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Human Rights in Northern Ireland: Ireland v. the United Kingdom

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I. INTRODUCTION

On January 18, 1978, ten years into the present conflict in Northern Ireland and amidst a developing worldwide interest in the treatment of political

1. (Editor's note: Spelling in all quotations from British sources has been changed to reflect American usage. Where this has been done, brackets have been placed around the changed letter or word). The current conflict in Northern Ireland has been an explosive topic of debate and the subject of numerous writings over the past ten years. Unfortunately, space does not permit a comprehensive discussion of this complex and still developing situation. However, a brief outline follows.

In the early decades of this century, Ireland (including the six northeastern counties which now constitute Northern Ireland) waged a struggle for independence against the United Kingdom. The struggle culminated in the partition of Ireland by an act of Parliament. Government of Ireland Act, 1920, 10 & 11 Geo. 5, c. 67. Under the provisions of this statute, the six northeastern counties of the island remained part of the United Kingdom, becoming known as Northern Ireland. Meanwhile, the twenty-six southern counties became a free state with dominion status in 1922, Irish Free State Act, 1922, 13 & 14 Geo. 5, c. 2, and eventually obtained complete independence as a Republic in 1949. Ireland Act, 1949, 12, 13 & 14 Geo. 6, c. 41. For a discussion of partition and of the constitutional history of Ireland, see N. Mansergh, The Irish Question 1840-1921 (3d ed. 1975); T. Moody, The Ulster Question 1603-1973 (1974).

Since the time of partition, the dominant and ruling population in Northern Ireland, holding approximately a two-thirds majority, has been Protestant. See Lowry, Terrorism and Human Rights: Counter-Insurgency and Necessity at Common Law, 53 Notre Dame Law. 49, 49 (1977) [hereinafter cited as Lowry, Terrorism]. The Protestant majority has been largely Loyalist, preferring continued unity with the United Kingdom rather than independence or reunification with the largely Catholic Republic of Ireland. See generally M. Farrell, Northern Ireland: The Orange State (1976); R. Rose, Governing Without Consensus (1971) [hereinafter cited as Rose].

On the other hand, the one-third minority in Northern Ireland has been Catholic and mainly Nationalist or Republican in its political philosophy. Lowry, supra, at 49. Throughout the sixty year history of Northern Ireland, many members of the minority population have actively pursued their goal of independence. They have often resorted to the use of force and violence as a means to achieve this goal. See generally C. O'Brien, States of Ireland (1972) [hereinafter cited as O'Brien]; R. Hull, The Irish Triangle: Conflict in Northern Ireland (1976); L. De Paor, Divided Ulster (2d ed. 1971) [hereinafter cited as De Paor]; G. MacEoin, Northern Ireland: Captive of History (1974). Over the years, such forceful attempts to gain independence have usually been encouraged and supported, if not led, by the clandestine Irish Republican Army (IRA). The IRA is a Republican organization composed mainly of members of the minority population. The expressed aim of the IRA has been to obtain a severance of the
detainees, the European Court of Human Rights delivered its judgment in *Ireland v. the United Kingdom*. The decision rendered in this case is the final phase of a six year legal process involving an interpretation and application of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). The conflict in Northern Ireland flared anew in the late 1960's. At that time, the problem focused upon the attempts of the minority to gain the same civil, social and political rights enjoyed by the majority. Disturbances and social unrest followed on the heels of civil rights demonstrations. The violence escalated to the point where, in the early-to-mid 1970's, shootings and bombings became a fact of life in Northern Ireland. For an excellent discussion of this period, see generally *London Sunday Times Insight Team, Ulster* (1972) [hereinafter cited as LSTIT]. In addition, for excellent accounts of the early years of the current conflict see *K. Boyle, T. Hadden & P. Hillyard, Law and State: The Case of Northern Ireland* (1975); *M. Hastings, Barricades in Belfast: The Fight for Civil Rights in Northern Ireland* (1970); *S. Winchester, Northern Ireland in Crisis* (1975); *Lowry & Spjut, The European Convention and Human Rights in Northern Ireland*, 10 CASE W. RES. J. INT'L L. 251, 252-57 (1978) [hereinafter cited as Lowry & Spjut]. The level of violence and terrorist activity reached the point where the decision was made, after consultation with the government of the United Kingdom, to reintroduce the emergency powers of detention and internment in August 1971. LSTIT, *supra*, at 260-70. For a discussion of detention and internment as they operated during the early 1970's, see § III infra.

2. Over the past twenty years, non-governmental organizations (NGO's) such as Amnesty International (AI) and the International Committee of the Red Cross (ICRC) have worked to increase public awareness of the plight of political prisoners. Forynthe, *Political Prisoners: The Law and Politics of Protection*, 9 VAND. J. TRANSNAT'L L. 295, 295 (1976). One of AI's stated objectives is to secure the international observance of the provisions of the Universal Declaration of Human Rights, G.A. Res. 217, 3 U.N. GAOR, Supp. (No. 2) 71, U.N. Doc. A/810 (1948) [hereinafter cited as Declaration], by "opposing by all appropriate means the imposition and infliction of death penalties and torture or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted persons whether or not they have used or advocated violence." *Statute of Amnesty International* art. 1(c) (1975). For a concise history of AI, see Scoble & Wiseberg, *Human Rights NGO's: Notes Toward Comparative Analysis*, 9 REVUE DES DROITS DE L'HOME [R. D.H.] 61, 622-24 (No. 4, 1976). For a discussion of what measures the United Nations has taken to protect the rights of political prisoners, see Burke, *New United Nations Procedure to Protect Prisoners and Other Detainees*, 64 CALIF. L. REV. 201 (1976). This contains a brief discussion of the facts in this case and a summary of the judgment. A resolution of the Committee of Ministers of the Council of Europe supervises the execution of the judgment of the European Court of Human Rights (Court). Resolution (78) 35, [1978] Y.B. EUR. CONV. ON HUMAN RIGHTS 648 [hereinafter cited as Resolution]. A copy of the complete text of the judgment may be obtained from the Registrar, European Court of Human Rights, Council of Europe, Strasbourg, France. All page references to this case will be to this complete text of the judgment [hereinafter cited as Judgment].

The Government of Ireland commenced the process by filing its interstate application with the European Commission of Human Rights (Commission) in December 1971. 5 In its application, the Irish Government alleged that many individuals detained in Northern Ireland under emergency powers of the United Kingdom had been subjected to ill-treatment and torture by the security forces. 6 In addition, the application alleged that the emergency powers violated the Convention and that such powers had been administered in a discriminatory and political manner. 7 The application alleged violations of Articles 1, 2, 3, 5, 6, 14 and 15 of the Convention. 8

The report of the Commission, adopted on January 25, 1976, confirmed several breaches of the Convention by the Government of the United Kingdom. 9 On March 10, 1976, the case was referred to the European Court

5. Application No. 5310/71, [1972] Y.B. CONV. ON HUMAN RIGHTS 76 (Eur. Comm. of Human Rights) (decision on admissibility) [hereinafter cited as [1972] YEARBOOK]. The objects of the claim, as stated in the application, were as follows:
1. To ensure that the respondent Government will secure to everyone in Northern Ireland the rights and freedoms defined in . . . Arts. 2, 3, 5, 6 and 14 of the Convention; 2. To bring to the attention of the Commission breaches of Arts. 1, 2, 3, 5, 6 and 14 of the Convention by the respondent Government in Northern Ireland; 3. To determine the compatibility with the Convention of certain legislative measures and administrative practices of the respondent Government in Northern Ireland; 4. To ensure the observance of the legal engagements and obligations undertaken by the respondent Government in the Convention.

Id. at 94.
6. Id. at 76.
7. Id. at 76, 78.
8. Id. The applicant government (Ireland) also alleged a breach of Article 2 (right to life) of the Convention, but the European Commission of Human Rights [hereinafter Commission] declared this part of the application inadmissible under Article 27(3) for failure to first exhaust all domestic remedies available, as required by Article 26 of the Convention. [1972] YEARBOOK, supra note 5, at 240, 242. See the discussion of the domestic remedies rule at note 47 infra. The application of the Irish Government was declared partly admissible on October 1, 1972. See [1972] YEARBOOK, supra note 5, at 78.


The Irish Government submitted written evidence in respect of 228 cases of alleged ill-treatment, 16 of which were ultimately examined in detail by the Commission as "illustrative" cases. Evidence in these cases consisted of oral evidence by the alleged victims, security force witnesses, and medical experts. In addition, the Commission received written comments from both parties on 41 further cases which were supported by some form of medical evidence. Specific findings were reached only with respect to the 16 illustrative cases. . . .

Id. at 247. This work also provides an excellent discussion of the Commission’s Report. See also O’Boyle, Torture and Emergency Provisions Under the European Convention on Human Rights: Ireland v. the United Kingdom, 71 AM. J. INT’L L. 674 (1977) [hereinafter cited as O’Boyle]. For a statement of the Commission’s decision, see note 238 infra.
of Human Rights (Court) by the Irish Government. The Government of Ireland requested confirmation of the Commission's findings and also sought a determination of further breaches of the Convention.\footnote{11}

This Comment will present an analysis of the Court's decision in \textit{Ireland v. the United Kingdom}. Initially, the author will present a concise outline of the relevant principles, procedures and institutions of the Convention. After setting out the factual background of the case, an analysis of the Court's judgment will be provided. Finally, the ramifications of the Court's judgment in light of recent developments in Northern Ireland will be discussed. The author concludes that the effect of the Court's decision, with respect to the future protection of human rights in Northern Ireland, has been diminished due to the apparent continuation of human rights violations in that province.

\section*{II. The Convention}

\subsection*{A. The Collective Enforcement of Human Rights}

Although the principle of respect for human rights had been established in international law by the United Nations Charter\footnote{12} and further defined in the Universal Declaration of Human Rights,\footnote{13} an effective means for implementing and enforcing such rights within the European community did not exist prior to the establishment of the Convention. Historically, the protection of human rights has been regarded as the concern of the state.\footnote{14} The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted to fill this void. The Convention provides for the "collective enforcement" of certain of the rights listed in the Universal Declaration of Human Rights.\footnote{15}

\begin{thebibliography}{9}
\bibitem{10} Judgment, \textit{supra} note 3, at 1-2.
\bibitem{11} \textit{Id.} at 2.
\bibitem{12} U.N. CHARTER Preamble & art. 1, para. 3. See F. JACOBS, \textit{THE EUROPEAN CONVENTION ON HUMAN RIGHTS} 3 (1975) [hereinafter cited as JACOBS].
\bibitem{13} Declaration, \textit{supra} note 2, arts. 1-27.
\bibitem{14} \textit{Id.}, at 2.
\end{thebibliography}
The Convention was drafted by member states of the Council of Europe and was opened for signature and ratification on November 4, 1950. The Convention entered into force in September of 1953, after the deposit of ten instruments of ratification with the Secretary General of the Council of Europe.

The guaranteed rights and freedoms are set out in Section I of the Convention. The main focus of the Convention is the protection of certain civil and political rights, including: the right to life, freedom from torture and from inhuman or degrading treatment, freedom from slavery, servitude and forced, compulsory labor, the right to liberty and security of person, the right to a fair and public trial, the right to privacy and family life, freedom of conscience and religion, freedoms of expression and peaceful assembly, the right to marry, the right to an effective remedy for breach of the above rights and freedoms and the right to enjoy such rights and freedoms without discrimination on any grounds. Additionally, the First Protocol to the Convention protects property rights and the rights to education and free elections. The Fourth Protocol guarantees freedom of movement. Article 1 of the Convention obligates the ratifying states to secure to everyone within their jurisdiction the rights and freedoms defined in Section I.
The Convention envisions a collective guarantee based upon a collective interest in its enforcement. The right to bring an application alleging a violation of the Convention does not depend upon the doctrine of reciprocity. Therefore, each state party to the Convention may present an application to the Commission, whether or not that state itself or any of its nationals are the victims of the alleged violation.

The various states party to the Convention have differed over the means by which the rights and freedoms guaranteed are to be protected within their internal legal systems. Some countries, including Belgium, Germany and the Netherlands, accept the theory that treaty provisions automatically become an integral part of domestic law upon treaty ratification. Other countries, including the United Kingdom, adopt the classical rule that treaty provisions must be incorporated into domestic law through an express statutory enactment.

The obligation under the Convention to secure the rights and freedoms therein to all persons within a state's jurisdiction arises immediately upon ratification. In addition, the Convention requires its member states to explain the manner in which their internal law ensures the effective implementation of the provisions of the Convention at the request of the Secretary General of the Council of Europe.

B. The Procedure Under the Convention

1. The Role of the Commission

The most unique aspect of the Convention is the procedure it establishes for the protection of collectively guaranteed rights and freedoms. The Commission and the Court are the two institutions created "[t]o ensure the observance of the engagements undertaken" by the states party to the Convention. Articles 20 through 23 of Section III and Articles 38 through 43 of Section IV describe the organization and membership of the Commission and Court, respectively.

33. Convention, supra note 4, Preamble.
34. JACOBS, supra note 12, at 6.
35. See Convention, supra note 4, arts. 1 and 24. See NEDJATI, supra note 15, at 3.
38. Convention, supra note 4, art. 1.
39. Id. art. 57.
40. Id. art. 19.
41. The Commission consists of a number of members equal to the number of states which have ratified the Convention and no two members of the Commission may be nationals of the same state. Id. art. 20. Article 21 provides that the Commission's members are to be elected by the Committee of Ministers by an absolute majority of votes. Each group of the representatives of
There are two procedures by which alleged violations of the Convention may be referred to the Commission. First, a state may present an interstate application, under Article 24, alleging a breach by another state.\(^2\) Second, the Commission may receive applications under Article 25 from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the Convention by one of the member states, provided that such state has recognized the competence of the Commission to receive individual applications.\(^3\) This right of individual application has been heralded as the original and innovative feature of the Convention.\(^4\)

Once an application has been referred to the Commission under Articles 24 or 25, the Commission must make a preliminary jurisdictional decision regarding its admissibility.\(^5\) In so doing, the Commission will usually obtain the written observations of the respondent government in response to the applicant's allegations.\(^6\)

An application shall be declared inadmissible for any one of various reasons.
including failure to exhaust all domestic remedies, submission of an anonymous application or submission of an application which is substantially the same as a matter already examined by the Commission or by some other international body. Other bases for refusal, where an Article 25 application is concerned, are incompatibility with the Convention’s provisions, the presentation of a complaint which is manifestly ill-founded or an abuse of the right of petition. The vast majority of applications, especially individual applications, have been rejected as inadmissible.

If an application survives the Commission’s scrutiny with regard to admissibility, the Commission then assumes its main function. The Commission must conduct, together with the representatives of the concerned parties, an examination of the application. A factual investigation is conducted where necessary. In addition, the Commission must attempt to facilitate a “friendly settlement” of the problem in question. If a friendly settlement between the applicant and respondent is attained, the Commission must draw up a report detailing the resolution of the case. Copies of this report are then sent to the concerned parties, to the Committee of Ministers and to the Secretary General of the Council of Europe.

47. Convention, supra note 4, art. 26. The rule requiring the exhaustion of domestic remedies as a condition of the presentation of the international claim is founded upon the principle that the respondent State must first have an opportunity to correct, by its own means and within the framework of its own domestic legal system, the wrong allegedly suffered by the individual. In order to comply with the requirements of Article 26 of the Convention, an applicant is obliged to exhaust every domestic remedy which cannot clearly be said to lack any prospect of success. In order to exhaust all domestic remedies the applicant should avail himself of all judicial remedies open to him, including appeal to a higher domestic court.


For a discussion of the domestic remedies rule as it relates to the case of Ireland v. the United Kingdom, see CASTBERG, supra note 15, at 47-48; NEDJATI, supra note 15, at 70-71.

