relation to extradition for political offences is in line with the practice of States and with generally accepted principles of international law. It is considered that the enactment of legislation to permit extradition for such offences would represent a departure from those principles and would consequently be repugnant to the Irish Constitution, Article 29.3 of which provides that "Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States."

1.4.3. The extradition of persons claiming political motivation for their acts has long been the subject of special reservations both in national law on the part of many States and in international treaties. These reservations were well described by the British Solicitor General, Sir Dingle Foot, in the House of Commons during the debate on the British Extradition Act, 1965 when he stated that

"The exception relating to offences of a political character is thoroughly familiar and has been included in our extradition legislation ever since 1870. Indeed, the tradition that we do not return to the country of origin persons who are accused of political offences goes back to the Napoleonic Wars".

1.4.4. Ireland has been able to sign and ratify a number of international conventions dealing with terrorist crime (e.g. the Hague and Montreal Conventions on hijacking which follow the long-established principle in international law of aut dedere aut judicare). This principle however is not properly reflected in the 1977 European Convention on the Suppression of Terrorism and as a consequence this country has been unable to sign that Convention - not because of any lack of determination to operate to the full the law against violence for political ends but because the Convention would be in conflict with our Constitution and of previous international Conventions. Indeed, other member States of the Council of Europe may also have difficulties with the absence in the Convention of a true aut dedere aut judicare principle. Reservations in regard to non-extradition for political offences have been made by a high proportion of those States which are party to the Convention: five of the thirteen States which have ratified to date have made such a reservation. It should also be noted that many European countries do not extradite their own nationals at all whether the offence involved is political or not.

- 4.5. In the view of the Government, the introduction of extradition arrangements between Northern Ireland and the Republic in respect of the kinds of offences under consideration would be of little practical significance since the absence of such arrangements is no bar to the successful prosecution and imprisonment of those who commit serious crimes in one jurisdiction and flee to the other. Appropriate legislative machinery for this purpose is provided by the Criminal Law Jurisdiction Act, 1976, as described above. There is no doubt in the view of the Government that the provisions of the Act can continue to be successfully applied where the Northern Ireland authorities supply evidence that persons residing in the jurisdiction of the State have committed offences in Northern Ireland.
- 1.4.6. For the same reason the Government rejects the suggestion that the absence of extradition for political offences has any significant effect in encouraging the activities of terrorists in Northern Ireland.
- 1.4.7. The UN Genocide Convention of 1948 which has been ratified by Ireland and at least 85 other States and thus has world wide as distinct from regional acceptance, provides that genocide shall not be considered a political crime for the purposes of extradition. Ireland has given effect to that Convention in domestic law by means of the Genocide Act 1973 which provides that a person commits an offence of genocide if he commits any act falling within the definition of "genocide" in Article II of the Convention. The Act establishes severe penalties, including imprisonment for life, and states: "No offence which, if committed in the State, would be punishable as genocide or as an attempt, conspiracy or incitement to commit genocide shall be regarded as a political offence or an offence connected with a political offence for the purposes of the Extradition Act 1965, and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character for the purposes of Section 24 of the Extradition Act, 1970, or Section 5 of the Extradition Act, 1873".

Fundamental Rights

- 1.5. While taking the extensive security and legislative measures referred to above as the situation required the Government have at all times taken care to adhere to its responsibilities and obligations under the Charter of the United Nations and the Universal Declaration of Human Rights, to which they attach great importance. Ireland is a party to the European Convention on Human Rights, which imposes many rights similar to those contained in the UN Covenant on Civil and Political Rights, and it has accepted the right of individual petition to the European Commission of Human Rights and the compulsory jurisdiction of the European Court of Human Rights for an unlimited period. The domestic legislation of the State accords generally with the UN Covenant, which it hopes to ratify before long, and in addition it gives Constitutional protection to a large number of fundamental rights.

II SUBMISSIONS ON ADMISSIBILITY

2. The Government submits that this petition is inadmissible in that:
- the petitioner has not exhausted domestic remedies (2.1. to 2.1.2.);
 - the petition is in reality directed against individuals responsible for acts of terrorism and the petitioner has failed to attribute responsibility to the Government for any conduct in violation of its international law obligations (2.2.1. to 2.2.5.);
 - the petition has manifestly political motivations and its subject is contrary to the provisions of the Charter of the United Nations (2.3);
 - the petitioner has failed to indicate with precision the information on which his petition is based or the persons on whose behalf it is brought (2.4.);
 - the issue of non-extradition for political offences has been settled by the enactment of aut dedere aut iudicare legislation (2.5).

