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First Round Table with the National Human Rights Institutions

3rd European Meeting of National Institutions

Strasbourg, 16-17 March 2000

**Compilation of reports, statements
and recommendations**

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PROGRAMMEThursday 16 March

08h15 Registration

09h00 **Opening Session**

Chair: Mr Pierre-Henri IMBERT, Director General of Human Rights, Council of Europe

Mr Pierre-Henri IMBERT, Director General of Human Rights
Mr Morten KJAERUM, Chair of the Coordinating Group of National Human Rights Institutions and Director of the Danish Centre for Human Rights
Ms Sandra VILCĀNE, Deputy Director, National Human Rights Office of Latvia

09h20 **Theme I : Protection and promotion of economic and social rights**

Chair: Mr Ivan BIZJAK, Ombudsman of Slovenia

Presentation by Rapporteurs:

Mr Philippe TEXIER, French National Consultative Committee of Human Rights
Mr Brice DICKSON, Northern Ireland Human Rights Commission

Comment by :

Ms Ulrika FLODIN-JANSON, Deputy Secretary of the European Committee of Social Rights, Council of Europe

10h20 *Coffee break*

10h45 **Working Session 1**

Chair: Mr Ivan BIZJAK, Ombudsman of Slovenia

12h45 *Lunch*

14h15 **Theme II: Fight against racism and related discrimination**

Chair: Ms Margareta WADSTEIN, Ombudsman against Ethnic Discrimination, Sweden

Presentation by Rapporteurs:

Mr François SANT'ANGELO, Centre for equal opportunity and the fight against racism, Belgium
Statement by Mr Michael HEAD, Vice-Chair of ECRI

15h15 *Coffee break*

- 15h30 **Working Session 2:**
- Chair: Ms Margareta WADSTEIN, Ombudsman against Ethnic Discrimination, Sweden
- 17h45 Round-up of the first day
- 18h00 *Reception in the Committee of Ministers' Foyer, Palais de l'Europe (2nd Floor)*

Friday 17 March.

- 09h00 **Theme III: Co-operation between National Human Rights Institutions and between them and the Council of Europe**
- Chair: Mr Pierre TRUCHE, President of the French National Consultative Committee of Human Rights
- Statement by:
 Ms Jane DINSDALE, Director, Directorate General of Human Rights, Council of Europe
 Mr Alvaro GIL ROBLES, Council of Europe Human Rights Commissioner
 Mr Morten KJAERUM, Chair of the Coordinating Group of National Human Rights Institutions and Director of the Danish Centre for Human Rights
- 10h00 *Coffee break*
- 10h20 **Working Session 3**
- Chair: Mr Pierre TRUCHE, President of the French National Consultative Committee of Human Rights
- 12h30 **General Session - Looking ahead and follow-up to the meeting**
- Chair: Mr Pierre-Henri IMBERT, Director General of Human Rights, Council of Europe.
- Recommendations by the Rapporteurs or Moderators of the three themes, and adoption of any recommendations
- 13h30 *Lunch*

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Afternoon :

Working meeting of National Human Rights Institutions to discuss ongoing co-operation. This business meeting is expected to start at 14h30 and to end at approximately 16h30. Amongst other items the agenda will include :

- Discussion on forthcoming conferences and meetings (Vth International Workshop of National Institutions for the Promotion and Protection of Human Rights in Rabat, UN Commission on Human Rights, European and World Conference against racism etc.);
- Information strategies;
- Appointment of Coordination Group;
- Adoption of any remaining recommendations.

OPENING CEREMONY

Speeches by:

Mr Pierre-Henri IMBERT,

Director General of Human Rights, Council of Europe

Mr Morten KJAERUM,

Chair of the Coordinating Group of National Human Rights Institutions and Director of Danish Centre for Human Rights

**Mr Pierre-Henri IMBERT,
Director General of Human Rights, Council of Europe**

Ladies and Gentlemen

It is with great pleasure that I have the honour to open this First Round Table with national human rights institutions today. Allow me first of all to welcome you to Strasbourg and to the headquarters of the Council of Europe. I would especially like to welcome our distinguished rapporteurs and chairpersons who have kindly agreed to provoke and stimulate the discussion during the Round Table.

I would like to take this opportunity to recall the importance that the Council of Europe places on the work of national human rights institutions in protecting human rights. Recognising their importance the Committee of Ministers of the Council of Europe adopted in 1997 a Recommendation encouraging "*The establishment of independent national human rights institutions*" and a Resolution on "*Co-operation between national human rights institutions of member States and between them and the Council of Europe*". It is in the framework of this latter Resolution that we are holding the Round Table, the first of its kind.

Nevertheless, I should add that our interest in and work with national institutions started well before the adoption of the Recommendation and Resolution – indeed the title of this meeting illustrates this clearly! The 1st European Meeting of national institutions organised by the French Consultative Commission took place here in Strasbourg, under the auspices of the Council of Europe in November 1994. The Council of Europe also co-operated with the Danish Centre for Human Rights in the organisation of the 2nd Meeting in Copenhagen in January 1997. In this context I would like to remind you of the important declaration adopted at the Copenhagen meeting, which directly influenced the adoption of the Recommendation and Resolution in September of 1997.

We have also developed a close co-operation with the Ombudsman Institutions since the mid-1980's, the importance of which has likewise been recognised by the Committee of Ministers. In 1985, the Committee adopted a Recommendation and a Resolution on the Ombudsman institution. In the framework of this co-operation we have so far organised six Round Tables with European Ombudsmen. More recently, in the framework of the work by the European Commission against Racism and Intolerance a close relationship has emerged with the Specialised bodies to combat racism, xenophobia and intolerance at the national level. I am delighted that this meeting has brought together in such large numbers representatives of national human rights institutions, ombudsmen with human rights mandates and Specialised bodies against racism. It is easy to understand why.

You are all aware of the immense changes that have taken place in Europe over the last ten years, and notably the effect that this has had upon the Council of Europe transforming it into a pan-european organisation thus fulfilling the goal of the Organisation's founders in 1949. Parallel with this rapid development the political organs of the Council of Europe have decided to accord greater priority to ensuring that the member States abide by the obligations they have entered into. Both the Parliamentary Assembly and the Committee of Ministers have set up their own systems of monitoring. (The latest overview of the way in which this monitoring is carried out is available from the Secretariat.) In addition there are, of course, the various treaty mechanisms of the Council of Europe.

What concerns us is not only that States sign up to the various Council of Europe treaties, but that they apply them in practice. Ensuring that the obligations taken at a European level are translated into reality at the national level requires constant monitoring and investigation, but also assistance. It entails working towards changing legislation or administrative practices, training particular groups of persons, raising public awareness on specific issues etc. The monitoring mechanisms of the Council of Europe should be viewed very much as a fall back for when the national systems fail. Protection of human rights can only become truly effective when they are implemented at the level closest to the individual – the concept of subsidiarity.

I make these points to highlight the important role that you have to play in your respective countries, in ensuring the obligations undertaken by your governments are transformed into practical and effective measures on the ground. And to stress how much we in the Council of Europe need to co-operate with you. This co-operation should not only be in implementing existing State obligations but should entail a more far-reaching effort to develop effective means for protecting human rights in the years ahead. This is ambitious.

We share a common objective: the protection and promotion of human rights. The Council of Europe was established to be the guardian of the grand principles of pluralist democracy, pre-eminence of the rule of law and human rights within Europe. These are also the principles that you defend and uphold. Together there is, as I indicated in Copenhagen three years ago what I deem, a “community of objectives” with which to construct a society that respects equally the dignity of each individual.

This said, while much has been done to achieve these objectives during the fifty years since the Council of Europe was established, there is no room for any complacency. Violence, hunger and misery have not been banished. Fanaticism and nationalism have reared their ugly heads again and the consequences have been a dissemination of hate, rejection of “the other” and mass killings. “Never again” was the cry after the Second World War. “Never” did not last long. Need we remind ourselves about the terrible events in Bosnia, Kosovo and now Chechnya!

There are many lessons to be learned but an important one from the perspective of the Council of Europe is that despite the impressive successes there nevertheless remains the fact that human rights are not adequately applied, enjoyed or “lived” in Europe today.

The task then is to take up the challenge posed by this rather sombre analysis with vigour and realism and by standing firm on our principles. This Round Table allows us to consider, in detail, what action can be undertaken in two important fields of human rights protection. With regard to both the protection of economic and social rights and the fight against racism and related discrimination there remains much work to be done in Europe, if these rights are to be effectively protected.

Theme I : the protection and promotion of economic and social rights

All of us recognise that human rights are indivisible and inter-dependent. The concept of indivisibility implies that the same importance should be given to all fundamental human rights whether they are civil, political, economic, social or cultural in nature. Nevertheless, the consequences of such indivisibility do not seem to be fully recognised in practice : often greater importance is being attached to civil rights, even to the point of being the only ones worthy of the qualification « human rights ». However, for individuals the various rights are

considered indivisible and inter-dependent, as the enjoyment of one of these rights is often dependent on securing another right.

The Round Table presents an opportunity to share best practices on how different national human rights institutions work with economic and social rights, to identify some of the particular obstacles to this work and to propose ideas for improving the effectiveness of tackling economic and social issues in the future. For the Council of Europe the key instrument in this domain is the European Social Charter. Much remains to be done to instigate a greater awareness, understanding and application of the European Social Charter.

I would very much hope that from this session ideas and proposals might emerge to advance the protection of economic and social rights at the national level by human rights institutions. I would also encourage you all to take an active role in the European Social Charter both at the national and European levels. Any proposals towards improving the protection of economic and social rights can be fed into the recommendations which you, as representatives of national human rights institutions, might wish to adopt at the end of the Round Table, in view of the European Ministerial Conference on Human Rights in Rome in November. I recall that this Conference will be looking at the future protection of human rights in Europe on the occasion of the 50th Anniversary of the European Convention on Human Rights.

Theme II on the fight against racism and related discrimination

This is a topic that we discussed in detail at the 1st European Meeting of national human rights institutions in 1994. It remains, unfortunately, as relevant and topical as in 1994. The difference is that much work has been done both at the European and international level as well as at the national level to raise awareness and to develop policies to combat this phenomenon.

We believe it is important for the knowledge and experience of the national human rights institutions in this field to be both recognised and tapped, in order that the lessons from their daily work can be taken on board. Keeping in mind the European contribution to the World Conference against racism Conference later this year, the Round Table represents an opportunity to make a recommendation on the priorities and methods that need to be stressed in the fight against racism and related discrimination.

As to the *third theme* of the Round Table I do not want to go into detail now. I would merely like to make a general comment that affects all our work together. I mentioned earlier that we have a common objective to protect and promote human rights. If we want to do this successfully we need to maximise our strengths and minimise our weaknesses. This can be achieved by instituting a candid dialogue and co-operation between the Council of Europe and you, the national human rights institutions, as well as amongst yourselves. This means that the national institutions should be aware of the developments within the Council of Europe treaty bodies. It also means that the national institutions should be allowed and encouraged to have an input into policy making. This meeting provides an excellent opportunity for input on two key themes in the perspective of the two important Conferences which will be held later in the year, and to which I referred to above.

I also believe that under the third theme we should discuss ideas for enhancing the co-operation between the ombudsmen and national institutions, including in the framework of our Round Tables. In this context, I welcome the presence here of the delegation of the

EOI/IOI Joint Coordinating Committee. In speaking of co-operation, I should also mention that the Council of Europe has been designated the sponsor of the Task Force on Good Governance under Working Table 1 of the Stability Pact for South East Europe. This Task Force includes the project on Ombudsman, and many of you were present at the Regional Meeting on Independent National Human Rights Protection Institutions that took place in Budapest last December. This too represents an subject for discussion under theme three.

Concluding remark

The Council of Europe is continuing to readjust to the new challenges thrown up by the developments of the last decade which have re-galvanised the Organisation but left us searching for more effective means to ensure that the basic human rights that we all pronounce as being indivisible and inter-dependent become a living reality in the Europe of the 21st Century.

Thank you.

**Mr Morten KJAERUM,
Chair of the Coordinating Group of National Human Rights Institutions
and Director of Danish Centre for Human Rights**

Ladies and gentlemen, it is a great pleasure for me to welcome you all to this 1st Council of Europe Round table with National Human Rights Institutions/ 3rd European Meeting of National Institutions. It is indeed a very timely meeting here in the beginning of a new decade. It is a time where we have to reflect on our role in meeting the challenges that lie ahead of us.

In 1941, in his speech on the four freedoms, President Roosevelt said that the future world order should be established on the basis of freedom of expression, freedom of faith, freedom from want and freedom from fear. Henceforward, the human dignity was to be protected by means of addressing these specific elements. Approximately 60 years later, these four freedoms have still not fully materialised, thus, even today they continue to serve as the basis of our work.

Today, at the turn of the century, globalization for good and bad is influencing the quality of our life in many aspects. It cannot be ignored that drastic changes in the world order, both in political and economic terms, have created fears, insecurities and uncertainties in important segments of the European population. The perceived threats are the breeding ground for new nationalistic movements all over Europe, and they cause a higher level of intolerance, thereby, directly and indirectly challenge human rights values.

The economic changes, where Europe has to adjust to the global market place, make our discussion here today on economic, social and cultural rights even more pertinent. In particular the privatisation is of concern. Privatisation is taking place in all parts of Europe. In a human rights context, the privatisation schemes, which were initiated in the 1980s and continued in the 1990s, gives reason to concern when they are applied in key areas such as health, education and social security. In the efforts to change heavy and inefficient state bureaucracies in Eastern and Central Europe as well as in Western countries, it is essential that structures are preserved or established which can maintain and develop economic, social and cultural rights. The state has a responsibility for diminishing inequalities created by the forces of the market economy, and create policies "with a view to achieving progressively the full realization" of economic, social and cultural rights.

