

Rights/Identity/International Law - Contribution to a Stable Society

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Prologue

International human rights standards are important when considering the issues needed to secure a stable society. The Northern Ireland problem is solvable. However, progress must be based on accepted international standards of democracy. If all subscribe to these standards this would secure a balanced agreement and a path to stability could be achieved. Hopefully, politicians could then focus on the expressed needs of the whole community. Move away from these standards and lasting stability may well be elusive.

1. Introduction

The world is ever changing, never without problems to solve, and there are occasionally new paradigms. Prior to a major attempt to solve the 'Northern Ireland Problem' in 1996, there was the basis for a new paradigm: the break-up of the USSR in 1989. Consequently, the potential threat to peace and stability within Europe was more likely to be intra-state than inter-state. European governments in Europe, primarily through the Council of Europe, therefore considered anew the problem of accommodating diversity of identity within States and so provided a rights based template to provide stability.

However, to date agreement has failed as to the 'rights' to be protected in Northern Ireland in order to provide stability. Each community grouping's representatives, within any negotiation process, has had a different viewpoint. The then head of the Northern Ireland Human Rights Commission (NIHRC), stated:

"In the case of Northern Ireland, the environment in which this holding to account takes place is politically very sensitive. We are all familiar with the phenomenon of politicians taking a view of human rights which happens to accord with their personal political persuasions rather than with a more independent analysis."¹

An 'independent analysis' devoid of any party or personal political perspective is thus required, in considering this all-important matter. The basic requirements for stability today are found within international Human Rights law. This corpus of rights embraces: civil, political, economic, social, religious and cultural aspects. The key question is how to address the different political viewpoints in Northern Ireland in ways consistent with international human rights standards.

¹ Professor Brice Dickson: Platform Article; Belfast Telegraph, 30 June 2004.

2. Context

Before a reconciliation initiative began in 1996, through an election to the Northern Ireland Forum, the Irish Government had already convened a 'Forum for Peace and Reconciliation' in 1994. Papers were presented to the Irish Government's Forum in 1996. For example:

"The human rights to be protected...form part of international law and must not be thought of as subject to bargaining between the parties...The substance of fundamental human rights is now determined by international consensus"²

Under the terms of the Belfast Agreement³, the NIHRC was to advise the Secretary of State on a new Bill of Rights for Northern Ireland to supplement the rights guaranteed by the European Convention on Human Rights. Namely: "These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem..."⁴ The NIHRC initiated public consultation, including answering questions regarding a Bill of Rights. For example:

"The European Convention is concerned essentially with individual rights. It is not designed to deal with the issues which typically arise in societies which are deeply divided along communal lines or in which there are clearly identifiable majority and minority communities...Rights of this kind are covered in the United Nations' Convention on Economic, Social and Cultural Rights and in the European Framework Convention on the Rights of National Minorities."⁵

This viewpoint was articulated at the Irish Government's Forum:

"The development of a concept of parity of treatment and esteem may be as important to the maintenance of peace and stability as the recognition of individual rights...The best approach may be to incorporate the major provisions of the European Convention on the Protection of National Minorities into any new bill of rights leaving the detailed provisions to be worked out in ordinary legislation."⁶

Also, Asbjorn Eide,⁷ writing for the same Forum, stated:

"It [Framework Convention] is the first multinational 'hard law' instrument [legally binding on States that ratify] devoted in its entirety to the protection of minorities, and it contains much more detailed provisions on such protection than any other international instrument."⁸

² Professors Kevin Boyle, Colm Campbell and Tom Hadden, 'The Protection of Human Rights in the Context of Peace and Reconciliation in Ireland', Forum for Peace and Reconciliation, Dublin Castle, 1996, pp. 23 and 27.

³ 'The Agreement' (10 April 1998) has been referred to as 'the Belfast Agreement' (primarily by Unionists) and 'the Good Friday Agreement' (primarily by Nationalists). In law it is referred to as 'the Belfast Agreement'.

⁴ The Belfast Agreement, par. 4, p 17.

⁵ Northern Ireland Human Rights Commission, 'A Bill of Rights - Your Questions Answered', March 2000.

⁶ Professors Kevin Boyle, Colm Campbell and Tom Hadden, quoted from reference 2 above, p. 6.

⁷ Asbjorn Eide, at the time of writing in 1996, was a leading international authority in the field of human rights and Director of the Norwegian Institute of Human Rights.

⁸ Asbjorn Eide, 'A Review and Analysis of Constructive Approaches to Group Accommodation and Minority Protection in Divided or Multicultural Societies', Forum For Peace and Reconciliation, Dublin Castle 1996, p. 69.

