

***With a little help from our friends?:
Independent commissions and the
mediation of issues in post-Good
Friday Agreement Northern Ireland***

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Abstract

With a little help from our friends?: Independent commissions and the mediation of issues in post-Good Friday Agreement Northern Ireland

Dawn Walsh

This dissertation uses mediation theory to examine the implementation stage of the Northern Ireland peace process. This highlights the fact that mediation does not end when a peace agreement is signed. The implementation of agreements is also a difficult challenge and an examination of how mediation theory can explain the role of third parties at this significant stage will fill a gap in our understanding of post agreement mediation. It examines how the Independent Commission on Policing, the Independent International Commission on Decommissioning, the Independent Monitoring Commission, and the Consultative Group on the Past managed their respective issues. The analysis establishes what type of mediation each commission used and how the identity of the mediator, the issue intensity, terms of reference of the commission, and the presence and nature of the Good Friday Agreement affected this. It finds that mediator identity has a strong effect on the type of mediation used; a combination of members with high international status and local members facilitated more interventionist mediation. Similarly, despite an inclination to focus on certain aspects of a mandate, terms of reference that explicitly provided for deeper involvement resulted in more interventionist activities. Issue intensity was not found to have a significant effect and its impact was largely mitigated by other factors. Finally, the Good Friday Agreement had a complex effect on the mediation. Mediation type was affected both by the existence of a peace agreement - which was seen as legitimate given its approval in a referendum - and the nature of the agreement as international, Lijphartian, and coercive.

Introduction

INTRODUCTION

We in Ireland appreciate this solidarity and support - from the United States, from the European Union, from friends around the world - more than we can say. The achievement of peace could not have been won without this goodwill and generosity of spirit.¹

The role of third parties and external actors in efforts to resolve the conflict in Northern Ireland was one of its most notable aspects. Their involvement has been cited by many as being central to the relative success of the peace process and the negotiation of the Good Friday Agreement (GFA).² There has been considerable examination of the role of these third parties in the build-up to the 1998 GFA.³ There has also been a small amount of work on the role of the USA in post-agreement Northern Ireland.⁴ However very little of this literature addressed the role played by a number of key independent commissions, most with a strong international component, that were charged with managing some of the most contentious issues of the peace process. This dissertation addresses this missing dimension. Independent commissions were key players in post-agreement Northern Ireland. Their involvement led in most cases to the relatively successful resolution of issues which were critical stumbling blocks to the implementation and operation of the GFA.

This dissertation draws on theoretical approaches in ethnonational conflict resolution that focus on mediation by external actors, specifically the rich repository of research carried out

1 John Hume, 'Nobel Lecture', Oslo, December 10, 1998.

2 This agreement is alternatively known as the Good Friday Agreement or the Belfast Agreement. For consistency, this article will henceforth use the term Good Friday Agreement as it is more recognized by people outside of Northern Ireland. The text of the agreement is available online from multiple sources including the Conflict Archive on the Internet (CAIN) website at <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>.

3 E.g. Roger MacGinty, 'American Influences on the Northern Ireland Peace Process'. *The Journal of Conflict Studies*, 17, no. 2, (1997): 31-50. John McGarry and Brendan O'Leary, 'Consociational Theory, Northern Ireland's Conflict, and its Agreement. Part 1: What Consociationalists Can Learn From Northern Ireland'. *Government and Opposition*, 41, no. 1 (2006): 43-63. Adrian Guelke, 'The United States and the Peace Process'. In *The Northern Ireland Question: The Peace Process and the Belfast Agreement*, eds. Brian Barton and Patrick J. Roche (Palgrave Macmillan, London, 2009).

4 Mary-Alice C. Clancy, *Peace without consensus: power sharing politics in Northern Ireland*, (Farnham: Ashgate, 2010). Lee Marsden, 'Promoting democracy in Northern Ireland: George Bush and the peace process'. *The Political Quarterly*, 77, no. 1 (2006): 61-70.

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by Jacob Bercovitch in conjunction with a number of co-authors.⁵ Issues such as policing reform and putting paramilitary weapons beyond use were deeply contentious and were not fully resolved by the GFA. Rather, they were entrusted to independent bodies that attempted to mediate a resolution. This process of delegation became common and a number of other independent bodies were created in the decade after the agreement.

A systematic analysis of the role of these groups builds on the existing literature examining the role of external actors in the Northern Ireland peace process. Furthermore, it highlights the key role that mediators played in the post-agreement phase of the process. Many peace agreements fail and the GFA looked like it might have done so on a number of occasions. This dissertation helps us to understand how mediation can operate in a post-agreement environment and how it can focus on resolving specific issues which threaten the success of agreements.

Third parties can undertake an almost endless range of activities during their intervention in peace processes. Using mediation theory and a threefold mediation type this dissertation captures the precise role of the independent commissions in Northern Ireland, classifying these activities in terms of the depth of intervention they reflect. It also examines how the key factors of mediator identity, issues intensity, terms of reference of commissions (TOR) and the peace agreement itself affected the choice of activities by the groups. Crucially this tells us why mediators undertake certain activities over others, helping us to understand the often intricate and opaque role of third parties. This is increasingly salient as the current research suggests that deeper interventions lead to more positive outcomes.⁶ While success is a complex concept in relation to the amelioration of conflicts, these indications are important as they suggest that where possible the factors should be manipulated to facilitate deeper interventions.

⁵ Jacob Bercovitch and Richard Jackson, 'Negotiation or Mediation?: An Exploration of Factors Affecting the Choice of Conflict Management in International Conflict'. *Negotiation Journal*, (2001): 59-77. Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 170-202.

⁶ Jacob Bercovitch and Su-Mi Lee, 'Mediating International Conflicts: Examining the Effectiveness of Directive Strategies'. *International Journal of Peace Studies*, 8, no. 1 (2003): 1-17.

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The focus of this dissertation was on the role of the Independent Commission on Policing (ICP), the Independent International Commission on Decommissioning (IICD), the Independent Monitoring Commission (IMC), and the Consultative Group on the Past (CGP). While there were other independent groups established in Northern Ireland these were the most significant. They were charged with managing issues that threatened the peace process and the success of the GFA. Together they provided diversity in terms of the factor mentioned above and allowed the observation of the effect of variation in these key factors on mediation.

The research for this dissertation was largely based on official documents and reports, political party and government statements, and newspaper reports. These sources were supplemented by a series of interviews with members of the commissions, British and Irish officials who were involved with their work, politicians, and civil society activists from their issue areas. This dissertation was divided into seven chapters. The first chapter introduces the research question, providing necessary theoretical and empirical background. It explains the critical nature of the implementation phase of peace processes, surveys the existing literature on third party involvement as mediators in peace processes, examines the activities undertaken, the factors driving the choice of activities and issues such as concepts of successful mediation - who mediates and why. The empirical case of Northern Ireland is then introduced, focusing on the nature of the peace agreement and the range of third parties involved in the peace process. Chapter two outlines the methodological approach of the research and explains how a number of methodological challenges were managed. Chapters three, four, five, and six provide an analysis of the roles of the ICP, IICD, IMC, and CGP respectively. They introduce the respective commissions; examine the activities it undertook, and how the four variables drove these activities. The conclusion draws together the findings for the Northern Ireland case and outlines how these findings are more widely applicable.

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CHAPTER ONE: THEORISING POST-AGREEMENT MEDIATION BY COMMISSIONS

The signing of the Good Friday Agreement (GFA) on the 10th of April 1998 was heralded as an historic day for Northern Ireland. After centuries of violent conflict, the most recent incarnation of which had lasted over thirty years and resulted in the deaths of over three thousand people, there was broad consensus on the way forward for the region. The endorsing of the GFA in popular referenda both in Northern Ireland and Ireland further underscored the fundamental progress which the agreement marked. However, its signing and popular endorsement marked the end of the beginning rather than the beginning of the end. Much of the hard work that was necessary to make a peace process work was still to come.

Most peace agreements fail and the GFA was at particular risk of suffering this fate on a number of occasions. The institutions set up by the agreement were suspended on various occasions and they teetered on the brink of collapse at other times. The cause of this instability was complex and multi-faceted. However, a number of contentious issues that existed within the peace process were a substantial source of volatility. These included the reform of policing, the decommissioning of paramilitary arms, the monitoring of ceasefires and dealing with the past conflict and its victims. In each of these areas an independent commission was set up to manage the issue. These commissions were asked to administrate existing legislation and/or to make recommendations regarding reforms in their respective areas.

How these commissions operated has not been explained. There are historic narratives which outline the basic progression of events in relation to particular issues but there has not been an academic study that addresses the question of how these involvements can be best understood. This dissertation establishes how these commissions behaved and what affected their behaviour. In order to provide a way

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of understanding the operation and involvement of the commissions in the implementation phase of the Northern Ireland peace process a type of different forms of mediation was applied; this was drawn from existing literature and adapted for the Northern Ireland case. These different types of mediation involved the commissions engaging in different tasks and represent different levels of intervention in the peace process. The commissions were examined to establish what type of mediation they exhibited (with possible variation over time). Once this was established the dissertation examined how four important factors (mediator identity, issue intensity, terms of reference, and the GFA) affected which type of mediation was used.

This chapter introduces the research question and the different concepts which are central to it. It discusses the importance of the implementation stage of peace agreements and how this project made an important contribution to this area of research. It then discusses existing mediation theory and how this literature informed the research question addressed in this dissertation; notably how the work informs the mediation type used which includes facilitative-procedural mediation, formulative mediation, and directive mediation. The issues of the variety of factors involved and their complex identities and roles are then discussed. The empirical case of post-GFA Northern Ireland is then examined. The internationalisation of the peace process and how this affects the use of meditative commissions is examined. The three-fold potential effects of the GFA's consociationalism on this dissertation is then explained, looking at its international, Lijphartian, and coercive elements. Finally a theoretical model for the research is provided.

Research Question

Fundamentally this dissertation asked what role the independent commissions played in managing their respective issues during the implementation phase of the GFA. In order to answer this question the dissertation examined the independent

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commissions to establish what form of mediation they utilised and what factors influenced the choice of that type of mediation. A type of mediation was used to provide meaningful distinctions regarding the different types of activities the commissions engaged in and levels of intervention in the process which these represented. This type included facilitative-procedural mediation, formulative mediation, and directive mediation.

In facilitative-procedural mediation the mediator acts as an intermediary between the conflict parties, they channel and clarify information and they may highlight possible areas of agreement. The mediator also has power over procedural elements of the mediation such as the agenda, access to media and access to constituents not present at the talks. In formulative mediation the mediator makes considerable suggestions regarding the substance of any compromises made on particular issues. They claim authorship of these suggestions. Directive mediation goes further: here the mediator will not only advocate a particular compromise but they will put pressure on the parties to accept their suggestion. The benefits of compromise and the costs of non-agreement will be highlighted. The mediator will use their power and resources as leverage. This type was adapted from two existing types of mediation in the literature and will be discussed further in the section which outlines how the existing literature has informed this dissertation.

This dissertation first established what type of mediation each commission was engaged in and whether there was temporal variation within each individual commission. It then examines what affected this. A number of key factors have been identified from within the existing literature as having an effect on mediation type. These factors are the nature of the conflict, the identity and status of mediators, and the mediation environment. These factors are currently being used to explain why certain types of mediation are used in different contexts *during the mediation of an initial settlement or agreement*. This dissertation focused on a later but equally important phase of conflict resolution: *implementation of an agreement*. The

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existing factors were reworked in order to make them applicable in this new implementation context and the Northern Ireland case. The importance of this stage of the peace process is now discussed.

Implementation of peace agreements

The implementation of a peace agreement is not an inevitable result of the continuous march of time; implementation is necessary if it is to be argued that the peace agreement has been successful in ameliorating the conflict in a real way. Any measure of success in peace processes involves recognition that there must be sincere efforts to implement the changes needed to bring about the political and constitutional transformation.⁷

It may be argued that if the terms of the peace agreement were clearly specified the implementation phase would simply involve the logical and smooth execution of these terms. But implementation is not usually a straight-forward process. This is due both to the role of 'constructive ambiguity' in reaching agreement and the fact that the depth and breadth of reforms needed in a post-conflict society mean that it is difficult if not impossible to specify every element in a formal agreement.⁸ In addition to this, confidence needs to be strengthened in stages. Post conflict societies often suffer from chronic mistrust, especially in internal conflicts where power is shared and cannot simply be divided or partitioned.

7 John Darby and Roger MacGinty, eds, *The Management of Peace Processes*, (London: MacMillan Press, 2000) 8.

8 'Constructive ambiguity' refers to the way in which certain actors may selectively interpret a peace agreement in order to make its provisions more attractive to its constituents. In some cases the source of ambiguity is deliberate ambiguity in the text in other cases the text may be clearer but actors may still engage in a degree of interpretation.

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As Bekoe argued a review of case studies shows that there is a gap between the concessions promised in peace agreements and the smaller steps needed to realise those provisions.⁹ For example the GFA states:

...progress (has been) made by the Independent International Commission on Decommissioning and the Governments in developing schemes which can represent a workable basis for achieving the decommissioning of illegally-held arms in the possession of paramilitary groups.

And that

All participants accordingly reaffirm their commitment to the total disarmament of all paramilitary organisations. They also confirm their intention to continue to work constructively and in good faith with the Independent Commission, and to use any influence they may have, to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement.

This clearly did not outline a detailed timetable or procedure for the implementation of these proposals on decommissioning.¹⁰ Fundamentally these issues were assigned to the relevant commission.¹¹ The task allocated to this and the other commissions, to bring these issues to an agreeable conclusion, was immense and success by no means guaranteed.

9 Dorina A. Bekoe, 'Towards a Theory of Peace Agreement Implementation: The Case of Liberia'. *Journal of Asian and African Studies*, 38, (2003): 258.

10 There was clearly a deadline for the completion of decommissioning though no indication of when it would begin. Furthermore none of the paramilitary groups were parties to the agreement so the 'commitment' applied to the political parties, particularly those who had direct links to paramilitary groups.

11 This assigning of issues to another body may be seen to fit with existing literature on delegation. However, delegation does not address the post-conflict nature of the issues which is fundamental to the case being examined in this dissertation. Therefore mediation theory is a more suitable theoretical framework.

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The record shows that in the majority of cases even where peace agreements are negotiated and signed these agreements collapse and the conflict reemerges.¹² In part their success is dependent on the quality and content of the agreement. However there are also a number of key elements that can be identified as having facilitated the success of the agreement in question. One such element is the useful role of third parties. Third parties are crucial if agreements are to be reached. And without the continued commitment to these agreements by third parties - to sustain the agreements through difficult years of implementation - the agreements would have collapsed. Many of the most successful peace agreements were not only agreed by the direct parties to the conflict but also by key regional and global powers.¹³

If a peace process is to be successful third party involvement in the processes should not end when an agreement is signed. The commitment of the regional and global powers to the Northern Ireland peace process can be seen in the involvement of the British, Irish, and US governments.¹⁴ How these third parties should act and what role they can play in implementing peace agreements is not clear. Cocker and Hampson provided a useful broad guideline. This included: coordinating timetables, facilitating demilitarization, avoiding excessive expectations, determining the shape of the deal, maintaining coherent leadership of the implementation process, and using the leverage it offers to force decisions where a settlement remains incomplete.¹⁵ These various tasks fit into different aspects of the existing theoretical literature regarding the role third parties can have in resolving conflicts. These theories are now outlined in order to demonstrate how they informed this dissertation.

12 John Stedman, *Implementing Peace Agreements in Civil Wars: Lessons and Recommendations for Policymakers*, (Stanford University: Centre for *International Security and Cooperation*, 2001) 1.

13 Chester A. Crocker and Fen Osler Hampson, 'Making Peace Settlements Work'. *Foreign Policy*, 104 (1996): 55-61.

14 This dissertation treats the British and Irish governments as third parties not to make a judgement as to the rightful constitutional position of Northern Ireland but rather to distinguish them from the direct conflict parties the two communities in Northern Ireland.

15 *Ibid.*, 71.

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Theories of third party involvement in peace processes

There are many different theories and terms that have been used to describe third party involvement in peace processes. This section discusses how these existing literatures informed this analysis. The need to develop a type that differentiated between different types of mediation and why this should be based on the level of intervention they involve is justified. The factors which are highlighted in the existing literature as affecting what type of mediation is used and how they are adapted for use in this dissertation is explained.

Outcomes of mediation are then discussed. The different definitions of success and the effect of mediation type on the outcome will be explored. The issue of who mediates, why they get involved, and why conflicting parties ask for or accept mediation is then discussed. Finally, other theories and terms which have been used to describe third party involvement in peace processes are outlined in order to demonstrate how they are not alternatives to mediation but can be incorporated into mediation if a comprehensive and clear type of mediation is used.

Types of mediation

Mediation has a long history, has been used in many different contexts, and continues to be used not just international relations but in labour disputes and the area of family law amongst others. However, as Bercovitch explained, the frequent attempts to study and analyse the practise by scholars from a broad range of disciplines has been beset with problems relating to lack of a clear definition and a tendency to focus on anecdotal or personal accounts. Bercovitch offered a clear (albeit broad) description of what is mediation activity. It referred to a wide range of third party activities that are acceptable to the conflicting parties, and that purport to abate, settle or resolve an (international) dispute without having to resort to force

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or invoking authoritative rules.¹⁶ This highlighted the voluntary and non-coercive role of mediation as well as its focus on ameliorating the conflict situation.

Narrow definitions of mediation are consistent with the attempt to capture the 'essence' of mediation and to draw boundaries between mediation, conciliation, facilitation, good offices, shuttle diplomacy, and fact-finding. This is a futile exercise. When intervening in an international dispute, a mediator may exhibit all or any combination of these behaviours. This is why a behavioural approach should be adopted and mediation defined broadly as

a process of conflict management where disputants seek the assistance of, or accept an offer of help from, an individual, group, state or organization to settle their conflict or resolve their differences without resorting to physical force or invoking the authority of the law.¹⁷

This definition is somewhat useful as it draws a distinction between mediators as actors who can resort to the authority of law in having their recommendations implemented such as adjudicators. However the broadness of the definition does not provide a real insight into how mediation operates, it does not tell us what mediators do. As the aim of this dissertation is to capture how the commissions acted as mediators (and why), it is therefore necessary to explore the various types of mediation that are discussed in the literature.

Mediation types

In pursuit of the overriding objective of dispute settlement a third party may play a number of roles. These range along a continuum from passive roles to active roles, or from those that represent a low level of intervention to those which involve a

¹⁶ Jacob Bercovitch, 'Focus On: International Mediation'. *Journal of Peace Research*, 28, no. 1 (1991): 3-6.

¹⁷ Jacob Bercovitch and Jeffrey Langley, 'The Nature of the Dispute and the Effectiveness of International Mediation'. *The Journal of Conflict Resolution*, 37, no. 4 (1993): 671.

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higher level of intervention. Scholars stress that much of the existing research examines mediation in general and does not make significant distinctions between the different types.¹⁸ Treating such a diverse range of activities as one means that these studies lose explanatory power and are often preoccupied by disagreements over definition. In response to such work a number of different types of mediation have been created in an effort to overcome these weaknesses in the literature.¹⁹

Types which sought to make important distinctions between the different roles which mediators play in peace processes emerged in the late 1970s and 1980s. Initially they were regularly adapted directly from types of mediation used in other contexts such as labour mediation. The earliest of such taxonomies was established by Kressel and classified three distinct type of mediation: reflexive, substantive, and contextual. Reflexive tactics (developing rapport with disputants) oriented mediators to the dispute and set the stage for their later mediations. The substantive tactics (e.g. suggesting specific concessions) dealt directly with the issue in dispute. And contextual tactics (e.g. pointing out common interests of the disputants) were those that assisted the parties in finding their own solution.²⁰

While support was found for this type, empirical research also found the need for revisions, particularly to recognise differences among activities currently being placed in the substantive category.²¹ Other attempts to make distinctions regarding the different activities undertaken by the mediator not only distinguished between the activity undertaken but also categorised the activity based on whether it was focused at the issue under dispute, the relationship between the disputants, or the

18 James Wall and Ann Lynn, 'Mediation: A Current Review'. *The Journal of Conflict Resolution*, 37, no. 1 (1993): 173.

19 Ibid., 160-194. James Wall et al., 'Mediation: A Current Review of Theory and Development'. *The Journal of Conflict Resolution*, 45, no. 3 (2001): 370-391. Kyle Beardsley et al., 'Mediation Style and Crisis Outcomes'. *Journal of Conflict Resolution*, 50, no. 1 (2006): 58-86.

20 James Wall and Ann Lynn, 'Mediation: A Current Review'. *The Journal of Conflict Resolution*, 37, no. 1 (1993): 166-167.

21 Ibid., 167.

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disputants-third party relationship.²² While such nuanced distinctions may appear useful, two issues arise here: firstly such approaches lead to the creation of over twenty different types of mediation. In many ways involve listing of all the different activities rather than grouping such activities together into meaningful types. Secondly, it is difficult to draw distinctions between whether an activity is focused on the issue, the disputants' relationship with each other, or their relationships with a third party. Many activities are focused at more than one of these areas. Thus a type based on this distinction is not the most useful.

Types based on the level of intervention the mediator makes are more commonly utilised. They also provide a more meaningful distinction in the context of this analysis. This dissertation aims to establish how these commissions behaved and what affected their behaviour. In distinguishing between the different ways they could behave the question of the level of intervention which they represent is essential. By categorising their behaviour in this way this analysis not only extends the existing literature on mediation into the implementation phase but also situates itself in a broader literature which examines different levels of third party involvement in peace processes. The level of involvement which third parties have in peace processes and what determines this is a fundamental issue for conflict resolution. By using such a distinction between the different types of mediation this dissertation examines this central question in the less studied context of the implementation of peace agreements.

There were two types that categorise mediation type along this important dimension and are frequently cited in the literature. Firstly, Bercovitch and Houston provided a useful three category classification of mediation types based on Sheppard's taxonomy of mediator behaviour. They focused on the level of intervention by exploring the content, process, and procedural aspects of conflict management. The

²² James Wall et. al, 'Mediation: A Current Review of Theory and Development'. *The Journal of Conflict Resolution*, 45, no. 3 (2001): 375-376.

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three types that emerged were communicative-facilitative mediation, procedural mediation, and directive mediation.²³

The communication-facilitation approach described mediator behaviour at the low end of the intervention spectrum. The mediator typically adopted a comparatively passive role - channelling information to the parties and facilitating cooperation - but exhibiting little control over the more formal process or substance of mediation. Procedural approaches enabled a mediator to exert more formal control over the mediation process with respect to the environment of the mediation. The mediator may have determined the structural aspects of meetings and control constituency influences, media publicity, the distribution of information, and the situation powers of the parties' resources and communication processes. The directive approach was the most powerful form of intervention. The mediator affected the content and substance of the bargaining process by providing incentives for the parties to negotiate or by issuing ultimatums. Directive approaches dealt directly with and aimed to change the way issues were framed and the behaviour associated with them.²⁴

A similar type was developed by Touval and Zartman.²⁵ They put forward three types of mediation: communicative/facilitative, formulative, and manipulative. Communicative or facilitative mediation involved the mediator acting as a channel for communication between the parties. The mediator made no substantive contribution but was restrained to ensuring continued and constructive, discussion and dialogue between the disputants. Formulative mediation involved substantive contribution to the negotiation, including the development and proposal of new solutions, to assist the disputants if and when they reach an impasse. Manipulative

23 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 175-176.

24 Ibid.

25 Saadia Touval and William Zartman, *International Mediation in Theory and Practice*. (Boulder, Colorado: Westview Press/Foreign Policy Institute, School of Advanced International Studies, Johns Hopkins University, 1985) 445-461.

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mediation also provided this substantive contribution but also involved the mediator using its power and influence to 'manipulate' or incentivise the parties into a solution, also referred to as 'mediation with muscle'.²⁶

These types had much in common. The communicative-facilitative type of mediation conceptualised by both pairs of scholars was essentially the same, but a difference did emerge. In Zartman and Touval's type the next type of mediation, formulative mediation, involved substantive proposals by the mediator. This type was distinguished from the more interventionist type of mediation, manipulative, by the latter's use of leverage to encourage agreement. However, Bercovitch and Houston's type excluded mediations that involve substantive proposals from their second category (procedural mediation). Their distinction between procedural and directive mediation was based on this difference in making substantive proposals rather than on the use of power.

The type used in this analysis was drawn from these two types and adapted in order to ensure it captures the meaningful differences between the different commissions. The communicative-facilitative and procedural mediation categories were combined into a facilitative-procedural type of mediation. This was done in recognition of the fact that none of the commissions under examination simply act as channels of communication; as the communicative-facilitative type indicates. Rather, the commissions on the lower end of the intervention spectrum also engaged in controlling procedural aspects of their respective issue to be managed. With this in mind a merely communicative-facilitative category have had no relevance to the case at hand. The second type of mediation used in this type was formulative mediation, as conceptualised by Touval and Zartman and referred to by Beardsley et al.²⁷ The third and final type of mediation included in the type was directive mediation. This type, which was drawn from Bercovitch and Houston's type, also

²⁶ Kyle Beardsley et al., 'Mediation Style and Crisis Outcomes'. *Journal of Conflict Resolution*, 50, no. 1 (2006): 62-63.

²⁷ *Ibid.*, 63.

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incorporated the use of power or leverage by the mediator - as included in manipulative mediation by Zartman and Touval.²⁸ This type will be elaborated on and its observable implications will be outlined in the concluding section of this chapter which will provide the theoretical model.

It is worth noting at this point that the types developed by Bercovitch and Houston, Zartman and Touval, and the type adapted from these for use in this analysis acknowledged fundamental distinctions between mediation types based on the level of involvement or intervention which the mediator made. This drew attention to the fact that mediation types are not composed of discrete types but represent a spectrum of involvement. In order for a mediator to engage in the activities of directive mediation the person or commission may also display characteristics of facilitative-procedural mediation. Yet the use of the types remains useful in that it allows distinctions between levels of intervention to be recognised. The level of engagement which third parties have in implementing peace agreements is an important issue for those interested in conflict resolution. Commissions that engage in directive mediation should exhibit different patterns than those that only use facilitative-procedural or formulative mediation.²⁹ This allows an examination of what affects the type of mediation that was employed.³⁰ This is the issue which is now discussed.

What affects mediation type?

It seems highly unlikely that the type of mediation used in a given context is random or arbitrary. But, as Bercovitch and Wells lamented, the question of what affects

28 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 170-172. Kyle Beardsley et al., 'Mediation Style and Crisis Outcomes'. *Journal of Conflict Resolution*, 50, 1 (2006): 63.

29 Kyle Beardsley et al., 'Mediation Style and Crisis Outcomes'. *Journal of Conflict Resolution*, 50, no. 1 (2006): 65.

30 This dissertation does not ask what type of mediation is chosen as the term chosen implies a conscious choice and the use of a particular type of mediation may or may not be made consciously.

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what type of mediation is used has been greatly neglected.³¹ They argued that mediation is a contingent practice. A small body of research exists which tests the effect of single or assorted variables on mediation either in a specific context or more generally. This dissertation drew on that literature and adapted it for the context being examined.

Terris and Maoz examined the role of conflict versatility – which they defined as the mediator’s perception of its ability to transform the current conflict into a partially or fully cooperative situation. They found that the greater the conflict versatility the more interventionist the type of mediation used.³² Wall and Druckman explored the role of conflict severity, time pressure, and mediator rank on the type of mediation which peacekeepers would engage in. They found that dispute severity has a strong effect on making more highly interventionist mediation likely, while higher rank had a lower effect in the same direction but time pressure had no effect.³³ While both these studies were very context specific they provided an important contribution to this dissertation by highlighting the potential effect of dispute severity, mediator rank, and conflict versatility on the type of mediation used. It was also useful that they tested how these factors affected the level of intervention which the mediation represents. This dissertation also conceptualised the different types of mediation in terms of levels of intervention so this work provided a useful insight.

It is also necessary to draw on research that examined the effect of a broader range of factors on the type of mediations that occurs. Wall and Lynn and Wall et al. both surveyed a broad range of factors and how they may have affected the type of

31 Jacob Bercovitch and Richard Wells, ‘Evaluating Mediation Strategies’. *Peace & Change*, 18, no. 1 (1993): 3.

32 Lesley G. Terris and Zeev Maoz, ‘Rational Mediation: A Theory and a Test’. *Journal of Peace Research*, 42, no. 5 (2005): 563.

33 James Wall and Daniel Druckman, ‘Mediation in Peacekeeping Missions’. *Journal of Conflict Resolution*, 47, no. 5 (2003): 701-703.

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mediation used.³⁴ Both papers found that the identity and characteristics of the mediator had an important influence on the type of mediation. This again highlighted the potential effect of the mediator on mediation type and highlighted its importance for this dissertation. Wall et al. also noted that the cultural distance between the mediator and disputant parties affected mediation type. While this was an important finding it did not apply to this dissertation, as the various commissions are operating in the same broadly Western/Christian cultural context. Wall and Lynn also suggested a possible effect of the rules and norms and mediation context. These were factors which may be significant to this dissertation. Unfortunately neither of these pieces of work distinguishes between different mediation types based on level of intervention. This meant that their findings, while worth bearing in mind - especially where they support findings of other research - were not directly comparable to this research.

In an effort to examine what factor may affect the type of mediation used in terms of level of intervention, Bercovitch and Wells built on Carnevale's work on mediation. This claimed that mediation type resulted directly from the perceptions of the mediator about a number of issues such as the parties' aspirations, the common ground between the parties, and the mediator's incentives. However, Bercovitch and Wells highlighted the fact that this model is inferred from a non-international relations context and that it failed to incorporate a number of issues which would intuitively be expected to affect mediation type, such as mediator resources.³⁵ They built on it by creating five clusters of variables which they felt may affect mediation type. These were the nature of the dispute, the nature of issues, and the nature of the parties, the different relationships, and the mediator's identity. They found each of these clusters of variables had an effect on the type of mediation used.

34 James Wall et al., 'Mediation: A Current Review of Theory and Development'. *The Journal of Conflict Resolution*, 45, no. 3 (2001): 370-391. James Wall and Ann Lynn, 'Mediation: A Current Review'. *The Journal of Conflict Resolution*, 37, no. 1 (1993): 160-194.

35 Jacob Bercovitch and Richard Wells, 'Evaluating Mediation Strategies'. *Peace & Change*, 18, no. 1 (1993): 8-12.

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Bercovitch and Houston drew on this work to compile a comprehensive, though not exhaustive, list of the factors that may have affected the choice of mediation strategy.³⁶ They then comprehensively discussed each of the factors. This comprehensive survey provided a fertile ground from which this analysis drew. Their factors can be grouped under the following broad headings:

- Conflict characteristics;
- Characteristics of the conflict parties;
- Mediator's characteristics and background;
- Context of the mediation.

The *conflict characteristics* included the intensity of the conflict and the issues under contestation. The intensity of the conflict is a term that can relate to a wide range of factors. These included the level of hostilities, the number of injuries or fatalities, the salience of the issues at stake to the parties and the strength of negative feelings the parties hold towards each other. Despite the wide range of issues that can be included under this heading it is logical to suggest that where the intensity of the conflict is low mediation efforts may take a weaker, less interventionist approach.³⁷

Simply creating conditions where talks can begin may be a sufficient role for third parties to play in order to assist in resolving the conflict. Where the conflict intensity is high third parties may need to be more directive in their mediation efforts if they hope to make substantial progress. Conflict intensity is a factor which is included in this dissertation. The intensity of the conflict around the different issues being managed by the commissions varies both from commission to commission and

36 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 173.

37 Ibid., 177.

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potentially over time providing ample opportunity to examine the effect of this factor.

The issues contested in a conflict can be conceptualised in many different ways. One way of thinking about this is to ask whether the issues are essentially civil or interstate. Many of the conflicts that become internationalised were originally civil conflicts. Costs have been incurred as the parties struggle for survival.³⁸ In these conflicts trust building mediation strategies are often necessary, because each party does not even acknowledge the legitimacy of the other. However in conflicts that are essentially interstate, mediation strategies may be more focused on concrete issues such as disputes over resources and how to secure concessions in these areas. Thus both conceptualisations of conflict would require and inspire different mediator strategies.³⁹ This factor was not included in this dissertation for two reasons. Firstly, the distinctions being drawn between the different types of conflict are very ambiguous. For example, ethnic conflict may also involve sovereignty issues. Secondly, the commissions largely deal with issues which would be classified in the same manner if such a crude classification system was used. Therefore the intensity of the conflict around the issue is a factor that offers both greater clarity and variation.

The characteristics of the conflict parties include both their internal makeup and their power and status (relative and absolute). Internally, parties may enjoy different level of political cohesiveness and social homogeneity. There is an assumption that the more commonality between the conflicting parties, the less interventionist the mediation strategy will be. Parties with high degrees of commonality may only need help in initial communication. Actors with low levels of commonality may need help in reaching agreements about processes and norms as they do not have a common

38 Edward Azar, *The Management of Protracted Social Conflict: Theory and Causes*, (Dartmouth: Aldershoot, 1990) 82-109.

39 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 178.

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base from which to begin.⁴⁰ Hence, where levels of commonality are low more interventionist forms of mediation may be used.

In cases where parties have similar levels of relative power and status within the international system, low level mediation strategies may be utilised. This is because in such cases neither party has the motivation, due to equal positions, to behave in an antagonistic manner. Both parties know that compromise is the only manner thorough which resolution can be achieved.⁴¹ Furthermore, the parties' absolute positions within the international system - in terms of power and status may also affect the choice of mediation strategy. If one or both of the parties occupies a strong position internationally, mediation strategies that involve lower levels of intervention are likely. This is due to the fact such parties are unlikely to accept high levels of intervention in their dispute and there are few parties with the necessary strength to exercise strong interventions as mediators in such environments. Where conflict parties occupy a low status or power position in the international system this may invite more interventionist mediation strategies adopted by mediators who are relatively strong. The commissions under examination in this dissertation included local actors. By examining mediator identity this dissertation captured both the effect of the identity of the third parties involved and the effect of the identity of the local parties.

The *mediator's characteristics* play an important role in affecting choice of mediator strategy. There is a wide range of possible actors who may occupy the position of mediator. International organisations, non-governmental organisations, regional organisations, states, and individuals may all act as mediators. Each different mediator will have different strengths and weaknesses.⁴² Certain mediators may be

40 Ibid., 179.

41 Jacob Bercovitch et al., 'Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations'. *Journal of Peace Research*, 28, no. 1 (1991): 10.

42 Ibid., 14.

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in a position to offer rewards, such as financial aid, to conflicting parties who reach agreements. Others may rely more heavily on their reputations or ideational attractiveness. Such elements are referred to as 'soft power'.⁴³ A mediator's choice of strategy will take its own position and resources into consideration. Furthermore a mediator's citizenship may be most important in ethnic or sovereignty conflicts.

It is also important to consider the mediator's previous relationship with the conflict parties. Common membership of alliances, international organisations, or historic relationships may affect what is considered appropriate and acceptable within the mediation. There is disagreement in the literature in relation to the importance of the impartiality of a mediator. Some authors argue that power and status as discussed above, are more important than conceptions of neutrality.⁴⁴ This discussion is usually couched in terms of the effectiveness of mediation, rather than in terms of choice of mediator strategy. Mediators that are seen to be more supportive of one of the conflicting parties may be forced to adopt a lighter-touch mediation strategy - focusing for example on communication - as the party (or parties) that feel less favoured may react negatively to a higher level of intervention.⁴⁵

The strategy which the mediator adopts may also be affected by the mediator's past mediating experience. If the mediator has mediated in other disputes and was successful they may be predisposed towards choosing a similar strategy. Equally if the mediator failed to mediate successfully using a particular approach, it is less likely they will choose that approach in a current situation. Past experiences help a mediator to build up skills related to particular approaches. Conflicting parties will also be aware that certain approaches were successful in the past and may react

43 Joseph Nye, 'Soft Power'. *Foreign Policy*, 80 (1990): 153-171.

44 Jacob Bercovitch and Gerald Schneider, 'Who Mediates? The Political Economy of International Conflict Management'. *Journal of Peace Research*, 37, no. 2 (2000): 149.

45 The use of a team of mediators such as on the commissions under examination can allow for deliberate balancing between mediators seen as supportive of one or other of the conflict parties and neutral mediators.

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favourably as a result.⁴⁶ However despite the obvious value of lesson-learning from past cases to guide the choice of mediation approach, mediators should (and often do) take into consideration the mediation environment associated with a particular conflict.

The identity of the mediator is an extremely important factor which has been conceptualised and operationalized in a variety of ways in different studies but had been found significant regardless of how it was operationalized. It takes on additional significance in this dissertation: commissions, as mediators, are made up of a variety of factors including the conflict parties. This factor was one which had to be included in this study in a way that fully recognised the complex nature of the commissions as mediators. The potential effect of the commissions' composition was drawn from the wider variety of existing literature and adapted for the Northern Ireland case. This will be discussed further in both the section examining who mediates and why parties accept mediation, and in the section providing context from Northern Ireland.

The mediation context takes into consideration the initiation and timing of the mediation and its environment. While mediation is voluntary, different mediations begin under different circumstances.⁴⁷ In some cases mediators are approached by conflict parties and asked to mediate, in other cases the mediator offers their services, and in some cases another party may bring the mediator and conflict parties together. The origins of the mediation may affect how the mediator and the conflict parties view its role. For example, a mediator who was invited by the conflict parties may feel that they have a stronger mandate and therefore engage in more interventionist mediation approaches.

46 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 184.

47 *Ibid.*, 182.

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The timing of the mediation may also affect the choice of approach. A different level of intervention by the mediator may be appropriate at different stages of the conflict. Given the focus of this project on the implementation stage of the Northern Ireland peace process, it is worth noting that there are two contradictory ways in which this stage may be seen to impact on choice and appropriateness of mediator strategy. It can be argued that at this stage of a conflict any third party mediator should only be involved in low level intervention. The conflicting parties must be given the space to take ownership of their new situation. Conversely it can also be argued that the implementation stage is marked by high levels of vulnerability on the part of the conflicting parties and that an approach towards mediation that is highly interventionist can use third parties to help overcome such vulnerability. The environment where the mediation takes place will present constraints and opportunities for the mediator and will therefore affect their choice of approach. An environment that gives the mediator control over aspects of the physical setting such as how parties are seated and their access to various actors will encourage a more interventionist approach to mediation.

These mediation context factors were considered in this dissertation, particularly how they are captured in the terms of reference of the different commissions (TOR) and the GFA. The issue of timing was allowed for in a number of ways. This dissertation brought mediation theory into a whole new stage of conflict resolution: implementation. Furthermore, as all the issues being addressed by the commissions have reached the implementation stage, there is a lack of variation on this issue. Finally, the covariational and causal process observation methods of this dissertation allowed the issue of timing to be considered both as a simple temporal element and in terms of significant effects. This better captures any time effect than does simply measuring the number of months or years an issue was controversial.

Having identified this wide range of possible influences on which mediation type is used, Bercovitch and Houston undertake an extensive quantitative analysis of

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instances of communicative-facilitative mediation and directive mediation. They find that mediator identity, the nature of the issues, and the mediation environment have the greatest effect on the choice of mediation strategy.⁴⁸ The variables which in previous research were found to have the most powerful effect on the type of mediation used were included in this analysis. This was combined with a need to focus on the variables which were likely to be significant given the specific Northern Ireland context. Thus, the examination of the case of the independent commissions in Northern Ireland focused on mediator identity, issue intensity, TOR, and GFA. As the existing understanding of these factors is based on the use of mediation to reach initial settlements, they were re-worked in order to be applied in the implementation phase which this dissertation addressed. This adaptation will be discussed in the next chapter.

When is mediation successful?

Mediation has not been a universal remedy to end conflict. Understanding the relative success rates of the different types of mediation provided important context for this dissertation. If one form of mediation was found to be more successful it would be desirable, where possible, to manipulate the factors that affect mediation type to allow for this type of mediation. This question is more complex than it may first appear. This is because there is no clear definition of mediation success. Before the relative success which the different types of mediation exhibit is discussed the concept of mediation success is addressed.

Evaluation criteria for assessing the success or failure of mediation are often taken for granted. However some scholars create their own specific definitions of success which can be problematic for comparative researchers. Others use broad definitions to maintain flexibility, speaking in terms of partial or full settlement. Another group have defined success as achieving the aims of the parties (conflicting and mediating).

⁴⁸ Ibid., 195.

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The lack of agreement on what is success in international mediation is the result of different views on the international system and the role conflict plays in it.⁴⁹ Conflict management, conflict settlement, conflict resolution, and conflict transformation are different terms that are used by those wishing to describe action taken to ameliorate a conflict situation. However, they do not share the same understanding of the conflict and therefore differ in what they consider to be a successful outcome of their efforts.

Conflict management has been conventionally associated with conflict containment. Its theorists see 'violent conflicts as an ineradicable consequence of differences of values and interests within and between communities' and see

Resolving such conflicts as unrealistic: the best that can be done is to manage and contain them and occasionally to reach a historic compromise in which violence may be laid aside and normal politics resumed.⁵⁰

This definition assumes that conflicts in the international system are irresolvable and that their successful administration is limited to containment and ending the violence.

Burton distinguished between two other concepts: 'settlement of conflict' and 'resolution of conflict'. Conflicts are 'settled' if the outcome entails a loss for one side and a gain for the other, or a compromise in which all or some of the parties are losers to some degree. In some cases, this can be the result of coercion. The conflict is 'resolved' if the outcome fully meets the needs and interests of all the parties concerned.⁵¹ This was based on Burton's understanding of conflict as resulting from the frustration of basic human needs.

49 Marieke Kleiboer, 'Understanding Success and Failure of International Mediation'. *Journal of Conflict Resolution*, 40, no. 2 (1996): 360-362.

50 Hugh Miall, *Conflict Transformation: A Multi-Dimensional Task*, (Berlin: Berghof Research Center for Constructive Conflict Management, 2004) 3.

51 John Burton and Frank Dukes, *Conflict: Practices in Management, Settlement & Resolution* (New York: St. Martin's Press, 1990) 83-87.

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The United Nations Institute for Training and Research stated that 'conflict transformation' is a term that has been used increasingly in the last number of years to refer to the longer-term and deeper structural, relational, and cultural dimensions of ending conflict.⁵² As a theoretical framework, conflict transformation can provide valuable insights - particularly in respect to asymmetric and protracted conflict. It focuses on the dynamics through which the conflict became violent, rather than narrowly focusing on bringing about a cease-fire or settlement.⁵³

By adopting a nuanced understanding of how conflict is ameliorated the fact that each approach has its strengths and weaknesses is acknowledged. However there is research that finds that more interventionist types of mediation are 'more successful'. Here success is operationalized as either a formal settlement or a ceasefire.⁵⁴ Such definitions of success are clearly not directly applicable to post-agreement contexts. However the logic that higher intervention is required to overcome the obstacles to resolving conflicts and so more interventionist forms of mediation are more successful extends to this phase. It is reasonable to expect that mediation types that are successful in helping parties to reach agreement may also help conflict parties to implement the agreement. Behaviours which helped the parties to overcome broad issues such as constitutional disagreement are also likely to also help these parties to reach agreement on specific compromises regarding issues such as security sector reform. The implementation stage is an extension of the pre-agreement peace process and thus similar activities would be constructive.

52 This derives from the work of Johan Galtung, see for example Galtung, J., 2000, 'Conflict Transformation by Peaceful Means (The Transcend Method)', participants' and trainers' manual, United Nations Disaster Management Training Programme, Geneva.

53 Tom Woodhouse and Tamara Duffey, *Peacekeeping and International Conflict Resolution*, (New York: UNITAR POCI, 2000) 31-59.

54 Jacob Bercovitch et al., 'Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations'. *Journal of Peace Research*, 28, no. 1 (1991): 15.

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The diversity of opinion in the current literature regarding success is reflective of different views of the international environment and how it operates. They centre on disagreement over how power should operate. Those who advocate less interventionist types of mediation argue that conflict parties must reach their own agreement: those types of mediation that involve mediators suggesting solutions or pressurising parties to accept an outcome can damage the atmosphere of trust and good will that is necessary. Analysts who encourage the adoption of more interventionist styles of mediation argue that the ability of the mediator to make their own substantive proposals and/or to use leverage will allow him/her to be more effective.

The different approaches to ameliorating conflicts and how they view power relations are important to consider. But they are not wholly applicable to this dissertation for a number of reasons. The commissions in Northern Ireland were not wholly external and included the involvement of the conflict parties. Thus the tension between local ownership of the process and strength of intervention of the mediator is less evident. Furthermore, the wider approach to how the conflict is being ameliorated is decided at the agreement stage. At the implementation stage a more straight-forward view of whether mediation has been successful can be applied. Were the individual issues which the commissions were charged with managing resolved? Do these issues continue to pose a threat to the wider peace process? Is the issue they are charged with resolved? For example, were weapons decommissioned or were recommendations implemented?

Who mediates, who should mediate and why do parties enter into mediation?

As was mentioned in the last section, different approaches to mediation have different ideas as to who should mediate, as they place varying levels of importance on different traits. In order to examine who mediates, mediators are often categorised in a three-fold manner: individuals, states, and international

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organisations. A common vision of a mediator is that of an individual who travels the globe going from city to city trying to assist conflict parties in reaching an agreement to prevent or end violence. In reality the individual mediator is an unusual entity and many of those identified as such are in fact representatives of states or international organisations. Only a small number of mediations are carried out by individuals (often those who have retired from international relations in a state or international organisation capacity), the majority of mediations are carried out by states or international organisations.⁵⁵

When states offer or are invited to mediate they often send an individual or group of their top decision-makers. International mediation by such actors, often including foreign secretaries/ministers or ambassadors, is shaped by several factors: their position domestically, the scope they are given by the government they represent, and the position of that government in relation to resources and political orientations.⁵⁶ Despite globalisation the state remains an important actor in the international environment but there are also a growing number of international and transnational organisations who are important actors.

International and regional organisations are composed of member states and act in the best interests of these states and in a way that fulfils the aims of the treaties that formed them. Transnational organisations on the contrary are not linked to states. They are composed of individuals or groups who joined together across state boundaries in recognition of shared goals or interests. It has been suggested that the latter type of organisations thus enjoy more flexibility and a greater appearance of impartiality than states and international organisations.⁵⁷

⁵⁵ Jacob Bercovitch and Gerald Schneider, 'Who Mediates? the Political Economy of International Conflict Management'. *Journal of Peace Research*, 37, no. 2 (2000): 147.

⁵⁶ *Ibid.*, 147.

⁵⁷ Jacob Bercovitch and Gerald Schneider, 'Who Mediates? The Political Economy of International Conflict Management'. *Journal of Peace Research*, 37, no. 2 (2000): 147.

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Given the wide range of options with regard to who may mediate in a given conflict it is important to address the question of who is the most effective mediator. One of the most pertinent issues in this regard is whether 'Great Powers' are appropriate mediators. Kleiboer's prototheories offered a good summary of the arguments in favour and against 'Great Power' mediation and the wider theoretical perspectives behind these positions. The assumption that such states make good mediators is based on a realist outlook that accepts their privileged position to offer incentives and deploy sanctions if agreement is not reached. They possess high levels of leverage and are able to become relevant parties to the conflict. However it is important to note that the 'Great Power' must also be willing and have the skills necessary to mediate and that they have their own interests.⁵⁸

In contrast a humanist perspective argues that 'Great Powers' are poorly suited to mediating. It claims that mediation must be aimed at reaching a consensus to end injustice which is the root cause of conflict. 'Great Powers' often enjoy their powerful position in the international system as a result of the status quo injustices and thus have no incentives to facilitate the overcoming of such injustices. Furthermore, the mediator should not be powerful but should empower the parties themselves to act.⁵⁹

Savun did not explore whether a mediator is a 'Great Power' as a measure of mediator appropriateness. He considered access to the relevant information needed by mediators to be central. State or international organisations that are members of alliances and have diplomatic representation, with good intelligences networks in conflicting countries, are the best mediators. These attributes allow these organisations and states to gather the necessary information about the conflict and

58 Marieke Kleiboer, 'Great Power Mediation: Using Leverage to Make Peace'. In Jacob Bercovitch, ed., *Studies in International Mediation*, (New York: Palgrave Macmillan, 2002) 127-140.

59 Ibid., 127-140.

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conflicting parties to act in the most effective manner.⁶⁰ This focuses on the role of the mediator in coordinating an agreement by overcoming uncertainty.

The conceptualisation of mediator identity which will be used in this dissertation draws on these existing ideas relating to the various parties that are involved in mediation. It builds on them considerably in order to make more meaningful classification and draws on other existing literature. For example, The USA was heavily involved in the commissions in Northern Ireland and it will be classified in a way that recognises its 'Great Power' status. Furthermore, the complex and dual roles played by the British and Irish governments in the commissions is not adequately captured by describing them as state actors or outlining their common membership of alliances or international organisations. The complicated nature of mediator identity in relation to this dissertation will be discussed in the next section which provides a more case specific discussion.

Given the diversity of opinion on who should mediate and why, it is useful to explore why conflict parties and mediators engage in the practice. An exploration of possible motivations for engaging in mediation provides a deeper understanding of the process. The conflicting parties may have a range of reasons for entering into mediation: they may hope it will prevent any escalation in the conflict, a conflict party may hope the mediator may influence another conflict party, they may want to make a public display of their commitment to peace, they may want an outsider to blame for the failure to end the conflict, or they may want a mediator to verify or monitor any agreement.⁶¹

60 Burcu Savun, 'Information, Bias, and Mediation Success'. *International Studies Quarterly*, 52, no. 1 (2008): 39-41.

61 Jacob Bercovitch, 'Mediation in International Conflict: An Overview of Theory, A Review of Practice'. In *Peacemaking in International Conflict: Methods and Techniques*, eds. William Zartman and J. Lewis Rasmussen, (Washington DC, United States Institute of Peace Press, 1997) 135.

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Any prospective mediators may also have a range of motivations. They may have a genuine desire to change the course of a conflict, they may want to put into practice ideas surrounding conflict management or transformation, they may want to spread their own ideas or raise their own status, they may have a mandate to mediate due to their membership of an international or regional organisation, or it may be in their interest to preserve an existing structure.⁶² Given these motivations, it is clear that mediation can occur where all parties are committed to ameliorating the conflict situation, but it may also occur where resolving the conflict is not the main aim of the conflict parties or the mediator. For example, even where mediators primarily become involved in a conflict to spread their own ideas or where conflict parties accept mediation to avoid being perceived as intransigent, mediation can still be successful if the correct types are used and if the conflict parties are willing to attempt to resolve their differences.

Third Parties as External Guarantors in peace processes

A number of the different terms used to describe third party involvement, such as conciliation, fall easily within the type of mediation used in this dissertation. Another existing theoretical foundation for the role of third parties in peace processes is the theory of 'External Guarantors'. This theory was considered an alternative way of conceptualising third party involvement in peace processes, particular in the post ceasefire or post-agreement context. However, it too is fully incorporated into mediation theory when a clear and comprehensive type of mediation is used. Special attention was paid to how this theory was incorporated into mediation because it is a theory that focuses on the implementation phase of peace processes, directly linking it to the case examined in this dissertation. This section introduces the theory and demonstrates how it fits within the mediation type being used in this analysis, showing that it should not be considered an alternative approach.

⁶² Ibid., 134.

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The focus of this theory put forward by Barbara Walter, was the vulnerable position in which implementing peace agreements places conflict parties. Showing how this is an impediment to ending the conflict and how third party guarantees can help overcome this obstacle. Walter argued that previous explanations of why conflict parties cannot end their dispute do not offer an explanation for a category of events. Previous explanations focused of the unwillingness or inability of one or more of the parties to negotiate a settlement that resolves the issues which are central to the conflict. However these theories did not explain why parties often return to violent conflict after the negotiation of an acceptable peace agreement. Here she recognised that ending the conflict involves much more than simply reaching an acceptable agreement, as difficult as that may be. Parties must feel confident that the agreement will be honoured.⁶³ This presents third parties with an important opportunity to become involved in ending conflict.

Peace agreements usually involve the demobilisation of combatants, the decommissioning of weapons, and other steps where the parties relax their conflict posture. While such moves are necessary if the conflict is to be ameliorated, these actions leave the parties involved very vulnerable. With no guarantee that the other parties will honour such commitments, any party that does demilitarise leaves itself open to surprise attack. Walter discussed this demobilisation phase and accepted that measures can be taken by the parties to reduce their vulnerability. An important strategy that may be followed is reciprocal implementation. This would allow step-by-step sequencing of military disengagement to ensure no side has a relative advantage at any given point. Yet Walter argued that even when such a procedure is in place monitoring and verification is needed.⁶⁴ It is here that third parties can play a central role by offering to carry out such monitoring and verification roles. These

63 Barbara Walter, 'The Critical Barrier to Civil War Settlement'. *International Organization*, 51, no. 3: (1997) 335-336.

64 Barbara Walter, 'Designing Transitions from Civil War: Demobilization, Democratization and Commitments to Peace'. *International Security*, 24, no. 1 (1999): 135-136.

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roles are recognised in mediation theory and fall within the directive type of mediation.

The above section has outlined how groups experience high levels of vulnerability post-agreement and how third parties may be able to assist. They can monitor and verify demilitarisation and oversee the implementation of challenging reforms. These activities are the essence of the external guarantor model but they also fall within the duties of a directive mediator. Consequently, mediation explains what external guarantor theory does - and more - making it a better overall theory.