In a democratic society governed by human rights, social, political and legal developments must be evaluated in the light of existing human rights norms. Is the state, for instance, "achieving progressively the full realization" of the right to health for the population as a whole? Even though a substantial part of the health sector is privatised, it is important that the state provides alternative means of health care services to the less fortunate groups in society. Otherwise, the state must have the capacity to control the privatised health sector and make sure that it renders services to all sections of society without discriminating on grounds of income or otherwise. If the state fails to do so it will not fulfil its obligation with regard to achieving progressively the full realization of economic, social and cultural rights.

Consequently, human rights norms will, to a certain extent, counterbalance the pure market economic control of important social tasks. In this regard, human rights can help to establish a local responsibility towards groups which are threatened by globalization. National Human Rights Institutions can play an important role in offering advice and in monitoring the

responsibility of the state. It is an area where experiences are still limited and therefore, I, personally, welcome a discussion on how national institutions can deal with the freedom from want?

How do we deal with freedom of religion and how do we fight racism? This was also the topic of the First European Meeting of National Institutions in 1994. Unfortunately, we did not succeed in making the problems disappear, so, yet again, it is on our agenda for this meeting. In my view, there is no doubt that racism and xenophobia represent the biggest challenges to our work these days. Challenges that are difficult to address because of the complexity and the weighing up of different perceptions of normality, which are inherently bound to our cultural and religious outset. At the same time, culture and religion are often used as a pretext for explaining incidents which are basically social or economic issues.

The European Human Rights Convention and UN instruments have in many countries played a key role in blocking for even more restrictive policies than what we have already witnessed. The European Court of Human Rights has played an important role in setting standards in this regard. Where moral end ethics seem to have vanished human rights are the last barriers for protection of human dignity for immigrants and refugees. This has, however, led to a situation where a growing number of groups on the right wing are questioning the importance of human rights in our democratic societies. They claim that human rights threaten our societies and violate the democratic right to pass any legislation which otherwise underpins the views of the majority.

These groups, which are not only found among extreme right wings but also among well established political parties, are slowly but surely undermining the respect for international human rights norms. Through their impact on refugee and immigration policies human rights are being considered to be an integral part of the globalization. In this way, we end up in a bizarre situation: As described by President Roosevelt, human rights should create freedom from fear, now they are perceived as going hand in hand with globalization which is creating fear.

How do we address these issues? What are the experiences of the various National Institutions in different parts of Europe? This will be interesting to debate. Furthermore, we should consider our input to the UN World Conference against Racism and the preparatory conference organised by the Council of Europe in October.

The challenges are there for the National Human Rights Institutions. It is, therefore, very positive to register that since we last met in Copenhagen for the Second European Meeting in January 1997 an increasing number of National Institutions are being established all over Europe and many more are on their way. However, there is still a lot to do in terms of developing the network between institutions and strengthening the ties to the Council of Europe. In the last two sessions, we will address issues related to these institutional links. How can institutions benefit from the experiences of other national institutions and from the Council of Europe?

These last two sessions deal with the question of how to build a bridge between the local and the global sphere? If human rights are to maintain their importance as a reaction against the violations of the integrity of human beings, it is necessary to uphold a high level of interaction between the people, who are to be protected, the governments who are responsible for the protection of human rights, and finally between the regional and international human rights

control mechanisms. National Human Rights Institutions are playing a key role in maintaining an ongoing and open dialogue and in securing a dynamic interpretation of human rights.

Furthermore, National Institutions have an obligation to ensure that these rights provide a relevant protection and that they are respected and recognized by the populations. Local ownership and due recognition are prerequisites for the willingness of the governments and other power structures to accept the limitation of their exercise of power which constitutes the primary role of human rights. This is what ultimately constitutes the universality of human rights. Contrary to globalization, which is a top down development, the universality of human rights is a bottom up reaction to violations of the human dignity.

Finally, let me use this occasion to thank the staff of the Council of Europe for an excellent collaboration in the preparation of this Roundtable and the Third European Meeting.

I look much forward to our discussions the next two days.

Thank you for your attention.

FIRST SESSION

Chair:
Mr Ivan BIZJAK,
Ombudsman of Slovenia

**THEME I: PROTECTION AND PROMOTION OF ECONOMIC
AND SOCIAL RIGHTS**

Reports presented by:
Mr Philippe TEXIER,
French National Consultative Committee of Human
Rights

Mr Brice DICKSON,
Chief Commissioner, Northern Ireland Human Rights
Commission

Comments by :
Mme Ulrika FLODIN-JANSON,
Deputy Secretary of the European Committee of
Social Rights, Council of Europe

Mr Philippe TEXIER
French National Consultative Committee of Human Rights

Since the adoption of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights in 1966, the two types of rights have been treated in two blatantly different ways. The noble ideals of the drafters of the Universal Declaration of Human Rights, who hoped that one day a single Covenant would cover all human rights, have come to naught.

For historical reasons connected with the nature of the Cold War in the 1960s, the lack of interest on the part of western countries, which saw economic, social and cultural rights not as human rights but rather as far-distant, slightly utopian objectives, and the attitude of the socialist countries, which proclaimed the precedence of such rights and rejected any idea of international supervision, two covenants were formally adopted, contrary to the ideas of René Cassin and others who believed in the indivisibility and interdependence of all human rights.

All the major international human rights conferences, particularly those in Teheran in 1968 and Vienna in 1993, solemnly proclaimed the universality, indivisibility and interdependence of such rights, a fact which the UN bodies reiterate at every opportunity. Nevertheless, there is a chasm between these declarations of intent and the reality of economic, social and cultural rights, which are violated on a massive scale a context of globalisation, liberalisation and increasing privatisation.

The unequal treatment of the two series of rights is obvious in the institutional treatment of the Universal Declaration of Human Rights:

- First of all, Article 2 of the Covenant on Civil and Political Rights lays down that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant". This means immediate application of these rights. On the other hand, Article two of the Covenant on Economic, Social and Cultural Rights provides that "Each State Party ... undertakes to take steps ... with a view to achieving progressively the full realisation of the rights recognised in the present Covenant". This implies gradual application of the rights in question, which has given rise to many misunderstandings and some degree of inertia on the part of States, many of which wrongly consider that this article does not impose any obligation on them.

- Secondly, the Covenant on Civil and Political Rights set up the Committee on Human Rights (Articles 28 ff) and provided for its membership and powers. It states that the Secretary-General of the United Nations must provide the staffing and material resources required for its operation, and formally imposes the obligation on States to submit reports to the Committee. Therefore, as soon as the Covenant came into force the Committee was able immediately to ensure its implementation in an effective manner.

No similar provision was made for the area of economic, social and cultural rights: no committee was set up and no obligation was imposed to provide operational resources. The obligation on States to submit reports is couched in rather vague terms in Article 16, to the effect that the Economic and Social Council is supposed to "consider" such reports, without specifying exactly how it should do so. It was not until 1985 that ECOSOC decided to set up the Committee on Economic, Social and Cultural Rights, which met for the first time in 1987

and which is still an offshoot of ECOSOC, a situation which, at least theoretically, weakens its independence.

Lastly, 1968 saw the adoption of an Optional Protocol to the Covenant on Civil and Political Rights, providing for the possibility of lodging individual complaints of a violation of any of the rights mentioned in the Covenant with the committee.

No such protocol has ever been adopted for economic, social and cultural rights, and what is more no such text is likely to be adopted in the foreseeable future. At the express request of the World Conference on Human Rights in 1993, the Committee prepared and adopted a draft protocol, after extensive debate, and forwarded it to the Commission on Human Rights in December 1996. This item was included on the Commission's agenda in 1997, 1998 and 1999, and is again to be discussed at the 2000 session beginning next week. However, no real effort has been made to push this issue forward, and the working party that is supposed, at some stage, to hold in-depth discussion on the relevance of an optional protocol has not even been set up. It would appear that no member State of the Commission on Human Rights has stood up to promote this initiative.

This attitude no doubt stems from an ignorance of the actual content of the economic, social and cultural rights protected and the obligations on States parties. The controversy on the judicial enforceability of such rights is still going on despite the Committee's efforts, and the setting up of a working party within the Commission of Human Rights would certainly help settle the dispute.

The same phenomenon can be seen at European level. While the European Convention for the Protection of Human Rights and Fundamental Freedoms has become a supranational standard-setting system, the same cannot be said of the Social Charter.

National courts apply the European Convention every day. In every country where it is in force, this text now takes legal precedence over national legislation. Lawyers and judges are familiar with the Convention, and the judgments handed down by the European Court of Human Rights have prompted States to modify their legislation and practice. In France, for example, the Court of Cassation considers that if a national law conflicts with the European Convention, the latter instrument must prevail.

However, the Convention only covers civil and political rights, and the Social Charter is very seldom relied on before national courts; in fact in France this never happens. The same phenomenon can be seen in Europe as at world level; it is as if civil and political rights had greater binding force than economic, social and cultural rights. At least the Social Charter has provided for a Committee of Experts, whose conclusions are examined by the Council of Europe's Social Committee. Thanks to the adoption of an additional protocol, which has been applicable since September 1992, but above all the additional protocol of 9 November 1995, international organisations, trade unions and NGOs can now submit complaints of violations of the Social Charter. This constitutes a major step forward.

However, the unequal treatment of the two types of rights is still the rule. This is why, on 3 December 1998, the Committee on Economic, Social and Cultural Rights adopted General Observation No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights, recommending that they afford special attention to such rights by promoting education and information programmes in all sectors, going through

domestic legislation with a fine-toothed comb to check its compatibility with the Covenant, identifying national landmarks to assess the enforcement of the obligations arising out of the Covenant, etc.

I would like to examine the role of the French National Consultative Commission on Human Rights (CNCDH) in this field in the light of the recommendations set out in this General Observation.

First of all, the jurisdiction of the CNCDH covers all economic, social and cultural rights both in France and at the international level, with the dual function of vigilance and consultancy upstream of government action in formulating draft legislation, regulations, policies or programmes, and downstream verification of the efficacy of respect for human rights in administrative practices or preventive action. While there is no specific working party on economic, social and cultural rights, all these issues are dealt with in specialised sub-committees, particularly those responsible for international affairs and forthcoming diplomatic events, national and educational affairs and human rights education and awareness.

Of the 120 or more opinions adopted by the Commission between 1987 and 1999, nearly forty concerned a wide variety of subjects relating to economic, social and cultural rights, eg AIDS, drugs, the right to housing, extreme poverty, the right of asylum and refugees, sexual exploitation of minors, forced marriage, control of immigration and clandestine immigration, the Revised European Social Charter, the General Principles Act on the indivisibility of human rights, etc.

Whenever a bill or a decree is liable to affect economic, social and cultural rights, the Commission examines it *ex officio* or at the request of the Prime Minister.

The Commission recently decided to ask the Ministry of Foreign Affairs for copies of the reports that France has to present to the six UN committees responsible for monitoring the application of human rights. The first such experiment entailed the examination of the second report to the Committee on Economic, Social and Cultural Rights. The observations submitted by the Commission resulted in distinct improvements to the report. Should we go even further and participate directly in preparing the report? This question has not yet been decided and might be further debated. At all events, I think it would be useful for National Commissions to fuel the government's discussions when drawing up their reports for the UN committees.

By the same token, National Commissions can and must play a role in disseminating these reports and taking further action on them.

When a report is submitted to the Committee on Economic, Social and Cultural Rights, the National Commission might usefully disseminate this text to the various sections of the public concerned. After the Committee has examined the report it is vital for its conclusions and recommendations to be disseminated as widely as possible, as keeping them confidential greatly reduces their effectiveness.

Better still, the National Commissions should deal with these recommendations *ex officio* in order to help the Government with follow-up: making administrative or legislative amendments, adopting action plans, or improving social policies. The fact that the National

Commissions could thus gauge the extent of the Government's political Will would further facilitate implementation of such measures. The CNCDH has decided to deal with follow-up to recommendations from both the UN committees and the Council of Europe. It began doing so after the publication of the European Torture Committee's conclusions on the situation in France.

Without setting out any firm conclusions, I would like to point to a number of avenues of inquiry for future action by the National Commission in the area of economic, social and cultural rights. Such a list obviously cannot be exhaustive, and our discussions should help highlight other ideas.

If economic, social and cultural rights take lower priority than civil and political rights in the activities of a given national human rights institution, or if the institution has no powers to deal with such rights, then this body should be assigned the requisite jurisdiction, ensuring that more time is devoted to issues of economic, social and cultural rights in keeping with the recommendations set out in the Committee's General Observation No. 10 (education, verification of legislation, technical consultancy, etc).

If the States parties to the Covenant fail to present their reports in time (two years after notification for the first report and every five years for periodical reports thereafter), the national institution should bring this to the Government's attention and possibly offer its assistance.

Campaigns might appropriately be conducted to move forward the study of the optional protocol in the UN Commission on Human Rights. In my view, Europe should be a driving force in this domain, and the national institutions as such can legitimately assist the European States in fulfilling this role.

Debates might be organised on the content of the Covenant and the legal enforceability of human rights, if only to publicise a legal instrument which is far less frequently used than the Covenant on Civil and Political Rights.

Information on the European Charter of Local Self-Government and its control mechanism should be disseminated by the national institutions, because it too is much less well known than the European Convention on Human Rights.

The national institutions might consider co-operation with the Committee on Economic, Social and Cultural Rights and with the supervisory machinery of the Social Charter, in the form of reports or seminars, or using any other arrangement.

This is no mean task, if indivisibility and complementarity of the rights in question are to move on beyond the stage of declarations of principle and become a living reality. However, the current debates on globalisation, as illustrated by the WTO meeting in Seattle, show that this task will be one of the fundamental challenges over the next few years.

**Mr Brice DICKSON,
Chief Commissioner of the Northern Ireland Human Rights Commission**

Introduction

1. It is an honour to be asked to address this august gathering on such an important theme as economic and social rights. I welcome very much the opportunity we will have during the next two days to share ideas and experiences from across Europe and to make proposals for how economic and social rights could be better protected in future.