3. International treaties

Two international treaties require consideration: the Council of Europe's 'Framework Convention' (ratified by the UK Government in January 1998); and relevant aspects in the Belfast Agreement (agreed at the multi-party talks, 10 April 1998, and approved by referenda of the peoples of the island of Ireland, 22 May 1998).

A. Framework Convention for the Protection of National Minorities (FCNM)

The FCNM's introductory comments included:

"Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent... [there is a need to]...create appropriate conditions enabling them to express, preserve and develop their identity."⁹

The Council of Europe describes the FCNM as "one of the most comprehensive treaties designed to protect the rights of persons belonging to national minorities."¹⁰ Also the FCNM:

"Resolved to define the principles to be respected and the obligations which flow from them, in order to ensure...the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states."¹¹

This last quotation was described as follows:

"[It] sets out the main aim of the Framework Convention: to ensure the effective protection of national minorities and of the rights of persons belonging to those minorities. It also stresses that the effective protection should be ensured within the rule of law, respecting the territorial integrity and national sovereignty of States."¹²

The FCNM does not contain a definition of 'national minority' as there is no general agreement among the Council of Europe's member states. Each member state is left to decide which groups are to be covered by the FCNM. Also, individuals are free to decide whether or not they wish to be treated as belonging to a national minority. The Government has previously used the following definition, "a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origins."¹³ The Government includes Cornish, Irish, Scots and Welsh people in this definition.

Among the Articles in the FCNM are: "adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority" [Art. 4]; "maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage" [Art. 5]; "every person belonging to a

⁹ Framework Convention for the Protection of National Minorities (FCNM), 'Introduction', 1995, p. 1.

¹⁰ <https://www.coe.int/web/portal> > Human Rights > Promoting Human Rights > National Minorities - FCNM.

¹¹ FCNM: Introductory comments, immediately prior to 'Section 1'.

¹² Explanatory Report to the FCNM, par. 28.

¹³ UK Government, 'Report submitted by the United Kingdom', Part 1, par. 2, p. 4, 22 July 1999.

national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing” [Art.10]; and “create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social economic life and in public affairs, in particular those affecting them.” [Art. 15]

Mindful of the above, Austin Currie (former senior member of the SDLP¹⁴) defined the problem in Northern Ireland as follows:

“Fundamentally the Northern Ireland conundrum is one of conflicting national identities between those who believe themselves Irish and those who believe themselves British. There are religious, social, cultural, political and other dimensions to the problem but they are only dimensions of that central issue.”¹⁵

More recently Senator George Mitchell stated:

“Division over identity in Northern Ireland does remain a threat to the stability of the institutions and addressing those issues must be a clear commitment by all of the political parties and all the leaders in Northern Ireland.”¹⁶

Considering the above two quotations, Unionist and Nationalist viewpoints are equally legitimate but they are legally different. The Nationalist viewpoint represents a legitimate right to wish for a change in Northern Ireland’s position within the United Kingdom while Northern Ireland as part of the United Kingdom is the legal position in international law.

Combined with rights (such as Articles 4, 5, 10 and 15 above) are associated obligations to enable the application of the FCNM. Two of the Articles are as follows:

“**Article 20** In the exercise of the rights and freedoms flowing from the principles enshrined in the present Framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.”

“**Article 21** Nothing in the present Framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.”

Article 20 is explained as, “Persons belonging to national minorities are required to respect the national constitution and other national legislation.”¹⁷

¹⁴ SDLP: The ‘Social Democratic and Labour Party’, formed in 1970, was the lead Nationalist party advocating a united Ireland until overtaken electorally by Sinn Fein.

¹⁵ Cadogan Group (Belfast): ‘Blurred Vision’; 1994, p. 3.

¹⁶ Senator George Mitchell (Chair of the multi-party talks that led to the Belfast Agreement), quotation from ‘Belfast Telegraph’ on 15 May 2019, referring to him speaking at a Conference (University of Ulster) to consider the Report, ‘Sectarianism in Northern Ireland: A Review’, 14 May 2019.

¹⁷ Explanatory Report to the FCNM, par. 89.

B. The Belfast Agreement

The participants recognised:

“The legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland [and] acknowledge that...the present wish of the majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland’s status as part of the United Kingdom reflects and relies upon that wish.”¹⁸

While recognising the legitimacy of the territorial integrity and political independence of the United Kingdom, there is also “the right to pursue democratically national and political aspirations [and] to seek constitutional change by peaceful and legitimate means.”¹⁹

The participants also endorsed:

“The power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities.”²⁰

“All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity including...the Irish language, Ulster Scots and languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.”²¹

In the context of the Council of Europe’s Charter for Regional or Minority Languages “the British Government will in particular in relation to the Irish language, where appropriate and where people so desire it take resolute action to promote the language.”²² This included, placing a duty on the Department of Education to encourage/facilitate Irish medium education and provide financial support for Irish language film/television production.