Walter also discussed the issue of credibility. She argued that the involvement of third parties is only seen as credible if it is in the interest of the outside parties and if the third parties will use force if necessary.⁶⁵ While these may be general criteria for credibility, such factors are (like all things in peace processes) dependent on the individual conflict. The costly nature of offering to act as external guarantors is cited as dis-incentivising. Therefore, if the costs of acting as external guarantors can be lowered the credibility of such guarantees would increase. In relation to security issues third party guarantors need not be prepared to use force. They may simply monitor or verify demilitarization and rely on another actor or body to provide military assistance if it becomes necessary. The second actor or body may not be seen as sufficiently neutral to act as monitor but may be more an appropriate guarantor should force be required. This highlights the different levels of guarantee and commitment that can be made by various actors depending on capabilities and appropriateness.

Reputational logic can also be a crucial factor in enhancing the credibility of commitments given by third parties. Third parties who offer to act as external guarantors of peace processes and do not live up to these commitments face

⁶⁵ Barbara Walter, 'The Critical Barrier to Civil War Settlement'. *International Organization*, 51, no. 3: (1997) 340.

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reputational damage.⁶⁶ This logic not only applies to whether third parties live up to commitments but also explains why certain actors offer or are asked to act as third party guarantor. In this manner third party external guarantors are identical to external mediators in terms of motivations and appropriateness. Reputation, status, past experience, and past relationship with the conflicting parties all contribute to whether actors act as guarantors - and if so - how credible and committed they are. These factors, which Walter discussed as making guarantees credible, are the same factors which motivate mediators, some of which have already been mentioned. Again, external guarantor theory does not demonstrate any real difference from mediation theory; it is simply addressing some elements of mediation.

It could be argued that the defining difference between mediation and external guarantor theory is whether they view the role of third party intervention as voluntary or coercive. One of the defining characteristics of mediation theory is that mediation is a voluntary process.⁶⁷ External guarantor theory involves no such stipulations regarding the voluntary nature of third party involvement. In fact, Walter's statement that for such guarantees to be credible third parties must be willing to use force may appear to be the antithesis to the voluntary nature of mediation.⁶⁸

The positions of both theories in relation to whether third party involvement should be voluntary or coercive are less distinct and more compatible than it may first appear. Directive mediation allows third parties to use leverage to motivate the conflict parties to reach an agreement. Positive inducements such as the promise of investment are often used as 'carrots' while threats to adopt less favourable policy

66 Isak Svensson, 'Guaranteeing Peace: The Credibility of Third-party Mediators in Civil Wars'. In Jacob Bercovitch and Scott Sigmund Gartner eds., *International Conflict Mediation: New Approaches and Findings*, (London: Routledge, 2009), 115-134.

67 Jacob Bercovitch 'Focus On: International Mediation'. *Journal of Peace Research*, 28, no. 1 (1991): 3-6.

68 Barbara Walter, 'The Critical Barrier to Civil War Settlement'. *International Organization*, 51, no. 3: (1997) 340-342.

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towards the region are often used as the accompanying 'stick'.⁶⁹ Similarly, despite Walter's argument for a commitment to use force, many third party guarantors do not commit to putting troops on the ground; rather using sanctions against groups that do not live up to their commitments.

Again, external guarantor theory can be subsumed into directive mediation theory. This nuanced picture that moves away from strict views of voluntarism or military force is more reflective of reality. The high cost of commitments to use military force mean such promises are relatively rare. Likewise, many mediators recognise the need for threats and promises in order to persuade conflict parties to make difficult compromises. Therefore any theory of third parties that recognises the frequent use of incentives rather than force is more realistic. This is the approach explicitly taken by directive mediation.

A final area where external guarantor theory may argue that it has something to add which is not already covered by mediation theory is in relation to who should mediate. However both theories advocate that the third parties involved should possess a range of skills and knowledge and both theories see a place for third parties who have historical ties or are regional powers. These roles recognise the significance of such actors in the security of regions *and* their in-depth knowledge of conflicts in their sphere of influence. Both also recognise a role for powerful states. These roles reflect the status and leverage possessed by such parties. Therefore external guarantor theory is in agreement with mediation theory in this area too and again has nothing unique to add which would justify it being viewed as a separate alternative approach.

69 Jacob Bercovitch, 'A Case Study of Mediation as a Method of International Conflict Resolution: The Camp David Experience A case study of mediation as a method of international conflict resolution'. *Review of International Studies*, 12, no. 1 (1986): 43-65.

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The Northern Ireland Context

Having established the theoretical framework and grounding for this dissertation, the empirical environment - the case of Northern Ireland - is now discussed. The international nature of the peace process and the threefold role of consociationalism are now outlined to provide this necessary background and introduce how these elements may affect the commissions examined in this dissertation.

The EU, the USA and other actors

The history of the progress of the Northern Ireland peace process is a history of gradually growing internationalisation of efforts to end the conflict. While traditionally treated by much of the international community and the British government as an internal issue to be dealt with by the UK, the Sunningdale Agreement of 1973 briefly and critically unsuccessfully introduced formal consultation with the Republic of Ireland, and the Anglo-Irish Agreement of 1985 institutionalized this acceptance of the advisory role of the Irish government in attempting to reach a solution to the Northern Ireland issue.⁷⁰ The 1990s saw further involvement by other international actors including the US government and the European Union (EU).

An international development that is often cited as altering the wider setting in which the Northern Ireland conflict was situated was the growing importance of the EU. Its significance has generally been highlighted in two separate but related ways. Firstly, the membership of both Britain and Ireland contributed to enhanced cooperation between the governments and reduced the significance of the border. This position was one that was particularly favoured by the constitutional nationalist party (SDLP.) The Social Democratic and Labour Party saw the logic of Europeanization represented by the UK and Ireland joining the EU in 1973 as key to

⁷⁰ Etain Tannam, 'The European Commission's Evolving Role in Conflict Resolution, The Case Of Northern Ireland 1989-2005'. *Cooperation and Conflict: Journal of Nordic International Studies Association*, 42, no. 3 (2007): 337-356.

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dissolving the importance of the border. They felt it could allow politicians involved in trying to end the conflict work together within an informal European framework (albeit with limited success).⁷¹ Accompanying the reduced significance of the border and reinforcing this idea is the issue of EU funds.

The support of the economy south of the border by EU funds assisted Ireland in the creation of the positive economic conditions that were commonly referred to as the 'Celtic Tiger'. This prosperity was accompanied by a wider but related process of social liberalisation. This undermined but did not alter unionist objections to joining a 'backward papist state'.⁷² The EU also provided funds that sought to redress the underdevelopment of particular areas on a regional not national basis. The administration of these funds was also to be on a regional basis, which it can be argued weakened the importance of state borders.⁷³ However, the EU had no significant political role. As Doyle argued, 'there was no direct involvement by either the European Commission or the Council of Ministers. No other member state ever sought to raise the Northern Ireland conflict or had any strategic desire to' and European reports on the issue such as the 1984 Haagerup report did not lead to proactive European engagement in conflict resolution.⁷⁴

The involvement of the USA was undoubtedly the most prominent international element of the Northern Ireland peace process. Albert Reynolds commented that the 'much vaunted greening of the White House cannot be underestimated in its effect on the trajectory of the Northern Ireland Peace Process'. He further developed this US-International dimension by outlining President Clinton's personal attachment to the (British) Isles. And importantly by indicating that the wider global context

71 Hugh Miall, et al., *Contemporary Conflict Management*, (Cambridge: Polity Press, 1999) 178.

72 Ibid., 178.

73 Etain Tannam, 'The European Commission's Evolving Role in Conflict Resolution, The Case of Northern Ireland 1989-2005'. *Cooperation and Conflict: Journal of Nordic International Studies Association*, 42, no. 3 (2007): 337-356.

74 John Doyle, 'The EU and Northern Ireland, SAARC and Kashmir: The Role of Regional Organisations in Internal Conflicts.' *Centre for International Studies, Dublin City University*, no. 4 (2012): 7.

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allowed for US involvement in a way that would not have been previously possible - given post-WWI American isolationism and that 'Nixon had other things on his mind'.⁷⁵

The election of Bill Clinton as President of the United States led to an unprecedented level of US interest and involvement in Northern Ireland.⁷⁶ The granting of an entry visa for the US to Gerry Adams in 1993 marked a move in control of policy on Northern Ireland away from the Anglophile State Department to the White House.⁷⁷ In 1995 Clinton appointed George Mitchell as the peace envoy that he had promised during his campaign. This culminated in George Mitchell not only chairing the GFA negotiations but critically for this dissertation, chairing the first commission to examine the issue of decommissioning in Northern Ireland. This highlights the direct progression of international involvement in the wider peace process and how it had a direct effect on this analysis. It led to the forming of the first commission to act as a mediator and also affected one of the key factors that this dissertation suggests affects mediation type: mediator identity.⁷⁸

The USA continued to have involvement in the implementation of the GFA as Andrew D. Sens, who replaced Ambassador Donald C. Johnsons in 1999, continued to be a member of the Independent International Commission on Decommissioning. A fellow American, Dick Kerr, also occupied an important position in the Independent Monitoring Commission that was primarily charged with overseeing the paramilitary ceasefires and reporting any activity.

75 Albert Reynolds, 'The Irish Government and the Peace Process, 1992-1994: A Political Perspective'. *Working Papers in British Irish Studies*, 30 (1999): 1-13.

76 Though there had been some involvement by earlier administrations.

77 Roger MacGinty, 'American Influences on the Northern Ireland Peace Process'. *The Journal of Conflict Studies*, 17, no. 2 (1997): 31-50

78 The 1991-92 Brooke-Mayhew with the role of Australian Sir Ninian Stephen talks had set precedents for international involvement.

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Less high profile states have also been pivotal in the support that they have offered the Northern Ireland process. Andrew D. Sens was accompanied on the Commission by Brigadier Tauon Nieminen from Finland and the Commission Chair was General John de Chastelain of Canada. Given how extremely contentious the issue of decommissioning was, and how it continued to linger and threatening the entire process for years after the signing of the GFA, the assistance of the men who sat on the IICD and the states from which they came should not be underestimated.

The above clearly shows that the peace process included strong international involvement. The continued support provided by international members of the independent commissions was a central concern of this dissertation. It is reasonable to argue that given the international history of the process, the internationalised composition of the independent commissions was part of a consistent whole. Furthermore, the content of the GFA also underlined an international understanding of the conflict. The effect of this international element of the GFA is now discussed (followed by the impact of its Lijphartian and coercive elements).

Consociationalism and the GFA

The GFA was widely accepted. Both governments and all the main parties (except the DUP) signed up to it. Importantly, it was endorsed in referendums north and south of the border, affording it considerable status. This suggested that connections to the GFA would afford the commissions legitimacy and leverage thus facilitating more interventionist mediation. There may also be more complex ways in which the GFA affected the commissions considering its multidimensional consociationalism which includes internationalising, Lijphartian, and coercive elements. The implementation of peace processes requires a movement from the general principles of an agreement to the specific detail. Zartman argued that

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implementation is essentially giving details to the formula.⁷⁹ The commissions were implementing the detail of an agreement that was committed to the above consociational principles; therefore these principles may have affected the commissions' work.

The GFA and the broader Northern Ireland peace process cannot be analysed in a meaningful way without a discussion of consociationalism. It is important at this point to outline the triple role consociationalism played in this analysis. Firstly, the consociational model which operates in the Northern Ireland case represented a fundamental internationalisation of traditional consociational theory. This connects to the above discussion of how the international members of the commissions were part of the wider internationalisation of the peace process. Secondly, the Lijphartian elements of consociationalism (power-sharing, minority veto, autonomy, and proportionality) were crucial in structuring the internal institutions in Northern Ireland and may also have influenced the composition of the commissions (encouraging cross-community representation) or the work of the commissions (facilitative-procedural or formulative mediation being consistent with the consensus approach associated with this). Finally, the GFA had a considerable coercive element; the British and Irish governments effectively pressured the local parties into the arrangement by indicating that the alternative would be less favourable, particularly to unionists. This was vital in helping it to overcome one of the strongest criticisms made by detractors of consociational theory. This use of coercion may have encouraged directive mediation by promoting the application of leverage to encourage compromise.

Neo-consociationalism: a continuation of the international

⁷⁹ William Zartman, "Negotiation as a Joint Decision-Making Process." In Zartman, I. William, ed., *The Negotiation Process*. (London: Sage Publications, 1978) 76-77.

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The GFA developed how consociational theory deals with the international elements of divided societies. Consociational theory has benefitted greatly from the ability of the GFA to recognise the international element which is central to many divided societies. It is unsurprising that the GFA introduced this important element to consociationalism, as the history of the Northern Ireland peace process highlights its growing understanding of the importance of the international. This section will discuss how the GFA's new form of consociationalism is international both in content and process, and how this affected the commissions.

The GFA represented a fundamental internationalisation of conflict resolution both in terms of its content and its process. By recognising the principle of consent in law, it moves away from the absoluteness of British sovereignty in the region and codifies the right of the people of Northern Ireland to either unify with the Irish state or remain part of UK.⁸⁰ This was done within the context of an international agreement, as the GFA was signed by two separate states and thus enjoyed the legal status of an international agreement. Furthermore, it included the creation of a number of bodies that work across international borders in order to allow coordination on policies and issues not only between the two parts of the island of Ireland, but also from east to west between Ireland and the nations that make up the United Kingdom.⁸¹

This external dimension, the role of the Republic of Ireland in the affairs of Northern Ireland and the East-West relationship between the peoples of the two islands, were innovatively dealt with. This dimension is termed not as any form of judgement as to the rightful constitutional position of Northern Ireland but simply to recognise that these elements cross state borders. The North-South Ministerial Council (NSMC) and the British-Irish Council (BIC) provide a cohesive framework for the recognition and

⁸⁰ Department of Foreign Affairs, *The Agreement: The Agreement reached at multi-party negotiations*, (Dublin, 1998).

⁸¹ *Ibid.*

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incorporation of the international in post-conflict Northern Ireland. The theoretical background that informs these developments is now discussed.

Traditional consociational theory developed to provide a framework for government in a number of religiously and linguistically divided countries in Europe. It was not developed to deal with the particularities of self-determination conflicts, though it was rapidly adapted and applied in such cases. It focused internally on how power should be exercised at central government level. Disputes such as those in Northern Ireland focus not only on how power should be exercised at a central level but on how much power should reside at this level and how much should be given to regional authorities. For these reasons, Lijphart, the father of consociationalism, was pessimistic about the ability of consociationalism to bring about peace in Northern Ireland. He argued that because of the aversion of Protestants to power-sharing, that they were capable of exercising hegemonic power alone, and because of their disposition to Westminster style politics, consociationalism would be difficult in Northern Ireland.⁸² McGarry and O'Leary argued that this analysis was accurate but limited.⁸³

Lijphart understandably, did not anticipate the innovative cross-border arrangements that are contained in the Agreement.⁸⁴ It was not only unionists that were opposed to internal-power-sharing within the UK. Nationalists needed a link with Ireland. Traditional consociationalism was unable to fathom the complicated arrangements that the agreement provides for North-South and East-West arrangements as embodied by NSMC and BIC because it operated on the false assumption that arrangements must be contained within one state. This was an understandable error given the dominance of the state as a unit of analysis within

82 Arend Lijphart, 'Review Article: The Northern Ireland Problem; Cases, Theories, and Solutions'. *British Journal of Political Science*, 5 (1975): 99–106.

83 John McGarry and Brendan O'Leary, 'Consociational Theory, Northern Ireland's Conflict, and its Agreement. Part 1: What Critics of Consociation Can Learn From Northern Ireland'. *Government and Opposition*, 41, no. 2 (2006b): 249-256.

84 Cross border arrangements were envisaged in the Government of Ireland Act 1920 and the Sunningdale Agreement.

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International Relations. The framework provided for by the agreement recognised that conflicts over self-determination are most effectively managed at a transnational level.

The cross-border institutions established allow for the linkages that the particular communities need to feel recognised and secure by promoting overlapping identities. These developments can increase security and reduce the threat felt by both ethno-national communities. This can be achieved in three ways. Firstly, they give the unionists an alternative source of security to direct British rule. Secondly they allow both communities access to policy-making at several levels (and take divisions within the communities into account). Finally, they reaffirm that the problem is not a UK one but a problem for both the governments.⁸⁵ This cooperation between the governments allows for a common stance and common action on problems as they arise. The conflict is no longer a question of the Protestant majority looking to Westminster for support and a Catholic minority feeling that their fate is in the hands of a British government that views them with suspicion.

The innovative cross-border arrangements of the GFA demonstrate how internationalising the mechanisms of conflict management can increase the feelings of security experienced by the parties and overcome sovereignty disputes, previously thought of as zero-sum in nature. This positive experience can be seen as providing the basis for the future use of the independent commissions as mediators. The commissions are highly internationalised bodies, having members from across the borders on the British Isles (like the NSMC and BIC), and from further afield. Their diverse make-up counters dominance by any one group or actor and allows issues to be framed in a non-dichotomous manner. In addition to paving the way for the involvement of international actors, consociationalism was also important to this project in another way: the traditional elements of consociationalism persisted.

⁸⁵ Kristen P. Williams and Jesse G. Neal, 'Resolving Nationalist Conflicts: Promoting Overlapping Identities and Pooling Sovereignty: The 1998 Northern Ireland Peace Agreement'. *Political Psychology*, 22, no. 3: (2001) 572.

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Traditional consociational principles and the commissions

The less innovative elements of the GFA were also likely to have an effect on the commissions. Lijphart's consociational principles of power-sharing, minority veto, autonomy, and proportionality have been institutionalised within the domestic institutions provided for in the GFA. A detailed exploration of how these institutions operate is outside the scope of this chapter but it is important to note that these principles are not simply abstract but have been applied to the institutions.

Power-sharing within the executive is governed by the use of the d'Hondt formula. It allocates seats within the executive to parties without the need for the parties to reach an agreement on their allocation and a programme for government, thus facilitating power-sharing in an atmosphere where trust is low. The PR-STV voting system allows for the allocation of seats in the assembly on a proportional basis. Within the Assembly members choose to classify themselves as 'nationalist', 'unionist', or 'other'. This identification exists in order to facilitate minority veto on important issues. These are either pre-determined by the GFA, or are designated as such via a 'petition of concern' moved by thirty Assembly members. These different mechanisms which give life to the consociational principles of the GFA have been criticised by many.⁸⁶

What was relevant for this dissertation was whether there was evidence that consociationalism and its principles were a driving force in the management of the conflict in the post-violence period. These principles may have affected the commissions in a number of ways. Firstly, they may have encouraged the use of commissions. Consociationalism promotes the idea that inclusive and consensual institutions are more appropriate in divided societies than majoritarianism. The

⁸⁶ For example, Paul Dixon, 'Is Consociational Theory the Answer to Global Conflict? From the Netherlands to Northern Ireland and Iraq'. *Political Studies Review*, 9 (2011): 309–322.

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commissions were inclusive bodies charged with administrating legislation or making recommendations in a consensual manner. Thus their very use was in line with consociationalism.

Furthermore, this project must be aware of the effects consociationalism may have on two of the important factors that influence mediation type. Consociational principles may guide how the TOR of the various commissions are drafted. The principles of proportionality, power-sharing and minority veto may further affect how the various actors on the commissions' work together. This would have ramifications for this dissertation in relation to how the commissions are viewed either as cohesive and unitary or fragmented and disjointed. Consociationalism is likely to have another influence relating to mediator identity. While the international elements of the consociationalism particular to the GFA facilitate the inclusion of international actors on the commissions, the traditional principles of consociationalism also present in the GFA mandate the inclusion of commission members from both communities in Northern Ireland.

*Coercive consociationalism*⁸⁷

While consociationalism is often associated with a consensual form of government, the form used in Northern Ireland differed from this in a significant manner. The British and Irish governments pressured the Northern Ireland parties into the Agreement and its consociationalism by making the alternative less desirable. This introduced a coercive element and suggested that this particular form of consociationalism may have been compatible with directive mediation and its application of leverage.

⁸⁷ The phrase was pioneered by Brendan O'Leary in 'The Limits to Coercive Consociationalism in Northern Ireland', *Political Studies*, 37 (4), 1989: 452–68.

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The GFA may have affected the use of mediation type by giving the commissions additional status due to their legitimacy. Consociationalism affected the use of commissions in the first place. Its traditional elements favour such an inclusive and non-confrontational form of conflict management. Its new international elements are drawn from the history of international involvement in Northern Ireland and brought George Mitchell's first decommissioning commission into the process, this paved the way for more commissions. Once the use of commissions was established, consociationalism continues to exert an effect. It may guide the TOR of the various commissions and how their various members interact. Importantly it may affect the composition of the commissions. Lastly, the coercive element of the consociationalism in the GFA, seen in the governments' pressuring Northern Ireland parties, may have made compulsion associated with directive mediation more acceptable.

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Theoretical Model

The theoretical model for this dissertation is twofold. Firstly the type of mediation being used by each commission was established. This model clearly specified what should be observed if each variant of mediation was being used by a commission. The empirical reality was compared with these specified observable implications and an assessment made as to what type of mediation was present. The second model then examined whether the four factors (mediator identity, issue intensity, TOR and the peace agreement) affected the type of mediation being used. It outlined what would have been seen if each of the factors were affecting the type of mediation being used. This involved outlining the anticipated effect of each factor and the causal mechanism that has been posited as driving this effect. The empirical data was examined to see if it supported the predicted variation in factors and the causal mechanism. Together this allowed the dissertation to assess how the commissions behave and why they behave in this manner.

In order to ascertain which type of mediation was present in the case of each commission, a clear outline of the observable implication of each type of mediation is provided. Facilitative-procedural mediation involves the lowest level of intervention. If facilitative-procedural mediation was present the following would be observed: mediators providing information to the parties in the hope it assists in resolving the conflict. They would also control procedural elements of the mediation such as the agenda and the access of parties to media or other actors. Information would be channelled between parties.⁸⁸

In facilitative-procedural mediations mediators will be observed seeking to reduce tensions by clarifying or restating positions of the parties in less confrontational or aggressive ways. The mediator will also highlight any common areas of agreement between the parties. The mediator may have private meetings with different parties

⁸⁸ Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 175.

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immediately before direct talks are held. The mediator will be observed drafting the agenda and deciding which issues will be discussed and how long to spend on various issues. The mediator will also control when the discussions take place and will often provide the location.⁸⁹

This control over the physical mediation setting will also be observed extending to control of the distribution of information from the meetings. The mediator will be seen controlling the flow of information from the meetings to different parties. This will include the ability to restrict the media access to those involved in the talks and thus limit the amount and type of information being made public. The mediator will be seen either directly controlling this by issuing the press releases or by overseeing the release of information to the media by the parties themselves. The mediator will be seen controlling the access which those involved in the talks have to their constituents outside the talks. They will limit the ability of those inside the talks to receive information from their constituents or to provide their constituents with information regarding the progression of the talks.⁹⁰ In facilitative-procedural mediation the mediator will not make substantive suggestions or exercise power. The mediator would not make recommendations regarding compromises or make promises, or threats, regarding the implications of non-agreement.

Formulative mediation involves mediators making substantial proposals or recommendations regarding the content of the compromises that may be made. Formulative mediators will be observed proactively outlining the shape compromises may take. While these proposals may be adapted during discussions, they are offered as a framework which can shape agreement. By providing this framework formulative mediators will be seen to take responsibility for concessions. As their

⁸⁹ 'Mediation Stages', Temple University. Last modified March 2006:

www.creducation.org/resources/Mediation_Stages.ppt

⁹⁰ Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 175.

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authors, they are accountable for proposals and the form they take. In the case of formulative mediation, proposals will not be seen as originating with one of the conflict parties. The mediator may stress their authorship of the proposals; this may make the proposals more acceptable to all conflicting parties than if they originate from an opposing party in the conflict.

Under directive mediation mediators will also be seen making substantive proposals. In addition to this they will be observed pressuring conflicting parties to compromise, offering incentives/making promises in return for compromises, highlighting the costs of non-agreement/progression and verifying compliance.⁹¹ The chief determinant of directive mediation is the leverage which the third party employs. This leverage may be seen as the result of the mediator being in possession of certain material resources. The mediator may be observed offering access to these resources as a reward for compromise or reaching agreement and threatening to block access to the same as a punishment for non-agreement or progression of the process.

Leverage can also be observed as the result of non-material power. Mediators may have leverage resulting from their reputation or expertise in relation to particular policy areas. Individuals, organisations or states that are viewed as being leaders in the development of international norms within particular policy areas possess leverage to have such policies incorporated into implemented peace agreements. If this form of leverage were being used mediators would be observed referring to their previous experience or expertise and international norms to press for the acceptance of their proposals.

⁹¹ 'Mediation Stages', Temple University. Last modified March 2006:
www.creducation.org/resources/Mediation_Stages.ppt

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Finally, directive mediators will be seen acting as verifiers of compliance. The threat of non-compliance represents a major obstacle to the implementation of peace agreements, as has been explored within Walter's external guarantor model above. In the case of directive mediation, the mediator will verify that groups are complying with commitments made in peace agreements. This independent verification greatly reduces the risks associated with compliance.⁹²

Each of the commissions under investigation was examined in order to ascertain what type of mediation was used. This dissertation recognised the possibility that the type of mediation being used may vary over time. This did not pose a problem for the dissertation but rather presented an opportunity; if such changes are found these will provide turning points around which the next model can focus. The next step outlines the anticipated implications which would be witnessed if each of the factors being considered were to affect the mediation type. If mediation type varies on the same commission the analysis can explore whether there was a change in any of the factors and trace how this change may (or may not) have led to the change in mediation type. Even if no change in mediation type over time is found this dissertation can trace the effect of the different factors on mediation type as the value of the factors vary across the commissions.

In order to be confident that the factors being examined are responsible for the mediation type an unambiguous model is now provided. Each factor will be discussed. Its anticipated effect on the mediation type will be explained. This explanation will first discuss what values for the factors should be associated with what type of mediation type. Because this dissertation does not base itself solely on correlations, the nature of this relationship will be expanded upon. The theoretical foundation for the effect as seen in existing literature will be discussed. By using both qualitative correlations and causal process observations, this dissertation

⁹² Jacob Bercovitch and Su-Mi Lee, 'Mediating International Conflicts: Examining the Effectiveness of Directive Strategies'. *International Journal of Peace Studies*, vol. 8, no. 1: (2003) 1-17.

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strengthened its ability to draw causal inferences. This is further discussed in the next chapter.

Mediator identity can affect mediation type in two ways: the relationship between the mediator and the conflicting parties and the mediator status. Current literature suggests that the more positive the mediator's existing relationship with the conflict parties the more interventionist the type of mediation used. This finding is explained by arguing that a positive relationship makes the conflict parties more willing to accept higher levels of intervention.

If the positive previous relationship between the mediator and the conflict parties is affecting the type of mediation being used, the conflict parties would be proactively inviting high levels of involvement from the mediator. They would also respond positively to such interventions. For example, even where the substance of a suggested compromise is rejected *the involvement* would be welcomed. The mediator would also be observed referring to this positive relationship as a reason for their involvement, and would outline how this relationship has informed their actions. Similarly, an existing negative relationship between the mediator and the conflict parties would lead to lower levels of intervention in mediation. The conflict parties would be seen to be begrudging in their acceptance of the mediator. They would be seen voicing hostility in relation to the mediator's involvement. The mediator would be seen acknowledging that the previous relationship makes their mediation activities difficult.

It is necessary to acknowledge that a mediator's relationship with the different parties to a conflict may be vastly different. This does not negate the effect this aspect of the mediator's identity will have on the mediation type. Rather, it allows this dissertation to examine the effect of this aspect of mediator identity across a wider and more nuanced range of values. In addition to being able to observe the

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effect of a positive existing relationship between the conflict parties and the mediator and a negative existing relationship, this dissertation will examine the effect of a mix of relationships.

High mediator status is associated with more interventionist forms of mediation. The theoretical reasoning provided to support this finding is that mediators with higher status are more powerful, and thus are likely to exercise this power in their mediation behaviours. Mediators with lower levels of status have less power available and are thus restricted to less interventionist forms of mediation. Status of the mediator can relate to the status of an individual, a state, or an organisation. Mediators may enjoy a high level of status because they are/were the holder of high office in their respective state or organisation, regardless of the status of this state or organisation. Alternatively, a mediator may be deemed to have a high status because the state or organisation which they represent has a high level of status even if their personal position is more modest. Therefore, when bestowing a mediator with a certain status it is important to examine both personal status and the status of the state or organisation.

There are also two conceptions of power which may intervene between the status of a mediator and the type of mediation. These are material and non-material power. Material power refers to traditional ideas of power - such as military and financial resources. Non-material power refers to the influence of factors such as international reputation or policy expertise. Whether a mediator's status results from material or non-material power, how this intervening factor is affecting mediation type should be observable. The mediator should be seen using their power. This could take the form of using reputation or expertise in a policy area to propose a compromise or using its financial resources to reward agreement by the parties.

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Similarly, where mediators do not have previous expertise or possible financial resources to cite as part of their mediation efforts, this lower mediator status should lead to lower levels of intervention (in mediation type). Nevertheless, it is important to note here that while it may appear that high mediator status and directive mediation are indivisible this is not the case. A mediator may have a high status and choose not to use this status, and a mediator with lower levels of status may more effectively or strongly leverage their limited power to engage in directive mediation. So while mediator status is a factor in determining mediation type it is not deterministic.

The existing literature finds that the greater the intensity of a conflict the more interventionist the type of mediation used. The theoretical reasoning offered for this finding is that the more intense the conflict the more difficult it is for the conflicting parties to reach an agreement alone, and the more assistance they will need from third parties. In relation to this dissertation, the finding would suggest that the greater the level of intensity of feeling around a particular issue which a commission is managing, the more interventionist the type of mediation used by that commission will be.

Therefore, if the level of intensity of feeling around an issue is affecting the type of mediation being used by a commission, the higher levels of intensity acting as a barrier to agreement between the conflict parties would be evident. The parties may state that they cannot compromise on the issue as it is too important to their constituents/supporters. They may claim that compromising on such a sensitive issue would result in them losing vital support. The mediator would try to use types of mediation that overcome these challenges. They may use formulative mediation to make substantive proposals and accept responsibility for concessions being made.

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However, if the intensity of feeling around an issue still makes compromise difficult for the conflicting parties, the mediator may resort to directive mediation. Using their leverage to attempt to overcome these challenges or acting as verifiers of compliance where possible non-compliance is increasing the intensity of feeling around an issue. If the intensity of feeling around an issue is affecting the type of mediation used more interventionist mediators would justify their involvement in terms of overcoming the associated challenges. Conversely, if the intensity of feeling around an issue is low, and this is leading to the use of less interventionist mediation, mediators would highlight how the parties can reach a compromise with a lower level of assistance.

The terms of reference (TOR) of the commissions should have a straight forward and predictable effect on the type of mediation used. It would be expected that a commission would engage in the activities indicated in its initial remit. This is a logical and reasonable expectation. Yet it is unlikely that a commission will focus equally on all elements of its remit. Where a commission chooses to focus more on certain elements its TOR may affect which mediation type is used. There is an additional issue that must be considered when examining the effect of the TOR on the type of mediation used by a commission: ambiguity. The TOR of the commission vary in the level of ambiguity which they contain. Where there is a lack of clarity in relation to what activities a commission is charged with undertaking the commission may use this ambiguity in order to either expand or limit the level of its intervention. It is unlikely that ambiguity would evoke the same response from different commissions. It is logical to expect that ambiguity will be used as a justification for behaving in a way which the commission is predisposed to in light of other factors. Thus, in cases where there is a high level of ambiguity in the TOR of a commission, other factors such as intensity of feeling around an issue or the mediator's identity are likely to take precedence. However, even where TOR are explicit, interpretation may play a significant role in the mediation type in which the commission engaged.

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If the TOR are affecting the type of mediation which a commission is using, the commissions should be observed referring back to their TOR in explaining their activities. This could take the form of outlining how their TOR prevent them from undertaking certain activities, which they may be under pressure to undertake in order to secure compromises. Alternatively, it may take the form of commissions citing their TOR in defending their activities if they are accused of exceeding their remit.

Other actors may also be seen citing the TOR of a commission in order to influence the mediation type. Actors may highlight areas where a commission appears not to be fulfilling all the activities in its remit. This ability of other actors to refer to TOR to influence the mediation a commission engages in increases the number of ways that TOR affect the type of mediation. Commissions not only have to interpret their TOR themselves when deciding what activities to undertake, but they must be mindful of how others will interpret these activities in relation to their TOR.

Finally, the GFA and its consociationalism may have affected the mediation type used. The widespread support enjoyed by the GFA may have allowed the commissions to engage in more interventionist forms of mediation. If this support affected the use of mediation type parties, including the commissions, would refer to their connection to the Agreement when engaging in interventionist mediation. The consociational elements of the GFA may also have had an effect on mediation type. The international version of consociationalism provided for in the GFA may have affected the mediation type by changing the identity of the mediator, encouraging the inclusion of external actors not from Northern Ireland. The Lijphartian elements of consociationalism, which present it as a consensual form of government, would be expected to lead to less interventionist forms of mediation. They would be consistent with facilitative-procedural and formulative mediation. It may also encourage the inclusion of members that represent the conflict parties. Finally, the coercive element of the GFA seen in the governments' use of leverage would be

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expected to lead to directive mediation as both include pressure to progress the peace process.

Consociationalism may also affect mediation by shaping the form which recommendations made by a commission take. It is worth noting that this dissertation concerns itself primarily with mediation type, not mediation content. Close attention must be paid to whether actors reference the GFA or power-sharing and - if so - what their conception of it is, in order to ascertain if these possible relationships were borne out.

The following chapter will build on this model. It will provide a discussion of the methods being used, their suitability for this dissertation, and the challenges they pose for the researcher. How the variables discussed in this chapter can be made applicable in the Northern Ireland case is considered. The issues of case selection and data to be analysed are also discussed.

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This chapter discusses the research design and methods used in this dissertation. It also explores a number of potential challenges for the analysis and considers how they were overcome or managed. The purpose of this dissertation and the foundations on which it rested are examined in order to explain how they fundamentally guided the choice of methods. The methods used is described; how often different variables are observed being mentioned in relation to different mediation activities. These observations were analysed in order to establish the significance of the different observations depending on the source. The issues surrounding case selection and how these applied to this dissertation are discussed. How this analysis clearly conceptualized and operationalized the complex variables under consideration: mediator identity, issue intensity, TOR and the Good Friday Agreement (GFA); in a manner that was valid and reliable within the Northern Ireland context while maintaining wider relevance, is then explored. The issue of data collection is addressed, paying close attention to the practical and theoretical issues that arose from interviewing elites and using official documents. Subsequently, how this data was analysed and organised is discussed. Lastly the connections between the issues managed by the four commissions examined in this dissertation, their connections to other commissions, and their connection to the wider peace process are addressed.

Background and purpose of project

The aim of this project was to explain how the independent commissions in Northern Ireland behaved in relation to the management of key controversial issues at the level of the conflict and how certain important variables affected this behaviour. This dissertation provides what Van Evera termed 'generalized specific explanation'.⁹³ This highlights the necessity of establishing the underlying assumptions of the research question before an argument can be made about the appropriate methods to utilise. As Hall argued: 'Ontology is ultimately crucial to methodology

⁹³ Stephen Van Evera, *Guide to Methods for Students of Political Science*, (London: Cornell University Press, 1997) 16.

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because the appropriateness of a particular set of methods for a given problem turns on assumptions about the nature of the causal relations they are meant to discover'.⁹⁴

A comprehensive discussion of an area as complex as ontology is beyond the scope of this chapter, but a treatment of the basic ontological assumption of this dissertation relating to generalisation and causality is necessary. This research rested on an ontological middle-ground in terms of generalization. In a perfectly ideographic world such a piece of research would be unable to say anything about mediation in general from the specific case on Northern Ireland. Similarly, in a world where every unit was perfectly comparable this research would also be nonsensical, why focus on the Northern Ireland case when any case would do just as well?⁹⁵

The focus of this dissertation was on explaining the specific case of Northern Ireland. However it identified the broader theory that governed this case. There was tension in this double function that had to be surmounted. The analysis had to identify what is unique about the Northern Ireland case and what is generalizable. Gerring argued that this challenge can be overcome if the researcher provides sufficient detail, reporting all facts. Providing such extensive information allows future researchers to be clear about the generalizations they can draw from a given piece of research.⁹⁶ This dissertation provided such detail in order to allow other scholars to be clear as to the detailed context on the Northern Ireland case and thus be more informed about the validity of generalizations from this case. Furthermore, this dissertation, by combining two different methodologies drew on three types of generalization thus strengthening its ability to generalise as is discussed momentarily as one of the advantages of combining these methodologies.

The analysis understood that causality in the social sciences is a complex issue. It recognised that the frequency with which variables are mentioned in association with specific mediation types is a powerful tool in establishing such and used this as the foundation for its causal inferences. It was

94 Peter Hall, 'Aligning Ontology and Methodology in Comparative Research'. In Dietrich Reuschmeyer and James Mahoney, *Comparative Historical Analysis in Social Sciences*, (Cambridge: Cambridge University Press, 2000) 373-374.

95 John Gerring, 'What is a Case Study and What is it Good for?' *American Political Science Review*, 98, no. 2 (2004): 349.

96 *Ibid.*, 345-346.

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also acutely aware that such a method while establishing covariance only suggests causation. To overcome that issue this dissertation supplemented such an analysis with an examination of the various observations, in order to assess the relative explanatory power which could be attributed to citations from different sources and how these fitted with existing theoretically posited relationships.

Frequency of variable citation and relative strength of different sources

Blatter and Blume argued that there are three ways of approaching case study research such as that undertaken in this dissertation: covariance, process tracing, and congruence.⁹⁷ This analysis primarily used covariance by analysing the frequency with which the different variables were cited in relation to different mediation activities. This is supplemented with process tracing, as an examination of the different citations was carried out in order to assess the different explanatory power of different citations due to their source. Combining these two different methodologies strengthens the causal inferences which can be made from this dissertation.

Analysing the frequency with which different variables are mentioned in relation to mediation activities corresponds to the prevailing outlook on case studies research in Political Science. Gerring coherently outlined this approach:

A purported cause and effect must be found to covary. They must appear and disappear, wax and wane, or perform some other transformation in tandem or at some regular, more or less predictable, intervals. Conversely, the absence of such covariation is taken as disconfirming evidence.⁹⁸

In keeping with this approach, this dissertation examined the frequency with which specific independent variables (mediator identity, issue intensity, TOR, and the peace agreement) were

⁹⁷ Joachim Blatter and Till Blume, 'Co-variation and Causal Process Tracing Revisited: Clarifying New Directions for Causal Inference and Generalization in Case Study Methodology'. *Qualitative Methods*, Spring (2008a): 29. This author rejects the idea that the lines between these methodologies are clear or distinct but sees Blatter and Blume's contribution as very useful in that it lays out different approaches which one may use when engaging in qualitative case study research.

⁹⁸ John Gerring, 'What is a Case Study and What is it Good for?' *American Political Science Review*, 98, no. 2 (2004): 342.

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mentioned in relation to the dependent variable (mediation type). This technique drew causal inferences on the basis of these how often these causal factors were mentioned in relation to causal effects. Important preconditions exist if causal inferences are to be drawn from such analysis.

Firstly, inferences drawn from the frequency with which independent variables are mentioned in relation to the dependent variable must be strengthened through the application of theory. The relationship between the variables can only be given meaning if such empirical observations connect to theory. Blatter and Blume note that covariational research often fails fully to fulfil this condition with weak theory, ad-hoc arguments, and references to empirical findings. They further argue that covariational research only needs to theorise the direction of the relationship given that it looks only at variation, and even where theoretical causal reasoning is given these are not studied.⁹⁹ This dissertation met this condition and avoided the pitfalls outlined by analysing the citations. This analysis assessed the relative explanatory power which could be attributed to citations from different sources and how these fitted with existing theoretically posited relationships.

The logic forwarded by Collier, Brady, and Seawright in relation to causal process observations (CPOs) was used in this analysis.¹⁰⁰ CPOs can demonstrate that covariance is connected to the theory hypothesized as they are pieces of evidence that demonstrate that the processes posited by the theory are occurring. A 'causal-process observation' (CPO) is 'an insight or piece of data that provides information about context, process, or mechanism, and that contributes distinctive leverage in causal inference'.¹⁰¹ The information contained within a CPO reflects in-depth knowledge of one or more particular cases rather than data collected as part of a systematized array of variables. The leverage gained for causal inference from CPOs is correspondingly distinct:

99 Joachim Blatter and Till Blume, 'In Search of Co-variance, Casual Mechanisms or Congruence? Towards a Plural Understanding of Case Studies'. *Swiss Political Science Review*, 14, no. 2 (2008b): 319-320.

100 David Collier and Henry, E. Brady, *Rethinking Social Inquiry. Diverse Tools, Shared Standards*, (Lanham: Rowman & Littlefield Publishers, 2004) 201.

101 *Ibid.*, 277.

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A causal-process observation sometimes resembles a 'smoking gun' that confirms causal inference in qualitative research, and is frequently viewed as an indispensable supplement to correlation-based inference in quantitative research.¹⁰²

In order to draw causal inferences from the frequency with which the specific independent variables are mentioned in relation to the dependent variable other variables must be controlled for. This cannot be done statistically in small-N-studies such as this one.¹⁰³ This difficulty can be overcome through comparison between the different cases from Northern Ireland that are being studied. The conclusion to this dissertation compares the findings on four individual commissions in order to assess the strength and soundness of inferences drawn. This is particularly effective in strengthening these inferences as they apply to the Northern Ireland case but also allows more generalizable findings to be posited. How these four commissions were selected is addressed in the next section of this chapter.

Case selection

The post-conflict setting on which this dissertation focused provided the scope for defining the population from which cases were selected. Firstly the appropriateness of Northern Ireland as a case from which generalisations can be made needed to be established. As has already been discussed this dissertation was inspired by a desire to explain an important element of the Northern Ireland case. However it is also important to outline how this case can be used to make more general findings about mediation in the implementation of peace agreements. The mediations which occurred in the Northern Ireland case were relatively successful. While many issues persist in Northern Ireland when viewed comparatively with other peace processes, and specifically the implementation of other peace agreement, Northern Ireland was viewed as a relative success.

102 David Collier and Henry, E. Brady, *Rethinking Social Inquiry. Diverse Tools, Shared Standards*, (Lanham: Rowman & Littlefield Publishers, 2004) 277-278.

103 Joachim Blatter and Till Blume, 'In Search of Co-variance, Casual Mechanisms or Congruence? Towards a Plural Understanding of Case Studies'. *Swiss Political Science Review*, 14, no. 2 (2008b): 314-316.

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The range of values observed in relation to, mediator identity, issue intensity, the TOR, the peace agreement (and the anticipated variation which will be found in relation to mediation type) also made the Northern Ireland case a good arena for exploring the relationship between mediation type and these factors. King, Keohane and Verba argued strongly that research design must not select cases which do not allow for variation in relation to the dependent variables. However they accepted that in many cases the values of the dependent variable are not known in advance. They suggested that the research design allow for variation on the independent variable while not ruling out variation on the dependent variables.¹⁰⁴ The Northern Ireland case met this important methodological requirement. Similarly the Northern Ireland case met another important practical methodological demand. It provided a repository of data: official reports and statements issued by the various commissions and other relevant actors, as well as considerable press reporting. Parliamentary reporting was not used widely as much of the same data was captured through political party statements, though where a parliamentary statement indicated unique information it was incorporated into the analysis. Furthermore there existed the very useful ability to supplement these by conducting interviews with appropriate government officials and commission members without considerable language or access issues.

Twenty one independent commissions operated in the 1990s and 2000s within Northern Ireland. Which commissions were examined will greatly affect the validity of any inferences drawn from the analysis. Before case selection can begin, it must be decided which potential cases should be considered for study. While there were twenty one commissions in operation in Northern Ireland this project did not take these twenty one to be the starting population. This project defined the population in a manner that is mindful of the scope of the theory. The theory sought to explain what mediation strategy is used to manage post-conflict issues and what variables affected this. Consequently, it was appropriate to define the population of commissions as those that dealt directly with post-conflict issues.

¹⁰⁴ Gary King, Robert O. Keohane and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research*, (London: Princeton University Press, 1994) 129-147.

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The thirteen commissions not considered for inclusion on this basis were: The Charity Commission, The Television Commission, The Housing Commission, The Energy Regulation Commission, The Mental Health Commission, The Sustainable Development Commission, The Planning Appeals Commission, The Judicial Appointments Commission, The Police Complaints Commission, The Data Protection Commission, The Livestock Commission, The Boundary Commission, The Equality Commission, The Electoral Commission, and The Law Commission. While a number of these commissions could be interpreted as being related to the conflict they were set up as permanent mechanisms for providing policy advice or governance on issues (that are also pertinent in societies that are not post-conflict), not for mediating to reach agreement on a particular post-conflict issue.

The starting population was nine commissions: the Independent Commission on Policing, the Independent International Commission on Decommissioning, the Independent Monitoring Commission, the Sentence Review Commission, the Commission for Victims and Survivors, the Consultative Group on the Past, the Parades Commission and The Human Rights Commission, the Independent Commission for the Location of Victims' Remains. This small number of cases was soundly defined as the population for this project as an extension beyond these cases would risk extending the theory beyond its scope and introducing casual heterogeneity.¹⁰⁵

Case selection criteria and considerations

Once the population of cases was defined, how to choose from within the population was considered. The selection criteria were variation on the independent variables and the importance of the issue managed in the Northern Ireland case. These dual criteria allowed the study to balance the need to meet methodological standards and ensure it explains the most important elements of the case. Case selection took into consideration the importance of the issue being managed by the commission in the context on the Northern Ireland case. The aim of this project was to explain how the commissions managed issues that were crucial in the peace process and what influenced this behaviour. It is logical that the cases which involved the most important

¹⁰⁵ James Mahoney, 'Clarifying Comparative-Historical Methodology'. *Qualitative Methods*, 3, no. 1 (2005a): 12.

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issues would be included. Importance in this sense can be ascertained by examining which issues had the greatest impact on the wider peace process and specifically prevent the normalisation of Northern Ireland society.

Selection which does not allow for a range of values for the dependent variable has been ferociously criticised by scholars such as King et al. and Geddes.¹⁰⁶ The first part of this project involved assessing the value of the dependent variable in terms of which type of mediation each commission uses. Given that the dependent variable value was not known before the project was undertaken selection that purposely chooses cases on the basis of variation on the dependent variable is not possible. Careful reading of King et al. reveals that they argued that a project must not be designed in such a way as to prevent variation on this value.¹⁰⁷ Given that the value was not known in relation to these cases, the study cannot be designed to do this. Thus the methods used in the study had scope for variation in the dependent variable.

This case selection method reflects the concerns and recommendations made by Gerring in relation to 'diverse cases'.¹⁰⁸ This method was particularly applicable to this dissertation as it deals with choosing a set of cases and is mindful of the need to consider that variable diversity can take on different forms. Diversity may refer to a range of variation on X, Y, or a particular combination of causal variables. The goal of case selection is to capture the full range of variation along the dimension(s) of interest.¹⁰⁹ This analysis choose cases to ensure that a full range of values on the four factors (mediator identity, issue intensity, the TOR of the commissions, and the GFA) was captured. Case selection also considered the need to ensure that there was diversity in the

106 Gary King, Robert O. Keohane and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research*, (London: Princeton University Press, 1994) 129-137. Barbara Geddes, *Paradigms and sand castles: theory building in comparative politics*, (Ann Arbor: University of Michigan Press, 2003) 89-130.

107 Gary King, Robert O. Keohane and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research*, (London: Princeton University Press, 1994) 129-137.

108 John Gerring, 'Understanding Causal Relationships with Case Studies: Possibilities and Limitations (aka, When Randomization Fails)', in proceeding of Conference: 'Impact evaluation of programs that address global environmental change', Columbia University, April, 20-21 2010 (New York, Earth Institute & International Research Institute for Climate and Society, 2010).

109 Ibid.

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combination of these variables as it is possible that different combinations of variables may have different effects on an outcome effects that vary across type.

These considerations informed how cases could be best selected. This was done here by choosing a group of commissions and by looking at how the set as a whole captured a diversity of values for relevant variables and combinations of variables. Within-case variation must also be considered. By choosing cases where there was internal variation on relevant variables the other background conditions can be held constant. Strong inferences can be made about the relationship between the variable which experiences variation and any variation in outcome.¹¹⁰

The above discussion highlights the complex considerations that must be made when choosing cases. The primary aim of this dissertation was to explain why the commissions in Northern Ireland mediated in a particular way. This aim led to a focus on the commissions which managed the issues with greatest consequences for the region. Furthermore, the recognition of the scope of the theory being proposed notably narrowed the population of cases. Even when choosing from a small number of cases it needed to ensure that the cases chosen demonstrate a suitable level of diversity in values for the variables and combinations of note, and allow for within-case variance that is a powerful source of inference.

Cases selected

Mindful of the primary aim of this dissertation, the above considerations and resource limitations four cases were chosen for study in this dissertation: the Independent Commission on Policing for Northern Ireland (ICP), the Independent International Commission on Decommissioning (IICD), the Independent Monitoring Commission (IMC) and the Consultative Group on the Past (CGP). The study of these commissions facilitated this analysis in fulfilling its purpose; they managed the issues that had the largest and most serious impact on the peace process and the normalisation of Northern Ireland society. Two of them were explicitly provided for by the GFA, as those involved in negotiations realised that the issues concerned could not be agreed on in those talks (ICP and

¹¹⁰ Stephen Van Evera, *Guide to Methods for Students of Political Science*, (London: Cornell University Press, 1997) 82.

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IICD). Furthermore, they also provided variation on the variables and combination of variables of interest both across the group of commissions and within the individual commissions.

Of the five commissions that constitute the population but are not being studied the Independent Commission for the Location of Victims' Remains would not be suitable for inclusion. It does not seek to mediate on a difficult issue but rather gathers confidential information in order to locate bodies of missing people presumed victims of the IRA during the conflict. This means that the commission does not provide an example of mediation to be explored. The Commission for Victims and Survivors managed issues surrounding victims. These issues, more broadly constituted, were also dealt with by the CGP. By including the CGP, these issues and more were considered. The Sentence Review Commission and The Parades Commission manage(d) controversial issues that had a significant impact on the region and its peace process. However an initial inspection of their work suggested that it did not meet the essential criteria for mediation in that judgements were essentially legally binding. Thus they were not the most appropriate case to include given that this dissertation focused on mediation. Finally The Human Rights Commission was relevant to the implementation of the GFA as the congruence of some its recommendations with the provision of the Agreement was questioned. However despite its potential legal implications the issues involved never attracted a high level of contentiousness or significance for the general population.

Deciding what type of mediation

Once cases had been chosen this dissertation established what type of mediation was used by each commission. The relationship between mediation type and mediator identity, issue intensity, TOR and the GFA was then examined. This use of types fulfilled Elman's classificatory function of types to determine to which 'type' a case can be characterized as belonging.¹¹¹ As was outlined in chapter one a three-fold type of mediation including facilitative-procedural, formulative, and directive is most appropriate to capture the work of the commission in the Northern Ireland case. In order to ascertain which type of mediation was present in the case of each commission, a clear

111 Colin Elman, 'Explanatory Types in Qualitative Studies in International Politics'. *International Organisations*, 59, no. 2 (2005): 298.

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outline of the observable implication of each type of mediation was used; this was provided in chapter one. A concise recap of the different observable implications of each of the three mediation types is now outlined:

Facilitative-procedural mediation involves:

- Mediators providing information to the parties in the hope it assists in resolving the conflict;
- Information being channelled between parties;
- Mediators will be observed seeking to reduce tensions by clarifying or restating positions of the parties in less confrontational or aggressive ways;
- The mediator will also highlight any common areas of agreement between the parties;
- Mediators controlling procedural elements of the mediation such as the agenda and the access of parties to media or other actors.¹¹²

Formulative mediation involves:

- Mediators making substantial and detailed proposals or recommendations regarding the content of the compromises that may be made;
- Mediators will be observed proactively outlining the shape compromises may take;
- Proposals will not be seen as originating with one of the conflict parties;
- Mediators may stress their authorship of the proposals; this may make the proposals more acceptable to all conflicting parties than if they originate from an opposing party in the conflict.

Directive mediation involves:

- Mediators will be observed pressuring conflicting parties to compromise;¹¹³
- A principal determinant of directive mediation is the leverage which the third party employs. This leverage may be seen as the result of the mediator being in possession of certain material resources;

112 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 175.

113 'Mediation Stages', Temple University. Last modified March 2006:

www.creducation.org/resources/Mediation_Stages.ppt

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- The mediator may be observed offering access to these resources as a reward for compromise or reaching agreement and threatening to block access to the same as a punishment for non-agreement or progression of the process;
- Mediators will verify compliance and assess whether conflict parties are carrying out activities to which they have committed.

In each of the four commissions observable implications of more than one mediation type were found. This led to the question of how it would be determined which type of mediation a particular commission was engaged. This issue was overcome by considering a number of elements. Firstly all types are a spectrum to a certain extent. For example, it would not be surprising to observe indicators of facilitative-procedural where a commission was engaged in formulative or directive mediation. In general the decision as to what type of mediation of commission used was decided on the preponderance of evidence.

This dissertation also considered whether the variation was the result of the type varying overtime. In a number of cases this was found to be so. This was particularly clear when observable implications differed greatly before and after significant events. In a number of cases the analysis of the commissions has been organised and structured to reflect this. Moreover, this was very useful for this dissertation and allowed the study to explore if the change in mediation type used was connected to a change in one of the independent variables, particularly the issue intensity.

The variables in the Northern Ireland context

Having discussed how the types of mediation were judged, this dissertation now outlines how the factors isolated in the previous chapter - as affecting the type of mediation used, mediator identity, issue intensity, TOR and the GFA - were operationalized in this context. In order to examine the role of the different factors in affecting the type of mediation which a commission engaged in these variables were first clearly conceptualised. This presented a challenge as their previous conceptualisation in the literature is based primarily on studies referring to mediation

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within an initial negotiation phase. This project examined how mediation plays a part in the implementation phase of the GFA.