2. I want to divide my address into four parts. I will first give a brief overview of the competence of national human rights institutions in this field. I will then provide a snapshot of the competence of the Northern Ireland Human Rights Commission in particular. In the third part I will consider some of the special problems associated with protecting and promoting economic and social rights. Finally I will make some suggestions for ways forward.

The competence of national human rights institutions

3. According to the United Nations' Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles),¹ a national institution must be given as broad a mandate as possible. The Principles list seven types of responsibilities which a national institution must have, including the duties to submit recommendations concerning the promotion and protection of human rights, to contribute to the reports which states are required to submit to United Nations bodies and (something especially relevant to this afternoon's discussions) to publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness. At no point in the Paris Principles is a distinction drawn between the functions of a national institution with regard to civil and political rights on the one hand and economic and social rights on the other. Indeed in the section on the methods of operation of national institutions the institutions are directed to develop relations with non-governmental organizations that are devoted (inter alia) to economic and social development, to combating racism or to protecting particularly vulnerable groups such as children, migrant workers, refugees and physically or mentally disabled persons.

4. Likewise, as the Background Note for this Round Table reminds us, the Council of Europe's Committee of Ministers adopted a resolution in 1997 calling on states to consider establishing effective national human rights institutions.² Again no distinction was drawn between the competence of these institutions in economic and social rights as opposed to civil and political rights. Member States of the Council of Europe recognize that human rights are indivisible and inter-dependent. Of course this does not necessarily mean that the methods used to promote and protect those rights need to be the same as those used for civil and political rights, nor that we must expect the same degree of uniformity throughout Europe on the standards reached in the economic and social sphere as we would expect in the civil and political sphere. But it does mean that there is no hierarchy of human rights. It also means that states must work to protect what are, in effect, rights exercised by persons in their

¹ Endorsed by the UN's Commission on Human Rights in Resolution 54 of 1992 and by the UN's General Assembly in Resolution 48/134 of 1993. The quotation is from Principle 2.

² Resolution (97) 14 on *"The establishment of independent national human rights institutions"*.

capacity as members of a group. Civil and political rights, on the contrary, are *usually* exercised by persons in their capacity as individuals.

5. National human rights institutions are particularly well placed to highlight the need for better protection of economic and social rights. Many people will not expect the institutions to be concerned about those issues and when they hear the institutions making public statements about them they will be made to think that those issues are just as fundamental as the more traditional civil and political rights. Also, economic and social rights do not tend to be *politically* controversial as between different groups in society. Poverty, unemployment, poor education, lack of adequate housing and ill health are all problems which every group experiences, even (perhaps especially) the dominant group. Of course in situations where one group - such as a group of migrant workers - is conveniently blamed for making the economic and social position of existing groups worse than before, there *can* be political controversy, but this situation is the exception, not the rule.

6. The assertion of economic and social rights is, moreover, less morally controversial. Those who are claiming such rights do not often carry the "baggage" which those who are claiming civil and political rights are sometimes perceived to be carrying (e.g. persons charged with a serious criminal offence or persons expressing unpopular opinions). In a predominantly Christian Europe there is a shared moral code which reinforces the values underpinning the international human rights provisions on economic and social rights. These values are also part and parcel of most other faiths.

The Northern Ireland Human Rights Commission (NIHRC)³

7. The NIHRC is, I believe, the first fully-fledged human rights institution in any part of Western Europe. It is more than a purely advisory body, having been granted investigative as well as litigating powers (it can take cases to court in its own name, or by supporting an individual applicant or by intervening as a third party). The Commission was set up by legislation on 1 March 1999.⁴

8. The legislation governing the NIHRC simply says (in summary) that its role is to promote and protect human rights in Northern Ireland. The term "human rights" is defined as including the rights in the European Convention on Human Rights. The Commission has decided to adopt a more expansive definition: by its Mission Statement it undertakes to measure laws, policies and practices in Northern Ireland against internationally recognized rules and principles for the protection of human rights. It is thereby referring not just to the international documents which the UK government has ratified but also those which it has not.⁵ As far as the Commissioners are concerned, their remit clearly extends to the promotion and protection of economic and social rights. No-one has gainsaid that.

9. Since the Commission started functioning it has found that people are very receptive to its involvement in economic and social issues. When it is represented at public meetings it

³ For further details see the Commission's web-site at www.nihrc.org.

⁴ Northern Ireland Act 1998, sections 68-70. At present the Scottish Parliament is considering whether to establish a human rights commission in Scotland and later this year a Parliamentary Human Rights Committee is to be established at Westminster, one of whose tasks will be to consider whether a human rights commission should be created for the United Kingdom as a whole. A commission is to be set up in the Republic of Ireland within the next two or three months (the Human Rights Commission Bill is currently before the Oireachtas, the Irish Parliament).

⁵ E.g. the Revised European Social Charter 1996.

gets a warm response to its proposals to undertake work in this field and a large number of community and voluntary organisations have had further meetings with the Commission to inform it about their specific areas of expertise and to ask for its support for their goals. In its Draft Strategic Plan issued in the autumn of 1999⁶ the Commission stated that it wished to prioritise work on (inter alia) the rights of victims of the civil unrest in Northern Ireland, children, older persons, persons with disabilities, persons who are discriminated against on the basis of their sexuality and ex-prisoners.⁷ Obviously the main concerns of such people fall more into the category of economic and social rights than civil and political rights.

10. Thus, the Commission envisages undertaking work on, for example, the right of victims to be given full access to health care and social services, the right of children to have access to a range of education facilities, the right of older persons to equality of opportunity in the employment market, the right of people with disabilities to be able to use public transport, the right of gay people not to be discriminated against either in the employment context or when accessing facilities and services, and the right of ex-prisoners not to be disadvantaged socially or economically just because they have served a sentence in prison. In choosing to work on such issues the NIHRC has followed the advice of other human rights commissions in other parts of the world - principally those in Australia and New Zealand.

11. The Commission has already undertaken work in the economic and social field. It persuaded an Education Board to supply a classroom assistant to a child with a disability who was attending a private Irish-medium school (formerly the Board's policy had been not to assist private schools). As Chief Commissioner I recently pledged the Commission's support to "Resolution 2000", a project run by a charity which seeks to eliminate homelessness in Northern Ireland. The Commission is currently considering whether to grant legal assistance to a parent who claims that there are not enough non-Catholic schools in his area and that consequently it is more difficult for his 11-year-old child to get a place at a "grammar" school. It is also considering a refusal by a local council to fund events connected with St Patrick's Day (tomorrow!). The Commission examined, but on the facts rejected, a request that it should support a challenge to the closure of part of a hospital in a rural area of Northern Ireland. During the two months of the life of the Northern Ireland Executive (2 December 1999 to 11 February 2000), the Commission met with the First and Deputy First Ministers as well as with the Ministers for Regional Development and for Further and Higher Education, Training and Employment. One of the few Bills brought forward by the Executive was the Equality (Disability, etc) Bill: the Commission is in the process of preparing comments on this, which will now probably be enacted as an Order in Council at Westminster. We are also feeding into the consultation processes on the Draft Protocol 12 of the ECHR and the Directives proposed to be issued under Article 13 of the Treaty of Amsterdam.

12. A key task for the NIHRC during 2000 is to consult with the people of Northern Ireland on what should be contained in a Bill of Rights for Northern Ireland.⁸ The duty to undertake this task was conferred on the Commission by the Good Friday Agreement of 1998, the peace settlement in Northern Ireland. Although aspects of that Agreement are now, regrettably, running into political difficulties, the Commission's work can continue unaffected. Indeed the Commission sees the Bill of Rights project as being based not just on the 1998 Agreement but on the fact that every political party in Northern Ireland (except for the very small Conservative Party) is in favour of a Bill of Rights, even if they are not in

⁶ A final version of the Strategic Plan should be available in April 2000.

⁷ It also prioritised work on persons who suffer injustice through the criminal justice and policing systems.

⁸ It will be communicating its final advice on this to the British Government early in 2001.

favour of the 1998 Agreement. The NIHRC launched its extensive consultation exercise on the Bill of Rights on 1 March 2000 and already it is obvious that many people - like the Commission itself - sees the Bill of Rights as potentially a crucial vehicle for improving the degree of protection afforded to economic and social rights. The Commission is in the process of producing educational materials on these rights in general and on education rights and women's rights in particular.

13. One model to look at will be the Directives of Social Policy which (although not justiciable) are already to be found in the Constitutions of countries such as Ireland, India and Namibia. I look forward to hearing how other European countries manage to underpin by law the protection of economic and social rights. The NIHRC is required to draw upon international instruments and experience when drafting its Bill of Rights, so I and the Commission's Chief Executive,⁹ who is also here today, are anxious to learn what we can about best practice elsewhere.

Some problems with protecting economic and social rights

14. This audience will be all too familiar with the difficulties associated with the protection of economic and social rights. First, the standards themselves - even those laid down in the Revised European Social Charter of 1996 - are on the whole less precise than those in the European Convention on Human Rights. Second, in international documents states are normally required to promise not that they will guarantee all the rights mentioned but that they will - in the words of the Revised European Social Charter - "accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised".¹⁰ Third, in such documents states are often required to consider themselves bound by only a selected number of the provisions (in the case of the Revised European Social Charter these are six out of nine specified Articles in Part II together with seven of the other Articles in Part II¹¹). Fourth, the international enforcement methods are not as developed as they are for civil and political rights: at present there is no procedure for taking cases to an international court if a state breaches its obligations in the field of economic and social rights. Fifth (a point which is often cited in order to justify all of the previous ones), states are supposedly less able to "afford" economic and social rights and do not take kindly to being told by other states that they should re-organise themselves so that they will become able to do so.

15. In truth, each of these difficulties can be exaggerated. Even when taken together they do not inexorably lead to the conclusion that economic and social rights cannot be protected as fully as civil and political rights. For a start, some of the latter rights are also governed by fairly vague standards (e.g. the requirement in ECHR Article 6 that a public hearing should occur "within a reasonable time", or the phrase, common to several Articles, that rights can be restricted if the restrictions are "necessary in a democratic society"). Most of the civil and political, too, cost money, especially now that the European Court of Human Rights is stressing more frequently that the ECHR Articles impose not just negative obligations of non-interference with personal freedoms but also positive obligations of active state involvement in supporting the freedoms. The latitude given to states as regards the way in which they may seek to attain conditions in which social and economic rights can be realised is mirrored to

⁹ Ms Paddy Sloan.

¹⁰ Part I, introductory paragraph.

¹¹ Or (somewhat oddly) so many paragraphs as makes the total number by which the state is bound 63.

some small extent by the margin of appreciation doctrine applied by the European Court of Human Rights in respect of some civil and political rights. We should not forget, in addition, that the European Court of Justice issues judgments on social and economic rights on many occasions - especially in the area of discrimination on the basis of gender. National courts do this as well. In Britain there have been several recent court cases on whether a public authority is entitled to take account of the financial resources at its disposal when providing economic or social services for residents.¹²

16. If national human rights institutions are to work effectively on economic and social rights they must be adequately funded for that purpose. The Northern Ireland Human Rights Commission certainly feels that it cannot do all that it would like to do because of its very limited resources.¹³ There will be many policy and legislative initiatives which we will not be able to analyse thoroughly, many applications for legal assistance which we will have to turn away and many educational and research ideas which we will have to put on the very long finger. There is a real danger that states will create human rights institutions merely to pay lip service to the UN and Council of Europe Resolutions: unless they are properly resourced they will raise false expectations and make people even more cynical about governments than they already are.

Suggestions for ways forward

17. There is a great ignorance of the international documents guaranteeing economic and social rights. Even though the UK ratified the European Social Charter in 1962,¹⁴ the level of knowledge of its content, even among human rights lawyers, is abysmally low. I have never heard a politician or civil servant argue that such-and-such a policy is or is not advisable because of what the European Social Charter (or the UN's International Covenant on Economic, Social and Cultural Rights) requires. I am aware that the UK Government dutifully submits its periodic reports to the European Social Rights Committee - and a few months ago my own Commission made a submission relating to the most recent of those reports. But in reality no-one takes the Charter at all seriously in Britain. Even if the European Social Rights Committee were to roundly criticise the UK for its non-compliance with various Articles in the Charter, this would be likely to receive very little, if any, coverage in the British press.

18. Making economic and social rights justiciable at the international level is the only way in which public authorities can be made to sit up and take notice of the Charter's requirements. Whenever the European Court of Justice pronounces, say, on whether the UK has breached an EC Directive on Equal Treatment, the national press do normally report that (even if not always sympathetically to the Court!). Similarly, training courses for civil servants, academic courses for law students and human rights programmes for school children must all give as much prominence to the contents of the European Social Charter as they do to the European Convention on Human Rights. Here, as in so many fields, education is virtually

¹² See, e.g., *R v Cambridge Health Authority, ex parte B* [1995] 2 All ER 129 (Court of Appeal) (right of 10-year-old to treatment for leukaemia), *R v Gloucestershire County Council, ex parte Barry* [1997] 2 All ER 1 (House of Lords) (right of chronically sick 79-year-old to subsidized cleaning and laundry services), *R v Sefton Metropolitan Borough Council, ex parte Help the Aged* [1997] 4 All ER 532 (Court of Appeal) (right of 87-year-old to subsidized nursing care), *R v East Sussex County Council, ex parte Tandy* [1998] 2 All ER 769 (House of Lords) (right to education for a 14-year-old too ill to attend school), *R v Birmingham City Council, ex parte Mohammed* [1998] 3 All ER 788 (High Court) (right of a disabled person to a grant for home central heating and insulation).

¹³ The Commission receives approximately 1.1 million Euros *per annum*.

¹⁴ It has signed but not yet ratified the Revised European Social Charter.

everything. The Council of Europe could also enhance the powers of the European Social Rights Committee or, failing that, the Committee itself could begin to exercise its existing powers more publicly and more stridently.