48. Convention, supra note 4, art. 27(1)(a).
49. Id. art. 27(1)(b).
50. Id. art. 27(2).
51. Between 1955 and December 31, 1978, 8,448 individual applications under Article 25 were registered with the Commission; over 7,880 were either rejected as inadmissible or were struck off the list. [1978] Y.B. EUR. CONV. ON HUMAN RIGHTS 594.
52. The Commission cannot examine a situation ex officio; it can act only if an application is presented to it under Article 24 or Article 25. Convention, supra note 4, arts. 24, 25.
53. Convention, supra note 4, art. 28(a).
54. Id. For the text of Article 28(a), see note 227 infra.
55. Convention, supra note 4, art. 28(b). For the text of Article 28(b), see note 233 infra.
57. Id.
In the event that a solution is not reached, the Commission will compile a report of the facts and state whether, in its opinion, such facts disclose a breach by the respondent government of its obligations under the Convention. The report may also include such proposals as the Commission considers appropriate. Thereafter, the report is sent to the Committee of Ministers and to the parties involved, but it is not made public.

2. The Role of the Court

At this stage of the process, either one of two courses may be pursued. One alternative is to refer the case to the Court, which then serves an appellate function. If the states concerned are subject to the compulsory jurisdiction of the Court or if the subject states have given their consent, the case may be referred to the Court for judicial resolution of the dispute. The Court can hear a case only after the Commission has acknowledged the failure of efforts to achieve a friendly settlement. The Court must consider a case within three months of the date of the transmission of the Commission’s report to the Committee of Ministers. Finally, the Court may exercise jurisdiction over a case only if it is referred by one of the states party to the Convention or by the Commission.

If a case is properly brought before it, the Court will render a decision. This decision is final and binding upon the concerned parties. The judges of the Court are entitled to submit separate opinions if unanimity is unobtainable. The Court must also provide the reasoning behind its decision.

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58. Id. art. 31(1). For the text of Article 31(1), see note 234 infra.
59. Convention, supra note 4, art. 31(3).
60. Id. art. 31(2).
61. Convention, supra note 4, art. 48. A case may be referred to the Court by the Commission, a state party whose national is alleged to be a victim, the state party which originally referred the case to the Commission or a state party against which the complaint was originally lodged. Id. Therefore, an individual applicant may not refer a case to the Court. Between 1959 and January 1980, the Court had thirty-one cases referred to it. European Court of Human Rights, The European Court of Human Rights: Its Organization and Working 2 (Press Release B(80)5, 1980) [hereinafter cited as Press Release]. As of January 23, 1980, Ireland v. the United Kingdom is the only interstate case which the Court has had the opportunity to examine. Id. at 4.
62. Convention, supra note 4, art. 46. As of January 23, 1980, eighteen of the nineteen ratifying states of the Convention had made declarations under Article 46 recognizing the compulsory jurisdiction of the Court: Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. Press Release, supra note 61, at 1.
63. See note 61 supra.
64. Convention, supra note 4, art. 47.
65. Id. arts. 32(1), 47.
66. Id. art. 44. See art. 48.
67. Id. art. 52.
68. Id. art. 53.
69. Id. art. 51(2).
70. Id. art. 51(1).
ment is then transmitted to the Committee of Ministers, which supervises its execution. 71 Article 50 of the Convention provides that the Court may, if necessary, afford just satisfaction to an injured party where the internal law of a concerned state party to the Convention allows only partial reparation for the consequence of the Court's decision. 72

If the case is not referred to the Court within the three month period, the Committee of Ministers will decide by a two-thirds majority vote whether the Convention has been violated. 73 This decision, like that of the Court, is binding upon the interested parties. 74 The Committee of Ministers may also prescribe a period within which the respondent government must undertake the measures required by its decision. 75

C. An Exception to the Jurisdiction of the Commission and Court

1. Discretionary Derogation Under Article 15

The Convention establishes the minimum standards necessary to preserve the rule of law and due process from arbitrary abuse by the executive of a state party to the Convention. 76 However, even these minimum standards have limitations upon their application. One important exception to the jurisdiction of the Commission and Court — an exception which had a major impact upon the decision in Ireland v. the United Kingdom — is Article 15. 77 This provision permits derogation from obligations under the Convention in certain situations. Article 15(1) states that:

[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. 78

It is apparent that Article 15 leaves a state with a great deal of discretion in determining whether there exists a "public emergency threatening the life of

71. Id. art. 54.
72. Id. art. 50. For the text of Article 50, see note 258 infra.
73. Convention, supra note 4, art. 32(1).
74. Id. art. 32(4).
75. Id. art. 32(2).
76. Lowry, Terrorism, supra note 1, at 86; CASTBERG, supra note 15, at 7.
77. For a discussion of Article 15 as it was applied by the Commission and the Court in the case of Ireland v. the United Kingdom, see Green, Derogation of Human Rights in Emergency Situations, 16 CAN. Y.B. INT'L L. 92, 98-101 (1978).
the nation” and whether the derogating measures taken are only “to the extent strictly required by the exigencies of the situation.\textsuperscript{79} However, the Commission and the Court serve an oversight function through their power and duty to review a state’s exercise of its discretion in invoking Article 15.\textsuperscript{80} This includes a factual determination of whether a “public emergency” actually did exist at the time of derogation.\textsuperscript{81} A review of the derogating measures taken and of their administration by the state must also be conducted to ascertain whether such measures were “strictly required by the exigencies of the situation.”\textsuperscript{82}

2. Limitations Upon the Right of Derogation

An important limitation on the Article 15 discretion of a state party to the Convention is that no derogation whatsoever is permitted from the proscrip-

\textsuperscript{79} Convention, \textit{supra} note 4, art. 15. The discretion accorded a derogating state follows from the well-known doctrine of necessity under both constitutional and international law. CASTBERG, \textit{supra} note 15, at 165.

\textsuperscript{80} In its decision in the “Lawless” Case, [1961] Y.B. EUR. CONV. ON HUMAN RIGHTS 438, the Court firmly established the competence of the Commission and of itself to examine and pass judgment upon the legitimacy of a government’s recourse to emergency powers under threat of a public emergency and also of any exceptional measures taken due to the exigencies of the situation. \textit{Id.} at 472, 474. See NEDJATI, \textit{supra} note 15, at 34.

\textsuperscript{81} It is apparent that the drafters of the Convention desired to prevent arbitrary derogations from obligations based upon the plea of necessity and, therefore, attempted to prescribe the conditions and procedure to be followed when emergency powers are to be implemented under Article 15. CASTBERG, \textit{supra} note 15, at 165-66.

The prior case law of the Commission and of the Court has helped to clarify and to establish the limitations and application of Article 15. See “Cyprus” Cases, [1958-1959] Y.B. EUR. CONV. ON HUMAN RIGHTS 182; “Lawless” Case, [1961] Y.B. EUR. CONV. ON HUMAN RIGHTS 438; “Greek” Case, [1969] Y.B. EUR. CONV. ON HUMAN RIGHTS 1, 71, 72 (Published 1972). For a discussion of the impact of these judgments upon the interpretation of Article 15, see BEDDARD, \textit{supra} note 15, at 44-46; JACOBS, \textit{supra} note 12, at 204-09.

Note that issues under Article 15 are examined on the merits and, consequently, cannot be disposed of at the admissibility stage of the proceedings. \textit{Id.} at 208.

\textsuperscript{82} Convention, \textit{supra} note 4, art. 15(1). In reviewing such derogating measures, the Commission and the Court have developed a standard of executive abuse known as the “margin of appreciation” test. This test was first applied in the “Lawless” Case. The doctrine of the “margin of appreciation” is explained in A. ROBERTSON, \textit{HUMAN RIGHTS IN EUROPE} (2d ed. 1977), \textit{quoted in Lowry, Terrorism, \textit{supra} note 1}, at 86 n.244:

The concept behind this doctrine is that Article 15 has to be read in the context of the rather special subject matter with which it deals: the responsibilities of a Government for maintaining law and order in times of war or public emergency threatening the life of the nation. The concept of the margin of appreciation is that a Government’s discharge of these responsibilities is essentially a delicate problem of appreciating complex factors and of balancing conflicting considerations of the public interest; and that, once the Commission or the Court is satisfied that the Government’s appreciation is at least on the margin of the powers conferred by Article 15, then the interest which the public itself has in effective Government and in the maintenance of order justifies and requires a decision in favor of the legality of the Government’s appreciation.

\textit{Id.}
tion against torture contained in Article 3 of the Convention. This limitation follows from the principle that there is never a justification for the use of torture or inhuman and degrading treatment. This exception to Article 15 was a significant factor in Ireland v. the United Kingdom.

In addition, any state availing itself of the right of derogation under the Convention must fully inform the Secretary General of the Council of Europe of the measures implemented and the reasons therefor. When such measures have ceased to operate and the provisions of the Convention are once again fully executed, the Secretary General must be notified.

III. THE FACTUAL BACKGROUND OF IRELAND V. THE UNITED KINGDOM

A. The Reintroduction of Detention and Internment

1. The Internment Sweep of August 9, 1971

In August of 1971, after consultation with the British Government, the Executive of the Northern Irish Government reintroduced internment in an attempt to counter the mounting insurgency of a particularly violent and protracted terrorist campaign led by the Irish Republican Army (IRA). The

83. Convention, supra note 4, art. 15(2). Article 15(2) reads: "No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision." Id.


85. See § IV.B infra.

86. Convention, supra note 4, art. 15(3). Paragraph 3 of Article 15 raises a legal obligation. Failure to provide the Secretary General with the requested information amounts to a violation of the Convention. CASTBERG, supra note 15, at 167. In Ireland v. the United Kingdom, the United Kingdom Government fulfilled its obligation under Article 15(3) by filing letters of derogation on August 20, 1971, January 23, 1973 and August 16, 1973. Judgment, supra note 3, at 73. Such notices of derogation concerned the use of certain emergency powers conferred by several different pieces of legislation. See § III infra.

87. Convention, supra note 4, art. 15(3).

88. The use of emergency powers (including arrest without warrant, detention and internment) by the civil authorities has existed throughout the history of Northern Ireland. In fact, resort to emergency powers has been taken in each decade of the existence of Northern Ireland. Lowry, Internment: Detention Without Trial in Northern Ireland, 5 HUMAN RIGHTS 261, 273 (1976) [hereinafter cited as Lowry, Internment]. For a short, though slightly biased, account of the use of internment in Northern Ireland, see id. at 268-75.


90. For an analysis of the beginnings of the current IRA campaign, see O'BRIEN, supra note 1; LSTIT, supra note 1. The Commission describes the IRA as follows:

The Irish Republican Army . . . was formed during World War I. It is a clandestine organization with quasi-military dispositions, which accepts neither the structure of Government in the Republic of Ireland nor the existence of Northern Ireland as part of the United Kingdom and which seeks to change both by force.
decision to reintroduce detention and internment was made in the early summer of 1971 in response to the deteriorating situation in Northern Ireland. 91 It should be noted that the use of violence to achieve political ends has been a recurring phenomenon throughout the short history of Northern Ireland. 92 Violence conducted by both Catholic and Protestant extremists reemerged in the wake of the civil rights demonstrations of the late 1960's. 93

Due to the increasing levels of violence, civil disturbance and terrorism, the British Army was called into Northern Ireland in August 1969, to assist the Royal Ulster Constabulary (RUC) in its attempt to control the civil strife which had reached emergency proportions. 94 Riots, shootings and bombings continued throughout 1970 and into 1971. Indeed, the IRA began an offensive campaign which continues to the present.

Exercising powers vested in the Home Affairs Minister by the Civil Authorities (Special Powers) Act (Northern Ireland), 1922 (Special Powers Act), 95 a general internment sweep was conducted in the early hours of August 1969.

Report, supra note 9, at 15. It should be noted that in 1969, the IRA split into two factions: the "Official" IRA and the "Provisional" IRA. Id. 91. LSTIT, supra note 1, at 260-70. 92. See O'BRIEN, supra note 1; DE PAOR, supra note 1. 93. See note 1 supra. In addition, for accounts of the disturbances of the late 1960's, as viewed by committees of inquiry appointed by the Government of Northern Ireland, see DISTURBANCES IN NORTHERN IRELAND: REPORT OF THE COMMISSION APPOINTED BY THE GOVERNOR OF NORTHERN IRELAND, CMD. NO. 532 (N.I. 1969) (Cameron); VIOLENCE AND CIVIL DISTURBANCES IN NORTHERN IRELAND IN 1969, CMD. NO. 566 (N.I. 1972) (Scarman). 94. See Judgment, supra note 3, at 9. 95. 12 & 13 Geo. 5, c. 5 (N.I. 1922), as amended by 18 & 19 Geo. 5, c. 5 (N.I. 1928); 23 & 24 Geo. 5, c. 12 (N.I. 1933); 6 & 7 Geo. 6, c. 2 (N.I. 1943) [Special Powers Act]. The Special Powers Act was originally enacted as a temporary measure and thus had to be renewed annually. In 1933, the Special Powers Act was made permanent by statute. Civil Authorities (Special Powers) Act (Northern Ireland), 1933, 23 & 24 Geo. 5, c. 12, § 2(1).

The Preamble of the Special Powers Act stated that it was "[a]n Act to empower certain authorities of the Government of Northern Ireland to take steps for preserving the peace and maintaining order in Northern Ireland. . . ." Special Powers Act, 12 & 13 Geo. 5, c. 5, Preamble. The Special Powers Act was an enabling statute. Its substantive provisions were contained in regulations made under the Act pursuant to the powers vested in the Home Affairs Minister. He was authorized to delegate such powers to a police officer and was also authorized to vary or revoke the regulations. Id. §§ 1(2) & (3). The following regulations were promulgated in 1956 and are those with which the case of Ireland v. the United Kingdom is concerned. Regulation 10 provides:

Any officer of the Royal Ulster Constabulary, for the preservation of the peace and maintenance of order, may authorize the arrest without warrant and detention for a period of not more than 48 hours of any person for the purpose of interrogation. Civil Authorities (Special Powers) Act Regulations (Northern Ireland), 1922, Reg. 10 (No. 191, 1956). Regulation 11(1) provides:

Any person authorized for the purpose by the Civil Authority, or any police constable, or member of any of Her Majesty's Forces on duty when the occasion for the arrest arises may arrest without warrant any person whom he suspects of acting or having acted or of being about to act in a manner prejudicial to the preservation of the peace or maintenance of order. . . . Id. Reg. 11(1). Regulation 11(2) provides:

Any person so arrested may on the order of the Civil Authority be detained in any of Her Majesty's prisons or elsewhere as may be specified in the order. . . .
9, 1971. On that day, over 340 persons were arrested as suspected IRA terrorists under Regulation 12 of the Special Powers Act. The arrested persons were taken to one of three Regional Holding Centres where they were interrogated and subsequently released or detained for further interrogation and/or internment. Within the following six months, over 2,350 persons were arrested under the regulations of the Special Powers Act, of whom 1,600 were released after interrogation.

2. Objections to the Reintroduction of Detention and Internment

This reintroduction of internment sparked a violent reaction among the

Id. Reg. 11(2). Regulation 12(1) provides:

When it appears to the Minister of Home Affairs for Northern Ireland on the recommendation of an officer of the Royal Ulster Constabulary that for securing the preservation of the peace and the maintenance of order in Northern Ireland it is expedient that a person shall be subjected to such obligations and restrictions as are hereinafter mentioned, the Minister of Home Affairs may by order require that person forthwith or from time to time either to remain in or to proceed to or reside in such place as may be specified in the order or to be interned as may be directed by the order.

