

# **An assessment of the Belfast Agreement**

**Accord** Issue 8

**Striking a balance**

**The Northern Ireland peace process**

**Conciliation Resources, London, 1999**<sup>1</sup>

The Belfast Agreement<sup>2</sup> is not a perfect document, but it does represent a significant attempt to deal with issues that affect all situations of inter-group conflict. The approaches that were adopted in the Agreement may help others attempting to resolve similar problems elsewhere. The threat to peace and stability within Europe is now often more likely to come from intra-state than interstate disputes. Any assessment of the Agreement should therefore be made in the light of developments in international principles and practice demonstrated in the array of international agreements, including, most recently, the Council of Europe's Framework Convention for the Protection of National Minorities, which became operable in May 1998. These agreements aim to guarantee the rights of citizens within states and the obligations of states towards their citizens. They represent the collective wisdom of all involved and have been based on the often bitter experience of the realities of differing allegiances within a state – the intrinsic problem in Northern Ireland.

## **Conflicting National Identities**

The basis for a lasting solution of intra-state conflict has often been referred to as 'group accommodation' or 'minority protection'. In order to try to solve such conflict the underlying dynamics of the intrinsic problem need to be clearly understood. The difficulty in Northern Ireland, according to Austin Currie, a former member of the SDLP, is that "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."<sup>3</sup>

The talks process has endeavoured to resolve the central problem where community identity and allegiance do not coincide with the State. The challenge has been to find ways to satisfy the concerns of different groups and at the same time not concede on fundamental international principles and practice. The unionist community has for a long time faced formidable pressure in this respect, for example in the arrangements proposed under the Anglo-Irish Agreement (1985) and the Framework Documents (1995). This challenge has been met in the last round of negotiations with not only determination and resolve by the Ulster Unionist Party (UUP) but also a clear and

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<sup>1</sup> Subsequent to the submission, the following footnotes were not included in the 1999 publication.

<sup>2</sup> The 'Northern Ireland Act 1998' referred to 'the Belfast Agreement' while the original document published in April 1998 was named on the front page as 'The Agreement'. It is also commonly called 'the Good Friday Agreement'.

<sup>3</sup> Cadogan Group (Belfast): 'Blurred Vision'; 1994, page 3

positive vision for the future. No doubt other parties have felt that they were responding to similar challenges.

The Agreement reflects international norms, in their broadest interpretation, with, for example, its inclusive form of government and methods of cross-border co-operation. The Agreement contains many detailed provisions such as the proposals for oaths of office and draft constitutional changes for the British and Irish Parliaments. The ethos of the Agreement is most clearly expressed in its approach to the concept of minorities, the question of human rights, the division of a homogeneous group by state boundaries, and the recognition of territorial boundaries. One other issue that needs to be considered is the commitment to democratic principles and the existence of armed groups.

### **Concepts of minority**

The word minority, often used in reference to Northern Ireland, is one that in many quarters is disliked because it implies a lesser degree of importance. The Council of Europe has referred to a national minority<sup>4</sup> as a group of people within a state “who display distinctive ethnic, cultural, religious or linguistic characteristics” and are “motivated by a concern to preserve together that which constitutes their common identity.” Such a national minority is to be “sufficiently representative, although smaller in number than the rest of the population of that State or a region of that State.” This reflects more truly the unionist concept of minority and accords with the usage of the term in the Agreement.

No grouping should consider itself a minority within Northern Ireland in the sense of being less important. The Celtic Romansh in Switzerland consider themselves to be not a minority, with all its connotations, but rather the fourth and smallest language group in Switzerland and equal in status to the French, German and Italian speakers. Dr. Michael Breisky,<sup>5</sup> the Austrian ambassador in Dublin, stressed in a speech at Queen’s University Belfast the equal importance of protecting minorities by the norms of international rules and the breaking down of psychological barriers. The sense of superiority and inferiority must be eliminated and confidence and trust must be built.

Unionists must convince nationalists that there will be a fair deal for all within Northern Ireland, that they have a stake in Northern Ireland and will play an important role at each level of government. Equally, nationalists must convince unionists that they will work within the institutions of government in Northern Ireland. This is where real confidence building is required. When David Trimble was elected Leader of the Ulster Unionist Party in September 1995, a review of party policy was carried out in November. At a special meeting of the party’s ruling Executive, it was agreed that all constitutional parties should have “a role at each level of responsibility in proportion to party strengths.”<sup>6</sup>

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<sup>4</sup> Human Rights Law Journal Vol. 16 No. 1-3, page 114

<sup>5</sup> Dr. M. Breisky: ‘Dealing with Minorities: A Challenge for Europe’; The Institute of European Studies, The Queen’s University of Belfast, October 1998.