19. Nationally there is much that could be done. Within my own jurisdiction steps have recently been taken to help ensure that economic and social goods are more equitably distributed in society. Most public authorities in Northern Ireland are now required to publish an approved "equality scheme"¹⁵ which is supposed to demonstrate how the authority's policies will impact on different racial, religious and political groups, on people of different age, marital status or sexual orientation, on men and women, on people with or without disabilities and on people with or without dependants.¹⁶ This statutory framework replaces the former voluntary "Policy and Fair Treatment Guidelines". Unfortunately the new framework is not enforceable through a court being empowered to grant compensation if a public authority's policies have an unjustifiable adverse impact on one of the sectors mentioned. That is the final step that requires to be taken to ensure fairer distribution of wealth and access to opportunities in Northern Ireland.

Conclusion

20. National and sub-national human rights institutions are in their infancy. I predict that within the next generation they will proliferate and that soon they will become de rigueur for any democratic society, in the same way as scrutiny committees of Parliament, Constitutional Courts or Councils, ombudsmen and auditors have already become. Concerted action by such human rights institutions can go a long way towards raising economic and social rights to the status they have for ever deserved but long been denied.

¹⁵ Approved, that is, by the Equality Commission for Northern Ireland, another body created by the Northern Ireland Act 1998. If the Equality Commission does not approve a scheme the matter can be referred to a Government Minister, who has power to *impose* a scheme.

¹⁶ Northern Ireland Act 1998, section 75.

Ms Ulrika FLODIN-JANSON
Deputy Secretary of the European Committee of Social Rights, Council of Europe

I am very pleased that the first theme of this 1st Council of Europe Round Table with national human rights institutions is the protection and promotion of economic and social rights and I have listened with great interest to the speeches of the two Rapporteurs.

I would like to start out by saying a few words about the situation of the European Social Charter (ESC) in the beginning of this new century and will then make some comments on the subject and purpose of this meeting.

- The new Charter instruments have either entered into force, ie the Protocol providing for a system of collective complaints and the revised ESC, or are already being implemented although not formally in force (ie the 1991 Amending Protocol).
- 26 of the Council of Europe member States are now bound by either the ECS or the revised ESC. In addition all except four member states of the Council of Europe have signed one of these instruments.
- 9 Countries have accepted the Additional Protocol to the Charter providing for a system of collective complaints.
- We expect that by the end of this year (2000), 30 countries will have ratified either the ECS or the revised ESC, approximately 10 countries already having opted for the revised Charter.

These developments are very positive considering that for a number of years only 20 States were bound by the Charter.

The supervisory system based on national reports, the traditional supervisory mechanism of the Charter, has developed considerably over the last years. We now receive an increasing number of comments from trade unions/employers' organisations and NGOs every year, the national reports have been improved as a result of a system of warnings in the Governmental Committee, the European Committee of Social Rights has consolidated and developed its case-law, states are taking measures to bring criticised national situations into conformity with the Charter provisions to an extent that they did not use to do before or they argue in the Governmental Committee at length as to why they cannot do so, using arguments based on social, economic and other policy considerations as provided for in the Amending Protocol. Finally, the Committee of Ministers adopts recommendations addressed to individual States. Thus, a considerable amount of additional work is carried out with respect to the supervision of the Charter, by the supervisory bodies as well as by trade unions, employers organisations and NGOs. Despite this, the length of the whole procedure has been reduced considerably.

The collective complaints procedure, which entered into force in 1998, has also started to function. We have eight registered cases now. In one case the European Committee of Social Rights has already reached a decision and transmitted its report in September last year to the Committee of Ministers, which has adopted a resolution to close the procedure. Four other cases have recently been declared admissible by the European Committee of Social Rights and other cases have been registered by the Secretariat.

However, although considerable progress have been made and the basis is there for a true reinforcement of social and economic rights in Europe, a long way remains to go before the protection of these rights is anywhere near that provided for civil and political rights. Some of the reasons for this have been pointed to by the Rapporteurs, such as the different characters of the two categories of rights and the lacking knowledge of the European Social Charter.

As Mr Dickson rightly mentioned in his speech, one of the reasons social and economic rights are often not given the same consideration as civil and political rights, is that they are said to be too costly. On this point it must be emphasised that also civil and political rights can be very costly, it is for example very costly for a state to guarantee the right to a fair trial, which implies the setting up of a court system etc. To follow the recommendations of the CPT on prison conditions is also very costly. Perhaps even more so than to provide decent conditions in an orphanage. There is also the argument that not providing certain social rights can be very costly for a state for example not providing vocational guidance and training, which can be fatal for a country's labour market policy.

I agree with Mr Texier that only very few social and economic rights can be said not to be justiciable, in fact in the Revised European Social Charter I can think of only three articles containing non-justiciable rights. I can confirm that the difference pointed to by Mr Texier as regards the protection of civil and political rights as compared to social and economic rights on the international level is reflected on the European level, where the European Social Charter has led a sleeping existence during its first thirty years. Mr Textier pointed out, *inter alia*, that whereas national courts make frequent use of the ECHR, the Charter is almost never invoked before national jurisdiction and certainly never in France. I am sure that this is largely true and due, of course, mainly to lacking knowledge of the Charter. But look back fifteen - twenty years, then this was the situation also for the ECHR.

I believe firmly that the Charter is on a turning point now. In the beginning of this week I was contacted by the legal adviser of one of the associations affiliated to the Swedish Employers' Association who has invoked the Charter in an important case that is now pending before the Swedish Labour Court. The following day a person employed by a French administration sought advice on the contents of the revised Charter with a view to bringing a case to court concerning harassment in the workplace.

Moreover, the French and Dutch Governments referred to the Charter before the European Court of Justice in the *Albany International* case (C-67/96).

These are positive signs, although the situation is still far from satisfactory in this respect.

I took great pleasure in hearing the proposals made by the Rapporteurs on how national human rights institutions can promote the protection of social and economic rights. In particular I think these institutions have an important role to play in spreading knowledge of the instruments existing in this field, in putting pressure on governments to ratify them and to produce reports of good quality on the due date. National institutions can also follow up the commitments made by putting pressure on governments to ensure that national situations that have been criticised are brought into conformity with the relevant undertakings.

Finally, I think there is an important role to play for national human rights institutions in the framework of the collective complaints procedure under the ESC, in spreading knowledge

about the existence of the procedure and giving advice to organisations of employers and workers and to NGOs on how the procedure operates and on case law.

In the conclusions of an NGO Forum held in Rome on 21--22 February 2000 several interesting recommendations of direct relevance to our discussion here today were made. These were submitted to the Drafting Group of the Steering Committee of Human Rights (CDDH-GR), which held its first meeting in Rome on the same date with a view to preparing the draft political texts for the European Ministerial Conference on Human Rights, to be held in Rome in November on the occasion of the 50th anniversary of the ECHR.

Among the recommendations were that equal priority be given to, and adequate resources provided for, the promotion and protection of economic, social and cultural rights, as for the protection of civil and political rights.

In his opening speech Mr Imbert said that much remains to be done to instigate greater awareness, understanding and application of the ESC. He mentioned that any proposals towards improving the protection of economic and social rights can be fed into the recommendations the Round Table might wish to adopt with a view to the Human Rights Conference.

I sincerely hope that you, as representatives of national human rights institutions, will take him up on this and make some concrete proposals, on the basis of the various ideas brought forward by the Rapporteurs, on how to increase the knowledge about and effectiveness of international and European instruments for the protection of social and economic rights. In expressing this hope I would like to recall that the process that led to the extensive reform of the Charter that has taken place during the last ten years was initiated at the Ministerial Conference on human rights held in Rome in 1990 at the occasion of the 40th anniversary of the ECHR.

SECOND SESSION

Chair:

Ms Margareta WADSTEIN

Ombudsman against Ethnic Discrimination, Sweden

THEME II: FIGHT AGAINST RACISM AND RELATED DISCRIMINATION

Report presented by:

Mr François SANT'ANGELO

Centre for equal opportunity and the fight against
racism, Belgium

Statement by:

Mr Michael HEAD,

Vice-Chair of European Commission against Racism
and Intolerance (ECRI)

Mr François SANT'ANGELO
Centre for equal opportunity and the fight against racism

Introduction

National institutions undoubtedly play a specific and vital role in combating racism and intolerance. Their involvement is essential as much in raising awareness among public authorities, the general public and the various classes of professional who handle disputes as in developing original approaches to resolving certain types of dispute.

Racism cannot be tackled through government measures alone. The social partners and civil society have key contributions to make at every level. Among the main initiators of change in our societies are non-governmental organisations, whose role must be recognised and promoted by public authorities, notably through effective, ongoing support.

There is a case for delimiting the roles of the different institutions (judicial and extra-judicial) and allocating functions among them - by agreement if possible.

It is very clear, however, that the potential of extra-judicial (and indeed judicial) mediation has not yet been properly explored or tried out in practice - much less harnessed widely. Likewise, serious consideration should be given to introducing some form of para-judicial preliminary examination of cases, possibly by specialised public bodies from which cases would go to a court of law virtually ready for decision. Amongst other things such bodies would have to be guaranteed access to all documentation relevant to a victim's case.

This report, however, is concerned with all aspects of the fight against racism and related discrimination, and is simply intended to pull together a number of considerations that have emerged from my experience and work with a specialised national body, current national and international initiatives and examples of good practice.

1. Effective anti-racist legislation appropriate to different circumstances

A. Effective legislation

The first priority for everyone concerned with action on racism is, of course, to get anti-racist legislation into the statute books (in those countries that do not already have it), but it is also essential to continue improving such legislation, notably to ensure that individuals, NGOs, national institutions, the various intermediaries and mediators, the forces to which offences are reported, the prosecution service and the courts have effective, appropriate means of exposing, proving and punishing breaches of the law.

There are various ways in which this can be done.

1. At supranational level:

- through Council of Europe adoption, as proposed by the European Commission against racism and Intolerance (ECRI), of draft Protocol n° 12 to the European Convention on Human Rights (extending the scope of the prohibition on discrimination contained in Article 14 of the Convention).

2. At national level:

- by examining the functioning of systems in other countries that already have a certain amount of experience in the field or a large body of relevant case-law;
- by consulting academics, lawyers, prosecutors and judges - for example on the controversial and frequently ill-understood concept of the burden of proof, current thinking (notably in the two draft European Union Council directives on equal treatment being that it should be shared or adjusted rather than reversed);
- by involving NGOs and associations working in the field, which encounter racism and discrimination on a daily basis;
- by setting up a specialised independent national body (possibly on a decentralised basis) to combat racism and discrimination, co-ordinating initiatives in both the public and private sectors and promoting improvements in the law; it would also receive complaints and would be entitled to be a party in legal actions and to claim damages in criminal cases.

Proposals:

- that ECRI General Policy Recommendation n° 2 on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level be implemented;
- Article 12 of the proposal for a (European Union) Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which provides a framework within which independent bodies helping to promote the principle of equal treatment could operate.

B. Appropriate legislation

These instruments - which must cover not only the most effective methods of punishing offences and ending discrimination (and at the same time the disputes, bearing in mind that sentencing by the criminal courts may not be the best solution in every case), but also the question of evidence (with more flexible requirements on securing evidence and admissibility of evidence), types of penalty and types of compensation - must be tailored as closely as possible to particular requirements.

For example, we cannot apply the same measures to a xenophobic, racist party that is represented in parliament (even if its leaders regularly appear in court on charges of incitement to racial hatred) as we would to a small ultra-violent group of neo-nazis, let alone take the same weapons to incitement of racial hatred in a speech and similar incitement on the Internet. Measures to eliminate discrimination by public or private subsidised housing associations must also be carefully targeted and will differ from those used to counter discrimination by private landlords renting their property on the open market; and the instruments used to tackle a company's discriminatory recruitment practices will not be the same as those for combating racially motivated psychological harassment in the same company or elsewhere.

Proposal:

- a comprehensive body of legislation to combat racial discrimination should be put in place in criminal, civil and administrative justice, and improved enforcement of anti-discrimination laws necessitates tackling the difficulties of proving that disputed acts were discriminatory or racially motivated. The implementation of ECRI General Policy Recommendation n° 1 on combating racism, xenophobia, anti-Semitism and intolerance is recommended in this connection.

Example: With a view to making the punishment fit the crime, courts could be empowered to impose, in addition to the main penalty, an ancillary penalty depriving convicted persons of certain political rights for 5 to 10 years.

C. Protection of victims and witnesses

Protection against actual or supposed intimidation should be afforded to victims and persons who feel victimised, as well as to witnesses (office or shop-floor colleagues, for example, or police officers in the same station as victims) who are aware of all that goes on but keep quiet for fear of reprisals by workmates or employers. Such people have a crucial role to play not only in proving that offences have been committed but also in establishing racist intention on the part of the offenders, for example in cases of assault (in such cases the courts should also be able to impose heavier sentences where racist motivation is proven).

Examples: Article 10 of the proposal for an EU Council Directive establishing a general framework for promoting equal treatment in employment and at work, and Article 9 of the proposal for a Council Directive implementing the principle of equal treatment irrespective of racial or ethnic origin.

At another level, it is important that associations, organisations and other legal entities should be able to initiate whatever type of legal or administrative proceedings in their own right or on behalf (and with the approval) of injured parties.

Examples: Article 8 of the proposal for a Council Directive establishing a general framework for promoting equal treatment in employment and at work, and Article 7 of the proposal for a Council Directive implementing the principle of equal treatment irrespective of racial or ethnic origin.

D. Desirable forms of co-operation

Co-operation (with the social partners and particularly the trade unions, for example, or with tenants' and landlords' associations, the army and the police) also offers scope for innovation with regard both to the prosecution of offences and to possible ways of resolving disputes.

Examples:

- use could be made of social legislation and devices such as labour agreements or provisions on factory inspections;
- police behaviour could be dealt with by supervisory bodies or disciplinary boards, with genuine transparency and proper penalties, of which victims would be informed.

E. Extending the range of instruments used

There is scope for initiative not only in the criminal field but also in civil and administrative law.