The powers created in the civil authority by the Special Powers Act and its regulations have continually been referred to as draconian in nature. See, e.g., LSTIT, supra note 88, at 33-34; Lowry, Internment, supra note 88, at 271. Under Section 1 of the Special Powers Act, the civil authority had the power “to take all such steps and issue all such orders as may be necessary for preserving the peace and maintaining order” in Northern Ireland. Special Powers Act, 12 & 13 Geo. 5, c. 5, § 1(1) (N.I.).

The broad power created under Regulation 10 rendered every citizen in Northern Ireland liable to peremptory arrest or detention for up to 48 hours, on the mere authority of any RUC officer, for the purposes of interrogation. Regulation 10 contained no requirement that the arrested person be in any way a suspect.


96. This large arrest operation was known as “Operation Demetrius.” Report, supra note 9, at 1. The list of persons to be arrested was compiled by the RUC in consultation with the British Army. Id.

97. Id.; Lowry, Internment, supra note 88, at 274.

98. See note 95 supra.

99. The three Regional Holding Centres set up to receive prisoners during the 48 hours of interrogation were: Magilligan Weekend Training Centre in County Londonderry, Ballykinler Weekend Training Centre in County Down and Girdwood Park Territorial Army Centre in Belfast. Report, supra note 9, at 1. Those persons who were detained for longer periods were then sent on board the ship “Maidstone” in Belfast Harbor or to Crumlin Road Prison. Id. In addition, 12 men were singled out and taken to an unknown center for interrogation purposes. The above Regional Holding Centres were closed shortly after Operation Demetrius was completed in August 1971. Id. at 2. They were replaced with holding centers at Palace Barracks in Holywood, Girdwood Park in Belfast, Gough in County Armagh and Ballykelly in County Londonderry. Id. at 2. The allegations of ill-treatment investigated by the Court in Ireland v. the United Kingdom dealt with persons detained at the unknown holding centers, Palace Barracks, Girdwood Park Territorial Army Centre, Ballykinler and other miscellaneous places. Judgment, supra note 3, at 36.

100. Lowry, Internment, supra note 88, at 274.
members of the minority population in Northern Ireland. These emergency powers were originally used solely against members of the minority population who were suspected of being IRA terrorists or sympathizers. This was so even though substantial numbers of the majority population were also involved in extremist, terrorist-type organizations. Consequently, the minority population viewed the use of detention and internment as a discriminatory means of repression employed by the majority-controlled government.

Reports of brutality and of ill-treatment began to filter out of the Regional Holding Centres within a few days of the initial internment sweep. The press printed statements by detainees who alleged that they had been subjected to ill-treatment, degrading conditions and brutality upon their initial arrest and/or during the 48 hours of their detention. Some of these allegations concerned physical beatings and the use of five sensory deprivation techniques which were employed by the security forces during "interrogation in depth."

The five techniques consisted of hoooding, subjection to "white noise," sleep deprivation, continuous wall-standing and deprivation of food and water. The United Kingdom admitted from the beginning of internment in August 1971, that the use of these disorientation techniques had been

102. Id. at 15. Loyalist terrorists, members of the majority population, were not subjected to arrest and detention under the emergency powers until February of 1973. Id. at 21; see Report, supra note 9, at 219. It has been accepted and admitted by the United Kingdom that some persons were arrested and detained during the initial internment sweep of August 1971 on the basis of inaccurate and inadequate information. Judgment, supra note 3, at 13.
103. Report, supra note 9, at 208-11. The Commission found that the emergency situation of August of 1971 "had its origins as much in the resistance of Loyalist extremists to demands by the Catholic community for reform as in any Republican activity." Id. at 208. However, the Commission noted that the reasons given for not interning any Loyalists during Operation Demetrius were that Loyalist activity was of minute proportions compared with that of the IRA and that there was insufficient intelligence available to justify the internment of any Loyalists. Id. at 211.
104. See Spjut, Executive Detention in Northern Ireland: The Gardiner Report and the Northern Ireland (Emergency Provisions) (Amendment) Act of 1975, 10 IRISH JUR. 272, 275 (1975) [hereinafter cited as Spjut]. See also Twining, Emergency Powers and Criminal Process: The Diplock Report, 1973 CRIM. L. REV. 406, 414 [hereinafter cited as Twining]. Professor Twining contends that (1) internment, as reintroduced in 1971, was discriminatory; (2) while preventative in conception, internment was punitive in execution; (3) the scale of the operation went beyond the exigencies strictly required by the situation; and (4) there was no satisfactory official outlet for grievances. Id. at 414-15.
105. Judgment, supra note 3, at 37.
106. Id. at 35.
107. Id. at 36.
108. Hooding consisted of "putting a black or navy [colored] bag over the detainees' heads and, at least initially, keeping it there all the time except during interrogation." Id.
109. This involved holding the detainees, "pending their interrogations, . . . in a room where there was a continuous loud and hissing noise." Id.
110. The detainees were forced to remain for long periods of time in a spreadeagled position, with their fingers placed high above their heads against a wall and their legs spread apart with the feet back, thereby causing them to stand on their toes with the weight of their body mainly on their fingers. Id.
authorized at a "high level" of government. In fact, the methods had been taught to members of the RUC by the English Intelligence Centre at a seminar held in April 1971.

The utilization of the five techniques was of considerable benefit to the Government of Northern Ireland as it resulted in the disclosure of a substantial amount of intelligence information. The interrogations revealed the identification of some 700 members of the IRA, details concerning the organization of the IRA and the discovery of individual responsibility for approximately 85 previously unexplained crimes. The question of whether the employment of such interrogation methods was justified in light of the information obtained and of the emergency situation then prevailing in Northern Ireland was of paramount importance in Ireland v. the United Kingdom. The Irish Government presented its petition to the Commission in December 1971, alleging, inter alia, that the means employed to obtain intelligence information were not justifiable in light of the ensuing denial and abuse of those human rights which are specifically protected under the Convention.

B. The Compton Report

In response to the large number of allegations of ill-treatment, the United Kingdom established the Compton Committee on August 31, 1971 to investigate allegations by those arrested on 9th August under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 of physical brutality while in the custody of the security forces prior to either their subsequent release, the preferring of a criminal charge or their being lodged in a place specified in a detention order.

The Compton Committee encountered a major obstacle in conducting its investigation. All but one of the eleven persons whose complaints were considered refused to appear as witnesses before the Committee. The detainees objected to the procedure adopted by the Compton Committee. The Committee sat in camera. Legal representatives were not permitted to cross-examine
witnesses; nor was confrontation allowed between the detainees and their alleged assailants.\textsuperscript{119}

Due to the lack of cooperation on the part of the detainees, the nature of the evidence reviewed by the Compton Committee was largely hearsay.\textsuperscript{120} The Committee admitted the inherent limitations of its inquiry with regard to the evidence.\textsuperscript{121} Despite this limitation on its investigatory function, the Compton Committee, in its report adopted November 3, 1971, concluded that interrogation in depth by means of the five sensory deprivation techniques constituted physical ill-treatment.\textsuperscript{122} The Committee declined to go so far as to determine that the use of these techniques constituted physical brutality as contrasted with ill-treatment.

Where we have concluded that physical ill-treatment took place, we are not making a finding of brutality on the part of those who handled these complainants. We consider that brutality is an inhuman or savage form of cruelty, and that cruelty implies a disposition to inflict suffering, coupled with indifference to, or pleasure in, the victim’s pain. We do not think that happened here.\textsuperscript{123}

In addition, the Compton Committee attempted to provide some justification for the use of the five techniques in stating that these methods were employed in support of the interrogation of “a small number of persons arrested in Northern Ireland who were believed to possess information of a kind which it was operationally necessary to obtain as rapidly as possible in the interest of saving lives.”\textsuperscript{124}

C. The Parker Report

The findings of the Compton Committee became the subject of a great deal of criticism when they were made public in November 1971.\textsuperscript{125} Consequently, the United Kingdom appointed yet another committee, the Parker Committee, to consider “whether, and if so in what respects, the procedures currently authorized for the interrogation of persons suspected of terrorism and for

\footnotesize{note 116, at 6. “It has been open to both complainants and to those complained against to be legally represented. No complainant availed himself of this facility though we were assisted by the legal representatives of army and police witnesses.” Id.


120. Such evidence consisted of press reports, written statements supposedly signed by the complainants, personal inspection of the Holding Centres, medical reports on persons admitted to the Holding Centres, operational orders, arrest files and oral evidence from persons in charge of operations. Compton Report, \textit{supra} note 116, at 4-5.

121. \textit{Id.} at 3.

122. \textit{Id.} at 21-22.

123. \textit{Id.} at 23.


125. LSTTT, \textit{supra} note 1, at 295.
their custody while subject to interrogation require amendment." 126 The Parker Committee submitted a majority and a minority report on January 31, 1972.127

The majority report of the Parker Committee discussed the five techniques, including their history, their continued value, possible alternatives and their justification.128 In so doing, the majority specifically refrained from determining whether the interrogations conducted in compliance with a Joint Directive on Military Interrogation,129 conflicted with the United Kingdom's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms.130 The majority reserved its judgment on this question because the application of the Irish Government, presented to the European Commission of Human Rights in December 1971, was then sub judice.131

While the majority accepted the proposition that torture, whether physical or mental, is not justified under any conditions, it claimed that the distinction between "discomfort" or "hardship" and "torture" is a matter of opinion regardless of the definition used.132 The majority stated that it did not support the principle that ends justify means.133 However, the majority was of the opinion that the question of the morality of the use of the five techniques depended upon the intensity with which they were applied and upon the provision of effective safeguards against their excessive use.134 The recommended safeguards included: "guidelines" to assist the security forces in determining the degree to which the techniques should be applied in any particular circumstance; the presence of a senior officer at the interrogation center who would bear personal responsibility for the operation; the establishment of a panel of highly skilled interrogators; the presence of a doctor with some psychiatric background during interrogation; and, the establishment of a procedure to process complaints concerning the application of the five techniques.135 Subject to these safeguards, the majority of the Parker Committee concluded that "there is no reason to rule out these techniques on moral grounds and that it is

126. REPORT OF THE COMMITTEE OF PRIVY COUNSELLORS APPOINTED TO CONSIDER AUTHORIZED PROCEDURES FOR THE INTERROGATION OF PERSONS SUSPECTED OF TERRORISM, CMD. NO. 4901, at v, (Gr. Britain 1972) [hereinafter cited as Parker Report]. The Committee was chaired by Lord Parker of Waddington.
127. Id. at v, 9.
128. Id. at 2-7.
130. Parker Report, supra note 126, at 1.
131. Id. at 1-2.
132. Id. at 2.
133. Id. at 6.
134. Id. at 7.
135. Id. at 8-9.
possible to operate them in a manner consistent with the highest standards of our society." 136

The minority report, written by Lord Gardiner, varied substantially from that of the majority. The minority report maintained that the five techniques could not be lawfully authorized under the domestic law of either Northern Ireland or Great Britain. 137 Lord Gardiner stated that such procedures could not even have been authorized under the emergency powers of the Special Powers Act. 138 Like the majority, Lord Gardiner declined to express his opinion concerning the legality of the five techniques under international law due to the pending application of the Irish Government. 139

The minority report asserted that the interrogation procedures were not morally justifiable, "even in the light of any marginal advantages which might have been obtained." 140 In conclusion, Lord Gardiner suggested that the continued use of the five techniques would have a detrimental effect on the international reputation of the United Kingdom and on the worldwide movement concerning the protection of human rights. 141

The Parker Report was published on March 2, 1972. That same day, the Prime Minister of the United Kingdom made the following declaration before Parliament: "[The] Government, having reviewed the whole matter with great care and with reference to any future operations, [has] decided that the techniques . . . will not be used in future as an aid to interrogation." 142 Following this statement, a directive on interrogation was issued which prohibited the use of the five techniques. 143

D. The Amnesty International Report

While the Parker Committee was drawing up its report, Amnesty International 144 was conducting its own inquiry into allegations of ill-treatment made by persons arrested and detained under the Special Powers Act. The Amnesty International Commission met in Belfast between December 16 and

136. Id. at 7.
137. Id. at 13-14 (minority report).
138. Id. at 14 (minority report).
139. Id. at 15 (minority report).
140. Id. at 20 (minority report).
141. Id. at 21 (minority report). Lord Gardiner stated "If . . . we now depart from world standards which we have helped to create, I believe that we sic [would] both gravely damage our own reputation and deal a severe blow to the whole world movement to improve Human Rights." Id. (minority report).
142. Judgment, supra note 3, at 37. The Prime Minister stated further: "[i]f a Government did decide . . . that additional techniques were required for interrogation, then I think that . . . they would probably have to come to the House and ask for the powers to do it." Id.
143. Id. at 47. This directive provided for mandatory medical examinations, the keeping of comprehensive records and the immediate reporting of any complaints of ill-treatment. Id.
144. See note 2 supra.
20, 1971, to consider 30 cases of alleged ill-treatment. Its report was published in March 1972, after the United Kingdom Prime Minister had made his statement concerning the termination of the use of the five techniques.

The Amnesty International Commission found that in all cases where medical information was available, the evidence supported the complainants' general allegations of ill-treatment. The Amnesty International Commission concluded that "persons arrested under the Special Powers Act had been subjected to brutal treatment by the security forces during arrest and transport." Amnesty International considered these instances of brutality to be in violation of the United Kingdom's obligations under Article 3 of the Convention.

The Amnesty International Commission also investigated the treatment of detainees during interrogation and, again, concluded that the complainants had been subjected to brutality. In so concluding, the Amnesty International Commission disagreed with the Compton Committee's findings of mere physical ill-treatment. The techniques used during interrogation in depth were also found to be in contravention of Article 3 of the Convention. In addition, the Amnesty International Report asserted that, while the five techniques may have been discontinued in accordance with the earlier statement and directive of the United Kingdom, the brutality of the type confirmed in the report still continued.

145. Amnesty International, Report of an Enquiry into Allegations of Ill-Treatment in Northern Ireland Foreword (March 1972) [hereinafter cited as AI REPORT]. The Amnesty International Commission heard oral evidence, whenever possible, from complainants personally. In addition, it heard medical evidence from such witnesses as were available. It dealt mainly with cases of individuals arrested after August 9, 1971, so as not to duplicate the work of the Compton Committee. Id.

The Amnesty International Commission experienced the same obstacle in obtaining evidence from the authorities that the Compton Committee encountered with witnesses. Amnesty International received no cooperation from the authorities. Consequently, its sources of information were one-sided. As a result, Amnesty International was forced to draw its conclusions based upon a subjective impression of the individual complainant and of his account. Id. at 3.

146. See id. at Foreword; Judgment, supra note 3, at 37.

147. AI REPORT, supra note 145, at 26. The Amnesty International Commission noted that there was a possibility that injuries may have been self-inflicted or sustained during arrest, but it felt that the nature of the injuries rendered both of these explanations improbable. Id.

148. Id.

149. Id. at 27. The Amnesty International Commission also considered these instances of brutality to be in violation of Article 5 of the Universal Declaration of Human Rights. Id. at 27. Article 5 of the Declaration states that "[n]o one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment." Declaration, supra note 2, art. 5.

150. AI REPORT, supra note 145, at 36.

151. Id. While the Compton Committee focused on physical brutality, see § III.B supra, Amnesty International concentrated on mental brutality. AI REPORT, supra note 145, at 38.