<sup>6</sup> ‘Statement of Aims’ Approved by the Executive Committee of the Ulster Unionist Council, 10<sup>th</sup> November 1995.

The structures of government contained in the Agreement reflect this inclusive dimension.<sup>7</sup> In Strand One – Democratic institutions in Northern Ireland – Section Two (page 5) refers to “safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected.” Measures proposed include the proportional allocation of ministerial positions and committee chairs using a mathematical formula (the d’Hondt system) which ensures that parties are allocated positions according to their party’s strength in the Assembly. There are also proposals to ensure that key decisions have cross-community support. Rather than ignoring the identity background of members of the Assembly, each member is required to register “a designation of identity – nationalist, unionist or other”, and two alternative voting systems are proposed for key decisions. The first option is ‘parallel consent’ under which a majority of both unionists and nationalists must support the motion. The second option is ‘weighted majority’ under which sixty per cent of all voting members must be in favour and at least forty per cent of both unionists and nationalists. These arrangements did not satisfy those who feel uncomfortable with either identity. They argued that the divisions in the community are being entrenched. Nonetheless their inclusion provides reassurance to the two major sections of the community. Two sections of the Agreement are devoted to human rights and economic, social and cultural issues in order to provide further protection and reassurance.

### **The question of human rights**

The UUP’s manifesto for the elections to the Northern Ireland Forum for Political Dialogue in June 1996 stated that rights were “the fundamental building block in any agreement regarding the future governance of Northern Ireland.” This pledge reflects much more than a party obligation: it is an obligation on all involved to subscribe to international norms. The basic requirements for order in any democratic society today are found within international human rights law.

One submission to the Forum for Peace and Reconciliation, convened by the Irish government in 1994 to bring momentum to the process of reconciliation stated that “The human rights to be protected... are defined by established conventions drawn up by international agreement.... As such they form part of international law and must not be thought of as subject to bargaining between parties.”<sup>8</sup>

Asbjorn Eide, Director of the Norwegian Institute of Human Rights at the University of Oslo and a leading international authority in the field of human rights, in another submission to the Forum in Dublin described the Framework Convention for the Protection of National Minorities as “the first multilateral...instrument devoted in its entirety to the protection of minorities and it contains much more detailed provisions on such protection than any other international instrument.”<sup>9</sup> It details a set of principles which include freedom of peaceful assembly and religion; access to the

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<sup>7</sup> The Agreement: Strand 1, paragraphs 8 and 16, pages 6 and 7.

<sup>8</sup> Forum for Peace and Reconciliation: ‘The protection of Human Rights in the Context of peace and Reconciliation in Ireland’ Dublin, May 1996, page 23

<sup>9</sup> 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 July 1996, page 69. Note: the initial quotation was wrongly taken from page 68 of this document.

media for national minorities in order to promote tolerance and to permit cultural pluralism; usage of personal names in the minority language; the right to display minority language signs of a private nature visible to the public; and the right to use freely and without interference minority language, in private and in public, orally and in writing.

It is the intention of the Agreement that these principles should be reflected in a Bill of Rights for Northern Ireland. In the context of Northern Ireland there is no more important issue to be addressed than how we organise our society with respect to human rights. This corpus of rights embraces a number of categories: civil, political, economic, social, religious and cultural. The question is how to manage the differences that exist in Northern Ireland in ways consistent with democratic values and human rights.

Consequently a separate section in the Agreement (Rights Safeguards and Equality of Opportunity) deals specifically with rights. It states that the European Convention on Human Rights will be incorporated into Northern Ireland law, a new Northern Ireland Human Rights Commission will be established and that body will advise on the development of a Bill of Rights for Northern Ireland reflecting the “principles of mutual respect for the identity and ethos of both communities and parity of esteem”.<sup>10</sup> There is also an obligation on the Irish government to take comparable steps to further strengthen the protection of human rights in its jurisdiction.

