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## From the Margins to the Mainstream: Human Rights and the Good Friday Agreement

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Paul Mageean and Martin O'Brien

## **Abstract**

This Essay examines the process by which the language of human rights moved to center stage in the political process. It looks to peace processes elsewhere to determine whether the Agreement is deserving of the High Commissioner's special praise and analyzes, from a human rights perspective, the content of the Agreement and the extent to which the promises made therein have been fulfilled to date.

# FROM THE MARGINS TO THE MAINSTREAM: HUMAN RIGHTS AND THE GOOD FRIDAY AGREEMENT\*

*Paul Mageean\*\**  
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## INTRODUCTION

During a recent visit to Belfast, the United Nations High Commissioner for Human Rights Mary Robinson described the Good Friday Agreement<sup>1</sup> (or "Agreement") as

[c]onspicuous by the centrality it gives to equality and human rights concerns. Few documents emerging from divisive and difficult political negotiations have so well captured the importance of fairness in creating right relationships. In its preambular paragraphs, throughout the text, and indeed in all the new institutions and mechanisms established as a result of the Agreement, concerns around fairness and justice are a recurring theme.<sup>2</sup>

The High Commissioner said that the special nature of the Agreement was not restricted to its conceptualization. "This carefully crafted document arose as a result of political parties of very different political persuasions recognizing and endorsing principles of impartiality, accountability, equality, fairness and pluralism."<sup>3</sup>

These comments underline the quite remarkable extent to which the Agreement placed human rights at its center. A peace

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\* This Essay was authored by Paul Mageean and Martin O'Brien of the Committee on the Administration of Justice ("CAJ"). The CAJ is a Belfast-based human rights non-governmental organization ("NGO"), which works for a just and peaceful society in Northern Ireland where the rights of all are respected and protected. The views expressed are not necessarily those of CAJ.

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1. Agreement Reached in the Multi-Party Negotiations, Apr. 10, 1998 [hereinafter Good Friday Agreement]. The Agreement Reached in the Multi-Party Negotiations ("Good Friday Agreement" or "Agreement") was signed on April 10, 1998, at Belfast, Northern Ireland. The Agreement was agreed upon by representatives of the two governments and eight of the ten parties entitled to take part in the negotiations.

2. Mary Robinson, Equality and Human Rights—Their Role in Peace Building, Speech at the Stormont Hotel (Dec. 2, 1998).

3. *Id.*

process designed to resolve a centuries-old jurisdictional conflict obviously addressed constitutional issues and increased cross-border cooperation, but the specific detail with which human rights issues were addressed is convincing evidence of a sea-change in the way the major players approached the resolution of the conflict.

This Essay examines the process by which the language of human rights moved to center stage in the political process. It looks to peace processes elsewhere to determine whether the Agreement is deserving of the High Commissioner's special praise and analyzes, from a human rights perspective, the content of the Agreement and the extent to which the promises made therein have been fulfilled to date.

### I. *HUMAN RIGHTS: THE AGENDA FOR CHANGE*

In the aftermath of the IRA and loyalist cease-fires in the summer of 1994,<sup>4</sup> the human rights community in Ireland and Britain keenly felt the expectation that was shared by the community in general that an unexpected and, in many ways an unprecedented, opportunity for change existed in Northern Ireland. A new departure was anticipated from the traditional reliance on emergency legislation and a highly militarized police force that had characterized the state's response to internal dissent for most of this century.<sup>5</sup> While the human rights community had long campaigned for improvements in the human rights situation, the new security situation challenged the assumed rationale on the part of the government for its continued reliance on emergency laws and practices that had been found to have violated international human rights law.<sup>6</sup> The rationale for such measures had now gone, and with it, the reasoning went, the exclusion orders, the detention centers,<sup>7</sup> the extra-ju-

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4. The Irish Republican Army ("IRA") cease-fire was declared at the end of August 1994 and was followed approximately one month later by cease-fires of the two main loyalist paramilitary groupings, the Ulster Defence Association and the Ulster Volunteer Force. The IRA cease-fire broke down in February 1996 but was restored in July 1997.

5. See MICHAEL FARRELL, *THE ORANGE STATE* (1980).

6. The United Kingdom adopted this approach in the case of *Brogan and Others v. United Kingdom*, 145 Eur. Ct. H.R. (ser. B) at 16 (1988), and its subsequent derogation from Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention"), and in the case of *Brannigan and McBride v. United Kingdom*, 258 Eur. Ct. H.R. (ser. A) at 31 (1993).

7. Detention centers are used for the interrogation of those arrested under the

dicial killings, and the effective immunity that members of the security forces enjoyed in relation to these violations. This optimistic and expectant analysis was articulated in a statement issued on International Human Rights Day, December 10, 1994, by five of the leading human rights groups in these islands. In the Declaration on Human Rights, the Northern Ireland Conflict and the Peace Process ("Declaration" or "Human Rights Declaration"), the Committee on the Administration of Justice ("CAJ"), Liberty, the Irish Council of Civil Liberties, the Scottish Council of Civil Liberties (now the Scottish Centre for Human Rights), and the British-Irish Rights Watch echoed the hopes of the wider community in declaring that "at this historic moment, there is a unique opportunity to put in place new structures which will defend and promote human rights."<sup>8</sup>

The groups called for the recognition, on the part of all those involved in negotiating a new political framework in Northern Ireland, of the centrality of human rights in the search for a just and lasting peace. New systems of justice were called for that would address the injustices of the past and ensure proper investigation of future violations. These systems included a Commission on Policing, which would produce a model of policing that would be representative of all sections of the community in Northern Ireland and command the confidence of the community, a fully-independent system for the investigation of police complaints, the introduction of a Bill of Rights, an overhaul of the criminal justice system, a Commission of Investigation to examine human rights abuses arising from the emergency legislation, and the introduction of human rights

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Prevention of Terrorism Act. Prevention of Terrorism Act (Temporary Provisions) Act, 1974, ch.56 (Eng.). There are three detention centers currently in use in Northern Ireland; one is in Castlereagh in Belfast and the others are in Derry and Armagh. The conditions in all three, but particularly Castlereagh, have been the focus of regular criticism by international human rights bodies and NGOs since the 1970s to date. Such bodies have expressed concern at the ill-treatment of detainees in the centers and in 1993, a visiting delegation from the European Committee for the Prevention of Torture concluded that those detained in Castlereagh faced a significant risk of psychological ill-treatment and occasional physical assault. *Final Response of the United Kingdom Government to the Report of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its Visit to the United Kingdom from 15 to 31 May 1994*, CPT/Inf (96) 12 (1996).

8. COMMITTEE ON THE ADMINISTRATION OF JUSTICE ET AL., DECLARATION ON HUMAN RIGHTS, THE NORTHERN IRELAND CONFLICT AND THE PEACE PROCESS (1994).

education into the school curriculum.<sup>9</sup> The Declaration also demanded the end of all forms of discrimination and the strengthening of anti-discrimination legislation.<sup>10</sup>

The Human Rights Declaration was followed up by further action by the human rights community in general, and the CAJ in particular, to ensure that key actors in the political process were engaged with the human rights agenda. In January 1995, a seminar was held under Chatham House rules in Belfast, to which influential policy-makers and senior officials from the Irish and British Governments were invited. The ideas contained in the Declaration were debated, including concepts that later appeared almost unchanged in the Agreement, including a Commission on Policing and a Criminal Justice Review and new measures to promote equality.

Building on this in March 1995, a public conference was held in Belfast to discuss the implications of the peace process for human rights. The keynote address was given by John Shattuck, the Assistant Secretary of State for Democracy, Human Rights, and Labor in the United States Administration. Again, the attendance list included the British and Irish Governments, representatives of the United States Government, many of the local political parties, victims of human rights violations, and a broad cross section of civil society. Its objective was to mobilize a broader support base for the Human Rights Declaration. Since then, the centrality of rights to the peace process has been the mantra of the human rights community and has been advanced on a consistent basis in press briefings, meetings with governments and others, and submissions to international human rights fora.<sup>11</sup>

An examination of the human rights aspects of the Agreement reveals that to a significant extent the proposals from the human rights community made in the 1994 Declaration have

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9. *See id.*

10. *See id.*

11. *See generally* COMMITTEE ON THE ADMINISTRATION OF JUSTICE, CAJ SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE (1998). Indeed on April 1, 1998, ten days before the signing of the Good Friday Agreement, the United Nations Special Rapporteur on the Independence of Judges and Lawyers issued a highly critical report in relation to intimidation of defense lawyers in Northern Ireland. In his report, he echoed the language of the NGOs when he said that he was making his recommendations "with the conviction that respect for the rule of law and human rights . . . will enhance the prospects for a peaceful resolution of the conflict."

been met, and there is little doubt that the broad agenda that the non-governmental organization ("NGO") community was articulating emerged onto the political agenda in Northern Ireland. Until the weeks before the Agreement, it appeared that the political agenda and that of the peace process were primarily focused on other matters. Indeed, the NGOs were disappointed with the lack of importance attached to human rights matters during the first stage of the peace process up to the breakdown of the IRA cease-fire in February 1996. Given the centrality afforded to human rights issues in the final Agreement, it is important to explore the reasons for the apparent shift in attitudes of some of the key players that led to rights issues taking center stage in the peace process little more than two years later.