152. Id. at 36. Article 5 of the Universal Declaration of Human Rights was also found to have been violated. Id.

153. Id. at Foreword. For more discussion on the question of continuing brutality in Northern Ireland, see § V infra.
E. Continued Violence and the Introduction of Direct Rule

While the members of the Parker Committee and of the Amnesty International Commission were composing their respective reports, the situation in Northern Ireland was rapidly deteriorating. In early 1972, the level of violence remained higher than at any time prior to the reintroduction of internment in August 1971.154 During the first three months of 1972, 87 people were killed155 and 421 bomb explosions occurred.156 On January 30, 1972, 13 civilian members of the minority population died under army gunfire during the course of a civil rights demonstration in Londonderry. The incident became known as "Bloody Sunday" and resulted in a new wave of support for the IRA.157

The IRA was responsible for the majority of the violence which occurred in the seven month period between August 1971 and March 1972.158 However, violent activities were also conducted by Loyalist extremists.159 The Loyalist Ulster Defense Association (UDA) was organized in September 1971, to perform a vigilante function.160 The UDA eventually initiated its own campaign of counter-terrorism.161

Despite the marked upsurge in violence and terrorist activities by members of the majority population, all of the approximately 900 persons detained and interned under the Special Powers Act at the end of March 1972, were members of the minority population.162 While only members of the minority population were subjected to the extrajudicial emergency powers at that time, the ordinary criminal law processes were employed against both majority and minority population members.163 Over 1,600 persons were charged with terrorism-related criminal offenses between August 9, 1971, and March 31, 1972.164

In response to the worsening situation and in view of the seeming inability of the Northern Ireland Government to deal with the problem effectively, the Government of the United Kingdom announced the introduction of direct rule by Westminster on March 24, 1972.165 Under an act of the United Kingdom, the Northern Ireland Parliament was prorogued and the British

155. Id. The total of 87 included 60 civilians and 27 members of the security forces. Id.
156. Id. Between August 1971 and March 30, 1972, there were 1,130 bomb explosions and over 2,000 shooting incidents in Northern Ireland; 158 civilians, 58 soldiers and 17 policemen were killed; and, 2,505 civilians, 306 soldiers and 107 policemen were injured. Id.
157. Id. For an excellent account of the events of "Bloody Sunday," see LSTIT, supra note 1.
158. See Judgment, supra note 3, at 15.
159. See id.
160. Id.
161. See id. at 15-17.
162. Id. at 15.
163. Id.
164. Id.
165. Id.
Parliament was empowered to legislate in its stead. The executive power was transferred to the holder of the newly created position of Secretary of State for Northern Ireland. Consequently, the Secretary of State assumed direct responsibility for the administration of the Special Powers Act.

In an attempt to reduce the level of tension and violence in Northern Ireland and thereby lessen political tension, the newly appointed Secretary of State began to release a substantial number of internees and detainees. Both factions of the IRA responded with the declaration of a ceasefire in the early summer of 1972. However, the truce announced by the Provisional IRA was rather short-lived and the summer months brought an increase in both Republican and Loyalist violence. As a result, new detention orders were executed while the number of releases declined.

F. The Diplock Report and the Detention of Terrorists Order

By the fall of 1972, the United Kingdom Government was desperately searching for an alternative to internment under the Special Powers Act. In October 1972, the United Kingdom established the Diplock Commission to consider "what arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organizations... otherwise than by internment by the Executive..." The Diplock Commission was chaired by Lord Diplock.

However, the United Kingdom Government did not wait for the Diplock Commission to present its proposals for change. On November 7, 1972, the Secretary of State announced the introduction of an interim measure, the Detention of Terrorists (Northern Ireland) Order. The Detention of Terrorists Order repealed and replaced the detention and internment regulations of the Special Powers Act while it retained the powers of arrest con-

167. Id.
168. See Spjut, supra note 104, at 276.
Id. at 17.
170. Id. at 17.
171. Id. at 17-18. See also LSTT, supra note 1.
172. See Judgment, supra note 3, at 16.
173. REPORT OF THE COMMISSION TO CONSIDER LEGAL PROCEDURES TO DEAL WITH TERRORIST ACTIVITIES IN NORTHERN IRELAND, CMD. No. 5185, at 5 (Gr. Britain 1972) [hereinafter cited as Diplock Report]. The Commission was chaired by Lord Diplock.
174. See note 95 supra. The Detention of Terrorists Order was introduced by the Secretary of State pursuant to his powers under the Temporary Provisions Act. See note 166 supra. For a general discussion of the Detention of Terrorists Order, see Rauch, The Compatibility of the Detention of Terrorists Order (Northern Ireland) with the European Convention for the Protection of Human Rights, 6 N.Y.U. J. INT'L L. & P. 1 (1973) [hereinafter cited as Rauch].
175. Specifically repealed were regulations 11(2) and 12(1). For the text of these regulations, see note 95 supra.
ferred under the Special Powers Act. Under the new order, "internment" as such was abolished and formal "detention" with some procedural safeguards was introduced.

1. Interim Custody and Detention under the Detention of Terrorists Order of 1972

Under the provisions of the Detention of Terrorists Order, when the Secretary of State for Northern Ireland suspected that an individual had committed or was attempting to commit an act of terrorism, or, that such individual had directed the organization or training of others for the purpose of terrorism, the Secretary could sign an interim custody order. This interim custody order authorized the temporary detention of the suspect for no more than 28 days, unless the Secretary of State referred the case to a Commissioner for the purpose of conducting a quasi-judicial hearing. If the Commissioner was satisfied that the individual's detention was necessary for the protection of the public, he was to issue a detention order. If the Commissioner was not so satisfied, he was to order the release of the detained individual. The legislation included a provision for appeal by the detainee to a Detention Appeal Tribunal within 21 days of the issuance of the detention order. However, the duration of detention under the Detention of Terrorists Order was unlimited. During the period between the entry into force of the Detention of Terrorists Order and January 31, 1973, 166 interim custody orders and 128 detention orders were processed while 94 persons were released.

The Diplock Commission submitted its report to the Parliament of the United Kingdom in December 1972, after a hastily conducted investigation. The Diplock Report referred to the five techniques which were

176. See id.
178. "Terrorism," as defined in the Detention of Terrorists Order, is "the use of violence for political ends and includes any use of violence for the purpose of putting the public ... in fear." Detention of Terrorists Order, STAT. R. & O. N.I. No. 1632, art. 2(2).
179. Id. art. 4(1).
180. Id. art. 4(3). A "Commissioner" had to be a person who held a judicial office in the United Kingdom or who was a barrister, advocate or solicitor of not less than ten years standing. Id. Schedule Part I. The hearing before the Commissioner was to be conducted in camera. Id. art. 6(4). The respondent was to be represented by counsel and was allowed to be present at the hearing. Id. Schedule Part III.
181. Id. arts. 5(1), (2). The detention order had to contain a statement of the grounds upon which it was issued and a copy of the detention order had to be delivered to the detainee. Id. art. 5(3).
182. See Rauch, supra note 174, at 3.
183. Detention of Terrorists Order, STAT. R. & O. N.I. No. 1632, art. 6(1).
184. See Lowry, Internment, supra note 88, at 294.
186. For a critical discussion of the Diplock Commission’s manner of proceeding and of its recommendations, see Twining, supra note 104. Professor Twining notes that the Diplock Report
discussed in the earlier Compton and Parker Reports. 187 The Diplock Commission flatly refused to condone such practices, concluding that their use was counter-productive. 188 The members of the Diplock Commission also commented that the large-scale internment sweep of August 1971, had led to the arrest and detention of a number of persons based upon "inadequate and inaccurate information." 189 The Diplock Commission concluded that there was no alternative to the use of extrajudicial detention so long as terrorists continued to operate in Northern Ireland and intimidation of potential witnesses to terrorist activities continued. 190

After discussing the continuing need for detention and approving the new detention procedures provided under the Detention of Terrorists Order, the Diplock Commission made several recommendations concerning changes in the existing criminal legal procedure dealing with terrorists. 191 It was hoped that these reforms would reduce the number of cases dealt with under extrajudicial detention procedures. Such recommendations included, inter alia, the admissibility of confessions as evidence unless obtained by torture or inhuman or degrading treatment; 192 a conferral upon members of the army of the power to arrest without warrant and detain in custody for up to four hours; 193 and, a transfer of the burden of proof from the prosecution to the accused as to the possession of firearms or explosives. 194


Many of the recommendations of the Diplock Commission were subsequently incorporated in the Northern Ireland (Emergency Provisions) Act 195 is "out of touch with certain phases of public opinion in Northern Ireland." Id. at 411. Twining suggests several factors which may have reduced the significance of the Diplock Report including: the "great dispatch" with which the Diplock Commission acted; the fact that almost all of the evidence was heard in London, far from the realities of the situation; the fact that the Diplock Report was necessarily one-sided as most of the evidence was obtained from government sources; and, the insensitivity of the Diplock Commission in suggesting that adequate safeguards and effective remedies existed against abuses by members of the security forces for unlawful arrest or for improper methods of interrogation. Id. at 410-12.

187. See Diplock Report, supra note 173, at 31. See also §§ III. B & C supra.
189. Id. at 15. The members of the Diplock Commission continued by saying that they were satisfied that the security authorities had "learnt the lessons of the experience." Id. at 16.
190. Id. at 14.
191. Id. at 17-34.
192. Id. at 32. It should be noted that in recommending this limited exception to a general rule of admissibility of confessions, the Diplock Commission was expressly adopting the wording of Article 3 of the Convention. Id.
193. Id. at 21.
194. This transfer of the burden of proof required the accused to prove that he did not know, nor had any reason to suspect, that firearms or explosives were where they were found. Id. at 27-28.
which entered into force on August 8, 1973. The Emergency Provisions Act was enacted as a consequence of the growing dissatisfaction of the general public of Northern Ireland with the operation of the quasi-judicial detention procedures. In August of 1973, opposition to detention was no longer limited to members of the minority population as the United Kingdom had begun to exercise the detention procedures against Loyalists and other majority population members in February of that year.

The Emergency Provisions Act repealed the remaining regulations of the Special Powers Act and also repealed the recently enacted Detention of Terrorists Order. However, in substance, the Emergency Provisions Act retained most of the interim custody and detention procedures contained in the Detention of Terrorists Order. In addition, the Act made some alterations in the criminal procedures employed against suspected terrorists, basing these changes on the recommendations of the Diplock Commission.

2. The Gardiner Report

The life of the Emergency Provisions Act was almost as short-lived as that of the Detention of Terrorists Order. By 1974, it was obvious that the United Kingdom Government was unable to effectively and quickly process the cases brought before it under the provisions of the new act. It was also apparent that detention was not being carried out with the degree of impartiality expected of quasi-judicial procedures.

Consequently, the United Kingdom appointed still another commission to investigate the operation of the detention procedures under the Emergency Provisions Act. This commission, known as the Gardiner Committee, examined what provisions and powers, “consistent to the maximum extent practicable in the circumstances with the preservation of civil liberties and human rights,” were required to deal with terrorism and subversion in Northern Ireland.

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196. See Spjut, supra note 104, at 278.
197. See id.; see also Judgment, supra note 3, at 21. For a brief discussion of the increasing level of Loyalist terrorism and accompanying Protestant militancy in late 1972 and in 1973, see id. at 20-21.
199. Extrajudicial powers enacted under the Emergency Provisions Act included arrest without warrant by a policeman and detention for 72 hours, id. Part II, §§ 10(1), (3); arrest without warrant by a member of the army and detention for 4 hours, id. Part II, § 12(1); interim custody for 28 days, id. Schedule I, Part II, §§ 11(1), (3); and, detention, id. Schedule I, Part II, § 24.
200. See id. Part I.
201. Spjut, supra note 104, at 273.
202. Id. See Lowry, Internment, supra note 88, at 308.
203. REPORT OF A COMMITTEE TO CONSIDER, IN THE CONTEXT OF CIVIL LIBERTIES AND HUMAN RIGHTS, MEASURES TO DEAL WITH TERRORISM IN NORTHERN IRELAND, CMD. No. 5847, at 1, (Gr. Britain 1975) [hereinafter cited as Gardiner Report]. The Gardiner Committee was chaired by Lord Gardiner who had written the minority opinion in the Parker Report.
The Gardiner Committee commenced its report by addressing the arguments of those who maintained that several features of the then existing emergency provisions were "so inherently objectionable" that they should be abolished as basic violations of human rights. The Gardiner Committee flatly disagreed with these arguments. It decided that the liberty of an individual, although a human right, is not an absolute right. The Gardiner Committee argued that an individual should be restrained from using his liberty to take away that of another. The members of the Gardiner Committee concluded that the United Kingdom Government had acted legitimately, and consistently with the provisions of the European Convention on Human Rights, in restricting certain fundamental liberties in Northern Ireland.

However, the Gardiner Committee asserted that the operation of emergency powers in Northern Ireland should be limited both in scope and duration. With particular reference to the emergency power of detention, the Committee stated in its report:

After long and anxious consideration, we are of the opinion that detention cannot remain as a long-term policy. In the short term, it may be an effective means of containing violence, but the prolonged effects of the use of detention are ultimately inimical to community life, fan a widespread sense of grievance and injustice, and obstruct those elements in Northern Ireland society which could lead to reconciliation. Detention can only be tolerated in a democratic society in the most extreme circumstances; it must be used with the utmost restraint and retained only as long as it is strictly necessary.

The appendix to the Gardiner Report contains tables indicating the statistics of violence in Northern Ireland from January 1, 1971 through November 30, 1974; statistics on the prison population from January 1, 1968 through November 30, 1974; and, statistics on the number of detention orders, interim custody orders and release orders from July 1, 1973 through November 30, 1974.

204. Id. at 6. The criticized features included the use of the Army in aid of the civil power, detention without trial, arrest on suspicion and trial without a jury. Id.

205. Id.

206. Id.

207. Id. at 6-7, 50. The Gardiner Committee noted that the United Kingdom had given proper notice of derogation under Article 15 of the Convention in order to deal with terrorism in Northern Ireland. Id. at 7. See note 86 supra.


209. Id. at 43.
The Gardiner Committee accepted the criticisms of the detention procedures under the Emergency Provisions Act as being largely justified. According to the Gardiner Report, the most persuasive criticism was that the detention procedures were "unsatisfactory, or even farcical, if considered as judicial." As a result, the Committee proposed several changes in the detention procedures. In addition, the Gardiner Committee made recommendations for changes in the ordinary trial procedures dealing with terrorists, the existing offenses relating to terrorism, prison accommodations and the "special category" status of prisoners.