There are also examples of good legislative and contractual practice that should be promoted.

Examples:

- public funding could be denied to political parties represented in parliament if they attack human rights or if their programmes push ideas for which people have been convicted in court;
- intermediary bodies (eg in Belgium, the Post Office, which unintentionally helps to disseminate racist and xenophobic literature) could be made aware of their responsibilities: codes of conduct can be introduced or agreements concluded with national institutions.

Monitoring:

It is important to remember that the introduction of new measures (however irreproachable in principle) is not enough unless, at the same time, provision is made for regular evaluation to see how the effects measure up to the underlying principles and aims - and, if necessary, to correct any unwanted effects.

Example, new legislation could seek to ensure that public housing goes to the families who genuinely need it, making the housing allocation process more transparent and reducing the risk of its abuse, in particular as regards discrimination on the basis of ethnicity or nationality.

F. Effective remedies must be available in the courts

People must always have effective judicial remedies in both national and international law.

Proposals:

States should be asked to take steps to sign, ratify and implement the international legal instruments for tackling racism, notably:

- the United Nations International Convention on the Elimination of all Forms of Racial Discrimination, in particular Article 14, under which individuals may make representations to the UN Committee on the Elimination of Racial Discrimination. It should be noted that, under the same article, this right is conditional on the relevant State Party having declared that it recognises the committee's competence to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in the convention;
- the Treaty of Amsterdam's provisions on non-discrimination. This treaty, signed on 2 October 1997, provides in Article 13 that the Council of Ministers of the EU, acting unanimously "may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".

2. Policies and practices to be adopted at national level

A. Raising the awareness of those immediately concerned

NGOs and national institutions, which are closest to the situation on the ground, must play a key role in stimulating this process.

There is a need for both awareness-raising and training not only for all levels of the prosecution service, commanding officers (eg in the armed forces and the police) and employers, but also for politicians (in both government and parliament), who must constantly improve, refocus or adjust the law and the various kinds of machinery.

To take a practical example, justice ministers could exercise their right to issue instructions to the prosecuting authorities to crack down on offences under anti-racist legislation.

B. The prosecution service

Training for public prosecutors must aim not only to ensure that they take a consistent approach to the prosecution of racist offences, but must also make them aware, at a more practical level, of the importance, for social cohesion, of prosecuting racist offences - too often regarded as minor and wasteful of the court's time. It should also demonstrate the potential of mediation in criminal cases, as a more rapid solution that may be better at giving the injured party a sense of redress.

Proposal:

At national level, allowing victims of racist and xenophobic acts to opt for mediation in criminal cases could be further developed, particularly where the parties are individuals. There would have to be prior agreement of all parties, and the procedure would be instigated by the prosecution service.

Consideration of the possibility could draw on the experience of bodies that already specialise in mediation. Judges and prosecution service mediation staff could also be consulted.

In a significant number of cases, racism and xenophobia offences are not classified as such but are prosecuted as offences of a more general type, such as assault.

Proposal:

The judicial authorities and those responsible for the internal and external supervision of the police service should be made more aware of the importance of using the term "racism" in official reports on offences.

C. Statistics

Detailed comprehensive statistics are vital for planning and implementing policies and strategies to combat racism and intolerance and monitoring their effectiveness. They are also a key tool in awareness-raising and training for everyone in the criminal justice system.

Proposal:

Governments, and especially justice ministries, should be encouraged to develop appropriate systems of statistics for recording complaints about incidents involving racism and xenophobia, including the number of complaints about racial discrimination that come to court, the outcome of proceedings and any damages awarded to victims of discrimination.

D. Innovative policies

There is scope for innovation in policies to combat racism and xenophobia; for initiatives that involve society generally in discussing the problems and finding solutions; and for new, more effective measures against racist and xenophobic political parties that exploit intolerance.

Proposal:

The economic and social problems caused by globalisation should be addressed, with particular attention to combating social insecurity, unemployment and exclusion, all of which are factors in the support for extremist parties. The legitimacy of democratic movements should be reasserted where it has been eroded, because one of the factors in the rise of right-wing extremism is the alleged unrepresentativeness of traditional political forces.

More should be done for minorities and vulnerable groups.

Proposals:

- In response to the situation of the Roma/Gypsies and their exclusion from political, economic and social life, ECRI General Policy Recommendation n° 3 on combating racism and intolerance against Roma/Gypsies should be implemented;
- Measures should also be taken to combat religious intolerance (for example prejudice against Muslim communities).

3. Education and awareness raising about combating racism*Training for judges and police officers*

Judges, police officers, local authority counter staff, prison warders etc. need educating about the content of racism law and relevant case-law. Experience has shown that people in these jobs often hold various prejudices - one example might be police officers working in areas where a large majority of the population is of immigrant origin, whereas they themselves come from small towns where there are few immigrants.

Proposals:

- Training should include education in multiculturalism and in problems specific to foreign or immigrant communities.
- Intake into the judicial service and the police should include people from immigrant communities and minority groups.
- Codes of conduct should be introduced to encourage the type of attitudes and behaviour that will improve relations between the public and the police.
- People who lodge complaints should be informed of the outcome of any action taken, because lack of openness minority groups' confidence in the police.

4. Information, communication and the media

A. The role of the media

This is twofold. First of all, the media must recognise their actual and potential role in causing prejudice and shaping attitudes at odds with reality. As a matter of professional ethics, events must be reported in a factual and unbiased way. Immigrant and minority groups are the subject of articles and reports but they must also become actively involved in the media in their own right, both in terms of enjoying the same freedom of expression as others and through working as journalists.

Example:

The justice minister and College of Public Prosecutors could issue a joint circular indicating what information the prosecution service and police may supply to the press during preliminary inquiries.

**Mr Michael HEAD,
Vice-Chair of European Commission against Racism and Intolerance (ECRI)**

Thank you very much, Margareta. May I say how I very much appreciate being invited to address you today and I will make it as short as possible. It is good to be back in this area which is of vital importance to the organisations which I represent today, and it is good also to be amongst company in which there are so many old friends.

Whereas François was concerned about general policy towards combating racism, I shall be concerned very much as a mere technician, with perhaps more the mechanics of how national human rights organisations might approach the subject, and what the implications for them in terms of organisation might be. I think it is right that we should perhaps take our eyes, during this conference, away occasionally from the far horizons to our bread and butter, the day to day work with which we are concerned. And perhaps we also should look closely at questions of organisation, and how those questions of organisation affect principles.

First, I think it would be helpful to remind ourselves why we are addressing the issue of racial discrimination as something unique and deserving of special attention.

We are dealing with a spectrum in which problems of racism on the basis of colour or ethnic or national origin merge imperceptibly into other problems, sometimes quite independently of those issues. And indeed, we cannot insist too much on differentiating racial problems from social problems. All too often the victims of racial discrimination are precisely those who suffer from the worst forms of social disadvantage and social exclusion. And this should bring them firmly into the area that we were discussing this morning. For day-to-day purposes, however, that is the day-to-day working purposes, I suspect that for most of us we would feel comfortable with definition of racial discrimination that is contained in Article 1 of the international convention on the Elimination of All Forms of Racial Discrimination. This says "racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The breadth of the definition, I think, turning now to organisational implications, helps to explain why many people have tended to favour a type of organisation which unites under one heading, one umbrella, concerns dealing not only with racism but with other forms of human rights abuse as well. And this school of thought will argue that the advantage of such an organisation is that its remit is then flexible, and allows for the maximum interaction in the ways of human rights abuses are dealt with. And (at the sum?) therefore, this means a human rights body which has matters other than race within its terms of reference.

Now I would not want to deny that there is a case for this. There does seem to be an increasing consensus in favour of organisations in the human rights field which cover as large a number of matters as possible. This reflects the conclusions coming out of discussions within the Council of Europe itself.

In countries that have a fragmented structure of human rights organisations, like for historical reasons, my own country the UK, there is beginning to be a move towards unification. In the UK, for example, the recent incorporation of the Human Rights Convention into UK law resulted in a quite strong effort to amalgamate all the various organisations operating in the

fields covered by the Convention. That was resisted by United Kingdom Ministers at the time on the unworthy grounds that it would cause far too much trouble and be far too difficult to persuade people to accept. But there is, perhaps, an underlying reality here. There is a dilemma that if you had once created such a wide universal body, you may find it difficult to retain the necessary focus and resources in areas like race that need specialised attention.

For myself, I would argue that whatever conclusion we reach on the precise remit of a national human rights body, there is a compelling case for regarding racial discrimination in its wider sense as something special. I mean this in the sense that the issue cannot be treated operationally as something that is submerged in the generality of day-to-day work. There are good practical reasons for this conclusion.

First, racial discrimination is at the root of a large proportion of human rights abuses. Second, the handling of these cases calls for a high level of specialist expertise. Third, these cases tend to involve the most vulnerable groups of society. And fourth, they are frequently the most politically charged.

In an ideal world, my own organisation ECRI would probably argue for a separate discreet body dealing with racial discrimination on the lines that have been set up in a number of European organisations. But whether or not you accept that, it does seem inconceivable that any national body, irrespective of its precise form and remit, should not have within it at least a section dealing specifically with problems of discrimination, on grounds of race as defined in the international Convention which I have just referred to.

This could well and indeed does have some organisational implications. Some guidance on these exists in documents which you will be familiar with - the Paris Principles and most recently in the ECRI general recommendations which François has just referred to. But I will, if I may, just refer to a few of them.

There are implications here obviously for the role of law. I think it is such a general consensus that it is now commonplace that national bodies shall be established by law, that their terms of reference should be promulgated in statute on the basis that their status and their effectiveness depend on this degree of public recognition. Without a system of effective powers and a clear statutory mandate, the efforts of national bodies are bound to be seriously undermined. This applies whatever the precise form a national body takes.

Of course, one has to be careful. The law can be your enemy as well as your friend and I can think of, perhaps, certain circumstances in which the law can give you an extremely wide remit and effective powers, but then set you up to fail by in effect denying you the resources with which to do the job. But that is a function of national negotiations.

I think I would argue that, given the fundamental principle that the law has to provide a base for the work of national human rights bodies, if we have a situation in which a particular section within a larger organisation is dealing with a particular specialism like race, the law should still then be very precise in the sorts of powers that it gives to that body to deal with that particular phenomenon.

There are issues also around the range of functions that a national body should carry out. I think it would be a strong argument on the part of ECRI that to be effective a national body needs powers and remit that François himself suggested. It should cover a whole field. It

should not simply be a case of an organisation in the traditional ombudsman model of pursuing individual cases of mal-administration by the executive. The body should also have a promotional role of giving advice to overnments, giving advice to members of the public, taking public positions on matters of public policy, as well as having a role in helping individuals suffering from discrimination with redress through the courts or through separate administrative tribunals.

You could argue, perhaps, over whether or not there should be a general umbrella body which covers all the various fields of human rights, but I feel much more strongly that there is less room for debate on the ideal structure of a human rights body, which is that it should cover as wide a field in its functions as it possibly can.

There are then the familiar clutch of issues that surround matters like accountability, composition and resources. I would, again, argue that if we are in a situation where race matters are increasingly handled within larger organisations of which they form a part, then the need for involving the particular community you are helping in your own national context, means that you have to take special steps to ensure that they are represented in whatever governing body is set up, even if this means setting up separate arrangements for that particular section itself.

The resources issue, I fear, is one of those insoluble matters that nothing that anybody says in a conference like this can help over. All of you face a grinding process of attrition with governments. If you think that it is going to be difficult for governments to accept the human rights costs, acknowledging a concept of human rights which embraces economic and social issues, I think you are quite right because the attitude that governments have shown to the process of providing resources to new bodies setting up solely dealing with the race field rather supports the proposition that you have to fight very hard indeed to get enough staff and enough money to do the job properly.

There is nothing here that can be said except that national circumstances will inevitably dictate how much people will give and how quickly. But all the pressure from international bodies, such as ECRI, will be in support of the setting-up of national bodies that are seen to be effective and are effective in reality.

I would pause there because I have reached almost the end of my time. I can see absolutely that the various principles that I have been mentioning as regards the organisation of national bodies apply equally, whether they are dealing with race or some other form of human rights abuse, whether it is data-protection privacy or discrimination on grounds of gender.

My concern is that in dealing with all these other issues, the importance of what I have just said as regards organisation when it comes down to race, should not be diluted. As I said earlier, there is no one model but it is extremely important, in my view, that if you are considering a form of organisation which deals simultaneously with various forms of human rights abuse, then it should not take a form which dilutes the focus that is rightly put, and for the reasons I have given, on matters to do with racial discrimination.

There are implications here, obviously, for the Council of Europe and for national governments: for the Council of Europe, in providing forums like this for debate and for networking, in providing opportunities for training and in promoting programmes like the South-East Europe Stability Pact, in which experience and assistance can be exchanged.

There are also implications for governments, above all, for taking these issues seriously. That means tackling the issues of mechanics, boring as they seem, but vital as they are, and above all, the question of resources.

Madame Chairman, I have, as I said, descended very much into detail and into bread and butter forms of organisation but I think that these do conceal broader questions of principle which I hope people will contribute to this afternoon in the process of discussion. Thank you.

THIRD SESSION

Chair:

Mr Pierre TRUCHE

President of the French National Consultative
Committee of Human Rights

**THEME III: CO-OPERATION BETWEEN NATIONAL HUMAN RIGHTS
INSTITUTIONS AND BETWEEN THEM AND THE COUNCIL OF EUROPE**

Statements by:

Ms Jane DINSDALE,

Director, Directorate General of Human Rights,
Council of Europe

Mr Alvaro GIL ROBLES,

Council of Europe Human Rights Commissioner

Mr Morten KJAERUM,

Chair of the Coordinating Group of National Human
Rights Institutions and Director of the Danish Centre
for Human Rights

**Ms Jane DINSDALE,
Director, Directorate General of Human Rights, Council of Europe**

Chairman, ladies and gentlemen,

First, allow me to say what a pleasure it is to see so many familiar faces gathered here today.