III NON EXHAUSTION OF DOMESTIC REMEDIES

- 2.1. The petitioner has not exhausted domestic remedies.
- 2.1.1. The petitioner alleges violations of the rights to freedom from discrimination, to life, to freedom from torture, to equal protection of the law, to protection of the family and to freedom of religion. Each of these rights is either expressly guaranteed in the Irish Constitution or has been held by the Courts to be an unspecified right enjoying full Constitutional protection. Irrespective of any remedies he may have under the British legal system in respect of events taking place in Northern Ireland, it is open to the petitioner to seize the Irish Courts of his complaints. Any individual may seek a declaration from the Irish Courts that fundamental rights have not been observed and an order directing the person or persons responsible to act in accordance with the Constitution, or otherwise providing relief. It is well established law that where there is a right there is a remedy, that the State, including its executive arm, is as much bound by the law as ordinary citizens, and that the State is responsible directly for the wrongful acts of its servants or agents. The Government are unaware of any efforts the petitioner may have made to seize the British Courts of his complaints. However, he appears to have made no effort to state a case before the Irish Courts in relation to his allegations that the State has, by action or inaction, caused violations of those rights: he has preferred to bring his allegations directly to a high international forum.
- 2.1.2. The petitioner alleges that the Irish Courts have refused to extradite persons accused of terrorist offences to Northern Ireland and describes the activities of such persons as "genocidal". The petitioner has supplied information (including names of defendants) and statistics which he alleges substantiate his claims but he does not appear to have made any effort to use this material for the purpose of pursuing a remedy before the Irish Courts. It is open

to him to provide such information as he has and to request the Director of Public Prosecutions of Ireland, who is independent of the Government in the exercise of his functions, to initiate an investigation into the activities of any of the individuals he suspects of having been involved in complicity in acts of genocide with a view to their prosecution in the State. The Government do not know if the petitioner ever requested the British Government to request the extradition from Ireland of persons suspected of genocide, but, were such a request to be made, it is clear from the legislation described at paragraph 1.4.7. above that the political nature of the offence would not be a barrier to extradition. It is open to the petitioner to provide such information as he has with a view to the prosecution by the Director of Public Prosecutions of individuals not only under the Genocide Act 1973 but also under the Offences Against the Person Act 1861 and the Criminal Law (Jurisdiction) Act 1976.

Connection between the alleged violations and the Government

- 2.2. The petitioner has sought to attribute responsibility for the alleged violations to the Government of Ireland and generally grounds his case on two claims, neither of which has any basis in fact or in law. Firstly, the petitioner seeks to impute indirect responsibility of the Government for a campaign of terrorism by alleging, among other matters, that the Government, its Ministers and other persons of high political importance in Ireland have sustained and encouraged the campaign. Secondly, the petitioner seeks to attribute direct responsibility to the Government for breach of international obligations by alleging, among other things that it does not extradite offenders, that it allows its territory to be used as the base for acts of terrorism without taking adequate or effective steps of control or surveillance or to apprehend and punish the perpetrators, that it denies a right of self determination of the people of Northern Ireland and that it is guilty of interference in the internal affairs of another sovereign State.

- 2.2.1. The Government submit that the security and legislative measures described at paragraphs 1.3.1. to 1.4.6. above provide a clear indication of the non-existence of any causal or agency link between it and persons responsible for terrorism in Northern Ireland. The petitioner has failed to provide even in outline, evidence of any conduct on the part of the Government which led to specific acts in Northern Ireland against any one of the people on whose behalf the petition is lodged. He has failed to provide a shred of evidence that any Minister or other person "of high political importance" had complicity in such acts. The Government of Ireland have never made money available for the purchase of arms for the IRA. It is submitted that, contrary to the petitioner's claims, the facts clearly show that the Government of Ireland have no connection with any act of violence, which they oppose vehemently, and that it has taken the widest measures to prohibit the IRA and to prevent and prosecute acts of terrorism taken in the name of that illegal organisation, or indeed taken by an offender.
- 2.2.2. The Government dispute the existence of any international obligation to extradite offenders in the absence of a treaty basis or where an offence is politically motivated. The question of whether a general principle of international law precludes extradition for political offences is certainly one on which different States may take different views, but there is no basis for asserting that the Government is bound by treaty, custom or general international law to ensure extradition of political offenders. Indeed, it is clear that if for no other reason than that the constitutional structures in so many States - including Ireland - which relate to the separation of the judicial, legislative and executive organs of State in consequence of which it is the independent, judicial organ which assesses on a case by case basis whether any given set of facts can be categorised as a politically

motivated action, that the principle of aut dedere aut judicare is in usage more commonly than any treaty obligation relating to compulsory extradition.