The Gardiner Report was presented to the United Kingdom Parliament in January 1975. On August 21, 1975, Parliament passed the Northern Ireland (Emergency Provisions) (Amendment) Act. This Act was based on the

211. Id. at 44. The Gardiner Report continued:
   The adversarial method of trial is reduced to impotence by the needs of security. . . .
   [T]he overwhelming amount of hearsay evidence and the in camera sessions are totally
   alien to ordinary trial procedures. The quasi-judicial procedures are a veneer to an en-
   quiry which, to be effective, inevitably has no relationship to common law procedures.
   Id.
212. Id. at 45-49. The proposed changes included repeal of certain provisions for detention under the Emergency Provisions Act, creation of a Detention Advisory Board to carry out the inves-
   tigation of the cases of persons proposed for detention, new time limits for the several phases of the detention procedures, creation of a Release Advisory Committee and establishment of a pre-
   release center and an ordered release program to prepare releasable detainees for entry back into society. Id. For a lengthier discussion and analysis of the Gardiner Committee's proposed changes, see Spjut, supra note 104, at 278-97. See also Lowry, Internment, supra note 88, at 308-14.
214. Id. at 24-26.
215. Id. at 33-37.
216. Id. at 34-35. In June of 1972, after a hunger strike was conducted at Crumlin Road Prison, a special category status for convicted prisoners was introduced.
   In practice this has meant that any convicted criminal sentenced to more than nine
   months' imprisonment who claims political motivation and who is acceptable to [prison
   officials] . . . is accorded special status. There were on 30th November [1974], 1,119
   prisoners in this special category out of a total of 1,771 convicted prisoners. . . . They
   are allowed to wear their own clothes and are not required to work. They receive more
   frequent visits than other prisoners and are allowed food parcels, and can spend their
   own money in the prison canteen. They are segregated in compounds according to the
   paramilitary organ[a]tion to which they claim allegiance, in the same way as de-
   tainees.
   Id. at 34. The members of the Gardiner Committee reached the conclusion that the introduction of special category status had been a serious mistake and they recommended that the status be
   terminated at the earliest practicable opportunity. Id. at 34-35. For subsequent developments with regard to the status of prisoners in Northern Ireland, see § V infra.
   cy Provisions Amendment Act] was continued twice by Parliamentary Resolution. The Northern
   Ireland (Emergency Provisions) (Amendment) Act 1977, c. 34, increased the maximum term of
recommendations of the Gardiner Committee\textsuperscript{219} and amended the emergency powers and the law relating to terrorism, the maintenance of order and the detection of crime in Northern Ireland.\textsuperscript{220}

On December 5, 1975, the Secretary of State for Northern Ireland signed orders for the release of the last 75 individuals held under the emergency powers.\textsuperscript{221} According to the evidence before the European Court of Human Rights, no individual was held in detention under the extrajudicial powers in Northern Ireland between December 1975 and the date of the Court’s decision in January 1978.\textsuperscript{222}

IV. THE DECISION OF THE COURT

A. The Proceedings of the Case

1. The Filing of the Application with the Commission

The Government of Ireland filed its interstate application under Article 24\textsuperscript{223} of the Convention with the Commission on December 16, 1971.\textsuperscript{224} The application alleged that the United Kingdom had, in relation to Northern Ireland, contravened Articles 1, 2, 3, 5, 6, 14 and 15 of the Convention.\textsuperscript{225} On October 1, 1972, the Commission declared the application admissible in part, accepting the allegations that:

(1) the methods of interrogation of persons held in custody amounted to an administrative practice in violation of Article 3;

(2) internment without trial and detention under the emergency powers constituted an administrative practice in breach of Article 5 and 6 in connection with Article 15;

(3) the exercise by the United Kingdom of the extrajudicial powers was being carried out with discrimination, thereby violating Article 14 in connection with Articles 5 and 6; and

(4) the administrative practices complained of also constituted a breach of Article 1.\textsuperscript{226}

\textsuperscript{219.} Emergency Provisions Amendment Act 1975, c. 62, Preliminary Note.
\textsuperscript{220.} Id. §§ 1-16. See Judgment, supra note 3, at 24.
\textsuperscript{221.} Judgment, supra note 3, at 25.
\textsuperscript{222.} Id. However, persons suspected of involvement in terrorist activities continued to be prosecuted under the ordinary criminal law procedures. The violence and terrorism in Northern Ireland has continued through the present day. For more discussion of developments since 1976, see § V infra.
\textsuperscript{223.} "Any High Contracting Party may refer to the Commission, through the Secretary General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party." Convention, supra note 4, art. 24.
\textsuperscript{224.} [1972] YEARBOOK, supra note 5. For a statement of the objectives of the application made by the Irish Government, see note 5 supra.
\textsuperscript{225.} [1972] YEARBOOK, supra note 5, at 76-78.
\textsuperscript{226.} Report, supra note 9, at 5. For an explanation of why the alleged Article 2 violation was declared inadmissible, see note 8 supra.
The Commission then conducted an examination of the facts and an investigation in accordance with Article 28 of the Convention.\textsuperscript{227} It eventually drew up its report and transmitted it to the Committee of Ministers on February 9, 1976.\textsuperscript{228}

2. The Decision of the Commission and the Referral of the Case to the Court

During the proceedings before the Commission in Ireland v. the United Kingdom, the written observations and oral submissions of the two concerned governments were received.\textsuperscript{229} In addition, the Commission heard testimony from a total of 119 witnesses.\textsuperscript{230} The Commission limited the scope of its investigation to the autumn of 1971 with respect to allegations of ill-treatment and torture.\textsuperscript{231} In its inquiry into the legitimacy of the emergency powers under the Convention and the question of their discriminatory application, the Commission broadened its scope to include the period from August of 1971 to June of 1974.\textsuperscript{232}

More than four years after declaring the application of the Irish Government partly admissible, and after failing to reach a friendly settlement\textsuperscript{233} of the

\textsuperscript{227} Article 28(a) states that the Commission "shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the [application] and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission. . . ." Convention, supra note 4, art. 28(a).

\textsuperscript{228} Judgment, supra note 3, at 1.

\textsuperscript{229} Id. at 50.

\textsuperscript{230} Id. Sixteen "illustrative" cases were chosen from the 228 cases of alleged ill-treatment originally submitted by the Irish Government. Id. at 35. These cases were chosen for the purpose of ascertaining the facts of the case, as required by the Convention. Convention, supra note 4, art. 28(a). The illustrative cases were examined in great detail by the Commission which received medical reports and oral evidence. Judgment, supra note 3, at 35. The Commission considered an additional 41 cases of alleged ill-treatment on which it received medical reports and written comments. Id.

In considering the illustrative cases, the Commission concluded that neither the case-witnesses nor the security force witnesses gave "accurate and complete accounts" of what had occurred. Id. As a result, the Commission was forced to treat the submitted medical reports as "the most important objective evidence." Id. quoting Report, supra note 9, at 407.

The Commission designated the sixteen individuals whose cases were considered with letters and figures in order to protect their identity. Id. In its Report, the Commission grouped the sixteen cases into five groups, according to the place where the alleged ill-treatment was supposedly inflicted: the unidentified interrogation centers, Palace Barracks, Girdwood Park Barracks, Ballykinler Regional Holding Centre and other miscellaneous places. Report, supra note 9, at 403.

\textsuperscript{231} Id. at 459. The Commission did accept evidence relating to later reports of ill-treatment and torture for its "indicative" value. Id.

\textsuperscript{232} Id. at 11.

\textsuperscript{233} Article 28(b) of the Convention states that the Commission "shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention." Convention, supra note 4, art. 28(b).
case, the Commission adopted its report on January 25, 1976. The Commission divided its lengthy report into three parts: (1) the issues relating to detention without trial; (2) the treatment of detainees; and (3) the duty to secure human rights. In its report, the Commission expressed its opinion which consisted of eight points.

The Irish Government, not entirely satisfied with the report of the Commission, referred its application to the Court on March 10, 1976, complying with the requisites of Articles 32, 47 and 48. The Irish Government invited the Court to

234. See Report, supra note 9. Article 31(1) of the Convention reads as follows:

If a solution is not reached, the Commission shall draw up a Report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerning its obligations under the Convention. The opinions of all members of the Commission on this point may be stated in the Report.

235. Part One deals with the issues under Articles 5, 6, 14 and 15 of the Convention. It is further divided into the justification issue and the discrimination issue. Id. at 9, 105.

236. Part Two deals with the issues related to Article 3 of the Convention. Id. at 221. Part Three is concerned with the issues raised under Article 1 of the Convention. Id.

237. The Commission unanimously held that

(1) the powers of detention and internment without trial, as exercised during the period in question, were not in conformity with Article 5, but were nevertheless justified as "strictly required by the exigencies of the situation" in Northern Ireland, within the meaning of Article 15(1);

(2) Article 6 was not applicable to the emergency powers;

(3) the emergency powers in question had not been applied with discrimination in contravention of Article 14;

(4) the combined use of the five techniques in aid of interrogation in the illustrative cases constituted a practice of inhuman treatment and torture in breach of Article 3;

(5) eleven other persons had suffered inhuman, and in two cases degrading, treatment contrary to Article 14;

(6) there had been, in the autumn of 1971, a practice in connection with the interrogation at Palace Barracks, a Regional Holding Centre, which practice amounted to inhuman treatment in contravention of Article 3; and

(7) no practice in violation of Article 3 had been found to exist in connection with general conditions at Girdwood Park or Ballykinler Regional Holding Centres in August 1971.

238. Read together, Articles 32(1), 47 and 48 allow a party state to bring a case before the Court within three months from the date of transmission of the Commission’s report to the Committee of Ministers. Convention, supra note 4, arts. 32(1), 47 & 48.

The Irish Government was dissatisfied with the Commission’s report for several reasons. The following specific points of disagreement were brought to light in the Irish Government’s Memorial. Memorial of the Government of Ireland [hereinafter cited as Irish Memorial] (obtainable from the European Court of Human Rights, Council of Europe, Strasbourg, France).

(1) The Irish Government was still of the opinion that Article 1 can be the subject of a separate breach of the Convention. According to the Irish Government, the United
consider the report of the Commission and to confirm the opinion of the Commission that breaches of the Convention have occurred and also to consider the claims of the applicant Government with regard to other alleged breaches and to make a finding of breach of the Convention where the Court is satisfied that a breach has occurred. 240

3. The Proceedings Before the Court

On April 29, 1976, the Chamber of seven judges which had been constituted to hear Ireland v. the United Kingdom decided to relinquish its jurisdiction in favor of the plenary Court, 'considering that the case raised serious questions affecting the interpretation of the Convention.' 242

The Court commenced the proceedings by requesting the submission of written memorials from the Irish Government, the United Kingdom Government and the delegates of the Commission. 243 Subsequently, the Court con-

Kingdom was in breach of Article 1 for failing to secure within its jurisdiction the particular rights and freedoms guaranteed in Section I of the Convention. Id. at 4.

(2) The Irish Government objected to the standard of proof applied by the Commission in its report, i.e., proof of the allegations made beyond a reasonable doubt, as being too rigid. Irish Memorial, supra, at 19. See Report, supra note 9, at 404. The applicant government stated that such a rigid standard of proof was "not necessarily appropriate when the matter under consideration is an alleged failure by a State to comply with its obligations under an international convention." Irish Memorial, supra, at 19.

(3) The Irish Government maintained that the United Kingdom Government had failed to establish that the emergency powers were strictly required by the exigencies of the situation within the meaning of Article 15. Id. at 51.

(4) The Irish Government contended that the exercise of the emergency powers involved a violation of Article 6(1). Id. at 52.

(5) The Irish Government believed that the exercise of the emergency powers by the authorities was carried out with discrimination on the grounds of political opinion. Id. at 78.

In addition, the Irish Government urged the Court to find further violations of Article 3 with reference to the treatment of persons held in custody between 1971 and 1974. Id. at 31.


241. Article 43 of the Convention states that:
For the consideration of each case brought before it the Court shall consist of a Chamber composed of seven judges. There shall sit as an ex officio member of the Chamber the judge who is a national of any State party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge; the names of the other judges shall be chosen by lot by the President before the opening of the case.

Convention, supra note 4, art. 43. In the present case, the Chamber invoked Rule 48 of the Rules of Court to relinquish jurisdiction in favor of the plenary Court. Judgment, supra note 3, at 2.


243. Id. at 2.
ducted two public hearings in February and April 1977.244 Thereafter, the Court delivered its judgment on January 18, 1978.245 Like the Commission, the Court decided that, with respect to certain of the sixteen illustrative cases, several violations of Article 3 of the Convention246 had occurred. The Court found that certain persons, interrogated and/or detained in Northern Ireland during autumn of 1971, had been the subjects of a practice of inhuman treatment,247 and in some cases inhuman and degrading treatment.248 Unlike the Commission, the majority of the Court believed that none of the established breaches of Article 3 constituted torture.249

The Court agreed with the Commission that further allegations of Convention breaches had not been established. In particular, the Court held that it had not been proven that the established derogations from Article 5250 were exceeded to the extent strictly required by the exigencies of the emergency situation in Northern Ireland.251 The Court also concluded that a discriminatory application of the emergency powers, contrary to Articles 5 and 14,252 had not been shown.253 In addition, the Court did not consider it necessary to give a decision on the alleged violations of Article 6.254 However, the Court assumed, without deciding, that Article 6 had not been violated.255

In its judgment, the Court addressed the issue of whether Article 1256 could be the subject of a separate breach and answered this question in the negative.257 Finally, the Court ruled on whether Article 50,258 concerning

244. Id. at 3, 4. During the first part of the oral hearings, held in February 1977, the Court concerned itself with jurisdictional issues. Id. at 3. During the oral proceedings held in April 1977, the Court heard addresses from the representatives of the applicant Government, the respondent Government and the Commission. Id. at 5.
245. Id. at 83. Annexed to the Judgment of the Court are the separate opinions of M. Zekia, id. at 84; P. O'Donoghue, id. at 88; Sir Gerald Fitzmaurice, id. at 95; D. Evrigenis, id. at 117; and, F. Matscher, id. at 119.
246. For the text of Article 3, see § IV.B.1 infra.
247. Judgment, supra note 3, at 82.
248. Id.
249. Id.
250. For the relevant text of Article 5, see § IV.C.1 infra.
251. Judgment, supra note 3, at 82. The decision on this issue involved the application of Article 15(1). Id. For the text of Article 15(1), see § II.C.1 supra.
252. For the text of Article 14, see § IV.D.1 infra.
254. Id. at 77. For the relevant text of Article 6, see § IV.E infra.
255. Judgment, supra note 3, at 77.
256. For the text of Article 1, see § IV.F infra.
257. Judgment, supra note 3, at 77-80.
258. Convention, supra note 4, art. 50. Article 50 states that:

If the Court finds that a decision or a measure taken by a legal authority, or any other authority of a High Contracting Party, is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

Id.
monetary compensation to individual victims of a breach of the Convention, should be applied to the case. The Court decided that it was not necessary to apply Article 50 since the Irish Government did not have as an object of its application the obtaining of compensation for any individual person.259

B. The Decision Concerning Allegations of Ill-Treatment and Torture: Article 3

1. Introduction

Article 3 of the Convention provides that "[n]o one shall be subjected to torture or to inhuman and degrading treatment or punishment."260 This guarantee of Article 3 is absolute — no derogation from Article 3 is ever permitted or justified, not even during an emergency situation threatening the life of a nation.261

In its application to the Commission, the Irish Government had alleged the ill-treatment and torture of persons detained at certain Regional Holding Centres in August and October of 1971. Some of these allegations centered on the use of the five techniques262 in aid of interrogation in depth at several unidentified holding centers.263 Other allegations concerned the treatment of detainees held at Girdwood Park, Palace Barracks and miscellaneous other locations.264 The majority of these allegations involved subjection to physical violence, including kickings and beatings.265 The alleged ill-treatment at Ballykinler Regional Holding Centre consisted of compulsory exercises for prolonged periods of time.266

The Commission, when presented with evidence in the form of illustrative cases, had concluded, by unanimous vote, that the combined use of the five techniques constituted a practice267 of inhuman treatment and torture in breach of Article 3.268 As to the other forms of alleged ill-treatment, the Commission unanimously had held that:

(1) eleven persons had suffered inhuman, and in two cases degrading, treatment in violation of Article 3;

259. Judgment, supra note 3, at 81, 83. In addition, the Court unanimously held that it could not, as requested by the Irish Government in a letter dated January 5, 1977, direct the United Kingdom Government to institute criminal or disciplinary proceedings against those members of the security forces who had committed the breaches of Article 3 nor against those who had condoned or tolerated such breaches. Id. at 62, 82.

260. Convention, supra note 4, art. 3.

261. See id. art. 15(2). See also Judgment, supra note 3, at 56.

262. For a discussion of the five techniques, see § III.A.2 supra.

263. Judgment, supra note 3, at 36.

264. Id.

265. Id. at 39-44, 45-46.

266. Id. at 44-45.

267. For a discussion of the distinction between "practice in breach of Article 3" and "administrative practice" (an important distinction when the case was before the Commission), see Report, supra note 9, at 379-88. See also McGovern, supra note 47.