I regret that other commitments have not allowed me to follow your sessions more closely. That being said, the feedback that I have had from colleagues about the discussions on themes 1 and 2 suggests that this has been a useful occasion to define more clearly, and in a practical way, how national human rights institutions can provide input into some of the core human rights issues on the international community's agenda. The two introductions we have just heard on theme 3 also suggest concrete conclusions on the interplay between national human rights institutions and the Council of Europe.

My own modest contribution was to have been on one specific aspect of the interplay between national human rights institutions and the Council of Europe, namely, how national human rights institutions can cooperate with the Council of Europe and among themselves in achieving one of the objectives of the Stability Pact for South East Europe: the promotion of independent human rights institutions in the region as an important complement to judicial protection of human rights and a mechanism through which to promote accountability and good governance. Such was the ambition when this meeting's programme was drawn up, it being expected that projects on this topic would have already got started in a serious way under the Stability Pact.

At present, I feel somewhat like an actor whose script has been withdrawn at the dress rehearsal. The complexity of the Stability Pact's decision-making processes and funding arrangements means that the bulk of the projects are in suspended limbo pending the Financing Conference scheduled for 29 March 2000. It will be at that Conference that pledges are expected for the numerous "quick-start" projects put forward by the Special Coordinator, Mr Bodo Hombach. Among those projects is a cooperative project on national human rights protection institutions, including Ombudsmen, put forward by the Council of Europe on its own behalf and on behalf of the other partners involved.

You will therefore appreciate the feeling of "virtual reality" I have in discussing how you can join in on this project and amplify its impact, when the actual fate of the project as yet remains an unknown quantity. That being said, I am confident that some or all of the projects will find favour with donors at the end of March and that, henceforth, some concrete action can begin.

I understand the project outline has been circulated to you. Nonetheless, a few words of explanation may be called for to put it in context.

When the Council of Europe, even prior to the adoption of the Stability Pact in June 1999, adopted its own Stability Programme for South East Europe in Budapest in May 1999, national human rights institutions were immediately identified as a priority area of action in view of the stabilising and catalysing effect we believe they can have in societies facing a post-conflict or post-crisis situation. We began therefore to plan actions designed to promote the establishment and to enhance the role of such institutions in the region, building on our

long-standing experience in contributing to the development of these institutions in countries of transition.

We were comforted in our approach when the Stability Pact included the promotion of national human rights institutions as one of the priority clusters of work of the Task Force on Good Governance under Working Table I on Democratisation and Human Rights which the Council of Europe was asked to sponsor. It was in this capacity that we organised a Regional meeting on independent national human rights institutions in Budapest in December 1999, hosted by the Hungarian Parliamentary Commissioner for Human Rights, Ms Katalin Gonczöl, whom I have the pleasure to see among us today. The meeting was to serve as a launching pad for practical initiatives and concrete projects to be carried forward. We were able, on the basis of the discussions there and the proposals received subsequently from institutions, countries and international organisations, to draw up the Project which is now on the table of the Financing Conference.

From the outset I should stress that the project – which seeks to be a practical, experience – and expertise-based project – is not a Council of Europe exclusivity. Although it is Council of Europe driven, it involves a loose network of cooperating institutions, organisation and authorities within the region and beyond. Indeed, at the Budapest meeting it was felt that, as a number of different actors were already active in one form or another in the region, the aim should be to capitalise on existing initiatives, amplifying them and giving them added value through interlinkages and synergies within a loose network coordinated by the Task Force Sponsor.

The main thrust of the Project involves promotion and development of the legislative framework for establishing independent national human rights institutions; enhancement of existing institutions through interlinkages and exchanges of good practices; capacity-building and skills acquisition; training and provision of information and documentation, as well as information and awareness-raising in official circles and civil society, the latter with special emphasis on the media

It goes without saying that the project is based on needs expressed within the region and that it is sufficiently flexible to evolve as the needs themselves evolve.

Key partners in the project so far are the Ombudsman of Greece, who has a comprehensive, self-financing proposal for nascent institutions in the region, the ombudsmen offices of France, the Russian Federation, Slovenia and Sweden, who are ready to make contributions in kind, as well as bodies such as the OSCE, ODIHR and EOI.

So, you can see that the project really is a collaborative effort involving the countries of South East Europe in an active role, as well as other institutions and international and regional organisations. We are very pleased that it has the active support of key partners in the near region such as Greece, Hungary and Slovenia.

We anticipate that the implementation of this project will mark a new phase in the co-operation between the Council of Europe and national human rights institutions, one characterised by intensified, sustained contacts rather than stand-alone activities, by new synergies and by closer inter-institutional links.

For this reason, and although the fate of the Project is still uncertain, we would encourage participants to reflect on how they, too, could join in on this collaborative effort. Contributions can be modest and in kind, e.g. lending specific expertise from your office for a period of time to a newly established office in the region, acting as host for study visits from offices from the region, lending a person for particular thematic meetings or training or information sessions and so on. This is a process of building blocks and each block, however modest, counts. I would make a particular appeal to those institutions in the near region who feel they might have an experience which could usefully be shared (both positive and negative), as well as to the bodies recognised by ECRI as “specialised bodies” for combating racism and intolerance, whose experience can be of special significance in a region torn by ethnic tension.

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Before closing Chairman, allow me to dwell in more general terms on the morning’s theme and pick up a few of the points raised by Morten Kjaerum in his introduction as food for thought for the discussion.

As some of you may be aware, at the behest of the Council of Europe’s 2nd Summit of Heads of State and Government in October 1997 a “Committee of Wise Persons” was set up to prepare recommendations to the Committee of Ministers on structural reforms necessary to adapt the Organisation to its new tasks. The Report of the Wise Persons was published in October 1998 and identifies potential new priorities for the Council of Europe. Of particular interest to us today is the recommendation that direct co-operation with national ombudspersons should be reinforced with the aim of consolidating the rule of law in all European countries, and that for this purpose full use should be made of existing structures and networks both at national and Council of Europe level so as to build up a genuine European network of interlocking relations.

Today’s meeting should be seen against the backdrop of that recommendation, enlarged to cover national human rights institutions generally. Consolidating the rule of law, human rights and pluralist democracy throughout our member States and applicant States is at the heart of the mandate of the Council of Europe and all of our activities are ultimately directed at this objective. But in order to accomplish that we need to work in concert with national institutions who have the local know-how and experience to ensure that our efforts are properly conceived and targeted.

We rely on you, first of all for the purposes of concrete co-operation projects and for drawing our attention to where particular efforts are needed. Secondly, the Council of Europe’s treaty bodies and other human rights monitoring mechanisms, such as ECRI, can benefit from your institutions’ in-depth knowledge in their work. Thirdly, the Council’s work in the area of human rights law and policy development generally could also lean on the knowledge and expertise which national institutions have acquired “in the field” so as to better anticipate specific human rights challenges which call for a concerted European response. In this connection, I note with interest the proposals put forward by Morten Kjaerum and, if you will allow me, I shall make a few comments in reaction:

In principle, developing a closer informal dialogue between national human rights institutions and for example the CPT, the Advisory Committee of the FCNM, ECRI, and possibly the European Committee on Social Rights would be a positive development and we should perhaps explore this idea further. In fact, I understand that a degree of co-operation has already been established in this direction, for example, in the context of ECRI's contact visits and the CPT's and the Advisory Committee's on-the-spot visits. No doubt my colleagues from the Secretariats of the different bodies will wish to comment in greater depth on this point.

The idea mentioned by Mr Kjaerum of a focal point is a good one that we in the Secretariat support in principle. I should say, however, that the Council is facing severe financial constraints at the moment which affect our ability to take on such new ventures. This also applies to the proposal that the Council should act as convenor of thematic workshops with national institutions. As regards training periods with the European Court of Human Rights, no doubt my colleague from the Court, Mr Strasser, will wish to come back on that question.

On the question of observer status with the CDDH and while I am sure that Mr Lathouwers and Mr Boillat will wish to comment on this matter, the idea of a greater input from the national institutions into the human rights law and policy development work is a good one, I would merely say that the comparative advantages of possible observer status need to be weighed up against other more flexible formula such as hearings, both general and thematic.

Mr Kjaerum also mentioned the development of closer interaction on human rights education and training, including the elaboration of an inventory of what is already available in different countries for different educational and professional groups. In fact, such an inventory was prepared in 1999¹⁷. We would certainly support the idea of building further on this and seeking to fill any gaps. As you will be aware, we are also heavily involved in the training of legal professionals and the police. With regard to the latter, an inventory has also been prepared of training materials on human rights specifically for the police. Again, input from the national institutions in building on this inventory would be most welcome.

Finally, on the proposal to draw up European principles for national human rights institutions, I think we would need further clarification from Mr Kjaerum as to what exactly he is suggesting. At this stage, I must confess that I fail to see what the CDDH could really add to the recent Recommendation so soon after its adoption, but no doubt this morning's discussion will provide food for thought on whether and how to proceed in this matter.

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Chairman, ladies and gentlemen,

Although my script was taken away at dress rehearsal, I trust nonetheless that my comments will provide some pointers on how the interplay between national human rights institutions can be enhanced.

I thank you for your attention.

¹⁷ "A preliminary survey of human rights education and training in member States of the Council of Europe and States with special guest status", June 1999 (H (99) 6), prepared by Alison Mawhinney.

Mr Alvaro GIL ROBLES
Council of Europe Human Rights Commissioner

First of all I should like, in my capacity as Commissioner for Human Rights of the Council of Europe, to thank you for your invitation and for this opportunity to be here with you today to follow your discussions.

I propose, for my part, to give you a brief overview of the origins of the office and powers of the Commissioner for Human Rights and look at his initial approach, his present activities and his possible future courses of action.

The Commissioner for Human Rights was instituted by Resolution (99) 50 of 7 May 1999, adopted by the Committee of Ministers at its 104th session in Budapest. The idea of a Council of Europe Commissioner for Human Rights is a fairly old one that materialised as a result of an initiative presented by the Finnish Government. The Finnish proposal aimed at setting up an Ombudsman-like institution in the Council of Europe framework to assist citizens who apply to the European Court of Human Rights but whose cases, for various reasons, such as jurisdiction, could not be dealt with by the Court. At the time certain questions could not be avoided: what about all the cases the Court is not competent to hear? Those cases that cannot be referred to the Court? Would it not be a good idea to institute an ombudsman? Could the Council of Europe not appoint a mediator to handle such cases? To help the people involved in such cases and also to deal with other issues?

The debate on these questions lasted several years. As the Ombudsman for Spain I attended some of the meetings held in the Council of Europe to discuss this initiative. I remember that in the course of the discussions it was even suggested that the future Commissioner for Human Rights might actually be an ombudsman.

According to Budapest Resolution (99) 50, however, the Commissioner for Human Rights is not exactly an ombudsman. There are a few ombudsmen among us here today. They know perfectly well what their task involves. All the participants are familiar with this institution. Resolution (99) 50 provides for something different. Why is that?

I think that in order to answer this question one must refer to the terms of office of the Commissioner for Human Rights.

They begin with two essential negatives which make it clear from the outset exactly what the Commissioner for Human Rights cannot do: 1) the Commissioner for Human Rights is a non-judicial institution. It therefore has no judicial powers, ie it is not part of the system of the European Court of Human Rights and cannot present applications to the Court; this draws a clear line between the two institutions; and 2) the Commissioner for Human Rights cannot take up individual complaints, which is what the ombudsman traditionally does, taking up individual cases and assisting the people concerned in their dealings with government departments, states and other public authorities.

Having clarified these two points, the mandate of the Commissioner for Human Rights leaves plenty of room to manoeuvre. For the sake of simplicity I shall present the activities involved broken down into three broad fields of action.

The first is to promote human rights education and awareness. This is the Human Rights Commissioner's first task.

The second is to identify any shortcomings in the laws and practices of Council of Europe member States concerning compliance with human rights. This involves analysing the legislation of the states concerned and identifying inadequacies in the laws, checking old laws for conformity with the Convention and so on.

The third field of action is particularly interesting. Under the terms of office set out in Resolution (99) 50 the Commissioner for Human Rights must contribute to the promotion of effective observance and full enjoyment of human rights in the member States.

As you will see, there are three very different fields of activity. The first two are more theoretical and the third highly specific. The Council of Europe has obviously been actively working on the first two fields for fifty years, just as you in your respective countries work to further human rights and to foster awareness of them. This is why the Council of Europe was born, the very reason for its existence, and the *raison d'être* of the Ombudsman institution, the European Court of Human Rights, etc.

Promoting effective enjoyment of human rights involves some form of monitoring. To operate taking into account each country's specific human rights "weaknesses", that is the third field of action enshrined in Article 3 of the Resolution (99)50.

This third sphere of action made it possible for the Commissioner for Human Rights to take an interest, in particular, in a matter familiar to you all, the Chechnya issue, and to ask the Russian Federation to permit investigations into what really transpired in that conflict on the human rights front. And precisely because the issue at hand is "effective" enjoyment, it means going out to see what is happening in the field.

First there was the matter of promoting education. How should the Commissioner for Human Rights act in this field? How, according to his terms of office, can he invest himself and work on this aspect of his task?

On the one hand I believe the Commissioner's mandate is intended to make him as effective as possible without trespassing on the preserves of the Council of Europe's other bodies and all the international organisations working in the human rights field. Part of the mandate is thus designed to avoid any duplication, which is no easy matter, as you well know. How can the Commissioner for Human Rights do his job without duplication, for example, when he acts at the same time as High Commissioner for Human Rights of the United Nations in Geneva, Ms Mary Robinson? This is a delicate issue.

On the other hand, the mandate must be interpreted in a realistic manner. Advantage must be taken of the work done by other bodies and care must be taken not to do exactly the same work as them. It should be possible to make use of all the available material. That is the whole idea of working together while preserving one's own identity and specific sphere of activity.