2.2.3. The facts as set out at paragraphs 1.1. to 1.4.6 above indicate that there is no basis for the allegation that the Government is in breach of any duty to prevent the commission of offences in Northern Ireland and to punish the authors of such offences. The extent of such a duty, the degree of diligence required of a State and the extent to which the fact that the vast majority of the people of Northern Ireland are entitled to Irish citizenship is a relevant factor, are questions on which differing legal views may be expressed. For the present, the Government are willing to accept, without more precise definition, that they have a duty to dissolve an organisation which has established itself in its territory and which is engaged in action aimed at overthrowing a foreign Government by violence. The IRA has been prohibited in the State, and the Government have spared no effort in combatting its activities by political action, security measures and through the judicial system.

2.2.4. The IRA poses an equally strong threat to the institutions of the State as it does to Northern Ireland. A spokesman for Provisional Sinn Fein (the political wing of the IRA) clearly underlined this threat when he said to supporters of that organisation in November 1981 "Who here really believes we can win the war through the ballot box? But will anyone here object if, with a ballot box in this hand, and an armalite in this hand, we take power in Ireland?" The petitioner has failed to indicate any negligence or other conduct of the State in its efforts to prosecute members of an organisation which has avowedly committed to overthrowing the Government of Ireland as well as the British Government in Northern Ireland. On the contrary, it is widely recognised at high political level in Britain and by security officers in Northern Ireland that the measures of control, surveillance and apprehension of offenders in the border area are effective and above objection. The

following are examples of the British Government's recognition of the extent and success of cross-border security co-operation.

".... noted with satisfaction the efforts being made by the two Governments, both separately and in cooperation in the field of security" (Mrs. Thatcher, British Prime Minister in joint communique with the Taoiseach, 21 May 1980)

Mr. Atkins the then Secretary of State for Northern Ireland, expressed satisfaction at the manner in which the agreed arrangements for security cooperation were operating (meeting with Minister for Foreign Affairs, Dublin, 15 April 1980)

".... we are receiving wonderful cooperation across the border concerned with catching terrorists wherever they commit their offences and trying them either in the North or in the South" (Mrs. Thatcher, British Prime Minister, House of Commons, 10 November 1981)

"Successive Governments have rightly attached much importance to effective security co-operation with the Republic. Cooperation between the Royal Ulster Constabulary and the Garda is excellent and it achieves solid results. Both Governments want that co-operation to be even more effective in the common purpose of defeating violence and murders" (Mr. James Prior, present Secretary of State for Northern Ireland, House of Commons, 15 December 1981)

"We have always attached great importance to effective cross-border security cooperation, and I am very happy to say that cooperation between the RUC and the Garda (Irish Police Force) is excellent and is producing solid results" - (The Earl of Gowrie, Deputy Secretary of State for Northern Ireland, House of Lords, 17 December 1981)

There is continuing improvement in the operation of security across the border and in some of the actions that have recently been taken on legislation passed by the Government of the Republic (Mr. James Prior, present Secretary of State for Northern Ireland in the House of Commons, 27 May 1982)

2.2.5 Similarly, the Government is unaware of any criticism or ground of criticism in relation to the measures of prosecution taken on the basis of ordinary legislation and on the basis of the Criminal Law (Jurisdiction) Act which provides extra-territorial jurisdiction. In cases where the offence has occurred in Northern Ireland or Britain the prosecuting authorities are, naturally, dependent on the cooperation of the British authorities if evidence is to be forthcoming. A recent example of such co-operation is to be found in the case of Gerard Tuite, described by the British authorities at one time as their "most wanted man", who was apprehended in Ireland early this year. The British authorities indicated that they would be willing to provide evidence of his involvement in explosives offences in Britain and the Director of Public Prosecutions having assessed the evidence, directed that a prosecution be brought. The offender was tried in the Special Criminal Court this month, convicted and sentenced to 10 years imprisonment. The Government can provide other examples of the diligence with which suspected offenders are prosecuted when evidence is forthcoming (See Annex A). It is true that no prosecution has been brought for genocide, that is, for an act committed in the State with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. It is widely recognised that acts of violence by the I.R.A. in Northern Ireland are committed with intent⁺ to take effect against British security force personnel, either active or retired, or economic targets, but if the petitioner has information which he believes could ground a prosecution in Ireland for genocide within the meaning of the Convention it is open to him to pursue this matter at domestic level, as submitted above in connection with his failure to exhaust domestic remedies.