268. Report, supra note 9, at 490.
(2) there had been in the autumn of 1971, a practice in connection with the interrogation at Palace Barracks which constituted inhuman treatment in breach of Article 3;

(3) no practice in breach of Article 3 had been found to exist in connection with general conditions at Girdwood Park in August 1971; and

(4) a violation of Article 3 was not found with respect to the conditions of detention at Ballykinler in August 1971.269

2. The Procedural Issues Addressed by the Court Under Article 3

a. Preliminary Question on the Non-contested Violations of Article 3

Before the Court, the United Kingdom did not contest the decision of the Commission with respect to breaches of Article 3.270 In addition, the United Kingdom Government gave its unqualified undertaking that the use of the five techniques would not be reintroduced as an aid to interrogation.271 However, the United Kingdom argued that the Court has the power to decline jurisdiction where the objective of an application has been accomplished or where adjudication on the merits would be devoid of purpose.272 The United Kingdom claimed that this was the situation in Ireland v. the United Kingdom. According to the United Kingdom, the case was moot.273 In support of this argument, the United Kingdom referred to (1) the official abandonment of the five techniques in 1972; (2) the solemn promise not to reintroduce the five techniques; and (3) the other measures274 that were adopted by the United Kingdom to remedy and to prevent the recurrence of the various violations found by the Commission.275 The Court took note of this commitment given by the United Kingdom and of the various measures adopted to prevent the recurrence of

269. Id. at 490-91.

270. Counter Memorial of the United Kingdom Government at 8 (obtainable from the European Court of Human Rights, Council of Europe, Strasbourg, France); Judgment, supra note 3, at 52.

271. Judgment, supra note 3, at 53. At the hearing held on February 8, 1977, the United Kingdom Attorney-General spoke on behalf of the United Kingdom Government when he made the following undertaking:

The Government of the United Kingdom [has] considered the question of the use of the "five techniques" with very great care and with particular regard to Article 3 of the Convention. They now give this unqualified undertaking, that the "five techniques" will not in any circumstances be reintroduced as an aid to interrogation.

Id.

272. Id. at 52.

273. See id.

274. Such measures included the following: issuance of police and army instructions and directives on the arrest, interrogation and treatment of persons in custody, revitalization of the established procedures for handling complaints against the police and the army, the payment of compensation in many cases, and, the appointment of committees of inquiry. Id. at 37, 47-49.

275. Id. at 52.
Convention violations; nevertheless, the Court unanimously concluded that it should render a decision on the non-contested violations of Article 3.\textsuperscript{276}

In so deciding, the Court fulfilled the broad purpose of the Convention, \textit{i.e.}, the maintenance and further realization of human rights and fundamental freedoms within the nations of Europe.\textsuperscript{277} As stated by the Court, its judgments "serve not only to decide those cases brought before [it] but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties."\textsuperscript{278} In its memorial, the Irish Government noted the continuing relevance of \textit{Ireland v. the United Kingdom}.\textsuperscript{279} The Irish Government maintained that "the Court will not merely be establishing whether in the past a breach of the Convention occurred, but its findings may well have practical consequences for the people of Northern Ireland in the future."\textsuperscript{280} Indeed, the decision of the Court has ramifications far beyond the boundaries of Northern Ireland by providing an interpretation of the scope and purpose of the Convention.

\textbf{b. Preliminary Question on Certain Contested Violations of Article 3}

In its memorial, the Irish Government invited the Court to hold, unlike the Commission, that certain violations of Article 3 had occurred at Ballykinler and at numerous other locations in Northern Ireland from 1971 to 1974.\textsuperscript{281} The United Kingdom Government contested the merits of this claim and also raised a preliminary question.\textsuperscript{282} The United Kingdom argued that these allegations did not involve a practice in breach of the Convention; rather, they concerned individual cases in which effective domestic remedies were available.\textsuperscript{283} Consequently, the United Kingdom maintained that these claims fell outside the scope of the allegation which had been asserted by the Irish Government and accepted by the Commission in its decision on admissibility.\textsuperscript{284} In its decision on admissibility, the Commission had accepted the allegation that "the treatment of persons in custody ... constituted an administrative practice in breach of Article 3."\textsuperscript{285}

The Court acknowledged that the allegation which had been accepted by the Commission under Article 3 involved a general practice and not isolated in-

\textsuperscript{276} Id. at 53.  
\textsuperscript{277} See Convention, supra note 4, Preamble.  
\textsuperscript{278} Judgment, supra note 3, at 53.  
\textsuperscript{279} Irish Memorial, supra note 239, at 2.  
\textsuperscript{280} Id.  
\textsuperscript{281} Id. at 30-31; Judgment, supra note 3, at 53.  
\textsuperscript{282} Judgment, supra note 3, at 53.  
\textsuperscript{283} Id.  
\textsuperscript{284} Id.  
\textsuperscript{285} Id.
individual cases. However, the Court noted that "a practice contrary to the Convention [could] only result from individual violations." Consequently, the Court unanimously concluded that it had jurisdiction to take cognizance of the individual cases of alleged breaches of Article 3 to the extent that the Irish Government introduced them as evidence establishing the existence of a practice.

c. Preliminary Question on the Standard of Proof

Before the Court, the Irish Government challenged the standard of proof which had been adopted by the Commission in its consideration of the alleged violations of Article 3. Relying on past case law, the Commission had applied the standard of "proof beyond a reasonable doubt." The Irish Government argued that this standard was "excessively rigid" for the purposes of the present case, especially in light of the seemingly uncooperative attitude of the United Kingdom before the Commission.

The Court agreed with the Commission's approach and adopted the same standard of proof, but added that such proof may follow from "the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact." The Court stated that it would also take into account the conduct of the parties while evidence was being obtained.

3. The Substantive Issues Addressed by the Court Under Article 3

a. The Unidentified Interrogation Center(s)

The Court accepted the Commission's findings that in August and October of 1971, there existed a practice in Northern Ireland of applying the five techniques against persons held in custody for purposes of interrogation. The Court stated that "the five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation.

The majority of the Court agreed with the Commission that the combined

286. Id.
287. Id.
288. Id.
289. Id. at 55. The Commission first applied this standard of proof in the Greek Case, [1969] Y.B. EUR. CONV. ON HUMAN RIGHTS 1, 196.
290. Judgment, supra note 3, at 56. According to the Court, the Commission had pointed out, in substance, that the United Kingdom Government did not always afford the Commission the desired assistance. Id. at 51. The Court "regretted" this attitude but did not make a specific finding that the United Kingdom was uncooperative. Id.
291. Id. at 56.
292. Id.
293. Id. at 57.
294. Id.
use of the five techniques constituted inhuman and degrading treatment within the meaning of Article 3.295 However, the majority of the Court disagreed with the Commission’s uncontested conclusion that the combined use of the five techniques also constituted torture.296 According to the Court, the distinction between “torture” and “inhuman or degrading treatment” lies in the intensity of the suffering that was inflicted.297 The Court supported its opinion by quoting the definition of torture in the recently adopted United Nations Declaration on Torture.298 That declaration defines torture as “an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.”299 The Court maintained that the combined application of the five techniques did not result in suffering of the particular intensity and cruelty implied by the word torture as that word was understood by the Court.300

Four of the seventeen judges sitting on the case disagreed with the majority’s decision that the use of the five techniques did not constitute torture within the meaning of Article 3.301 None of the four dissenting judges was satisfied with the Court’s definition of torture. Judge Zekia acknowledged that torture was an aggravated form of inhuman treatment, but he believed that the Court’s definition was too objective.302 Judge Zekia would apply a more subjective definition which would take into account “the nature of the ill-treatment inflicted, the means and methods employed, the repetition and duration of such treatment, the age, sex and health condition of the person exposed to it, [and] the likelihood that such treatment might injure the physical, mental and psychological condition of the person exposed.”303 Judge O’Donoghue also agreed with the Court’s basic argument that torture is a more severe type of inhuman treatment.304 However, like Judges Evrigenis and Matscher, Judge O’Donoghue thought that the Court had construed its definition of torture too narrowly by confining the concept to its historical “medieval dungeon” forms.305 As emphasized by Judges

295. Id. Sir Gerald Fitzmaurice, a judge from the United Kingdom, was the sole dissenter on this issue. Id. at 95 (Fitzmaurice, J., dissenting). According to Fitzmaurice, to call “the treatment involved by the use of the five techniques ‘inhuman’ is excessive and distorting, unless the term is being employed loosely and merely figuratively.” Id. For similar reasons, he disagreed with the Court’s opinion that the use of the five techniques was “degrading.” Id. at 108-11.

296. Id. at 57.

297. Id.


299. Id. at 93.

300. Id. at 93.

301. See id. at 94 (Zekia, J., dissenting); id. at 88 (O’Donoghue, J., dissenting); id. at 117 (Evrigenis, J., dissenting); id. at 119 (Matscher, J., dissenting).

302. Id. at 84 (Zekia, J., dissenting).

303. Id. (Zekia, J., dissenting).

304. Id. at 91 (O’Donoghue, J., dissenting).

305. Id. at 91 (O’Donoghue, J., dissenting). See id. at 118 (Evrigenis, J., dissenting); id. at 119 (Matscher, J., dissenting).
O’Donoghue, Evrigenis and Matscher, torture takes on a much more subtle form within the context of today’s refined technology.  

A close reading of the Court’s judgment reveals that it was aware of the possibility that torture could result from mental abuse as well as from physical violence. The Court commented that the five techniques constituted inhuman and degrading treatment even though no “actual bodily injury” may have resulted. The Court noted that mental, as well as physical, suffering evidenced the inhuman and degrading treatment which occurred when the five techniques were applied. Consequently, it is surprising that the Court saw fit to overturn the Commission’s uncontested finding of torture. According to Judge Zekia, whether or not the five techniques amounted to torture was an issue of fact which should have been left to the Commission. However, perhaps regrettably, the Court did not do so. As a result, the Court has limited, at least for the present, the scope and application of the protection afforded against torture by Article 3.

The Court reviewed the evidence concerning the persons who had been subjected to the five techniques and held, by sixteen votes to one, that no other practice in violation of Article 3 was established in relation to the unidentified interrogation center(s).

b. Palace Barracks

With regard to Palace Barracks, the Irish Government asked the Court to confirm the Commission’s finding of a practice which violated the guarantee in Article 3 against inhuman treatment in connection with interrogation during the autumn of 1971. The Court was also invited to supplement the Commission’s finding by (1) holding that the practice complained of continued until June of 1972 when Palace Barracks was closed and (2) holding that the practice constituted torture within the meaning of Article 3.

The Court confirmed the finding of the Commission. In addition, the Court held, by fourteen votes to three, that the practice at Palace Barracks

306. Id. at 91 (O’Donoghue, J., dissenting); id. at 118 (Evrigenis, J., dissenting); id. at 119 (Matscher, J., dissenting).
307. Id. at 57.
308. Id.
309. Id. at 86 (Zekia, J., dissenting).
310. The sole dissenting vote was that of Judge O’Donoghue. Id. at 88 (O’Donoghue, J., dissenting).
311. Id. at 58, 82.
312. Id. at 58.
313. Id. at 59.
314. Id.
315. Id. at 58.
316. The three dissenting votes were those of Judge O’Donoghue, Judge Evrigenis, and Judge Matscher. Id. at 88 (O’Donoghue, J., dissenting); id at 117 (Evrigenis, J., dissenting); id. at 119 (Matscher, J., dissenting).
in the autumn of 1971 was not one of torture within the meaning of Article 3.\textsuperscript{317} Finally, the Court unanimously decided that there was not sufficient evidence to establish that the practice of inhuman treatment continued beyond the autumn of 1971.\textsuperscript{318}

c. Other Places

According to the claims of the Irish Government, and contrary to the holding of the Commission, a practice or practices in violation of Article 3 existed in Northern Ireland from 1971 to 1974 at such places as Ballykinler and Girdwood Park.\textsuperscript{319} The United Kingdom denied this allegation before the Court.\textsuperscript{320}

The Court first addressed the issue by examining the situation at Ballykinler, where it was alleged that detainees were compelled to undergo certain exercises.\textsuperscript{321} The Court acknowledged that the RUC and the army conducted a practice of forcing arrested persons at Ballykinler to perform "irksome and painful" exercises.\textsuperscript{322} Yet, the Court decided that this practice, although "discreditable and reprehensible," did not constitute an infringement of Article 3.\textsuperscript{323}

The Court considered the evidence which suggested that other individual violations of Article 3 may have occurred at other places in Northern Ireland during the autumn of 1971.\textsuperscript{324} After considering this evidence, the Court agreed with the Commission's findings that such information was insufficient to support an allegation of a breach of Article 3.\textsuperscript{325}

C. The Decision Concerning Extrajudicial Deprivation of Liberty: Articles 5 and 15

1. Introduction

Article 5 of the Convention consists of five paragraphs which, when taken together, guarantee an individual's right to liberty and security of person. Paragraphs one through four are relevant to the proceedings in Ireland v. the United Kingdom.\textsuperscript{326} The first paragraph of Article 5 contains an exhaustive list

\textsuperscript{317} Id. at 59.  
\textsuperscript{318} Id.  
\textsuperscript{319} Id. at 60.  
\textsuperscript{320} Id.  
\textsuperscript{321} Id.  
\textsuperscript{322} Id.  
\textsuperscript{323} Id.  
\textsuperscript{324} Id. at 61.  
\textsuperscript{325} Id. The decision on this issue was reached by a vote of fifteen to two. The dissenting votes were those of Judges O’Donoghue and Evrigenis. Id. at 88 (O’Donoghue, J., dissenting); id. at 117 (Evrigenis, J., dissenting).  
\textsuperscript{326} Paragraph 5 of Article 5 states that "[e]veryone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation." Convention, supra note 4, art. 5(5).
of those instances in which it is permissible, under the Convention, to deprive an individual of his liberty. \(^\text{327}\) Paragraphs two to four of Article 5 obligate states party to the Convention to provide several guarantees in cases where an individual is deprived of his liberty:

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 authorized 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. \(^\text{328}\)

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\(^{327}\) Paragraph one of Article 5 states:

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 fulfillment 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 offense or when it is reasonably considered necessary to prevent him committing an offense of 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 unauthorized entry into the country or a person against whom action is being taken with a view to deportation or extradition.

\(\text{id. art. 5(1).}\) Both the Commission and the Court discussed the applicability of the various subparagraphs of Article 5(1) to the present case and to the emergency legislation exercised in Northern Ireland from August 9, 1971 to March 1975. The Commission and the Court concluded that sub-paragraphs (a), (b), (d), (e) and (f) did not apply to arrest and detention under the emergency legislation in question. Report, supra note 9, at 88; Judgment, supra note 3, at 64.

With regard to sub-paragraph (c) of Article 5(1), the Commission and the Court both found that many of the detentions made under the emergency legislation would have met its description if it were not for the connection between Article 5(1)(c) and Article 5(3). Report, supra note 9, at 88; Judgment, supra note 3, at 64-65. Considering Article 5(3) together with Article 5(1)(c), the Court found that the extrajudicial measures were not effected for the purpose of bringing the persons concerned "promptly" before the "competent legal authority." Judgment, supra note 3, at 65.