## II. FROM THE MARGINS TO THE MAINSTREAM

### A. *Republicanism, Nationalism, and the Irish Government*

Perhaps least surprising is the weight that the nationalist participants in the process attached to the protection of rights. The experience of the nationalist community within the state of Northern Ireland was forcefully articulated in the language of rights as early as the beginning of the current conflict. Indeed, many would say that the violence of the state's reaction to that expression of discontent led to the re-birth of militant republicanism and the subsequent violence.<sup>12</sup> During the course of the conflict itself, it has primarily, though not exclusively, been members of the nationalist community who have suffered regular human rights violations by the state.<sup>13</sup> Although republicans occasionally viewed aspects of the rights agenda as a distraction from their main task of removing the British presence from Ireland,<sup>14</sup> since the late 1980s Sinn Féin has increasingly used the

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12. See GERRY ADAMS, *PATHWAY TO FREEDOM* (1995); BOB PURDIE, *POLITICS IN THE STREET* (1990).

13. For instance, an analysis of those killed at the hands of the security forces during the course of the conflict in Northern Ireland shows that 89.6% of the victims were from the nationalist/catholic community, which, according to the 1991 census, made up 38% of the population of Northern Ireland.

14. David Schmitt, *The Consequences of Administrative Emphasis in Equal Opportunity Strategies: Comparative Analysis of the United States and Northern Ireland*, Speech prepared for the Annual Meeting of the American Political Science Association (Sept. 3-6, 1981).

language of rights in its literature.<sup>15</sup> However, the republican focus on the human rights agenda became more obvious in the period immediately before and during the negotiations. It is likely that there were two reasons for this focus: an acceptance that immediate change in terms of jurisdictional control over Northern Ireland was unlikely, and a degree of satisfaction with statements from the British government that it no longer had any selfish strategic or economic interest in staying in Northern Ireland. Many in the republican community argued that this unprecedented statement, while hardly tantamount to a declaration of intent to withdraw from Northern Ireland, nevertheless was extremely significant and would never have been made in relation to a region of Britain. These factors, combined with the knowledge that cross-border bodies would emerge from the talks, probably served to sharpen the republican focus on the rights agenda so that their support base would experience real change in what they identified as the interim period before their ultimate goal of Irish unity.

The Irish government has, over a long period, identified the issue of rights as being central to the conflict in Northern Ireland. For example, an analysis of speeches of the Irish government to the General Assembly of the United Nations reveals that in every speech from 1969 until 1977, and from 1987 until 1991, the denial of rights was mentioned as contributing to the conflict.<sup>16</sup> From 1991 on, the Irish government appeared to be more reluctant to identify human rights violations as one of the main problems during the first stirrings of the peace process. This reluctance may have been because of an improvement in relations between London and Dublin, and also perhaps because the Irish government felt that their concerns on these issues were being adequately addressed under the aegis of the Anglo-Irish Agreement,<sup>17</sup> thus avoiding the need to raise the issues in a

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15. *See* SINN FÉIN, *TOWARDS A LASTING PEACE IN IRELAND, SINN FÉIN MANIFESTO FOR THE WESTMINSTER ELECTION APRIL 1992* (1992).

16. Martin O'Brien, *Northern Ireland at the United Nations 1969-1996* (1996) (unpublished LL.M. thesis, Queen's University of Belfast).

17. *Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland*, Nov. 15, 1985, U.K.-Ir., Cmnd. 9657, *reprinted in* TOM HADDEN & KEVIN BOYLE, *THE ANGLO-IRISH AGREEMENT 15-48* (1989) [hereinafter *Anglo-Irish Agreement*]. The Anglo-Irish Agreement of 1985 was the first of a series of joint declarations to be undertaken by the British and Irish governments in relation to Northern Ireland. The Agreement provoked wide-



public international forum.

The Anglo-Irish Agreement of 1985 is believed by some commentators<sup>18</sup> to have been the genesis of the peace process. In it, both governments reaffirmed their commitment to a society "free from discrimination and intolerance, and with the opportunity for both communities to participate fully in the structures and processes of government."<sup>19</sup> The intergovernmental conference that was set up under Article 2 of the Anglo-Irish Agreement was given the remit of dealing with "legal matters, including the administration of justice."<sup>20</sup> Matters to be considered by the intergovernmental conference under Article 5 include "the avoidance of economic and social discrimination and the advantages and disadvantages of a Bill of Rights in some form in Northern Ireland."<sup>21</sup> Article 7, dealing with security and related matters, accepts that there is a need for measures to improve relations between the security forces and the community. The measures envisaged include improvements in arrangements for handling complaints and action to increase the proportion of members of the minority in the RUC.<sup>22</sup> There is also recognition in Article 8 of the importance of public confidence in the administration of justice.<sup>23</sup>

Concern with rights continues to be a feature of the documents drafted by both governments. For example, the Joint Declaration made at Downing Street on December 15, 1993, includes the acceptance on the part of the then Taoiseach, Albert Reynolds, that the exercise of the right of self-determination on the part of the Irish people must

respect the democratic dignity and the civil rights and religious liberties of both communities, including:

- the right of free political thought;
- the right of freedom and expression of religion;
- the right to pursue democratically national and political aspirations;

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spread Unionist opposition mainly because it recognized the right of the government in Dublin to have an input into the governance of Northern Ireland for the first time.

18. See EAMONN MALLIE & DAVID MCKITTRICK, *THE FIGHT FOR PEACE* (1996).

19. See Anglo-Irish Agreement, *supra* note 17, pmb1.

20. *Id.* art. 2.

21. *Id.* art. 5.

22. *Id.* art. 7.

23. *Id.* art. 8.

- the right to seek constitutional change by peaceful and legitimate means;
- the right to live wherever one chooses without hindrance;
- the right to equal opportunity in all social and economic activity, regardless of class, creed, sex or colour.

These rights would be reflected in any future political and constitutional arrangements emerging from a new and more broadly based agreement.<sup>24</sup>

These provisions are repeated almost verbatim in the Framework Documents.<sup>25</sup> The Framework Documents add that both governments would encourage the adoption of a charter or covenant that might reflect and endorse agreed measures for the protection of the fundamental rights of all those living in Ireland. Each government also undertakes to ensure the systematic and effective protection of common rights.<sup>26</sup> The British government, of course, was also a signatory to these agreements, but given the content of both the Anglo-Irish Agreement and the Framework Documents, it is widely believed that the Irish government was the driving force behind both documents. The Anglo-Irish Agreement in particular also bore the imprimatur of the Social Democratic and Labour Party ("SDLP"), the largest nationalist party in Northern Ireland.<sup>27</sup>

The SDLP frequently made reference in its election literature to the importance of rights, although its primary focus has been in attempting to resolve the conflict not through the human rights paradigm, but through persuading the two governments to build institutions that reflected the two main traditions

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24. The Joint Declaration by An Taoiseach, Mr. Albert Reynolds, T.D. & The British Prime Minister, The Rt. Hon. John Major, M.P., Dec. 15, 1993, U.K.-Ir., Cm. 2442 [hereinafter *Downing Street Declaration*].

25. A New Framework for Agreement, Dec. 1994, 34 I.L.M. 946 [hereinafter *Framework Documents*]. The Framework Documents were issued in December 1994 by the Irish and British governments and outlined a shared understanding of future political arrangements on the island of Ireland and between Ireland and the United Kingdom.

26. *See id.*

27. Indeed, in a Social Democratic Labour Party document entitled "The Positive Approach," the SDLP asserted its role as the "inspiration for every major advance towards agreement over the last three decades." SOCIAL DEMOCRATIC LABOUR PARTY, THE POSITIVE APPROACH (1997). In its 1997 election manifesto, it also included detailed objectives in the human rights sphere including the repeal of emergency legislation, the withdrawal of plastic bullets, transfer of prisoners, etc. SOCIAL DEMOCRATIC LABOUR PARTY REAL LEADERSHIP, REAL PEACE (1997).

in Northern Ireland. The history of the party's involvement in the human rights agenda is a complex one. Senior members of the party including the party leader, John Hume, were centrally involved in the civil rights movement in the late 1960s. To an extent, therefore, the party emerged from that movement. However, since the emergence of Sinn Féin in the early 1980s, the support base of the SDLP has become increasingly middle class. That constituency has generally not been at the sharp end of human rights violations and therefore the motivation, in base political terms, to work on these issues has decreased. However, the party has certainly recognized the potential of human rights violations to increase support for republicanism, and it is perhaps in that context, and that of the past experience of key members of the party's leadership, that much of their work on these issues can be placed.

#### B. *Unionism, Loyalism, and the British Government*

The election of a new British Government in May 1997 did effect a discernible change in the public attitude of the British government toward the human rights agenda. First, the new Labour administration made human rights a cornerstone of its foreign policy.<sup>28</sup> The Foreign Secretary, Robin Cook, in a major speech in July 1997, adopted twelve new policies that, he claimed, would put into effect the Labour Government's commitment to human rights. The twelfth of these policies was perhaps the most significant in terms of improving the human rights situation in Northern Ireland. The Foreign Secretary accepted that if "Britain is to carry credibility when we talk to other governments about their observance of human rights, we must command respect for our own human rights record."<sup>29</sup> Second, Labour in opposition had on occasion taken a relatively progressive approach to human rights issues in Northern Ireland. The Labour party conference had voted to ban the use of plastic bullets,<sup>30</sup> and for many years Labour had voted against the renewal of the Prevention of Terrorism Act because it violated basic human rights standards and required that the United Kingdom

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28. LABOUR PARTY, HUMAN RIGHTS INTO A NEW CENTURY (1997).