### **Interstate division of peoples**

By viewing the Northern Ireland situation as different from others, UK and Irish governments created for themselves an unnecessary problem in their efforts to resolve the questions posed by a divided society. In the foreword to the Frameworks for the Future published on 22 February 1995, which set out proposals for accountable government in Northern Ireland and relationships within the island of Ireland and between the two governments, Northern Ireland was described as being in a special, even unique, position. The population was made up of different communities with allegiances to different states: the United Kingdom and the Republic of Ireland.

The assertion that the central problem in Northern Ireland is unique is not based on objective judgement: there are perhaps a hundred million people across Europe who consider themselves to be on the wrong side of a border. Nor does the presumed size of the Nationalist community in Northern Ireland make it unique. There are national minorities in some countries, for example the German speakers in the South Tyrol region of Italy that constitute majorities in their own regions. Eide has described this type of conflict as ethno-nationalist, “and often the most difficult”<sup>11</sup> to resolve.

This dispute between Austria and Italy over the South Tyrol was resolved in 1992 within current internationally accepted norms after a conflict of over 30 years that saw bombs, many people dead and bitter arguments regarding the self-determination of the South Tyrol. The German speaking (Austrian) community in the South Tyrol has achieved full parity of esteem with the Italian community within a framework of self-

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<sup>10</sup> The Agreement: ‘Rights, Safeguards and Equality of Opportunity’, par. 4, pages 16 and 17.

<sup>11</sup> Asbjorn Eide: op. cit. page 33

government established in line with the accepted principles of government in other parts of Italy.

What threatened to make the Northern Ireland conundrum insoluble was thinking that it was uniquely complicated to the extent that it could only be tackled by pursuing measures such as joint authority which, unionists argued, were untried, dangerously innovative, complex and without precedent elsewhere, and which would offer only continued instability. The overwhelming international consensus favours accepting the territorial integrity of existing states and offering maximum internationally defined guarantees to national minorities within them as the best hope for stability.

### **Balancing differences**

From a unionist viewpoint the legitimacy of Irish nationalism is not rejected in the sense that it is entitled to wish for a united Ireland, though unionism does not accept the validity of the nationalist argument. The unionist and nationalist viewpoints have equal legitimacy as viewpoints but they are entirely different in law. Northern Ireland is accepted by international law as part of the UK, whereas the nationalist viewpoint has the status of a legitimate right to wish for a change in Northern Ireland's position within the UK. The section of the Agreement entitled 'Constitutional Issues' (page 2) deals with these different aspirations. It is very carefully worded in order to demonstrate that each party acknowledges and respects the concerns and aspirations of the others.

The British and Irish governments made a commitment <sup>12</sup> that, in the new British-Irish Agreement replacing the Anglo-Irish Agreement of 1985, they will firstly "recognise the legitimacy of whatever choice is freely exercised by a majority of people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland." Secondly, they "will recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of the majority of the people of Northern Ireland." Thirdly, they will "acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union..." The other parties to the talks endorsed that commitment.

Additionally, in paragraph five of the section of the Agreement entitled 'The Declaration of Support' (page 1), the parties "acknowledge the substantial differences between our continuing, and equally legitimate, political aspirations. However, we will endeavour to strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements. We pledge that we will, in good faith, work to ensure the success of each and every one of the arrangements to be established under this agreement. It is accepted that all of the institutional and constitutional arrangements – an Assembly in Northern Ireland, a

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<sup>12</sup> The Agreement: Article 1; (i), (ii) and (iii), page 27.

North-South Ministerial Council, implementation bodies, a British-Irish Council and a British-Irish Intergovernmental Conference and any amendments to British Acts of Parliament and the Constitution of Ireland – are interlocking and interdependent and that in particular the functioning of the Assembly and the North-South Council are so closely inter-related that the success of each depends on that of the other.” From a unionist point of view these bodies do not take away from the current position of Northern Ireland within the United Kingdom but from a nationalist perspective they provide opportunities for co-operation based on mutual benefit and allowing for their identification with the whole island of Ireland.

In order to make these arrangements function each identity group has to have confidence in the commitment and goodwill of the others. The Agreement therefore included a system of checks and balances so that if one part of the Agreement does not work the other parts will also cease to apply. For example, Ministers are expected to sit on the Executive Committee of the Northern Ireland Assembly and to take part in the North-South Ministerial Council established to “bring together those with executive responsibilities in Northern Ireland and the Irish government” and “develop consultation, co-operation and action within the island of Ireland”<sup>13</sup>. Some politicians will embrace this dual role as a reflection of their commitment to good government. Others may find one or other of these bodies difficult, but they do not have the option of only taking part in the one which fits best with their own sense of identity.