\(^{328}\) Convention, supra note 4, arts. 5(2), (3), (4).
In substance, the allegations of the Irish Government with respect to Articles 5 and 15 were two-fold. First, it was alleged that the various powers relating to extrajudicial deprivation of liberty,329 exercised in Northern Ireland between August 9, 1971 and March 1975,330 did not satisfy the conditions prescribed by Article 5.331 In addition, the Irish Government alleged that these powers violated Article 5 by failing to meet the requirement of Article 15 that they be “strictly required by the exigencies of the situation.”332

The Commission, in its report, had acknowledged that the powers exercised under the emergency legislation in Northern Ireland were not in conformity with Article 5 of the Convention.333 However, the Commission had cautioned that the finding of an actual breach of Article 5 depended on whether derogation from Article 5 was justified under Article 15 due to the emergency situation in Northern Ireland at the relevant time.334 The Commission eventually had concluded, by a unanimous vote, that the measures for detention without trial, although in derogation of Article 5, were “strictly required by the exigencies of the situation” within the meaning of Article 15(1).335

2. The Court’s Interpretation of the Extrajudicial Powers in Relation to Article 5

The Court conducted an examination of the powers relating to extrajudicial deprivation of liberty to determine whether such measures were in conformity with Article 5 of the Convention.336

Upon arrest, Article 5(2) requires the prompt disclosure of the reasons for such arrest and of any charges against the arrested individual.337 According to the Court, there was no such provision in either the regulations of the Special Powers Act or the Emergency Provisions Act.338 The Court commented that persons arrested under either of these powers were not usually informed why they had been arrested; “in general, they were simply told that the arrest was made pursuant to the emergency legislation and they were given no further...

329. See note 95 supra.
330. The Irish Government did not ask the Court to render a decision concerning legislation in effect subsequent to March 1975. This was the date of the final hearings before the Commission. Judgment, supra note 3, at 62. The Court noted that the Emergency Provisions Amendment Act, 1975, c. 62, reintroduced the principle of detention by order of the Secretary of State for Northern Ireland. Judgment, supra note 3, at 62. The Court decided that an ex officio examination of the Emergency Provisions Amendment Act, which entered into force on August 21, 1975, was not necessary because the information available to the Court suggested that the detention provisions of that act had not been invoked since December 5, 1975. Id.
331. Id.
332. Id.
333. Report, supra note 9, at 92.
334. Id.
335. Id. at 103.
337. Convention, supra note 4, art. 5(2).
The Court found that the three pieces of emergency legislation were not effected for the purpose of bringing arrested or detained persons "promptly" before the "competent legal authority." The Court also found that the fundamental guarantees inherent in the notion of "court" as used in Article 5(4) were not provided under the Special Powers Act and its regulations, the Detention of Terrorists Order or the Emergency Provisions Act.

In sum, the Court supported that the Commission’s conclusion that the extrajudicial powers exercised in Northern Ireland between August 9, 1971 and March 1975 were not in conformity with Articles 5(1)-5(4) of the Convention.

3. The Necessity for Derogation from Article 5: The Court’s Application of Article 15

a. The Existence of a Public Emergency

After addressing some procedural matters, the Court considered the allegation of the Irish Government that the emergency powers relating to extrajudicial deprivation of liberty constituted a violation of Article 5 because

339. ld.
340. Id. at 67.
342. Judgment, supra note 3, at 65. See also note 327 supra.
344. Id. at 67.
345. The Irish Government requested that the Court exclude certain evidence from its examination of the issues under Article 15 because such evidence was heard in the absence of the parties and without the opportunity for cross-examination. Id. at 68-69. The information in question had been gathered from three witnesses who were heard in London on February 20, 1975, during the proceedings before the Commission. Id. at 69. The Court found that it did not have jurisdiction to rule on the correctness of the procedure followed at a hearing which was conducted at the level of the proceedings before the Commission. "The Commission, with its independence from the Court when carrying out its fact-finding role, is master of its procedure and of the interpretation of its Rules of Procedure . . . which it draws up under Article 36 of the Convention." Id.

The Court also cautioned that the limits on the Court’s power of review are particularly apparent where Article 15 is concerned:

It falls in the first place to each Contracting State, with its responsibility for "the life of its nation," to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter Article 15 §1 leaves those authorities a wide margin of appreciation.
they were not "strictly required by the exigencies of the situation" within the meaning of Article 15.346

The Court noted that Article 15 is applicable only "in time of war or other public emergency threatening the life of the nation."347 The Court unanimously held that there existed in Northern Ireland from August 9, 1971 to March 1975 a "public emergency threatening the life of the nation" within the meaning of Article 15(1).348 The existence of an emergency situation was not questioned by either party before the Commission or the Court.349

b. The Necessity for Extrajudicial Deprivation of Liberty, Contrary to Article 5(1)

The Court acknowledged that the exercise of the emergency powers in Northern Ireland was mainly350 directed against suspected members of the IRA and against those persons who might have possessed information concerning the Republican organization.351 According to the Court, the intention of such a restricted application of the emergency powers was to "combat an organization which had played a considerable subversive role throughout the recent history of [Northern] Ireland and which was creating ... a particularly far-reaching and acute danger for the territorial integrity of the United Kingdom, the institutions of the six counties and the lives of the province's inhabitants."352

In the Court's opinion, the Northern Ireland Government and, after the introduction of direct rule in March of 1972, the British Government acted reasonably when they resorted to extrajudicial measures in their attempt to confront the "wave of violence and intimidation."353

In its discussion of the necessity for derogation from Article 5(1), the Court

Nevertheless, the States do not enjoy an unlimited power in this respect. The Court, which, with the Commission, is responsible for ensuring the observance of the States' engagements (Article 19), is empowered to rule on whether the States have gone beyond the "extent strictly required by the exigencies" of the crisis. ... The domestic margin of appreciation is thus accompanied by a European supervision.

Id. at 68.

346. For a discussion of Article 15, see § II.C supra.
347. Judgment, supra note 3, at 68, quoting Convention, supra note 4, art. 15(1).
348. Id. at 68, 82.
349. Id. at 68.
350. Before February 5, 1973, the emergency powers were applied exclusively against the IRA. Id. at 70. For a discussion of the allegation of discrimination, which concerns the one-sided application of the emergency powers, see Section IV.D infra.
351. Judgment, supra note 3, at 70.
352. Id.
353. Id. In a particularly interesting aside, the Court noted that: "[w]hen the Irish Republic was faced with a serious crisis in 1957, it adopted the same approach and the Court did not conclude that the 'extent strictly required' had been exceeded." Id. The Court was referring to the "Lawless" Case, [1961] Y.B. EUR. CONV. ON HUMAN RIGHTS 438.
made a particular reference to Regulation 10 of the Special Powers Act, presumably due to the extraordinary nature of the deprivation of liberty allowed under that regulation. Under Regulation 10, even an individual who was not suspected of committing a crime or of engaging in activities prejudicial to the maintenance of peace and order could be arrested and detained for the singular purpose of obtaining information about others. The Court maintained that such an arrest could be justified only in "a very exceptional situation." The Court was of the opinion that such an exceptional situation existed in Northern Ireland at the relevant time stating that such arrests were "indispensable" in order to question witnesses without fear of reprisal and that the maximum limit of detention under Regulation 10 was 48 hours.

Without downplaying the existence of a real problem involving the intimidation of witnesses, it is suggested that the Court over-emphasized the actual use of Regulation 10's powers of arrest and detention to protect witnesses against fear of reprisal. It is more likely that such powers were employed as a means of intimidating and frightening innocent members of the general public as well as suspected members of the IRA. The Court decided that the limits of the margin of appreciation left to the states by Article 15(1) were not overstepped by the United Kingdom when it determined that extrajudicial deprivation of liberty was necessary during the period from August 9, 1971 to March 1975.

c. The Necessity for Derogation from the Guarantees of Article 5(2)-(4)

The Court conducted an examination of the extrajudicial legislation and practice under scrutiny and concluded that this legislation "evolved in the direction of increasing respect for individual liberty." In so concluding, the Court seemed to regret that more satisfactory judicial, or at least administrative, guarantees were not incorporated into the emergency legislation from the start when detention and internment were reintroduced in August of 1971. The United Kingdom Government was excused for its failure to provide more adequate safeguards for the protection of human rights in the application of the emergency powers.

When a State is struggling against a public emergency threatening

354. See note 95 supra.
355. Id.; see Judgment, supra note 3, at 70.
356. Judgment, supra note 3, at 70.
357. Id.
358. Id.
359. See id. at 12.
360. See note 82 supra.
362. Id. at 71-72.
363. Id. at 72.
the life of the nation, it would be rendered defenseless if it were required to accomplish everything at once, to furnish from the outset each of its chosen means of action with each of the safeguards reconcilable with the priority requirements for the proper functioning of the authorities and for restoring peace within the community.364

In the opinion of the Court, the interpretation of Article 15 leaves sufficient room for "progressive adaptations."365

Progressive adaptations are what the United Kingdom Government achieved in Northern Ireland during the 1970's when it repealed, passed and amended several pieces of emergency legislation.366 These legislative measures were taken, for the most part, in response to the recommendations of government-appointed commissions of inquiry.367 The question arises whether such legislation should have been more progressively adapted, especially in light of the United Kingdom's obligation under the Convention to protect human rights. The Court addressed this question but decided that it could not given an affirmative answer.368

According to the Court, in view of the emergency situation in Northern Ireland and of the margin of appreciation left to the states under Article 15, the derogations from Article 5(2)-5(4) were justified and did not exceed the "extent strictly required."369 The Court's holding on this issue was disputed by Judge O'Donoghue. In his separate opinion, Judge O'Donoghue maintained that the invocation by the Court of the margin of appreciation principle, in favor of the United Kingdom, amounted to a "blanket exculpation" for many actions which could not be reconciled with the observance of obligations imposed by the Convention.370 Although Judge O'Donoghue agreed that the situation in Northern Ireland justified derogation from Article 5, he believed that the departures taken went beyond the "extent strictly required by the exigencies of the situation."371

d. The Satisfaction of the Other Requirements of Article 15

Paragraph three of Article 15 requires a derogating state "to keep the Secretary General of the Council of Europe fully informed of the measures it has
taken and the reasons therefor."372 By a unanimous vote, the Court held that the United Kingdom's notices of derogation from Article 5 of the Convention properly fulfilled the requirements of Article 15(3).373 The Court also held that the United Kingdom Government had not disregarded other obligations under international law within the meaning of Article 15(1).374 In sum, the Court concluded that, because all of the requirements of Article 15 were met, the derogations from Article 5 were not in breach of the Convention.375

D. The Decision Concerning Discrimination: Articles 5 and 14

1. Introduction

The Irish Government alleged a further breach of the Convention with respect to Article 5 involving the application of Article 14, which provides that "[t]he enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, [color], language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."376 The Irish Government claimed that the emergency powers relating to extrajudicial deprivation of liberty were exercised in a discriminatory manner in violation of Article 14.377 The facts before the Commission had established that before February 5, 1973, the extrajudicial powers were used only against individuals suspected of involvement in IRA terrorist activities.378 After February 5, 1973, the emergency powers were also employed against suspected Loyalist terrorists, but to a far lesser extent.379 The Commission had unanimously held that the emergency powers had not been applied in breach of Article 14.380

2. The Period Prior to February 5, 1973

The Court began its review of the allegation of discrimination by accepting the Commission's finding that a difference in the treatment of Republican as opposed to Loyalist terrorism existed in Northern Ireland as early as 1971.381 The Court found that there were "profound" differences between Loyalist and Republican terrorism.382

372. Convention, supra note 4, art. 15(3).
373. Judgment, supra note 3, at 73.
374. Id.
375. Id. One judge dissented on this point. Id. at 88, 92-93 (O'Donoghue, J., dissenting).
376. Convention, supra note 4, art. 14.
378. Id. at 74.
379. Id.
380. Report, supra note 9, at 220.
381. See Judgment, supra note 3, at 74.
382. Id. Three factors were cited by the Court to explain why the emergency powers were used exclusively against Republican terrorism prior to February 5, 1973:
According to the Court, when the United Kingdom assumed direct rule of Northern Ireland in March 1972, it desired to combat the discrimination long prevalent there with respect to electoral rights, employment and housing.383 The Court commented that this approach did not result in that which might have been expected, i.e., a complete equality of treatment between Loyalist and Republican terrorists.384 Shortly after the introduction of direct rule, there was a vast increase in Loyalist terrorism.385 In addition, the Loyalist terrorist organizations expanded in membership and developed structurally.386 Yet, "a surprising time-lag" of ten months elapsed before the first two Loyalists were extrajudicially deprived of their liberty on February 5, 1973.387

The reasons advanced by the Commission and the United Kingdom in explanation of this ten month lag consisted of (1) the decision to attempt to phase out detention and internment; (2) the fact that the large majority of serious acts of terrorism were still attributable to the IRA; and (3) the notion that the ordinary criminal processes remained far more suited to the campaign against Loyalist terrorism.388 The Court stated that although these reasons were influential before the introduction of direct rule, they became less valid as time progressed.389 The Court continued:

However, the Court considers it unrealistic to carve into clear-cut phases a situation that was inherently changing and constantly evolving. The Court can understand the authorities' hesitating about the course to take, feeling their way and needing a certain time to try to adapt themselves to the successive demands of an ugly crisis.390

Consequently, the Court refused to make a determination of a violation of Article 14, taken together with Article 5, regarding the United Kingdom's application of the emergency powers exclusively against the IRA prior to February 5, 1973.391

(1) The vast majority of murders, explosions and other violence was attributable to Republicans. The Loyalists were also perpetrators of violence, but the scale of their activities was insignificant when compared with those of the IRA.

(2) The IRA, then a far more structured organization, imposed a far more serious threat than the Loyalist terrorists. At that time, Loyalist terrorism was viewed as the sporadic work of individuals or isolated factions.

(3) As a general rule, Loyalist terrorists were easier to criminally prosecute than their Republican counterparts. The Loyalists, although not extrajudicially deprived of their liberty, do not seem to have been able to act with impunity.

Id. at 74-75.
383. Id. at 75.
384. Id.
385. Id.
386. See id.
387. Id.
388. Id.
389. Id.
390. Id.
391. Id.
3. The Period After February 5, 1973

The first two Loyalist terrorists were subjected to the emergency powers on February 5, 1973.392 After that date, extrajudicial deprivation of liberty was used to combat terrorism generally and was no longer directed at a specific terrorist organization.393

In actuality, the emergency powers continued to be applied against Republican terrorists to a much greater extent than against Loyalist terrorists.394 However, with respect to the period after February 5, 1973, the Court concluded that the initial difference in treatment did not continue if the full range of processes of the law applied against the two categories of terrorists are taken into account.395

Accordingly, the Court held, by fifteen votes to two, that discrimination contrary to Articles 14 and 5 taken together had not been established.396 The first criticism of the Court’s conclusion is the apparent ease with which the Court was willing to equate extrajudicial deprivation of liberty with deprivation of liberty effected through the ordinary criminal process. Unless the Court was referring to “justified” extrajudicial deprivation of liberty within the context of the right of derogation in Article 15, its equation of the various means by which deprivation of liberty can be achieved seems erroneous in light of the purposes of the Convention.397 It must be assumed that the Court was delivering its judgment on the discrimination issue in conjunction with its holding on the Article 15 issue.

E. The Holding Concerning Article 6

In its claims regarding Article 6 of the Convention, the Irish Government raised allegations which paralleled those made under Article 5. Specifically, it was alleged that the various powers concerning extrajudicial deprivation of liberty, used in Northern Ireland from August 9, 1971 to March 1975, (1) did not meet the requirements set forth in Article 6; (2) violated 6 as they did not fully satisfy the conditions of Article 15; and (3) violated Article 14, taken together with Article 6, because they were implemented in a discriminatory manner.398

Article 6 protects an individual’s right to a fair and public trial. It provides in paragraph one that “[i]n the determination of his civil rights and obliga-

392. Id. at 21.
393. Id. at 76.
394. Id.
395. Id. During this period the IRA was still to blame for the majority of the violence. The Court noted that it was still easier to bring Loyalist terrorists before the courts. Id.
396. Id.
397. See § II.A supra.
398. Judgment, supra note 3, at 76.
tions 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.\(^{399}\)

Before the Commission and the Court, the Irish Government alleged that Article 6(1) had been violated, with respect to the Special Powers Act, due to the absence of any adequate detention procedures during the operation of that act.\(^{400}\) The Irish Government acknowledged that detention and internment under the Special Powers Act did not involve the determination of a criminal charge within the meaning of Article 6(1).\(^{401}\) However, the Irish Government did claim that the decision to detain or intern involved the determination of a civil right, i.e., the right to liberty.\(^{402}\) The Irish Government also maintained that the procedures followed under the Detention of Terrorists Order and the Emergency Provisions Act amounted to the determination of a civil right, if not a criminal charge, of "terrorism."\(^{403}\)

The United Kingdom’s position before the Commission and the Court was that the exercise of the emergency powers involved an executive or administrative act beyond the scope of Article 6.\(^{404}\) The Commission had agreed with the United Kingdom’s argument that Article 6 does not apply to the extra-judicial powers under scrutiny.\(^{405}\)

The Court recognized that a dispute existed over whether Article 6 was ap-

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399. Convention, supra note 4, art. 6(1). Article 6 continues:
Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest 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 offen[s]e shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offen[s]e 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 defen[s];
   (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.