29. Foreign Secretary, Robin Cook, Speech at the Labour Party Conference (July 1997).

30. *Id.*

derogate from the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR" or "European Convention on Human Rights") in respect to its seven day detention powers. Although, as it neared government, the party moved to a position of abstention on this issue, it was clearly more likely to be persuaded by human rights arguments than its predecessor. Indeed, the shadow Secretary of State, Mo Mowlam, held briefings at Westminster to which she invited representatives of the human rights community to help inform her policy on Northern Ireland.<sup>31</sup>

The results of this meeting were reflected in many of the Secretary of State's speeches in which she asserted the importance of rights to the peace process. In her speech to the Labour Party annual conference in the autumn of 1997, she said that the guiding principles for resolving the problems of Northern Ireland would be "the same principles that guide the Government overall. They are principles of fairness, justice and equality of opportunity."<sup>32</sup> She talked of the legacy of unfairness and injustice that haunts both communities in Northern Ireland, and she placed many of the government's policies in that context, including the incorporation of the European Convention on Human Rights into British law, legislation to deal with the marching issue, changes to the emergency legislation, changes to policing, and measures to combat employment inequality.<sup>33</sup>

It is rare, of course, for governments to act from motives that are completely unadulterated, and support for international human rights standards may have been only one of several reasons for the change in attitude of the United Kingdom. Britain had also been subject to quite severe criticism at an international level in relation to its human rights record in Northern Ireland. In addition to a large number of adverse judgements from the European Court of Human Rights,<sup>34</sup> the United Nations Human Rights Committee and Committee Against Torture had also

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31. Shortly before Labour took power, Mo Mowlam held a meeting at Westminster to which she invited representatives of human rights NGOs working on Northern Ireland.

32. Mo Mowlam, Speech to the Labour Party Conference (Nov. 1997).

33. *See id.*

34. *See* *McCann v. United Kingdom*, 324 Eur. Ct. H.R. (ser. A) (1995); *Murray v. United Kingdom*, 300 Eur. Ct. H.R. (ser. A) at 19 (1994); *Brogan and Others v. United Kingdom*, 145 Eur. Ct. H.R. (ser. B) at 16 (1988); *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) at 79 (1978).

been highly critical of the United Kingdom in 1991 and 1995. There is evidence that this criticism led to changes in policy<sup>35</sup> and may also have influenced at the time the official opposition that such criticism should be avoided if possible.

In addition, of course, it is very likely that unionists within the talks process were left in little doubt that the extensive protections afforded to rights in the Agreement were there primarily to reassure nationalists who had suffered under both unionist and direct rule from London that the diluted but extant union that would emerge from the talks would be a safer place for them. More progressive elements within unionism saw the validity of providing extensive safeguards for those whom they were intent on keeping within the union. There may also have been the beginning of a realization that ultimately these self-same protections would be safeguards for unionists within any future Irish structures that might emerge.

The loyalist parties in the talks process that were close to the loyalist paramilitary groups<sup>36</sup> were also responsible for the extent to which the rights agenda made its way so significantly into the final text. The support base of both parties is predominately urban and working class. While traditionally the Protestant working class would have been supportive of the state and its institutions in Northern Ireland, the experience of those institutions subjecting members of the Protestant community to similar treatment as their Catholic counterparts convinced many in the loyalist community that change was necessary. Already concerned about the socio-economic condition of the Protestant and working-class, the more that loyalism experienced the sharp end of paramilitary policing by the RUC, emergency laws, and special juryless courts, the easier it became for its representatives to contemplate widespread and fundamental change to the legal and justice systems.<sup>37</sup> The peace process and the consequent absence of violent attacks on the police also undoubtedly played a part in a process that liberated loyalist opinion and allowed it to

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35. Paul Mageean, *Human Rights and the Peace Process*, U.S. J. CRITICAL CRIMINOLOGY (1997).

36. The Progressive Unionist Party ("PUP") was generally seen as the political voice of the Ulster Volunteer Force and the Ulster Democratic Party ("UDP") was generally seen as the Ulster Defense Association.

37. DR. ROBBIE McVEIGH, "HARRASSMENT: IT'S PART OF LIFE HERE. . ." THE SECURITY FORCES AND HARRASSMENT IN NORTHERN IRELAND (1995).

criticize those institutions that had previously been under attack. Indeed, some of the proposals from the loyalist parties went beyond those which were finally included in the Agreement itself. The Progressive Unionist Party ("PUP") suggested at one point that there should be a new constitutional court in Northern Ireland that should include judges from Britain, the Republic of Ireland, and Europe, as well as members of the bench in Northern Ireland.<sup>38</sup>

This process was not mirrored in mainstream unionism. Contemplating serious change to the police, judiciary, and criminal justice system would have constituted firm evidence that flaws existed within those institutions and that they had in some ways contributed to the conflict. Such an analysis was a distinct anathema to unionism, whose mindset, despite the most momentous changes to the political landscape in Ireland since partition, was clearly still stuck in a conflict mode. To effect real change to the police was to accept the validity of the "enemy's" perception of the police, and therefore to betray those who had stoutly defended the state through a quarter century of the worst political violence experienced in any Western state since World War II. In one sense, it could be argued that mainstream unionism could only lose in the talks and the question was really how much would be lost. The potential loss of mainstream unionism helps to explain the extent to which the predominately middle-class strain of unionism represented by the Ulster Unionist Party objected vociferously to changes to the police and criminal justice systems.

*C. The Alliance Party and the Women's Coalition—  
The Center Ground?*

One of the more interesting political developments in the peace process was the emergence of the Women's Coalition. This grouping contested the elections that were held to determine which parties could attend the negotiations and managed, through the size of their vote, to become one of the parties at the talks table. The perspective that they brought to the process was, of course, one concerned with gender issues, but they also

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38. Undated statement from the Progressive Unionist Party entitled *Human Rights* and signed by Mr. W. McArthur, Chairperson (on file with the *Fordham International Law Journal*).

managed to engage in some difficult issues for a party that drew membership and support from both the nationalist and unionist communities.<sup>39</sup> Their approach to the human rights agenda was positive. Their commitment to equality may have been a product of their origins, but they were also to the fore in the discussion on how best to protect rights constitutionally and also on the sharper issues of policing and prisoners.<sup>40</sup> The other party that has traditionally claimed to occupy the middle ground in Northern Ireland, while paradoxically supporting the union with Britain, was the Alliance Party. While the Alliance Party is also committed to the protection of human rights, issues of fundamental change to policing and the release of prisoners appear to have caused them particular problems. This can be best placed in the context of a party that has traditionally been among the staunchest and uncritical supporters of the RUC.

#### D. *Other Players and the Three Governments*

The campaign to place the language employed by the human rights community in the Human Rights Declaration center stage in the peace process also bore crucial fruit when it was adopted by individuals and organizations that would have a crucial role in the process that led to the adoption of the Agreement. In particular, the Mitchell Report on Decommissioning recognized the importance of confidence building measures taken by all sides to strengthen the process.<sup>41</sup> Decommissioning was obviously one of those measures but because, as Mitchell recognized, "success in the peace process cannot be achieved solely by reference to the decommissioning of arms," other steps were needed.<sup>42</sup> Many of the examples that Mitchell gave of such steps

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39. For instance, at the Northern Ireland Forum, which met during the talks process, the Women's Coalition voted for the removal of the Union flag that flew over the Forum building. In contrast, the Alliance Party were absent when the vote was being taken.

40. See NORTHERN IRELAND WOMEN'S COALITION, SUBMISSION TO THE INTERNATIONAL BODY ON STRAND 2, RIGHTS AND SAFEGUARDS (1995).

41. THE INTERNATIONAL BODY, REPORT OF THE INTERNATIONAL BODY (1996). The Mitchell commission was established to overcome the difficulties that had arisen because of the decommissioning issue. Mitchell recommended the parallel decommissioning of weaponry at the same time as talks. On the day of the report's publication the British Government changed its tactic from making decommissioning the pre-condition for talks to advancing the need for electoral support, and announced plans to hold an election to the talks process.

42. *Id.*

related directly to the items on the list of recommendations advanced by the human rights community.<sup>43</sup> For instance, Mitchell expressed the hope that policing in Northern Ireland could be normalized.<sup>44</sup> He also suggested a review of the use of plastic bullets and continued progress toward more balanced representation in the police force, which would contribute to the building of trust.<sup>45</sup> These very matters had been raised with the Mitchell Commission in a submission from the CAJ and a subsequent meeting.<sup>46</sup>

External criticism of the United Kingdom's position in the peace process also began to be articulated in the language of rights. An editorial in the influential publication *The Nation* in March 1996, written in the aftermath of the breakdown of the first IRA cease-fire, placed a significant amount of the blame on John Major, the British Prime Minister at the time.<sup>47</sup> Interestingly, the writer castigated Major for failing on the rights agenda by not changing the emergency legal regime and for releasing a British soldier convicted of the murder of a young Catholic girl after only three years of a life sentence.<sup>48</sup> This critique also came in the context of increasingly strong language in the United States State Department Country Reports on the United Kingdom.<sup>49</sup>

Other influential figures, particularly in the United States, also began to increase their use of the language of rights, on occasion, using the same key phrases as the NGO community. For instance, on St Patrick's Day, the important Friends of Ireland (or "Friends") group in Washington issued their annual statement. In the 1997 statement, the Friends asserted that "basic issues of equal justice and human rights are at the heart of the conflict in Northern Ireland and they must be central to any realistic resolution of the conflict."<sup>50</sup> The Agenda for Change

43. *Id.* at 1-3.