A Bill of Rights remains an outstanding issue. However, given earlier comments that the best approach to a Bill of Rights may be the incorporation of the FCNM into any bill, this issue is to an extent addressed by the FCNM’s ongoing monitoring process.

4. Issues

Context is important; with rights go obligations. The following are two important issues relevant to a full consideration of the requirements for enduring stability.

¹⁸ The Belfast Agreement, par. 1 (i) and (iii), p. 2.

¹⁹ The Belfast Agreement, par 1, p. 16.

²⁰ The Belfast Agreement, par. 1 (v), p. 2.

²¹ The Belfast Agreement, par. 3, p. 19.

²² The Belfast Agreement, par. 4, p. 19.

A. Respect

The “main aim”²³ of the FCNM involves the outworking of the meaning of the word ‘respect’. Generally if you respect people, you have a good opinion of them or, if you show respect for people’s wishes, rights, or customs, you avoid doing anything they would dislike or regard as wrong. From a legal perspective, in the Oxford dictionary respect means one agrees to recognise and abide by the legal position: respect for the legal position is not merely complying with the law, which one must do. To ‘recognise’ involves acknowledging the existence, validity or legality of the position and acting accordingly.

B. Irish language

The Government’s second report to the Council of Europe (2007) recognised the Irish language dimension:

“Government made a commitment in the St Andrew’s Agreement of 13th October 2006 to introduce an Irish Language bill reflecting on the experience of Wales and Ireland, and to work with an incoming Executive to enhance and protect the development of the Irish language.”²⁴

The Council of Europe’s opinion (2007) welcomed “the Government’s commitment...to introduce an Irish language Act, and to develop strategies for enhancing and protecting the Ulster Scots language, heritage and culture.”²⁵ The subsequent opinion (2011) was stronger:

“Issues for immediate action...develop comprehensive legislation on the Irish language in Northern Ireland and take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.”²⁶

The latest opinion (2017) was less strong. It “regrets that there has been little progress on the Irish Language Bill or a strategy for the development and enhancement of the Irish language.”²⁷ While it referred to adopting appropriate legislation to protect and promote the Irish language, it added that “the UK government should engage in a dialogue to create the political consensus needed for adopting legislation.”²⁸

Against this background there has been press commentary. One Northern Ireland daily paper had the following lead story:

“More than two hundred people from the worlds of sport, education, trade unions and academia have signed an open letter to the British and Irish governments calling for an Irish Language Act [with the letter stating] the Irish language community are still denied language rights that are afforded to indigenous language communities across these islands. We are an anomaly.”²⁹

²³ Explanatory Report to the FCNM, par. 28. (For further detail see references 11 and 12 above)

²⁴ UK Government, ‘Second Report Submitted by the United Kingdom, par. 280, p. 63, Strasbourg, 22 February 2007.

²⁵ Council of Europe, ‘Second Opinion on the United Kingdom’, par. 21, p. 6, Strasbourg, 26 October 2007.

²⁶ Council of Europe, ‘Third Opinion on the United Kingdom’, p. 2, Strasbourg, 22 December 2011.

²⁷ Council of Europe, ‘Fourth Opinion on the United Kingdom’, par. 103, p. 33, Strasbourg, 27 February 2017.

²⁸ Council of Europe, ‘Fourth Opinion on the United Kingdom’, par. 152, p. 49, Strasbourg, 27 February 2017

²⁹ The Irish News, 29 May 2019.

Two days later there was a published counter response headed: “Unionists unite in opposition to push for Irish language act.”³⁰

The right to have an Irish Language Act is wholly reasonable in the wider European context and, importantly, is in accord with international law. However, this right needs to be considered both in the full context of international law and also the Council of Europe’s latest advice that political consensus is needed.

Wales is an example to consider, given the rubric contained in the above quotations. But in Wales the context is totally different and it reflects normality in accord with international law. For example, the First Minister, as a member of the (British) Labour party and a fluent Welsh speaker, has answered First Minister’s questions in the Assembly in Welsh when asked in that language. Also, all nationalist politicians in Britain (Plaid Cymru in Wales and the Scottish National Party) respect the principles of international law, such as Articles 20 and 21 of the FCNM, including their full participation in the national parliament.

As a first step, initial consideration should be given to listing what measures are in place at present in order to foster the Irish language and compare this both with the situations in Scotland and Wales and also the rights contained in the FCNM. Thus, before one can fully address an issue, one should fully understand the dimensions involved that need to be addressed.