### **International law and territorial boundaries**

During the negotiations matters relating to the relationship with Dublin were the most difficult to resolve. The only reference in international human rights law to cross-border personal links is to be found in Article 17 of the Council of Europe’s Framework Convention which states “The parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or common cultural heritage.” It is worth noting that this article supports persons belonging to a minority in establishing and maintaining free and peaceful contact across borders, but it does not extend to trans-border political institutions.

Various concepts in the practice of international law are relevant to the Northern Ireland situation. The international community has tended not to recognise as legitimate the change of state boundaries as the result of the use of force, even though it has not always been able to prevent such action. When faced by irredentist claims by neighbouring states, or separatist demands by a national group, the presumption is that the existing jurisdiction of the institutions of the state should be respected. If there is dissension within a region of a state regarding the validity of that state, autonomous regional government should be developed and institutions should be created within that state to protect all ethnic groups. Tension and a lack of trust across borders should be countered by encouraging co-operation and should be built up slowly from the base of already existing regional government. Where there is a state that has an ethnic affinity with a group of people in a neighbouring state, it has a natural interest in the welfare of that minority but this does not extend to a say in its

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<sup>13</sup> The Agreement: ‘North/South Ministerial Council’, par. 1, page 11.

government. The UUP wants to see a network of practical political co-operation extended to all the regions of the United Kingdom and the Republic of Ireland on matters that are of mutual benefit as there is more in common between the two states than there is dividing them. Alongside the North-South Ministerial Body there is also a 'British-Irish Council' to "promote the harmonious and mutually beneficial development of the totality of relationships"<sup>14</sup> between the peoples of the UK and the Irish Republic.

### **The final difficulty**

There are indeed unique aspects to the Agreement, not least the right of all the major parties, based on electoral strength, to have a role in the government. Sinn Fein, as the political representative of the republican movement, has a right to be in the government of Northern Ireland along with other political parties, but participation by each party is conditional on its acceptance of democratic principles. However, it is not enough to merely subscribe formally to international democratic norms. All sections of the Northern Ireland community must feel at ease with each other. The psychological barriers of distrust and lack of confidence must be broken down. There is no place in a functioning democracy for equivocation on violence or the threat of violence. The right to be in government carries with it a responsibility to demonstrate absolute commitment to peace, democracy and therefore stability. It goes beyond accepted international norms for a political section of any movement to participate in the government of a region when its paramilitary section has done no more than declare a cease-fire: by the end of 1999 the threat of a return to violence by the IRA was undiminished.

One difficulty in the Agreement is that the provisions are interdependent but some could come into operation earlier than others. Parties found it difficult to be sure that if they met their commitments other parties would do the same. Since the Agreement, the UUP has consistently argued that all parties could fulfil all their commitments under the Agreement simultaneously and that this would be the best way to develop confidence and to allow both communities to feel at ease with each other. In particular, the commitments to forming the government and to decommissioning paramilitary arms could have taken place at the same time, a process known as 'jumping together'. This is only fair and reasonable and it was hoped that the Republican movement could see a way to accept this proposition.

Consequently, the UUP was unwilling to participate in the creation of the Executive in the absence of a start to decommissioning. Sinn Fein's view expressed in the words of national chairperson Mitchell McLaughlin<sup>15</sup> that "as far as Republicans are concerned ... they [the unionists] will never enter into a power sharing Executive" is simply untrue and now has been clearly shown to be untrue. The UUP still believes that the other commitments which have been entered into and effected must be matched by a commitment from the republican movement, and in particular the IRA, to end violence. Without that commitment, demonstrated by decommissioning, the new Northern Ireland government will not be sustainable. With that commitment fully demonstrated will come the full and balanced implementation of the Agreement.

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<sup>14</sup> The Agreement: 'British Irish Council', par. 1, page 14

<sup>15</sup> Mitchell McLaughlin - Sinn Fein Chairman and member of the Northern Ireland Assembly - speaking on BBC Radio Ulster programme 'Inside Politics', 24<sup>th</sup> July 1999

The Agreement reflects fully the guiding principles provided by the international community. In accepting the Agreement the unionists involved have not shirked their responsibility in endeavouring to provide a political framework within which all democrats can feel at home. They have gone that extra mile to reach an honourable settlement.

**Dermot Nesbitt**