44. *Id.*

45. *Id.* at 18.

46. COMMITTEE ON THE ADMINISTRATION OF JUSTICE, SUBMISSION TO THE INTERNATIONAL BODY (Dec. 1995).

47. *A Major Blow: British Prime Minister John Major and the Peace Process*, *NATION*, Mar. 4, 1996, at 3.

48. *Id.*

49. A. Hegarty, *United States State Department Report*, *JUST NEWS*, Mar. 1998, vol. 13 no. 3.

50. Annual Statement by the Friends of Ireland, Wash., D.C. (Mar. 17, 1997).



published two years earlier had said that "human rights have been at the very heart of the conflict in Northern Ireland. They must therefore be at the heart of the peace process."

Exactly one year after the Friends of Ireland statement, on St. Patrick's Day in 1998, the United States Congress passed a resolution stating its view that any peace agreement reached in Northern Ireland "must recognize the state's obligation to protect human rights in all circumstances."<sup>51</sup> The resolution followed two hearings held by the House Subcommittee on International Operations and Human Rights, which were addressed by members of the human rights community in Northern Ireland and internationally. The resolution, which also described human rights violations and the lack of accountability by those responsible for such violations as being persistent features of the conflict in Northern Ireland, was passed unanimously.<sup>52</sup>

The input of such initiatives undoubtedly impacted the negotiations and those engaged in them, and it is also likely that the two governments and the U.S. administration began to see the important role that human rights could play in assisting the negotiation process. For in essence, although there has been a widely held view that the rights agenda was in effect a nationalist one, both nationalists and unionists in Northern Ireland share an interest in the protection of human rights. Both believe in basic rights like freedom of expression and religion, freedom from discrimination, and other fundamental political liberties. Most of the political parties were committed to the introduction of a Bill of Rights.

Negotiations on these matters enjoy distinct advantages. First, the parameters of the debate can be set by the international standards for the protection of human rights that are already in existence. In this way, the agreed delivery of means to protect rights is externalized and is therefore partially insulated from the potentially divisive nature of an internally-focused debate. It is also difficult for the two governments to disagree with this method or the conclusions that it reaches insofar as they are consistent with international standards that the governments have helped to set. Finally, the negotiations can be driven by an

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51. 144 CONG. REC. H1196-01 (daily ed. Mar. 17, 1998) (expressing sense of congress regarding Northern Ireland).

52. *Id.*

agenda agreed on by the parties to address matters on which there is already an element of consensus.

Additionally, this mode of dealing with human rights issues will ensure that the vindication of human rights will be seen as an integral part of the process as opposed to being part of the political horse-trading accompanying the peace process. This will avoid situations such as the one that arose when the exclusion orders<sup>53</sup> on Gerry Adams and Martin McGuinness were lifted by the British government while many others remained in place. The lifting of these two orders was seen by unionists as a concession to republicans rather than as a positive contribution to the protection of human rights, particularly as there were a small number of extant orders relating to loyalists, and those relating to the Sinn Féin leaders were lifted purely to facilitate the peace process. The other major improvement of the human rights situation, the lifting of the broadcasting ban on parties associated with paramilitaries, was also seen as a concession to the republicans. Although lifting this ban benefitted both loyalist and republican spokespersons, it was seen by many as a concession specifically to republicanism. Equally, the release of Private Clegg need not have impacted so negatively on the peace process if it had been presented as part of a package of review of the sentences of all those imprisoned as a result of the conflict. Respect for human rights and, consequently for the rule of law, cannot be successfully built on the notion that human rights are optional extras or trade-offs between parties. The inverse of the causal link between the abuse of human rights and conflict will not be achieved unless the protection of those rights is a matter of concern to all.

### III. *THE INTERNATIONAL EXPERIENCE*

In addition to the apparent success of the campaign of the human rights community to place human rights concerns in the minds of the participants of the talks process, NGOs, and indeed, the parties to the talks process often looked to the experi-

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53. Exclusion orders are issued under the Prevention of Terrorism Act by the Home Secretary or the Northern Ireland Secretary of State. Prevention of Terrorism Act (Temporary Provisions) Act, 1974, ch. 56 (Eng.). Their purpose is to exclude Irish or Northern Irish citizens from Britain or from Northern Ireland. The current Labour Government has discontinued their use.

ence of other jurisdictions that were emerging from conflict. The rationale of the human rights agenda was that the resolution of these issues of concern not only was positive in and of itself, but also would ease the search for peace. Human rights groups in Northern Ireland have often argued that the abuse of human rights is not only wrong, but also feeds and fuels the conflict.<sup>54</sup> This causal link has been recognized by commentators and indeed by the institutions and declarations of the international community. In the Preamble to the Universal Declaration of Human Rights, it is stated that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."<sup>55</sup> In addition, the Preamble recognizes that the inherent dignity and equal and inalienable rights of all members of the human family is "the foundation of freedom, justice and peace in the world."<sup>56</sup> Several international mechanisms for the protection of human rights also, by their very nature, recognize the link between human rights abuse and conflict. These mechanisms include the early-warning systems of the United Nations, specifically, the Human Rights Commission, and the mandate given to the High Commissioner for National Minorities of the Organization for Security and Co-operation in Europe.

Experience in other jurisdictions has also served to lend empirical support to the claims of NGOs and international mechanisms. It is axiomatic that it was the massive and widespread violation of human rights that was central to the conflict in apartheid South Africa.

The homelands policy of geographic separation based on race, the forced mass relocation of Black South Africans, the denial of the franchise, political suppression of individuals and political parties, human rights abuses in response to popular protest, the imposition of the Afrikaans language in black schools; all these led to revolt and conditions approaching civil war in South Africa.

It is equally clear that the relative success of the transition from

54. *See supra* notes 4-11.

55. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., pmb., at 135-36, U.N. Doc. A/810 (1948).

56. *Id.*

apartheid to a multi-racial democracy has been based, to a large extent, on the centrality of human rights and mechanisms for their protection to the process. The 1994 South African Constitution articulates the fundamental freedoms that are to be protected, but goes further than this in trying to inculcate a human rights culture. It directs all South African courts to "promote the values which underlie an open and democratic society based on freedom and equality."<sup>57</sup> Additionally, the constitution establishes a number of bodies entrusted with the protection of human rights. These bodies include the Constitutional Court, the Judicial Services Commission, the Public Protector, the Human Rights Commission, the Commission on Gender Equality, and the Commission on Restitution of Land Rights.<sup>58</sup> While it may be argued that the mechanisms provided for by the constitution are in many respects the culmination of the negotiations process, the need to protect human rights was recognized throughout by the participants to the process and its frameworks. As early as three months after the opening of talks between the African National Congress and the South African government, a working group was set up in May 1990 to examine issues including the release of political prisoners, security legislation, and steps towards lifting the state of emergency. The fears of the white community were also addressed in an address by President de Klerk at the opening of parliament in 1992 when he outlined protection of language and cultural rights, education rights, and devolution of power to regional levels.

A cursory examination of peace processes elsewhere appears to lend weight to a correlation between relative success of the negotiating process and the centrality of rights to it. For instance, in the Dayton Agreement, all of the parties recognized that the "observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace."<sup>59</sup> To that end, they agreed on detailed measures for the protection of rights including, *inter alia*, a Commission on Human Rights and a Commission on Refugees and Displaced

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57. The Constitution of the Republic of South Africa of 1996, Act No. 108 of 1996, reprinted in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* at binder XVII (Albert P. Blaustein & Gisbert H. Flanz eds., 1997).

58. *Id.*

59. General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Dec. 14, 1996, art. VII, 35 I.L.M. 75, 90.

Persons.<sup>60</sup>

In Guatemala, at the beginning of the peace process in April 1991, the government, the army, and the main guerrilla groups met to set the agenda for negotiations. The agenda was to include "human rights, the identity and rights of indigenous peoples, socio-economic issues, a truth commission, and the role of the army during peace time."<sup>61</sup>

Unlike in Bosnia, Guatemala, and South Africa, the peace process in the Middle East placed little emphasis, at least in agreed texts, on the importance of human rights. In a critique of the Declaration of Principles on Interim Self-Government Arrangements for Palestinians ("DP"), published in 1993, the Palestinian human rights group Al-Haq predicts with considerable foresight the problems that were to arise in the area because of the failure to accord appropriate weight to human rights protections.<sup>62</sup> Al-Haq comments that

the absence of any human rights provision and the failure to agree expressly to the amendment of Israeli military legislation and practice raise serious questions as to the standard of protection of human rights, and the real potential for their improvement, during the interim phase; and, finally, the proposed jurisdiction of Israeli and Palestinian authorities remains obscure, creating potential problems of accountability in the protection of Palestinian human rights.<sup>63</sup>

There is no express provision for the protection of human rights in the DP. While concentrating primarily on continuing human rights violations by the Israelis, Al-Haq also called on the new Palestinian authorities to uphold human rights standards and to incorporate these standards into domestic law so that "these instruments will set the standards that govern the action of the future Council."<sup>64</sup>

In addition, Al-Haq expressed concern at the DP's reference to a "strong" Palestinian police force. While the DP discussed such a force ensuring public order and guaranteeing in-

60. *Id.* art. VI, at 90.

61. RICHARD WILSON, *THE PEOPLE'S CONSCIENCE? CIVIL GROUPS, PEACE AND JUSTICE IN THE SOUTH AFRICAN AND GUATEMALAN TRANSITIONS* (1997).