The re-imagination of these concepts was facilitated by detailed knowledge of both theories relating to the implementation of peace agreements and of the Northern Ireland case. As Mahoney has argued, qualitative methods are well positioned to undertake such a re-conceptualization as it can match general or preconceived understandings of concepts with detailed evidence from cases. This process of matching often proceeds through many iterations and stimulates new conceptual understandings.¹¹⁴ This was very important for the factors considered in this case, will now be outlined.

Mediator identity

According to the existing literature mediator identity affects the choice of mediation type as the result of the status of the mediator and the relationship which the mediator has with the conflict parties. Mediators with high levels of status are expected to engage in more interventionist forms of mediation such as directive mediation. Mediators with lower levels of status are expected to engage in less interventionist types of mediation. Mediators that have existing positive relationships with conflicting parties are expected to engage in more interventionist mediation types.¹¹⁵

This existing literature in relation to mediator identity is overly simplified. It fails to adequately address the reality that in many cases mediation is carried out by teams. This group element complicates the issue of identity. In the case of Northern Ireland the commissions were all made up of multiple members. This analysis examined how the commissions operated as a group. It explored whether the commission members acted as individuals, a team or are led by one strong member. This issue of whether commissions had singular or multiple identities complicated this

114 James Mahoney, 'Qualitative Methodology and Comparative Politics', in proceeding of the annual meeting of the American Political Science Association, Washington, DC, Sep 01, 2005 (Washington D.C.: APSA, 2005b).

115 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000) 180.

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dissertation. But importantly it also reflected the reality that different actors frequently mediate together.¹¹⁶

These different members also had different individual levels of status and originated from different countries. In order to provide a nuanced understanding of how the identity of a mediator affected mediation type, this dissertation developed a fourfold type of actors in the Northern Ireland case. This type captured the complex role of different actors in the case. The four types of actors were: local, primary mediator (PM), international other (IO), and external ethnoguarantors (EEGs).

The type made sufficient distinctions between the multitudes of parties included in the commissions to capture their varying statuses and relationships. Local actors were those drawn from within Northern Ireland. The PM in this case was the USA and IO included actors from countries such as South Africa and Finland. EEGs were those drawn from Ireland and Britain. The local actor label identified those who are primarily located within the region and thus had a direct involvement in the conflict. There existed differences between different local actors in relation to their exact status and relationships. However they were broadly similar when compared with other actors involved in the commissions.

The USA was given a special label, Primary Mediator (PM), to reflect its particular status and relationships. It is a global superpower and enjoys high status. Furthermore it has close relationships with both regional states, Britain and Ireland. The IO label was applied to other international actors who are involved in the commissions. These actors usually became involved due to their international reputations as peacemakers or policy experts in certain areas. Consequently they had special kinds of status that is more associated with soft power than hard power and are often viewed in a positive light by other actors. Finland, Canada and South Africa were all IOs involved in the commissions.

¹¹⁶ Jacob Bercovitch and Gerald Schneider, 'Who Mediates? the Political Economy of International Conflict Management'. *Journal of Peace Research*, 37, no. 2 (2000): 146-150.

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The roles of Britain and Ireland in the commissions were perhaps the most complex. While the Northern Ireland conflict was in many ways largely confined to the region, both these states were intimately involved. The conflict was essentially about the legitimacy of the borders of these countries. Given the fact that both states had ethnonational connections with different communities within Northern Ireland and had been involved in promoting and facilitating the peace process, the term external ethnoguarantors (EEG) was most appropriate to describe them.¹¹⁷ However even this term which is used to capture the special relationship which some states have to conflicts did not fully capture the intricacy of this case. Both states have been viewed with suspicion by the community with which they have ties in Northern Ireland. Neither community was convinced that its EEG would act in their best interest.

Furthermore the relationship between the two EEGs was also complex. In the years leading up to the GFA the two governments presented a united front in relation to the peace process. Their unity and determination has been highlighted as being one of the key variables which led to the successful conclusion of the GFA negotiations and the continued progression of the process despite numerous challenges. Yet the governments have had different opinions on certain issues. The history of the relationship is fraught with serious hostility. With the exception of a cross border institutional linkage in the short-lived Sunningdale Agreement of 1973-4, for the first ten to fifteen years of the conflict the British government refused the Irish government input. Even after the Anglo-Irish Agreement of 1985 they treated the Irish as inferior for many years. In this case the EEG label was used to capture this incredibly complex relationship; between two states and the communities to which they have ties - but who are suspicious of them - and states whose close cooperation has been key to success in the peace process but who have a fraught history.

The classification of an actor as one of the above was not always clear. Some actors could fit into more than one type. Chris Patten, for example, who chaired the commission which managed the

¹¹⁷For a detailed explanation of what an EEG is see Sean Byrne, 'Power politics as usual Cyprus and Northern Ireland: Divided islands and the roles of external ethno-guarantors'. *Nationalism and Ethnic Politics*, vol. 6, no.1 (2000): 1-23.

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policing reform, could have been seen as either an EEG or an OI. This was as a result of the fact he is British and was the British government's nominee to the commission but has a high personal international profile. However, measurement validity is enhanced when operational definitions and indicators can be refined in light of detailed case knowledge. Such coding errors can be avoided due to high level of knowledge about particular case. Patten presented such an opportunity for a context specific and finely-grained measurement of this key factor.

This also raised the question of perception. When scoring the mediators it was important to consider their self-perception, their perception by other members of the commission, and their perception by other actors such as political parties. Identity is not an objective reality but rather is a product of perceptions. This analysis evaluated how perceptions of the identity of the mediators varied, and how these perceptions affected the choice of mediation type. Perceptions of past relationships can also vary, which can lead to confusion where actors are unsure of how to perceive a particular individual.

Furthermore the perceived status of individuals may vary even if they fall into the same category on the fourfold type. This raised the need to consider the individual identities of members of the commission and how this may affect the commission identity. To this end, as well as classifying an individual using the fourfold type above, this analysis also distinguished between individuals on the basis of their personal background and status. Finally, in one case the individuals on the commission changed over the period of the commission's operation. Where this occurred, this dissertation examined whether this change affected the type of mediation which that commissions engaged in. However, given that the commission members were replaced by members with very similar identities and backgrounds this was not significant.

To conclude, in order to comprehensively capture the variable of mediator identity this dissertation considered a number of elements: how the commissions operate as groups, their members' identities on a fourfold type differentiating on the basis of where a member originated, individuals' personal status, and how any change in personnel affected the type of mediation

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which that commission used. The identity of each commission and its effect on mediator type is assessed.

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Issue intensity

As was mentioned in the previous chapter, existing literature, particularly work by Bercovitch and Houston also highlighted the role which the nature of the conflict plays in determining mediation type.¹¹⁸ For the purposes of this analysis this variable was re-conceptualised to focus on the issue being managed by the commission. While the overarching nature of the conflict may still have had some effect on the choice of mediation type, it is logical to consider that the issue being managed would have a more direct influence as it is central to the commission's work. The nature of the conflict has limited use as a concept in general, as most conflicts blur the boundaries between different types of conflict. For example, they are both secessionist and ethnic. In the case of the commissions the issues were broadly post-conflict security issues. However, again, a particular issue could be seen in a number of ways. For example, policing reform can be seen as security sector reform but also as overcoming the sectarian past of the state.

Given the difficulty in classifying conflicts - or in this case the issues - in a mutually exclusive manner this dissertation looked at the issues in relation to intensity. The existing literature suggests that the more intense the conflict is the more interventionist the mediation type will be.¹¹⁹ This idea of intensity was applied to the issues managed by the commissions. The existing literature is related to conflicts in general and thus discusses intensity in terms for this context; this is usually in terms of number of deaths. While there are arguments in favour and against the use of this proxy in conflict contexts it is inappropriate to the implementation context. Measurements of the continuing level of paramilitary-style assaults were available in Northern Ireland. However this activity was often simply criminality, vigilantism and internal feuds within paramilitary groups. Its level does not capture the salience of the issues managed by the commissions within the communities in Northern Ireland. This dissertation needed to re-imagine the concept of intensity.

118 Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 177.

119 Ibid.

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It is important at this stage to acknowledge some of the challenges which arose. The intensity of feeling around each particular issue was not uniform. Some actors felt more strongly about a particular issue than other actors. In many cases the disagreement over an issue can be viewed as one community seeking action and the other resisting. For example, the nationalist community seeking policing reform and the unionist community resisting.

The intensity of feeling around a particular issue can vary over time. Certain domestic or international events heightened the intensity of feeling about particular issues. Both the robbery of the Northern Bank and the murder of Robert McCartney in Belfast were issues which greatly heightened the intensity of issues surrounding the paramilitary ceasefires, particularly that of the IRA.¹²⁰ While the monitoring of paramilitary ceasefires was an issue around which there was a low level of intensity during periods when the ceasefires appeared to be holding, incidents such as those mentioned above could have led to higher levels of issue intensity.

Such variation of the intensity of feeling from different actors and across different time periods indicates that this concept must be operationalized and measured in a way that is sensitive to such variations. In order to capture this variation this dissertation considered whether the type of mediation changed around points at which intensity arose either in general or for particular actors. Capturing these variations was important to this dissertation's findings as the intra-case variation allowed the effect of a particular variable to be more clearly observed.

Here it is important to note that the delegation of issues to the commissions was as a result of the intensity of disagreement around them. The substantive policies or reforms that were needed in these areas could not be agreed in most cases. Even in cases where the substance was largely agreed there was a need for certain actors to distance themselves from what was agreed for political reasons. Thus the commissions were charged with the administration of the changes or

¹²⁰ The headquarters of the Northern Bank in Belfast was robbed in December 2004. Over £26 million was stolen. It was widely believed that the IRA was involved. The IRA and Sinn Fein denied these charges. Robert McCartney was murdered outside a public house in Belfast in February 2005. There were widespread allegations of involvement by IRA members and three IRA members were expelled from the organisation in relation to the incident. Nobody has been convicted in connection with the killing.

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reforms. Consequently the issues which were delegated to commissions all had a relatively high level of intensity associated with the disagreement around them. However there still existed variation on this independent variable. Firstly, there was the possibility of temporal intra-case variation. Secondly, and more fundamentally, while all the issues delegated to commissions were contentious they were most certainly not all equally so. This can be seen through the threat to which they posed to the reaching of the GFA and its implementation. The intensity of feeling surrounding an issue was observed through the opinions, arguments and behaviours of the different groups regarding the issue, and how this affected the implementation of the GFA.

TOR of the commissions

Mediation type is context specific and therefore the mediation environment plays an important role, affecting mediation type.¹²¹ However the concept of mediation environment has been conceptualised and operationalized in such a wide variety of ways that it has no clear meaning. The environment of mediation can be taken to mean anything from the physical surroundings to the wider political situation. This variation can be somewhat explained by the fact that different aspects of the broad environment are more important in different cases. If mediation takes place in a third party location for example this location may be chosen to represent neutral ground where all parties have equal rights to be heard despite an asymmetry in their statuses, though in other cases the physical location may have very little significance. It is also clear that it is useful to distinguish between the direct context of the mediation and the broader environment. In light of the approach to conceptualising variables, and mindful of Brady's advice that qualitative research can best conceptualise and operationalize concepts due to a high level of detailed case knowledge, the mediation environment will be re-conceptualised in light of this case. Thus this dissertation distinguished between the direct and broad environments by having two variables. The TOR of the commission represented the direct context surrounding the mediation. The GFA represents the broader environment in which the mediations occurred.

¹²¹ Jacob Bercovitch and Allison Houston, 'Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts'. *Journal of Conflict Resolution*, 44, no. 2 (2000): 182.

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The TOR represented provided a very useful way to operationalize this context variable. These TOR provided the framework through which the commissions operated. They outlined issues such as what was expected of the commission and how they should go about their tasks. In this way they are the context in which the commissions operated. The inclusion of this variable may also seem to some to be a truism. It may appear that it is unquestionable that the TOR of a commission would greatly affect how it operated and therefore the mediation type used. This is not the case; the TOR of the various commissions were more concerned with setting out broad principles to which the parties could agree. They outlined general activities the commissions should take to manage/resolve an issue, such as consult groups or advise the governments.

As a result two important issues were focused on within the TOR. Firstly, the issue of ambiguity is important. In some cases the TOR were not explicit. This meant that commissions had to interpret their TOR and decided what activities they should engage in to fulfil their mandate. Secondly, even when TOR were explicit commissions were often charged with engaging in a number of diverse activities. Where this is the case the commission must decide how much attention to pay to the different aspects of its remit. Here it would be expected that the TOR would be interpreted in such a way as to encourage mediation types that were also being enabled by the other factors.

Good Friday Agreement

In Northern Ireland the GFA provided the wider environment in which the commissions mediated. As was mentioned in chapter one, this dissertation was the first work to examine mediation in the implementation phase of a peace process. Thus this was the first to take advantage of such an opportunity to examine the effect of a peace agreement on mediation. In the case of Northern Ireland, the GFA was that agreement. As has been introduced in the previous chapter the GFA's consociationalism may have affected mediation type in three ways, relating to its international nature, traditional Lijphartian principles, and coercive element.

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The GFA was innovative in that it included cross-border elements. This internationalisation may have affected the composition of the commissions, encouraging the inclusion of non-local members. This in turn may have affected mediation type by changing mediator identity. Here the effect of the GFA was indirect and would be observed through the effect of mediator identity. The Lijphartian principles of power-sharing, minority veto, autonomy, and proportionality are likely to have affected the type of mediation undertaken by the commissions. Broadly speaking, the principles of power-sharing and minority veto appeared to be incompatible with the power and leverage elements of directive mediation. They appeared to favour a procedural-facilitative or formulative mediation type. The Lijphartian elements of the GFA's consociationalism may also have affected mediation type by encouraging the inclusion of local members from both communities on the commissions. Here again the effect of this would be indirect and observed through the effect of mediator identity on mediation type. The coercive elements of the GFA, i.e. the manner in which the governments effectively imposed it, suggest that the GFA's particular consociationalism may well have been suited to directive mediation.

There was also a definite possibility that the commissions were not fully aware of the consociational principles of the GFA. They may have focused more on being successful, and the specific policy issues they were charged with managing, than acting in a way that was consistent with the GFA. It was also possible that the commissions were unconsciously affected by the GFA, as actors are often not aware of how their environment affects their behaviour. However different commission members may have been more aware of this and so they may be able to report this. The time that has passed since the work of the commissions also allowed for more self-aware reflection on this matter during interviews. Furthermore, the fact that the nature of the GFA may have affected the mediation content to a greater extent than it affected mediation type had to be considered. This is an issue that this analysis considered in relation to the other factors to a lesser extent, and is discussed momentarily.

It may be argued that the peace agreement should not have been included because it did not vary between the commissions. However this was a variable that has not previously been examined and empirical literature would suggest is important. The different commissions had varying links

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to the GFA due to whether or not they were directly provided for in the agreement, and when they were formed. In addition all possible outcomes from this examination were interesting. For example, if the GFA affected different commissions in the same manner or in different ways. This is particularly true as there is significant variation in the other variables, both across commissions and temporally, within each commission. Thus the GFA could interact with these in different ways to affect mediation type. Furthermore this argument would only have held up if there was no variation on the dependent variable (mediation type) *and* the independent variable (GFA), but it was always likely that there would be variation in mediation type given the diversity of commissions chosen.

Mediation type vs. mediation content

An important point to be aware of is that this dissertation focused on how these variables affected the type of mediation used. This must be differentiated from exploring how these variables affected the content of any recommendations made by the various commissions. The types of mediation categorise mediator behaviour on the basis of the depth of intervention which the mediators make in the conflict. This is wholly different from the substance of any recommendations relating to the issue under contestation. E.g. pressurising parties to accept a certain recommendation is directive mediation while the compromise, for example the redrawing of a border is the substance.

The identity of the mediator, issue intensity, the TOR of the commissions or the peace agreement affected both the type of mediation used *and* the substance of any recommendations made. The latter is an interesting question and the effect that mediator variables have on the content of mediations is significant. As was mentioned above this was especially interesting in relation to the effect of peace agreement on mediations, as mediation during the implementation period of a peace agreement was an innovative element of this dissertation. However, this analysis focused on the former and was aware of the distinction and considered it throughout the examination of the data. Whether the variables included here affect the content of the recommendations made

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by the various commissions is an interesting question and is connected to the research question examined in this dissertation but is distinct from it.

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Data to be examined

In order to ascertain whether the factors affected the choice of mediation type data relating to the commissions was examined. While there was a wealth of data in the public domain in the form of official statements, recommendations, and reports, a number of issues that arise when using such official or public documentation in research were considered. Interviews were also carried out with members of commissions, relevant civil servants, politicians, and members of civil society. The issues to take into account when using existing documents and when using interviews will now be discussed.

Using documents and reports

This dissertation used official reports and statements from the commissions, British and Irish governments, and political parties as an initial source of data. In order to ensure appropriate interpretation of this data the author was aware of the process of production of these documents. The identities of the authors, the purposes for which they were produced, and the organisational framework in which they operated were all considered.¹²²

The identity of the author of specific documents will strongly influence how these documents are interpreted as a source of data.¹²³ While authorship is always a significant variable to consider when interpreting data, it became an even stronger consideration in a post-conflict society. The divided nature of these societies increased incentives for particular groups to make statements and recommendations that serve their constituency. For example, there was a strong motivation for anti-agreement political parties in Northern Ireland to make negative judgements in relation to the commissions, as this reinforced their own position.

Similarly there was a need to consider the purpose for which the document was produced. Documents were produced with a certain aim in mind; even where the authors were viewed as

¹²² Lindsay Prior, *Using documents in social research*, (London: Sage, 2010) 1-27.

¹²³ *Ibid.*, 89-105.

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relatively neutral the purpose of the statement or report should be born in mind.¹²⁴ Some reports or statements were produced simply to state in a factual manner the work that was being undertaken while other reports sought to assess this work against a particular measure or criterion. The purpose of the report or statement was also affected by who the authors predicted would be the primary audience. Documents aimed at the general public contain different language and details than those intended for consumption by civil servants. In relation to this dissertation, it was important to consider that public reports by the commissions addressed to the governments were usually intended for more general public audience; and the tone and details reflected this. The analysis considered the identity of the author and the purpose for which the documents were produced in order to make a suitable reading of the content.

Finally the analysis considered that documents were elements within a wider framework.¹²⁵ Each individual document examined existed as part of a connected network. There was an awareness of how a document fit into these networks in order to fully assess their content. An awareness of these networks allowed particular documents to be placed in a fuller context. Documents may have been a refutation of an existing report or statement, or they may have sought to provide additional information to support earlier claims or statements. The use of referencing assisted in placing documents in context within these networks. The other documents provided a useful tool which enabled the situating of a document within a wider framework. This allowed for the establishment of a scheme of language, or whether a document was a response to an existing documents etc. Documents used in this research included reports issued by the commissions, British and Irish government Acts, statements made by the British and Irish ministers and politicians, statements by politicians from Northern Ireland, newspaper articles, and interview transcripts.

Furthermore, an understanding of these networks was vital in order to properly understand the language used. By viewing individual documents as part of a wider framework what certain language means in a particular context could be ascertained. Language is not neutral, and its

¹²⁴ Ibid., 68.

¹²⁵ Ibid., 26.

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meaning varies across environments. Particularly, in relation to this dissertation certain language had a very specific meaning within a post-conflict environment. Conflicts have their own language: the use of particular words or phrases can identify the position of the authors and thus inform how a researcher interprets a document. Different parties connected to the conflict and peace process in Northern Ireland utilised particular language to refer to contentious issues such as those managed by the commissions. Reference to, for example, 'the history of the police force' can mean very different things in the context of Northern Ireland, depending on whether the document is situated within a unionist or nationalist frame.

Interviews

Interviews were used to supplement these existing documents. The use of interviews is often viewed sceptically in the social sciences. However once the theoretical and practical concerns were allowed for, interviews provided an invaluable source of information for this project. They were a particularly useful source of data for this dissertation. This is because interviewing is often the most productive approach when influence over a particular outcome of interest was restricted to a small number of decision-makers.¹²⁶ In the case of this dissertation the type of mediation used by a particular commission is likely to have been shaped by a small number of people; primarily the members, civil servants, and politicians involved in its set-up and operation. Interviewing helped to establish whether an actor felt under pressure to act in a particular way and where they felt this pressure from. This is particularly important where there are multiple independent variables under investigation as is the case with this research. While other sources of information such as official reports provided insight into these variables and were useful (as discussed above) interviewing was unique in that it allowed the author to ask the questions that needed answering in order to investigate the specific theory under consideration. This analysis was not restricted to examining existing academic literature and other reports. Interviewing is the most direct and targeted method in the qualitative arsenal.¹²⁷

126 Brian C. Rathbun, 'Interviewing and Qualitative Field Methods: Pragmatism and Practicalities'. In Janet Box-Steffensmeier, Henry Brady and David Collier, eds. *The Oxford Handbook of Political Methodology*, (Oxford: Oxford University Press, 2010) 690.

127 *Ibid.*, 691.

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There are a number of more theoretical issues to be aware of, as they affect the value of the data gathered and the possibility of making inferences from it. Reactions to interviewee responses must be neutral and open. A careful balance was achieved here between targeting questions to gather the data necessary to answer the research question and ensuring the questions were sufficiently open to not guide interviews to provide certain answers. In order to achieve this balance, and to ensure comparability between the interviews a mix of general interview guide and standardised open-ended questions were used.

There is almost a presumption that interviewees *will* provide biased or dishonest answers. This issue may be considered even more important in the post-conflict context. The deep divisions in society can increase motivation to attempt to convey a particular reading of events based on one's ethno-national identity or position within a community. Likewise, there may be an incentive to overstate one's organisation's role or one's personal role in the peace process. Bias due to ideational approach was tested for by including some preliminary unrelated questions at the beginning of the interview which is sometimes called 'norming'. The risk that interviewees are simply reiterating a party or organisational position was reduced by being fully aware of all relevant such positions before the interview and probing possible inconsistencies between these public accounts/positions and the interviewees responses. Other sources of dishonesty such as the exaggeration of the positive role played by an interviewee in a process can also be discovered by comparing accounts across sources before and after the interview.¹²⁸

The need for multiple sources in order to garner as much information as possible and cross-check for bias or dishonesty raises a question regarding sampling in elite-interviewing. Triangulation which is the norm across different social sciences methods, overcomes this difficulty. Also, in order to assess whether there is sampling bias within the project there needs to be an examination of whether those who do not take part vary in a meaningful way from those who do. In this area elite-interviewing has an advantage over mass interviews or surveys because the researcher knows a great deal about the population and can compare its traits to those of the

¹²⁸ Jeffrey M. Berry, 'Validity and Reliability Issues in Elite Interviewing'. *Political Science and Politics*, 35, no. 4 (2002): 679-682.

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sample. For example, this analysis was careful to ensure that the non-participants are not disproportionately from one group in the community, external organisation, or country, as this would bias the research findings.¹²⁹

Data analysis

For each commission the official reports, political statements, newspaper articles, and interview transcripts were analysed using the same processes. A large amount of data was available for each commission. All relevant official reports and political statements were gathered. All newspaper articles from national broadsheet newspapers in Ireland, the UK and Northern Ireland were gathered using an electronic search of the Nexus database. Search dates were chosen to capture the setting up, work of, and conclusion of the relevant commission; and where necessary to capture essential background on how an issue came to be delegated to an independent commission. Interviews were conducted with members of the commissions, civil servants, politicians, and civil society groups working in the areas dealt with by the commissions. Interview transcripts were generated and analysed in the same manner as the other data, as discussed below. In some cases interview transcripts were not available due to interviewees not being comfortable being recorded. In these cases interview notes taken by the researcher were used. Parliamentary records were not used extensively but were included where they included information but already included through political party statements or interviews.

The documents were read and any reference to behaviours which were indicative of one of the three mediation types, and/or of a link between the variables and mediation types were coded. These coded references were then grouped by mediation type or relationship between variable and mediation type of which they were indicative. Once the data was organised in this manner the presence of the different types and the links between the types and variables became apparent. This information was used to draft the findings of the research.

¹²⁹ Kenneth Goldstein, 'Getting in the Door: Sampling and Completing Elite Interviews'. *Political Science and Politics*, 35, no. 4 (2002): 669-672.

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Links between commissions

The issues which the four commissions managed (reform of policing, decommissioning, monitoring paramilitary activity and the past) were undoubtedly connected to each other and to other post-agreement implementation issues. Before an examination of how the commissions worked and why they operated in such a manner it is vital that these connections are acknowledged and considered. In its report, the ICP recognised that its recommendations could not be viewed in a vacuum and that they could only be truly successful if the peace process as a whole progressed: 'the full transformation of policing envisaged in this report will be possible only with active community support and with a continuing commitment to peace'.¹³⁰

Policing reform and decommissioning became strongly associated. The DUP sought to convince Peter Mandelson to suspend implementation of the ICP's recommendations (some of which they utterly opposed in any circumstances), in the absence of decommissioning from the IRA.¹³¹ Conversely, the IRA argued that decommissioning was part of a wider programme of reforms including policing reform.¹³² There were resultant fears in the unionist community that Peter Mandelson would implement the ICP's recommendations - which it found unacceptable - in order to secure decommissioning.¹³³ They were outraged, as they were opposed to some of the reforms proposed *and* felt the IRA was already obliged to decommission as a result of Sinn Féin signing the GFA. Mo Mowlam denied any such linkage by the British government.¹³⁴

The failure of the IRA to decommission and the dismay with which the ICP's recommendations were greeted in the unionist community put support for David Trimble - and thus the process as a whole - under constant stress; 'Many Ulster Unionists....view the Patten Commission...simply as part of a cavalcade of concessions to SF and the IRA with no redeeming merits'.¹³⁵ These unionist

130 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland*, September 1999, (Belfast, HMSO, 1999) 12.

131 Sarah Schaefer, 'Parliament: Northern Ireland', *The Independent*, November 25, 1999.

132 David McKittrick, 'Northern Ireland: Blair tells parties', *The Independent*, July 10, 2001.

133 Liam Clarke and Michael Prescott, 'IRA seeks link in arms deal to scrapping RUC', *Sunday Times*, April 25, 1999.

134 Clare Murphy, 'Mowlam moves to allay RUC fears', *Irish Times*, November 18, 1998.

135 'Symbols and substance', *The Times*, March 31, 2000.

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views, and the stalling of the implementation of the GFA led to the return of the American Senator George Mitchell - the original chairman of the multi-party talks - to review the GFA and suggest a way forward.¹³⁶ This review took place at the same time as the ICP released its report. This timing and the significance of the policing issue led some to argue that the very survival of the GFA became dependent on the success of the ICP.

As well as being connected to the issue of policing reform the IICD's work was particularly connected to the implementation of the GFA in general and a number of other specific issues. The main connections observed were the monitoring of paramilitary ceasefires and the release of paramilitary prisoners. The connections between these issues and decommissioning were long predicted: as early as 1996 the report of the IBD flagged the link between these 'confidence building' matters and decommissioning.¹³⁷ The IICD itself flagged a variety of connections and various parties also attempted to link decommissioning to other matters.

The loyalist feud in 2000 made it more difficult for the IICD to engage with loyalist paramilitaries to facilitate their decommissioning.¹³⁸ The tensions surrounding the marching season also made work more difficult.¹³⁹ In its final report the IICD also highlighted the need for political stability and reintegration of former paramilitaries in order to facilitate loyalist decommissioning.¹⁴⁰ Andrew D. Sens said the delay in implementing some aspects of the GFA made the IRA slower to decommission.¹⁴¹ A number of issues were cited by republicans as impeding their engagement with the IICD. These included the slow progress on demilitarisation (which they intimately connected to decommissioning) and the concerns regarding former paramilitaries on the run from

136 John Mullin, 'Blair suffers loss of credibility on Ulster', *The Guardian*, July 16, 1999.

137 International Body on Arms Decommissioning. *Report of the International Body on Arms Decommissioning*, (Belfast, IBD, 1996).

138 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 26 October 2000. (Belfast:, IICD, 2010)

139 Ibid.

140 Independent International Commission on Decommissioning (IICD). *Final Report of the Independent International Commission on Decommissioning (IICD)*, 4 July 2011, (Belfast, IICD, 2011).

141 Andrew D. Sens (Member of the IICD – for a biography see Chapter Four), email interview by Dawn Walsh, March 1, 2013.

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Britain.¹⁴² Likewise the loyalists highlighted how decommissioning must occur in a wider environment; their concerns were around socioeconomic issues.¹⁴³

The IICD's work was strongly connected to additional commissions, the IMC and the ICP. The IICD shared offices in Dublin Castle with the IMC after it was set up and had regular meetings.¹⁴⁴ The IICD stressed the importance of ceasefires being upheld and monitored for the success of its work.¹⁴⁵ Similarly, the IMC felt that decommissioning could tell them about the IRA's intent. Joe Brosnan said: 'when we were trying to assess, are the IRA really going off the stage, anything to do with weapons was important from our point of view'.¹⁴⁶ There was an analogous connection regarding Loyalist paramilitaries: 'also in relation to the loyalist groups...we kept in close touch with them [IICD] as well, again not because we wanted to know the detail of what they were doing but we wanted any indications they had about what kind of thinking was going on in the leadership of the UVF or UDA.'¹⁴⁷

There was an apparent disagreement between the IICD and IMC regarding whether the IRA had fully decommissioned.¹⁴⁸ Joe Brosnan argued that: 'In one of our reports we had that some weapons were being held back, I mean that was an important factor for us, not in second guessing the IICD but in terms of assessing what is the republican movement actually doing'.¹⁴⁹ However this was not necessarily a contradiction, as there was a distinction to be made between the organisation decommissioning and individuals holding back a small number of arms without authorisation. Furthermore John Alderdice argued that was not necessarily a bad thing as it

142 John De Chastelain, 'The Northern Ireland Peace Process and the Impact of Decommissioning'. *Working Paper No. 8*. (Dublin, Institute for British-Irish Studies, 2001) 12.

143 Independent International Commission on Decommissioning (IICD). *Final Report of the Independent International Commission on Decommissioning (IICD)*, 19 January 2006, (Belfast, IICD, 2006).

144 John Alderdice (member of the IMC – for a biography see Chapter Five), interview by Dawn Walsh, January 7, 2013.

145 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 22 December 2000. (Belfast: IICD, 2000). Andrew Sens, email interview by Dawn Walsh, March 1, 2013.

146 Joe Brosnan (member of the IMC – for a biography see Chapter Five), interview by Dawn Walsh, January 25, 2013.

147 Ibid.

148 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 19 January 2006, (Belfast: IICD, 2006).

149 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

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showed that the commissions were not colluding to provide a certain picture (in order to push the process forward) and was the result of having different sources.¹⁵⁰

The IMC also had some indirect links to the ICP. The issue of policing reform had been significantly progressed by the time the IMC was engaged in its work; therefore it had less of an impact than the work of the IICD.¹⁵¹ The ICP had recommended changes to policing that overlapped with the work of the IMC regarding demilitarisation. Particularly reduction of police numbers, the role of the Army in supporting policing, and physical changes to police stations. By the time the IMC had been set up the Oversight Commissioner, which had been provided for in the ICP's report, had been appointed. Joe Brosnan stated that there was some overlap:

In relation to security normalisation, particularly in relation to the policing bits that were in our mandate...we would have kept in touch with them on that...for example...we...talked to the Oversight Commissioner about his assessment of the situation in relation to police stations or numbers or whatever.¹⁵²

The CGP consulted with the IMC.¹⁵³ It felt that dealing with the past and reconciliation was impossible unless there were clear indications that the paramilitary groups were winding up.¹⁵⁴ There were also connections regarding the issue of 'exiles'. Within the mandate of the CGP, in order for the issue of the past to be managed 'exiles' would need to feel safe returning. For the IMC, paramilitaries would have to stop intimidating these people if they were ending their illegal activities. There was also a link to the ICP as it had made recommendations regarding support that could be provided to police officers regarding the trauma they may have experienced as a result of the conflict. The CGP dealt with the issue of services for all those who experienced trauma as a result of the conflict.

150 John Alderdice, interview by Dawn Walsh, January 7, 2013.

151 Ibid. Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

152 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

153 Lesley Carroll (member of the CGP – for a biography see Chapter Six), interview by Dawn Walsh, February 26, 2013. James Mackey, interview by Dawn Walsh, February 21, 2013.

154 James Mackey (member of the CGP – for a biography see Chapter Six), interview by Dawn Walsh, February 21, 2013

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There were also links to other commissions. There was an explicit link between the Sentence Review Commission (SRC) and the IICD, as clause 3 of the Decommissioning Act 1997 outlined how prisoner release was connected to cooperation with the IICD. This led to unionists (and members of the British Conservative Party) demanding the cessation of prisoner releases when the IRA was not engaged with the IICD.¹⁵⁵ Tony Blair had made a bilateral agreement with Sinn Féin that all prisoners would be released within one year. However the early release of IRA prisoners was not halted. Notably, in reference to ex-prisoners, the Sentence Review Commission facilitated early prisoner release while the CGP was concerned with how these people could be integrated into society.¹⁵⁶ The IMC was also concerned with whether these individuals were engaged in criminality.¹⁵⁷ Those who rejected the recommendations of the CGP highlighted that the early release of prisoners by the Sentence Review Commission had already been difficult for victims, arguing that this would be compounded if some of the recommendations of the CGP were implemented.¹⁵⁸ Finally, the CGP also linked its work to the Independent Committee for the Location of Victims Remains (ICLVR). Clearly, if the past is to be dealt with the successful completion of the ICLVR's mandate would be important.

There were clear connections between the four commissions examined in this dissertation, as well as connections to other specific commissions and the broader progress on implementing the GFA. Recommendations made by certain commissions overlapped with the mandate of other commissions. This led to political parties framing the issues as interconnected and using non-progression on one issue as an excuse not to progress others. It also led to consultation between the commissions. This contributed to the accumulation and institutionalisation of expertise and memory. Furthermore, the relative success of earlier commissions not only led to the governments automatically creating commissions for future issues but also afforded such bodies' higher status. Interestingly, despite their proliferation, the benefits of the commissions were not

155 Frank Millar, 'Tories may vote against prisoner release Bill', *Irish Times*, June 15, 1998. Jim Cusack, 'Prisoner debate to reflect unionist outrage', *Irish Times*, June 6, 1998.

156 Consultative Group on the Past, *Report of the Consultative Group on the Past*, (Belfast, CGPNI, 2009).

157 Independent Monitoring Commission, *Second report of the Independent Monitoring Commission*, (London, House of Commons, 2004).

158 House of Commons Northern Ireland Affairs Committee. *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*. (London, House of Commons, 2010).

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necessarily maximised. The strengths of early commissions were not isolated and replicated in some later commissions. The ad-hoc development of the commission system also meant that how they would coordinate and operate as part of a comprehensive implementation strategy was not foreseen.

Conclusion

This chapter built on the theoretical framework laid out in chapter one by discussing methodological issues. It outlined two different methodologies. The analysis of the frequency with which the independent variables were mentioned in relation to the dependent variable, and a further examination of the relative explanatory power of these citations due to their source and relationship to existing theoretical relationships, were used and this maximised the strength of causal inferences and the possibility of generalizing from the Northern Ireland case. Furthermore, by combining frequency of citations with an analysis of the relative explanatory power of these, the causality implied was strengthened as both methods are connected to the theory in different ways. In order to draw inferences from observing the frequency with which the independent variables were cited in relation to the dependent variables, cases were carefully selected to ensure other variables are controlled for.

The chapter then turned to the important issue of case selection. How the parameters of the population were defined was outlined. The need for dual case selection criteria in order to both explain the Northern Ireland case and meet vital methodological standards was explained. On this basis the four cases being selected were: Independent Commission on Policing (ICP), Independent International Commission on Decommissioning (IICD), The Independent Monitoring Commission (IMC), and The Consultative Group on the Past (CGP).

The chapter then moved on to discuss the issue of conceptualising and operationalising the four independent variables of mediator identity, intensity of feeling surrounding the issue, the TOR of the commissions, and the GFA. A fourfold type of mediator identity was used to capture the complex relationships between the different parties involved in the commissions. It demonstrated

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how international actors and actors from Britain and Ireland were categorised in a meaningful way. The presence of multiple parties on each commission was highlighted as a challenge which could be turned into an opportunity, as it allowed for greater variation on values of the variable. It is a better reflection of the reality that teams of mediators are often used. The rationale behind using issue intensity as a variable was then discussed. This discussion highlighted why this was more appropriate than looking at issue type, both in general, as a result of a lack of clarity of classifications, and due to the fact that this dissertation focused on the implementation phase of the peace process. The likelihood of variation in this variable in response to significant events such as violence was examined and it is concluded that this intra-case variation over time presents an opportunity to isolate the effect on this variable. The TOR variable was considered, highlighting the issue of interpretation. The three ways which the GFA may have affected the mediation type used (internationalisation, Lijphartian, and coercive) and why it was included, was then explained.

This chapter explored the use of different forms of data in this dissertation. The use of existing documents such as official reports and statements was addressed first. The need to be mindful of the authorship of these documents was explained. Furthermore the necessity of viewing these documents as part of a network of interconnected documents in order to accurately assess their meaning was explained. The use of interviews as an additional source of data was then assessed. The usefulness of interviews to track decision-making in this context of the commissions was highlighted. The important issue of honesty was addressed by the use of 'norming' and the ability to ensure representative sampling due to deep knowledge of the elite population was also explained. How this data was analysed and organised was then discussed. Finally the important links between the four commissions, other independent groups, and the wider peace process were discussed.

CHAPTER THREE: THE INDEPENDENT COMMISSION ON POLICING

The issue of policing has a long and controversial history in Northern Ireland. The Royal Ulster Constabulary (RUC) never secured the support of the nationalist community. They viewed it as sectarian force charged with imposing a status quo which discriminated against its members and was a barrier to the fulfilment of its national ambition. Conversely, unionists largely saw it as the brave and last defence against terrorism. The resolution of these differences proved to be a great challenge to the peace process and the Independent Commission on Policing (ICP) was charged with managing it.

The ICP engaged in a range of mediation activities during its work, reporting and in the aftermath of its report. The majority of these activities fell within the type of directive mediation, with elements of formulative mediation. This chapter first provides a background to the issue of policing in Northern Ireland. Then the process through which the ICP was formed, acted and reported is examined in order to explicate the types of mediation used. This explication is divided into three phases:

- Policing and the Good Friday Agreement (GFA) negotiations;
- The work of the ICP;
- The Police Bill and implementation plan.

The chapter then examines how mediator identity, issue intensity, the TOR, and the GFA affected the choice of mediation type.

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Background to policing in Northern Ireland

The RUC was established as a 3,000 member force. There was also an auxiliary force, the Ulster Special Constabulary, known as the B Specials, who were seen by many Catholics as a Protestant army. From its establishment in 1922 the RUC differed from other police forces in Britain and other liberal democratic states in a number of ways, reflecting the contested status of the region. It did not simply provide ordinary policing services. It was also charged with defending the Union against Irish nationalists who wished to unite with the newly formed Irish Free State. To assist it in its paramilitary role, it was equipped with some of the most draconian police powers passed in a liberal democracy. These were contained in the Civil Authorities (Special Powers) Act of 1922, which was renewed annually until 1928, then for five years until 1933, and then made permanent. The 'Special Powers Act' was augmented by other legislation, notably the Public Order Act (1951) and the Flags and Emblems Act (1954). All three laws were aimed at quelling nationalist dissent.¹⁵⁹

Northern Ireland had a difficult beginning. The polarized political climate resulted in violence from both sides of the political and religious divide, particularly in the greater Belfast area and border counties. The lawlessness that affected Northern Ireland in the period of the early twenties caused problems for the police. By the mid-twenties the situation had calmed.¹⁶⁰ The 1920s and 1930s were years of economic austerity. This contributed to the already high level of unemployment. Rioting broke out in 1932 in Belfast in protest at the inadequate nature of Poor Law relief. In their protest against governmental parsimony, Catholic and Protestant working class areas found common cause - an almost unique situation either before or since. Community relations, particularly in Belfast, were consistently volatile and

159 John McGarry, "Democracy" in Northern Ireland: experiments in self-rule from the Protestant Ascendancy to the Good Friday Agreement'. *Nations and Nationalism*, 8, no. 6 (2002): 451-474.

160 Graham Ellison and Jim Smyth, *The Crowned Harp: Policing Northern Ireland*, (London: Pluto Press, 2000) 18-32.

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serious disturbances could easily be triggered; seasonal marches could also quickly degenerate into communal rioting. This placed extra demands on the RUC.¹⁶¹

The end of the 1960s is associated with the Civil Rights campaign and the beginning of the most recent period of violent conflict in the region. This demanded a response from the RUC but its management of the situation was criticised. In August 1969, in response to the rapidly deteriorating public order situation, the British Army was called in to aid the civil power. A report on the response of the RUC to the deteriorating security situation recommended a complete reorganization of the RUC with the aim of both modernizing the force and bringing it into line with the other police forces in the UK. In 1972 the Government of Northern Ireland resigned and the parliament was prorogued. Northern Ireland subsequently came under direct rule from Westminster with its own Secretary of State, who had overall responsibility for security policy.¹⁶²

The issue of policing has often been portrayed as secondary to the main conflict regarding the constitutional status of Northern Ireland. However, as Doyle argued, policing is better conceived as being a central element of this conflict.¹⁶³ Policing, and the role of the police, was seen by both the nationalist and unionist communities as a fundamental vehicle for either frustrating or protecting their desires in relation to their citizenship and the constitutional position of the region. Policing is inextricably linked to the political status of a region particularly in Northern Ireland where police services were charged with protecting the unionist status quo.

161 Ibid.

162 Ibid.

163 John Doyle, ed. *Policing the Narrow Ground*, (Dublin: Royal Irish Academy, 2010) 167.

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Nationalists point to symbolic factors, such as the name and badge of the force - for example the use of the term 'royal' and the presence of the crown on the badge, as being indicative of partiality and how it favours the unionist community.¹⁶⁴ Control of the forces also pointed to a highly biased force. The police were subordinate in practice to the political direction of the Northern Ireland government. From 1921 until 1972 one party, the Ulster Unionist Party (UUP) composed the entire cabinet. They were Protestant and 93% were members of the Orange Order. Given this level of political monopoly it was virtually impossible for the police force to avoid political interference. The RUC itself was also overwhelmingly composed of Protestants. Furthermore, supervision from Westminster was viewed as willing to protect Protestant interests and disadvantage Catholics.¹⁶⁵

Nationalists also highlighted the RUC's contravention of international human rights norms - such as the use of plastic bullets and evidence of police collusion with loyalist paramilitaries. The limited response of the organisation to reports by both international human rights groups, such as Amnesty International, and the British government, further reinforced nationalist estrangement from the police and the state. This alienation was added to by the low numbers of nationalists in the police.¹⁶⁶ In contrast unionists viewed the nationalist community's non-support of the police force as proof of their mal-intent and used it as justification for their refusal to share power with the SDLP. They argued that all citizens had a responsibility to support the police as guardians of society. Unionists also argued that the alleged human-rights abuses where they occurred were unavoidable and warranted due to the campaign of the IRA. They further argued that nationalists were reluctant to join the RUC due to intimidation from within their own community, not as a result of the ethos of the police force. Finally, the unionist community sought the return of control of policing to the region from Westminster during the height of

¹⁶⁴ Ibid., 170.

¹⁶⁵ John McGarry and Brendan O'Leary, *Policing Northern Ireland: Proposals for a New Start*, (Belfast: The Blackstaff Press, 1999) 27-30.

¹⁶⁶ John Doyle, ed. *Policing the Narrow Ground*, (Dublin: Royal Irish Academy, 2010) 173-175.

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the violent conflict; arguing that local control was necessary for the community to feel safe in light of the terrorist campaign of the IRA.¹⁶⁷

Both communities were intransigent in their views of the RUC during the long peace process. The nationalist community pointed to the highly politicised nature of policing arguing that no nationalist parties could support policing and maintain the support of their community. But without nationalist support the RUC could not police nationalist areas. The unionist community rejected the need for any major reform and argued the force had performed well, bravely protecting citizens from IRA violence. Given these strong and opposing views it is unsurprising that the parties to the 1998 talks were unable to reach an agreement on the issue of policing. Thus this issue was delegated to a commission, the ICP. The TOR provided to the ICP by politicians and how these affected mediation type are discussed in the section of this chapter that examines this factor's affects.

The work of the ICP

Section nine of the GFA dealt with the issues of policing and justice, and Annex one provided for an independent commission to oversee the issue. After consultation with the Irish government, Secretary for State Mo Mowlam announced the appointments to the commission in the first week of June 1998 and Chairman Chris Patten called the first meeting the next week. The ICP held its first meeting on 11-12 June 1998. It began its work by briefing itself, through meetings, research on the background to the GFA and the establishment of the ICP, on the contemporary policing arrangements in Northern Ireland, on previous reports on policing in Northern Ireland and elsewhere, and on developments and debates concerning police worldwide. Through a press conference, advertisements in newspapers and

¹⁶⁷ Ibid., 178-184.

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letters to specific groups and organisations the ICP invited submissions from the public.

Public meetings were held throughout Northern Ireland with over 10,000 people attending and over 1,000 addressing the meetings. As a result of these meetings and the earlier call for submissions almost 6,000 submissions were received including petitions signed by thousands.¹⁶⁸ The ICP collectively, and commission members individually, also held private meetings with a range of people; including clerics, politicians, civil liberties groups, community and youth workers, and academics. They also visited police stations, police headquarters and consulted with a variety of police departments and individual members.

At points during this work the observable implications of facilitative-procedural mediation were clearly present. The ICP held public and private meetings; it controlled the location and schedule of these meetings.¹⁶⁹ The ICP controlled the agenda. This is inherent in the ICP's statement that it decided to hear harrowing stories from survivors of violence and their families despite this being outside their precise remit.¹⁷⁰

However in some ways these meetings did not show the level of control over information with that would be observed if facilitative-procedural mediation was being used. The ICP invited submissions from certain organisations but it also accepted them from the general public. Furthermore, while the commission did not publish information from private meetings or the submissions made to it, it did not attempt to prevent other parties from releasing these to the media (as many did). Also, access to the public meetings was unrestricted. Moreover, Peter Smith argued

¹⁶⁸ Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland*, September 1999, (Belfast, HMSO, 1999): 11.

¹⁶⁹ *Ibid.*, 10.

¹⁷⁰ *Ibid.* Presbyterian Church of Ireland. *The Patten Report Dilemmas and Decisions: A Presbyterian Response from the Church and Government Committee*. (Belfast, Presbyterian Church of Ireland, 1999).

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that as the ICP was not dealing with individual policing cases, confidentiality was not a major issue for him.¹⁷¹

The ICP made no attempt to channel information between the parties, to highlight areas of common agreement or to restate positions in a less confrontational or aggressive manner. Kathleen O'Toole recalled an understanding that discretion was necessary to gain respect and that the idea that the ICP would relay information provide to it from one group to another could damage this. Yet, she also noted that at public meetings, where there were members of different communities present, there was an opportunity for them to hear each other's opinions and positions. This could be viewed as the ICP indirectly channelling information between the communities.¹⁷²

The work of the ICP also involved consultants conducting a focus group study, involving eight focus groups selected from different traditions and backgrounds, other consultants, with the cooperation of the RUC, undertook a cultural audit of the police. In May/June 1999 it carried out a survey of public attitudes to policing. The ICP visited the Garda Síochána in the Republic of Ireland, as well as a number of police services in Great Britain, Canada, South Africa, Spain and the United States. It visited the Council of Europe in Strasbourg and attended a number of conferences, concerned with policing and human rights. Commissioning the consultants to undertake such research and exploring international norms and best practice provided leverage when the recommendations from the work of the ICP were completed and its report released. The use of primary research, international experts, and best practice gave the work of the ICP's work a high standing. Maurice Hayes referred to these 'international norms' as necessary to give the report heft.¹⁷³

171 Peter Smith (member of the ICP – for a biography see Chapter Three), interview by Dawn Walsh, April 17, 2012.

172 Kathleen O'Toole (member of the ICP – for a biography see Chapter Three), interview by Dawn Walsh, April 18, 2012.

173 Maurice Hayes (member of the ICP – for a biography see Chapter Three), interview by Dawn Walsh, April 18, 2012.

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This acted as leverage which the ICP used to push for the acceptance of its recommendations, an issue that will be returned to momentarily.

The ICP provided substantial proposals; the report ran to over 128 pages (including appendices), and the summary section of the report outlined 175 recommendations. It stated that its recommendations constituted an 'ambitious programme'. The report dealt with a comprehensive range of areas, addressing everything from community policing, to training, cooperation with other police forces, as well as representativeness and cultural ethos. Each chapter provided further detailed recommendations regarding the area with which it dealt, rather than broad or vague directions.¹⁷⁴ Other groups also noted the substantial nature of the recommendations made by the ICP, including the Commission on Security and Cooperation in Europe, the SDLP, Sinn Féin, and the Committee on the Administration of the Justice.¹⁷⁵ The number and detail of these recommendations clearly met with an important observable implication of formulative mediation as they were undeniably substantive.

The ICP outlined the shape compromises could take. Along with other actors, including the British and Irish governments, it recognised that these compromises may be adapted in further negotiations, particularly as the contemporary security situation needed to be considered.¹⁷⁶ Kathleen O'Toole pointed out that policing is always a work in progress and highlighted how the changing security situation

174 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland*, September 1999, (Belfast, HMSO, 1999).

175 Commission on Security and Cooperation in Europe. *Protecting human rights and securing peace in Northern Ireland: The vital role of police reform*, (Washington D.C., CSCE, 2000). 'Statement by the SDLP in response to the Patten Report, 9 September 1999'. <http://cain.ulst.ac.uk/issues/police/patten/sdlp9999.htm>. 'Statement by Sinn Féin in response to the Patten Report, Thursday 9 September 1999'. <http://cain.ulst.ac.uk/issues/police/patten/sf9999.htm> Committee on the Administration of Justice. *The Patten Commission: The way forward for policing in Northern Ireland? Proceedings of a conference on the findings of the Patten Commission held in February 1999*. (Belfast, CAJ, 1999).

176 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland*, September 1999, (Belfast, HMSO, 1999) 46. Statement by the Secretary of State for Northern Ireland, Peter Mandelson MP to the House of Commons, on the implementation of the Patten Report, 19 January 2000'. <http://cain.ulst.ac.uk/issues/police/patten/pm19100.htm>. *Dáil Eireann debates*, vol. 528, no. 1, (12 December 2000).

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regarding the threat from dissident paramilitaries is continuing to shape the situation.¹⁷⁷ This is in keeping with the observable implications of formulative mediation. The ICP was observed proactively outlining the shape compromises may take. While these proposals may be adapted during discussions they are offered as a framework which can shape agreement.

In keeping with formulative mediation, the ICP explicitly stated that its recommendations did not result from attempting to find a mid-point between the positions taken by the two communities in regard to policing. The report set out a number of criteria against which recommendations are judged.¹⁷⁸ However this does not mean that the ICP was taking responsibility for the recommendations as would be expect if formulative mediation was being used. Instead the ICP stressed that the recommendations flowed from international norms and from the terms of references and general spirit of the GFA.¹⁷⁹ This was more in keeping with leverage associated with directive mediation.

In its own report, the ICP highlighted the potential negative impact to the peace process of a failure to properly handle policing changes. It emphasized that other policing experts were in agreement with its recommendations. The fact the recommendations were in line with these policy experts and international norms formed a non-material type of power which the ICP used to pressure for their acceptance. It underlined how the report must be implemented in a holistic manner: 'we do firmly believe that the essentials of our recommendations represent a package which must be implemented comprehensively if Northern Ireland is to have the policing arrangements it needs' and 'we advise in the strongest terms against cherry-picking from this report or trying to implement some major elements of it in isolation from others'.¹⁸⁰ These statements were in keeping with the observable

177 Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012.

178 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 5-7.

179 Ibid.

180 Ibid., 4, 29, 38, 41-45, 60, 66, 93, 105.

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implications of directive mediation, as the ICP used non-material power to pressure for acceptance of their recommendations and stressed the possible negative consequences if this was not done.

Other parties also stressed the role of the international norms and expertise in influencing the recommendations.¹⁸¹ The fact that other actors also highlighted that the work of the ICP and its recommendations were in keeping with international norms further enabled the ICP to act as a directive mediator, as is leverage was increased.

If the ICP was acting as a directive mediator it would also have been observed acting as a verifier of compliance with their recommendations. However in its report the ICP explicitly set up an alternative enforcement mechanism and stated it was not its place to oversee the implementation of its report: 'we cannot be judge and jury now of the precise timing of their implementation' and 'we recommend that an eminent person, from a country other than the United Kingdom or Ireland, should be appointed as soon as possible as an oversight commissioner with responsibility for supervising the implementation of our recommendations'.¹⁸² This was a very popular idea within the ICP and there was no discussion of the ICP or a member acting in this role.¹⁸³

Despite this provision, Peter Smith and Maurice Hayes were consulted regarding the implementation of the plan.¹⁸⁴ A Sinn Féin official argued that during the public meetings Chris Patten 'gave very public commitment that what he was proposing he

181 Commission on Security and Cooperation in Europe. *Protecting human rights and securing peace in Northern Ireland: The vital role of police reform*, (Washington D.C., CSCE, 2000). 'Statement by the SDLP in response to the Patten Report, 9 September 1999'. <http://cain.ulst.ac.uk/issues/police/patten/sdlp9999.htm>. 'Statement by Sinn Féin in response to the Patten Report, Thursday 9 September 1999.' <http://cain.ulst.ac.uk/issues/police/patten/sf9999.htm>.