5. Conclusion

A. UK Government’s responsibility

The Government historically has attempted to create the conditions necessary for a ‘normal’ society. However, when considering the issue of rights during the negotiations leading to the Belfast Agreement, it stated that “there may be some existing models” or that “the provisions of certain international instruments on human rights might contain elements”³¹ relevant to Northern Ireland. The Government clearly seems to have had, and continues to have, an unacceptable ‘blind spot’ regarding relevant international norms.

This ‘blind spot’ was based initially on a belief that it faced a unique problem. A former Prime Minister described Northern Ireland as “unique.”³² Viewing the problem as unique blocks the mind from considering all aspects of the FCNM. This has the potential to cause continued instability, interspersed with periods of apparent stability. Yet the assertion that the central problem is unique is not based on fact. The FCNM’s perspective “that the protection of national minorities is essential to stability, democratic security and peace”³³ combined with its monitoring process is testimony to that fact. Each country has its own particular characteristics but all are subject to the same FCNM template in order to secure stability.

Most Northern Ireland residents will likely not have heard of the FCNM, but one postulates their general attitude is likely to be a reflection of its overall values. And because the

³⁰ News Letter, 31 May 2019.

³¹ UK Government’s tabled document at the multi-party talks, 6th February 1998.

³² John Major (Conservative Party, Prime Minister), ‘A Framework for Accountable Government in Northern Ireland’, Foreword, February 1995.

³³ See reference 9 above for a fuller quotation and also source of the quotation.

Government has not reflected these values, it has consequently undermined the confidence and trust of many regarding political progress towards a normal and stable society.

B. Local Political Party Responsibility

All political parties, in particular the dominant two parties from each tradition, have a clear responsibility. Some quotations may focus the mind.

Michael Farrell (Founding member of 'Peoples Democracy' and related to the civil rights movement) stated in 1969: "The only solution to the problem at the moment is for the government to give us equal rights with the rest of the United Kingdom."³⁴ However, by the end of 1969 the scene was set for three decades of violence.

The Northern Ireland parliament was prorogued by the UK Government in March 1972 and in March 1973 the Government introduced proposals to, hopefully, enable a peaceful settlement to unfold. One element of the proposals was that:

"It is the view of the Government that the Executive itself can no longer be solely based upon any single party, if that party draws its support and its elected representation virtually entirely from only one section of a divided community."³⁵

This proposal represented power-sharing between Unionists and Nationalists on a voluntary basis. The Government's overall proposals were opposed by many Unionist candidates in the election that followed in June 1973 and of those who were elected, they boycotted subsequent talks to try and agree a political way forward. Yet, under the terms of the Belfast Agreement, Unionist politicians participated in a mandatory form of power-sharing government. Some prominent Unionists now argue for a more voluntary form of government, precisely what was offered 46 years previously. For example, Arlene Foster stated:

"There are also those of us who would want to look at the structures of the institutions to see what we can do better. If you look back at our documents from 2003 right forwards, we always saw mandatory coalition as the first step in relation to moving to voluntary coalition."³⁶

If the last 50 years indicate anything, and conscious of the FCNM's 'rights' advice, Unionism's political leadership needs to show more pragmatism in its approach to seeking stability.

Consider two other quotations. Caoimhghin O Caolain wrote:

"Under our party constitution, Sinn Fein candidates in Westminster elections are pledged not to 'sit in, nor take part in, the proceedings of the Westminster parliament'. That is because we believe the Westminster parliament has no right to legislate for any part of Ireland."³⁷

³⁴ Ulster Television, 'Brink of Chaos', broadcast on 23 October 2018.

³⁵ Cmnd 5259: 'Northern Ireland Constitutional Proposals', par. 52, p. 13, March 1973. [Also: any Council of Ireland "must operate with the consent of both majority and minority opinion", par. 111, p. 30]

³⁶ Arlene Foster MLA (Democratic Unionist Party Leader), 'BBC Newsline', 10 January 2017.

³⁷ Caoimhghin O Caolain TD, Platform Article, Irish Times, 20 September 2005.

And Gerry Adams stated, “Yes, Sinn Fein have always been looking for Ireland to be united. I consider the position of this island to be totally and absolutely illegitimate and amoral.”³⁸ Given the FCNM’s ‘respect’ rubric and the above two quotations, Republicanism’s political leadership needs also to show more pragmatism in its approach, if there is to be a stable society.

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³⁸ Gerry Adams TD, then President of Sinn Fein, BBC’s ‘The Andrew Marr Show’, 12 March 2017.