62. AL-HAQ, *A HUMAN RIGHTS ASSESSMENT OF THE DECLARATION OF PRINCIPLES ON INTERIM SELF-GOVERNMENT ARRANGEMENTS FOR PALESTINIANS* (1993).

63. *Id.* at 1.

64. *Id.* at 10.

ternal security, there was no mention of the necessity of holding the police accountable or the importance of human rights to their work.<sup>65</sup> Since the establishment of the new Palestinian police force, there have been particularly disappointing and credible claims of serious human rights abuses even by those at the heart of the Palestinian leadership.<sup>66</sup>

The DP, of course, was agreed upon as a result of intensive and secret negotiations between Israeli and Palestinian delegations in Oslo. While the Norwegian government lent administrative support to the process, there was no further overt external input. The peace processes in Bosnia and Guatemala, apart from the centrality that they accorded rights issues, also both benefited from significant international input; the Organisation for Security and Co-operation in Europe led in the case of Bosnia, and the United Nations led in Guatemala. There was also an institutional international input into the talks process in Northern Ireland in the role of Senator Mitchell and the co-chairs of the talks process, Mr. Harry Holkeri from Finland and General John de Chastelain from Canada. In addition, we have already seen that influential commentators, external to the formal process, but crucial to its success, had begun to see the importance of human rights.

It is difficult to determine to what extent talks participants in Northern Ireland learned from the successes and failures of similar processes in other jurisdictions. There is little doubt that the conflicts in Northern Ireland, South Africa, and the Middle East were often compared<sup>67</sup> and as the peace processes began, common features were identified. Given the human rights language and commitments that ultimately ended up in the Agreement, it seems likely that the general international trend towards linking the protection to peace was followed, whether or not by all of the talks participants and whether consciously or not, in Northern Ireland.

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65. *Id.* at 12.

66. JOINT MISSION TO ISRAEL, THE OCCUPIED TERRITORIES AND NEW PALESTINIAN AUTONOMOUS AREAS ON BEHALF OF THE LAW SOCIETY OF ENGLAND AND WALES AND THE HUMAN RIGHTS COMMITTEE OF THE BAR OF ENGLAND AND WALES: CRITICISMS VOICED BY HANAN ASHRAWI IN HUMAN RIGHTS IN A PERIOD OF TRANSITION, THE CASE OF THE OCCUPIED TERRITORIES, JERICHO AND THE GAZA STRIP (1994).

67. For example, Brian Gormally and Kieran McEvoy in *The Release and Reintegration of Politically Motivated Prisoners* compared the mechanisms for release of prisoners in various conflicts around the world including South Africa and Palestine.

#### IV. THE NORTHERN IRELAND AGREEMENT

There are few segments of the Agreement that do not—explicitly and implicitly—refer to the centrality of human rights concerns. The British and Irish Governments, together with all the parties engaged in the talks process, clearly accepted this as a starting premise. The preambular paragraphs set a clear tone with all the parties to the Agreement firmly dedicating themselves to “the achievement of reconciliation, tolerance and mutual trust, and to the protection and vindication of the human rights of all,” as the most fitting memorial to those who lost their lives during the conflict.

More significantly, the commitment in the preamble is given frequent and concrete expression at various stages throughout the Agreement. The commitment is therefore more than rhetorical, and it amounts to a recognition that true respect for human rights must underpin any hope that the Agreement can provide “a truly historic opportunity for a new beginning.”<sup>68</sup> The extent to which this commitment is given concrete expression can be determined by an analysis of the Agreement itself and an examination of what has happened since.

##### A. Constitutional Issues

In this segment of the Agreement, the parties affirm that whatever constitutional choice is exercised, power shall be exercised

with rigorous impartiality on behalf of all of 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.<sup>69</sup>

A surprising omission from this listing of rights is that of economic rights, though this right is included in listings elsewhere in the document. One must assume, therefore, that this omis-

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68. Good Friday Agreement, *supra* note 1, Declaration of Support ¶ 1. The text of the Good Friday Agreement is paginated differently in different printed versions. To avoid confusion, all references in the text are made to the chapter title and paragraph numbers rather than page numbers.

69. *Id.*, Constitutional Issues ¶ 1(v).

sion was not deliberate. Nevertheless, it is vital that people concerned about human rights continue to emphasize the interdependence between rights and reject the notion that somehow economic rights are less important than other rights. This is a point that the United Nations High Commissioner for Human Rights, Mary Robinson, made about the Agreement in a recent speech in Belfast when she said:

It also, very importantly, recognises that civil, political, economic, social and cultural rights are all interdependent and that, in combination they underpin any democratic society. The inter-dependence which figures in the Agreement reflects the growing consensus at the international level about the importance of addressing rights in a more holistic way.

In my travels around the world, it is clear that the legacy of the Cold War which suggested there was some contradiction between civil and political rights on the one hand, and economic, social and cultural on the other, is slowly dissipating. How can one argue that the right to vote is more important than the right to a roof over one's head? And yet, without the right to vote—and all that entails in terms of democratic choice—how will people ever secure the policies which will provide roofs over their heads?

No, it is not one set of rights or the other—it is the pursuit of a broad and inclusive human rights agenda which will create the future we all aspire to for ourselves and our children. The Good Friday Agreement recognises that in a fundamental and exciting way.<sup>70</sup>

#### B. *Strand One: Democratic Institutions in Northern Ireland*

The Agreement “provides for a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community.”<sup>71</sup> Among the safeguards listed, explicit reference is made to the incorporation of the European Convention on Human Rights (“ECHR”), a Bill of Rights for Northern

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70. Mary Robinson, Speech on Equality and Human Rights – Their Role in Peace Building, Belfast (Dec. 2, 1998).

71. Good Friday Agreement, *supra* note 2, Strand One, Democratic Institutions in Northern Ireland ¶ 1.



Ireland, a Human Rights Commission,<sup>72</sup> arrangements to ensure that key decisions and legislation are proofed to ensure that they infringe neither the ECHR nor any Bill of Rights,<sup>73</sup> and a possible Equality Commission.<sup>74</sup>

We comment elsewhere on the proposals relating to a Human Rights Commission, the Equality Commission, and the question of a Bill of Rights, but it is important here to address the commitment by the U.K. Government to incorporate the ECHR into its domestic law.<sup>75</sup> Since the signing of the Agreement, the Human Rights Act has completed its passage through the U.K. parliament and is due to come into effect in April 2000. This effectively incorporates the ECHR into domestic law and means that litigants will be able to rely on the protections of the ECHR in local courts. Unfortunately, the U.K. Government did not take the opportunity presented by incorporation to withdraw its derogation from the ECHR regarding seven-day detention powers under the Prevention of Terrorism Act, which were found to breach the fair trial provisions of the ECHR in the Brogan case.<sup>76</sup> Nevertheless, incorporation of the ECHR will provide an important safeguard.

In its clauses on the operation of the Assembly, the Agreement envisages that a special committee may be appointed to "examine and report on whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights. The Committee shall have the powers to call people and papers to assist in its consideration of the matter."<sup>77</sup> It is not clear what relationship, if any, such a committee would have with the Human Rights Commission, nor what significance, if any, should be placed in the fact that such a committee is optional. However, reassurance as to the central importance of rights can be found later in the same chapter, when the Agreement lists some of the limitations on the authority of the

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72. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Safeguards ¶ 5(b).

73. *Id.* ¶ 5(c).

74. *Id.* ¶ 5(e).

75. *See id.*, Rights, Safeguards and Equality of Opportunity, Human Rights, United Kingdom Legislation ¶ 2.

76. *Brogan and Others v. United Kingdom*, 145B Eur. Ct. H.R. (ser. A) at 16 (1988).

77. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Operation of the Assembly ¶ 11.

Assembly. Thus, the Assembly only has authority to pass primary legislation for Northern Ireland in devolved areas, subject to “(a) the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void.”<sup>78</sup>

Nor are the safeguards limited to the workings of the Assembly. With reference to non-devolved matters, the Secretary of State and the Westminster Parliament must “legislate as necessary to ensure the United Kingdom’s international obligations are met in respect of Northern Ireland.”<sup>79</sup> This point is particularly important in that it underlines the importance of the United Kingdom’s international obligations. Where, for example, the Agreement is silent or indeed, where its commitments are less than those applicable under international human rights law, the government must legislate to ensure compliance with the international obligations.

Furthermore, and very importantly, “[a]s a condition of appointment, Ministers, including the First Minister and Deputy First Minister, will affirm the terms of a Pledge of Office (Annex A) undertaking to discharge effectively in good faith all the responsibilities attaching to their office.”<sup>80</sup> Both the Pledge of Office and the Code of Conduct for Ministers incorporate references to human rights. Thus, all Ministers will be expected to take a pledge, which among other things promises that they will “serve all the people of Northern Ireland equally, and . . . act in accordance with the general obligation on government to promote equality and prevent discrimination.”<sup>81</sup> The Code of Conduct requires that Ministers “must at all times” work in a way that respects a series of key principles: impartiality, objectivity, accountability, openness, responsibility, equality of treatment, personal honesty, and integrity.<sup>82</sup>

These parts of the Agreement are very important, not only for the standards that they set for those in elected public posi-

78. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Legislation ¶ 26(a).

79. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Relations with other institutions ¶ 33(b).

80. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Executive Authority ¶ 23.

81. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Annex A ¶ (c).

82. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Code of Conduct.

tions, but also in the standards that they set for public life generally. Ministers, if they are to uphold their pledge of office, will have to ensure that the departments for which they are responsible meet these standards of service. The objectives of serving all the people of Northern Ireland equally, and doing so in an open and transparent manner that makes public bodies fully accountable for their actions, are clearly laid out in the text. It is of course the duty of everyone—elected officials, public servants, and ordinary citizens—to ensure that these objectives are met in practice, but the Agreement at least sets important benchmarks.

### *C. Rights, Safeguards, and Equality of Opportunity*

Very significantly, a whole chapter is devoted specifically to the issue of human rights. Additionally, the coupling of human rights with a concern for “safeguards” makes it clear how a commitment to human rights has to underpin any long-term resolution of the conflict. While human rights protections are vital in their own right, as a matter of principle, it is also recognized that they are necessary to create the framework within which political accommodation can be reached and peace ensured. Thus, regardless of whatever structures emerge, each community and the individuals within each community should be assured that their human rights will be respected.

All of the parties to the Agreement affirm “their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community.”<sup>83</sup> It is not clear to those who were not engaged in the details of the negotiations why an enumeration of certain rights was made, and not others. The particular rights enumerated are the right of free political thought, the right to freedom and expression of religion, the right to pursue democratically national and political aspirations, the right to seek constitutional change by peaceful and legitimate means, the right to choose one’s place of residence freely, the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender, or ethnicity, the right to freedom from sectarian harassment, and the right of women to full and equal political participation.

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83. *Id.*, Rights, Safeguards and Equality of Opportunity, Human Rights ¶ 1.

## 1. Equality of Opportunity

The Agreement's provisions on equality of opportunity are perhaps among the most innovative of the broad range of human rights provisions contained within the document. This issue is dealt with in greater detail in the article by Dr. Christopher McCrudden, who, together with the public service union UNISON, played the key role in shaping the Agreement's equality provisions and their subsequent enactment in the Northern Ireland Act of 1998. Here, we briefly highlight some of the key features of the Agreement and subsequent developments.

The Agreement provided for a new statutory obligation and statutory schemes to promote equality of opportunity. It suggested that these schemes would cover arrangements for policy appraisals, public access to information, consultation, impact assessments, monitoring, and timetables. The Agreement also referred to a recent government proposal to amalgamate the existing equality agencies in Northern Ireland<sup>84</sup> into one new body. Importantly, however, it stressed that this proposal should be subject to the outcome of the public consultation that was currently underway. A reference was also made to the possible establishment of a Department of Equality within government.

An analysis of the first available draft of the Agreement shows that a number of important changes were made in this section of the Agreement in subsequent negotiations. The first of these is that the proposals in respect to equality were all made subject to the outcome of public consultation. This change was pressed by some of the parties to take account of the fact that there was currently a public consultation exercise underway on some of these issues, and it would clearly have been unacceptable to render this nugatory by resolving the matter definitively in the Agreement. Furthermore, a requirement was added to provide for an assessment of the impact of decisions on equality of opportunity for different groups, in addition to a requirement for public access to information about decisions.

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84. *Id.*, Rights, Safeguards and Equality of Opportunity, Human Rights, New Institutions in Northern Ireland ¶ 6. These are the Fair Employment Commission, the Equal Opportunities Commission, the Commission for Racial Equality, and the Northern Ireland Disability Council. *Id.*

The first unpublished draft of the Northern Ireland Bill,<sup>85</sup> the piece of legislation brought forward to implement much of the Agreement, shows, however, that the inclusion of these provisions in the Agreement did not mean that they would necessarily be implemented. In relation to the question of amalgamating the existing equality bodies, the government brought forward proposals to establish one new Equality Commission. This amalgamation was entirely contrary to the outcome of the public consultation exercise<sup>86</sup> and effectively nullified this aspect of the Agreement.

Similarly, the draft legislation imposed no clear obligation on public authorities to establish schemes to promote equality of opportunity, and there was no reference at all to the question of impact assessments. The provisions on access to information and consultation were also extremely limited and did not reflect the requirements of the Agreement.<sup>87</sup> It was not until the end of the parliamentary process that most of these deficiencies were remedied. Remedying these deficiencies required intensive lobbying and the support of a broad coalition of politicians from across the political divide in Northern Ireland and in Britain.<sup>88</sup>

## 2. National Security Exemptions

The British Government also undertook to make "rapid progress with . . . a review of the national security aspects of the present fair employment legislation at the earliest possible time."<sup>89</sup> Given this commitment, it was a source of considerable disappointment to discover provisions in the draft Northern Ire-

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85. Northern Ireland Bill, Bill 229, July 15, 1998 [hereinafter Northern Ireland Bill].

86. See COMMITTEE ON THE ADMINISTRATION OF JUSTICE, PRELIMINARY ANALYSIS BY THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE OF RESPONSES TO THE WHITE PAPER "PARTNERSHIP FOR EQUALITY" (1998) (on file with the Committee on the Administration of Justice).

87. The Northern Ireland Bill provided only that groups should be consulted about the shape of equality schemes and that they should be given access to information on the schemes. This was eventually changed to ensure that the groups likely to be affected by decisions would be consulted about those decisions and that they would have access to information relevant to the decisions.

88. See Northern Ireland Act, 1998, ch. 47, pt. VII (Eng.) (reflecting debates in Commons and Lords on Northern Ireland Bill).

89. Good Friday Agreement, *supra* note 2, Rights, Safeguards and Equality of Opportunity, Economic, Social and Cultural Issues ¶ 2.

land Bill<sup>90</sup> that replicated the existing provisions under fair employment legislation.<sup>91</sup> Under existing fair employment legislation and under the draft Bill, a certificate signed by the Secretary of State stating that a particular action or decision was taken in order to safeguard national security would be sufficient to prevent any challenge to the decision or action on the grounds that it was discriminatory.<sup>92</sup>

The provisions under the fair employment legislation had been particularly controversial in that they effectively denied any remedy in the local courts. This controversy had led to the provision in the Agreement to carry out a review of the provisions. However, instead of fulfilling this aspect of the Agreement, it was deemed necessary to further extend these provisions to provide national security exemptions under the Northern Ireland Bill as well. The section 42 provisions of the Fair Employment Act 1976 had been the subject of a challenge in the European Court of Human Rights. Ironically, four days after the date of the draft Northern Ireland Bill, the European Court found that the provisions violated the ECHR.<sup>93</sup>

The clear expectation was that the provisions in the draft Bill would be removed, but when the Bill was published on July 15, 1998, the offending sections remained.<sup>94</sup> It was not until the Committee stage in the House of Lords that the Government's intention became clear. It decided not to remove the provisions but to establish a tribunal to deal with any complaints about the application of certificates. However, those complaining to the tribunal would have no right to know the case against them. The special tribunal established to hear the case may sit in secret and exclude the victim, and the victim will have no right to have his or her own lawyer represent them. Instead, the government may itself appoint a lawyer for complainants, and this lawyer will have no responsibilities to the complainants.

These proposals provoked strong criticism in the Lords and

90. See Northern Ireland Bill, 1998, § 75(4), (5).

91. See Fair Employment (Northern Ireland) Act, 1976, ch. 25, § 42 (Eng.).

92. See *id.*; see also Northern Ireland Bill, 1998, § 75(4), (5).

93. *Tinnelly v. United Kingdom*, Application No. 20390/92, July 10, 1998 (Eur. Ct. H.R. decision not yet published in Series A) (visited Apr. 15, 1999) <<http://www.dhcour.coe.fr/eng/Judgments.htm>> (on file with the *Fordham International Law Journal*).

94. See Northern Ireland Bill, 1998, ch. 47, § 79(4), (5) (Eng.).

in the Commons, and the Northern Ireland Bar Council wrote to the government pointing out that the provisions were contrary to their code of practice and that it would therefore be difficult for them to fulfill the role stipulated for them under the legislation. These criticisms caused some problems with correspondence being exchanged between the Bar Council and the Attorney General and led to the establishment of a working group to address the issues raised. Nevertheless, the legislation was passed, and it remains to be seen how the situation will evolve.

### 3. The Human Rights Commission

The Good Friday Agreement provided for

[a] new Northern Ireland Human Rights Commission, with membership from Northern Ireland reflecting the community balance, will be established by Westminster legislation, independent of Government, with an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights, to include keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the new Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so.<sup>95</sup>

The new Northern Ireland Human Rights Commission . . . will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and — taken together with the ECHR — to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of

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95. Good Friday Agreement, *supra* note 2, Rights, Safeguards and Equality of Opportunity, Human Rights, New Institutions in Northern Ireland ¶ 5.

treatment, the identity and ethos of both communities in Northern Ireland; and

- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.<sup>96</sup>

It is envisaged that there would be a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of human rights issues in the island of Ireland. The joint committee will consider, among other matters, the possibility of establishing a charter, open to signature by all the democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.<sup>97</sup>

When this final text is compared with the first available draft of the Agreement, we can see that two important additions were made in the process of the negotiations. The additions to the Agreement included the requirement on the Human Rights Commission (or "Commission") to consult on the content of the Bill of Rights and to have a membership that reflects the community balance in Northern Ireland. An analysis of the parliamentary process, however, shows that there was opposition to some of the powers and roles envisaged for the Commission on the part of those given the task of drafting the legislation and taking it through the parliamentary process.