182 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 15.

183 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

184 Peter Smith (member of the ICP – see Chapter Three), interview by Dawn Walsh, April 17, 2012.

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wanted to see implemented, so he almost formed a social contract'.¹⁸⁵ A number of commission members were also vocal in their support of or opposition to the Police Bill and implementation plan. This analysis now examines this phase.

The Police Bill and the implementation plan

The ICP published its report in September 1999. Even before this there were leaks in the media on possible recommendations in the report.¹⁸⁶ In keeping with facilitative-procedural mediation, the ICP tried to protect the secrecy of its recommendations until the report was published. The importance the ICP placed on this can be seen in Chris Patten's response to leaks of the report published in the *Irish Times*; he attacked leaks calling them 'fabrications'.¹⁸⁷ Furthermore, Peter Smith highlighted how briefings to political parties given before the report was released were also given under an understanding of confidentiality (even though this was subsequently not respected).¹⁸⁸

The report was met with a range of responses from those who cautiously welcomed it to those utterly rejected it. The DUP rejected the report; this was not surprising given their rejection of the GFA. Their response stated that: 'Patten's programme is that Protestants have to be ethnically cleansed'.¹⁸⁹ The Ulster Unionist Party was particularly upset by changes to the name and badge of the police force: 'the Patten Commission has allowed itself to be diverted into a gratuitous insult by stripping the service of its name, badge and flag'.¹⁹⁰ The SDLP said:

The Patten Report represents a serious body of proposals from a serious body of experienced public servants and administrators. It therefore deserves

185 Sinn Féin official interview by Dawn Walsh, November 25, 2012.

186 Frank Millar, 'Security 'devolution' part of Patten reforms', *Irish Times*, September 9, 1999.

187 Patrick Smyth, 'Police Report "leaks" are fabrications- Patten', *Irish Times*, September 3, 1999.

188 Peter Smith, interview by Dawn Walsh, April 17, 2012.

189 'Statement by the DUP in response to the Patten Report, 9 September 1999'.

<http://cain.ulst.ac.uk/issues/police/patten/ip9999.htm>.

190 'Statement by the UUP in response to the Patten Report, 9 September 1999'.

<http://cain.ulst.ac.uk/issues/police/patten/uup9999.htm>.

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and demands the most serious examination and appraisal. The SDLP acknowledges in particular the following positive recommendations in the Report... There are, however, some issues, which are not addressed in the Patten Report as fully or as satisfactorily as we would wish.¹⁹¹

Sinn Féin stated they would: 'study the recommendations of the Patten Commission very carefully'.¹⁹² The British government considered the report for a number of months before the Secretary for State Peter Mandelson published a bill and implementation plan designed to realise the recommendations of the ICP.

The British government's Police Bill 2000 and implementation plan were criticised for not faithfully realising the aims of the report. Though Martin O'Brien, of the Committee on the Administration of Justice, argued that the CAJ would have liked to see greater involvement by the commission members in the debate surrounding implementation, a number of commission members did make comments in relation to the implementation of the report.¹⁹³ In the controversy surrounding the Police Bill and implementation plan Clifford Shearing was consistently and ardently critical of Peter Mandelson's attempts to dilute the report.¹⁹⁴ Chris Patten and Maurice Hayes were initially critical but endorsed a substantially revised bill arguing that, given these reforms, Northern Catholics should join the new police.¹⁹⁵ The important thing to note here is that some of the commission members essentially assessed the implementation of the report. This demonstrated the willingness of some commission members to act as de facto verifiers of the implementation of the ICP's report in keeping with directive mediation. Maurice Hayes maintained it was very important to highlight that the Police Bill was not a reflection of the report and that such supervision was needed at the legislative stage especially given that an

191 'Statement by the SDLP in response to the Patten Report, 9 September 1999.'

<http://cain.ulst.ac.uk/issues/police/patten/sdlp9999.htm>.

192 'Statement by Sinn Féin in response to the Patten Report, Thursday 9 September 1999'.

<http://cain.ulst.ac.uk/issues/police/patten/sf9999.htm>.

193 Martin O'Brien, interview by Dawn Walsh, March 29, 2012.

194 Clifford Shearing, 'Foundations of Patten dismantled', *Irish Times*, November 15, 2000.

195 Chris Thornton, 'Prominent Catholic backs new force', *Belfast Telegraph*, November 25, 2000.

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Oversight Commissioner had not yet been appointed.¹⁹⁶ Furthermore once Tom Considine took up his role as Oversight commissioner he spoke with the ICP's members 'especially Smith and Hayes who he met on every visit to Northern Ireland and discussed how they felt the progress was going'.¹⁹⁷

There were nuanced differences in the behaviour of different commission members. Peter Smith did not want to take individual personal responsibility for publicly reinterpreting the recommendations. He felt that there was an agreement among members not to publicly speak out. He was embarrassed when Clifford Shearing spoke out, feeling that Shearing's personal opinions could be misconstrued as the ICP's opinion.¹⁹⁸ Kathleen O'Toole felt a need not to interfere in the Oversight Commissioner's work. She avoided getting involved in the politics that followed the report but felt it was important to discuss the ICP's work in appropriate contexts, doing so at an academic conference and with interested groups in the USA.¹⁹⁹ However, here it is important to note that even though the IPC members did differ, they maintained a high level of cohesion and all stood firmly behind the report as the product of their combined work.

Dermot Ahern recalled that the Irish governments 'would have been exhorting the British government to implement what Patten said rather than a nuanced version of Patten'.²⁰⁰ Other parties, including prominent figures from countries where the commission members lived/worked, were also strong advocates for the full implementation of the report. A US Congress committee demanded the full implementation of the Patten Report proposals. The first of two resolutions on the Patten Commission were endorsed by the International Relations Committee in Washington. Congressman Peter King said:

196 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

197 Tom Considine, interview by Dawn Walsh, March, 2012.

198 Peter Smith, interview by Dawn Walsh, April 17, 2012.

199 Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012.

200 Dermot Ahern, interview by Dawn Walsh, October 8, 2013.

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The Patten Commission in itself was a compromise. Any further compromises are really going to undermine the Good Friday Agreement. There really cannot be any more compromise, whether it's the role of the ombudsman, police board or name change. All of these procedures were compromised already.²⁰¹

Hon. Benjamin A. Gilman, Chairman of the House commission on International Relations, argued that President Clinton made clear to him that both Tony Blair and Bertie Ahern, of the British and Irish governments respectively, were aware of his strong interest in the issue of the full implementation of the Patten Report recommendations.²⁰² The Democratic Party's Presidential candidate in 2000, US Vice President Al Gore, urged the British government 'to fully and expeditiously implement these recommendations'.²⁰³ The two American policing expert members were not representatives of their government, but the USA's decision to weigh in behind the commission and to push for the full implementation of its recommendations was significant due to its international standing as the global superpower and due to its previous role in the peace process. Its interventions increased the leverage the ICP. This assisted the ICP in acting as a directive mediator.

In November 2000 a revised bill passed despite some continued protests. Chris Patten supported this bill by advocating that Catholics should join the new force.²⁰⁴ However there were continued negotiations on policing and justice issues in order to secure cross-community support for reforms and the structure of the new police. By August 2001 the SDLP had secured sufficient assurances from the British government and they publicly supported the new force and joined the new policing board. Sinn Féin continued to highlight the gap between the British reforms and the recommendations in the Patten report until 2007.

201 'Patten reform storm hits US politics', *Belfast Telegraph*, September 7, 2000.

202 Commission on Security and Cooperation in Europe. *Protecting human rights and securing peace in Northern Ireland: The vital role of police reform*, (Washington D.C.: CSCE, 2000) 45.

203 'American politicians "dubious" at Patten reforms', *Belfast Telegraph*, September 28, 2000.

204 David McKittrick, 'Patten asks Catholics to join new Ulster force', *The Independent*, November 29, 2000.

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The negotiations and changes resulting from them, between 2001 and 2010 are significant for the story of policing in Northern Ireland. They resulted in nationalists and republicans supporting the police, and control over policing (and later justice) was returned to Stormont for the first time since the 1970s. As this dissertation is focused on the mediation process carried out by the ICP, the analysis in this chapter will end with the passing of the revised Police Bill at the end of 2000. This marked the end of the central role of the ICP in the issue.

Observable implications of all three types of mediation were present in relation to the ICP. However the ICP was best classified as undertaking directive mediation. There was very little effort to act as go-between or highlight agreement or progress i.e. to act as a facilitative-procedural mediator. The ICP did control some aspects of the mediation such as the agenda of meetings, and tried to keep its report confidential until its official release. Yet it also had open access meetings, and did not stop other parties from releasing information from their submissions or meetings.

The ICP engaged in formulative mediation, and this can be clearly seen in the substantial proposals made in its report, but directive mediation was the dominant form of mediation used. Even when making substantial proposals, which is in line with formulative mediation, the ICP *also pressed for their implementation*. This application of leverage is one of the key observable implications of directive mediation. Furthermore, during the implementation phase ICP members made a number of interventions that applied strong pressure on the British government to implement its report fully. Verification being another key element of directive mediation, ICP members acted as verifiers of the implementation of its report. The provision of an office of Oversight Commissioner in the report also indicates that the ICP was not content to leave the implementation of its report to the British government.

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Summary chronology of policing reform in Northern Ireland

- June 1998 - Independent Commission on Policing appointed
- June 1998 to July 1999 – ICP undertakes its work including public and private meetings and the commissioning of a survey examining public attitudes to the RUC.
- September 1999 – Independent Commission on Policing reports
- January 2000 – Secretary of State’s implementation plan
- May 2000 – First Police (Northern Ireland) Bill published
- August 2001 – Revised Implementation plan
- 4 November 2001 the RUC became the Police Service of Northern Ireland.
- April 2002 - The first PSNI-trained officers took up duty
- May 2007 – Sinn Féin endorses PSNI

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The effect of the variables on the mediation type

The observable implications of directive mediation were substantially and most frequently observed in relation to the ICP. Thus the ICP is most appropriately conceived as a directive mediator. This dissertation now turns its attention to the four variables (mediator identity, issue intensity, TOR, and GFA) and examines whether they affected the use of directive (and the minor use of formulative and facilitative-procedural) mediation.

Mediator identity

The membership of the ICP was as follows: The Right Honourable Chris Patten, Dr Maurice Hayes, Peter Smith QC, Kathleen O'Toole, Gerald Lynch, Professor Clifford Shearing, Sir John Smith, and Lucy Woods. The Secretary of the ICP was Robert Pierce of the Foreign and Commonwealth Office, assisted by Alan Tipping of the NIO, Chief Superintendent David Griffin of Humberside Police, Dr Michael Boyle of the Northern Ireland Statistics and Research Agency, Gwen Mawhinney of the Department of Finance and Personnel, and other secretariat staff. Liaison with the police was facilitated by Superintendent Sheamus Hamill.

Their appointment was not without controversy. Some unionists argued that the ICP included too many Catholics and/or that the members were too far removed from Northern Ireland and should not be allowed to come to the region and dictate how policing should be organised.²⁰⁵ The Irish government recommended the inclusion of Gerald Lynch.²⁰⁶ Even the identity of support staff and liaisons with other organisations was controversial. The appointment of a full-time liaison, Superintendent Sheamus Hamill from the RUC was criticised by Sinn Féin. They said that this put the independence of the ICP in doubt and demanded his removal. The

²⁰⁵ Gerry Moriarty, 'Religion of Patten commission members raised', *Irish Times*, December 1, 1998.

²⁰⁶ Paul Mageean and Martin O'Brien, 'From the Margins to the Mainstream: Human Rights and the Good Friday Agreement'. *Fordham International Law Journal* 22, no. 4 (1998): 1535.

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IPC argued it was simply more convenient to have a full-time single point of contact than to liaise with RUC headquarters.²⁰⁷ Having briefly introduced the ICP this chapter now turns its attention its identity and how this affected mediation type.

The observable implications which should be evident if mediator identity was affecting mediation type were outlined in the previous chapter. However they are concisely recapped here. Mediator identity can affect mediation type in two ways. Firstly, the relationship between the mediator and the conflicting parties affects mediation type and secondly mediator status affects mediation type. If the relationship between mediator and conflict parties was affecting mediation type, references to these relationships would be made. High mediator status is associated with directive mediation. Increased mediator status should be seen leading to more interventionist types of mediation such as directive mediation. The ICP and other actors would be seen referring to the high status of the ICP and its members in relation to giving weight to the recommendations. Alternatively, actors may be seen attempting to denigrate their status to counter their ability to engage in directive mediation. Finally, elements of mediator identity which are contentious in Northern Ireland, such as the religion of members from outside Northern Ireland, are also considered. While these elements may not have generally been seen as adding to or taking from the status of a mediator or referring to a direct past relationship between the mediator and conflict parties, they may have a large effect on how the mediator was viewed and thus the level of intervention accepted.

Before this analysis can outline how mediator identity affected mediation type there were a number of issues regarding the identity of the ICP which were considered. The ICP was composed of eight individuals; therefore this analysis had to establish if there were any disagreements and whether the members worked as a team or if

²⁰⁷ Deaglan De Bréadún, 'Patten commission to hold meetings in both nationalist and loyalist areas', *Irish Times*, October 6, 1998.

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they operated more autonomously. The report stated that most recommendations were unanimous and it appeared that during their work the members operated as a team.²⁰⁸ Not all commission members attended all meetings. The decision as to which members would attend which meetings was as a result of the logistics and the availability of certain members. Some private meetings were 'spin-offs' from public meetings, and thus the same members would be present to ensure continuity.²⁰⁹ The work and research done by the ICP was organically and informally divided between different members to reflect the different expertise and backgrounds of the individual members. In terms of drafting recommendations, the entire commission worked together discussing recommendations and coming to a consensus agreement.²¹⁰

The various commission members had distinct backgrounds. The different identity of the home state of individual commission members allowed for their classification using the four-fold type (local, primary mediator, external ethno-guarantors and international other) set out in the previous chapters. The importance of Peter Smith and Maurice Hayes as local actors and Chris Patten as an international actor was noted in this analysis. These elements are discussed further in relation to the individuals in question later in this section.

In addition to this categorisation, each member had a different level of individual status. While examining how mediator identity affected mediation type these two aspects of individual identity were taken into account, as well as the overall identity of the ICP.

208 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 105.

209 Peter Smith, interview by Dawn Walsh, April 17, 2012. Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

210 Maurice Hayes, interview by Dawn Walsh, April 18, 2012. Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012. Peter Smith, interview by Dawn Walsh, April 17, 2012.

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Individual members

The effect of the inclusion of each individual member of the ICP is now discussed. The effect of mediator identity is seen in its provision of expertise (discussed in the next section), and also in the mix of international and local status and representation. The inclusion of Maurice Hayes and Peter Smith created a perception that both communities were represented. This perception of balance and local representation allowed the ICP to be a directive mediator; the inclusion of these members implied that both communities' needs were considered. The high international status afforded to Chris Patten as a result of his role as the last Governor of Hong Kong gave the ICP a high international status. This made it difficult for the British government to resist implementing it and thus also facilitated directive mediation. This status was underscored when he was appointed as an EU Commissioner. The high status of Chris Patten internationally, and Maurice Hayes and Peter Smith locally, and the relatively high 'soft' power which it collectively wielded show that the ICP's identity made possible its directive mediation.

Following the General Election of June 1983, Chris Patten was appointed Parliamentary Under-Secretary of State, NIO. While this position was referred to in passing occasionally, for example by Mo Mowlam when she appointed him to chair the commission, it was not a relationship which was the focus of attention by any actor.²¹¹ Chris Patten's religion and position as the last Governor in Hong Kong were repeatedly highlighted. His broader background and experience may have been perceived in a number of ways by different parties. Some unionists were critical of his Catholicism, arguing that too many of the ICP's members were Catholic.²¹² Furthermore, an Irish official recalled that unionists had not forgotten that when he was working in Northern Ireland previously he had allowed the name of Londonderry district council be changed to Derry district council. The same official went on to say

211 'Dr Marjorie (Mo) Mowlam, Press release by the Secretary of State announcing the membership of the Independent Commission on Policing, 3 June 1998'. <http://cain.ulst.ac.uk/events/peace/docs/mm3698.htm>.

212 Gerry Moriarty, 'Religion of Patten commission members raised', *Irish Times*, December 1, 1998.

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that the SDLP liked Chris Patten and that this was important given they were the dominant nationalist party at the time.²¹³ Perhaps it was thought this was balanced by his past as a Conservative Party Chairman, given the party's traditionally unsympathetic attitude towards Northern Ireland's Catholics. The dominant feature attributed to him was his role as the last Governor of Hong Kong before the province was returned to China that was and it was frequently mentioned.²¹⁴

This position may have been seen by unionists as being associated with handing territory over to other states and thus may have had negative associations. Kathleen O'Toole also stated that his background gave him credibility.²¹⁵ While a Sinn Féin official argued that: 'Chris Patten in of himself was quite an interesting pick because as republicans we were very suspicious of bringing in a Tory lord, but at the same time the response from unionism was here is the guy that gave away Hong Kong'.²¹⁶ What was clear is that this position had a high international profile. While Chris Patten had a past in the British government, this position internationalised his identity and means it is more appropriate to view him as 'IO' not 'EEG' (as a result of being British). This gave Chris Patten higher status and thus allowed the ICP to act as a directive mediator. His position as an international actor was further reinforced by his appointment as European Commissioner after the ICP reported, and this high status allowed him to be directive in criticising the Police Bill. However Maurice Hayes noted that his appointment also made it more difficult for the ICP to pressure for full implementation of the report as Chris Patten was already in his new role and this limited his ability to focus on the implementation of the ICP's report.²¹⁷

213 Irish official, interview by Dawn Walsh, December 9, 2013.

214 'Statement by the Police Federation in response to the Patten Report, 9 September, 1999.', <http://cain.ulst.ac.uk/issues/police/patten/pfed9999.htm>.

215 Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012.

216 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

217 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

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Maurice Hayes clearly had past relationships in Northern Ireland as he was previously Northern Ireland Ombudsman and Permanent Secretary in the Northern Ireland Department of Health and Social Services. He also had previously issued a report on policing reform in Northern Ireland. The report by the ICP stated:

One of our commissioners, Dr Maurice Hayes, was asked by the Northern Ireland Secretary of State in 1996 to review the police complaints system. His report of January 1997 found the existing system inadequate and recommended an independent Police Ombudsman with his/her own independent team of investigators, and a change in the standard of proof required in police disciplinary cases. The Hayes Report was accepted by all parties in Northern Ireland and by the police themselves, and its recommendations passed into law in 1998.²¹⁸

The widespread acceptance of the recommendations of the Hayes Report was indicative of a past positive relationship. However this was not directly referred to by other actors and thus it was unclear whether it facilitated the ICP in engaging in directive mediation. Maurice Hayes himself argued that while he found his past relationships beneficial they also brought with them baggage regarding wider policy decisions he had made previously.²¹⁹

His background as a Northern Catholic was repeatedly stressed. For example he 'had been one of the highest- ranking Catholics in the Northern Ireland Civil Service before becoming Ombudsman for Northern Ireland' and 'Maurice Hayes, the only Northern Ireland Catholic on the Commission and a commentator respected by SDLP leader John Hume, said nationalists should take part in the new institutions'.²²⁰

These frequent mentions of Maurice Hayes' identity as a Catholic allowed the ICP to be directive as it indicated that the ICP had input from both Northern Ireland's Catholic community and, in conjunction with Peter Smith, was balanced to represent both communities in Northern Ireland. It is worth noting that while Maurice Hayes is

218 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 37.

219 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

220 Martin Breen 'Who and what is the Patten Commission?' *Belfast Telegraph*, September 9, 1999.

Chris Thornton, 'D-Day for new Police Board deferred', *Belfast Telegraph*, November 27, 2000.

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a Catholic he has never been a member of a nationalist political organisation, rather he was a Northern Ireland civil servant. The depictions of Maurice Hayes as a nationalist representative were made despite strong protests from Maurice Hayes; he argued that he was not on the ICP to represent anyone and was acting as an individual. He went as far as to object to the inclusion of Peter Smith on the ICP as he argued this would further lead to him being seen as a nationalist representative in contrast to Peter Smith representing unionism, due to his past involvement with the UUP.²²¹ Stewart Dickson MLA for the Alliance party, felt Maurice Hayes was right to protest that he was included because of this expertise and that his background was an additional element but should not be the main reason for his inclusion.²²² This reinforces a point made by a Sinn Féin official that people should not be chosen simply to provide superficial balance, people should also have expertise.²²³ Maurice Hayes undoubtedly had this expertise as well as a Catholic background.

Sinn Féin felt his background was not strong enough to convince republicans of balance: 'Well you see dealing with people who were victims of state violence and who were from a republican background, people, ex-IRA volunteers families who had been killed, Maurice Hayes is not going to sway or reassure them'.²²⁴ However, an Irish official argued that given his background he could understand the nationalist point of view and that he was close to and liked by the Irish government.²²⁵

Peter Smith had past relationships that arguably made him sympathetic to both the RUC and unionist community. In this way he and Maurice Hayes did come to be seen as representing their respective communities. Peter Smith was less resistant to this characterisation than Maurice Hayes. He recalled that he met with Ulster Unionist party members at a dinner after his appointment hoping to discuss policing. However the subject was avoided at the dinner; he felt the UUP did not want to

221 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

222 Stewart Dickson, interview by Dawn Walsh, November 27, 2013.

223 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

224 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

225 Irish official, interview by Dawn Walsh, December 9, 2013.

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know about difficult compromises that would have to be made. He was also uneasy regarding possible loyalist paramilitary reaction to his role.²²⁶ Peter Smith had done previous work with the Police Federation regarding personal injury claims. In discussions he was sympathetic to RUC reaction to the reforms, given the losses the forces suffered.²²⁷ It is worth noting that Maurice Hayes was similarly sympathetic so it is perhaps more appropriate to see this attitude as a result of living in Northern Ireland rather than being a member of a particular community.

Given the focus of this analysis it is important to stress that Maurice Hayes and Peter Smith membership of the ICP brought local involvement and added perceived balance, thus allowing more directive mediation. Mark Durkan of the SDLP highlighted this, arguing that the local members were able to envisage the issues that the different communities would have with the ICP's report.²²⁸ This finding was somewhat contrary to the expectation that international primary mediators would have a higher status and thus be able to engage in more interventionist mediation. Here the local status of the mediators and the perceived balance it brought added to their status and ability to engage in directive mediation.²²⁹

Kathleen O'Toole also had minor past relationships with the RUC through her previous employment. She recalled that these relationships were the subject of protest from some nationalist elements who felt they meant she was too close to the police. However she went on to argue that these relationships seemed to contradict with the earlier initial stereotyping of her identity given her Irish surname and Boston origins and thus her identity confused people throughout the duration of

²²⁶ Peter Smith, interview by Dawn Walsh, April 17, 2012.

²²⁷ Ibid.

²²⁸ Mark Durkan, interview by Dawn Walsh, October 2, 2013.

²²⁹ Peter Smith's position was initially offered to a unionist academic (Peter Smith, interview by Dawn Walsh, April 17, 2012). While both men had expertise they were drawn from different areas and the main thing they had in common was their unionism. Therefore it appears community representation was more important than expertise in the case of this appointment.

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her work on the ICP.²³⁰ Given this confusion it appears unlikely that her past relationship or status affected the type of mediation used by the ICP. However her past work in the Boston police force undoubtedly gave her knowledge which was helpful when the ICP was making substantial recommendations – helping it act as a formulative mediator. It also conferred on her the role of policing expert. Her identity can be seen to add to the expert perception of the ICP held by many actors outlined above, thus enabling directive mediation.

Similarly, Sir John Smith was a career police officer. He was former Deputy Commissioner of the Metropolitan Police and a former Inspector of Constabulary; his background undoubtedly gave him knowledge, policing expertise, and subsequent status. He appears to have been uncontroversial and was not often referred to in government, party political or media reports. However Maurice Hayes argued he was a very important and hard-working member of the ICP.²³¹ Furthermore this background allowed him to be aware of the likely reaction to recommendations from the wider UK police establishment.²³² Therefore John Smith added to the knowledge the ICP had at its disposal to make substantial recommendations and engage in formulative mediation. It also added to the perception of the ICP as experts again facilitating directive mediation.

Clifford Shearing was Director of the Centre of Criminology at the University of Toronto in Canada. He was an expert on policing in his native South Africa.²³³ As such he added to the soft power of the ICP and attempted to use this to pressure for the implementation of the report. This was reinforced by the comparisons often made

230 Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012.

231 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

232 Peter Smith, interview by Dawn Walsh, April 17, 2012.

233 Martin Breen, 'Who and what is the Patten Commission?' *Belfast Telegraph*, September 9, 1999.

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between the South Africa and Northern Ireland conflicts especially by republicans.²³⁴ However his identity became contested and politicised when he criticised the implementation of the ICP's report:

By the simple act of declaring that the Government has 'gutted' the Patten Report on policing, Clifford Shearing changed his status in Northern Ireland this week. On Monday, the South African was one of the more obscure former members of the Patten Commission...By Tuesday afternoon, he had risen, in the Sinn Féin lexicon, to being crucially important and a 'senior' among the eight people who made up the Commission.²³⁵

Other members also recalled Clifford Shearing's ability to propose innovative developments in policing from his academic expertise.²³⁶ They argued that these suggestions, whether largely included or not, gave the ICP more options. This assisted the commission in forming substantial recommendations and so aided the use of formulative mediation.

As President of John Jay College of Criminal Justice, Dr Gerald Lynch had a past relationship with Northern Ireland directly related to policing. He oversaw John Jay College's exchange of police and faculty for over 20 years with the RUC.²³⁷ This past relationship was not mentioned by the ICP or other actors and thus it is unclear if it assisted the ICP's in its directive mediation. His experience undoubtedly added to the status of the ICP; for example, The Commission on Security and Cooperation in Europe noted Dr Lynch 'is an internationally known expert and advocate for criminal justice education'.²³⁸ Here Gerald Lynch's expertise and experience in New York was being used to increase the credibility of the report and press for its full implementation: a clear instance of directive mediation.

234 Comparisons between Northern Ireland and South Africa were common throughout the peace process and the inclusion of South Africans can also be seen in Cyril Ramaphosa's involvement in the IICD which is addressed in the next chapter.

235 'Mallon "plays hardball" with Government over policing', *Belfast Telegraph*, November 16, 2000.

236 Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012. Peter Smith, interview by Dawn Walsh, April 17, 2012.

237 Commission on Security and Cooperation in Europe. *Protecting human rights and securing peace in Northern Ireland: The vital role of police reform*, (Washington D.C., CSCE, 2000) 7.

238 *Ibid.*, 6.

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Lucy Woods was a former chief executive of British Telecom in Northern Ireland. Her background in the business sector was apolitical and her inclusion and involvement in the ICP was uncontroversial and low key. Her relationships and status were not mentioned by the ICP or other actors and it seems very unlikely that these affected the mediation types used by the ICP.

By examining the individual commissioners where the perception of expertise originated can be uncovered. The careers of a number of the members clearly provided the ICP with expertise from career police officers and academics in the area of policing and criminal justice. This expertise not only provided the ICP with knowledge it could use to form substantive recommendations but it gave the ICP an expert status that allowed it to press for the implementation of its recommendations. Thus it made possible both formulative and directive mediation.

Expertise

On naming the members of the ICP Mo Mowlam repeatedly referred to their 'experience', 'knowledge', 'academic expertise', 'vast experience in the law enforcement field', and concluding that 'the entire membership is of the highest standing. Individually and collectively they have a considerable amount of expertise and ability to offer the Commission'.²³⁹ The Irish government noted the 'wide-ranging and diverse expertise and experience' of the commission.²⁴⁰ These comments clearly signified a view that the ICP had a high status and thus afforded it credibility to engage in directive mediation.

The ICP was mindful that its behaviour affected how it was viewed and acted in order to increase its status and credibility. For example, the large number of public

239 'Dr Marjorie (Mo) Mowlam, Press release by the Secretary of State announcing the membership of the Independent Commission on Policing, 3 June 1998'. <http://cain.ulst.ac.uk/events/peace/docs/mm3698.htm>.

240 'Statement by the Irish government in response to the Patten Report, 9 September 1999'. <http://cain.ulst.ac.uk/issues/police/patten/irgov9999.htm>.

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meetings was viewed as adding to the ICP's credibility.²⁴¹ A Sinn Féin official also highlighted the importance of these meetings in engaging the public and building trust.²⁴² The ICP report was also drafted with this in mind. Both Maurice Hayes and Peter Smith argued that they were wary of praising the RUC too much for fear that any subsequent scandal involving the RUC's past behaviour would then undermine the credibility of the entire ICP.²⁴³

The ICP did not explicitly refer to members as experts in its report. However by quoting policing experts and international norms from a range of countries on issues from community policing to personnel management they establish themselves as highly knowledgeable.²⁴⁴ Maurice Hayes also argued that the presence of policing experts made it more difficult for people to dismiss the report.²⁴⁵ The ICP's position as a group of policing experts raised the status of the ICP and allowed it to be directive in its mediation. This expertise also indirectly led to the commission being able to engage in directive mediation by ensuring the report was of very high quality.

In relation to implementation an editorial in the Irish Times argued that:

The Patten Commission, guided as it was by men and women experienced in the application of policing authority in contested circumstances, spelled out how this could be achieved in Northern Ireland. It is regrettable that the British government should feel itself required to deviate in any way from what Patten set down.²⁴⁶

241 Maurice Hayes, interview by Dawn Walsh, April 18, 2012. Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012.

242 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

243 Maurice Hayes, interview by Dawn Walsh, April 18, 2012. Peter Smith, interview by Dawn Walsh, April 17, 2012.

244 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 18, 22, 25, 40, 57.

245 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

246 'Mandelson's Special Task', *Irish Times*, June 6, 2000.

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Interestingly, even when criticising the report David Trimble did not denigrate the status of the ICP members. Instead he argued that the report was 'unworthy of the people who sat on the commission - all talented people'.²⁴⁷

It is clear the ICP was seen by a range of actors as being composed of experts. This was important in allowing the ICP to press for the implementation of its report and made countering such pressure more difficult. Thus these perceptions of the ICP as expert allowed the use of directive mediation. The representation of local views and its international character were essential components in laying a strong base on which the members could establish their own bona fides and integrity.²⁴⁸ An Irish official underlined the importance of the international element, stating that: 'there is no doubt that the fact these people are international was the most important leverage they had'.²⁴⁹ Three main elements worked together to give the ICP knowledge and expertise useful when engaging in formulative mediation. The international profile and high individual status of its chairman Chris Patten, representation from both communities in Northern Ireland in the inclusion of Maurice Hayes and Peter Smith and finally the inclusion of policing and criminal justice experts such as Kathleen O'Toole, Clifford Shearing and John Smith. These gave it the necessary leverage and high quality report to make possible its directive mediation.

247 'Changing name of RUC would cause much hurt', *Irish Times*, December 2, 2000.

248 John Doyle, ed. *Policing the Narrow Ground*, (Dublin: Royal Irish Academy, 2010), 4-5.

249 Irish official, interview by Dawn Walsh, May 1, 2013.

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Issue intensity

The issue of policing reform was highly controversial and salient within both communities. The unionist community strongly resisted changes to a police force which it saw as the protector of the innocent from IRA terrorists. Nationalists and republicans were desperate for substantial changes in what they saw as a sectarian force which victimised their community and upheld a discriminatory status quo, often through violent means. In the build up to the publication of the ICP's report, David Trimble highlighted the emotional nature of the unionist support for the RUC:

Proposed changes in the name of the RUC repudiate and insult what is currently one of the world's most professional police forces. Indeed, the emotional charge is greater because, together with the British Army, the RUC has, in the eyes of many Ulster people, been their main defence against the lawlessness of paramilitaries, both republican and loyalist. For over 30 years civilised life has been possible in most areas through the sacrifices of the police and Army. Over this period 302 officers lost their lives. Thousands more were injured. Some have recovered but many have suffered permanent physical and psychological injuries. All across the Province former officers live out their lives without sight or without limbs.²⁵⁰

In a strong contrast to this position Gerry Adams argued:

The importance of policing will ensure that there will be keen attention paid by nationalists and republicans to the Patten report. If Patten doesn't deliver what does that then say about the integrity and credibility of the agreement? The nationalist people are law abiding, decent people who want a police service they can trust, respect and join. In recent months the undisguised sectarianism of the RUC has been apparent again... The issue of collusion, never far below the surface...All of this is just the tip of a very deep iceberg which goes back to the founding of the RUC in 1922.²⁵¹

The intensity of feeling surrounding the issue of policing reform in both communities was clear. Both Gerry Adams and David Trimble refer directly or indirectly to the ICP and changes it may propose and the ICP itself recalled the intensity of feeling it witnessed during its work. Furthermore, Martin O'Brien of the Committee on the

²⁵⁰ David Trimble, 'You've given in to the IRA, Chris', *The Times*, August 27, 1999.

²⁵¹ Gerry Adams, 'RUC must go', *An Phoblacht*, September 9, 1999.

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Administration of Justice also highlighted that the issue was very salient for associated civil servants and members of the police, many of whom resisted reform.²⁵² Therefore it must be ask how the effects of this intensity of feeling affected mediation type.

An acute awareness of this level of intensity surrounding policing was evident in the ICP's own report. It noted that:

...during the course of our public meetings, the Commission heard many harrowing stories from individuals about their experiences of violence in the last 30 years...this underlined for us the importance of the work we were asked to do: a new beginning for policing in Northern Ireland will both contribute to and result from the return of hope, healing and peace.²⁵³

As discussed in previous chapters existing literature finds that the greater the intensity of a conflict the more interventionist the type of mediation which will be used. The theoretical reasoning offered for this finding is that the more intense a conflict the more difficult it is for the conflicting parties to reach an agreement alone, and the more assistance they will need from third parties. Therefore high levels of intensity of feeling around policing were expected to be accompanied by a highly interventionist mediation type such as directive mediation.

If the level of intensity of feeling around an issue is affecting the type of mediation being used by a commission the following would be observed:

- The higher levels of intensity acting as a barrier to agreement between the conflict parties. The parties may state that they cannot compromise on the issue

252 Martin O'Brien, interview by Dawn Walsh, March 29, 2012.

253 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999).

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as it is too important to their constituents/supporters. They may claim that compromising on such a sensitive issue would result in them losing vital support.

- If the intensity of feeling around an issue is affecting the type of mediation used more interventionist mediators would justify their involvement in terms of overcoming the associated challenges.
- Conversely, if the intensity of feeling around an issue is low and leading to the use of less interventionist mediation a mediator would highlight how the parties can reach a compromise with a lower level of assistance.

The level of intensity around policing was a challenge for the ICP. Moore argued: 'the Patten Commission faces the pitfall of those working within Northern Ireland's traditional polarities - how to create opportunities for positive change without provoking such a hostile reaction from unionists'.²⁵⁴ The issue intensity was also evident in the hurt and sadness felt around policing. This clearly affected the public meetings the ICP held. At one of the early meetings Chris Patten told the gathering that while he was happy to continue hearing stories of personal experiences, he also hoped that people would want to make 'positive suggestions for changes in policing'. This demonstrated that early in its work the ICP was engaging in facilitative-procedural mediation as Chris Patten sought to control the agenda of the meeting. Some people in the audience were visibly angry at the suggestion that by recounting, sometimes traumatic experiences, they were not being positive or forward looking.²⁵⁵ Peter Smith felt this reaction was choreographed.²⁵⁶ Regardless of this, after this event the ICP stepped back from attempts to control the agenda and allowed members of the public to recount their personal stories without restrictions. Thus the high level of issue intensity limited the ability of the ICP to act as a facilitative-procedural mediator.

254 Linda Moore, 'Policing and Change in Northern Ireland: The Centrality of Human Rights'. *Fordham International Law Journal*, 22, no. 4 (1998): 1582.

255 *Ibid.*, 1594.

256 Peter Smith, interview by Dawn Walsh, April 17, 2012.

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The issue intensity contributed to the use of more interventionist mediation types from the ICP. Chris Patten highlighted that if a political solution to the issue of policing was possible, Senator George Mitchell would have secured it during the GFA negotiations.²⁵⁷ The ICP felt that they were ‘the last chance saloon’.²⁵⁸ They also felt that policing was a vital element of the wider peace process and that a failure to manage this issue correctly would put the wider process in jeopardy.²⁵⁹ This highlighted the fact that the ICP did not believe that the issue was one that could be resolved through light touch mediation such as providing communication channels. If the disagreement about policing was simply a matter of miscommunication George Mitchell would have overcome this. This suggested that the ICP knew from the beginning that acting as a facilitative-procedural mediator would not be sufficient. Formulative or directive mediation would be necessary as a direct result of the intensity of feeling around policing.

Furthermore, in its report the ICP highlighted that the issue of policing was a very ‘controversial’ one and that they were asked to step in due to a failure of politicians to be able to resolve this issue: ‘the issue of policing is at the heart of many of the problems that politicians have been unable to resolve in Northern Ireland, hence the fact that we were asked to consider this question ourselves’.²⁶⁰ Maurice Hayes argued that the ICP used this inability to press politicians to accept and implement its recommendations.²⁶¹ Thus the intensity of feeling surrounding the issue and the resultant political failure to resolve the issue facilitated directive mediation. When politicians criticised the recommendations of the ICP or resisted their implementation the ICP could counter by reminding them they had been unable to resolve the issue.

257 Kathleen O’Toole, interview by Dawn Walsh, April 18, 2012.

258 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

259 Kathleen O’Toole, interview by Dawn Walsh, April 18, 2012.

260 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 2.

261 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

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The intensity of feeling around the issue of policing was further seen in the RUCs attempts to keep documents confidential, going so far as going to court. 'The RUC, under former Chief Constable Sir Hugh Annesley, has previously gone to court to prevent the Stalker Report from being released'.²⁶² The ICP insisted on viewing these controversial documents. The pressure the ICP applied to secure access to these documents shows that this intensity directly led to the ICP acting as a directive mediator.

Interestingly the intensity of feeling around the issue of policing was also used to rebut the ICP's attempts to act as directive mediators. Peter Mandelson cited the sensitivities surrounding the issue to defend the Police Bill, and implementation plan which fell short of the recommendations in the report. 'Mr Mandelson told them he was "listening very carefully" to the arguments and was determined 'to act with great sensitivity'. He paid specific tribute to the sacrifices made by RUC officers and made clear that their contribution should never be forgotten. 'I also recognise and understand the pain which has been caused to many in the RUC by Patten's proposal to change its name and symbol.²⁶³ Peter Mandelson also arguably had unionist sympathies and was very eager to preserve David Trimble's leadership of the UUP. These factors were also motivations for his attempts to avoid the fulsome implementation of the recommendations.

A similar argument was made by David Trimble in order to counter arguments for the necessity of some of the recommendations made by the ICP. He argued that changing the name or symbols of the police would cause great hurt in his community and in fact are only seen as necessary because of anti-RUC propaganda in the nationalist community.²⁶⁴ In short, he was arguing that these issues are genuinely sensitive in his community while the sensitivities that appear in the nationalist community have been cynically fostered. Therefore, the pressure which the ICP

²⁶² Chris Thornton, 'Patten to see secret police reports', *Belfast Telegraph*, December 11, 1999.

²⁶³ Frank Millar, 'Mandelson hints at concessions to unionists in RUC reforms comments centre on force name and symbol', *Irish Times*, November 17, 1999.

²⁶⁴ Sarah Schaefer, 'Parliament: Northern Ireland', *The Independent*, April 7, 2000.

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attempted to apply (the directive mediation) to facilitate these changes was unnecessary. Importantly neither of these arguments gained traction.

The intensity of feeling around the issue of policing was based on the fact the issue was salient in both communities and differences were based on substantial divergent opinions rather than communication failures. Thus facilitative–procedural mediation would not be sufficient to resolve the issue. The intensity of feeling also countered the ability of the ICP to control the agenda at public meetings as people need to be allowed to explain their hurt. This again proscribed facilitative-procedural mediation. Interestingly in this case, the intensity of the issue was also used unsuccessfully by some parties to try to block the full implementation of the report in order to allow further negotiation/compromise.

The controversy and salience surrounding the issue also led to the inability of politics to resolve the differences. The ICP used this political failure to apply pressure to accept its recommendations – engaging in directive mediation. The high level of intensity around policing prevented the issue being resolved in the GFA negotiations and this in turn allowed the ICP to engage in directive mediation; it pressed the government to implement its report highlighting the governments and parties past failures in this area.

The TOR

While the issue intensity of policing reform prevented it being resolved by politicians; as mentioned above politicians did provide TOR for the ICP in the GFA. These TOR affected the type of mediation used. Powers explicitly provided for would be expected to result in these activities and the mediation type of which they are indicative being engaged in. There is an additional issue that was considered when examining the effect of the TOR on the type of mediation used by the ICP: ambiguity. While the TOR of the ICP were relatively clear there was always a degree of interpretation at play. It was logical to expect that ambiguity would be used as a

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justification for behaving in a way which the commission was predisposed to in light of other factors. Given that in the case of the ICP the mediator identity and intensity of feeling were facilitating the use of directive mediation, in relation to implementation it was expected the ICP to interpret any ambiguity in a way that led to directive mediation.

The TOR are now outlined and how they affected mediation type is then explained.

Commission on policing for Northern Ireland - Terms of Reference

Taking account of the principles on policing as set out in the agreement, the Commission will inquire into policing in Northern Ireland and, on the basis of its findings, bring forward proposals for future policing structures and arrangements, including means of encouraging widespread community support for those arrangements.

Its proposals on policing should be designed to ensure that policing arrangements, including composition, recruitment, training, culture, ethos and symbols, are such that in a new approach Northern Ireland has a police service that can enjoy widespread support from, and is seen as an integral part of, the community as a whole.

Its proposals should include recommendations covering any issues such as re-training, job placement and educational and professional development required in the transition to policing in a peaceful society.

Its proposals should also be designed to ensure that:

- the police service is structured, managed and resourced so that it can be effective in discharging its full range of functions (including proposals on any necessary arrangements for the transition to policing in a normal peaceful society);
- the police service is delivered in constructive and inclusive partnerships with the community at all levels with the maximum delegation of authority and responsibility;
- the legislative and constitutional framework requires the impartial discharge of policing functions and conforms with internationally accepted norms in relation to policing standards;
- the police operate within a clear framework of accountability to the law and the community they serve, so: they are constrained by, accountable to and act only within the law;
- their powers and procedures, like the law they enforce, are clearly established and publicly available;

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- there are open, accessible and independent means of investigating and adjudicating upon complaints against the police;
- there are clearly established arrangements enabling local people, and
- their political representatives, to articulate their views and concerns about policing and to establish publicly policing priorities and influence policing
- policies, subject to safeguards to ensure police impartiality and freedom from partisan political control;
- there are arrangements for accountability and for the effective, efficient and economic use of resources in achieving policing objectives;
- there are means to ensure independent professional scrutiny and inspection of the police service to ensure that proper professional standards are maintained;
- the scope for structured co-operation with the Garda Síochána and other police forces is addressed;
- And the management of public order events which can impose exceptional demands on policing resources is also addressed.

The Commission should focus on policing issues, but if it identifies other aspects of the criminal justice system relevant to its work on policing, including the role of the police in prosecution, then it should draw the attention of the Government to those matters.

The Commission should consult widely, including with non-governmental expert organisations, and through such focus groups as they consider it appropriate to establish.

The Government proposes to establish the Commission as soon as possible, with the aim of it starting work as soon as possible and publishing its final report by summer 1999.²⁶⁵

These proposals were part of the package ratified by referendum in May 1998. The terms of reference covered a broad range of issues suggesting in advance that the ICP would engage in formulative mediation as it was empowered to make substantial suggestions on a very broad range of issues, relating to policing reform. This encouraged the commission to act as a formulative mediator. Furthermore, the fact these TOR were endorsed by the major political parties in Northern Ireland (with the exception of the DUP), as part of the GFA document, and by the public in the referendum suggested that if the ICP remained within these TOR it was empowered

²⁶⁵ The Agreement, Agreement reached in the multi-party negotiations (10 April 1998).

<http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>.

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to apply pressure to ensure its remit was fulfilled. Thus the ICP could act as a directive mediator.

The TOR for the ICP were crucial to the local commission members. Peter Smith and Maurice Hayes argued that controversial changes were pre-agreed, changes could not be just technical because the TOR said the new police force had to be acceptable to both communities: 'Northern Ireland has a police service that can enjoy widespread support from, and is seen as an integral part of, the community as a whole'.²⁶⁶ Maurice Hayes argued that the TOR were very clear; that the report simply 'put flesh on the bones' and that if the UUP were not able to accept this why had they signed up to the GFA.²⁶⁷ An Irish official commented: 'the first thing they [commission members] do when they get a job is they read the terms of reference. The one thing they do not want for their own professional reputation is somebody to hold up the report and say you did not do what you were asked to do'.²⁶⁸

Similarly, Peter Smith felt that the reforms proposed by the ICP were the irrefutable conclusions that any commission would have come to given the TOR. He argued that these TOR were straightforward and that it was illogical to argue that the outcomes could not be predicted by anyone who had seen them. He was exasperated by the reaction of David Trimble, arguing that David Trimble had signed up to the GFA and was now feigning surprise because the reforms were unpopular.²⁶⁹ Here the local ICP members in particular use the TOR to justify controversial recommendations and, vitally for this analysis to press for their acceptance thus employ them to engage in directive mediation.

Peter Smith recalled David Trimble arguing that the report should not be implemented as it did not meet the TOR of the commission; in that the new police

²⁶⁶ Ibid.

²⁶⁷ Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

²⁶⁸ Irish official, interview by Dawn Walsh, May 1, 2013.

²⁶⁹ Peter Smith, interview by Dawn Walsh, April 17, 2012.

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force it envisaged could not be supported by the unionist community due to changes including those to the emblems and name.²⁷⁰ So here David Trimble was trying to use the TOR to counter efforts by the ICP to act as a directive mediator pressing for the implementation of its report. However this argument did not gain traction and Peter Smith rejected it outright.²⁷¹

There were no indications that ambiguity was significant in relation to the TOR of the ICP. No members or other parties highlight it as an issue and both Maurice Hayes and Peter Smith spoke of clarity. In relation to the TOR the local ICP members in particular used them to refute opposition to controversial recommendations and push for their acceptance. Thus the TOR, and vitally the fact that the commission's recommendations were in keeping with them were used to allow for directive mediation.

The GFA

The GFA provided the wider environment in which the ICP operated. This dissertation is the first work which examined how factors affected mediation in the implementation phase of a peace process. This means there was no existing work which outlined how the peace agreement may affect mediation. This analysis predicted that the GFA may have a number of effects. By being provided for in a peace agreement mediators may gain additional leverage. The GFA was endorsed in two referendums and was seen as the way forward for the region by both governments and all but one of the major parties. Thus the ICP may have been able to engage in more interventionist forms of mediation as a result of legitimacy gained from its origins in the GFA.

270 Ibid.

271 Ibid.

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The innovative international nature of the GFA's form of consociationalism may have tied in with the presence of international members and thus the effect of this internationalisation would be seen indirectly through the effect of the international element of the commission's identity. Similarly, Lijphartian consociationalism may have encouraged the inclusion of members that were representative of the different communities; again this effect would be observed indirectly through the effect of mediator identity.

Lijphartian consociationalism may also have encouraged procedural-facilitative and/or formulative mediation. Its principles, such as power-sharing and consensus decision-making, appear predisposed to focusing on inclusive discussions and co-drafting of compromises. The power and leverage element of directive mediation appears to be incompatible with consociationalism. However the form of consociationalism present in the GFA must be considered. There was a significant coercive element to the GFA, i.e. the manner in which the governments effectively imposed it. This suggests the consensus reading of consociationalism does not necessarily apply to the GFA and the coercive elements may well have been suited to directive mediation.

If the nature of the GFA was affecting the type of mediation which the ICP used commissions would be observed referring back to the GFA in explaining their activities. Other actors may also cite the GFA in order to influence the type of mediation the ICP uses. Actors may have also highlighted areas where a commission's activities appeared not to be consistent with the GFA. The ICP was provided for in the GFA and the GFA was popularly endorsed. This implicitly afforded an authority to the ICP, allowing it to engage in directive mediation. The GFA was supported by the British and Irish governments, most Northern Ireland political parties (with the notable exception of the DUP), and in a popular referendum. This

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gave the commissions provided for in it a high-level of validity. The ICP themselves referred to the GFA and the referendum to allude to this validity:

Since over 70 per cent of those who voted in the Northern Ireland referendum – whatever the hazards they feared and the doubts they have subsequently expressed – supported the Agreement, this approach appears to be the most realistic as well as the most hopeful.²⁷²

For O’Leary the reworking of an implementation plan to fully reflect the ICP’s report was necessary if the GFA was to be considered implemented because the IPC was directly provided for in the Agreement.²⁷³

Peter Smith accepted that the referendum gave the ICP a stronger mandate than an alternative genesis would have.²⁷⁴ Kathleen O’Toole, while not conscious of this during the work of the ICP, agreed in hindsight.²⁷⁵ Similarly, a Sinn Féin official argued that: ‘the Patten hearings... the framework was set in the Good Friday Agreement and people signed up and there was broad political support for it and then there was electoral support through the referendum which gave it a mandate’.²⁷⁶

The existence of the GFA was an important source of leverage which both the ICP and other actors used to pressure Peter Mandelson to fully implement its recommendations. For example, Clifford Shearing referred to the GFA when criticising the Police Bill and implementation plan initiated by Peter Mandelson: ‘the measure failed to fulfil the “hopes and vision” of the Belfast Agreement’.²⁷⁷ Similarly Brendan O’Leary argued that the Police Bill was a failure because it did not implement the recommendations which were allowed for in the GFA. He also noted

272 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 6.

273 Arguments regarding the implementation of the GFA including contributions by Brendan O’Leary, Garrett Fitzgerald, Alex Attwood and Gerry Adams can be found in the Irish Times op-ed pieces throughout the summer of 2000.

274 Peter Smith, interview by Dawn Walsh, April 17, 2012.

275 Kathleen O’Toole, interview by Dawn Walsh, April 18, 2012.

276 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

277 Desmond McCartan, ‘Twin attack on Police reform’, *Belfast Telegraph*, November 14, 2000.

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that this opinion is widely held: 'The Patten Report and the bill were supposed to be consistent with the Belfast agreement. Patten's Report was; the bill is not. It does not represent the promised "new beginning"'.²⁷⁸

While the GFA's existence and its widespread support facilitated directive mediation whether its nature as a consociational agreement affected mediation type requires a consideration of its international, Lijphartian, and coercive element. The inclusion of various international members, including two from the USA, can be seen as an extension of the wider internationalisation of the Northern Ireland peace process. As was mentioned in the analysis of mediator identity the focus on Chris Patten's role as the last Governor of Hong Kong also internationalised the ICP. As was also mentioned in that section, the inclusion of Maurice Hayes and Peter Smith was in keeping with the Lijphartian approach: communities should be proportionally represented in decision-making bodies.

The reference to 'unanimous recommendations' by the ICP in its report, and its widespread consultation in both communities may be seen as consistent with the Lijphartian elements of consociationalism such as power-sharing and minority veto.²⁷⁹ The extensive discussion of recommendations for inclusion and the consensual nature of the process were also stressed by members.²⁸⁰ However the GFA can also be viewed as a coercive coalition because the internal conflict parties were pressured into accepting its framework by the British and Irish governments. This coercive element of the GFA's consociationalism is consistent with the directive mediation used by the ICP.

There was no attempt by the ICP or others to link the process of mediation to consociationalism, and Kathleen O'Toole stated that she feels the drive towards

²⁷⁸ Brendan O'Leary, 'Comment & Analysis: Perfidious Britannia', *The Guardian*, June 15, 2000.

²⁷⁹ Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 105.

²⁸⁰ Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012. Peter Smith, interview by Dawn Walsh, April 17, 2012. Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

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inclusive and consensual approach resulted from the personalities involved. Where the members pressed for implementation of the report this was due to the fact they felt it was the 'last chance saloon'.²⁸¹ The pressure applied by external actors such as US politicians, to implement the report was in keeping with both the strong internationalisation provided for in the GFA and the coercion which the GFA included. This suggests that mediation in the implementation phase of a peace agreement will be in keeping with the character of the wider peace process and any seminal agreement which has been reached.

Consociationalism was given as a reason for the outcome of the mediation rather than the shape it took. Issues such as 50:50 recruitment and changing the name and symbols of the police were related to the need for cross-community consent and equal respect for identities and hence are linked to consociationalism. The consociational d'Hondt formula was even recommended for appointments to the policing board: 'We recommend that the Policing Board should have 19 members, 10 of whom should be Assembly members drawn from the parties that comprise the new Northern Ireland Executive, selected on the d'Hondt system'.²⁸²

Interestingly, the public meetings stage of the work of the ICP can be viewed as being inconsistent with conceptions of consociationalism. The ICP members stressed the importance of going out into the community and meeting ordinary people. Maurice Hayes stated they wanted to go to every district council area at least once.²⁸³ Consociationalism is usually thought of as an elite driven process; the desire of the ICP to engage with ordinary citizens and their feeling that this increased their credibility (and arguably their leverage), was inconsistent with this element of consociationalism.

281 Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012.

282 Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 30.