The Commissioner for Human Rights must naturally work with the government and parliament of each country, but also with the Parliamentary Assembly of the Council of Europe, the ombudsmen, NGOs, citizens, etc. His work must not be seen as a completely independent activity. Quite the contrary; that is the whole point. He must act with the other

organisations, the other human rights protection institutions. He must endeavour to work with them, take advantage of their experience and, at the same time, take advantage of his presence and work in the field to give impetus to his action. The mandate clearly requires him, specifically and simultaneously, to try to co-ordinate everything.

Two things can trigger action by the Commissioner for Human Rights. He can act at his own initiative, of course, or he can act on the various complaints and individual initiatives he receives. Here, however, we come up against a contradiction in the Resolution (99) 50.

The text of the mandate was the outcome of a political debate in considerable depth. The contradiction is that it says, on the one hand, that the Commissioner for Human Rights cannot take up individual cases and, on the other, that he can act on information submitted by individual citizens of the Council of Europe's member states. Anyone who has been an ombudsman knows very well that citizens do not write to the Commissioner for Human Rights to discuss general human rights issues. They write about their own personal cases, about the problems they have had with the courts or the police, etc. It is a real problem for the Commissioner to know how to deal with the individual cases submitted to him, which often raise important issues.

What he obviously cannot do is take up these individual cases with the governments concerned. He must tell the citizen that he personally cannot defend the case but – and this is how I believe my terms of office are to be interpreted – he must guide the citizen in the right direction, towards someone who *can* help him or her. This may be an international organisation, such as Ms Robinson's office in Geneva, or the national ombudsman's office, or another national organisation likely to be able to help. This means a vast network of co-ordinated action, which in turn means being very well organised, the most important, most sensitive part being to make sure that the citizen is not left in despair, without any assistance. I believe this type of communication is essential to steer the citizen in the right direction.

I also think the Commissioner for Human Rights can go from the specific to the general, draw general conclusions from a particular case and address the broader issue raised.

In practice all sorts of things can happen. When I last went to Chechnya there was a very delicate individual case: that of a journalist, Mr Babitsky. I knew I had to act differently. I could not simply ask the Russian Federation to consider Mr Babitsky's personal case. What I could do was ask about freedom of information and the right to work in general and bring up the subject of Mr Babitsky in that context. And, still in that context, of course, receive a fully co-operative response from the Russian Federation. This means that one must be highly aware of what is worthwhile and important and take great pains to find the right way to address the issue. Evidently a state may turn round and say "Hands off! That is an individual case and you have no authority to discuss it". But the broader issue is a different matter.

This is where the real power of the Commissioner for Human Rights lies. His working methods may involve all the national and international organisations which naturally co-operate in those areas of interest to the Council of Europe, as the institution of the Commissioner for Human Rights itself is a product of the Council of Europe, and under his terms of office he is also expected to work directly with that Organisation.

I believe it is particularly in connection with Article 3 of the Commissioner's terms of office, concerning effective observance and full enjoyment of human rights in the member States,

that states should give their full co-operation to the Commissioner for Human Rights. It is an important article and one which was actually put to the test only this month, during the two visits to Chechnya. It is in just such a difficult situation as this that one sees whether or not a state is really willing to co-operate. Today I am in a position to confirm that in this particular case full co-operation was forthcoming. The Russian Federation agreed to the inspection and did what was necessary to make it possible. Formal co-operation was given and that is what counts, setting an example for other states to follow.

If co-operation is possible in a crisis situation you feel you have accomplished something. I think that is one of the most promising signs for the future.

The result? The practical result is the report drawn up by the Commissioner for Human Rights, with proposals for a recommendation and possibly his opinions. The Commissioner for Human Rights presents annual reports and reports on specific matters. Two reports on Chechnya were presented and eventually officially announced. They were submitted to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, making it possible to analyse the situation within the Organisation and reach what the Committee of Ministers considered the most appropriate decisions, the Parliamentary Assembly also taking a stance in respect of the particular situation.

What then happened in the case of Chechnya, to continue with that concrete example, is that recommendations were made in the reports and the Russian Federation actually accepted two recommendations contained in the first report, calling for the opening of a Human Rights Office and the organisation of a seminar on the democratic reconstitution of Chechnya.

To conclude without taking up too much of your time, let me just mention one last point I consider important and not to be neglected, concerning the “face” the Commissioner for Human Rights was to be given.

The post of Commissioner for Human Rights of the Council of Europe is filled by election. The Commissioner for Human Rights is elected, unlike the other institutions. First of all, the Committee of Ministers selects three candidates among those nominated and transmits them to the Parliamentary Assembly. The Assembly then elects the Commissioner by an absolute majority. This evidently gives the Commissioner a distinctly political face. His responsibility to both the Assembly and the Committee of Ministers is political.

The Commissioner has an office manned by staff provided by the Secretariat of the Council of Europe.

Under Article 2 of Resolution (99) 50 the Commissioner for Human Rights is fully independent and impartial. This gives him considerable freedom of action. He receives instructions neither from the Committee of Ministers nor from the Parliamentary Assembly.

As you can imagine –the ombudsmen among you better than anybody – freedom of action is a fine thing, but sometimes it is also a great and very heavy responsibility. On the one hand you enjoy complete independence, but on the other you need a highly developed sense of responsibility and considerable impartiality when it comes to making decisions. Sometimes when the Commissioner for Human Rights tries to be impartial, his decisions are not understood by all concerned.

Finally, one more word about co-operation and co-ordination. This month has been one big test. When I went to Chechnya, for example, a prior agreement had been reached between the Committee for the Prevention of Torture (CPT) and the Council of Europe's Commissioner for Human Rights. On the agreed day, the CPT visited holding and detention facilities in Chechnya over a one-week period and the Commissioner for Human Rights and his team also visited the country but in a different frame of mind. While the CPT does what it has to do on the one hand, the Commissioner for Human Rights clearly has to act in a completely different manner on the other. My intention in taking this approach was to give a clear example of simultaneous co-operation, which I think proved positive.

I should like to add, before concluding, that I am very sensitive to your proposal to set up a co-ordination centre. I consider this as a highly interesting initiative. We must consider discussing it soon. I cannot commit myself further to the project because the means available to the Commissioner for Human Rights are more than limited. I am sure you have the same problem. I do not wish to dwell on exactly how limited our resources are, so I shall say no more about it. However, if you were to find the wherewithal to create such a centre, you could certainly count on my assistance and support. We may have scanty means, but our intentions are good and just, and I assure you that I am ready and willing to work with you. I will spare no personal effort to make this project a reality. I fear, however, that all the personal commitment in the world will not suffice; we really need something more!

Let me conclude by reminding you that I am quite ready to discuss things with you and consider the various possibilities for the different Council of Europe member states to work together. I am entirely at your disposal and open to any initiatives and ideas you may have.

Thank you again for your attention. I wish you every success with this first Round Table of national human rights institutions.

**Mr Morten KJAERUM,
Chair of the Coordinating Group of National Human Rights Institutions
and Director of the Danish Centre for Human Rights**

The following note contains two parts. Part one (I) focuses on collaboration between National Institutions for the Promotion and Protection of Human Rights (NIHR) and on areas where this could be reinforced. Part two (II) addresses issues related to collaboration between NIHR and the Council of Europe with all its differential tasks.

I. Co-operation between National Institutions for the Promotion and Protection of Human Rights. General remarks

1. Introduction

Cooperation between NIHR in Europe has mainly been in relation to the three European Meetings of National Institutions. The first Meeting was held in 1994 in Strasbourg, organized jointly by the French Commission Nationale Consultative des Droits de l'Homme and the Council of Europe, the primary focus being the role of NIHR in combatting racism. The second meeting was held in Copenhagen in January 1997 and was organised by the Danish Centre for Human Rights and the Council of Europe in collaboration with the UN and other regional intergovernmental organisations. The theme for this meeting was the exchange of experiences and different approaches to cooperation in a variety of areas. At the meeting, a coordinating committee was established comprising the Latvian National Human Rights Office, the French Commission Nationale Consultative des Droits de l'Homme, the Swedish Ombudsman Against Ethnic Discrimination and the Danish Centre for Human Rights. The Danish Centre for Human Rights was asked to chair the committee. The third meeting is held in Strasbourg March 2000. This meeting is organised by the Council of Europe and the Danish Centre for Human Rights, on behalf of the coordinating committee. The focus of the meeting is economic, social and cultural rights, the role of NIHR in combatting racism, and collaboration between NIHR and the Council of Europe.

In between these meetings cooperation between the respective institutions is rather limited. Since the Copenhagen meeting, the coordinating committee has met twice in the fringes of other meetings to discuss issues of a more practical nature. Six circular letters have been sent from the coordinating committee to inform all participants in the network about past and upcoming events. This includes detailed information about proceedings during the meeting of the UN Human Rights Commission in relation to National Institutions. The same procedure was applied in relation to the OSCE meeting on National Institutions held in Warsaw in May, 1998. The circular letters have been well received and several participants have expressed a need for receiving further information of this kind. Due to lack of funding it has so far not been possible to expand this service. However, in the time to come, it may be possible to undertake a more continuous reporting of events of particular interest to NIHR.

Furthermore, some institutions have supported the establishment of new institutions in the Central Asian republics. In particular, this has been done by organising training courses and giving advice on structures and procedures for establishing a NIHR. Informally, institutions assist each other in a number of different areas, and the fact that these informal contacts seem to be increasing is therefore rather promising in terms of establishing even closer cooperation in the future.

With Europe becoming even more integrated, not only within the frontiers of EU but in Europe as a whole, there is a need for NIHR to join forces. Many of the issues addressed by these institutions are of a similar nature as governments, now more than ever before, harmonise their legislation and copy administrative practices for good and for bad. This way, NIHR may turn to institutions in other countries for inspiration for how to solve their problems. Areas of mutual interest will be highlighted in the following.

2. Substantial cooperation

Regional trends in relation to legislation, harmonisation within the administration and issues raised in the public debate all lead to the conclusion that NIHR often deal with the similar issues in their respective countries. Consequently, cooperation on issues such as these would help ease the burden on many institutions and thereby qualify their output.

- Issues related to the implementation of economic, social and cultural rights have been addressed in most European countries in the last decade. In western European countries, the revision of the welfare state models and the introduction of privatisation schemes have challenged traditional perceptions on how minimum guarantees should be legally constructed. The same discussion has emerged in eastern and central European countries after the collapse of welfare structures under communist systems. At the same time, it has to be recognised that economic, social and cultural rights are not legally developed to the same extent as are civil and political rights. Nonetheless, NIHR are confronted with rapidly changing social and economic conditions for immigrants and refugees, for the elderly, for the unemployed, etc. How do NIHR address these issues in a human rights context on the individual level in relation to specific complaints, and, in more general terms, when advising governments and administrators?

- Issues related to racism and other forms of discrimination are areas of mutual concern in all European countries. Especially, as we are witnessing a growing tendency towards harmonisation within the EU, and as new policies are rapidly being adopted by other non-EU member countries in the region. How are NIHR addressing new restrictions in connection to family reunification? What are the experiences in relation to, e.g. mediation when discrimination takes place at the workplace? What are the working modalities between general NIHR and specialised institutions addressing different kinds of discrimination?

- Issues related to criminal law and criminal procedures are, because of transborder criminality, subject to a higher level of harmonisation through the state cooperation in EUROPOL and other regional fora. These issues raise new human rights questions such as, e.g., what are the limitations in respect of the registration and exchange of sensitive personal data? What are the limitations for using anonymous witnesses? What are human rights conditions in relation to the extradition of suspects? These are highly complicated and pertinent legal issues where NIHR may not have all the expertise in house. However, by joining forces such expertise may become available.

Recommendation:

- A network of professionals working on the different substantial issues within the individual institutions should be established. Collaboration could, to a large extent, be facilitated by the use of the internet.

- An inventory of the expertise available in the institutions within key areas of common concern should be elaborated.

3. Methodological cooperation

Given that most NIHR have only existed for a relatively short period of time compared to other democratic institutions, working methodologies have not yet found a well structured format. Consequently, when looking at the institutions in Europe you are presented with a rather broad picture as working methodologies and approaches are diverse. However, the Copenhagen meeting revealed that there is a lot to be learned from each institution on how to do things in order to maximise the impact of the work towards people who request the services of NIHR.

- Giving advice to governments and state administrations on human rights compliance is a key function for National Institutions. At the same time, it is a delicate task since the institution becomes directly involved in the political process of the country. This may lead either to co-optation of the institution and thereby pacification or, on the other hand, marginalisation which leaves the institutions with no impact what so ever. How to strike a balance between these extremes? How to develop expertise in the institutions to empower them to enter into serious discussions with relevant authorities ?

- Monitoring human rights is intimately linked to the advisory function. An important precondition for the monitoring function is that the institution is well rooted in civil society and identified as a place to turn to if or when human rights issues occur. Handling of individual complaints constitutes an integral part of the monitoring function. What are the experiences regarding the delicate balance between handling complaints and having a more general approach to issues of concern? How to avoid that individual cases use all resources available to the institution? What are the ways and methods to report on human rights problems in a particular country?

- Information and education are important functions in making people aware of their rights and in capacitating state institutions to comply with human rights in their particular fields. A substantial amount of educational material on human rights is being developed in different institutions which thereby gain a lot of experience. Which pedagogical approaches are useful in relation to particular target groups? Could training material developed in one country be used in other countries or is the adaptation to the local context too cumbersome? How to teach groups like judges and politicians who do not normally realise that they need to be trained?

Recommendations:

- Working methodologies of NIHR should be more carefully worked out and described in a set of European Principles of National Human Rights Institutions with the purpose of clarifying the role and function of NIHR to European governments and the general public. These Principles should eventually be endorsed by the Council of Europe.
- Joint work on national human rights reporting in order to create a European format.
- Strengthening of collaboration in the field of human rights education and information.

- Finally, internships could be arranged in such a way that staff members could stay in other institutions for a specific period of time in order to learn new approaches to the work.