Perhaps the most glaring omissions concern the requirement to consult and advise on the contents of the Bill of Rights and the absence of any requirement to establish the joint committee for cooperation between the two human rights commissions in Northern Ireland and the Republic of Ireland. The draft Northern Ireland Bill merely provided for the appointment of members to any such joint committee that might be established. The ability of the Commission to provide assistance to litigants was initially limited to litigation under the Human Rights Act and did not include the power to support litigation under the non-discrimination provisions of the Northern Ireland Bill itself. There was also no provision enabling the Commission to bring court proceedings in its own name as provided

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96. *Id.*, Human Rights, United Kingdom Legislation ¶ 4.

97. *Id.*, Human Rights, A Joint Committee ¶ 10.



for in the Agreement.<sup>98</sup>

Following representations from NGOs and signatories to the Agreement, some of these matters were remedied by the time the Bill was formally published. However, it was not until the final stages of the Bill's passage through parliament that a number of these deficiencies were resolved. The published Bill provided a statutory basis for the consultation exercise on the Bill of Rights and, while not establishing the joint committee, strengthened the provisions to require the Commission to "do all that they can to facilitate the establishment of the committee referred to in paragraph 10 of that section of the Agreement."

However, it was not until the Committee stage in the House of Lords that the restrictions on assistance to litigants were removed and the Commission was given a broader power to assist in proceedings relating to the protection of human rights.<sup>99</sup> It was even later in the process that the Government finally moved on the ability of the Commission to bring proceedings in its own name. The Commission's powers in this respect are, however, quite limited and mean that the Commission will be able to bring proceedings on human rights questions but not if they are relying on the protection given by the incorporated ECHR. If the Commission wishes to pursue ECHR-related points, then it will have to find an individual victim to bring the case.<sup>100</sup>

The other major point of contention in relation to the Human Rights Commission concerns the power to investigate violations of human rights. This matter was not specifically provided for in the Agreement, but the list of issues that were referred to was clearly not envisaged as an exhaustive one, as can be seen from the wording "to include"<sup>101</sup> in the Agreement. NGOs maintained that in light of both the Agreement's frequent references to international standards and the commitment that the Commission would have a greater role than the present role of the Standing Advisory Commission on Human Rights, the Commission should follow the minimum standards laid down in the Paris Principles for National Human Rights Institutions. In addition, given the importance vested in a Human Rights Com-

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98. See *id.*, Human Rights, New Institutions in Northern Ireland ¶ 5.

99. See Northern Ireland Bill (as amended in Committee), H.L. Bill 158, cl. 66.

100. See House of Commons, Official Report, vol. 319, Nov. 10, 1998, col. 706.

101. Good Friday Agreement, *supra* note 2, Rights, Safeguards and Equality of Opportunity, Human Rights, New Institutions in Northern Ireland ¶ 5.

mission for underpinning an effective peace process, it seemed natural to assume that international good practice would be followed. This assumption represents a view that was shared by the United Nations High Commissioner for Human Rights, who became involved in the debate in both Northern Ireland and the Republic.<sup>102</sup> These standards envisage human rights commissions being in a position to carry out investigations and having the necessary powers to do so. In particular, the standards suggest that commissions should have the power to discover documents and subpoena witnesses. Finally, after a great deal of pressure, the Government included a power to investigate, but did not provide the Commission with the necessary powers to make these investigations effective. Thus, the Commission has a statutory basis to carry out investigations that is not backed up by any powers to secure information from reluctant sources. This decision was unfortunate because it means that the Commission does not comply with the minimum international standards laid down in the Paris Principles for National Human Rights Institutions. In a further effort to counter criticism on this front, the Government stated that, subject to the requirements of national security, it would cooperate with investigations. It also offered a review of the Commission's powers to be completed within a two year period.

#### 4. The Irish Republic

The Irish Government also committed itself to "ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland."<sup>103</sup> This commitment has the potential to improve the human rights situation in the Irish Republic as well. In concrete terms the Irish Government agreed to establish a Human Rights Commission in the Republic with a remit and mandate equivalent to that in Northern Ireland. It also agreed to implement enhanced equality legislation and equal status legislation to ratify the Council of Europe Framework Convention on National Minorities, which the U.K. Government has already ratified. The Irish Government also agreed

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102. See Letter from Mary Robinson, U.N. High Commissioner for Human Rights, to Prime Minister Tony Blair and Taoiseach Bertie Ahern (June 18, 1998) (on file with the *Fordham International Law Journal*).

103. Good Friday Agreement, *supra* note 2, Rights, Safeguards and Equality of Opportunity, Human Rights, Comparable Steps by the Irish Government ¶ 9.

to take further steps to demonstrate its respect for the different traditions on the island of Ireland.

Interestingly, the Irish Government did not go so far as to commit itself to incorporating the ECHR into its domestic law. Rather, it agreed to consider this issue further. With the decision to incorporate having been taken by the United Kingdom, Ireland remains the only member of the Council of Europe not to have taken this step.

### 5. Victims

The Agreement indicated that the participants believed that it was essential that the suffering of the victims of violence be acknowledged as a necessary element of reconciliation. In this context they looked forward to the work of the Northern Ireland Victims Commission.<sup>104</sup> The Victims Commissioner produced a report entitled "We Will Remember Them." Although in that report the Commissioner makes clear that his definition of a victim is broad and includes those killed by paramilitaries as well as by the state, he very unfortunately reinforces an already existing hierarchy of victimhood in his report. He devoted a great deal of time and attention to the needs of police officers injured in the conflict and the relatives of those officers who were killed, and also to the relatives of those who disappeared due to the acts of paramilitary groups. However, he was not as sympathetic to the concerns of the relatives of those killed by the state. Here, he simply recorded the concerns and noted that he had agreed to report on them.

His differential approach, and the subsequent appointment of the Minister for Security as the official advocate within government on behalf of victims, had done little to address the concerns of the relatives of those killed by the security forces. Those killed by security forces account for eleven percent of all of the deaths. This figure does not of course include those killed as a result of collusion between security forces and paramilitary groups. This approach has done little to promote reconciliation and healing. Indeed, in some ways it has made matters worse because the victims of the state feel that the mechanism set up

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104. Good Friday Agreement, *supra* note 2, Rights, Safeguards and Equality of Opportunity, Human Rights, Reconciliation and Victims of Violence ¶ 11.

by the state, which was meant to address their pain, has served to deny and diminish the fact that they too are victims.

## 6. Economic, Social, and Cultural Issues

There is a specific section of the Agreement referring to the importance of economic, social, and cultural issues in bringing about greater rights, safeguards, and equality of opportunity for everyone. Specific reference is made to the importance of economic growth, social inclusion, and the advancement of women in public life.<sup>105</sup> It is very welcome that the Agreement refers explicitly to the Targeting Social Need initiative and the need progressively to eliminate the differential in employment rates between the two communities.<sup>106</sup>

Importantly, the Agreement notes that “[a]ll participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.”<sup>107</sup> While the British Government did not commit itself outright to sign the Council of Europe’s Charter for Regional or Minority Languages, it did commit to “active consideration”<sup>108</sup> of this issue. This assertion is followed by a series of specific proposals in relation to the promotion and protection of the Irish language.

Subsequent media disclosures<sup>109</sup> caused grave disquiet with respect to the British Government’s intentions with regard to its commitments about the Irish language. In a Northern Ireland Office (“NIO”) leaked document, a senior official briefing his Minister wrote of these commitments: “What these worthy sentiments might mean in practice is a matter of interpretation, and we could argue that our interpretation is as valid as anyone else’s.” The tenor of the rest of the memorandum suggests that a minimalist interpretation is to be assumed if not encouraged.

The outcry following these revelations seems, however, to have borne some fruit. Since the signing of the Good Friday

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105. *Id.*, Economic, Social and Cultural Issues ¶ 1.

106. *Id.* ¶ 2(iii)

107. *Id.* ¶ 3.

108. *Id.* ¶ 4.

109. *See Exposed: NIO Deal Deceit*, ANDERSONSTOWN NEWS, May 2, 1998, at 1.

Agreement, the United Kingdom decided to sign the European Charter for Regional or Minority Languages.<sup>110</sup> Additionally, the Education (Northern Ireland) Order (or "Order") was passed on July 10, 1998.<sup>111</sup> Article 89 of the Order places a statutory duty on the Department of Education in Northern Ireland to encourage and facilitate the development of Irish-medium education.<sup>112</sup> The lack of state funding for such schools, in comparison to state support for integrated education (schools where Catholic and Protestant children are educated together), had long been a matter of contention. The new Order places Irish language education on the same statutory footing as integrated education.<sup>113</sup>

#### D. Security

While the Agreement refers to the "normalisation of security arrangements and practices,"<sup>114</sup> it is disappointing that it goes no further than to restate the position *ex post ante*. It is clear that there is no emergency threatening the life of the nation, and therefore there is no justification in international law for emergency legislation.<sup>115</sup> All emergency law should therefore be dismantled.

It is interesting to note that the question of repeal of emergency legislation is left entirely in the hands of the U.K. Government and, indeed, the terms of reference<sup>116</sup> for the criminal justice review established under the Agreement, discussed below, specifically exclude consideration of emergency legislation from its remit.<sup>117</sup> This exclusion is particularly worrisome as the continued use and abuse of emergency legislation would tend to undermine improvements to policing brought about by the commission on policing set up by the Agreement.

In this context, the recent paper published by the U.K. Government on its plans for emergency legislation is particularly dis-

110. IRISH NEWS, June 10, 1998.

111. Education (Northern Ireland) Order, 1998 (Eng.).

112. *Id.* art. 89.