283 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

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The unionist community had a complex and fractious relationship with the GFA and this affected its attitude to the ICP. The DUP rejected the recommendations on the basis that they resulted from what they saw as a flawed agreement. Ian Paisley Jr. accused the ICP of being: 'handcuffed by the Belfast Agreement... The Commission are no more than puppets of the Agreement'.²⁸⁴ Interestingly given the emphasis the ICP's report placed on its recommendations being in line with the GFA the claim that the ICP was restricted by the GFA was refuted. While accepting the link between the GFA and the ICP, Chris Patten argued: 'I haven't built a career on being a puppet' and Sir John Smith claimed 'I've always valued fiercely my independence...I've never considered myself a puppet to anyone or anybody'.²⁸⁵

This showed tension within the ICP. It needed to be seen as being in line with the GFA but it also needed to show itself to be an independent body and making decisions on the basis of their expertise. This tension was evident in its report, where the ICP focused on the GFA and international policing norms as the main determinants of their recommendations. Regardless of how a balance between these was achieved they both represented the use of leverage to enforce recommendations and thus indicate that both expertise (a subset of mediator identity discussed above under that heading) and the GFA affected mediation type by facilitating directive mediation.

To conclude, the existence of the GFA and the widespread support it received affected mediation type. They were used as a form of leverage to strengthen recommendations and pressurise Peter Mandelson to implement the recommendations in full. The May 2000 Police Bill, which was seen by nationalists, the Irish governments, and by international observers as not fully implementing the ICP's report, was revised during 2001 and a new implementation plan proposed that would seek to ensure the implementation of the remaining recommendations. Thus the popular endorsement of the GFA provided the ICP with legitimacy and allowed

²⁸⁴ Janet Devlin, 'Fury at Patten claims', *Belfast Telegraph*, November 18, 1998.

²⁸⁵ Gerry Moriarty, 'RUC review body rejects "puppet" allegation', *Irish Times*, October 3, 1998.

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for directive mediation. The inclusion of international commission members and the role of external parties, such as US politicians, in pushing for the implementation of the ICP's report (thus strengthening its position as a directive mediator) was consistent with the international focus of the peace process in general and the specific consociationalism provided in the GFA. Consociationalism can be seen indirectly leading to directive mediation. Ideas of power-sharing and representation seen in Lijphartian consociationalism can be linked to the inclusion of Maurice Hayes and Peter Smith. Their inclusion in turn facilitated directive mediation; so consociationalism may again have contributed indirectly to directive mediation. Finally the use of directive mediation, particularly the pressing of parties to accept compromises with which they were unhappy, was similar to how the governments pressed the conflict parties into the GFA. This suggests that mediation during the implementation stage of a peace agreement will be in keeping with the general characteristics of the peace process and the agreement reached.

Conclusion

The ICP mainly engaged in activities indicative of directive mediation. The variables under examination affected this in a number of ways. An Irish official highlighted the role of mediator identity and TOR saying 'there is a mix of elements in this: there is the TOR, the composition of the body, the professional integrity of the members on it'.²⁸⁶ The high status, both internationally and locally, and expertise of its members facilitated the directive mediation. The clarity of the TOR were used particularly by the local members to push for the implementation of the report – and thus be a directive mediator. The intensity of feeling in both communities surrounding policing led to a failure of politicians to resolve the issue and this in turn was used by the ICP to press for the implementation of its report.

²⁸⁶ Irish official, interview by Dawn Walsh, May 1, 2013.

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The Good Friday Agreement provided the ICP with legitimacy that also allowed it to press for the full implementation of its report. The power-sharing and representation advocated by Lijphart can be linked to the inclusion of Maurice Hayes and Peter Smith. Their presence supported the use of directive mediation, thus these elements of consociationalism can be seen indirectly as enabling directive mediation. Similarly, the international nature of the peace process and specifically of the GFA, may have led to the inclusion of international commission members - which again led indirectly to directive mediation. Finally, this directive mediation was in keeping with how the governments had previously exerted pressure to get the parties to agree to the GFA. Therefore post-agreement mediation is likely to be in keeping with the characteristics of the peace process and the peace agreement.

CHAPTER FOUR: THE INDEPENDENT INTERNATIONAL COMMISSION ON DECOMMISSIONING

Decommissioning was the term which came to be used in the Northern Ireland context to refer to the putting beyond use of arms by the various paramilitary groups. This issue became the *bête-noir* of the peace process, particularly as at times unionists refused to negotiate with or sit in government with Sinn Féin until the IRA had put its arms beyond use. In order to overcome this obstacle the two governments first created the International Body on Decommissioning and then the Independent International Commission on Decommissioning.

‘Sometimes a window of opportunity may be opened from the outside, serving as a catalyst generating a solution for a seemingly intractable situation’.²⁸⁷ This quote from Brown and Hauswedell regarding decommissioning in Northern Ireland highlights the potential role for third parties or external actors in assisting conflict parties to put their arms beyond use. This chapter focuses on the commission which was tasked with this job in Northern Ireland. It examines the behaviour of the Independent International Commission on Decommissioning (IICD) in Northern Ireland using the framework and methods outlined in chapters one and two, and which was applied to the ICP in chapter three. In order to do this a background to the issue of decommissioning in Northern Ireland is first provided. The role of the IICD in mediating the decommissioning of paramilitary arms is then examined in order to establish what type of mediation was used.

This examination is divided into four phases:

- The International Body on Decommissioning to the signing of the Good Friday Agreement (1996 to spring 1998);

²⁸⁷ Kris Brown and Corinna Hauswedell, ‘Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland’, (Bonn: Bonn International Centre for Conversion, 2002) 4.

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- The GFA referendum to the suspension of the Assembly in February 2000 (summer 1998 to spring 2000);
- The reestablishment of the Assembly to IRA decommissioning (summer 2000 to autumn 2005);
- Post-IRA decommissioning to the closure of the IICD (winter 2005 to end of 2010).

The chapter then explores how mediator identity, issue intensity, the TOR and the GFA affected the choice of mediation type.

Background to decommissioning in Northern Ireland

In order to understand the role of the IICD the background to decommissioning and how the issue became salient during Northern Ireland peace process must be outlined. The early years of the Northern Ireland peace process, (1990-1994), focused on the British and Irish governments working to secure ceasefires, particularly an IRA ceasefire, and to negotiate a framework for peace talks.²⁸⁸ In the absence of ceasefires decommissioning was largely a non-issue. However, even at this early stage, the governments were looking to the future and had an expectation that decommissioning would occur.

As early as May 1993 the Irish Taoiseach Albert Reynolds included the issue as part of a series of clandestine contacts with the republican movement. In a document called 'Steps Envisaged', which was sent to Gerry Adams the Irish government stated that once public confidence in a peace process could be established it would make every effort to deal expeditiously with issues such as prisoner release, and arms and equipment.²⁸⁹ The British also mentioned the issue to the republicans in a secret contact. In November 1993 they stated they would 'examine the practical consequences of the end of the violence'. This

²⁸⁸ Colin McInnes, 'A farewell to Arms: Decommissioning and the peace process'. In Michael Cox, Adrian Guelke and Fiona Stephen. *A Farewell to Arms?: From War to Peace in Northern Ireland*, (Manchester: Manchester University Press, 2000) 79.

²⁸⁹ Eamonn Mallie and David McKittrick, *The fight for peace: the secret story behind the Irish peace process*, (London: Heinemann, 1996) 75.

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suggested they would discuss demilitarization of Northern Ireland's security situation in conjunction with a discussion of decommissioning of IRA arms.²⁹⁰ Furthermore, in October 1993 Sir Patrick Mayhew, the Secretary of State for Northern Ireland, also raised the issue, saying that an IRA ceasefire would have to be accompanied by disarmament which indicated that the 'violence was over'.²⁹¹ Republicans repeatedly argued that all parties to the conflict 'will see fit, at a time of their own choosing to demilitarise'.²⁹²

The Joint Declaration made by both governments in December 1993 made no specific reference to decommissioning but it did make reference to 'a permanent end to the use of, or support for, paramilitary arms'.²⁹³ However the Irish Tánaiste Dick Spring was quick to infer from this; speaking in the Dáil he claimed that his government was talking about a 'permanent cessation of violence' coupled with 'the handing up of weapons'. In fact he went as far as to say that Sinn Féin could not participate in any peace negotiations without IRA disarmament.²⁹⁴ However this was not a position that was wholeheartedly and unquestioningly accepted by the Irish government: it was aware that such a precondition could act as an obstacle to an IRA ceasefire. Albert Reynolds argued Dick Spring's position was 'too hardline', in hindsight. In May 1994 the British government also seemed to drop the idea that decommissioning was a necessary precondition to including Sinn Féin in peace negotiations, instead focusing on a ceasefire that was sustained over three months.²⁹⁵

The unionists saw the question of decommissioning as hypothetical in the absence of a ceasefire, but were early adopters of a 'disarmament first and talks later approach' which they sustained to varying degrees once an IRA ceasefire was announced on the 31st August

290 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 11.

291 Ibid., 13.

292 Ibid 13.

293 British and Irish Governments, *Joint Declaration on Peace: The Downing Street Declaration*, (15 December 1993), (London: Prime Minister's Office, 1993).

294 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 11.

295 Ibid., 13.

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1994.²⁹⁶ On the occasion of the announcement of the IRA ceasefire the British government were also suspicious.²⁹⁷ As Albert Reynolds' successor, John Bruton argued:

The Irish Government has trusted Sinn Féin that the cessation of IRA violence is irreversible and it continues to be encouraged in this by the absence of violence for over a year now. However, the British Government and, more importantly, the unionists do not yet fully share in this trust.²⁹⁸

This led to the infamous 'Washington 3' speech in which Patrick Mayhew set down three criteria which had to be met if Sinn Féin were to be included in peace talks: a willingness to disarm, an understanding of the modalities, and actual decommissioning of some arms.²⁹⁹ By so clearly setting out these criteria the British government restricted its room to manoeuvre. The Conservative government also became increasingly dependent on the Ulster Unionist Party for political support in the House of Commons due to internal Conservative party divisions. This made it more difficult for the British government to deviate from the unionist position of demanding prior decommissioning. The republican movement utterly rejected the 'Washington 3' criteria arguing that it was tantamount to demanding surrender. Meanwhile the Irish government argued that all-party talks had to be a priority while pressuring republicans to meet the criteria so the process could move forward. They were also concerned that in the absence of progress violence could resume.³⁰⁰

As time went by it became clear that this issue could not be overcome. Thoughts turned to how it could be 'gone around' or as it has often been described as 'fudged'. The solution was to de-couple the issues of decommissioning and political negotiations. This was achieved by delegating the responsibility for decommissioning to a third party. At first it was

296 Ibid., 14.

297 Eamonn Mallie and David McKittrick, *The fight for peace: the secret story behind the Irish peace process*, (London: Heinemann, 1996) 329.

298 Dáil Debates, vol. 456, col. 76 (27 September, 1995).

299 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 16.

300 Ibid., 16-20.

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thought this could be a British-Irish subcommittee but the Irish government suggested an international body (as the unionists previously had). In June 1995 John Major accepted this suggestion and on the International Body on Decommissioning (IBD) was formed that November, it comprised of former American Senator George Mitchell, the Canadian General John De Chastelain and former Finnish Prime Minister Harri Holkeri.³⁰¹ This was part of a 'twin track' approach, in which this body could address the issue of decommissioning while the negotiations to initiate political talks could take place separately.³⁰²

The International Body on Decommissioning to the signing of the Good Friday Agreement (1996 to spring 1998)

The IBD was a separate body to the IICD; however it was appropriate to begin the analysis of what type of mediation the IICD used at this chronological point. This was because the formation of the IBD marked the internationalisation of the issue and its delegation to a third party.³⁰³ Furthermore the report of the IBD formed the basis for the remit of the IICD and the text on decommissioning in the GFA was drawn from it. General John De Chastelain who sat on the IBD went on to chair the IICD and the other two members of both bodies were provided by the same nations (Finland and the USA). All these elements meant that the period between the formation of the IBD and the signing of the GFA were reasonably seen as intimately and inextricably linked to the work of the IICD.

The IBD was asked to consider how verifiable decommissioning may take place and whether there was a commitment to do this on the part of those who held the arms.³⁰⁴ The report included six democratic principles to which parties must commit if they were to be included in any negotiations. It recommended that decommissioning should take place in parallel

301 Eamonn O'Kane, 'Decommissioning and the Peace Process: Where Did It Come From and Why Did It Stay So Long?' *Irish Political Studies*, 22, no. 1 (2007): 81-101.

302 Colin McInnes, 'A farewell to Arms: Decommissioning and the peace process'. In Michael Cox, Adrian Guelke and Fiona Stephen. *A Farewell to Arms?: From War to Peace in Northern Ireland*, (Manchester: Manchester University Press, 2000) 81.

303 This internationalisation is extremely significant, not only for the issue of decommissioning but for the peace process as a whole and is closely related to the issue of mediation and mediator identity which are central to this dissertation.

304 International Body on Arms Decommissioning. *Report of the International Body on Arms Decommissioning, [Mitchell Report]*, (Belfast: NIO, 1996) Article 7.

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with political negotiations. The most important element of the report for this analysis was the third of these principles which stated that participants should 'agree that such disarmament must be verifiable to the satisfaction of an independent commission'.³⁰⁵ It was this recommendation which led the governments to form the IICD. The use of the term 'verify' was an early indicator that the IICD would act as a directive mediator. Articles 40-43 set out the basics of the IICD. The commission should be appointed by both governments after consultations with the parties; should be independent in both jurisdictions with legal status and immunity; and should be provided with resources, expertise and army assistance to allow it to verify the decommissioning process.³⁰⁶ Again the use of the term 'verify' in what essentially becomes the basis of the IICD's TOR indicated that the IICD would act as a directive mediator.

Parallel decommissioning remained unpopular with John Major (and unionists). Instead, John Major focused on one of the more minor recommendations in the report and chose to call elections to a representative assembly which would provide representation at the multi-party talks. This move was met with extreme hostility by the republican movement, and in February 1996 the IRA broke its ceasefire by exploding a bomb in London's docklands.³⁰⁷ The result of the end of the IRA ceasefire was a renewed determination by the governments to work together to persuade the IRA to instigate a new ceasefire and to move the peace process forward. New governments, including a change in the party in power, were elected in May 1997 in Britain (led by Tony Blair) and June 1997 in Ireland (led by Bertie Ahern). Decommissioning was seen as secondary to getting the process moving by the new British government.³⁰⁸

305 Ibid, Article 20.

306 Ibid., Articles 40-43..

307 Colin McInnes, 'A farewell to Arms: Decommissioning and the peace process'. In Michael Cox, Adrian Guelke and Fiona Stephen. *A Farewell to Arms?: From War to Peace in Northern Ireland*, (Manchester: Manchester University Press, 2000) 82.

308 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 24.

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The new governments announced all-party talks would begin in September, to be completed by May 1998. Sinn Féin could participate in the talks if the IRA renewed their ceasefire and decommissioning was to be addressed separately and in parallel as indicated by the IBD.³⁰⁹ In June 1997, mechanisms for decommissioning provided for in legislation of February of the same year came into effect. Tony Blair wrote to Martin McGuinness stating his desire to move the process forward as quickly as possible and that exclusion from talks would result only from a refusal to abide by Mitchell's principles on non-violence.³¹⁰ The IRA ceasefire was restored on the 19th of July. This facilitation of Sinn Féin's entry into talks was not without consequence- the DUP and UKUP left the process.

On the 29th of July the governments issued a Joint Communiqué indicating that the preparatory work for the setting up of a commission to manage decommissioning was underway and an agreement was published on the 26th of August 1997.³¹¹ The commission was appointed that September. Multiparty talks were underway and the IICD's first task was to provide the related subcommittee of these talks with a report. In doing so it consulted with the different parties and provided possible scenarios through which decommissioning may take place.³¹² By engaging in these discussions and producing the report for the subcommittee, the IICD was essentially channelling information between different parties, restating positions and highlighting common ground. Thus in undertaking its first task the IICD engaged in facilitative-procedural mediation. There was no evidence of substantial proposals at this stage (formulative mediation). Rather the IICD itself indicated its negotiations sought to deal with the recommendations of IBD and subsequent legislation and to find schemes acceptable to paramilitary groups.³¹³

309 Eamonn O'Kane, 'Decommissioning and the Peace Process: Where Did It Come From and Why Did It Stay So Long?' *Irish Political Studies*, 22, no. 1 (2007): 93.

310 Frank Millar, 'Determined Blair puts pressure on Trimble', *Irish Times*, July 18, 1997.

311 British and Irish Governments. *Agreement on the Independent International Commission on Decommissioning (IICD)*, (Belfast: NIO, 1997).

312 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 2 July 1999. (Belfast: IICD, 1999).

313 Ibid.

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It is useful to note here that the GFA did not directly link inclusion in its proposed institutions to decommissioning. Furthermore it did not specify a starting date for decommissioning but rather indicated that the process should be completed within two years of the referenda (i.e. May 2000). This was a worry for the main remaining unionist party (the UUP). In order to allay this fear, Tony Blair provided David Trimble with a side letter relating to decommissioning. The letter stated that: 'it's our view the effect of the decommissioning section of the agreement, with decommissioning schemes coming into effect in June (1998), is that the process of decommissioning should begin straight away'. Tony Blair claimed this meant IRA decommissioning should begin immediately and this would be before devolution (likely in February 1999). However Sinn Féin viewed this letter as having no status.³¹⁴ So clearly before it even began the central part of its work there was disagreement between conflict parties as to the timetable of the IICD.

The GFA referendum to the suspension of the Assembly in February 2000 (summer 1998 to spring 2000)

The celebrations surrounding the conclusion of the GFA soon subsided. Two major incidents held public attention in the summer of 1998. The standoff at Drumcree rapidly descended into an often violent confrontation. The Parades Commission rerouted a traditional Orange Order parade away from the nationalist Garvaghy road. The Orange Order attempted to march the route despite this and the resultant standoff led to violence across the province including petrol bombing. The Real IRA bomb in Omagh in August was the single most fatal incident of the conflict in Northern Ireland killing twenty-eight people and two unborn children. This violence showed that peace was far from secured. The violence surrounding Drumcree may have refocused people's minds on the alternatives to the GFA and thus strengthened support for it in the subsequent referendum.

Despite this support the GFA quickly developed problems of its own largely around the issue of decommissioning. The aforementioned letter from Tony Blair to David Trimble provided unionists with a claim that Sinn Féin holding office in the executive of the GFA was

³¹⁴ Eamonn O'Kane, 'Decommissioning and the Peace Process: Where Did It Come From and Why Did It Stay So Long?' *Irish Political Studies*, 22, no. 1 (2007): 95.

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dependent on IRA decommissioning. Sinn Féin absolutely rejected this position. The two governments desperately attempted to choreograph a way past the standoff. Firstly, they tried to pressure Sinn Féin to achieve IRA decommissioning. When that failed the Hillsborough Declaration of May 1999 proposed a mutual sequence of events. Martin McGuinness pointed out that the IICD did not act as the authority on decommissioning during this period.³¹⁵

Nevertheless there was evidence that the governments were trying to establish the IICD's role. Bertie Ahern repeatedly stressed its important role in an interview with the Irish Times.³¹⁶ Furthermore, the one act of decommissioning that did occur during this period by the LVF was overseen by the IICD.³¹⁷ Thus the IICD verified LVF decommissioning and in doing so acted as a directive mediator. Additionally in the build up to this act the IICD refused to release details of their contacts with the LVF, thus acting as a facilitative-procedural mediator by controlling information.³¹⁸

The IICD issued a report in July 1999 which detailed its work. In this report it stated it was aware that the governments may circulate the report widely. Thus it pledged to parties that private discussions would remain confidential and that the IICD was 'reticent about linking statements or actions directly with named groups or individuals unless these are already in the public domain or essential to the integrity of the report'.³¹⁹ This clearly outlined how the IICD was controlling the flow of information, clearly undertaking facilitative-procedural mediation. However as the report also mentioned the paramilitary groups did make public statements which the IICD did not control.³²⁰ The IICD also outlined that it had put three

315 Deaglan de Bréadún, 'SF sees ending causes of conflict as more vital than giving up guns as efforts to implement the Belfast agreement enter a crucial phase', *Irish Times*, June 24, 1999.

316 'Ahern stresses importance of start on decommissioning', *Irish Times*, February 15, 1999.

317 Clare Murphy, 'Politicians hail LVF arms move', *Irish Times*, December 19, 1998.

318 Gerry Moriarty, 'LVF contact confident of early arms hand-over Pastor optimistic on pre-Christmas decommissioning', *Irish Times*, December 10, 1998.

319 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 2 July 1999*. (Belfast: IICD, 1999).

320 Ibid.

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questions to the political parties during meetings in June 1999. It stated that Sinn Féin's proposals could be endorsed by the IRA and reciprocated by loyalists and other republican groups. Following this there could be the creation of a timetable which would ensure decommissioning was completed by May 2000 (two years after the 1998 referenda, which was the deadline for completion of the process as set out in the text of the Agreement).³²¹ In doing so it engaged in highlighting areas of agreement and restating positions in less confrontational ways. Thus these statements also showed the IICD undertaking facilitative-procedural mediation.

The IICD also outlined how it had 'made detailed, specific and clear suggestions' as to how the impasse over decommissioning could be overcome.³²² This description suggests formulative mediation due to the substantial nature of the recommendations though there was no indication as to who was the author of these suggestions. This report prompted the governments to issue a joint statement: 'The Way Forward'. Amongst other things, this document promised that the governments would suspend the institutions of the GFA if commitments to decommissioning were not kept and the IICD was given the job of adjudicating over this.³²³ This reinforced the existing role of the IICD as verifier and therefore directive mediator.

A review of the implementation of the GFA by George Mitchell also prompted the IICD to engage in directive mediation. The UUP had maintained a 'no guns, no government' policy which was popular within its constituency, despite the governments' 'The Way Forward' statement. The process stalled and a review was initiated in the autumn/winter of 1999.³²⁴ The review made three recommendations. Two of these related to decommissioning: decommissioning of all paramilitary arms was to occur by May 2000 and decommissioning

321 'Commission's Mandate And Actions', *Irish Times*, July 3, 1999.

322 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 2 July 1999. (Belfast: IICD, 1999).

323 'Commission's Mandate And Actions', *Irish Times*, July 3, 1999.

324 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 37.

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was to be carried out in a manner determined by the IICD. On foot of this the IICD issued a report on 15 November 1999. It stressed that time was now short if decommissioning was to be achieved by the deadline. It outlined that the appointment of representatives to it by paramilitary groups was now 'urgent', and reminded the parties of the commitment to decommissioning they had signed up to under the GFA. The IICD said it was ready to adopt 'a more active role'.³²⁵ Here we observed the IICD pressuring the groups involved to decommission. The application of this pressure is indicative of directive mediation. Andrew D. Sens confirmed this, stating: 'You can't imagine how hard we pressed the various groups to decommission'.³²⁶ The IICD also admitted that decommissioning could not be imposed.³²⁷ However, this is not incompatible with directive mediation but rather highlights that the IICD was a *mediator* and thus not able to legally or militarily impose its will.

The IICD reported again in December 1999. It noted 'the renewed collective commitment of the parties'.³²⁸ This comment showed the IICD highlighting agreement and thus indicated the IICD was acting as facilitative-procedural mediator. Similarly, in a January 2000 report the IICD further engaged in the highlighting of common ground. It highlighted that paramilitary groups were still on ceasefire and that this was a vital part of the peace process.³²⁹ The comment was made even though the IICD admitted that it did not have evidence of imminent decommissioning. Thus the IICD was engaging in facilitative-procedural mediation despite the lack of progress.

There were strong signs of directive mediation in these reports. The IICD praised the appointment of contacts by the IRA and UVF/RHC to the commission. It credited its previous

325 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 15 November 1999*. (Belfast: IICD, 1999).

326 Andrew D. Sens, email interview by Dawn Walsh, March 1, 2013.

327 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 15 November 1999*. (Belfast: IICD, 1999).

328 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 10 December 1999*. (Belfast: IICD, 1999).

329 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 31 January 2000 (report made public 6.30pm 11 February 2000)*. (Belfast: IICD, 2000).

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report with inspiring this development and clearly saw itself pressurizing parties, thus acting as a directive mediator. Furthermore, the IICD concluded that these moves led it to believe that decommissioning would occur.³³⁰ In a way this conclusion was verification in so far as it is indicating it believed the process towards decommissioning was underway. Verification was necessary as a result of a lack of trust between parties. Every move relating to decommissioning, not just actual acts of decommissioning needed to be verified. This conclusion by the IICD should also be viewed as directive mediation through verification. It also indicated that if a timetable could not be agreed with paramilitaries it was prepared to 'state that actual decommissioning is to start within a specific period'. Here again the IICD was using timing issues to apply pressure and thus employing directive mediation. It indicated that time was running out for decommissioning to begin if it was to be completed by the 22nd of May, and that if it felt decommissioning was not going to happen it would ask the governments to disband it.³³¹ This stressing of the timetable and the threat to effectively resign clearly applied pressure and thus was part of directive mediation.

The lack of progress and this report from the IICD marked the beginning of another crisis in the process. A number of statements by the IRA did not satisfy the UUP, and in order to prevent a walk out of pro-Agreement unionists; Peter Mandelson suspended the executive on February 11th 2000. A last minute proposal from the IRA which Gerry Adams claimed could 'finally resolve' the issue did not prevent the suspension, as did the next report of the IICD, which dealt with these proposals, published on February 12th 2000. Peter Mandelson suspended Northern Ireland's devolved government because First Minister Trimble was poised to resign to protest the continued absence of IRA decommissioning.³³² There was an anxiety within the British government that David Trimble would have been replaced as party leader possibly by someone opposed to the GFA. However the fact Peter Mandelson did not

330 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 10 December 1999. (Belfast: IICD, 1999).

331 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 31 January 2000 (report made public 6.30pm 11 February 2000). (Belfast: IICD, 2000).

332 The Irish government did not officially recognise the suspension as its reading of the 1998 Agreement indicated that any such action required the joint support of both governments.

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delay the suspension until after the IICD report raises a question as to whether the British government were prepared to allow the IICD to manage the issue.

Gerry Adams' proposals were not made public. However, the IICD appeared to verify their significance. The IICD report indicated the proposals were 'valuable progress' and held out 'the real prospect of an agreement which would enable it [IICD] to fulfil the substance of its mandate'.³³³ Here the IICD was acting as a verifier, not of an actual act of decommissioning but again of progress on the process. This showed the IICD engaging in directive mediation. However the IRA proposals were withdrawn, as was the IRA contact with the IICD, on February 15th as the IRA accused the British government and unionists of defaulting on the GFA by suspending the Executive.³³⁴

Re-establishment of the Assembly to IRA decommissioning (summer 2000 to autumn 2005)

In the weeks that followed the suspension of the Executive and withdrawal of the IRA contacts and proposals from the IICD, various actors were quick to point the finger of blame at others. The governments quickly began negotiations with Sinn Féin to try to move the issue of decommissioning forward. Meanwhile the issue of policing reform came to the forefront and it, along with decommissioning and demilitarization became interlocking parts of a deal.³³⁵

In May 2000 the governments released a joint plan on the implementation of the outstanding issues in the GFA. At the same time the IRA issued a statement committing to putting its arms 'completely and verifiably' beyond use. This ended the crisis and the IRA resumed contact with the IICD. Cyril Ramaphosa and Martti Ahtisaari arrived in Northern

333 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 31 January 2000 (report made public 6.30pm 11 February 2000). (Belfast: IICD, 2000).

334 Frank McNally, 'Chairman of SF says suspension is "illegal"', *Irish Times*, February 16, 2000.

335 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 42.

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Ireland to act as international arms dumps inspectors and on June 26th they released their first report. They stated that their remit was to inspect IRA arms dumps to ensure the arms remained secure and report to the IICD.³³⁶ The legislation put in place by both governments to facilitate the IICD mentioned 'agents of the IICD' and thus the international inspectors acted as such agents. Why they were needed when the IICD was available to act as a verifier is discussed under mediator identity. This was followed by a second inspection and report which said these weapons 'remained secure'.³³⁷

These moves, as they began to unfold, helped the re-establishment of the Assembly and the Executive in May 2000. At this time the governments invited the IICD to put forward any other proposals it felt would help it fulfil its remit.³³⁸ This gave the IICD the opportunity to act as a formulative mediator as it invited substantial recommendations. This was an opportunity to be creative; moving outside its original technical mandate to verify two ways of destroying weapons as described by Andrew D. Sens.³³⁹ However, there is no clear evidence that this opportunity was realized. This will be further discussed in relation to the effect of the TOR of the commission on mediation type.

Loyalists failed to reciprocate the IRA moves, perhaps because on ongoing loyalist feuds. Furthermore the IICD did not meet directly with IRA contacts, only having contacts with international inspectors. So the IICD was unable to directly verify moves during this period, it did pressure the paramilitary groups to meet with it. It 'stressed the urgency of meeting with paramilitary representatives'.³⁴⁰ Therefore, even though the IICD alone could not act as a verifier - and thus meet that implication of directive mediation - it did meet another main implication; pressuring parties to make concessions/compromises.

336 Martti Ahtisaari and Cyril Ramaphosa, *Report on the First Inspection of IRA Weapons Dumps, 26 June 2000*. (Belfast: IICD, 2000).

337 Martti Ahtisaari and Cyril Ramaphosa, *Report on the Second Inspection of IRA Weapons Dumps, 26 October 2000*. (Belfast: IICD, 2000).

338 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 26 October 2000*. (Belfast: IICD, 2000).

339 Andrew D. Sens, 'A commission to decommission paramilitary arms – Northern Ireland's example', *World Policy Journal*, (Fall 2006) 75-85.

340 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 26 October 2000*. (Belfast: IICD, 2000).

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The autumn and winter of 2000 saw little progress. There was renewed political pressure on David Trimble over the issue of sitting in government with Sinn Féin without full IRA decommissioning. In its December report the IICD stated it was prepared to outline a timetable that must be met if decommissioning was to end by the new June 2001 deadline.³⁴¹ Here, as was also previously seen, the IICD was using the issue of timing to press groups to act, thus operating as a directive mediator.

In March the IICD reported it had contacts and meetings with the UVF, the UFF and critically, with the IRA. It concluded that the meeting with the IRA was in 'good faith' and would be built on in other meetings soon.³⁴² Thus the IICD was verifying the involvement of the IRA into its process; this verification was a form of directive mediation.

In its June report the IICD outlined continued meetings but it was not in a position to report moves towards or actual decommissioning. It reported that it had been told by some actors that, given its inability to start decommissioning it should be wound up. On the other hand many others had argued that it should remain engaged. It said it would consider both ideas, also stating that a start must be made urgently.³⁴³ This showed the IICD acting as directive mediator; it applied pressure, stating the urgency of starting decommissioning and not ruling out winding up the IICD.

In August the IICD reported that the IRA had proposed a method of decommissioning which it believed complied with its remit and would put 'arms completely and verifiably beyond

³⁴¹ Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 22 December 2000*. (Belfast: IICD, 2000).

³⁴² Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 22 March 2001*. (Belfast: IICD, 2001).

³⁴³ Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 30 June 2001*. (Belfast: IICD, 2001).

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use'.³⁴⁴ This conclusion verified a move by the IRA in a process towards actual decommissioning. In October the IICD reported witnessing an event where a significant amount of arms were put beyond use, as per the August suggestions.³⁴⁵ The specific timing of this IRA move may have been influenced by American pressure imposed after the discovery of an IRA-FARC connection in Colombia in August, and more significantly, the changes in the international political climate in the wake of the September 11 atrocities in the United States and the changing attitudes towards any groups which were linked to terrorism, though this process was in train before September 2001. When Andrew D. Sens recalled this he used the term 'verified'.³⁴⁶ Here the IICD was acting as directive mediator by verifying an IRA act of decommissioning. At the same time it also said it would not provide further details as this would not help progress the issue.³⁴⁷ Here it appeared that the IICD was acting as a facilitative-procedural mediator by controlling information. After a meeting with the IICD, unionist Robert McCartney said: 'Gen De Chastelain confirmed he had not released any details on last week's act of decommissioning...The commission has given no one, neither governments, parties or press agencies such information'. An insistence on confidentiality may have originated with the IRA, as it felt that public disarmament was tantamount to surrendering. Furthermore, the IICD met with parties concerned about the lack of transparency, such as the UUP, to try and provide reassurances.³⁴⁸ However, even though the IICD did not originate the need for confidentiality and had concerns surrounding it, it was still acting as a facilitative-procedural mediator as it was still controlling information. That same October the inspectors Cyril Ramaphosa and Martti Ahtisaari left Ireland saying the IICD was now overseeing decommissioning. This indicated the IICD was now the only verifier 'in town'.

344 Independent International Commission on Decommissioning (IICD). *Statement by the Independent International Commission on Decommissioning (IICD), 6 August 2001*. (Belfast: IICD, 2001).

345 Independent International Commission on Decommissioning (IICD). *Statement by the Independent International Commission on Decommissioning (IICD), 23 October 2001*. (Belfast: IICD, 2001).

346 Andrew D. Sens, 'A commission to decommission paramilitary arms – Northern Ireland's example', *World Policy Journal*, (Fall 2006) 75-85.

347 Independent International Commission on Decommissioning (IICD). *Statement by the Independent International Commission on Decommissioning (IICD), 23 October 2001*. (Belfast: IICD, 2001).

348 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 61.

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In April 2002 the IICD reported that it had witnessed another act of IRA decommissioning.³⁴⁹ Similarly, in October 2003 John De Chastelain indicated that the IICD had witnessed a third act of IRA decommissioning.³⁵⁰ Here it was again showing itself to be a verifier, and thus a directive mediator. Also in April 2002, the IICD stated it agreed to the IRA condition of confidentiality that was compatible with the governments' schemes and regulations.³⁵¹ Furthermore, Andrew D. Sens argued that the IICD would have liked to provide more information but that the IRA leadership 'would not permit' this.³⁵² Again, even though the control of information idea does not originate with the IICD, it is the controller of the information and thus is still indicative of facilitative-procedural mediation. In September the IICD stated it had an inventory which it would keep confidential until its remit had expired.³⁵³ This was clear control of information and showed the IICD engaging in the facilitative-procedural mediation type.

Following an IRA statement in July 2005 that the organisation would follow a democratic path ending more than 30 years of violence, the IICD reported in September that it had verified IRA decommissioning of weapons that it felt constituted its entire arsenal.³⁵⁴ This verification clearly indicated the IICD had acted as directive mediators here. The IRA also appeared to see the IICD as verifiers as it used this term in relation to its engagement with the IICD.³⁵⁵ The DUP did not appear to trust the IICD to verify decommissioning and made request for TV or photographic evidence. Instead two local clergymen acted as witnesses. The presence of these two clergymen, Harold Good and Alec Reid, to underpin this verification suggests the IICD could not act as verifiers without back up, particularly as the

349 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 8 April 2002. (Belfast: IICD, 2002).

350 Independent International Commission on Decommissioning (IICD). *Statement by the Independent International Commission on Decommissioning (IICD)*, 21 October 2003. (Belfast: IICD, 2003).

351 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 8 April 2002. (Belfast: IICD, 2002).

352 Andrew D. Sens, 'A commission to decommission paramilitary arms – Northern Ireland's example', *World Policy Journal*, (Fall 2006) 75-85.

353 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 26 September 2005. (Belfast: IICD, 2005).

354 Ibid.

355 Colin Brown, 'Blair hails statement, others stay cautious', *Belfast Telegraph*, July 29, 2005.

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UUP and DUP indicated they did not fully trust the IICD (this issue is discussed in the section of this chapter dealing with mediator identity). This tension as to whether mediator identity affected mediation type, including ability to verify, is discussed in the mediator identity section of this chapter.

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Post-IRA decommissioning to the closure of the IICD (winter 2005 to end of 2010)

In January 2006 the IICD released another report. This outlined their efforts to engage the UPRG, UDA and LVF.³⁵⁶ It also addressed comments that the IRA still held some arms (despite the IICD claiming in its September report that the entirety of its arsenal had been put beyond use). It argued that this claim was always qualified and that individual IRA members may have kept arms without the approval or knowledge of the leadership of the organisation.³⁵⁷ This was reinforcing its role as a directive mediator by pressing the UPRG, UDA and LVF to engage, and defending its role as a credible verifier.

The IICD did not report for the next three years. In January 2009 it issued a statement confirming that it had begun the process of decommissioning with the UDA in June 2008 and had now witnessed the decommissioning of arms which constituted the entirety of the weapons held by the group.³⁵⁸ By witnessing this act of decommissioning the IICD was acting as a verifier and therefore engaging in the directive mediation type. In this statement it reminded the remaining groups that the February 9th 2009 was the deadline the completion of its mandate.³⁵⁹ Here the IICD was using time to leverage the issue and press the remaining groups to decommission. This use of leverage also placed the IICD within the type of directive mediation.

In September 2009 the IICD issued another report. It confirmed having overseen acts of decommissioning by the UVF and the RHC, which again constituted all the arms held by

356 The UDA was comprised of six brigades under a combined military command. However control over the brigades varied and in particular the South East Antrim brigade which was closely connected to the Red Hand Defenders and the North Belfast Brigade led by the Shourki brothers until their expulsion when they formed a Shoukri Paramilitary Element' in 2006. For more details of the splits within the UDA see Henry McDonald & Jim Cusack, *UDA: Inside the Heart of Loyalist Terror*, (Dublin, Penguin, 2004).

357 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 19 January 2006. (Belfast: IICD, 2006).

358 Independent International Commission on Decommissioning (IICD). *Statement by the Independent International Commission on Decommissioning (IICD)*, 6 January 2010. (Belfast: IICD, 2010).

359 Ibid.

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these groups.³⁶⁰ This again showed the IICD verifying decommissioning and thus acting as directive mediators. In this report it also urged the UDA and UDA South East Antrim Group to decommission 'as soon as possible' and 'within the timeframe of the Commission's current and final mandate'.³⁶¹ This showed the IICD exerting pressure, using its leverage and again thus acting using directive mediation.

On February 8th 2010 the IICD reported that it had witnessed decommissioning of all armaments by both the OIRA and INLA.³⁶² Here again the IICD was verifying decommissioning and thus acting as directive mediator. Its final operational report was issued on the 25th February 2010 (as its remit ended in both jurisdictions that month). This report reiterated the verification of decommissioning of all arms held by the UDA, the OIRA, the INLA, the UDA and South East Antrim Group and outlined the decommissioning of all arms by the Shoukri Paramilitary Elements.³⁶³

In its final report the IICD chose not to release an inventory of arms decommissioned, despite the expectations of the public and its previous suggestions that it would. It felt this would not help the peace process. Instead, it made arrangements for the records to be held in Washington D.C. by the US Department of State, to be released only if both governments submitted a formal written request. The IICD felt the governments would only do this when

360 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 4 September 2009. (Belfast: IICD, 2009).

361 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 4 September 2009. (Belfast: IICD, 2009).

362 Independent International Commission on Decommissioning (IICD), *Statement by the Independent International Commission on Decommissioning (IICD) about Official IRA decommissioning*, 8 February 2010, (Belfast: IICD, 2010). Independent International Commission on Decommissioning (IICD), *Statement by the Independent International Commission on Decommissioning (IICD) about INLA decommissioning*, 8 February 2010, (Belfast: IICD, 2010).

363 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 25 February 2010, (Belfast: IICD, 2010). The Shoukri Element resulted from a split within the UDA when the leadership's expelled Andre Shoukri, his brother Ihab, and another associate in June 2006. The expulsion of several members of the UDA is believed to be a result of the organisation's stated commitment to a move away from criminal activity, and as paving the way towards decommissioning.

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it was not damaging to the peace process.³⁶⁴ This controlling of information clearly indicated that the IICD was engaging in facilitative-procedural mediation.

The final IICD report further clarified its position on confidentiality. It stated that it understood that people, especially those affected by the conflict would like to see evidence of decommissioning - such as that provided by the LVF. However despite it explaining this to the paramilitaries other paramilitary groups decided not to release this information.³⁶⁵ This indicated that it was not the IICD's decision to maintain confidentiality and that the paramilitary groups were free to publish this information, and in fact the IICD would rather they did. However, despite its concerns, the IICD maintained the confidentiality of the process and thus acted as a facilitative-procedural mediator.

The dominant form of mediation seen in the work of the IICD was directive mediation. The majority of its work saw it acting as a verifier and pressuring for compromise. Its main role was to verify the process and acts of decommissioning. Verification is one of the main indicators of directive mediation. The IICD exerted its leverage over groups attempting to pressure them to progress the decommissioning the process. The exertion of leverage is another of the main indicators of directive mediation. Given the frequent presence of the two main indicators of directive mediation in the bulk of the IICD's work, it was clearly a directive mediator. The IICD also showed some behaviour consistent with other forms of mediation, most significantly controlling information, but these constituted a minor part of its work in comparison to its role verifying decommissioning.

³⁶⁴ Brian Rowan, 'Time to answer awkward questions of the Troubles', *Belfast Telegraph*, May 9, 2011. NIO, 'Written Ministerial Statement Final Report of the Independent International Commission on Decommissioning'. (Belfast: NIO, 2011).

³⁶⁵ Independent International Commission on Decommissioning (IICD). *Final Report of the Independent International Commission on Decommissioning (IICD)*, 4 July 2011. (Belfast: IICD, 2011).

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The effect of the variables on the mediation type

Having ascertained that the IICD's core work placed it chiefly in the directive mediation type this chapter examines how the four variables (mediator identity, issue intensity, TOR, and the GFA) affected the choice of mediation type.

Mediator identity

The IICD was made up of three individuals from three different countries with three different backgrounds and areas of expertise.³⁶⁶ Therefore the examination took into consideration how these identities affected mediation individually as well as collectively. The identity of the IICD was also affected by the role of the inspectors, Cyril Ramaphosa and Martti Ahtisaari and briefly Fr Alec Reid and Rev Harold Good, as 'the agents' of the IICD. The different identity of the home state of different commission members allowed the analysis to classify them using the four-fold type (local, primary mediator, external ethno-guarantors and international other), as set out in chapters one and two. However the analysis must also take into consideration the individual level of status of each commission member and any past relationships members had with conflicting parties. A short introduction to the IICD members is provided as essential background to how their identities affected their behaviour (a brief background on the International Inspectors and Alec Reid and Harold Goode is also provided).

Brief Biographies

John De Chastelain was born in Bucharest, Romania, in 1937. The son of a Scottish oil engineer and an American author, both his parents worked secretly as British spies during the Second World War. He went to Fettes College in Edinburgh, Scotland, before following his parents to Canada when he was 18. There, he attended the Royal Military College in Kingston, Ontario and earned a degree in history and a Canadian army commission. He served with the Princess Patricia's Canadian Light Infantry (PPCLI) until 1966, when he attended the British Army Staff College. He rose quickly through the ranks. He later led

³⁶⁶ Four individuals were involved as Andrew D. Sens replaced Donald Johnson in 1999. However they both had similar backgrounds as US diplomats and there is no evidence that the change affected the operation of the IICD in any way.

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Canada's contingent in the United Nations Force in Cyprus. When he was promoted to brigadier-general, John De Chastelain commanded the Royal Military College. After another promotion, to major-general, he was deputy commander of Canada's army. In 1989, he was promoted to general and appointed chief of defence staff - Canada's highest military rank. In 1990, he supervised negotiations with Mohawks during the two-month Oka crisis, a standoff between aboriginals and the military over the use of Mohawk burial grounds. The solution included the destruction of some of the Mohawks' weapons, a theme he later revisited in Northern Ireland. Later, John De Chastelain was in charge of the Canadian Forces during the Gulf War and a 1992 peacekeeping mission in Somalia. In 1993, he transferred to the Canadian Forces Reserves and served as Canada's ambassador to the United States, a role usually reserved for high-ranking diplomats. The next year, he returned to the regular Forces and was reappointed chief of defence staff. He retired from the post in December 1995.

Donald Johnson entered the United States Foreign Service in 1974. His first post was as Third Secretary in Guatemala. Other overseas postings saw him serve in Moscow, Taipei, Beijing, Madrid, and Tegucigalpa. Domestic assignments included service as a Desk Officer at the State Department and service on the National Security Council at the White House. Career highlights include earthquake relief in Guatemala; liaison with human rights groups in the former Soviet Union; and negotiation of drug control and status of forces agreements in Honduras. Before becoming U.S. Ambassador to Mongolia (1993–1996), Donald Johnson had travelled to Ulaanbaatar before the U.S. had established diplomatic relations. He was also instrumental in concluding numerous trade and scientific agreements during his tenure. From 1996 to 1997 he was Head of Mission in Moldova for the Organization for Security and Cooperation in Europe.

A career diplomat, Andrew D. Sens was an executive secretary to the National Security Council in Washington. A senior foreign and defence policy aide to President Bill Clinton and

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his national security advisor, Andrew D. Sens has had postings in Kampala, Tehran, Washington, Islamabad, and Buenos Aires.

Brigadier Tauno Nieminen was a prominent member of the Finnish Defence forces. He had written on political-military developments and had been involved in peace-keeping particularly in the former Yugoslavia. From January 3rd to December 14th 1995, he was appointed commander of a civilian observer operation controlling the borders between Bosnia-Herzegovina, Serbia and Montenegro under the peace conference of the former Yugoslavia (ICFY).

Cyril Ramaphosa served as Secretary General of the African National Congress (ANC) from July 1991 to January 1997 and General Secretary of the National Union of Mineworkers from December 1982 to July 1991. From May 1994 to May 1996 he was Chairman of the Constitutional Assembly, which wrote South Africa's first democratic constitution. He was involved in the political transformation process in South Africa as Head of the Negotiating Team of the ANC.

Martti Ahtisaari had a long and distinguished career in the Finnish Foreign Ministry and the United Nations and had been involved in peace mediation and conflict resolution in a number of countries including Namibia, Bosnia-Herzegovina, Yugoslavia and Indonesia. He was the president of Finland from 1994 to 2000 and won the Nobel Peace Prize in 2008.

Fr Alec Reid was an Irish priest noted for his role as a facilitator in the Northern Ireland peace process. In the 1980s he facilitated a series of meetings between Sinn Féin President Gerry Adams and Social Democratic and Labour Party (SDLP) leader John Hume in an effort to unite Irish nationalists from Northern Ireland, Ireland, and the USA to enable a move toward renouncing violence in favour of negotiation. Alec Reid then acted as their conduit

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with the Irish Government in Dublin from a 1987 meeting with Charles Haughey up to the signing of the Good Friday Agreement in 1998. In this role, which was not public knowledge at the time, he held meetings with various Taoisigh, and particularly with Martin Mansergh - advisor to various Fianna Fáil leaders.

Rev Harold Good was a Methodist minister. In the course of his ministry he was active in the work of reconciliation and the resettlement of prisoners. In the 1970s he was the Director of the Corrymeela community, a centre for reconciliation between the communities. He was chair of NIACRO (Northern Ireland Association for the Care and Resettlement of Offenders); part-time prison chaplain at Crumlin road prison and worked closely with both republican and loyalist prisoners. He was awarded an MBE in 1970 and OBE in 1985. He was elected President of the Irish Methodist Church in 2001-2.

Effects of mediator identity

Mediator identity, as previously discussed, can have an effect on mediation type in two ways. Both the relationship between the mediator and the conflicting parties and secondly the status of the mediator affects mediation type. Where mediators past relationships with conflict parties are positive, more interventionist mediation types - such as directive mediation – should be more likely. If positive past relationships are affecting the IICD's use of directive mediation, it should be visible in discussions of these relationships.

High mediator status should coexist with directive mediation. This should be visible in how the IICD and other actors refer to the elevated status of the IICD and its members in relation to giving weight to its work. Alternatively actors opposing its mission may try to belittle its status: countering its ability to employ directive mediation. It is important to point out that status can be as a consequence of material power or non-material power such as policy expertise.

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John De Chastelain

Regarding the identity of individual commissioners, it appeared that the background of John De Chastelain had the strongest effect on the IICD's behaviour and thus mediation type. His military background and high status led various actors to claim the IICD's verification of acts of decommissioning should be viewed as credible. Andrew D. Sens stated that: 'his seniority and reputation as a military leader made it very likely that his word on decommissioning would be trusted broadly'.³⁶⁷ Without such belief the IICD would not have been able to engage in such verification, an important element of directive mediation. However, the unionist community appeared to have doubted the IICD at certain points despite being ardent supports of John De Chastelain earlier in the process.

As early as 1995 the UUP suggested a Canadian General might play a role in decommissioning.³⁶⁸ This suggested the nationality and military expertise of such an individual would grant them the confidence of the unionist community. An Irish official argued that the unionists wanted to include a Canadian in a mistaken belief that Canada was more sympathetic to unionists and could act as a balance to Irish-American involvement.³⁶⁹ The appointment of the IBD undoubtedly internationalised the issue of decommissioning. Its members were drawn from the USA, Canada, and Finland (George Mitchell, John De Chastelain and Harri Holkeri). The IBD suggested that an independent commission should oversee decommissioning.³⁷⁰

John De Chastelain was said to have impressed both republicans and loyalists during his involvement in the work of the IBD.³⁷¹ The Irish Taoiseach John Bruton also strongly praised his role in the IBD, saying he: 'acted with impeccable independence, integrity and

367 Andrew D. Sens, email interview by Dawn Walsh, March 1, 2013.

368 Dick Grogan, 'UUP document proposes steps to press IRA on weapons', *Irish Times*, March 7, 1995.

369 Irish official, interview by Dawn Walsh, December 9, 2013.

370 International Body on Arms Decommissioning. *Report of the International Body on Arms Decommissioning, [Mitchell Report]*, (Belfast: NIO, 1996).

371 Denis Coghlan, 'Mitchell, De Chastelain considered for NI talks', *Irish Times*, April 29, 1996.

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impartiality but also with outstanding effectiveness'.³⁷² These early comments suggest that John De Chastelain's contacts with conflict parties on the IBD won him respect which facilitated his appointment to the IICD. This could allow him to act in more interventionist manner during his time as chair of the commission.

David Trimble showed the UUP's support for John De Chastelain's military and Canadian identity: 'His role is perhaps the most difficult role to date but his military expertise, coupled with his patience and diplomacy, has earned him a tremendous respect from all sides. Here is a Canadian who came to Northern Ireland and has made a difference'.³⁷³ He was named in the Queens' honours list in January 1999. Furthermore Tony Blair explicitly stated that it was up to John De Chastelain's IICD - which was 'tough' and had 'integrity' - to verify decommissioning.³⁷⁴ It was almost solely John De Chastelain as the chair of the IICD who was the focus of attention. Other members received very little media or political attention.³⁷⁵ The international weapons inspectors Cyril Ramaphosa and Martti Ahtisaari and the local clerics Alec Reid and Harold Goode who all acted in conjunction with the IICD in verifying decommissioning also attracted some attention.

John De Chastelain's previous role in the Canadian military did attract attention. Controversies in the Canadian army while he was chief of defence staff were reported in the Irish media.³⁷⁶ However no political actors used these to denigrate his status, so its effect on mediation type seemed negligible. An article in the Belfast Telegraph drew focus to this in relation to the military terminology he used in a statement on IRA arms decommissioning.³⁷⁷ This military background was also highlighted in talks with unionists; in trying to maintain confidentiality regarding IRA arms (and thus not providing lists of arms) John De Chastelain

372 'Burton emphasises his determination to achieve a balanced, honourable settlement acceptable to all', *Irish Times*, June 11, 1996.

373 Noel McAdam, 'Arms issue "litmus test" Trimble', *Belfast Telegraph*, October 16, 1998.

374 'Tony Blair's message to Ulster', *Belfast Telegraph*, July 5, 1999.

375 'Arms and the man with the inside track', *Belfast Telegraph*, January 31, 2000. It was announced that the US member of the IICD, Mr Donald C. Johnson, had told the two governments last month he would be standing down "for career reasons" from July 2nd. He will be replaced by another American, Mr Andrew D. Sens (June 1999).

376 Jim Cusack, 'De Chastelain a soldier who has been in the front line', *Irish Times*, August 11, 2001.

377 'Talking Shop', *Belfast Telegraph*, November 6, 2001.

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was able to state he recognised arms calibres etc. due to experience.³⁷⁸ This military background showed expert knowledge of armaments and thus increased his status and trustworthiness in relation to verifying the type or significance of arms decommissioned. However, Stewart Dickson of the Alliance party argued his military background may have meant that he was not focused on issues of transparency as this is not usually associated with the military.³⁷⁹ This may indicate that John De Chastelain's military background was also connected to the most significant element of facilitative-procedural mediation in which the IICD engaged, control of information.

Unionists support for John De Chastelain appears to have decreased from 2001. Media reports noted that 'a vague statement from Gen De Chastelain saying the IRA put some weapons beyond use is not enough' and that 'unionist trust in the IICD is very low'.³⁸⁰ Here it appears unionism did not afford the IICD the status it needed to trust its verification of decommissioning in the absence of more transparency. In April 2002 Taoiseach Bertie Ahern singled out De Chastelain (perhaps as IICD chair), saying he was pressuring for the completion of decommissioning for some time.³⁸¹ The naming of De Chastelain, rather than referring to the IICD or the other members, suggested that Bertie Ahern felt it was his individual status that was allowing the application of pressure- i.e. directive mediation.

International & Expert

The commission was also international and expert in terms of its broader composition. The governments chose to appoint IICD members from the same countries from which the IBD members were drawn. General John De Chastelain, a member of the IBD, became the chair of the IICD. These moves provided continuity from one body to the next. There was no formal promise or legal necessity to do this. The agreement the governments came to in relation to the IICD did not make reference to the identity of the members; simply saying it

378 'What General De Chastelain told Ulster Unionists', *Belfast Telegraph*, November 2, 2001.

379 Stewart Dickson, interview by Dawn Walsh, November 27, 2013.

380 Suzanne Breen, 'North parties take to lobbying as political institutions crumble', *Irish Times*, August 10, 2001.

381 'Ahern sees will to move on arms issue', *Irish Times*, April 18, 2002.