4. Conclusion

Hitherto cooperation between NIHR in Europe has been limited and has mainly focussed on the three European meetings. However, there is plenty of room for closer interaction on a daily working basis which would be particularly useful in terms of upgrading the professional performance of the institutions and building long-term capacity. Furthermore, closer interaction and a broader common understanding of working methodologies could help to create a clearer profile of these institutions among European parliamentarians, governments and the public at large. To this end a common set of principles outlining the mandate and working methodologies could be useful.

II. Cooperation between the Council of Europe and National Institutions for the Promotion and Protection of Human Rights

1. General introduction

In the working relation between the Council of Europe and National Institutions differences in professional capacity and thereby the complimentary roles should be explored further. However, at the outset the Council of Europe holds a high level of expertise in the interpretation of human rights conventions. On the other hand, NIHR can provide expertise on how these conventions are applied and implemented at the domestic level.

In general terms, collaboration between the Council of Europe and NIHR has hitherto been limited, though appearing to be increasing in recent years. The main activity has been the preparation of the European Meetings in which the Council of Europe has played a very active role in the preparation, i.e. both in practical as well as in substantial terms. With the Council of Europe resolution (97) 11, establishing the Council of Europe Round Table with National Institutions, there seems to be a genuine interest on both sides to strengthen the interaction. In the following, areas for a possible expansion of cooperation will be highlighted.

2. What can NIHR bring to the Council of Europe?

National Institutions have a profound and in-depth overview of the different human rights issues in their particular countries, thereby becoming natural focal points at the domestic level for a variety of Council of Europe institutions. To mention a few examples:

- It would be obvious if the Committee for the Prevention of Torture (CPT) and the advisory committee under the Framework Convention for the Protection of National Minorities, when visiting countries, consults with the local NIHR to tap their information on the issues related to their mandate. Have they received complaints and in that case what has been done?

- When countries report under the European Social Charter to the Committee on Economic, Social and Cultural Rights NIHR could provide important supplementary information to that which is provided by governments. In this way the Expert Committee will obtain a more comprehensive picture on the situation in the particular country.
- Closer interaction could be established between the ECRI and NIHR, i.e. not least to focus on the human rights approach and human rights concerns which are being raised at the national level. In this way, ECRI will always be updated on the most recent developments in member States, thereby providing a unique possibility for addressing the problems in a concerted manner.

Recommendations:

- As decided in Resolution (97) 11 the different bodies in the Council of Europe should carefully consider how they, to a larger extent than hitherto, can tap into the resources of National Institutions in order to keep updated in terms of the specific situation in the individual member States.
- NIHR consider how they can make themselves available to Council of Europe mechanisms.

2. What can Council of Europe bring to NIHR?

The Council of Europe has overwhelming knowledge of and insight into the European human rights mechanisms and should, from this position, be the natural focal point for human rights work in Europe and in particular for NIHR. Some examples will be mentioned where NIHR could benefit from this knowledge and from having a focal point such as the Council of Europe.

- As mentioned above in part I, NIHR need to collaborate closer on a number of topics. On these matters, the Council of Europe could offer its facilities to support the development of the different issues in order to ensure the highest possible level of expertise. The Council of Europe would be the convener of a number of workshops regarding specific themes like, for example, the implementation of economic, social and cultural rights.
- By taking outset in national reports submitted to the Council of Europe from national reporters, the Council could be instrumental in creating a format for national reports about the human rights situation to be released domestically. Furthermore, the reports could be developed into an annual European Human Rights Report. Such a report would be of great value in order to obtain an overview of the current trends.
- The Council of Europe could assist in developing European principles for NIHR, i.e. specifying, inter alia, the scope of mandate, working methodologies, etc. These principle should be elaborated by NIHR and endorsed by the Council of Europe.
- Further developing closer interaction with NIHR on human rights education. A first step could be to create an inventory of what has already been developed on the different educational levels in particular for schools and professional groups like the police, social workers and teachers. A second step would be to develop strategies to fill the gaps.

Recommendation:

- Establish a focal point for the work with National Institutions within the Council of Europe. This could be link to the Council of Europe Commissioner on Human Rights or the Human Rights Directorate. The aim of the focal point should be to assist the NIHR in developing and professionalising their work. The focal point should, furthermore, help to identify Council of Europe experts who, on particular issues, could assist NIHR. The position would be parallel to what has already been established in the UN Office of the High Commissioner for Human Rights. Funding should be secured for the focal point to be operational in terms of calling for workshop meetings, visiting member States, etc.
- Furthermore, to continue the dialogue and expand cooperation, the European Coordinating Committee should have observer status in the Steering Committee on Human Rights (CDDH) and take part in specialised meetings and hearings.
- Finally, internship or volunteers from NIHR could be linked to the European Court of Human Rights in order to upgrade their qualifications.

3. Conclusion

Many institutions, in particular, from EU countries spend more time on discussing human rights issues in Brussels than in Strasbourg. This may indicate that the Council of Europe could be more aware of its role as a regional focal point for NIHR. As indicated by the very strong and extremely useful Council of Europe website, the Council is the natural platform for human rights developments in this region - and that unique position should be fertilised.

Furthermore, for the moment the backlog of cases at the European Court of Human Rights is increasing sharply. This phenomenon will hardly change in the foreseeable future due to the growing number of countries joining the Council of Europe. However, it emphasises the importance of having strong and efficient domestic remedies for addressing human rights violations. The more issues that can be solved domestically, the fewer cases will be submitted to the Court. NIHR are unique in terms of their capability to address human rights topics with a differential approach, thus a closer cooperation between these institutions and the Council of Europe would help to strengthen the protection of human rights in Europe.

GENERAL SESSION :
RECOMMENDATIONS ADOPTED

THEME I:**PROTECTION AND PROMOTION OF ECONOMIC AND SOCIAL RIGHTS¹⁸**

This Round Table notes that across Europe national institutions for the protection of human rights are already working in the field of economic and social rights. It welcomes this work, based as it is on the recognition of the indivisibility of all human rights and stresses the interdependence between the protection of economic and social rights and the effective realisation of civil and political rights. Having considered the activities of national institutions undertaken to date and the potential for further activities, the participants in the Round Table make the following recommendations:

1. National human rights institutions should publicise as effectively as possible the internationally agreed standards on economic and social rights.
2. National human rights institutions should encourage state governments to ratify, and to implement, the international agreements on economic and social rights.
3. National human rights institutions should actively promote, develop and participate in programmes of education and training directed at judges, lawyers and civil servants at national, regional and local levels with a view to increasing their awareness of, and commitment to, internationally agreed standards on economic and social rights.
4. National human rights institutions should encourage state governments to promote the discussion in the United Nations (UN) Commission of Human Rights of the proposed Optional Protocol to the UN Covenant on Economic, Social and Cultural Rights.
5. Member States of the Council of Europe should individually and collectively agree to assess the impact of proposed laws and policies on economic and social rights protected by the European Social Charter. National human rights institutions should be invited to contribute to these assessments. They should be made public before the proposed law or policy is finally adopted.
6. Member States of the Council of Europe should ratify as soon as possible not only the Revised European Social Charter of 1996 but also the Additional Protocol on Collective Complaints. At the same time they should declare their willingness to allow national non-governmental organisations to lodge complaints based on alleged violations of the Revised European Social Charter and work towards allowing national human rights institutions to lodge such complaints.
7. Recommendation R (2000) 3 of the Committee of Ministers of the Council of Europe on the right to the satisfaction of basic material needs is an important further step towards making economic and social rights justiciable. In order to avoid the creation of two sets of standards, it is imperative that all the rights contained in the Revised European Social Charter and in the UN Covenant on Economic, Social and Cultural Rights are made fully justiciable.

¹⁸ Rapporteurs: Mr Philippe TEXIER and Mr Brice DICKSON.

8. The Council of Europe should continue to work closely with national human rights institutions to promote awareness, and to ensure the implementation, of the Revised European Social Charter.

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THEME II:

FIGHT AGAINST RACISM AND RELATED DISCRIMINATION¹⁹

This Round Table notes that the fight against racism and related discrimination takes place against a background of increasing inter-ethnic tension in certain parts of Europe and continuing discrimination against members of minority groups throughout Europe as a whole. It notes that, although the situation varies greatly from country to country, problems of direct and indirect racial discrimination frequently overlap with and are indivisible from other human rights abuses. It notes the link between economic, social and cultural rights and the problem of racism and related discrimination. It underlines the vital role of national human rights institutions (including national specialised bodies combating racism and racial discrimination), acting independently of governments in working for the rights of members of groups vulnerable to racism and related discrimination and for the development and strengthening of effective civil societies. Having considered the activities of national institutions in their various forms and having noted recent work within the framework of the Council of Europe, in particular its European Commission against Racism and Intolerance (ECRI) and its Steering Committee for Human Rights (CDDH), the participants in the Round Table make the following suggestions:

1. National human rights institutions which cover other potential abuses of human rights should ensure that issues of racial discrimination are addressed, within their organisations, with an adequate degree of focus and specialist expertise at the same time as taking advantage of the lessons to be learnt from their other activities.
2. National human rights institutions should encourage the governments and parliaments of member States to provide them with sufficient legal power and resources to enable them to function effectively in the fight against racial discrimination.
3. National human rights institutions should work actively with non-governmental organisations (NGOs) on race discrimination issues and help to foster the development of effective civil societies.
4. Member States of the Council of Europe should individually and collectively agree to assess the impact of proposed laws and policies on the promotion of racial equality. National human rights institutions should be invited to contribute to these assessments. They should be made public before the proposed law or policy is finally adopted.
5. National institutions should identify effective strategies developed for preventing and combating racism and related discrimination and in co-operation with governments, specialised bodies and NGOs ensure that they are discussed at the European

¹⁹ Rapporteurs: Mr François SANT'ANGELO and Mr Michael HEAD.

Conference against racism and made available to those preparing for the World Conference on racism in 2001.

6. National human rights institutions should heighten the awareness of law enforcement officials and judicial circles in order to make prosecution of infringement of anti-racist and anti-discrimination legislation more effective.
7. Member States of the Council of Europe should provide concrete follow-up to the recommendations and proposals formulated by the national specialised bodies and/or national human rights institutions to combat racism efficiently.
8. Member States of the Council of Europe should, without delay, adopt and sign draft Protocol N°12 to the European Convention on Human Rights providing for a general prohibition of discrimination.
9. Member States of the Council of Europe should consider introducing into their legal systems, or at least into civil and administrative law, a shift in the burden of proof, in order to ensure that anti-racist legislation and legislation on equal treatment in general can be more effectively applied.
10. Member States of the Council of Europe should ratify and implement the relevant international agreements which are in force in this field, in particular the International Convention on the Elimination of All Forms of Racial Discrimination (including acceptance of its Article 14 procedure).

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THEME III:

CO-OPERATION BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND BETWEEN THEM AND THE COUNCIL OF EUROPE²⁰

This Round Table notes that the meeting comes at the right time for taking stock of experiences learned and reflecting on the serious challenges that lie ahead in order to ensure that human rights are effectively protected at the national, European and international levels. In this spirit, it was agreed that there is a need to strengthen the collaboration between national human rights institutions and between the Council of Europe and national institutions. Having considered a number of proposals, the participants in the Round Table made the following recommendations:

1. To elaborate an inventory of the expertise available in the institutions within key areas of common concern.
2. To establish a network of experts and representatives of non-governmental organisations working on the different substantial issues within the individual national human rights institutions. Collaboration could, to a large extent, be facilitated by the use of the internet.

²⁰ Rapporteur: Mr Morten KJAERUM.

3. To develop more in-depth working methodologies for national human rights institutions, in accordance with the Paris Principles adopted by the General Assembly of the United Nations and the relevant recommendations adopted by the Committee of Ministers of the Council of Europe.
4. To develop guidelines on national human rights reporting with a view to creating best practices which could assist new or emerging national human rights institutions.
5. To strengthen collaboration in the field of human rights education and information.
6. To request that internships be arranged in such a way that staff members could stay in other institutions for a specific period of time in order to learn new approaches to the work.
7. To recommend, as stated in Resolution (97) 11, that the different bodies in the Council of Europe carefully consider how they, to a larger extent than hitherto, can tap into the resources of national human rights institutions in order to keep updated on the specific situation in the individual member States.
8. To reflect on how national human rights institutions can make themselves more available to Council of Europe mechanisms.
9. To establish in cooperation with the European Coordinating Group, a focal point within the Council of Europe, to work with national human rights institutions. This could be linked to the Council of Europe Commissioner on Human Rights or the Directorate General of Human Rights. The aim of the focal point should be to assist the national human rights institutions in developing their work. It is vital that funding should be secured for the focal point to be operational in terms of calling for workshop meetings, visiting member States, etc.
10. To continue the dialogue and expand cooperation, the European Coordinating Group should have observer status in the Steering Committee on Human Rights (CDDH) and take part in specialised meetings and hearings.
11. To propose that the Council of Europe human rights mechanisms accept internships or volunteers from national human rights institutions.
12. To request that the European Coordinating Group promote the implementation of the above recommendations.

Motion

The National Institutions, being alarmed about the tragic situation in Chechnya,

- denounce the systematic and gross violations of human rights and international humanitarian law that are being committed against the civilian populations, and request that the authorities of the Russian Federation put an end to these violations and prosecute those responsible for them;
- deplore the fact that there has been no satisfactory response to the reiterated appeals from the highest authorities of the Council of Europe, the OSCE and the UN, and demand that the Russian Federation honour its commitments and its legal obligations to these organisations, and in particular that the Russian Federation co-operate fully with the Council of Europe through the Organisation's human rights protection procedures and mechanisms;
- stress that participation by the member States of the Council of Europe, particularly under the European Convention on Human Rights, is based on respect for fundamental common values and that all States have a collective responsibility to protect these values. The National Institutions ask all member States to make full use of the procedures available to preserve the European ideal, which is under serious threat from the current crisis, which is not a matter solely for the Russian Federation but also jeopardise the very mission of the Council of Europe.

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