Id.

400. Report, supra note 9, at 74. For a discussion of the detention and internment procedures under the Special Powers Act, see note 95 supra.
401. Report, supra note 9, at 74.
402. Id.
403. Id. at 75. For a discussion of such procedures, see §§ III.F.1, G.1 supra.
404. Report, supra note 9, at 75.
405. Id. at 94.
plicable at all. The Court summarily determined that it was not necessary for it to render a decision on the issue.  

F. The Decision Concerning Article 1

The laws in force in Northern Ireland from August 9, 1971 to March 1975 did not explicitly prohibit violations of the rights and freedoms protected by the Convention. In fact, the Irish Government argued that several of such laws, in addition to certain administrative practices, authorized or permitted such violations. According to the final submission of the Irish Government, the United Kingdom was in breach of an interstate obligation that was separate from its obligations toward individuals. The Irish Government alleged that this separate breach arises from the obligation of Article 1, which provides that "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."  

Both the United Kingdom Government and the Commission disagreed with this novel argument of the Irish Government. In fact, the Commission had held that Article 1 could not be the subject of a separate breach because it grants no rights in addition to those provided in Section I of the Convention.  

The Court agreed that Article 1 could not be the subject of a separate breach. The Court explained that Article 1 helps to outline the boundaries of the Convention and is one of the articles which attests to the binding character of the Convention. In the Court’s interpretation of the Convention, Article 1 was drafted with reference to the provisions contained in Section I. Thus, it takes effect only in conjunction with those provisions. Consequently, a violation of Article 1 follows automatically from a breach of any of the provi-

407. Id. The Court continued:

However, assuming Article 6 to be material, the derogations from the guarantees of a judicial nature afforded by Article 5 perforce involved derogating from those afforded by Article 6. The Court has already held that the derogations from Article 5 met the requirements of Article 15; in the circumstances of the case, it arrives at the same conclusion as regards the derogations from Article 6. In addition, the Court has held that no discrimination contrary to Articles 14 and 5 taken together is established; it likewise finds no discrimination with respect to Article 6.

Id. Two dissenting votes were cast by Judges O'Donoghue and Matscher, with respect to the Court’s holding that there was no violation of Article 14, taken together with Article 6. Id. at 88 (O'Donoghue, J., dissenting); id. at 120 (Matscher, J., dissenting).

408. Id. at 77.
409. Id.
410. Convention, supra note 4, art. 1.
411. Judgment, supra note 3, at 78.
412. Report, supra note 9, at 485.
413. Judgment, supra note 3, at 78.
414. Id.
sions of Section I.\textsuperscript{415} In other words, a law cannot be challenged in the abstract.\textsuperscript{416} With its decision on the issues raised under Article 1, the Court concluded its task of reviewing \textit{Ireland v. the United Kingdom}.

\textbf{G. The Resolution of the Committee of Ministers}

The Court transmitted its judgment to the Committee of Ministers in compliance with Article 54 of the Convention.\textsuperscript{417} The Committee of Ministers then supervised its execution. On June 27, 1978, the Committee of Ministers adopted its resolution concerning the judgment of the Court in \textit{Ireland v. the United Kingdom}.\textsuperscript{418}

In preparing its resolution, the Committee of Ministers invited the United Kingdom Government to inform it of the measures which it had taken as a result of the judgment.\textsuperscript{419} The United Kingdom complied with this request.\textsuperscript{420} The United Kingdom response consisted of three points:

1. The fourteen men who were the victims of the practice of inhuman and/or degrading treatment in violation of Article 3 had brought civil actions for damages in the High Court of Northern Ireland and had received compensation therefor. The Prime Minister announced in March 1972 that the five techniques would no longer be used as an aid to interrogation. In February 1977, the Court took formal notice of the solemn undertaking by the Attorney General to the same effect.

2. Although the Court also found that there was, in autumn 1971, a practice of inhuman treatment in breach of Article 3 in connection with interrogation of detainees at Palace Barracks, it was not established that this practice continued thereafter.

3. The Court noted that a series of measures were adopted from 1971 onwards to guarantee that detainees would be properly treated in the future. Such measures included medical examinations of persons held in custody, strict instructions to the security forces concerning the treatment of persons held in custody and rigorous procedures for investigating complaints.\textsuperscript{421}

Taking note of this information supplied by the United Kingdom Government, the Committee of Ministers declared in its resolution that it had exer-

\textsuperscript{415} \textit{Id.} However, Article 1 adds nothing to a breach of any of these provisions. \textit{Id.}

\textsuperscript{416} \textit{Id.} at 79.

\textsuperscript{417} \textit{See} Convention, \textit{supra} note 4, art. 54.

\textsuperscript{418} Resolution, \textit{supra} note 3.

\textsuperscript{419} \textit{Id.} at 652. Under Article 53, the United Kingdom was obligated to abide by the judgment. \textit{See} Convention, \textit{supra} note 4, art. 53.

\textsuperscript{420} \textit{See} Resolution, \textit{supra} note 3, App. at 652.

\textsuperscript{421} \textit{Id.} at 652, 654.
cised its function under Article 54 of the Convention with regard to the present case.\^22

H. An Overview of the Court’s Decision

The European Court of Human Rights faced an enormous undertaking when it was presented with *Ireland v. the United Kingdom*. The Court was confronted with three major tasks. First, it had to render a decision concerning the appropriate balance, under the Convention, between the protection of human rights and the traditional prerogative of a state to deal with an emergency situation in a manner which necessitates the infringement of human rights and freedoms. Not only did the Court have to strike this delicate balance, but it had to do so amidst a continuing, violent and highly volatile political situation. In addition, the Court was required to apply the articles of the relatively new Convention in reaching its decision. This process involved the interpretation of, and reference to, the prior case law arising under the Convention. Finally, the Court had the broader task of interpreting the Convention itself. The Court bears the responsibilities of further outlining the scope of the Convention and of clarifying the meaning of its provisions.

With regard to the Court’s first task of balancing a state’s obligation under the Convention to protect human rights against that state’s right to suspend such obligations in the midst of a public emergency, the Court seems to have reached the appropriate, if not desirable, balance in consideration of the circumstances in Northern Ireland. Unfortunately, the political realities of the situation in Northern Ireland prevented the United Kingdom from fully observing its obligations under the Convention in the present case. However, the decision in this case is not without merit. It portends a further erosion of the doctrines of necessity and state sovereignty, with respect to derogations from human rights protection.

The Court approached its second task of applying prior case law to the facts of *Ireland v. the United Kingdom* with little difficulty.\^23 The Court was able to draw upon previous decisions in rendering its decision concerning most of the allegations examined, especially in connection with those claims alleging violations of Articles 1, 5, 14 and 15.\^24 In so doing, the Court generally used the prior case law to limit its power of review and the scope of the Convention’s application.\^25 Whether or not this was a desirable outcome remains to be seen.

\^22. *Id.* at 652.

\^23. The scope of this Comment does not include a detailed discussion or explanation of the Court’s application of its prior case law to the facts and law in *Ireland v. the United Kingdom*. For an analysis of the case involving such a discussion, see Article, *Case of Ireland v. the United Kingdom: Misrule on Trial*, 3 A.S.I.L.S. INT’L L. J. 1 (1979).

\^24. See *Judgment*, supra note 3, at 64, 66, 68-69, 74, 78.

\^25. See, e.g., *id.* at 68 (Court has limited powers of review); *id.* at 69 (Court has no jurisdiction
In light of the preceding discussion and with a view to the third task of the Court, it must be kept in mind that the Court was exercising its important responsibility of interpreting a relatively new instrument of international dimension. The Court was involved in interpreting the limits of the Convention for the present and in clarifying its scope for the future.

V. SUBSEQUENT DEVELOPMENTS

A. Additional Reports of Human Rights Violations

The effect of the Court's 1978 judgment upon the United Kingdom's future handling of the situation in Northern Ireland has been challenged. Despite the judgment of the Court with respect to breaches of the protection under Article 3 against inhuman and degrading treatment, and contrary to the United Kingdom's affirmance before the Committee of Ministers that "a series of measures were adopted from 1971 onwards to ensure that prisoners would in the future be properly treated," it is apparent that human rights violations continue to exist in Northern Ireland. Most of these alleged violations concern the treatment of persons interrogated at Northern Ireland's holding centers on suspicion of involvement in terrorist-related activities.

Some recent reports support the claims that violations of human rights, as protected under the Convention, continue to occur. One such report is the result of an investigation conducted by the Amnesty International during the autumn of 1977. Amnesty International released its report in June of 1978, just five months after the Court had delivered its judgment. The report examined 78 individual cases of alleged mistreatment from both Republican and Loyalist prisoners.

426. Resolution, supra note 3, App. at 654.

427. AMNESTY INTERNATIONAL, REPORT OF AN AMNESTY INTERNATIONAL MISSION TO NORTHERN IRELAND (28 NOVEMBER-6 DECEMBER 1977) at 2-4 (1978) [hereinafter cited as AI REPORT: 1978]. For a discussion of the various individuals, groups and non-governmental organizations which have investigated and/or publicized such allegations of ill-treatment, see id. at 3-4.

428. During 1976, Amnesty International received a number of allegations of ill-treatment by the security forces in Northern Ireland. Id. at 8. These allegations continued to reach Amnesty International and, consequently, it decided to send a research mission to Northern Ireland. Id. The Amnesty International Mission was restricted to investigating specific allegations concerning persons in the custody of the RUC, rather than more general charges of human rights violations. Id.

429. See Judgment, supra note 3, at 83.

430. AI REPORT: 1978, supra note 427, at 10. Of the total 78 cases examined by the Amnesty International Mission, direct testimony was heard from 52 individuals who claimed that they had been mistreated while in police custody. Id. at 9.
The alleged ill-treatment was both mental and physical. Many of the allegations were in reference to interrogations conducted at Castlereagh Holding Centre. According to the Amnesty International Report, the response by the RUC authorities to these allegations was that:

1. the allegations constitute part of a "propaganda campaign" against the RUC, intended to defeat its aim of improving its reputation throughout the province;
2. the allegations are made with a view towards obtaining acquittal before the courts on the grounds that self-incriminating statements — frequently the only evidence against suspected terrorists which can be produced in court — were made under duress; and
3. some of the allegations actually involved self-inflicted wounds.

In its conclusion, the report recommended that a "public and impartial inquiry" be conducted to investigate the allegations of maltreatment.

Such a committee of inquiry was established by the United Kingdom Government in the summer of 1978 following the publication of the Amnesty International report. This committee, the Bennett Committee, was authorized to report on RUC interrogation procedures in general, rather than to investigate individual cases in depth. In addition, the Bennett Committee was authorized to examine the operation of the existing procedures for dealing with the complaints against the police.

The Bennett Report was made public in March of 1979. The Bennett...
Committee based its findings on medical, oral and written evidence received from the RUC authorities. The lengthy and thorough report of the Bennett Committee contains numerous recommendations for the improvement of procedures concerning police interrogation and the handling of complaints against police in Northern Ireland.

The most important conclusion of the Bennett Committee, with regard to the allegations of RUC ill-treatment, is its finding that persons had received injuries while in police custody which were not self-inflicted. The Bennett Committee commented that what it had found "reinforces the concern shown by the doctors and the Police Authority, and demonstrates the need for an improvement in the supervision and control of interrogation." In addition, the Bennett Committee noted that the fact that the United Kingdom was the subject of the adverse judgment of the European Court of Human Rights in Ireland v. the United Kingdom emphasizes the point that the [honor] and good name of this country, as well as domestic law and the observance for their own sake of human rights recognized in the international instruments to which the United Kingdom is a party, require continuing vigilance in the matter of interrogation of prisoners.

The findings of the Bennett Committee are supported by the statement of Dr. Robert Irwin, a police surgeon in Northern Ireland. In March 1979, Dr. Irwin claimed that over 150 suspected terrorists whom he had examined at Castlereagh over the preceding three years had been "physically ill-treated" during interrogation by members of the RUC.

The Amnesty International Report, the Bennett Report and the statement of Dr. Irwin all support the claims of further and continuing violations of human rights in Northern Ireland. In this respect, the work of the Court and of the Commission is not yet completed. In fact, the Commission recently was presented with an application concerning the conditions of imprisonment in Northern Ireland. Having recently considered extrajudicial deprivation of liberty and practices of ill-treatment in connection with such extrajudicial measures in Northern Ireland, the Commission, and perhaps eventually the Court, must now investigate the allegations of mistreatment emanating from the prisons of Northern Ireland.

438. Id. at 2-4. The Bennett Committee heard a total of 58 witnesses. Id. at 3. The investigation conducted by the Bennett Committee was confined, largely, to 1977 and 1978. Id. at 5.
439. Id. at 50-95, 112-34. See "Summary of Principal Conclusions and Recommendations." Id. at 135-40.
440. See id. at 55.
441. Id.
442. Id. at 51.
VI. CONCLUSION

The Court failed to find that the emergency powers involving the extra-judicial deprivation of liberty were applied in a discriminatory manner against members of the minority population between August 1971 and March 1975. The Court's decision on this issue is questionable. The general policy of discrimination against members of the minority population was the motivating force of the civil rights movement in Northern Ireland in the late 1960's. It was this movement and the reaction to it by members of the majority population which subsequently led to the violence and terrorist activities of the 1970's. The extrajudicial measures were then introduced to combat such terrorism and violence. The facts before the Commission and the Court support the conclusion that the authorities in Northern Ireland exercised such measures almost exclusively against suspected terrorists who were members of the minority population. This one-sided application of extrajudicial powers was introduced and continued, even though terrorism that was attributed to members of the majority population existed at that time, and eventually escalated to a level approximating that of members of the minority population.

This Comment has examined the judgment of the European Court of Human Rights in Ireland v. the United Kingdom. In its decision, the Court affirmed, in part, the findings of the European Commission of Human Rights. The Court held that there existed a practice of inhuman and, in some cases, a practice of inhuman and degrading treatment with respect to individuals held in custody in Northern Ireland during autumn of 1971. However, the majority of the Court refused to accept the Commission's holding that such treatment also involved the use of torture.

The Court's determination that no suffering of the particular intensity and cruelty implied by the word "torture" resulted from the application of certain methods of interrogation was wrong. The Commission's uncontested finding of torture should have been upheld. The facts presented in the hearings before the Commission indicated that the means of interrogation employed in Northern Ireland during the autumn of 1971, especially the "five techniques," constituted torture. This determination of fact was not contested by the United Kingdom. In light of the Court's limited power of review and the discretion afforded to the Commission's determination of fact, the Court should not have interfered with the Commission's findings of fact.

The only aspect of the Court's decision that favored the protection of human rights in Northern Ireland was the determination that a practice of inhuman treatment had occurred in contravention of Article 3. Even this limited extension of human rights has been diminished by the apparent continuation of practices of inhuman treatment.

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