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would have at least two members, and they would be jointly appointed.³⁸² In the build up to the appointment of members the UUP pushed for the appointment of John De Chastelain. The governments' claimed he was ideal but worried he could not chair both the IICD and Strand two of the multiparty talks, to which he was already committed.³⁸³

The Irish government referred to 'the integrity and professionalism' and 'vast experience and expertise *in verifying*' decommissioning of John De Chastelain and the commission.³⁸⁴ Furthermore, in his statement to the Dáil, Minister Brian Cowen spoke of how the IICD drew on international expertise: 'the best and brightest from Canada, the US and Finland'.³⁸⁵ These statements suggested the Irish government viewed the international nature of the IICD and the expertise of its members as an important element of its work and specifically its ability to verify. Bertie Ahern also spoke of trusting the IICD when it verified that the IRA had fully decommissioned: 'But we do place our trust in the IICD. It is what they say that matters'.³⁸⁶ Dermot Ahern also stressed the importance of the international element in order for the commission to be beyond reproach: 'I think in relation to decommissioning particularly it was important to have international people, people who no one could throw a stone at'.³⁸⁷

John Hume stressed the independent international and expert nature of the IICD.³⁸⁸ This stressing of status sought to reinforce the credibility of agreements between the IRA and IICD, allowing the IICD to verify arms decommissioning. This showed the importance of identity in allowing for directive mediation. The questioning of IICD statements by unionists was greeted with incredulity by the SDLP, who suggested this questioning could not be

382 British and Irish Governments. *Agreement on the Independent International Commission on Decommissioning (IICD)*, (Belfast: NIO, 1997).

383 'Chief sought for arms body', *Belfast Telegraph*, August 27, 1997.

384 Department of Foreign Affairs, *Statement by the Minister following the Report of the International Commission on Decommissioning, 23/10/2001*, (Dublin: Department of Foreign Affairs, 2001). *Department of Foreign Affairs, Statement by the Minister of State in response to the report by the IICD on IRA Decommissioning, 23/10/2001*, (Dublin: Department of Foreign Affairs, 2001).

385 Department of Foreign Affairs, *Statement in the Dáil on the IICD Report by the Minister for Foreign Affairs, Mr Brian Cowen, T.D., 24/10/2001*, (Dublin: Department of Foreign Affairs, 2001).

386 'Speech by Bertie Ahern, then Taoiseach (Irish Prime Minister), to the Dáil, on Recent Developments in the Peace Process (28 September 2005)', <http://cain.ulst.ac.uk/issues/politics/docs/dott/ba280905.htm>

387 Dermot Ahern, interview by Dawn Walsh, October 8, 2013.

388 Monika Unsworth, 'Statement from IRA "too little, too late"', *Irish Times*, August 9, 2001.

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genuine as the IICD's standing was beyond doubt.³⁸⁹ This suggested that its status was such that its verification (directive mediation) was considered incontestable by at least one conflict party.

Interestingly, in 2005 sections of the media chose to also mention the other two commissioners and their backgrounds: 'Sens is a career diplomat who has served in various postings around the world. Brig-Gen Nieminen has extensive peacekeeping and peace monitoring experience'.³⁹⁰ Perhaps there was an understanding that the relevant expertise of all members must be stressed if the IICD was to have sufficiently high status that its verifications would be believed by both communities. Writing in 2006 Andrew D. Sens outlined that the IICD was international and this suggested he viewed this as an important aspect of their work.³⁹¹ He further underlined this in 2012, arguing that the involvement of himself (and of Donald Johnson) underlined the commitment of Bill Clinton to the process and underlined the importance of the effort.³⁹² Jeffery Donaldson, of the Democratic Unionist Party (DUP), accepted that in terms of decommissioning it was 'good to have facilitators who are deemed to be international and neutral', but that the external actors were not sufficiently familiar with Northern Ireland: 'the IICD who were coming to this pretty cold from Canada, Finland and the US'. Rather he stressed the need for local involvement, which is discussed in the next section.³⁹³

Other actors and 'agents' of the IICD

Interestingly the IICD may have been able to draw on the status of Senator George Mitchell. Not only did he chair the IBD which recommended its creation but his review of the process

389 'Farren anger at "no" voters', *Belfast Telegraph*, November 2, 2001.

390 'IICD: composition and remit', *Irish Times*, September 27, 2005.

391 Andrew D. Sens, 'A commission to decommission paramilitary arms – Northern Ireland's example', *World Policy Journal*, (Fall 2006) 75-85.

392 Andrew D. Sens, email interview by Dawn Walsh, March 1, 2013.

393 Jeffery Donaldson, interview by Dawn Walsh, November 8, 2013.

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in late 1999 put forward a deadline for decommissioning and insisted it be carried out in a manner acceptable to the IICD.³⁹⁴

In May 2000 Cyril Ramaphosa and Martti Ahtisaari arrived in Northern Ireland and acted as International Inspectors. Martti Ahtisaari's involvement continued the Finnish role and he undoubtedly had a high international status. He was the tenth President of Finland, Nobel Peace Prize laureate and United Nations diplomat and mediator, and recognised for his international peace work. The question did arise as to why he rather than the IICD, acted as verifier during this time and what part of his identity made that appear to be the best way forward.

Cyril Ramaphosa was well known for the role he played during the negotiations to bring an end to the apartheid regime and to steer South Africa towards its first democratic elections in 1994. Given the Republican tendency to view the Northern Ireland conflict in similar terms to the South African struggle against apartheid, his identity was more acceptable to the IRA than the IICD members. The IRA's empathetic view of the African National Congress meant that his verification of IRA decommissioning in the period May 2000 to October 2001 was not seen as a form of surrender. Mark Durkan stressed the usefulness of the inclusion of a South African dimension, arguing that it was: 'useful to bring in a South African additive in relation to that. It would make it easier for people to see things in a different light, in a different perspective...It is about trying to do things and removing excuses and giving people cover. And that can be part of it and people being able to address their base and say this is the terms in which this is being done and it's not being done for Trimble or for those who are harassing Trimble'.³⁹⁵ Similarly a Sinn Féin official stated that: 'Even inviting a representative of the ANC was very positive in terms of republicans dealing with putting weapons beyond use'.³⁹⁶

394 John De Chastelain, *The Northern Ireland Peace Process and the Impact of Decommissioning*, Working Paper No. 8. (Dublin: Institute for British-Irish Studies (IBIS), 2001) 7.

395 Mark Durkan, interview by Dawn Walsh, October 3, 2013.

396 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

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Andrew D. Sens stated that the suggestion to ask for the help of two respected neutrals was part of a 'confidence building measure' that showed IRA thinking was evolving even if they were not yet ready to decommission. He also outlined that 'for a year and a half they helped to allay unionist scepticism'.³⁹⁷ However Jeffery Donaldson argued that the usefulness of the involvement of Marti Athisaari and Cyril Ramaphosa was limited due to the fact that they were not well known in Northern Ireland. He instead highlighted the importance of having two local clergymen involved: 'they weren't that well known locally, I think latterly having someone like Harold Good and Alec Reid involved did help'.³⁹⁸ Similarly an Irish official argued that Cyril Ramaphosa and Marti Athisaari would not convince David Trimble but that the involvement of Harold Good was useful.³⁹⁹

Stewart Dickson of the Alliance party confirms this, stressing the importance of having local actors who knew the personalities and complexities involved. They could guide the international individuals who, while having technical knowledge, did not necessarily know the Northern Ireland context well.⁴⁰⁰ Caitriona Ruane, a former Minister in the Northern Ireland executive and current Sinn Féin MLA, highlighted the broad respect which Alec Reid and Harold Good enjoyed.⁴⁰¹

These clergymen, who acted as witnesses to IRA decommissioning in 2005 assisted the IICD in acting as a verifier. The SDLP mentioned the role of these church witnesses in the verification of IRA decommissioning.⁴⁰² This raised a question as to whether the status of the IICD was not considerable enough for it alone to verify IRA decommissioning. Particularly it showed how helpful it would be to include local people from each side of the community who had long histories of working with paramilitaries to end violence.⁴⁰³ This was particularly true for the unionist community, as previously mentioned, and Harold

397 Andrew D. Sens, email interview by Dawn Walsh, March 1, 2013.

398 Jeffery Donaldson interview by Dawn Walsh, November 8, 2013.

399 Irish official, interview by Dawn Walsh, December 9, 2013.

400 Stewart Dickson, interview by Dawn Walsh, November 27, 2013.

401 Caitriona Ruane, interview by Dawn Walsh, November 29, 2013.

402 Mark Hennessy, 'SDLP "reassured" after meeting', *Irish Times*, September 28, 2005.

403 Alf McCreary, 'Clerics renowned for peace efforts', *Irish Times*, September 27, 2005.

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Good's presence helped to overcome this issue; the UUP and DUP could not voice the same misgiving about Harold Good's word as they had previously articulated vis-à-vis the IICD.

The report of the two independent witnesses to the decommissioning acts, Rev Harold Good and Fr Alec Reid, seemed to the ordinary onlooker to add to the authority of Gen De Chastelain's military account. They spoke of the experience of 'seeing with our own eyes, on a minute-to-minute basis, provided us with evidence so clear and of its nature so incontrovertible that, at the end of the process, it demonstrated to us, and would have demonstrated to anyone who might have been with us, that beyond any shadow of a doubt, the arms of the IRA have now been decommissioned.'⁴⁰⁴

The broad identity of the IICD as international appears to have been important. As early as 1995 an independent international commission was being floated as a possible way past the gridlock, and different parties, including commission member Andrew D. Sens mentioned the international nature of the IICD during its work. A Sinn Féin official argued that: 'the decommissioning body very obviously had to be an international body...so they had to be highly credible international people and it would just be, it wouldn't even have flown; the idea of having people from these two states'.⁴⁰⁵

As has already been mentioned, John De Chastelain's identity in particular convinced many actors to have full confidence in the IICD's ability to verify, and thus directive mediate. But at points the IICD needed support from other international actors and locals to allow it to engage in this verification. The role of the international inspectors showed that during the period of their work their identities were better accepted as being suited to verification – directive mediation – than the IICD, which had long since been charged with this job. Furthermore, the role of the two clergymen as witnesses to acts of decommissioning demonstrated that local verifiers were also important, especially in the unionist community. Mark Durkan stressed the need for local and international actors at different points, arguing that while the local aspect was helpful at the time, the process would not have been successful without the international dimension.⁴⁰⁶ A Sinn Féin official argued that the inclusion of the local clergymen was particularly important to the unionist community: 'you

404 'The IRA decommissions', *Irish Times*, September 27, 2005.

405 Sinn Féin official, interview by Dawn Walsh, November 26, 2013.

406 Mark Durkan, interview by Dawn Walsh, October 3, 2013.

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bring in Harold Good and Alec Reid, that was particularly pointed towards a reassurance to unionism'.⁴⁰⁷ This highlights the need to combine locally respected individuals from both communities with the international element. As 'outsiders', the commission members alone could not act as wholly convincing verifiers.

Issue intensity

Decommissioning was undoubtedly one of, if not the most, controversial issue in the Northern Ireland peace process. Even the choice of the term 'decommissioning' and the much used phrase 'put arms beyond use' rather than 'disarmament', reflected this. The latter suggesting defeat or surrender, which was particularly unacceptable to the republicans.⁴⁰⁸ It also avoided comparisons with the British Army's demilitarisation of the region. As has been discussed earlier in this chapter, the issue became an apparently immovable obstacle in the progress of the peace process. The failure to move past this obstacle arguably contributed to the end of the first IRA ceasefire.⁴⁰⁹ There was a recognition that the issue of paramilitary arms carried a symbolic value and weight that went far beyond its military potential, serving as the political foundation upon which both conflicting parties anchored their positions.⁴¹⁰ Decommissioning was much more about trust and the moral high ground than about security or military concerns.⁴¹¹

As discussed in previous chapters, existing literature finds that the greater the intensity of a conflict, the more interventionist the type of mediation which will be used. The theoretical logic offered for this finding is that the more intense a conflict the more difficult it is for the conflicting parties to achieve an agreement without help, and the more assistance they will need from third parties. Therefore, if the level of intensity of feeling around an issue is affecting the type of mediation being used by the IICD, higher levels of intensity should be

407 Sinn Féin official, interview by Dawn Walsh, November 26, 2013.

408 Colin McInnes, 'A farewell to Arms: Decommissioning and the peace process'. In Michael Cox, Adrian Guelke and Fiona Stephen. *A Farewell to Arms?: From War to Peace in Northern Ireland*, (Manchester: Manchester University Press, 2000) 78.

409 Ibid., 81.

410 Kris Brown and Corinna Hauswedell, 'Burying the Hatchet: The Decommissioning of Paramilitary Arms in Northern Ireland', (Bonn: Bonn International Centre for Conversion, 2002) 4.

411 Roger MacGinty, "'Biting the Bullet": Decommissioning in the Transition from War to Peace in Northern Ireland'. *Irish Studies in International Affairs*, 10 (1999): 241.

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seen acting as a hurdle to agreement between the conflict parties. The parties may state that they cannot make concessions on the issue as it is too significant to their constituents/supporters. They may claim that compromising on such a sensitive matter would result in them losing vital support.

The IICD should be observed trying to use types of mediation that overcome these challenges. It may use formulative mediation to make substantive proposals and accept responsibility for concessions being made. If the intensity of feeling around an issue still makes compromise difficult for the conflicting parties the IICD may elect to use directive mediation; using its influence and endeavouring to overcome these challenges or act as a verifier of compliance where possible non-compliance is increasing the intensity of feeling around an issue. If the intensity of feeling around an issue is affecting the type of mediation used, a more interventionist mediator should be seen justifying involvement in terms of overcoming the associated challenges. Conversely, if the intensity of feeling around an issue is low the IICD would be seen highlighting how the parties can reach a compromise with a lower level of assistance.

It was the intensity of feeling around the issue of decommissioning that led the governments to internationalise this issue, even before the wider process that became fully internationalised. Thus, the IBD was formed: ‘those differences led to the creation of the Body’.⁴¹² It recommended that an independent commission was formed, and that all decommissioning must be done to its satisfaction.⁴¹³ This showed that it felt the issue was sufficiently intense to need an independent actor to verify compliance. The governments and parties could not simply implement the recommendations of the IBD, the parent body of the IICD saw that the level of intensity would demand a commission to verify – thus be directive mediators. Once the acts of decommissioning began (principally 2005-2010) the IICD was an active verifier.

412 International Body on Arms Decommissioning. *Report of the International Body on Arms Decommissioning, [Mitchell Report]*, (Belfast: NIO, 1996).

413 Ibid.

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Andrew D. Sens confirmed that: ‘people on both sides felt so strongly for or against decommissioning’. This was made more intense due to the fact that decommissioning was easier to understand than the complex nuanced political negotiations. At times it felt almost everything depended on the IICD being able to show it was moving in the right direction and that because of this they kept pressing the paramilitaries at every stage.⁴¹⁴ This showed how the intensity led the IICD to pressure groups, to directive mediation.

The intensity of feeling around the issue within the unionist community resulted in two different logics regarding the role of the IICD; both advocated directive mediation but focused on its different elements, verification, and application of pressure. Robert McCartney warned that the IICD should limit itself to a technical remit: identifying and verifying arms being put beyond use. David Trimble on the other hand felt the IICD should take some proactive action to overcome the impasse.⁴¹⁵ Robert McCartney’s view clearly alluded to verification and thus his mistrust of the IRA led him to want the IICD to verify, be a directive mediator. David Trimble’s view was that the impasse was so ingrained that the IICD must do more. This suggested he wanted the IICD to exert pressure, also an element of directive mediation.

The IICD’s report in June 2001 stated that it had been unable to meet either of the deadlines that had previously been set for decommissioning. In the same report it suggested that it was considering the opinion that it should be wound down.⁴¹⁶ The IICD used the threat of winding up to press actors to overcome this intensity. Intensity was preventing progress and led to the IICD applying pressure to overcome it, engaging in directive mediation. The IICD’s understanding that the commission would need to verify decommissioning in a way that indicated neither surrender nor defeat meant the IICD were prepared to keep information

414 Andrew D. Sens, email interview by Dawn Walsh, March 1, 2013.

415 Deaglan De Bréadún, ‘Radio words cause waves amid all the tough talking analysis’, *Irish Times*, October 26, 1998.

416 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 30 June 2001. (Belfast: IICD, 2001).

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surrounding the process confidential.⁴¹⁷ Here, intensity around the issue regarding the fact decommissioning must not be seen as part of surrendering, particularly in the republican community, led to the IICD controlling information and thus engaging in facilitative-procedural mediation. The IICD maintained confidentiality in order to avoid the feeling of surrender, which would have made progress impossible given the intensity of feeling around this in the republican community. As a Sinn Féin official argued:

‘I think that was an essential element of it because anything outside of that would have smacked of surrender ... the claim that it shouldn’t be confidential was a very political claim and the public surrender of weapons wasn’t going to happen because that wasn’t what the peace process was about, one side winning and one side losing’.⁴¹⁸

By controlling the information around quantities and types of arms and how they were decommissioned, the IICD engaged in facilitative-procedural mediation. Interestingly this shows high levels of issue intensity leading to less interventionist mediation rather than the more interventionist forms predicted.

Similarly, in its final report the IICD did not provide an inventory of arms decommissioned, despite earlier suggestions this would be provided at the end of its work.⁴¹⁹ Instead, the inventory was placed with the US State Department for safe-keeping. This control of information was undertaken by the IICD as it felt that making such information public at this time would not have helped the process. Here the IICD can be seen controlling information due to the level of intensity around the issue. Again, this level of intensity resulted in more facilitative-procedural mediation and less interventionist mediation.

The three questions the IICD put to the paramilitary groups in 1999 were aimed at overcoming an impasse caused by the intensity of feeling over decommissioning. The

417 Andrew D. Sens, ‘A commission to decommission paramilitary arms – Northern Ireland’s example’, *World Policy Journal*, (Fall 2006) 75-85.

418 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

419 Gerry Moriarty, ‘Publication of arms list would be incendiary’, *Irish Times*, July 5, 2011.

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unionists still wanted decommissioning in order to sit in government with Sinn Féin, while Sinn Féin felt such a precondition was unacceptable. It was an attempt to highlight common areas of agreement; falling under facilitative-procedural mediation.⁴²⁰

The Hillsborough Declaration which was aimed at overcoming the decommissioning impasse and allowing the GFA institutions to be reinstated stated:

The IICD (Independent International Commission on Decommissioning) will continue its task under the Agreement. The government will now ask the IICD to consider urgently, in consultation with representatives of the paramilitary organisations, whether there are any further proposals for decommissioning schemes which offer the Commission greater scope to proceed in more effective and satisfactory ways with the discharge of its basic mandate and to report.⁴²¹

The IICD was being charged with coming up with substantial proposals in order to overcome the impasse caused by the level of intensity around decommissioning. This showed the level of intensity resulting in possible formulative mediation. However whether the possibility became a reality is discussed in relation to the effects of TOR in the next section.

The intensity of feeling surrounding decommissioning was the very reason it was the first issue internationalised within the Northern Ireland peace process. Impasses resulting from the intensity led the IICD to frequently press groups to engage and to decommission - making it a directive mediator. The intensity of the issue also led the unionist representatives to ask the IICD to act as a directive mediator in two separate ways. Robert McCartney saw its role simply as a verifier (directive mediator), whereas David Trimble wanted it to press the IRA to decommission - to apply leverage (also directive mediate). Thus the intensity of the issue in the unionist community required the IICD to act as a directive mediator. The intensity of the issue of decommissioning also led the IICD to act as facilitative-procedural mediator. The republican community needed the IICD to control information to prevent decommissioning from being seen as surrender. Furthermore, the IICD controlled information by giving unionist representatives as much detail as it could in private, in an attempt to quell their fears without breaking confidentiality. Intensity also led

420 'Decommissioning the crucial questions', *The Guardian*, June 29, 1999.

421 'Call to restore peace momentum', *Irish Times*, March 9, 2001.

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to impasses, which in turn led the governments to widen the IICD's remit calling on it to provide proposals - which could have made it a formulative mediator.

The TOR

The IICD's TOR were provided for not only in the GFA (as was seen for the Independent Commission on Policing) but in earlier agreements and legislation. The IBD carried out its work before the GFA was concluded and the IICD was formed on the advice of the IBD, again before the GFA was agreed. In 1997 the governments released a joint agreement on the IICD and each passed the necessary legislation. Therefore, as well as considering the effect of the TOR for the IICD included in the GFA, this analysis considered whether the TOR included in earlier agreements and legislation affected the type of mediation used by the IICD. The IICD used the TOR set out in the 1997 legislation. These also outlined that the IICD would verify if and when the decommissioning process had begun.⁴²² This showed the TOR facilitating the IICD to verify the process and so use the directive mediation type.

The use of independent inspectors to verify decommissioning during the period May 2000-October 2001 indicated that the IICD was using its original 1997 TOR to allow it to (indirectly) verify decommissioning and thus engage in directive mediation as the international inspectors came under the heading of 'agents of the commission'. They were mentioned in the legislation but not explicitly cited in the TOR in the GFA. The involvement of clergymen in 2005 as witnesses to complete IRA decommissioning may be similarly viewed.

Articles two and four of the TOR, set out in the text of the GFA, endorsed the 'progress made by the Independent International Commission on Decommissioning and the Governments in developing schemes which can represent a workable basis for achieving the decommissioning of illegally-held arms in the possession of paramilitary groups' and that: 'the Independent Commission will monitor, review and verify progress on decommissioning

⁴²² Independent International Commission on Decommissioning (IICD), *Report of the Independent International Commission on Decommissioning (IICD)*, 2 July 1999, (Belfast: IICD, 1999).

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of illegal arms, and will report to both Governments at regular intervals'.⁴²³ Here again, as in the report of IBD, the use of the word 'verify' strongly indicated that the IICD would act as a directive mediator; verifying compliance is a key indicator of directive mediation.

The 1997 schemes and regulations were also cited as the reason for making an inventory of weapons to be provided to the governments on completion of the IICD's mandate.⁴²⁴ The IICD also used them to explain how it justified providing confidentiality to the IRA: 'We have agreed to the IRA's condition of confidentiality regarding details of this event, as provided for in the same scheme and regulations'.⁴²⁵ Martin Mansergh also felt confidentiality was consistent with these 1997 TOR: 'Confidentiality is consistent with the decommissioning scheme approved by both parliaments. Gen De Chastelain has been very disciplined, and has managed to achieve great progress by behaving discreetly and by retaining the confidence of his paramilitary interlocutor'.⁴²⁶ Andrew D. Sens also stated that: 'the schemes and regulations under which we were to operate gave us the option of agreeing to confidentiality'.⁴²⁷ He also stated that the IBD's recommendation that decommissioning should not be seen as surrender led him to decide that it should be confidential.⁴²⁸ Thus the IBD's report was driving the IICD to control information, acting as a facilitative-procedural mediator.

The 1997 schemes allowed the IICD to provide the modalities of decommissioning. The decommissioning section in the GFA also alluded to this. 'Developing schemes' could have involved formulative mediation if it involved making substantial proposals. The TOR of the IICD were widened in 2000 and this facilitated formulative mediation. The governments

423 'The Agreement, Agreement reached in the multi-party negotiations (10 April 1998)'.

<http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>.

424 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 8 April 2002. (Belfast: IICD, 2002).

425 'Text of letter sent to governments', *Irish Times*, April 9, 2002.

426 Martin Mansergh, 'Not a clear round, but don't ignore progress', *Irish Times*, October 25, 2003.

427 Andrew D. Sens, email interview by Dawn Walsh, March 1, 2013.

428 Andrew D. Sens, 'A commission to decommission paramilitary arms – Northern Ireland's example', *World Policy Journal*, (Fall 2006) 75-85.

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invited the IICD to make further proposals as to how decommissioning might be carried out.⁴²⁹ However there is no evidence of the IICD producing its own substantial recommendations. Rather it channelled information and highlighted areas of agreement, etc. as was outlined above, in relation to the production of a report for the Liaison Sub-Committee on Decommissioning and governments during the GFA negotiations - thus it was more indicative of facilitative-procedural mediation. It also accepted and endorsed modalities proposed by others, such as in 2001 when the governments extended the existing legislation in line with suggestions made by the IICD after discussions with the IRA. This provided greater flexibility and endorsement of IRA suggestions can be viewed more as directive mediation as it is part of verifying the authenticity and workability of the IRA's commitment and approach to decommissioning.

The decommissioning legislation of 1997 guided the IICD in verifying decommissioning (directive mediation). It also provided for the use of 'agents of the commission' which the IICD used in the form of International Inspectors and clergymen who as verifiers, which assisted it in acting as a directive mediator by verifying. By providing the means to control information, this legislation further enabled the IICD to engage in facilitative-procedural mediation. This legislation also suggested the potential for substantial proposals, which was later built on in the Hillsborough Declaration (formulative mediation), yet there is no evidence that formulative mediation was used because proposals appeared to originate elsewhere.

The GFA

As has been mentioned in previous chapters this is the first work which examined how variables affect mediation in the implementation phase of a peace process. This means there is no existing work which outlines how a peace agreement may affect mediation. If a mediator is provided for in a peace agreement these mediators may gain additional leverage. The GFA was approved by the public north and south of the border and other main actors including the governments and the political parties in Northern Ireland, (apart

⁴²⁹ Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 26 October 2000, (Belfast: IICD, 2000).

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from the DUP and Robert McCartney's UKUP). The IICD may have been able to engage in more interventionist forms of mediation (as a result of authority garnered from its genesis in the agreement).

The consociational nature of the GFA may also have had specific effects on the mediation type used through its international, Lijphartian, and coercive elements. Firstly the international nature of the GFA may have led to the inclusion of international commission members, changing the mediator identity and thus effecting mediation type as discussed in the section on mediator identity. Similarly the GFA's Lijphartian elements may have led to the inclusion of actors seen as representative of the conflict communities, in this case Alec Reid and Harold Good, again affecting mediation type by changing mediator identity. Mark Durkan argued that the use of Alex Reid and Harold Good only worked because they represented both communities: 'If it was just Alec Reid on his own unionists would say whatever. So unfortunately there was the binary aspect to it for obvious reasons...so that worked'.⁴³⁰ This shows that consociationalism may affect mediation identity. The effects of mediation identity, in particular the international and local aspects inspired by the GFA's consociationalism were outlined above in the section on mediator identity.

It may also have been expected that Lijphartian consociationalism would encourage procedural-facilitative and/or formulative mediation. The power and leverage element directive mediation appears to be incompatible with the compromise form of government sometimes associated with Lijphartian consociationalism. However, the form of consociationalism present in the GFA must be considered. There was a significant coercive element to the GFA, i.e. the manner in which the governments effectively imposed it. This suggests the consensus reading of consociationalism does not necessarily apply to the GFA and the coercive elements may well have been suited to directive mediation.

If the nature of the GFA was affecting the type of mediation which the IICD used, commissions would be observed referring back to the GFA in explaining their activities.

⁴³⁰ Mark Durkan, interview by Dawn Walsh, October 3, 2013.

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Other actors may have also cited the GFA in order to influence the type of mediation the IICD uses. Actors may have highlighted areas where a commission's activities appeared not to be consistent with the GFA.

As early as its first report there were indications that GFA may have had an effect on the IICD. The IICD stated that the request for the report came from the governments pursuant to the GFA. It reiterated the commitment made by the parties relating to decommissioning under the GFA and said it had no reason to doubt the veracity of this pledge. It also indicated that it was committed to the timetable set down under the GFA, and uses this timing to press the parties to begin decommissioning.⁴³¹ There the GFA's referral to timing is being used to apply pressure, thus it is facilitating the use of directive mediation.

John De Chastelain used support for the GFA to press parties to decommission: 'A large number of people in Ireland, North and South, want to see an end to violence and the decommissioning of all paramilitary arms. And a considerable majority in the North, and a huge one in the South, want the Good Friday agreement - which includes decommissioning - to work'.⁴³² He was using the legitimacy of the GFA to engage in directive mediation. In its November 1999 report the IICD again reiterated the commitments made by the pro-GFA parties on decommissioning under the agreement, and pressured the parties to fulfil these commitments under the timetable set down in the GFA.⁴³³ Here again the analysis noted the IICD using the GFA and its timetable to engage in directive mediation. Similarly, a Sinn Féin official argued that: 'I think the ones that came from the GFA did have that legitimacy and people signed up, they may not have signed up to the outcome but they signed up to the framework and signed up for an assessment of what the issues and problems were... around decommissioning the idea was to get everyone to act in good faith to bring it about'.⁴³⁴

431 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 2 July 1999*. (Belfast: IICD, 1999).

432 Renagh Holohan, 'Mowlam hints at early move on RUC report', *Irish Times*, September 15, 1999.

433 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD), 15 November 1999*. (Belfast: IICD, 1999).

434 Sinn Féin official, interview by Dawn Walsh, November 26, 2013.

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Interestingly the UVF/RHC used the GFA to explain delays in the start of the process, stating that it could only occur as part of the full implementation of the GFA and acceptance by the republicans that the GFA is the final settlement on the constitutional issue.⁴³⁵ The IRA adopted a similar approach; it argued decommissioning could only occur in the context of the overall implementation of the GFA and the removal of the causes of conflict.⁴³⁶ The GFA was also being used to counter the IICD's directive mediation which was pressuring parties to move forward immediately. Whether this was a genuine explanation or simply an excuse for the slow progress has been questioned. Nevertheless, it is interesting to this analysis that the GFA was being put forward as an explanation for slow progress as it is being used to counter the IICD's attempts to use directive mediation.

When the governments put forward proposals to move implementation of the GFA forward the IICD further underlined its connection to the GFA by using this opportunity to push for decommissioning to begin.⁴³⁷ Progress on the implementation of the GFA was being used to pressure the parties to decommission. Thus the GFA was allowing the IICD to act as directive mediator. The Irish government repeatedly referred to commitments under the GFA in order to press parties to engage with the IICD.⁴³⁸ Thus the Irish government was using the GFA to back up the IICD's pressuring of the parties to decommission. This can also be seen as an extension of the government's approach to using pressure, in keeping with its previous coercive consociationalism.

The GFA, the fact that political parties signed up encourage decommissioning and its support in referenda, was used by the IICD and other actors including the governments to

435 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 10 December 1999. (Belfast: IICD, 1999).

436 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 11 February 2000 (report made public 9.30pm 11 February 2000), (Belfast: IICD, 2000).

437 Independent International Commission on Decommissioning (IICD). *Report of the Independent International Commission on Decommissioning (IICD)*, 22 December 2000. (Belfast: IICD, 2000).

438 Department of Foreign Affairs, *Statement by the Minister of State in response to the report of the IICD on IRA Decommissioning*, 23 October 2001, (Dublin: Department of Foreign Affairs, 2001). Department of Foreign Affairs, *Response by the Minister for Foreign Affairs to today's remarks by Sinn Féin President*, (Dublin: Department of Foreign Affairs, 2001).

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pressure the parties to engage with the IICD and decommission: the GFA was leading to directive mediation. The IICD's pressuring of groups to decommission was similar to how the governments pressed the conflict parties into the GFA initially - thus it was consistent with the coercive element of the GFA. As was seen with the ICP, the work of the IICD as mediators was consistent with the general characteristics of the peace process: specifically the GFA - including internationalisation, representation from both communities and coercion to press parties to act/compromise.

Conclusion

The IICD was a directive mediator, its main role being to verify the process and acts of decommissioning. It also applied pressure in an effort to convince the paramilitary groups to decommission. The identity of the commission, particularly the status of John De Chastelain facilitated this directive mediation. But this identity alone was not enough alone. The role of the international inspectors shows that other identities were needed. Particularly Cyril Ramaphosa's identity as an ANC official made it easier for the IRA to allow its arms dumps to be inspected. Similarly, the unionist community needed Harold Good and Alec Reid to back up the IICD's final verification of IRA decommissioning; as their standing put the conclusion beyond doubt. The unionist need for a local actor from their community to be involved shows the importance of having local involvement as well as a strong international element to achieve credible verification, directive mediation.

Intensity around the issue manifested itself in the need for facilitative-procedural mediation as information surrounding decommissioning was tightly controlled. This intensity also meant the unionist community needed a strong and independent verifier who would push paramilitary groups to decommission (particularly the IRA). The TOR of the IICD clearly indicated that the IICD was to verify decommissioning and evidently led to directive mediation. The GFA, and its validity given the two referendums, allowed the IICD to point to commitments within it regarding decommissioning to press paramilitaries to comply and thus to act as a directive mediator. The application of this pressure was also similar to the

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application of pressure by the two governments in establishing the coercive consociationalism of the GFA. All four variables led to the IICD acting as a directive mediator, and this was the dominant form of mediation which it used.

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CHAPTER FIVE: THE INDEPENDENT MONITORING COMMISSION

Controversial activities by the RUC, the growth of paramilitary groups, mainly the IRA but also loyalist groups (and other republican groups including dissidents) and the militarisation of the British government's response to paramilitaries were at the very core of the Northern Ireland conflict. While the Good Friday Agreement (GFA) provided for a framework and institutions to manage the incompatible ethnonational aspirations of the communities, these paramilitary activities and militarisation were not comprehensively dealt with in the GFA. The activities of the paramilitary groups, and the question of whether their ceasefires were genuine and complete, were controversial and dominant issues. Unionists in particular resisted power-sharing with Sinn Féin while these questions hung over the IRA. In turn Sinn Féin drew attention to the continued high level presence of the British military in Northern Ireland, with 15,000 troops still stationed in the region in 1999.⁴³⁹

In April 2003, in an attempt to re-establish an operational Assembly, the two governments came to an agreement to form an independent body to monitor the activities of paramilitaries and the demilitarisation of Northern Ireland; the Independent Monitoring Commission (IMC). This chapter first provides a brief background to the setting up of the IMC, and then the work of the IMC is examined in order to explain the types of mediation used. This explanation is divided into three sections:

- (1) The IMC and British demilitarisation;
- (2) Paramilitary activity from the foundation of the IMC 2003 to Autumn 2005 and;
- (3) Paramilitary activity from Autumn 2005 to closure of the IMC 2011.

⁴³⁹ Independent Monitoring Commission (IMC), *Second report of the independent monitoring commission*, (London: House of Commons, 2004).

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The chapter then examines how mediator identity, issue intensity, the TOR and the GFA affected the choice of this type.

Background to the setting up of the IMC

In order to provide the necessary background detail, this chapter examines the context in which the IMC was formed and the TOR which it was given in order to overcome the challenges posed to the peace process by the aforementioned context. The IRA, the INLA, the UDA, the LVF, and UVF all entered into ceasefires in the 1990s, in the build up to - and in the case of the LVF in the direct aftermath - of the GFA. There was an assumption that these groups would end their activities and that Northern Ireland would move to a normal political situation as the agreement was implemented. Despite the ceasefires officially declared by the main paramilitary groups many disputed whether these groups continued to be involved in violence and criminal activity. And furthermore whether they were prepared to return to full campaigns if the peace process failed to deliver what they wanted (this was reinforced by failures to decommission as outlined in the previous chapter). In particular, the continued existence of the IRA represented a challenge. Unionists cited the incompatible nature of its existence with a solely democratic system as a barrier to being in government with Sinn Féin. Low level sectarian violence and paramilitary thuggish behaviour such as so-called 'punishment beatings' were perceived to be rising. Between 1999 and 2002 there were 721 loyalist and 398 republican shootings or assaults, making a total of 1,119. This marked an increase from the figures for the previous four year period (1990, 477 loyalist and 513 republican).⁴⁴⁰ In addition, increasing support for the less moderate parties (DUP and Sinn Féin) from within their respective communities raised concerns that the situation was regressing and that gains made during the peace process could be lost.⁴⁴¹

440 Independent Monitoring Commission (IMC), First report of the independent monitoring commission, (London: House of Commons, 2004).

441 Arthur Aughey, *The Politics of Northern Ireland: Beyond the Belfast Agreement*, (New York: Routledge, 2005) 166-172.

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In October 2002 the Northern Ireland Assembly was suspended because the unionist ministers decided to withdraw as a result of these concerns and challenges. On the suspension of the Assembly the Secretary for State for Northern Ireland John Reid outlined that the difficulties:

...stem from a loss of trust on both sides of the community. In particular it is essential that concerns about the commitment to exclusively democratic and non-violent means are removed. The time has come for people to face up to the choice between violence and democracy. It is also essential that each community has confidence in the commitment of the other to the Agreement.⁴⁴²

On the same day the two governments released a joint statement where they too stressed the breakdown of trust surrounding commitment to exclusively democratic means and the need for this trust to be re-established:

It is our sincere wish that the Northern Ireland institutions be restored as soon as possible. We firmly believe that it will be possible to do so, and in a way that will last without further disruption, once trust between the parties has been re-established. For that to happen, it must be clear that the transition from violence to exclusively peaceful and democratic means, which has been ongoing since the Agreement, and indeed before, is being brought to an unambiguous and definitive conclusion. It is now essential that the concerns around the commitment to exclusively democratic and non-violent means are removed. The time has come for people to clearly choose one track or the other. In addition, it is essential that each community has confidence in the commitment of the representatives of the other to the full operation and implementation of the Agreement.⁴⁴³

This statement showed a concern in relation to commitment to exclusively democratic means and the need for confidence in this area. This was an early indication that a mechanism may be needed to overcome this challenge. In May 2003 a draft 'Agreement on Monitoring and Compliance' was published outlining the establishment of an Independent Monitoring Commission to manage this issue, in

⁴⁴² Statement by John Reid, then Secretary of State, on the Suspension of Devolution, Hillsborough, Monday 14 October 2002, (Belfast: NIO, 2002).

⁴⁴³ British and Irish Governments, *Joint Statement issued by the British and Irish Governments*, Monday 14 October 2002 (Belfast: NIO, 2002).

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September the agreement was finalised and the appropriate legislation was introduced. Taoiseach Bertie Ahern clearly outlined the thinking of the governments in relation to the role of the IMC explaining that:

The essential purpose of the Independent Monitoring Commission is to give confidence to all sides of the community in Northern Ireland that the key commitments under the Good Friday Agreement are being fulfilled. These commitments, which create obligations on all sides, relate to ending paramilitary activity, advancing the normalisation of security arrangements and ensuring that all parties fully participate in the political institutions of the Agreement. The Commission is designed to be an assurance mechanism that is independent, objective and properly balanced. Its establishment and the work it will undertake will have a significant confidence building role.⁴⁴⁴

The May 2003 draft 'Agreement on Monitoring and Compliance' provides a clear and concise indication as to the role of the IMC and the remit which was given to it by the two governments:

In relation to the remaining threat from paramilitary groups the Independent Monitoring Body would publish its findings on:

- any continuing paramilitary involvement in attacks on the security forces, murders, sectarian attacks, involvement in riots, and other criminal offences;
- any continuing involvement of paramilitary groups in training, targeting, intelligence gathering, acquisition or development of arms or weapons and other preparations for terrorist campaigns;
- the extent to which any paramilitary groups still appeared to be engaged in punishment beatings/attacks and exiling;
- their assessment of whether the leaderships of such organisations were directing such incidents or seeking to prevent them; and
- trends in security incidents.

444 Department of the Taoiseach, *Independent Monitoring Commission - publication of draft international Agreement*.

http://www.taoiseach.gov.ie/eng/News/Archives/2003/Government_Press_Releases_2003/Independent_Monitoring_Commission_-_publication_of_draft_international_Agreement.html

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In relation to the British Government's commitments to a package of security normalisation measures, the IMC would publish reports as to whether those measures were being fully implemented within the agreed timescales - in the light of its assessment of the paramilitary threat and the British Government's obligation to ensure the safety and security of the community as a whole, including:

- demolition of towers and observation posts;
- withdrawal of troops from police stations;
- closure and dismantling of military bases and installations;
- troop deployments and withdrawals from Northern Ireland and levels of British Army helicopter use;
- the repeal of counter-terrorist legislation particular to Northern Ireland.

At the request of the Governments, the Independent Monitoring Body could be asked to consider claims by any party in the Assembly that another party is in breach of requirements in the Declaration of Support or elsewhere in the Agreement.

- The Independent Monitoring Body would report to the two Governments, making recommendations as to appropriate remedies for particular breaches and what measures, if any, it would be appropriate to apply.
- The Independent Monitoring Body would have access to all the information necessary to carry out its functions, subject to appropriate conditions to ensure confidentiality.
- The Independent Monitoring Body would be expected to publish reports as and when required and, in any event, at least every six months.
- The Independent Monitoring Body would consult as required with the Policing Board, the Oversight Commissioner and the Independent International Commission on Decommissioning.⁴⁴⁵

⁴⁴⁵ British and Irish Governments, *Joint Declaration by the British and Irish Governments, (April 2003)*, (Belfast: NIO, 2003).

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Its appointment was contentious. Sinn Féin rejected its formation, viewing it as a vehicle to exclude them from the Executive. Unionists also objected, viewing it as a means for Sinn Féin's inclusion. Specifically some unionist representatives were particularly opposed to the inclusion of a member appointed by the Irish government and more generally to the inclusion of any member from outside the United Kingdom. Jeffery Donaldson argued that the presence of such a member would give the Irish government, a say in internal Northern Ireland matters. David Trimble and Tony Blair rejected this reading.⁴⁴⁶ 'Lord Kilclooney (formerly Mr John Taylor, Mr Trimble's deputy) said it was "a slap in the face" for the police in Northern Ireland because it was not their advice the Secretary of State would act upon but the advice of a commission including two "foreigners" from the Republic and the United States'.⁴⁴⁷ This incident showed the controversy in the unionist community surrounding the non-British members of the IMC even before it began its work. This will be returned to in the section on how mediator identity affected mediation type. Having briefly introduced the IMC this dissertation now examines the work of the commission divided into the aforementioned three areas: (1) The IMC and British demilitarisation; (2) Paramilitary activity from the foundation of the IMC 2003 to Autumn 2005 and; (3) Paramilitary activity from Autumn 2005 to closure of the IMC 2011.

The IMC and British demilitarisation

British demilitarisation in Northern Ireland, or 'security normalisation', the term preferred by the British government, made up a considerably smaller part of the work of the commission than that relating to paramilitaries. Five of its twenty-six reports dealt exclusively with the issue (twenty dealt with paramilitaries and one was a concluding summation report). This element of its work also received far less attention from the governments, political parties, and media. However it was still

446 Frank Millar, 'Commission may not be such a help to Trimble', *Irish Times*, September 5, 2003. Frank Millar and Arthur Beesley, 'Poll cannot be delayed indefinitely', *Irish Times*, September 5, 2003.

447 Frank Millar, 'Ahern and Blair push for fresh elections in North', *Irish Times*, September 13, 2003.

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important work in the context of the peace process, as security normalisation by the British government was important within republican communities.

There was a lot of unhappiness for years in the nationalist/republican community about the militarisation of policing in Northern Ireland in all kinds of ways...We were glad to have that function, it did balance things a little bit, it helped to give us a role in relation to something else on the other side of the equation if you like.⁴⁴⁸

The IMC indicated that it spent much of its time examining the issue, particularly in its first three years of operation: 'Our monitoring of the security normalisation programme never attracted the same political or public attention as our work on paramilitary activity. It was nevertheless a key part of our role and occupied much of our time in the first three years'.⁴⁴⁹ Furthermore, it was one of three broad tasks given to the IMC (examining the activities of paramilitaries, examining security normalisation and examining complaints made by Assembly members regarding the failure of other MLAs to maintain the commitment to exclusively democratic means), of which it only engaged in two.

This work came under Article 5 of the TOR of the IMC:

Article 5

(1) In relation to a commitment by the British Government to a package of security normalisation measures, the Commission shall:

(a) monitor whether commitments made are being fully implemented within the agreed timescales, in the light of its assessment of the paramilitary threat and the British Government's obligation to ensure the safety and security of the community as a whole. The activities it shall monitor in this regard shall include:

- i. demolition of towers and observation posts in Northern Ireland;
- ii. withdrawal of troops from police stations in Northern Ireland;

448 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

449 Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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iii. closure and dismantling of military bases and installations in Northern Ireland;

iv. troop deployments and withdrawals from Northern Ireland and levels of British Army helicopter use;

v. the repeal of counter-terrorist legislation particular to Northern Ireland;

(b) report its findings in respect of paragraph (a) of this Article to the two Governments at six-monthly intervals.

(2) The Commission shall, at the request of the British Government, prepare a report giving an account of security normalisation activity undertaken by the British Government over a specified period. The period to be covered by such a report, and the activities it shall monitor in this regard, shall be notified to the Commission by the British Government.

In this area the commission issued one report which outlined the existing position of the British security forces in Northern Ireland.⁴⁵⁰ It issued further reports which outlined the progress that was being made in relation to implementing the 'Security Normalisation Programme' published by the British Government on August 1st 2005. This programme outlined how the reduction of the British military presence would occur, providing a timetable against which issues such as troop levels, number of observation posts etc. could be measured.

The IMC acted as a facilitative-procedural mediator in this area. It indicated that it consulted widely in compiling these (and all its other) reports.⁴⁵¹ By gathering information, from wide range of sources and issuing regular reports which outline this information the IMC channelled this information from the various sources to a wider audience - the public. It also indicated that it viewed helping the public to

450 Independent Monitoring Commission (IMC), *Second report of the independent monitoring commission*, (London: House of Commons, 2004).

451 Independent Monitoring Commission (IMC), *Second report of the independent monitoring commission*, (London: House of Commons, 2004). Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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understand this issue as part of its work in this area.⁴⁵² Consulting widely, channelling information and assisting the public in understanding, are indicators of facilitative-procedural mediation.

Another of the indicators of facilitative-procedural mediation is the highlighting of areas of agreement or progression. The commission's reports in relation to security normalisation highlighted and stressed the progress that had been made in the area.⁴⁵³ Thus the work of the IMC in this area was indicative of facilitative-procedural. It spoke of 'significant' and 'striking' changes.⁴⁵⁴ Furthermore, the media coverage of its reports on security normalisation consistently reported that the British government was making the necessary changes: 'The Independent Monitoring Commission (IMC) has praised the British government's "amazing progress" on dismantling the military structure in Northern Ireland'.⁴⁵⁵ It also underlined where the British government had exceeded targets: 'Although the normalisation programme made no specific reference to the withdrawal of troops from police stations during its first 8 month period we noted in our first report on normalisation that there was a reduction of 50%', and 'there will therefore be 12 bases as against the 14 envisaged for the end of the normalisation programme 'and 'reduction in the number of troops has been consistently ahead of schedule'.⁴⁵⁶ Such

452 Independent Monitoring Commission (IMC), *Second report of the independent monitoring commission*, (London: House of Commons, 2004).

453 Independent Monitoring Commission (IMC), *Second report of the independent monitoring commission*, (London: House of Commons, 2004). Independent Monitoring Commission (IMC), *Ninth report of the independent monitoring commission*, (London: House of Commons, 2006). Independent Monitoring Commission (IMC), *Eleventh report of the independent monitoring commission*, (London: House of Commons, 2006). Independent Monitoring Commission (IMC), *Fourteenth report of the independent monitoring commission*, (London: House of Commons, 2007). Independent Monitoring Commission (IMC), *Sixteenth report of the independent monitoring commission*, (London: House of Commons, 2007). Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

454 Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

455 Dan Keenan and Stephen Collins, 'IMC calls for review of non-jury courts in NI', *Irish Times*, September 18, 2007.

456 Independent Monitoring Commission (IMC), *Sixteenth report of the independent monitoring commission*, (London: House of Commons, 2007).

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praise was clearly underscoring the progress made in a very positive way and hoping to aid the conflict resolution, this was clearly facilitative-procedural mediation.

Where changes have not been made, particularly in the area of terrorism legislation applying exclusively to Northern Ireland, the IMC largely excused such by reiterating that the programme for security normalisation could only be implemented as far as the security situation allowed, and any criticism was couched in terms that the commission hoped future improvements in the security situation would allow further changes: 'they are shaped by a continuation of a level of paramilitary activity and a risk of juror intimidation in some individual cases...we hope will continue to become less and less applicable'.⁴⁵⁷

The practice of including a summation of previous reports that dealt with this area in each new report in the area provided a clear contrast that highlighted the progress made. Rather than simply putting forward the actions taken by the British government in one six monthly period the IMC chose to show all the actions that had been taken to date and thus conveyed a more convincing picture of security normalisation. The IMC emphasized how this continuous reporting and its longevity allowed it to clearly show progress. This also applied to its other work too and will be returned to: 'the power of continuous reporting, which meant that we could return repeatedly to activities or issues', and 'our longevity, which has enabled us to map events over seven years. Transition from conflict is a long slow process. We could trace events and offer a perspective relevant to the circumstances. Where there was change, we could convincingly show it'.⁴⁵⁸ It also explicitly contrasts the position in relation to certain issues during the height of the conflict and after the security normalisation programme, arguing that the number of troops that would be

⁴⁵⁷ Independent Monitoring Commission (IMC), *Sixteenth report of the independent monitoring commission*, (London: House of Commons, 2007).

⁴⁵⁸ Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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stationed in Northern Ireland after the implementation of the plan was in sharp contrast to the numbers stationed there during the height of the conflict: 'This eventual number contrasts with that at the height of the conflict– some 30,000'.⁴⁵⁹ This contrasting underlined progress and was indicative of facilitative-procedural mediation.

The commission's work in this area did not involve any formulative mediation. This is not surprising, given in its TOR it was not given the power to make recommendations in this area. Yet it is worth noting here that while the TOR did not give it this power, this would not necessarily exclude it from implicitly making recommendations, especially given that it took the broadest and most permissive reading of its TOR in relation to other areas. However there were no such implicit recommendations, no suggestions as to what a normalisation plan should/would look like and no attempts by the IMC to claim authorship of the normalisation plan when it was issued. Thus there were no indicators that the IMC engaged in formulative mediation in relation to its work on security normalisation.

These reports on security normalisation may have been seen by some as verifying the commitments made by the British government. This is understandable given some of the language used by the IMC. Its reports used phrases such as: 'we conclude that the provisions of the programme relating to military support to the police have been met' and 'we believe the requirements set out in the normalisation programme...have been met'.⁴⁶⁰ But this reading is affording the IMC a role that it did not see itself undertaking, as it explicitly said it is 'not for us to adjudicate'.⁴⁶¹ It did in practice make adjudications at certain points, in the area of demilitarisation

⁴⁵⁹ Independent Monitoring Commission (IMC), *Sixteenth report of the independent monitoring commission*, (London: House of Commons, 2007).

⁴⁶⁰ Independent Monitoring Commission (IMC), *Eleventh report of the independent monitoring commission*, (London: House of Commons, 2006).

⁴⁶¹ Independent Monitoring Commission (IMC), *Sixteenth report of the independent monitoring commission*, (London: House of Commons, 2007).

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there is no sign that there was any need for an independent verifier. Much of the changes set out, such as the removal of observation towers, could clearly be seen by all members of the public.⁴⁶² In the areas where verification may have been needed there was frequently overlap with other independent offices e.g. changes in policing were verified by the Oversight Commissioner provided for by the ICP's report. Lastly, it would have been problematic for the IMC to have verified the behaviour of the British government, given that that the governments - and the British government in particular - were its master.

Paramilitary activity – from the foundation of the IMC 2003 to Autumn 2005

This period covered reports one, three, four, five, six and seven issued by the IMC.⁴⁶³ Autumn 2005 is an appropriate and useful cut-off point as reports after this point deal with the period after a monumental statement by the IRA in July 2005 which fundamentally changed the nature of the work the IMC was undertaking in relation to the group and the broader context of paramilitary activity.⁴⁶⁴ The work under this period (and the next) came under articles 4 and 7 of the TOR of the IMC.

Article 4

In relation to the remaining threat from paramilitary groups, the Commission shall:

(a) monitor any continuing activity by paramilitary groups including:

- i. attacks on the security forces, murders, sectarian attacks, involvement in riots, and other criminal offences;
- ii. training, targeting, intelligence gathering, acquisition or development of arms or weapons and other preparations for terrorist campaigns;
- iii. punishment beatings and attacks and exiling;

(b) assess:

⁴⁶² John Alderdice, interview by Dawn Walsh, January 7, 2013. Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

⁴⁶³ The IMC's second report dealt with security normalisation as discussed above.

⁴⁶⁴ On the 28th of July 2005 the IRA issued a statement indicating that it was ending its armed campaign effective at 4pm on that day, that members had been ordered to dump arms and commit to exclusively democratic activities and that its representative would engage with the IICD.

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i. whether the leaderships of such organisations are directing such incidents or seeking to prevent them; and

ii. trends in security incidents.

(c) report its findings in respect of paragraphs (a) and (b) of this

Article to the two Governments at six-monthly intervals; and, at the joint request of the two Governments, or if the Commission sees fit to do so, produce further reports on paramilitary activity on an ad hoc basis.

Article 7

When reporting under Articles 4 or 6 of this Agreement, the Commission, or in the case of Article 6(2), the relevant members thereof shall recommend any remedial action considered necessary. The Commission may also recommend what measures, if any, it considers might appropriately be taken by the Northern Ireland Assembly, such measures being limited to those which the Northern Ireland Assembly has power to take under relevant United Kingdom legislation.

During this period the commission was engaged in formulative mediation. There were also minor elements of facilitative-procedural and directive mediation. These minor elements of facilitative-procedural mediation included the IMC consulting with a broad range of sources of information and reports channelling information, as was also seen regarding its work on security normalisation. The third report outlined the different groups and individuals consulted: 'We meet community groups and individuals, some as private citizens and others in their professional capacities, for example as business people, journalists or academics'.⁴⁶⁵ Specifically, this included the commission initiating contact with Raymond McCord - the father of a victim of the UVF and campaigner against the group.⁴⁶⁶

⁴⁶⁵ Independent Monitoring Commission (IMC), *Third report of the independent monitoring commission*, (London: House of Commons, 2004).