113. *Id.*

114. Good Friday Agreement, *supra* note 2, Security ¶ 1.

115. See COMMITTEE ON THE ADMINISTRATION OF JUSTICE, NO EMERGENCY, NO EMERGENCY LAW (1995).

116. See Good Friday Agreement, *supra* note 2, Policing and Justice ¶¶ 4-6.

117. See *id.*, Policing and Justice, Annex B.

appointing.<sup>118</sup> Instead of moving away from emergency laws, the Government is proposing to entrench them in a permanent piece of U.K. wide anti-terrorism legislation. In addition, it suggests that even with this legislation, there may be a need to retain a number of Northern Irish specific provisions.

If the Government continues on this course of action, it is likely to encounter further criticism at the international human rights level.<sup>119</sup> It is profoundly regrettable that the opportunity to break with the past has not been taken in relation to emergency legislation. The failure to do so is likely to impede seriously any efforts to secure support for new arrangements in respect to policing and the criminal justice system.

### E. *Policing and Justice*

The Agreement's provisions on policing are of great significance. The Agreement refers to a "a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole."<sup>120</sup> The Agreement goes on to point out that

[t]he participants believe it is essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control, accountable; both under the laws and to the community it serves; representative of the society it polices, and operates within a coherent and co-operative criminal justice system which conforms with human rights norms.<sup>121</sup>

These parameters are very similar to those proposed in a major piece of comparative international research published on policing by the Committee on the Administration of Justice some months before the signing of the Agreement.<sup>122</sup>

In order to achieve this goal, the Agreement requires the creation of an independent commission, which should be broadly representative with expert and international representa-

118. LEGISLATION AGAINST TERRORISM, 1998, Cm. 4178.

119. See The Conclusions and Recommendations of the Committee Against Torture, on its examination of the United Kingdom of Great Britain and Northern Ireland and Dependent Territories, Nov. 19, 1998 (CAT/C/SR.354, 355, and 360).

120. Good Friday Agreement, *supra* note 2, Policing and Justice ¶ 1.

121. *Id.* ¶ 2.

122. See MARY O'RAWE & DR. LINDA MOORE, HUMAN RIGHTS ON DUTY (1997).

tion among its membership. It also stresses that the Policing Commission should consult widely (including with expert NGOs) and report no later than the summer of 1999. The terms of reference outline the need for widespread community support, a legislative and constitutional framework requiring impartial policing, a clear framework of legal and democratic accountability, and an effective complaints system.<sup>123</sup>

The Policing Commission was appointed in June 1998 by the Northern Irish Secretary of State, Dr. Mo Mowlam, with Chris Patten, the former Governor of Hong Kong, as chairperson. There was considerable controversy surrounding the appointments and in particular the lack of consultation with key groups. A particular gap in the make-up of the commission lay in the absence of any member with specific expertise in the area of human rights.

The Irish Government in particular was extremely unhappy at the lack of consultation. It emerged that only one of ten nominees put forward by the Irish was appointed and that this appointment was only made after substantial effort on their part.<sup>124</sup> The picture that emerges is one of civil servants within the Northern Ireland Office pressing ahead with selecting and approaching members without involving the Irish Government at all in the process.

Problems also emerged in the early days of the Policing Commission's work when it was felt that there was a heavy emphasis on contacts with police officers and policing bodies but no sign of public contact with policing critics. This initial criticism was further heightened when it became known that there was a serving police officer working on a full-time basis with the commission at its headquarters.<sup>125</sup> Given the extreme sensitivity of the policing debate and the suspicions that were rife, the Policing Commission felt obliged to try to reassure the public. They insisted that this officer's role was solely to be a liaison between the commission and the police.

Despite these teething problems, people have continued to vest a lot of hope in the work of the Policing Commission and its

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123. See Good Friday Agreement, *supra* note 2, Policing and Justice ¶ 3, Annex A, Terms of Reference.

124. See *Policing Commission*, IRISH TIMES, June 4, 1998, at 17.

125. See SUNDAY BUSINESS POST, Oct. 4, 1998.

ability to deliver the necessary level of change. Literally thousands of people have attended a series of public meetings throughout Northern Ireland. These meetings have sometimes been quite acrimonious but have provided an important space for public debate on this deeply contentious issue.

The key challenge for the Policing Commission does not lie in identifying practical proposals to remedy policing problems in Northern Ireland. There are many good and concrete proposals that have been made and these often draw on good practice elsewhere. Rather, the challenge lies in securing the necessary degree of public and political consensus behind a particular package of measures to deliver change.

Alongside the commission into policing, this chapter of the Agreement promises a "parallel wide-ranging review of criminal justice."<sup>126</sup> In comparison to the detail on policing, the terms of reference and status of this review are much more vague, and the review is to "be carried out by the British Government through a mechanism with an independent element."<sup>127</sup>

Under the terms of the Agreement, the review is to report by autumn 1999, and this will allow it to consider any matters referred to it by the Policing Commission. While this review was a good idea in principle, it makes it all the more unacceptable that the criminal justice review should be carried out by a mechanism largely internal to the civil service. Important issues relating to the powers of the police, and police relations to the criminal justice system, may be identified by the Policing Commission only to be referred to what effectively amounts to an internal Northern Ireland Office body with the resultant limitations.

The review was formally launched on June 27, 1998, and the Secretary of State indicated that "it would be taken forward by a team of officials from the Northern Ireland Office and will include representatives of the Lord Chancellor and the Attorney General."<sup>128</sup> The team was to be assisted by five independent assessors including representatives from the legal profession, academia, the voluntary sector, and a retired English judge.

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126. Good Friday Agreement, *supra* note 2, Policing and Justice ¶ 5.

127. *Id.*

128. See Northern Ireland Office, *Secretary of State Launches Review of Criminal Justice*, June 27, 1998 (visited Apr. 15, 1999) <<http://www.nio.gov.uk/980627a-nio.htm>> (on file with the *Fordham International Law Journal*).



On August 27, 1998, the review group published a consultation paper<sup>129</sup> and invited submissions by October 30, 1998.<sup>130</sup> The consultation paper is general in nature and raises questions on topics such as the prosecution process, law reform, and judicial appointments. It is anticipated that the group will publish a more detailed document in due course.

#### F. *Strand Three: British-Irish Intergovernmental Conference*

Aside from the specific references and mechanisms referred to above, this section makes it clear that the Irish Government will continue to have the opportunity to raise issues of concern on human rights matters with the British Government through the new British-Irish Intergovernmental Conference, which has yet to be established. The British-Irish Intergovernmental Conference will be the successor to the Anglo-Irish Conference that was established under the Anglo-Irish Agreement in 1985. In particular, the Agreement states that "[t]he Conference will also address, in particular, the areas of rights, justice, prisons and policing in Northern Ireland (unless and until responsibility is devolved to a Northern Ireland administration) and will intensify co-operation between the two Governments on the all-island or cross-border aspects of those matters."<sup>131</sup> The importance of this provision will depend to some extent on the effectiveness of the other mechanisms established under the Agreement. Issues such as prisoners and policing remain matters outside the responsibility of the new Assembly; however, it will continue to provide an important avenue for inter-governmental contact on these issues.

### CONCLUSION

This detailed examination of the Agreement illustrates clearly the extent to which human rights language and principle color all aspects of the text. The emphasis on human rights is undoubtedly a singular victory for the human rights community and indeed for all interested in justice and equality in Northern

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129. CRIMINAL JUSTICE REVIEW GROUP, REVIEW OF THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND: A CONSULTATION PAPER (1998).

130. See generally COMMITTEE ON THE ADMINISTRATION OF JUSTICE, SUBMISSION TO THE CRIMINAL JUSTICE REVIEW NO. 78 (1998).

131. Anglo-Irish Agreement, *supra* note 17.

Ireland. Equally, the Agreement was a major defeat for those in Northern Ireland and Britain who are opposed to the rights agenda. The legislative process of the Northern Ireland Bill clearly showed that there was considerable opposition from elements of the state to the changes envisaged in the Agreement. Our above analysis has shown that there was a concerted attempt on the human rights commission, on equality of opportunity, and on policing to dilute the effectiveness of what was promised in the Agreement. There has been informed speculation that the main stumbling block to full implementation of the Agreement was a number of civil servants within the Northern Ireland Office who were hostile to change or wanted to derail the whole process.<sup>132</sup> Indeed, this speculation has been given substance by a number of embarrassing and potentially damaging leaks that have come from within government. One of these leaks related to the composition of the Patten Commission on Policing and was seen as particularly embarrassing for the Secretary of State. The other leak was related to internal discussions on the controversial Orange Order march through the nationalist Garvaghy Road area.<sup>133</sup>

The process has managed to continue despite such opposition. Although started by the NGOs on the ground, the fact that this campaign was unprecedented in its success to get human rights into the political mainstream illustrates the way in which this agenda managed to mobilize political parties and others. For a variety of reasons, not all of which are yet possible to discern accurately, many of the major players in the peace process picked up the human rights ball and ran with it. Despite a number of scares, they have not yet dropped it. The focus of those who wish to see society transformed as a result of the Good Friday Agreement will be to ensure that they never do.

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132. Kevin McNamara, *Inattention to Detail on Amendments Could Be Costly*, IRISH TIMES, Oct. 29, 1998, at 10.

133. See Deaglan de Breadun, *Leaked Memo Exposes Rift over Police Body*, IRISH TIMES, June 9, 1998, at 8; see also *Broken Heads, Dashed Hopes*, ECONOMIST, July 12, 1997, at 49.