2.6. The petitioner does not explain what aspect of self-determination he has in mind and, in particular, how the wishes of the majority of people living in the island of Ireland can be set aside. Neither has he specified how the words of the Constitution can conflict with it. Likewise the petitioner does not elaborate on his claim that Ireland is interfering in the internal affairs of another State. The Constitution reflects an aspiration deeply held by the majority of Irish people for the restoration of the unity of Ireland. This aspiration should be regarded in the light of the acceptance by successive Irish Governments of the principle that re-unification can only be achieved by peaceful means and with consent. These serious allegations are made in order to help the petitioner build up a general case that Ireland is bound in international law to extradite political offenders, and not because of any single act of the Government. The Constitutional provisions in question reflect an aspiration the legitimacy of which has been fully recognised by the British authorities (see para 1.2.4.). The Working Group is not seized of a claim by one Sovereign State that another has interfered in its internal affairs. On the contrary, it is seized of an attempt by an individual on behalf of unnamed constituents to persuade the Working Group to conclude that Irish law should be changed in one specific respect. The Government are of the opinion that in these circumstances the Working Group should not accept such ill founded allegations.

The Motivation of the Petitioner

2.3. The Government submits that the petition has manifestly political motivations and that its subject is contrary to the provisions of the Charter of the United Nations. The petitioner is a member of the British Parliament who has expressed in political and other fora his view that Ireland should provide by law for the extradition of persons who

have committed political offences. Notwithstanding the passing of the Criminal Law (Jurisdiction) Act and its successful operation, he maintains his view that Ireland should be bound- whether by treaty or otherwise - to compulsory extradition rather than to the principle of aut dedere aut judicare. By this petition he hopes to impose on the Government a particular means of ensuring that offenders are brought to justice, rather than leaving it to the Government concerned to determine - in its sovereignty and having regard to the Constitution adopted by its people - the means of achieving the aim sought. He also seeks to attribute to the Government complicity in the criminal actions of individuals notwithstanding the Government's effective measures to apprehend and bring to justice so many offenders. His general motivation is to maintain the present political status of Northern Ireland, to attack the legitimate policy of the Irish Government in seeking the peaceful reunification of the island and to impugn the Government's motivation and efforts to deal with terrorism. If successful, his petition would effectively undermine the authority of present and future Irish Governments to play their part in the fight against terrorism and the maintenance of peace and good order. It would also undermine the authority of the Government, in the exercise of its sovereign powers, to determine the specific means whereby it achieves the end of bringing offenders to justice.

The information on which the petition is based and the persons on whose behalf it is brought

- 2.4. The information produced by the petitioner including that annexed in support of his application does not give a true picture of the effect of the violence on the island of Ireland. While direct reliable information on many of the matters dealt

with in the annexes may be obtained in the first instance from British Government sources, the Irish Government has given some information, at paragraphs 1.1.1. to 1.1.3. above from sources available to them of the impact of violence in Northern Ireland as a whole, from which it can be seen that the level of violence in border areas has been relatively small. Secondly, the applicant has provided no information of any kind tending to support his overall thesis that there is a causal link between the Government's security and legislative measures and the effects of the violence in border areas. Thirdly, there is no indication in the petition of the number of persons on whose behalf it is brought or of any intention by the petitioner to clearly identify them.

The settlement of the case

- 2.5. The petitioner says that the States concerned have not settled or made any attempt to settle complaints in accordance with the principle^s set forth in the Universal Declaration of Human Rights and other applicable documents in the field of human rights. While the Government wishes to draw the attention of the Working Group to its understanding that the petitioner may have lodged a similar application under Article 25 of the European Convention on Human Rights, which provides procedures for a friendly settlement to be reached if the application is declared admissible, it submits that the issue of non-extradition for political offences is at the centre of the petitioner's case, and that this issue has been settled by the enactment of aut dedere aut judicare legislation.

The Criminal Law (Jurisdiction) Act was enacted in Ireland following the establishment of a British-Irish Law Enforcement Commission to consider the most appropriate means of resolving certain matters, including the question of non-extradition for political offences. A similar piece of legislation was passed by the British Parliament at about the same time. The Act gives effect to the principle of aut dedere aut judicare on the basis of the mutual consent of the two countries that

the Irish Courts may exercise extra-territorial jurisdiction over certain offences committed outside Ireland.

III CONCLUSION

3. The Government submit that the petitioner has failed to show any reasonable ground for attributing responsibility to the Government of Ireland for gross and reliably attested violations of human rights and fundamental freedoms. They submit that this application should be declared inadmissible.

Annex A

Successful prosecutions in the State under the extraterritorial provisions of the Criminal Law Jurisdiction Act

NAME	OFFENCE	SENTENCE
Robert Campbell	Escaping from Crumlin Road Jail Belfast, Northern Ireland, and using fire-arms	10 years
Michael Ryan	"	"
Angelo Fusco	"	"
Paul Magee	"	"
Michael McKee	"	"
Anthony Sloan	"	"
Gerard Tuite	Possession of bomb making equipment in London in 1978/79	"