⁴⁶⁶ McCord became involved in the issue of victims' rights after his son Raymond McCord jnr was killed by the loyalist paramilitary group the Ulster Volunteer Force (UVF) in 1997. A comprehensive account of the family's experience can be found in McCord's book, *Justice For Raymond*, (Dublin: Gill & Macmillan, 2008). David Gordon, 'McCord to "name names" in IMC talks', *Belfast Telegraph*, March 18, 2004.

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There was a commitment to maintaining confidentiality, with the commission using language such as: 'observe confidences' and 'complete confidence'.⁴⁶⁷ John Alderdice stressed that it maintained complete confidence and refused even say who it met. At the same time it did not try and stop others making statements on their contacts with the IMC. This was because it felt leaks were inevitable and did not want to get sidelined into discussions on who was responsible for such leaks.⁴⁶⁸ Therefore this was a practical approach to avoid getting distracted from its main work by this issue rather than a decision that controlling information was not important. Joe Brosnan commented that this sometimes led to strange situations where parties gave press conferences outside its offices and it refused to confirm it had met with them. However he added that:

...there was just no way we could have done anything other than we did and fortunately we had privileges and immunities under the legislation and the agreement itself to resist any attempts to push the disclosure of who we had been speaking to and what had been said to us.⁴⁶⁹

The commission also declined to comment when asked about certain issues and refused to name members of Sinn Féin it felt were also in the IRA: 'Commission members yesterday refused to name the Sinn Fein members concerned'.⁴⁷⁰ These activities: consulting widely, seeking to improve public knowledge, and controlling information were indicative of facilitative-procedural mediation.

467 Independent Monitoring Commission (IMC), *First report of the independent monitoring commission*, (London: House of Commons, 2004). Independent Monitoring Commission (IMC), *Third report of the independent monitoring commission*, (London: House of Commons, 2004). Independent Monitoring Commission (IMC), *Seventh report of the independent monitoring commission*, (London: House of Commons, 2005).

468 John Alderdice, interview by Dawn Walsh, January 7, 2013.

469 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

470 David McKittrick, 'Sinn Fein's leaders gave green light for IRA robberies, key report finds', *Belfast Telegraph*, February 11, 2005.

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During this period the IMC also indicated that it wanted to 'refocus' and was 'spotlighting' certain issues in order to heighten 'public awareness'.⁴⁷¹ The SDLP held this view and saw the work of the IMC as confidence building and part of keeping the political dialogue open.⁴⁷² Interestingly, the commission was criticised for not sufficiently highlighting the progress made by loyalist paramilitaries. This further limited its ability to be a facilitative-procedural mediator because the PUP refused to meet with it as a result. This limited its ability to consult a significant player.⁴⁷³ These activities may at first appear to fall within the facilitative-procedural type, given the context, it is more appropriate to view them as directive. Activities such as 'refocusing' were not carried out in this environment to highlight the existing agreement between the parties. Rather, given the ongoing involvement of paramilitaries in various types of criminality, it is likely that by focusing attention on this conduct the IMC was exerting pressure on the political parties associated with these paramilitary groups to use their influence to end these activities.

There were also other minor indications that the IMC engaged in directive mediation. The IMC itself indicated in its first report that it believed that continuing paramilitary activities were authorised, and that what was authorised could be stopped.⁴⁷⁴ This episode showed the commission attempting to exert pressure on paramilitary groups and connected political parties to use any influence to end these activities. The commission also considered naming and shaming the Sinn Féin members also involved in IRA activity: 'the IMC warned it may, in the future, name and shame those leading Sinn Féin members it considers to also be in the IRA leadership' and 'may name those senior figures they believe are members of

471 Independent Monitoring Commission (IMC), *First report of the independent monitoring commission*, (London: House of Commons, 2004). Independent Monitoring Commission (IMC), *Seventh report of the independent monitoring commission*, (London: House of Commons, 2005).

472 Frank Millar, 'Blair and Adams to meet amid fall-out from IMC', *Irish Times*, April 22, 2004.

473 David Gordon, 'Paramilitaries will not vanish, warns Loyalist', *Belfast Telegraph*, April 26, 2004.

474 Independent Monitoring Commission (IMC), *First report of the independent monitoring commission*, (London: House of Commons, 2004).

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paramilitary organisations'.⁴⁷⁵ These attempts to apply pressure in order to obtain change from paramilitary groups were in keeping with directive mediation. However these activities were a minor part of the IMC's work during this period.

Unionists wanted the IMC to act as a directive mediator by verifying the IRA ceasefire and having the power to sanction Sinn Féin - up to and including excluding it from the Assembly: 'DUP remains adamant it will not talk to Sinn Fein before total IRA decommissioning and an end to paramilitary activity verified over a period of time by the Independent Monitoring Commission'.⁴⁷⁶ However, the IMC rejected the narrow role of ceasefire verifier; it did not have the power to impose sanctions and was only able to recommend them to the Secretary for State (given that the Assembly was suspended). Thus these activities were indicative of formulative mediation and are discussed below.

The larger part of its work was indicative of formulative mediation. The IMC made numerous recommendations across a wide range of issues, some more directly connected to the activities of paramilitary organisations than others. Most significantly, in the first report the commission recommended that the Sinn Féin and PUP assembly members be stripped of their financial allowances because of continuing activities of the paramilitary groups to which they were linked, the IRA and, UVF and RHC respectively: 'we recommend that the Secretary of State should consider taking action in respect of the salary of Assembly members and/or the funding of Assembly parties so as to impose an appropriate financial measure in respect of Sinn Féin and the Progressive Unionist Party'. It also indicated that had the Assembly been sitting it would have recommended action up to the exclusion of these parties from the Assembly: 'We nevertheless want to make clear that had the Assembly now been functioning, we would have recommended in respect of Sinn

475 Ian Graham, 'SF fined £120,000 over IRA activity', *Belfast Telegraph*, April 28, 2004. Dan Keenan and Conor Lally, 'Ahern to pursue North talks despite IMC report', *Irish Times*, April 21, 2004.

476 Noel McAdam, 'SDLP warns serious political talks could be a year away', *Belfast Telegraph*, May 22, 2004.

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Féin and the Progressive Unionist Party measures up to and possibly including exclusion from office'.⁴⁷⁷

The IMC also recommended the imposition of penalties due to specific events. The commission recommended that the Secretary for State impose financial sanctions against Sinn Féin as a result of the IRA's involvement in the Northern Bank robbery: 'we have decided to recommend that the Secretary of State should consider exercising the powers he has in the absence of the Assembly to implement the measures which are presently applicable, namely the financial ones' and again had the Assembly seen sitting they recommended that Sinn Féin be excluded: 'If the Northern Ireland Assembly was now sitting we would be recommending the implementation of the full range of measures listed in paragraph 12, including exclusion from office'.⁴⁷⁸ The recommendation that the Secretary of State impose such financial penalties was not only significant for the peace process but most importantly for this analysis, showed the IMC engaging in formulative mediation by making specific recommendations.

The Secretary for State took the IMC's recommendations in all but one case regarding imposing such sanctions and/or de-specifying paramilitary groups and imposed these sanctions.⁴⁷⁹ However, it is important to note that there was no pressure by the IMC to do so and no attempt to press the Secretary of State to do so. In the one case where the Secretary for State acted counter to the IMC's recommendation regarding ending financial sanctions against the PUP in July 2005 the IMC did not attempt to influence his decision or change his mind: 'The Secretary

477 Independent Monitoring Commission (IMC), *First report of the independent monitoring commission*, (London: House of Commons, 2004).

478 The equivalent of £26.5 million was stolen in a bank robbery involving a gang kidnapping bank staffs' family members to force them to participate in the robbery. This was the largest bank robbery in the history of the British state. Independent Monitoring Commission (IMC), *Fourth report of the independent monitoring commission*, (London: House of Commons, 2005).

479 A specified organisation is one which the British government considered to still be involved in or encouraging terrorism related to Northern Ireland and not to be on a complete and unequivocal ceasefire.

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of State decided not to implement the recommendations we made in our Fifth Report, which we saw no grounds for rescinding in our Seventh Report in October 2005. In consequence the PUP has been in receipt of its Assembly allowances since April 2005', though the inclusion of this comment indicated that they still believed this recommendation to be correct. Thus these recommendations *did not* indicate directive mediation. This instance in particular raised a wider question of why the IMC did not attempt to exert leverage. Did it feel it was not in a position to do so as a result of its relatively low status membership, in comparison with for example Chris Patten in relation to the ICP? This question is addressed in the section of this chapter dealing with the relationship between mediator identity, specifically status and mediation type.

The commission also made a wide range of recommendations that were connected, albeit less directly, to the activities of paramilitaries. These include recommendations to the Organised Crime Taskforce, tax bodies, licensing bodies for taxis, fuel and private security industries, and changes to charities legislation.⁴⁸⁰ It felt that these areas were also important in establishing a culture of lawfulness that had been missing during the conflict.⁴⁸¹ It worried that the situation in Northern Ireland could slip into post-conflict gangster-ism and that some of these paramilitary gangs would morph into organised crime.⁴⁸² The broad range of areas in which the IMC made recommendations was a further indication of its role as a formulative mediator during this period.

480 Independent Monitoring Commission (IMC), *Third report of the independent monitoring commission*, (London: House of Commons, 2004). Independent Monitoring Commission (IMC), *Fifth report of the independent monitoring commission*, (London: House of Commons, 2005). Independent Monitoring Commission (IMC), *Seventh report of the independent monitoring commission*, (London: House of Commons, 2005).

481 John Alderdice, interview by Dawn Walsh, January 7, 2013.

482 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

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Paramilitary activity from Autumn 2005 to the closure of the IMC in 2011

As has already been mentioned this period provided a dramatically different context for the work of the IMC. The IRA made a significant statement in July 2005 indicating that it was committed to moving to an exclusively peaceful and democratic campaign. This changed the context and affected the activities of the IMC and the type of mediation it engaged in. During this period some elements of formulative mediation seen in the previous period were continued as some substantial recommendations continued to be made. However the IMC framed its work during this period in a manner that was indicative of facilitative-procedural mediation; it continually highlighted progress. Notably, other actors, including both governments, strongly indicated that their perception of the IMC was as a verifier, i.e. a directive mediator.

The commission continued to make recommendations, both of a kind closely connected to the behaviour of paramilitary groups and indirectly connected to their activities. Indirectly, it made recommendations regarding concerns it had with the potential role of paramilitaries in restorative justice schemes.⁴⁸³ Directly, it recommended the de-specification of the UVF and the specification of Óglaigh na hÉireann.⁴⁸⁴ The commission stressed its authorship of these recommendations which was also indicative of formulative mediation: 'We think it is worth re-emphasising that these reports contain our own assessments of the matters within our remit' and 'the views we express in our reports are ours alone'.⁴⁸⁵ Unlike the

483 Independent Monitoring Commission (IMC), *Eight report of the independent monitoring commission*, (London: House of Commons, 2006).

484 Óglaigh na hÉireann is a name that has been claimed by a number of the factions of Irish republican movement from 1916 onwards. It is also used by the Irish military who have increasingly used it in recent years. Here it refers to a small dissident republican paramilitary group. It was formed in 2006 as a splinter group from the Continuity IRA. It should not be confused with the Real IRA faction of the same name that began using the same title in 2009. Independent Monitoring Commission (IMC), *Eighteenth report of the independent monitoring commission*, (London: House of Commons, 2008).

485 Independent Monitoring Commission (IMC), *Thirteenth report of the independent monitoring commission*, (London: House of Commons, 2007). Independent Monitoring Commission (IMC), *Fifteenth report of the independent monitoring commission*, (London: House of Commons, 2007).

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previous period these activities which were indicative of formulative mediation represented a small part of the commission's role.

Work done during this period, particularly reporting on the activities of paramilitary groups regarding specific incidents, was viewed differently by the IMC and other actors. The IMC itself characterised its work during this period as facilitative-procedural.⁴⁸⁶ Yet other actors viewed this work as directive - this will be discussed momentarily. The commission highlighted and praised the progress made by the UDA; Sinn Féin's support for policing; and leadership shown by Sinn Féin, the UVF and the UDA on decommissioning.⁴⁸⁷ Even where activities were engaged in that challenged the peace process, the IMC ensured the necessary distinctions were made. For example, it indicated that the murder of Paul Quinn was carried out by people who were or used to be IRA members but was not sanctioned by the IRA leadership: 'In April the Independent Monitoring Commission found that the IRA organisation did not kill Paul Quinn although "local members or former members" of the republican group were involved in his murder'.⁴⁸⁸ It also failed to recommend the re-specification of the UVF after the murder of Bobby Moffett, placing it in a wider context of progress the group had made since May 2007.⁴⁸⁹ It recognised when the UDA's progress was slow that this could largely be due to the non-unified nature of the leadership which made implementing a cohesive plan to move away from

486 The IMC's ability control information, engage in facilitative-procedural mediation, was limited when in March 2007 the governments decided to delay publication of one of its reports until after elections.

487 Independent Monitoring Commission (IMC), *Twelfth report of the independent monitoring commission*, (London: House of Commons, 2006). Independent Monitoring Commission (IMC), *Thirteenth report of the independent monitoring commission*, (London: House of Commons, 2007). Independent Monitoring Commission (IMC) *Twenty-first report of the independent monitoring commission*, (London: House of Commons, 2009). Independent Monitoring Commission (IMC) *Twenty-second report of the independent monitoring commission*, (London: House of Commons, 2009). Independent Monitoring Commission (IMC) *Twenty-third report of the independent monitoring commission*, (London: House of Commons, 2010).

488 Gerry Moriarty, 'Six arrested in connection with Paul Quinn murder', *Irish Times*, July 30, 2008. Quinn was lured to a farm in Co. Monaghan and beaten to death by a waiting group of men in October 2007. His family believed that members of the Provisional IRA South Armagh Brigade were responsible.

489 In May 2010 the UVF was believed to have carried out the murder of Bobby Moffett, who had connections to the Red Hand Command, on the Shankill Road in Belfast in broad daylight. The shooting raised questions over the future of the PUP. Independent Monitoring Commission (IMC), *Twenty-fourth report of the independent monitoring commission*, (London: House of Commons, 2010).

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paramilitarism and decommissioning difficult.⁴⁹⁰ These activities highlighted progress and were clearly in keeping with facilitative-procedural mediation. The IMC itself continued to see its work in terms of facilitative-procedural mediation, saying that the: 'exposure of facts is a valuable means of securing change'.⁴⁹¹ It is important to note here that the IMC did not seek to highlight improvements to the detriment of presenting an accurate picture of the activities of paramilitaries. It felt that it was vital that, if it were to be believed when it sought to outline improvements, presented a true picture of events.⁴⁹² This shows that engaging in facilitative-procedural mediation by highlighting progress does not have to involve ignoring areas where progress is not forthcoming. Rather acknowledging areas where progress is not occurring can increase credibility.

During this period the IMC did see some of its work as directive mediation. It pressed the UVF and UDA to decommission:

Decommissioning is a test by which any paramilitary organisation must ultimately expect to be judged. In our view it is hard to lay an entirely convincing claim to be irrevocably set on a peaceful path... until it is at least clear that they plan to decommission and are taking active steps to that end.⁴⁹³

It highlighted the future damage that would be done to communities in Northern Ireland if paramilitaries did not end their activities, including exiling, particularly in relation to the UDA and the UVF: 'We have repeatedly said that only when a paramilitary group has both ended the practice of exiling and has allowed those previously exiled freely to return if they want to do so, can it be said fully to have given up illegal activity in this regard' and 'their continued existence can only serve

490 Independent Monitoring Commission (IMC) *Twenty-third report of the independent monitoring commission*, (London: House of Commons, 2010).

491 Independent Monitoring Commission (IMC), *Eight report of the independent monitoring commission*, (London: House of Commons, 2006).

492 John Alderdice, interview by Dawn Walsh, January 7, 2013. Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

493 Independent Monitoring Commission (IMC), *Seventeenth report of the independent monitoring commission*, (London: House of Commons, 2007).

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to restrain the development so desperately needed in the communities in which they have their roots'.⁴⁹⁴ This use of this language showed efforts to apply pressure to paramilitary organisations and thus was consistent with directive mediation.

Interestingly, other actors - particularly the two governments - also framed work which the IMC saw as facilitative-procedural as directive mediation. There were numerous suggestions that it was the verifier of the ceasefires and winding down of paramilitary groups. Dermot Ahern argued of the Irish government: 'we used it as gospel'.⁴⁹⁵ The British and Irish governments indicated that the IMC reports were acting as verification of paramilitaries ending their activities and tried to use positive reports to press for movement in the process: 'Mr Ahern added: "We're hoping that when we get positive soundings from the IMC, that may very well be the key to getting both sides to move"' and 'Minister for Justice Michael McDowell yesterday welcomed the Independent Monitoring Commission's (IMC) latest report which found that the IRA has abandoned terrorism and violence'.⁴⁹⁶

The governments saw these positive reports as an important step in a process to re-establish the Executive: 'In a few days, the British and Irish governments will unveil a report by the Independent Monitoring Commission expected to mark further progress by the IRA. It will be used by the government to press the DUP to move quickly into dialogue with Sinn Fein and to establish an executive'.⁴⁹⁷ The governments asked the IMC to produce a special report on the leadership and organisation of the IRA: 'British and Irish governments confirmed they had asked the Independent Monitoring Commission to produce a special report on the current

494 Independent Monitoring Commission (IMC), *Twelfth report of the independent monitoring commission*, (London: House of Commons, 2006). Independent Monitoring Commission (IMC), *Eighteenth report of the independent monitoring commission*, (London: House of Commons, 2008).

495 Dermot Ahern, interview by Dawn Walsh, October 8, 2013.

496 Dan Keenan, 'Ahern seeks end to the "shadow boxing" on North', *Irish Times*, January 18, 2006. Miriam Donohoe and Alexandra Cochrane, 'Restore devolved NI government without delay', *Irish Times*, January 31, 2007.

497 Liam Clarke, 'DUP in talks on summer deadline', *The Sunday Times (London)*, March 4, 2007.

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status of the IRA army council’ and ‘The British and Irish governments will today point to the conclusions of a report by the Independent Monitoring Commission (IMC) showing the IRA army council still in existence but posing no paramilitary threat’.⁴⁹⁸ The governments clearly viewed the IMC’s reports as an important source of leverage, which they could use to press the DUP to enter into government with Sinn Féin. The IMC did not think about what the governments would do with its reports, though its members ‘had been around long enough to know’ what it would probably do.⁴⁹⁹ The IMC was aware that the DUP itself was the main audience for its reports. Being notoriously immune to government pressure, the IMC felt that if the DUP was to go into government it would have to be satisfied with the IMC’s report.⁵⁰⁰

The Irish government also indicated that an IMC report meant that the killers of Garda McCabe would not be released and the US government used IMC reports to decide if Sinn Féin could fundraise in the US.⁵⁰¹ The use of the IMC as a verifier by the governments to insert momentum into the process and re-establish the Executive was important, however a clear contrast could be seen in the governments’ view of these activities and the commission’s attitude. The commission constantly reiterated that: ‘We do not make statements of official policy. It is for the two Governments and, in the context of devolution, the Northern Ireland Assembly, to decide how to respond to our reports’.⁵⁰² This was indicative of

498 Dan Keenan, ‘Robinson says SF devolution claim “false”’, *Irish Times*, August 8, 2008. Dan Keenan, ‘Devolution depends on end to army council’, *Irish Times*, August 8, 2008.

499 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

500 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

501 Michael O’Regan, ‘SF accused of “dishonesty” on McCabe ruling’, *Irish Times*, December 8, 2005. ‘McGuinness barred from raising funds on US trip’, *Irish Times*, September 30, 2005.

502 Independent Monitoring Commission (IMC), *Fifteenth report of the independent monitoring commission*, (London: House of Commons, 2007). Independent Monitoring Commission (IMC), *Seventeenth report of the independent monitoring commission*, (London: House of Commons, 2007). Independent Monitoring Commission (IMC), *Eighteenth report of the independent monitoring commission*, (London: House of Commons, 2008). Independent Monitoring Commission (IMC), *Nineteenth report of the independent monitoring commission*, (London: House of Commons, 2008). Independent Monitoring Commission (IMC), *Twentieth report of the independent monitoring commission*, (London: House of Commons, 2008). Independent Monitoring Commission (IMC) *Twenty-first report of the independent monitoring commission*, (London: House of Commons, 2009).

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a commission that did not see its primary role as pressuring or applying leverage to bring about change and this suggested that the IMC did not see itself as a directive mediator. This indicated that the governments were able to use the IMC's reports as leverage even though the commission itself did not press for this role.

In its final report the IMC summarised its work and made comments about the lessons to be learned from its work. Given that all three types of mediation were observed in its work this provided an opportunity to clarify what the IMC saw as the most important elements of its work. Importantly for this analysis it reiterated its rejection of the view that it was a verifier of ceasefires and consistently referred to its role highlighting progress both by paramilitaries and in the British government's programme of security normalisation, exposing facts, and increasing public understanding. It also stressed how widely it consulted and that hearing information in confidence was key to its work. All these activities clearly indicated that the IMC was a facilitative-procedural mediator. It also mentioned its formulative role by recapping the range of recommendations it made. This was particularly true in relation to paramilitary activity before the IRA statement of July 2005. This shows how context can affect the type of mediation used; this is further discussed in the section on issue intensity and mediation type.

Interestingly the commission indicated that by accepting almost all of the recommendations the governments enhanced its role. This enabled it to engage in directive mediation in the few instances in which it openly set out to do so, for example on certain instances pressing the IRA and loyalist paramilitaries to end their activities. Furthermore, across a broader range of activities where the IMC did not necessarily seek to act as a directive mediator the reaction by the two governments

Independent Monitoring Commission (IMC) *Twenty-second report of the independent monitoring commission*, (London: House of Commons, 2009). Independent Monitoring Commission (IMC) *Twenty-third report of the independent monitoring commission*, (London: House of Commons, 2010). Independent Monitoring Commission (IMC), *Twenty-fifth report of the independent monitoring commission*, (London: House of Commons, 2010).

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to its reports cast it as a directive mediator. By implementing its recommendations, and chiefly by using its reports as leverage, to pressure Sinn Féin to ensure IRA activity ceased, and subsequently the DUP to enter government with Sinn Féin, the governments presented a commission that engaged in activities from all mediation types as a directive mediator.

The effect of the variables on the mediation type

The IMC undertook activities across all three mediation types. While it stressed activities indicative of facilitative-procedural mediation, other actors cast it as a directive mediator. This dissertation now turns its attention to the four variables (mediator identity, issue intensity, TOR and GFA), and examines how they affected the choice of mediation type.

Mediator Identity

The membership of the IMC was as follows: Lord John Alderdice (appointed by the British Government was the Commissioner from Northern Ireland), Joe Brosnan (appointed by the Irish Government), John Grieve (appointed by the British Government) and Dick Kerr (appointed by the British and Irish Governments on the nomination of the US Government). The Commissioners appointed two part-time Joint-Secretaries, Stephen Boys Smith (a former British civil servant) and Michael Mellett (a former Irish civil servant). There were also three full time members of staff in the Belfast office seconded from the NIO and one in the Dublin office seconded from the Irish Civil Service. The commission also consulted seventeen people from different backgrounds.⁵⁰³

As outlined in earlier chapters where mediator status is highest, more interventionist types of mediation, such as directive mediation, should be visible. The IMC and other

⁵⁰³ Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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actors would be seen referring to the high status of the IMC and its members in relation to giving weight to the recommendations. Alternatively, actors may attempt to denigrate their status to counter their ability to engage in more interventionist types of mediation. It is important to note that status can be as a result of material or non-material power such as policy expertise.

As was done with the ICP and IICD, when examining the data special attention was paid to how certain elements of an IMC member's identity may be perceived differently in the Northern Ireland context than would be more generally. Importantly, certain past experience or characteristics may be highly offensive or contested by certain Northern Ireland actors given the divided nature of the society and its divergent views of history. These elements of identity may have a very important impact on how mediators are viewed in the Northern Ireland context and thus the mediation type the IMC employed.

Before this analysis could outline how mediator identity affected mediation type there were a number of issues regarding the identity of the IMC which were considered. Firstly, the IMC was composed of four individuals; therefore it had to be established whether the members worked as a team or if they operated as individuals and if there were any differences of opinion. The IMC acted as a team. It was composed of four individuals predisposed towards consensus decision-making.⁵⁰⁴ The chairmanship of meetings rotated between members. The IMC felt that this was very important as it ensured that the commission was not dominated by any one member. If there had been a chair, this would have had to be the US member.⁵⁰⁵ The vast majority of reports on the IMC's work referred to it as a four-man body, and all four members were often named and brief biographies

504 John Alderdice, interview by Dawn Walsh, January 7, 2013. Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

505 Though there were occasional errors in the media where Lord Alderdice was reported as chair (*Irish Times*, 13 March 2004) but in general, unlike some other commissions it was not dominated by a single member. Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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provided.⁵⁰⁶ John Alderdice said that it: ‘Worked very well as a team, it was greater than the sum of its parts and the different members were able to help each other look at issues from a variety of angles. This was very lucky that they worked so well working together’.⁵⁰⁷ Joe Brosnan agreed that the group developed a good-working relationship and were the kind of people who were looking for a solution to the problem rather than to keep the problem going. So despite difficulties in reaching agreement at times they never needed to issue a minority report, which was a strength.⁵⁰⁸

The team nature and relatively even coverage given to the various members’ identities was indicative of the fact that each of the commissioners’ identities affected the commission’s use of different mediation types at different points. No one member’s identity was dominant in driving mediation type. John Grieve and Dick Kerr’s past as a security officials was mentioned, as was John Alderdice’s political background, and to a lesser extent Joe Brosnan’s role in the Irish civil service. The relatively equal attention given to the different members reinforced the fact the IMC acted as a team. Unlike the other commissions, the equal attention given to each member also meant that no one member’s high international status was stressed – though this decreased the IMC’s general status. Notably, the IMC may have experienced higher status if the commission had been chaired by the US member, as was considered. This can particularly be seen if the IMC is compared to the ICP and IICD. While they too worked as teams there was a clear leader with a high international status which increased the respective commission’s status. Such a comparison underscores how high international status facilitated these commissions being directive mediators.

506 Examples: Brian Rowan, ‘Garrison cuts on the way: Blueprint’, *Belfast Telegraph*, January 13, 2006. Gerry Moriarty, ‘SF queries role of new monitoring commission’, *Irish Times*, January 7, 2004.

507 John Alderdice, interview by Dawn Walsh, January 7, 2013.

508 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

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The various commission members had distinct backgrounds. The different identity of the home state of each commission member permitted their categorization using the four-fold type (local, primary mediator, external ethno-guarantors and international other) set out in the previous chapters. In addition to this categorisation, each member had a different level of individual status. While examining how mediator identity affected mediation type these two aspects of individual identity were taken into account, as well as the overall identity of the IMC. A short introduction to the IMC members is provided as essential background, aiding understanding of how their identities affected their behaviour. How the members' expertise affected mediation is then examined, and finally the independence of the commission and its effect is explored.

Lord John Alderdice

John Alderdice specialized in psychiatry and psychoanalysis. In addition to his clinical and teaching work he focussed on applying psychoanalytical ideas to understanding and working with terrorism and violent political conflict in various parts of the world and this work has been recognized by a number of honorary doctorates, fellowships, and international prizes. He joined Northern Ireland's cross-community Alliance Party in 1978 and held a number of offices before being elected Party Leader in 1987. In 1996 he had been appointed to the House of Lords, taking his seat on the Liberal Democrat benches. He has worked as a consultant or negotiator on behalf of a number of governments and international bodies in South Asia, Africa, Latin America, and particularly in the Middle East. He participated in all the inter-party and inter-governmental talks on Northern Ireland over this period, culminating in the GFA. After his election in June 1998 to the newly established Northern Ireland Assembly as MLA for East Belfast, he stepped down as Alliance Leader and was appointed Speaker of the new Assembly. For the next six years he was responsible for the conduct and development of the new legislature. He retired as Speaker in 2004 after being appointed to the IMC. He was elected Convenor (Chair) of the Liberal Democrat Parliamentary Party in the House of Lords in June 2010.

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Joe Brosnan

Joe Brosnan is a former Irish civil servant and a qualified barrister. For most of his civil service career he worked in the Department of Justice, of which he was Secretary General in the early 1990s. In that Department he worked on the preparation of criminal law, criminal justice, and other legislation. This included police powers of arrest and detention, interception of communications, crime prevention, and extradition. For several years he headed the Garda and Security Division responsible for policy on policing and security and for relations with the Garda Síochána. As such he was briefed on the security situation and on the activities of paramilitary groups during the ‘Troubles’ and was involved in policy to counter those activities. He took part in the North-South cooperation on legal and policing matters set up following the Anglo-Irish Agreement of 1985. He was involved in negotiations on a number of draft EU legislative proposals and in co-operation among the EC Member States on policing and justice matters. He was then dispatched to work in Brussels for six years. On retiring in 1999 he worked as a consultant on public and European affairs. He was a member of a group, established by the Irish Government in 2002, which investigated and reported on allegations made about Garda security intelligence operations in the run-up to the Omagh bombing of 1998. However it is worth noting that during all this time he had a very low public profile.⁵⁰⁹

John Grieve

John Grieve joined the Metropolitan Police Service (MPS) in 1966. He served as a police officer and detective throughout London, including in the Drug Squad (in part in undercover roles), the Flying Squad, the Robbery Squad, and as a Murder Squad senior investigator. His senior responsibilities have included responsibility for covert

⁵⁰⁹ A search for Joe Brosnan on Nexus UK for the two years previous to his appointment found only 22 articles mentioning him. In comparison, the same search for John Grieve found over 1,000 articles.

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activities and sources, the introduction of asset seizure investigation in the UK, MPS Head of Training (with a particular personal involvement in issues to do with community relations), first MPS Director of Intelligence (when he introduced the first London-wide IT intelligence system), Head of the MPS Anti Terrorist Squad, and (simultaneously at a national level) National Coordinator for Counter Terrorism for England and Wales. As such he led the Anti-Terrorist Squad during the 1996-1998 IRA bombing campaigns, and in investigations of the precursors of Al-Qaida. He has also researched, written and taught about all aspects of policing in the UK and many other countries.

Dick Kerr

After serving three years in the US army and undergraduate and graduate work at the University of Oregon, Dick Kerr was recruited by the Central Intelligence Agency. His first significant job was as an analyst following Soviet military forces in Cuba during the missile crisis. In 1988 President Bush appointed him Deputy Director of Central Intelligence and of the CIA - the senior professional intelligence officer in the US. In that position he was a member of the team that made policy recommendations to the President on issues ranging from terrorism in the Middle East to the breakup of the Soviet Union. After retiring in 1992, he continued to work on national security issues in the private sector and government. In late 2002, he was asked to head a team reviewing intelligence produced in the two years leading up to the war with Iraq by the Director of Central Intelligence, acting on a request from the Secretary of Defence.

Past relationships

The previous relationships which the different commission members had in Northern Ireland are indicated in the above biographical notes. The activities that members had previously engaged in were undoubtedly important in their own right and contributed to their appointment to the IMC. John Alderdice had a long political history in Northern Ireland. Having come to the IMC from his position as Speaker of

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the Northern Ireland Assembly, he felt that he had space from his political past so that his role in opposition to other political parties did not have a negative impact.⁵¹⁰

Joe Brosnan was involved in security responses to the Troubles, cross-border policing cooperation, and investigations into the Omagh bomb. John Grieve led the Anti-Terrorist Squad during the 1996-1998 IRA bombing campaigns. Jeffery Donaldson argued that these past relationships helped the IMC to make significant recommendations: 'IMC were probably more effective, knew Northern Ireland better', and 'ensure that any report or recommendations are grounded in realities'.⁵¹¹ An Irish official also argued that John Grieve's past role meant he had a lot of contact with the Irish government and was well known and respected in Belfast.⁵¹² Sinn Féin's claims that the commission was made up of 'securocrats' may have referred to these relationships. This may have affected how Sinn Féin viewed the commission. However they had political reasons for rejecting the commission regardless of membership, and such complaints, gained little traction, as is discussed below.

Experience, expertise and individuals

As already indicated, the experience and expertise of the IMC members affected in different ways at different points the three types of mediation used. The collective expertise of the commission was used to outline how easily it could verify matters: 'the Independent Monitoring Commission have enormous expertise at their disposal and can verify the process with relative ease'.⁵¹³ This demonstrated how a large amount of expertise led to an impression that the commission could act as a directive mediator. Where this mediation type was being used, the expertise and past experience of the members of the commission was cited and/or detailed in

510 John Alderdice, interview by Dawn Walsh, January 7, 2013.

511 Jeffery Donaldson, interview by Dawn Walsh, November 8, 2013.

512 Irish Official, interview by Dawn Walsh, December 9, 2013.

513 'Defusing the peace', *Irish Independent*, November 12, 2007.

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order to show that the soft power resulting from such expertise is present: 'The body has three intelligence experts among its members - Dick Kerr, a former CIA official, John Grieve, a former head of the London Metropolitan police anti-terrorism squad, and Joe Brosnan, a former secretary-general of the Department of Justice in Dublin'.⁵¹⁴

In relation to one of the occasions where the IMC clearly perceived its own role as directive it threatened to reveal the names of Sinn Féin leaders who it believed were also in the IRA. In this case the experience of one of its members was emphasized to provide the necessary leverage: 'The commission said that it may name leaders of terrorist groups, including those in senior political positions. John Grieve, the former head of the Metropolitan Police Anti-Terrorist Branch and one of the commission's four members, said: "The dogs in the street have the names of these people, who are behaving like absolute thugs and should have a spotlight shone on them"'.⁵¹⁵

The commission members' expertise was occasionally referred to when it engaged in activities which it indicated were facilitative-procedural mediation but which the governments' responses elevated to directive mediation. The security and justice related experience of the individual members was referred to when the IMC indicated that IRA violence was reducing and that its statement in July 2005 was potentially very significant: 'Mr Kerr, a former deputy director of the US Central Intelligence Agency', and 'the other members of the commission are former Metropolitan Police deputy assistant commissioner John Grieve, and the former secretary of the Department of Justice, Joe Brosnan'.⁵¹⁶ Furthermore, Lord Alderdice's previous role as Speaker of the Assembly was underlined when the IMC highlighted that the IRA's war was over and that it was 'difficult to report a negative':

514 Liam Clarke and Enda Leahy, 'IRA still training recruits, says IMC', *Sunday Times* (London), May 22, 2005.

515 David Lister, 'Sinn Féin report says IRA ready for conflict', *The Times*, April 21, 2004.

516 Mark Hennessy, 'Firm ruling on IRA action in January', *Irish Times*, October 20, 2005.

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'the former Speaker of the Northern Assembly'.⁵¹⁷ The references to past roles in security and justice were clearly calling attention to expertise and thus to the credibility of these members. Similarly drawing attention to John Alderdice's previous role while clearly emphasising a political expertise, was also using expertise to give him credibility. This undoubtedly created an impression that helped the governments (and some political parties) to use the IMC reports as leverage to move the process forward, thus casting the IMC as directive mediators.

The IMC's recommendations were occasionally framed in terms of its expertise and experience. The implication was that the professional background of its members gave them the necessary knowledge to make these recommendations. Similarly to the case of the ICP the expertise helped to ensure that recommendations were of high quality. Concerning articles detailing the Northern Bank robbery - mentioned above - and the IMC's recommendation to impose sanctions on Sinn Féin because of the robbery, John Grieve's past role with the Metropolitan Police force and Dick Kerr's position with the CIA are mentioned: 'The Independent Monitoring Commission, which was set up last year, consists of four figures, including Richard Kerr, a former deputy director of the CIA, and John Grieve, the one-time commander of Scotland Yard's Anti-Terrorist Squad'.⁵¹⁸ John Grieve and Dick Kerr's past roles in law enforcement support the IMC's recommendation to the Secretary of State to impose financial sanctions. These posts clearly gave the commission the necessary knowledge and skills to assess information and make appropriate recommendations. Clearly, expertise and experience were leading to formulative mediation.

While the expertise and experiences of the commission members affected the use of mediation type, at certain points its effect was relatively modest. The home state of the individual members was not explicitly mentioned in relation to experience or expertise. While references to John Grieve and Dick Kerr's roles in the Metropolitan

⁵¹⁷ 'All sides agree IRA terror 'well and truly over'', *Irish Independent*, September 4, 2008.

⁵¹⁸ David McKittrick, 'Politics: Sinn Féin faces fines over IRA links financial sanctions', *The Independent*, April 20, 2004.

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Police and the CIA respectively associated them with a specific country this was used more to tie them to organisations widely viewed as expert rather than to tie them to a specific state. Mark Durkan said that he could not recall: ‘anyone making a big deal saying the chairman should be international’.⁵¹⁹ This contrasts with the ICP and IICD, where the international nature of one of the members was stressed. This meant that these commissions had not only expertise but international status. The effect of the identity of home state of members is further discussed in relation to diversity, impartiality, and independence discussed below.

Experience and expertise was not referred to frequently by the IMC itself. Though John Alderdice did mention that Dick Kerr’s intelligence expertise and distance from the conflict was useful.⁵²⁰ The security expertise of the members was cited in relation to the three different types of mediation, showing that the same expertise led to different mediation types in the case of the IMC. Similarly the diversity, impartiality and independence had a modest effect on mediation type. These effects are now outlined.

Diverse, impartial and independent

The IMC stressed the importance of its independence, from the governments, to its work in general but did not connect it to any particular activities and therefore to any particular mediation type: ‘Independence was a key factor for us’.⁵²¹ Independence and impartiality were infrequently highlighted when the IMC was engaged in formulative mediation by recommending sanctions. However this very independence from the British government was used by some unionists to limit its ability to engage in formulative mediation.

519 Mark Durkan, interview by Dawn Walsh, October 3, 2013.

520 John Alderdice, interview by Dawn Walsh, January 7, 2013.

521 Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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Interestingly, this independence was consistently disputed by Sinn Féin. It accused the IMC of being comprised of ‘a collection of spies, spooks, retired civil servants and failed politicians’, being a tool of British ‘securocrats’ and being ‘a tame donkey’ of the two governments.⁵²² A Sinn Féin official argued that: ‘the IMC was set up by the British and Irish government, more the British government and was reporting to the British government, I would question their independence’.⁵²³ Caitriona Ruane, former minister in the Northern Ireland executive and current Sinn Féin MLA, argued that: ‘Sinn Fein never signed up to the monitoring - that was a securocrat agenda’.⁵²⁴ This criticism of the IMC’s identity was particularly strong in the wake of the IMC recommending the imposition of penalties against Sinn Féin as a result of IRA activity. Thus the party’s attacks on the identity of the IMC can be seen as attempts to use its identity to prevent the commission engaging in formulative mediation. Furthermore, Joe Brosnan felt that these attacks did not have the impact that they may have had if its membership was not so diverse: ‘put it this way; if it had only been John Grieve and John Alderdice it would have been a lot easier for Sinn Féin to rubbish the whole thing’.⁵²⁵ Though arguably the commission would have been in a stronger position had it included a nationalist from Northern Ireland.

John Alderdice argued that it was helpful to be able to choose different members to make particular comments depending on the content and audience. He also said that their diversity allowed different members to help the others to understand context when the IMC visited states from which they came. This was particularly relevant in Northern Ireland where he was able to translate both literally and figuratively.⁵²⁶ However Sinn Fein’s attacks could also have been seen more generally as attempts to prevent or make possible the IMC undertaking *any* activities, rather than

522 Gerry Moriarty, ‘Blair defends IMC’s proposals ahead of meeting with Adams’, *Irish Times*, April 24, 2004. Gerry Moriarty, ‘Onus on Ahern to justify bank claim’, *Irish Times*, January 25, 2005.

523 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

524 Caitriona Ruane, interview by Dawn Walsh, November 29, 2013.

525 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

526 John Alderdice, interview by Dawn Walsh, January 7, 2013. The IMC visit the USA, UK, Ireland and other states on research trips.

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principally engaging in formulative mediation as Sinn Féin objected to the very existence of the IMC.

Assaults on the IMC's identity from Sinn Féin did not go unanswered. The Irish Labour party's Pat Rabbitte claimed the reports were written by men: 'who have no political axe to grind'.⁵²⁷ The SDLP also countered Sinn Féin's claims; Seamus Mallon said:

The IMC is composed of people of international reputation and standing, including people from the south and the USA. Is he saying that Joe Brosnan, a former secretary general in Dublin and top European Commission official, is a British securocrat? Is he saying that John Kerr, a former top American official, is a British securocrat?⁵²⁸

Statements attacking Sinn Féin's position from political rivals were common. What is most interesting for this analysis is that they chose to use the IMC. By doing so Pat Rabbitte and Seamus Mallon demonstrated an understanding of the IMC as a strong mediator. They clearly viewed the IMC as credible as a result of being a diverse and independent commission.⁵²⁹

Comments stressed the inclusion of members from the US, Britain, and Ireland as well as Northern Ireland. This provided the IMC with diversity. However as has previously been mentioned, the failure to focus on one member, particularly Dick Kerr as the US member, contrasts with how the ICP and IICD were presented. If the IMC had an international chair, like the ICP and IICD, it would have had a higher international status. This may have led to more directive activities, as was seen with the previous commissions.

527 Mark Brennock, 'Opposition calls again for end to IRA criminality', *Irish Times*, February 11, 2005.

528 Dan Keenan, 'Northern parties at odds over findings of monitoring body', *Irish Times*, April 22 2004.

529 The high status of existing commissions, particularly the ICP and the IICD may have also increased the IMC status by making commissions generally more credible. These connections are explored in Chapter two.

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In terms of formulative mediation the IMC's independence and diversity played a dual role. As previously mentioned, some unionists used the presence of the Irish (and US) member(s) to counter the commission's ability to engage in formulative mediation.⁵³⁰ This criticism was successful in ensuring that Article 6 (2) of the TOR of the IMC restricted the ability of the commission to act in this area to the British appointed members only: 'In what was clearly intended as Dublin's major concession to Mr Trimble, Article 6 (2) goes on to say that, insofar as any such claim "relates to the operation of the institutional arrangements under Strand One of the multiparty agreement, the claim shall be considered only by those members of the commission appointed by the British government"'.⁵³¹ The very independence from the governments and diversity that many saw as being an advantage for the commission was here a disadvantage. It played on unionist fears regarding the involvement of the Dublin government in the affairs of Northern Ireland.

The IMC's impartiality was underscored when an article suggested that it should recommend that the Secretary of State exclude Sinn Féin from the Assembly as a result of the IRA's alleged role in the Northern Bank robbery: 'the neutral, non-partisan Independent Monitoring Commission'.⁵³² While the IMC did not go on to make this recommendation it is clear that its impartial identity was being used to allow it to make credible recommendations; to engage in formulative mediation.

The independence of the commission was also emphasised when the IMC was highlighting the progress made by the paramilitaries, particularly the IRA, to end their activity.⁵³³ This independence is even celebrated by David Trimble after the IMC gave the IRA 'a clean bill of health'.⁵³⁴ While this was done in an argument to continue the IMC's existence it still shows the independence being vital in relation to

530 Frank Millar, 'Ahern and Blair push for fresh elections in North', *Irish Times*, September 13, 2003.

531 Frank Millar, 'Commission may not be such a help to', *Irish Times*, September 5, 2003.

532 Rod Liddle, 'Al-Qaeda is more honest than Gerry Adams', *The Sunday Times (London)*, February 6, 2006.

533 Mark Hennessy, 'Firm ruling on IRA action in January', *Irish Times*, October 20, 2005.

534 John Burns, 'Keep ceasefire watchdog or threaten peace: Trimble', *Sunday Times*, May 30, 2010.

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the credibility of progress highlighted, thus leading to being able to engage in facilitative-procedural mediation. An Irish official also argued that it was important for international opinion that it wasn't just the governments making comments about paramilitary activity.⁵³⁵

The IMC's comment on its identity was also framed in general, as opposed to in relation to particular activities. When addressing this issue of its identity the IMC highlighted the diverse nature of its members, their independence and impartiality. It viewed this diversity and independence as key to being able to carry out its work. It outlined how having meetings in both Dublin and Belfast and not in government buildings underscored this independence.⁵³⁶ John Alderdice also resigned his position as Speaker of the Assembly in order to preserve the independence of the commission.⁵³⁷ While arguing that these aspects of its identity were important and protecting them the commission did not underline that they were important to particular activities more than others, so it was difficult to link them to a particular type.

The British and Irish governments made no explicit comment on the impartiality or independence of the IMC. Comments made by the IMC, media, and political parties highlighted the impartiality and independence of the commission's - identity creating an environment where the IMC was viewed positively. This in turn assisted the governments in using its reports to apply leverage to Sinn Féin and the DUP in order to work towards the reinstatement of the Assembly.

Taken collectively, the various aspects of the IMC's identity had some effect on mediation type. Expertise was seen as assisting the commission in formulating

⁵³⁵ Irish official, interview by Dawn Walsh, December 9, 2013.

⁵³⁶ Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

⁵³⁷ Dan Keenan, 'Alderdice resigns as Speaker', *Irish Times*, February 27, 2004.

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detailed recommendations. Independence from the British government was a problem for some unionists. Sinn Féin refused to acknowledge that such independence existed, instead trying to undermine the IMC by describing it as a tool of British intelligence. In general the creation of a positive identity for the commission - mainly by media referrals to both expertise and independence - created an environment where the governments could use its reports as leverage. Despite its relatively positive identity, which recognised its expertise and independence, the IMC did not have a chair with a high international profile. When this element of identity is compared with the ICP and IICD it suggests that such a chair enables more directive mediation. However the very fact that the IMC followed the ICP and IICD may have afforded it some increased status. Their relative strength both in terms of identity and activity may have created an environment in which, by virtue of being a commission, the IMC enjoyed an enhanced level of status despite the relative low status of its members.

In the case of the IMC the effects of identity were weak. Links between identity and specific activities were not frequent and the same aspects of identity led to different mediation types at different times. These results indicate that other variables may be affecting mediation type more strongly to account for the different outcomes given consistent identity (this will be discussed in the next sections of this chapter examining issue intensity, TOR, and the GFA).

Issue intensity

The issue of paramilitary activity became increasingly salient in the years after the GFA, due to continuing paramilitary activity despite ceasefires.⁵³⁸ While it was the failure to decommission (2000 and 2002) and alleged Sinn Féin intelligence gathering (2001) that led to the suspension of the Northern Ireland Assembly, allegations of continued IRA activity was cited by unionists as a reason for not sharing power with Sinn Féin. Perceptions that ‘punishment beatings’ and other criminal behaviour,

⁵³⁸ As the IMC noted that the issue of security normalisation received far less attention (IMC, 26th Report).

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short of murder were increasing, focused attention on the problem that continuing paramilitarism posed to the peace process and how it was an obstacle to the reintroduction of devolution (along with a lack of decommissioning). The IMC stated that it was formed by the governments due to the negative effects that issue was having on the GFA: 'Paramilitary groups...were still engaged in illegal activity. The links that some had with political parties had not been severed'.⁵³⁹ Therefore it was the increasing intensity surrounding the issue of paramilitaries, and the obstacle that this presented to progress that led to the creation of the IMC. The decision by the governments to set up a commission rather than using another mechanism reflected the ongoing use of commissions in the peace process and their relative success at managing the issues given to them.

In terms of mediation type a number of key events - certain murders attributed to paramilitary groups and most notably the Northern Bank Robbery in Belfast carried out on 20 December 2004 and attributed to the IRA - led to periods of increased intensity and salience around the issue of paramilitary activity. These periods were marked both by the IMC engaging in certain types of mediation and other actors pressing it to do so. At times, reports from the IMC also increased intensity in the area and subsequently had a rebound effect on the IMC, often prompting certain groups to limit or attempt to limit its work.

In the aftermath of the Northern Bank robbery, the PSNI and British and Irish governments indicated that they believed that the IRA was responsible. Sinn Féin leaders argued that the IRA had told them that it was not responsible and that it believed these denials. It further challenged those who made such claims to produce evidence. In this context the governments and the Alliance party insisted that it was for the IMC to make recommendations: 'The Northern Secretary said it would be up to the Independent Monitoring Commission (IMC) to look at possible penalties or

⁵³⁹ Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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sanctions against Sinn Féin', and 'The Government should request a report from the Independent Monitoring Commission (IMC) giving its assessment of Hugh Orde's statement and proposing appropriate remedial measures'.⁵⁴⁰ These comments clearly showed the intensity around the robbery prompting actors to ask the IMC to engage in formulative or even directive mediation. The commission did so. It produced an ad hoc report dealing with the incident, responsibility, and recommendations. The Northern Bank robbery increased intensity around the issue and directly led to the IMC making specific recommendations - the imposition of sanctions on Sinn Féin - and thus engaging in formulative mediation.⁵⁴¹

The intensity around this issue was noteworthy in that it also led to one of the occasions when the IMC engaged in directive mediation. In its ad hoc report the IMC used the event to pressure Sinn Féin to change. It even implied that the Secretary for State should consider other sanctions, despite the fact this recommendation was outside its remit.⁵⁴² The strength of the pressure applied here and its clear intent to change behaviour was a clear indication of directive mediation. The DUP also used the intensity caused by this event to support the IMC's role as a directive mediator.⁵⁴³ Thus the extremely high level of intensity surrounding IRA activity after the robbery was observed to lead to directive mediation.

Two murders which increased the intensity around the activity of paramilitaries resulted in the IMC engaging in facilitative-procedural mediation. Joseph Rafferty's family alleged IRA involvement in his murder.⁵⁴⁴ His family then engaged in intensive political campaigning. In response, the commission contacted the Rafferty family and

540 Brian Dowling, 'Heist has set bar for deal even higher, SF warned', *Belfast Telegraph*, January 18, 2005. Jonathan McCambridge, 'Orde to point finger of blame', *Belfast Telegraph*, January 26, 2005.

541 Independent Monitoring Commission (IMC), *Fourth report of the independent monitoring commission*, (London: House of Commons, 2005).

542 Independent Monitoring Commission (IMC), *Fourth report of the independent monitoring commission*, (London: House of Commons, 2005).

543 Liam Clarke and Stephen O'Brien, 'IRA plots more bank raids in funding drive', *Sunday Times (London)*, January 9, 2005.

544 Rafferty was murdered in Dublin in April 2005.

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consulted them about the information which they had about the murder. When asked about the meeting the IMC reaffirmed that it would not disclose the identity of those it meets with.⁵⁴⁵ Here the IMC controlled the flow of information and the timing of the meeting, thus these actions were facilitative-procedural mediation.

The second murder was that of Paul Quinn on 20th of October 2007. The IMC dealt with this in its 18th report. It indicated that it did not believe that the leadership of the IRA had been involved or had sanctioned the murder and highlighted the condemnation of the killing by Sinn Féin. This was done despite admission that some of those involved in the killing were connected to the IRA.⁵⁴⁶ In response to increased intensity surrounding this murder and the involvement of those connected to the IRA the IMC highlighted that the killing was not carried out by the IRA as an organisation and that Sinn Féin criticised the killing and called on members of the public to pass information to the PSNI. In doing so the IMC explained the circumstances of the murder in a less damaging manner and thus engaged in facilitative-procedural mediation.

The increased threat from dissident republicans also increased intensity around the issue of paramilitary activity. In response to this development the IMC engaged in facilitative-procedural mediation. Despite the fact that the increasing threat from these groups was dangerous, the IMC highlighted that the threats were not comparable to the threat that had been posed by the IRA during the conflict: 'it is important to point out that this is in no way a reappearance of something comparable to the PIRA campaign' It indicated that RIRA had neither the resources nor the community or political support that the IRA had enjoyed.⁵⁴⁷ This was a delicate task given the British government's reluctance to accept that the IRA itself

545 'Ceasefire body to meet Rafferty family', *Irish Times*, October 8, 2005.

546 Independent Monitoring Commission (IMC), *Eighteenth report of the independent monitoring commission*, (London: House of Commons, 2008).

547 Independent Monitoring Commission (IMC) *Twenty-third report of the independent monitoring commission*, (London: House of Commons, 2010).

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had enjoyed such support during the conflict. The IMC pointed to the GFA and recent devolution of policing and justice to further underscore how the progress that had been made, and the fact that now the majority of both communities did not support such activities. By emphasising the different situation, political progress etc. the IMC was engaging in facilitative-procedural mediation in light of the increased tensions around dissident activities.

The work of the IMC, its reports, and recommendations also had the power to increase the level of intensity around paramilitary activity. The reaction of actors, against whom the IMC had made recommendations, was aimed at countering the work of the commission. When the commission recommended sanctions against Sinn Féin the party reacted strongly. This included a court case challenging the commission's right to examine its activities and make recommendations.⁵⁴⁸ While the case was unsuccessful, it clearly showed Sinn Féin trying to prevent the IMC from making recommendations following increased intensity resulting from fines the IMC recommended.

The PUP also reacted angrily to the IMC's recommendations that financial sanctions be levied against it as a result of UVF violence. The PUP leader said he would permanently cut contact with the commission: 'Mr Ervine vowed he would never again meet with the IMC after its report'.⁵⁴⁹ In particular, this refusal limited the commission's ability to engage in facilitative-procedural mediation as it limited its ability to channel information between parties and to control meetings, insofar as it could not have meetings with the PUP leader. Thus the increased intensity resulting from IMC recommendations and the PUP's reaction to it limited the IMC's ability to engage in facilitative-procedural mediation.

⁵⁴⁸ 'Sinn Fein loses legal case over IRA fine', *Irish Times*, February 15, 2005.

⁵⁴⁹ Mary Fitzgerald, 'UVF-linked PUP silent over murder', *Belfast Telegraph*, May 19, 2004.

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The extreme intensity around the Northern Bank Robbery led to formulative and directive mediation. This was in keeping with the logic that the higher the intensity the more interventionist the form of mediation used. However in other cases where intensity was also high the IMC opted to use facilitative-procedural mediation. This may have been due to the relatively low status of the commission. Finally the IMC's own reports, and in particular its recommendations, heightened intensity levels and provoked responses from actors that attempted to limit its ability to engage in mediation (one successfully, one not).

The TOR

The IMC differed slightly from the two commissions previously examined in this dissertation as its TOR were not included in the GFA. However the TOR were still related to the GFA, this connection will be discussed in the next section. The IMC Agreement including full its TOR was signed on 25 November 2003. The full TOR were included in the legislation passed in both jurisdictions to set up the commission.⁵⁵⁰ The key TOR which affected mediation type were: articles 3, 4, 5, 7, 8 and 11; and for clarity these are now provided.

Article 3

The objective of the Commission is to carry out the functions as described in Articles 4, 5, 6 and 7 of this Agreement with a view to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland.

Article 4

In relation to the remaining threat from paramilitary groups, the

Commission shall:

(a) monitor any continuing activity by paramilitary groups including:

i. attacks on the security forces, murders, sectarian attacks, involvement in riots, and other criminal offences;

⁵⁵⁰ The TOR of the IMC had an indirect effect on mediation type in so far as Article 10 put forward the states from which the members should come and did not specify a chairperson. The full effects of these elements are outlined in the section dealing with mediator identity.

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ii. training, targeting, intelligence gathering, acquisition or development of arms or weapons and other preparations for terrorist campaigns;

iii. punishment beatings and attacks and exiling;

(b) assess:

i. whether the leaderships of such organisations are directing such incidents or seeking to prevent them; and

ii. trends in security incidents.

(c) report its findings in respect of paragraphs (a) and (b) of this Article to the two Governments at six-monthly intervals; and, at the joint request of the two Governments, or if the Commission sees fit to do so, produce further reports on paramilitary activity on an ad hoc basis.

Article 6

(1) The Commission may consider a claim by any party represented in the Northern Ireland Assembly:

(a) that a Minister, or another party in the Assembly, is not committed to non-violence and exclusively peaceful and democratic means; or

(b) that a Minister has failed to observe any other terms of the pledge of office; or that a party is not committed to such of its members as are or might become Ministers observing the other terms of the pledge of office.

(2) Insofar as a claim under paragraph 1(b) relates to the operation of the institutional arrangements under Strand One of the multi-party Agreement, the claim shall be considered only by those members of the Commission appointed by the British Government under Article 10(1)(a) of this Agreement.

(3) The Commission members appointed under Article 10(1)(a) of this Agreement shall report their findings in respect of any claim falling within paragraph (2) of this Article solely to the British Government. The Commission shall report its findings on any other claim under this Article to the two Governments.

(4) In this Article—

(a) references to the pledge of office are to the pledge of office set out in Annex A to Strand One of the multi-party agreement;

(b) references to a Minister are to the First Minister, the Deputy First Minister, a Minister or a junior Minister in the devolved administration in Northern Ireland.

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Article 7

When reporting under Articles 4 or 6 of this Agreement, the Commission, or in the case of Article 6(2), the relevant members thereof shall recommend any remedial action considered necessary. The Commission may also recommend what measures, if any, it considers might appropriately be taken by the Northern Ireland Assembly, such measures being limited to those which the Northern Ireland Assembly has power to take under relevant United Kingdom legislation.

Article 8

In preparing its reports and making recommendations as described in Article 7 of this Agreement, the Commission shall be accessible to all interested parties and shall consult as necessary on the issues mentioned in Articles 4 to 6 of this Agreement.

Article 11

The Commission, its staff, property and premises, and any agents of persons carrying out work for or giving advice to the Commission shall have such privileges, immunities and inviolabilities as may be conferred or provided for in accordance with the relevant legislation of Ireland and of the United Kingdom.

The TOR contributed to use the of facilitative-procedural mediation in four ways. There was also one instance where the TOR clearly led to formulative mediation. Finally there was one instance where the IMC suggested that its TOR contributed to directive mediation.

Four articles were important in leading to facilitative-procedural mediation: Articles 3, 4, 8 and 11. The first of these, Article 3, was quoted by the IMC in its reports. It stated: 'the objective of the Commission is to carry out [its functions] with a view to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland'. While this article could have been interpreted in a way that led to a range of mediation activity, the IMC interpreted it in a manner that encouraged it to highlight progress and thus to engage in facilitative-procedural mediation.

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Article 8 of the TOR outlined that the IMC should consult as necessary. The commission took this to mean that it should consult widely as this was necessary to properly fulfil its duties. This wide consultation was in keeping with facilitative-procedural mediation and it facilitated the channelling of information. The continuous reporting, called for in Article 4 (C) also leads to the use of facilitative-procedural mediation in two ways. The large number of reports released meant that information was essentially channelled between the different parties. As has already been mentioned the IMC emphasised how this continuous reporting allowed it to show the changes and progress made: 'It was strength of our successive reports that we were able to track change'.⁵⁵¹ Article 11 conferred on the IMC immunities that the commission found vital to its work. This essentially 'meant that we could receive material from official and private sources secure in the knowledge that no third party could force us to reveal either its origin or its contents'.⁵⁵² It enabled the IMC to control information; such control of information is in keeping with facilitative-procedural mediation. Thus the TOR directly allowed the use of this type of mediation.

The formulative mediation which the commission engaged in resulted directly from Article 7, and it quoted this article in most of its reports when making recommendations: 'shall recommend any remedial action considered necessary'.⁵⁵³

551 Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

552 Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

553 See for example, Independent Monitoring Commission (IMC), *Third report of the independent monitoring commission*, (London: House of Commons, 2004). Independent Monitoring Commission (IMC), *Fourth report of the independent monitoring commission*, (London: House of Commons, 2005).

Independent Monitoring Commission (IMC), *Fifth report of the independent monitoring commission*, (London: House of Commons, 2005). Independent Monitoring Commission (IMC), *Nineteenth report of the independent monitoring commission*, (London: House of Commons, 2008). Independent Monitoring Commission (IMC), *Twentieth report of the independent monitoring commission*, (London: House of Commons, 2008). Independent Monitoring Commission (IMC) *Twenty-first report of the independent monitoring commission*, (London: House of Commons, 2009). Independent Monitoring Commission (IMC) *Twenty-second report of the independent monitoring commission*, (London: House of Commons, 2009). Independent

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Such recommendations clearly indicated formulative mediation and the persistent referral to the article in the TOR that bestowed this power showed that these TOR were drivers in the use of this type of mediation. Additionally, the IMC used Article 4: ‘In relation to the remaining threat from paramilitary groups, the Commission shall: (a) monitor *any continuing activity* by paramilitary groups’ (emphasised added) to make recommendations across an extremely broad range of matters, including charities legislation and the licensing of a range of industries. It interpreted this to mean it should do so in relation to any activities paramilitaries were linked to, not simply those specified. Thus Article 4 also led to formulative mediation. Joe Brosnan felt that this interpretation of its TOR made by the IMC was the ‘most reasonable interpretation’ of its remit.⁵⁵⁴ Furthermore, Jeffery Donaldson argued that taking a broad understanding of one’s remit (without overstepping it) was one of the reasons the IMC was effective: ‘you want people who go on and to work within their remit but at the same time to explore that remit to the nth degree to the greatest extent they can’, and ‘the independent monitoring commission was probably the most effective and I think was one that did fulfil its remit in particularly the fullest terms’.⁵⁵⁵

In its final report the IMC outlined why it had never used its power under Article 6:

And we suspect that the absence of any claims may not have been pure coincidence. It may have reflected a degree of self-restraint amongst the parties and a developing mutual regard for the process and each other. And it may even perhaps have become a factor in the view the parties took of the IMC. Because we had consulted the parties about the procedures we intended to follow they knew how involved a claim would be, just as they knew that the outcome could never be certain. Like the sword of Damocles, the strength and value of Article 6 may have been greater for its not having been used rather than it’s not being necessary or appropriate.⁵⁵⁶

Monitoring Commission (IMC) *Twenty-third report of the independent monitoring commission*, (London: House of Commons, 2010).

554 Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

555 Jeffery Donaldson, interview by Dawn Walsh, November 8, 2013.

556 Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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A complaint necessary to bring these powers into play was not made. However the commission stated that the existence of this Article and the steps the commission told the parties it would take should such a complaint be made it may have been sufficient to ensure the parties did not make such claims about political rivals.⁵⁵⁷ This was an interesting observation and showed that the commission's TOR ensured parties did not act in a certain way simply by outlining the possible outcomes should it have use a particular power.

The four key articles in the TOR of the IMC (3, 4, 8 and 11) and the commission's interpretation of these strongly informed the majority of the commission's work and clearly led to facilitative-procedural mediation. Articles 7 and 4 were also important in that they led to formulative mediation through the making of recommendations across a wide range of issues, which was significant especially before the IRA statement of July 2005. Interestingly, the commission highlighted how Article 6's existence, though it was never officially used, created implicit directive mediation ensuring parties did not act in a certain way. Collectively the TOR were influential in affecting the type of mediation used.

The GFA

The GFA provided the wider context in which the IMC operated. The GFA was a popularly endorsed peace agreement. By having some link to the GFA the IMC may have gained leverage which allowed it to engage in more interventionist forms of mediation. The specific nature of the GFA also had to be considered. As has already been established, there are three ways in which the GFA's consociation may affect the mediation type. Its international nature may have led to the inclusion of international members on the IMC and this would affect mediation type. This effect

⁵⁵⁷ Independent Monitoring Commission (IMC), *Twenty-sixth and final report of the independent monitoring commission, 2004-2011 – changes, impact and lessons*, (London: House of Commons, 2011).

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can be seen in the examination of the effect of mediator identity on mediation type. Secondly, the Lijphartian elements of consociationalism may have encouraged the inclusion of members who are representative of the different communities in Northern Ireland. Interestingly and in contrast to the ICP the IMC did not include such members. These Lijphartian elements are consistent with and may also encourage facilitative-procedural or formulative mediation. Finally, the GFA incorporated a coercive element; the two governments essentially pressed the parties into the arrangement. Given the coercive nature of the consociationalism associated with the GFA the Agreement may have led to directive mediation. If the nature of the GFA was affecting the type of mediation which the IMC used references to the agreement should be observed in explaining mediation activities. Actors may cite the GFA in order to influence the type of mediation the IMC uses and may have highlighted areas where a commission's activities appeared not to be consistent with the GFA.

In terms of legitimacy gained by being linked to the GFA the IMC linked its work to the agreement. In its second report it outlined how the security normalisation which it was monitoring is explicitly set out in the GFA: 'The Belfast Agreement of 1998 sets the framework on security normalisation within which our remit under the International Agreement is placed', and 'security normalisation is an objective of the Belfast Agreement and the IMC's task in this regard is to discharge the monitoring and reporting obligations conferred on it'.⁵⁵⁸ The IMC was stressing its links to the GFA in order to give legitimacy and context to its work on security normalisation, which was mainly facilitative-procedural mediation. However there was no indication that the IMC's link to the GFA was leading to a particular type of mediation.

⁵⁵⁸ Independent Monitoring Commission (IMC), *Second report of the independent monitoring commission*, (London: House of Commons, 2004).

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Sinn Féin disputed the IMC's connection to the GFA, and used this in attempts to undermine its work. Gerry Adams argued: 'The IMC is clearly in contravention of the Good Friday agreement' and Gerry Kelly claimed: 'The judgment was a political judgment, it is not within the Good Friday agreement'.⁵⁵⁹ By arguing that the commission was not part of the GFA Sinn Féin was attempting to undermine its work. These criticisms were particularly a reaction to the IMC recommending financial sanctions against the party. Thus the party was attempting to use the GFA, and the fact the IMC was not explicitly provided for in it, to counter recommendations, so countering formulative mediation. However this had limited success and the commission was widely accepted (as indicated in the mediator identity section).

John Alderdice did suggest that in hindsight he would recommend the inclusion of a body such as the IMC in the text of other peace agreements.⁵⁶⁰ Joe Brosnan took a nuanced view of whether it would have been helpful to have the IMC included in the GFA. He acknowledged that at first he thought it would have helped the commission to counter criticisms, but on reflection he felt that inclusion in the GFA may not have been helpful. He argued that had the IMC been around since 1998 and paramilitary activity continued, the commission may have lost credibility it needed in 2004 and 2005.⁵⁶¹ This showed the need to be aware of the particular chronology and context of the peace process when assessing whether the GFA afforded the IMC credibility and if this could have been increased through a more direct provision for the commission in the agreement.

The GFA's international application of consociationalism may have contributed to the inclusion of Dick Kerr as an international commission member. This indirect

⁵⁵⁹ Gerry Moriarty, 'SF to challenge the legality of IMC sanctions', *Irish Times*, May 20, 2004. 'Sinn Fein loses legal case over IRA fine', *Irish Times*, February 15, 2005.

⁵⁶⁰ John Alderdice, interview by Dawn Walsh, January 7, 2013.

⁵⁶¹ Joe Brosnan, interview by Dawn Walsh, January 25, 2013.

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effect of internationalised consociationalism was addressed by examining Dick Kerr's effect on mediation type in the section of this chapter on mediator identity. It is worth reiterating that, unlike with certain international members of other commissions, Dick Kerr's international identity was not stressed. Thus the effect of the internationalised element of the GFA's consociationalism had little effect.

The IMC did not include local representation from the two communities. This may seem to be incompatible with the power-sharing element of Lijphartian consociationalism. John Alderdice was a local member and he argued that his past was seen as neutral. Interestingly Jeffery Donaldson while accepting that there was a need for balance where local actors were involved in a commission showed no preference for an approach that included a member from each community or a neutral individual such as John Alderdice.⁵⁶² It is worth noting that John Grieve and Joe Brosnan as appointees by the British and Irish governments may have been viewed by some as indirectly representing the two communities in Northern Ireland. This view would make their inclusion in keeping with Lijphartian elements of proportional representation. While such an interpretation is not invalid their inclusion is undoubtedly different from the inclusion of local actors who were more directly representative. However the inclusion of local members who were seen as representing the two main communities, particularly a nationalist, may have increased its legitimacy and strengthened its ability to counter claims that it was a puppet of the intelligence services. The governments' use of the IMC's reports to pressure certain actors to engage in specific behaviours, and the small elements of the IMC's activities which it presented as directive, were in keeping with the coercive nature of the GFA's consociationalism.

The GFA had a very minor effect on the mediation type used by the IMC. The commission placed its work in the context of the agreement, especially in relation to

⁵⁶² Jeffery Donaldson, interview by Dawn Walsh, November 8, 2013.

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security normalisation, in order to provide perspective and gain legitimacy for this section of its work. Conversely, Sinn Féin argued that the IMC was not part of the GFA and thus it - and specifically its recommendations - were invalid. As a Sinn Féin official argued: 'the Monitoring commission, which was outside and actually worked against the GFA'.⁵⁶³ Thus the party attempted to use the GFA to stop the IMC engaging in formulative mediation though this was not a very successful strategy.

The governments' use of the reports to press parties to move the peace process forward, and the directive elements of the IMC's work were in keeping with the coercive element of the GFA's consociationalism. This suggests that mediation carried out in the implementation phase of a peace agreement will be in keeping with the general characteristics of the process and agreement. However the effect on the IMC was weaker than that seen in the ICP and IICD, particularly in relation to indirectly affecting the composition of the commission. This may be as a result of its weaker connection to the agreement both due to the fact it was not directly provided for and due to the passage of time.

Conclusion

The IMC engaged in all three types of mediation at different points. It highlighted progress, kept confidentiality, and consulted widely; all facilitative-procedural mediation. It made significant recommendations; clearly formulative mediation. It also attempted to pressure paramilitaries on some specific occasions; directive mediation. For this dissertation one of the most striking elements of the IMC's was that while it did not press to have an interventionist role the two governments frame the IMC as a directive mediator. Doing this by using its reports to exert leverage primarily on Sinn Féin and the DUP. This shows that mediators may have more interventionist roles even when they do not proactively seek them, as a result of other actors' responses to their work.

⁵⁶³ Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

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The GFA had a minor effect on the use of mediation type. It was used by the commission to give legitimacy and context to its work but not directly linked to a particular mediation type. Conversely, Sinn Féin attempted to use it to counter the recommendations of the commission and to counter its ability to engage in formulative mediation; though this was largely unsuccessful. The effect which the GFA had on mediator identity, and thus indirectly on mediation type in the case of the ICP and IICD was not as obviously present in the case of the IMC. The governments' use of the IMC to exert pressure, and the commission's directive mediation, were consistent with the coercive element of the GFA.

The identity of the commission members had a moderate effect on mediation type. The same elements of identity facilitated different types rather than being linked to one type. The identity of commission members gave the IMC the necessary expertise to make recommendations (formulative mediation), the credibility to be believed when highlighting progress (facilitative-procedural mediation), and contributed to an environment where the governments could use its reports as leverage (directive mediation). Notable here is that the IMC may have been seen as positive, and consequently been used by the governments as a result of status it enjoys simply from being a commission in the aftermath of the IPC and IICD. Nevertheless, it differed importantly from the ICP and IICD in that there was no focus on the international element of the commission's identity, thus lowering its relative status. It engaged in less directive mediation than these commissions and this difference in stress on identity is notable in this context.

The TOR and the issue intensity strongly affected the IMC's use of mediation type. The TOR were most clearly associated with the recommendations the IMC made, which were evidence of formulative mediation. They also led to facilitative-procedural mediation by allowing consistent reporting, controlling of information

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and setting the wider role of the commission. Intensity surrounding certain events led the commission to stress improvements and to and make nuanced assessments that highlighted progress from the past. Theory suggested that increased levels of intensity may have led to more interventionist forms of mediation to overcome the difficulties. However this case showed that higher levels of intensity can also lead to facilitative-procedural mediation, as the mediator attempts to reduce tensions by highlighting progress and putting issues into a wider context of the progress made in the process. This may predominantly be the case where mediator identity is not particularly strong and thus directive mediation is less likely.

CHAPTER SIX: CONSULTATIVE GROUP ON THE PAST

Throughout the thirty years of violent conflict in Northern Ireland over three thousand deaths occurred and tens of thousands of others were seriously injured. In many cases the facts surrounding atrocities were not established; over 2,000 murders were not solved. Victims and survivors did not obtain the justice which they deserved. Compensation was absent or inadequate and the provision of services which victims needed was inconsistent and not coordinated. This failure to adequately address the violence of the past and its effects continued into the post-Troubles Northern Ireland. The GFA, unlike many other peace agreements, did not include an official mechanism to comprehensively deal with the past.⁵⁶⁴ This failure did not just impinge on those who had been directly affected by the violence; animosity surrounding specific events was felt across the respective communities. Furthermore, it was an obstacle to broader community reconciliation. A number of specific initiatives had previously been used by government and community groups to address specific elements of the past, such as the Saville inquiry on 'Bloody Sunday'. These effects culminated in 2007 when Secretary for State Peter Hain set up a Consultative Group on the Past (CGP) with a broad remit to develop a mechanism for dealing with the past.

The CGP undertook a number of mediation activities during its work, reporting, and in the aftermath of its report. The majority of these activities fell within the type of facilitative-procedural mediation, with very minor elements of directive mediation. This chapter first provides a background to the issue of the past in Northern Ireland. Then the process through which the CGP was formed, acted and reported is examined in order to explicate the types of mediation used. This explication is divided into two phases:

- 1) The work of the CGP and its report and;
- 2) Reaction, the consultation process, and beyond.

⁵⁶⁴ See for example Peace Accords Matrix, Kroc Institute for International Peace Studies, University of Notre Dame.

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The chapter then examines how mediator identity, the issue intensity, the TOR, and the GFA affected the choice of this type.

Background to the issue of the past in Northern Ireland

The challenge of dealing with the past in Northern Ireland differs substantially from the same task in many other post-conflict societies. Such tasks have traditionally been associated with transition from authoritarian and undemocratic states to democracy. Northern Ireland reveals that atrocities and abuses and the associated need to confront them after a conflict can occur also in highly developed western democracies. Indeed this context may constrain acknowledgement of abuse as the British government and certain elements of the community in Northern Ireland are less willing to accept institutional failure. They have difficulty recognizing that the State may have been involved in a less than neutral role.⁵⁶⁵

There was public discussion about whether a truth commission - South Africa's Truth and Reconciliation Commission being the example most often given - would be useful in the Northern Ireland context. The benefits attributed to truth commissions include their ability to help victims, establish an authoritative record of the past, promote accountability, draw a clear line between past and present, deter future abuses and encourage reconciliation.⁵⁶⁶ Whether these potential benefits could be realised was the subject of much debate. The likelihood of establishing one accepted truth in a divided society is low. Findings of such commissions may be rejected by one or more groups. Lundy and McGovern found that in Northern Ireland, around half of those asked thought such a process could be important for the future. Nationalists were more inclined toward truth recovery than unionists while among the latter in particular there was a significant constituency who believed that the truth about the conflict would be better sought through investigations, and should lead to

565 Fiona Ni Aolain and Colm Campbell, 'The paradox of transition in conflicted democracies'. *Human Rights Quarterly*, 27 (2005): 213.

Sinn Féin while framing many of the IRA's activities as part of a legitimate war is also reluctant to revisit some of the IRA's past activities.

566 Patricia Lundy, 'Commissioning the Past in Northern Ireland', *Review of International Affairs, Special Edition on Transitional Justice*, vol. LX, no. 1138-1139 (2010): 103-104.

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prosecutions and punishment.⁵⁶⁷ There were divisions regarding who were the 'victims' of the conflict, and also doubts as to whether or not it could get to the truth. Crucially, a truth commission did not enjoy as much support as a number of other possible ways of dealing with the past, most obviously in terms of providing support for victims and undertaking grassroots initiatives within communities.⁵⁶⁸

It is useful to outline the positions taken by the political parties on how the issue of the past, truth recovery and victims should be dealt with. Broadly, their positions reflected the discussion within their constituencies. Sinn Féin focused on the activities of the security services, arguing that the activities of the state must be examined and that there must be no 'hierarchy of victims'.⁵⁶⁹ It also demanded an international element to any such process, with Gerry Adams calling for 'the creation of an independent international truth commission to deal with the legacy of the Troubles'.⁵⁷⁰ The DUP's policy focused on providing practical services to victims and to obtaining justice through the PSNI's Historical Enquiries Team (HET). Both the DUP and UUP were critical of initiatives which they felt focused only on victims from one community. They sought to differentiate between 'victim' and 'terrorist', affectively arguing, contrary to Sinn Féin's position, that there should be some form of hierarchy in relation to victims.⁵⁷¹

Despite this reluctance, a variety of initiatives were put in place by the government and community groups to deal with the past in certain areas. A number of these were put in place in the build up to the GFA and can be seen as confidence-building moves.⁵⁷² These

567 Patricia Lundy and Mark Mc Govern, 'Truth Justice and Dealing with the Legacy of the Past in Northern Ireland, 1998-2008'.

Ethnopolitics, 17, no. 1 (2008): 185.

568 Ibid.

569 Sinn Féin, Who Sanctioned Britain's Death Squads Time for the truth, 24 May 2003, (Dublin, Sinn Féin, 2003). Sinn Féin, McGuigan addresses Ard Fheis on truth recovery, February 28, 2004 (Dublin: Sinn Féin, 2004).

570 Gerry Moriarty, 'Adams directs call for truth commission to republicans', *Irish Times*, September 29, 2008.

571 Noel McAdam, 'Why most parties don't want talks on the past', *Belfast Telegraph*, July 23, 2010. 'So, what proposals do our politicians have?' *Belfast Telegraph*, July 23, 2010.

572 This is a very brief outline of some such mechanisms to provide the background necessary for this dissertation. For a comprehensive treatment of the initiatives see Ryan Gawn, 'Still shackled by the Past: Truth and Recovery in Northern Ireland'. *Peace & Conflict Review*, 1,

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included: the Victims Commission was set up in October 1997 and headed by Sir Kenneth Bloomfield, former head of the Northern Ireland Civil Service.⁵⁷³ In May 1998, the British Government appointed Adam Ingram as Minister for Victims in the NIO (NIO). This was followed in June by the establishment of the Victims Liaison Unit (VLU) within the NIO to take forward the Bloomfield recommendations. Also in 1998, a second judicial inquiry to investigate Bloody Sunday was established, the Saville Enquiry.

There were also enquiries into other state-related deaths with Sir John Stevens (then Commissioner of the London Metropolitan Police Force) and retired Canadian judge Peter Cory conducting inquiries that found evidence of collusion (cooperation between the RUC, other state security forces, and loyalist paramilitaries).⁵⁷⁴ In 2005, former Secretary of State Paul Murphy announced proposals for a Victims' and Survivors' Commissioner, as part of a detailed consultation on the future of services for victims and survivors of the troubles. In 2005 he also announced the establishment of a special unit whose task was to examine all unresolved deaths in Northern Ireland that were related to the security situation. The Historical Enquiries Team (HET) is currently conducting a 'cold case review' of 2,120 unresolved killings. The unit is staffed by 100 retired RUC and Garda detectives as well as officers from the British Police. In December 2012 the results of the inquiry conducted by Sir Desmond de Silva into the murder of Belfast solicitor Pat Finucane were published.⁵⁷⁵ He

no. 2 (2008): 1-15 and Patricia Lundy, 'Commissioning the Past in Northern Ireland'. *Review of International Affairs, Special Edition on Transitional Justice*, vol. LX, no. 1138-1139 (2010): 101-133.

⁵⁷³ Kenneth Bloomfield, *We will remember them: Report of the Northern Ireland Victims Commissioner*, (London, NIO, 1998).

⁵⁷⁴ One particularly controversial aspect of the conflict has been collusion between the state security forces and loyalist paramilitaries. As well as taking part in paramilitary attacks, some soldiers and policemen are alleged to have given weapons and intelligence to loyalists, turned a blind eye to their activities, and/or hindered police investigations of them. Peter Cory, *Cory Collusion Inquiry Report: Chief Superintendent Breen and Superintendent Buchanan*, (delivered 7 October 2003; published 18 December 2003) (Dublin: Department for Justice, Equality and Law Reform, 2003). Peter Cory, *Cory Collusion Inquiry Report: Patrick Finucane*, (Delivered 7 October 2003; Published 1 April 2004), (London: HMSO, 2003). Peter Cory, *Cory Collusion Inquiry Report: Lord Justice Gibson and Lady Gibson*, (delivered 7 October 2003; published 18 December 2003), (Dublin: Department for Justice, Equality and Law Reform, 2003). Peter Cory, *Cory Collusion Inquiry Report: Robert Hamill*, (Delivered 7 October 2003; Published 1 April 2004), (London: HMSO, 2004). Peter Cory, *Cory Collusion Inquiry Report: Rosemary Nelson*, (Delivered 7 October 2003; Published 1 April 2004), (London: HMSO, 2004). Peter Cory, *Cory Collusion Inquiry Report: Billy Wright*, (Delivered 7 October 2003; Published 1 April 2004), (London: HMSO, 2004).

⁵⁷⁵ Pat Finucane was a Belfast solicitor killed by loyalist paramilitaries in 1989. He had come to prominence due to successfully challenging the British Government over several important human rights cases in the 1980s. His killing was one of the most controversial during the conflict as there was state collusion with the loyalist paramilitaries involved.

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found extensive evidence of collusion between the State and loyalist gangs, including the selection of targets. As a result Prime Minister David Cameron issued an apology, though the Finucane family rejected this and continue to campaign for a full public enquiry. As well as these diverse government initiatives there are numerous community based moves to deal with the past, most notably Healing through Remembering.⁵⁷⁶

Despite the wide range of initiatives put in place in the lead up to and after the agreement, the GFA was notable for its lack of any reference to a comprehensive approach to dealing with the past. The GFA did establish some broad principles and policy goals for dealing with victims' issues. These included recognition that victims 'had a right to remember [as part of the] wider promotion of a culture of tolerance at every level of society' and that a 'necessary element of reconciliation' was the need to 'acknowledge and address the suffering of the victims of violence'.⁵⁷⁷ This deficiency can be viewed as a result of both the nature of the GFA and the process of negotiation through which it was arrived at. Consociational theory, as provided for in the GFA, does not provide an approach for dealing with a past conflict and/or reconciliation. This is understandable as consociational theory did not originate in context where such a violent conflict had occurred and reconciliation was necessary. Furthermore, where it has been applied to post-conflict situations it has focused on the future.

The GFA in Northern Ireland followed this approach. It avoided addressing what caused the conflict, rather it put in place a pragmatic compromise, aimed at living more peacefully.⁵⁷⁸ During the negotiations leading up to the GFA there was a strategy that aimed to avoid addressing anything too contentious that could put the achievement of the agreement at risk. The issue of dealing with the past was one such issue (as were the issues of reform of policing and decommissioning also dealt with in this dissertation). Indeed this logic continued to be a prevailing force in developments since, the endeavour to

⁵⁷⁶ For more information see <http://www.healingthroughremembering.org/>.

⁵⁷⁷ 'The Agreement, Agreement reached in the multi-party negotiations (10 April 1998)'.

<http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>.

⁵⁷⁸ Christine Bell, 'Dealing with the past in Northern Ireland'. *Fordham International Law Journal*, 26 (2002-2003): 1098.

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comprehensively deal with the past, would have to be preceded by political stability in the peace process, if it were to happen at all.⁵⁷⁹

In 2007, events conspired to provide what Peter Hain appeared to think was the political stability necessary to revisit this issue. The decision by Sinn Féin at its Ard Fheis that year to support policing, the relatively positive thirteenth report of the IMC, and the consequential re-establishment of devolution provided a positive background. It was against this background that Peter Hain announced the establishment of the CGP: 'But I believe that with the historic political agreement that was implemented only last month, it is time to pause and ask how a society that went through a violent and long conflict wants to deal with its past'.⁵⁸⁰

The Group's terms of reference were:-

To consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years; and to make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past.

To present a report setting out conclusions to the Secretary of State for Northern Ireland by summer 2008.

In going about its work, the Consultative Group should consider:

- i. the landscape of initiatives that have already been taken by Governments and non-Governmental groups;
- ii. work already done – and ongoing – in this area, including consultation exercises;
- iii. the resources that would be required to implement any recommendations that it makes.

The Group's report will be published. Funding will be provided for a secretariat to support its work.

579 Patricia Lundy, 'Commissioning the Past in Northern Ireland', *Review of International Affairs, Special Edition on Transitional Justice*, vol. LX, no. 1138-1139 (2010): 101-133.

580 Press Release on behalf of Peter Hain, Secretary of State for Northern Ireland, about the formation of an independent consultative group to look at the legacy of the past, (22 June 2007), (Belfast: NIO, 2007).

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As the group begins work, it may well choose to engage additional advisers to ensure it has access to a wide range of expert advice, both on international issues and on other specialist areas.⁵⁸¹

The members of the CGP were the Right Reverend Lord Eames OM (the Anglican Primate of All Ireland and Archbishop of Armagh from 1986 to 2006) and Denis Bradley (former vice-chairman of the police board for the Police Service of Northern Ireland and a former priest) co-chaired the group and Jarlath Burns, Rev. Dr. Lesley Carroll, Professor James Mackey, Willie John McBride MBE, Elaine Moore, and Canon David Porter (a comprehensive discussion of the identities of members is discussed in the section of this chapter dealing with mediator identity). Having briefly introduced the CGP the analysis now examines the work of the group divided into the aforementioned three areas: (1) The work and report of the CGP; (2) The consultation process and beyond.

The work and report of the CGP

This period covers the time from which the group was established on 22 June 2007 up to and including the report which it presented to the Secretary of State on 23 January 2009 and publicly launched in Belfast on 28 January 2009. During this period the group engaged in an extensive consultation, including placing advertisements in a variety of media outlets, inviting stakeholders to meet with them, and holding public meetings. As a result of this consultation the group compiled a report outlining how the issues of the past could be dealt with. During this period the group engaged in facilitative-procedural mediation with a small element of directive mediation.

The widespread consultation with the public in Northern Ireland and specific stakeholders was indicative of facilitative-procedural mediation. The group outlined that it engaged in 'the widest possible consultation'. This activity included 'listening, talking and sharing',

⁵⁸¹ *Press Release on behalf of Peter Hain, Secretary of State for Northern Ireland, about the formation of an independent consultative group to look at the legacy of the past, (22 June 2007), (Belfast: NIO, 2007).*

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'public and private meetings', 'written submissions', 'official presentations', 'individual representations, written submissions and dialogue with people from every sector of the community'. It received '290 written submissions and 2086 standardised letters were received, as well as many letters providing general commentary and offering support. The Group met privately with 141 individuals or groups, many of which were representing hundreds more. It conducted meetings across Ireland, north and south, and in Great Britain. Over 500 people attended public meetings in Belfast, Omagh, Armagh, Ballymena, Bangor, Enniskillen and Derry/Londonderry'.⁵⁸² CGP members Lesley Carroll and Denis Bradley both stated that the consultation was very broad including both open invitations and particular invitations to relevant groups and including meetings across Northern Ireland, in Dublin, and in Britain.⁵⁸³ These activities were explicitly undertaken to 'seek consensus'.⁵⁸⁴ Thus the group engaged in widespread consultation in order to seek a consensus, which is an indicator of facilitative-procedural mediation.

It is worth noting the group's ability to consult widely was somewhat restricted by the refusal of some individuals and groups to engage with it: 'some have even refused our specific request to submit ideas'.⁵⁸⁵ Notably it was highlighted in the media that the IRA would not meet with the group: 'The IRA has all but ruled out a meeting with the Consultative Group on the Past led by Dennis Bradley and Lord Robin Eames'.⁵⁸⁶ This refusal could have been as a result of poor relations with Denis Bradley following allegations surrounding his time as a conduit between republicans and the British government in the early 1990s or the context more generally.⁵⁸⁷ However Sinn Féin advocated for a stronger international element to the group and also refused to engage with the IMC.⁵⁸⁸

582 Consultative Group on the Past, *Text of Report Launch Address by Denis Bradley and Robin Eames of the Consultative Group on the Past*, (28 January 2009), (Belfast: CGPNI, 2009). Consultative Group on the Past, *Report of the Consultative Group on the Past*, (23 January 2009; launched on 28 January 2009), (Belfast: CGPNI, 2009).

583 Lesley Carroll, interview by Dawn Walsh, February 26, 2013. Denis Bradley, interview by Dawn Walsh, March 4, 2013.

584 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008).

585 Ibid.

586 Dan Keenan, 'IRA 'highly unlikely' to discuss past with Eames and Bradley', *Irish Times*, February 26, 2008.

587 See Deaglan De Bréadún, *The Far Side of Revenge. Making Peace in Northern Ireland*, (Cork: The Collins Press, 2008).

588 Denis Bradley was a conduit between the British government and the Republican movement in the early 1990s. There were accusations that he was not honest in this role but rather tried to portray the IRA position favourably in the hope that this would motivate

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There were also incidents where the group framed its work as contributing to the wider debate around dealing with the past and highlighted the good work being done by other groups. In a speech given in May 2008 Robin Eames and Denis Bradley stated that they felt ‘we needed to contribute these thoughts to the public debate’, and in relation to other groups working in the area ‘it is important that they are recognised for their commitment and dedication’.⁵⁸⁹ This desire to contribute to the debate and to highlight existing initiatives was continued in the report of the CGP. The report endorsed the Healing through Remembering ‘Day of Reflection’, ‘was impressed by the HET’, and wanted to ‘generate further debate’.⁵⁹⁰ These activities involved highlighting the good work done by existing groups and seeking to facilitate debate and were indicative of facilitative-procedural mediation.

The CGP was observed controlling both the meetings which it held and the information which emerged from these meetings. It decided where to have meetings and how much time would be afforded to specific groups/issues.⁵⁹¹ In terms of control over the meetings it decided to have meetings in a variety of locations in order to ensure that they were ‘geographically accessible’.⁵⁹² The group also decided to be inclusive in relation to who it would engage with: ‘The Group acknowledged that most of those engaging with the process would be living or working in Northern Ireland. However, it equally encouraged people who had been affected by the conflict, currently living or working in the Republic of Ireland, in Great Britain and elsewhere, to contribute to the process. The Group considered that all those affected by the conflict had a legitimate right to be part of the process to build a shared and reconciled future’ and ‘adopted a flexible interpretation’ of ‘the past 40 years’, and ‘engaged with all those who wanted to make a contribution, whether they had been

the British government to move the peace process forward. This massively damaged trust between Bradley and particularly Martin McGuinness.

589 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008).

590 Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

591 James Mackey, interview by Dawn Walsh, February 21 2013.

592 Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

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directly or indirectly affected by events, and regardless of when those events occurred'.⁵⁹³ While the group clearly adopted an inclusive approach to its consultation, this still shows that the group had control and chose to be extremely inclusive. This control was indicative of facilitative-procedural mediation.

The group also controlled information to provide confidentiality where it felt this was necessary. It appreciated that it needed to control information in this way as some groups and individuals were reluctant or unable to speak openly in public.⁵⁹⁴ It recognised: 'private meetings were a crucial part of the Group's engagement, allowing it to hear from those who were not comfortable engaging in more formal meetings'.⁵⁹⁵ Importantly it recognised the different needs of various actors with relation to confidentiality. Denis Bradley reminisced that some groups did not need confidentiality as they had been speaking publicly around these issues for decades.⁵⁹⁶ While group member Lesley Carroll argued that: 'we didn't make public a note of all our meetings and again we didn't note who all the people we met were, because that wouldn't have been appropriate; for some groups the anonymity was important'.⁵⁹⁷ Thus the CGP controlled information where it felt it was necessary to provide confidentiality, this was also indicative of facilitative-procedural mediation.

The report was described at its launch as a 'framework' and provided thirty one recommendations.⁵⁹⁸ This may lead to its work being seen as formulative but this is not the case. Firstly, there is debate as to whether the recommendations provided the necessary detail to be viewed in this way. This became an issue during the consultation on the report and will be returned to in the next section of this chapter. More profoundly, the CGP did not accept responsibility for the recommendations which it made in a way that would be necessary to categorise it as formulative. It did not stress its authorship of the

593 Ibid.

594 Ibid.

595 Ibid.

596 Denis Bradley, interview by Dawn Walsh, March 4, 2013.

597 Lesley Carroll, interview by Dawn Walsh, February 26, 2013.

598 Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

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recommendations. Rather, it repeatedly stressed how its recommendations originated from other sources and that the report was ‘a mirror’.⁵⁹⁹ This occurred in a number of ways. Firstly it broadly stated that the report was the result of what it was told during its consultation. The report ‘has been built on the views expressed during our consultation’, it was ‘guided and shaped by those who gave their time and shared their ideas on what would work best in our society. This report belongs to those people and to the wider society’, and it ‘remains true to what has been said during the consultation’. Its recommendations ‘reflect many of the ideas which have been suggested’.⁶⁰⁰ While group member Lesley Carroll said: ‘at the end of the day it was the Consultative Groups’ report’, she went on to say that: ‘we acknowledged the people who fed into it. It was important that they were there, at times in the report we might have liked to say more about that’ and Denis Bradley characterised the recommendations as ‘a mirror’ of what the Group heard during its consultation.⁶⁰¹

It also stressed how its recommendation on a ‘recognition payment’ was the result of its consultation, and was not an idea which originated with the group: ‘unanimous agreement that many payments were inadequate’, and the ‘call for compensation was not primarily about money but rather a need for recognition’.⁶⁰² Lesley Carroll stressed how the recommendation for the payment resulted from the need to help older people in financial difficulties who were victims of the conflict and for whom there had been insufficient or no compensation.⁶⁰³ The group also placed responsibility for this recommendation with the British (and to a lesser extent the Irish) governments. It outlined that the definition of victim which it was using was provided by the government in the Victims and Survivors (Northern Ireland) Order 2006.⁶⁰⁴ It also highlighted that the Irish government had made comparable

599 Ibid

600 Ibid.

601 Lesley Carroll, interview by Dawn Walsh, February 26, 2013. Denis Bradley, interview by Dawn Walsh, March 4, 2013.

602 Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

603 Lesley Carroll, interview by Dawn Walsh, February 26,, 2013.

604 Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

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payments and that this practise was common in 'other countries'.⁶⁰⁵ These activities clearly place responsibility for the recommendations with those who were consulted and the governments. By explicitly placing responsibility elsewhere and not claiming authorship of the recommendations in its report, the CGP was not acting in a manner keeping with formulative mediation.

The group engaged in a small amount of directive mediation during this period. The group stressed the importance of dealing with the past if Northern Ireland was to move forward: 'Issues from the past must be dealt with if we are truly to ensure that we do not repeat the mistakes of the past', 'issues that need to be confronted if we are to have a better future that is not overshadowed by the past'.⁶⁰⁶ At the launch of the report it said that there was 'a moral duty' to do so and that it was 'time to grasp the opportunities that lie before us'.⁶⁰⁷ Denis Bradley, while saying he did not think it was the Group's job to push for implementation and that it did not officially meet again, also argued that during his work with the policing commission and then on the CGP he became convinced that if the past was not dealt with there would be problems in the future. He also acknowledged that the issues involved 'live on in one's heart'.⁶⁰⁸ It was unclear from these comments if the group was pressing for the issue of the past to be dealt with in general or if it was pressing for the implementation of the report.

There were other comments which are more specific stating that the report provided 'the best way forward', that it was 'difficult to see how justice, truth and reconciliation can be pursued in a proper and balanced way without the creation of the new commission', that it 'stands by the recommendation' and asks the government 'not to lose time...in taking steps towards implementation'.⁶⁰⁹ These statements clearly showed the CGP pressing for the

605 Ibid.

606 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008).

607 Consultative Group on the Past, *Text of Report Launch Address by Denis Bradley and Robin Eames of the Consultative Group on the Past, (28 January 2009)*, (Belfast: CGPNI, 2009).

608 Denis Bradley, interview by Dawn Walsh, March 4, 2013.

609 Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

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implementation of its report, acting as directive mediator. Yet the group provided for a separate implementation body and thus did not take responsibility for implementation. However as was seen in the case of the ICP, the provision of such an office does not exclude members of the group from pressing for its report's implementation. This will be addressed in the next section.

The consultation process and beyond

The report and its launch attracted high levels of controversy. The launch resulted in the heckling of Robert Eames and Denis Bradley by some of those gathered, particularly some victims' groups. The aforementioned recognition payment attracted the most intense reaction. This intensity will be discussed in the section of this chapter examining the effect of issue intensity on mediation type. It is important to note this response as it resulted in the Secretary for State Shaun Woodward launching a consultation process on the report; a consultation on the consultation. This consultation focused an examination of and reaction to the report and the ensuing process provided data which this analysis used, in conjunction with other sources, to ascertain the type of mediation used by the group in the aftermath of the publication of its report.

During this period a number of actors reiterated that the CGP had consulted widely. This recognition was widespread and was acknowledged both by groups that were largely resistant to the recommendations of the CGP and those that were more neutral or positive towards the recommendations. The House of Commons Northern Ireland Committee, which was largely hostile towards the CGP's report recognised that the group had been able to 'take all views into account', and had engaged in 'a broad consultative exercise'.⁶¹⁰ Similarly Healing through Remembering acknowledged that the group had been able to 'consult so widely'.⁶¹¹ The Houses of the Oireachtas Joint Committee on the Implementation of the

610 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

611 Healing Through Remembering (HTR), *Healing Through Remembering Response to Launch of Report of Consultative Group on the Past (CGP)*, (27 January 2009), (Belfast: HTR, 2009).

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Good Friday Agreement also said that ‘The Group consulted widely, including with an important and emotionally difficult series of public meetings, and brought forward into their final report the product of their extensive consultations’.⁶¹² In academia Lundy also acknowledged that the CGP had ‘demonstrated a willingness to listen sensitively to a range of voices and concerns’.⁶¹³ These views demonstrated recognition of the work of the group as a consultation exercise. This was indicative of an understanding of the CGP as a facilitative-procedural mediator.

This recognition was part of a wider understanding of the group’s work and report as a contribution to a wider debate and a tool to stimulate debate. Speaking about the need for the government to study the report of the group the Secretary for State Shaun Woodward stated that the CGP: ‘puts these complex issues firmly into the public arena and encourages all of us to seek ways to find a consensus’.⁶¹⁴ His successor Owen Patterson stated that: ‘The Consultative Group’s Report should be seen as an important contribution to the debate about the past’.⁶¹⁵ Likewise the House of Commons Northern Ireland Affairs Committee accepts that it ‘clearly stimulated debate...even if few of its recommendations are ultimately implemented.’⁶¹⁶ During the consultation process an understanding of the work of the CGP as engaging in a wide consultation and thus providing an opportunity to debate ways to manage the issue of the future was observed. These statements further underscored an understanding of the CGP as engaging in facilitative-procedural mediation.

612 Oireachtas Joint Committee on the Implementation of the Good Friday Agreement, Consultative Group on the Past outlines findings of its report on dealing with the legacy of the North's Troubles, (March, 5, 2009).

613 Patricia Lundy, ‘Commissioning the Past in Northern Ireland’. *Review of International Affairs*, Special Edition on Transitional Justice, vol. LX, no. 1138-1139 (2010): 101-133.

614 ‘Report must be carefully considered’: media release on behalf of Shaun Woodward, Secretary of State, (28 January 2008), (Belfast: NIO, 2008).

615 Lecture by Owen Paterson, then Secretary of State for Northern Ireland, entitled ‘Building the Future - Dealing with the Past’, Leonard Steinberg Memorial Lecture (16 November 2010), (London: NIO, 2010).

616 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

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There was no indication of formulative mediation during this period. The group continued to stress that the recommendations originated in the consultation and that it was communicating the views of others. It argued that ‘none of those are plucked out of the air’ and that it would have been ‘breaking faith with people who asked us to do it’ if it did not include the recognition payment recommendation even if they were contentious.⁶¹⁷ As was mentioned above, there was a question over whether the CGP provided sufficient detail as to how certain recommendations in its report would operate if implemented. The report ran to one hundred and ninety pages and contained thirty one recommendations. The House of Commons Northern Ireland Affairs Committee described the recommendations as ‘detailed’. However it also argued that the report was ‘unclear’ in relation to the involvement of the Irish government and the ministerial responsibility regarding implementation of its report. It also pressed Robin Eames and Denis Bradley on aspects of the Legacy Commission including who should run it.⁶¹⁸ In addition there was an argument in the media that not enough detail regarding who would run the legacy commission: ‘[They] made the mistake of recommending a Legacy Commission without knowing who would participate’.⁶¹⁹

Questions surrounding how recommendations would operate may have been motivated by a resistance to their implementation. It is useful to acknowledge that questions persisted over how elements of the recommendations would operate. If the CGP is compared with the ICP one can observe that even the most strongly resisted elements of the ICP did not attract the same level of questions regarding how they would operate, indicating a higher level of detail. Establishing exactly what level of detail indicates formulative mediation is difficult, through comparison it was established that the CGP does not provide the necessary amount. As the necessary level of detail was not present in its recommendations *and* the group did not take ownership of its recommendations the CGP did not engage in formulative mediation. The identity of the commission members, the lack of expertise in

617 Deaglan De Bréadún, ‘IRA urged to co-operate with legacy body’, *Irish Times*, March 6, 2009. House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

618 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

619 ‘Many unanswered questions as the big moment arrives’, *Belfast Telegraph*, April 12, 2010.

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transitional justice, may have affected the ability to provide necessary detail and thus undermined the report.

There were indications of directive mediation during this period and members of the group pressed for the implementation of their report. Other significant actors also advocated for the implementation of the CGP's report, giving the report extra weight. Robin Eames and Denis Bradley stood behind their recommendation for a recognition payment despite the intense reaction it generated: 'Lord Eames and Mr Bradley trenchantly defended their report. They insisted that while Mr Woodward had ruled out the payment inevitably it would come back on the table', and

Lord Eames and Denis Bradley have strongly advocated that their suggested recognition payment of £12,000 be paid to the victims of the Troubles in the North just as the sum of Euro 15,000 was paid to 300 victims in the Republic. While they recognised there was no agreement on what a victim was, Mr Bradley said it would be sinful to give a payment in Donegal but not across the road in Northern Ireland. It was part of the healing process. It is best and better to do it and do it soon.⁶²⁰

Jarlath Burns went as far as to accuse certain unionist politicians of publicly rejecting recommendations they had accepted in private:

Eames-Bradley group member Jarlath Burns told BBC Radio Ulster that some senior unionists had been almost duplicitous in saying one thing privately to the group while saying another in public. A lot of our politicians came up with a lot of the ideas which we had, but felt they couldn't really present them publicly or couldn't support us publicly, he said.⁶²¹

Lesley Carroll argued that the Group should not have been dismissed so soon after the report was published. It should have been allowed travel around explaining the report. Even though the British government did not facilitate this, she argued that 'some of us do talk to the media still about it, so we haven't lobbied in a significant way but all of us one way or the other I think, or the majority of us one way or the other, have been involved in quietly

620 Gerry Moriarty, 'Secretary of State rejects £12,000 payouts to families', *Irish Times*, February 26, 2009. Renagh Holohan, 'Bradley, Eames back payment of £12,000 to victims in North', *Irish Times*, February 26, 2009.

621 Gerry Moriarty, 'People 'outraged' by report, says DUP', *Irish Times*, February 3, 2009.

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continuing to lobby how we could'.⁶²² These comments clearly show members of the CGP pressing for the implementation of its report and undermining the opposition to it, thus engaging in directive mediation.

There was also support of the CGP's report and pressure to implement it from a range of substantial actors. The Police Ombudsman Al Hutchinson supported the CGP's framework: 'I support an Eames/Bradley framework'.⁶²³ Similarly Gemma McKeown, Solicitor for Committee Administration of Justice (CAJ) stated that: 'A political commitment to moving forward with the recommendations of the report of the Consultative Group on the Past (Eames-Bradley) is required to help Northern Ireland deal with its past. Whilst CAJ had reservations about some of the proposals in this report, we believe that the report is an important step forward'.⁶²⁴ Alan McBride, Human Rights Commissioner, widowed in the Shankill bomb in 1993, argued that: 'I don't think there is anything better than the Eames-Bradley report -- all the ingredients are in there. It needs to be taken off the shelf and looked at again. There are no better mechanisms than what was in the report by this Consultative Group on the Past'.⁶²⁵ Justice for the Forgotten, a group formed in 1996 with the aim of campaigning for truth and justice for the victims of the Dublin and Monaghan bombings of 17 May 1974 also welcomed the recommendation regarding the Legacy Commission: 'Justice for the Forgotten has welcomed the recent Eames-Bradley proposals that a Legacy Commission be established to deal with the past'.⁶²⁶ Finally Jose Ramos Horta also offered support for the implementation of the most controversial recommendation: 'Ramos Horta praised the Bradley-Eames approach of compensating all victims'.⁶²⁷ Given his position as a Nobel Laureate he had a high status, and thus this comment carried associated leverage. Similarly the status of the other actors as experts and those directly affected by the conflict gives significant weight to their support. Thus the statements by these actors gave the group and its report additional leverage to push for implementation, and act as directive mediators.

622 Lesley Carroll, interview by Dawn Walsh, February 26, 2013.

623 'I'm so sorry, says repentant Ombudsman to families of McGurk's bomb Victims', *Belfast Telegraph*, July 14, 2010.

624 Gemma McKeown, 'Consider Eames-Bradley Report', *Belfast Telegraph*, October 13, 2011.

625 'There's No One Solution to the Past', Alan McBride', *Belfast Telegraph*, October 13, 2011.

626 'Survivor recalls lucky escape from blast', *Irish Independent*, May 19, 2009.

627 'Nobel laureate refused offer of help from IRA', *Irish Times*, March 4, 2009.

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The CGP mainly engaged in facilitative-procedural mediation. It consulted widely, controlled its interactions with groups and individuals, and respected confidentiality; all in order to seek a consensus on how best to deal with the issue of the past. It and others repeatedly acknowledged this and highlighted the role such activities and the resulting report played in stimulating debate on the past in Northern Ireland. While the report made thirty one recommendations, the authorship that was afforded to these - largely the public involved in the consultation - and the lack of detail meant they were not indicative of formulative mediation. Interestingly, despite not claiming ownership over the recommendations the CGP pressed for the implementation of its recommendations - including the most controversial surrounding a recognition payment. Other significant actors also supported the recommendations giving extra leverage to pressure for their implementation. Directive mediation was also clearly present though this represents a very minor part of the group's work in comparison to the facilitative-procedural element.

The effect of the variables on the mediation type

Having established that the CGP was a facilitative-procedural mediator, with minor elements of directive mediation, this dissertation then turned its attention to the four variables (mediator identity, issue intensity, TOR and GFA) and examined how they affected the use of facilitative-procedural (and directive mediation).

Mediator Identity

Before this analysis made any assessment of how the identity of the CGP affected its use of facilitative-procedural and directive mediation it noted that the CGP was made up of two co-chairs and six members with different backgrounds and areas of expertise. Therefore it considered how these identities affected mediation individually as well as collectively. It also considered the role of Martti Ahtisaari and Brian Currin as international advisers.

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Unlike with the commissions examined in the previous chapters, the membership of the CGP was drawn from Northern Ireland and thus all members were deemed local on the fourfold type outlined in chapters one and two. However the individual level of status and expertise of each commission member and any past relationships members had with conflicting parties still had to be considered. A short introduction to the CGP members is now provided - drawn from the report of the group - as essential background which helps understand how their identities affected their behaviour, a brief background on the international advisers is also provided.

The members of the CGP were the Right Reverend Lord Eames OM, and Mr Denis Bradley who co-chaired the group, and Mr Jarlath Burns, Rev. Dr. Lesley Carroll, Professor James Mackey, Mr Willie John McBride MBE, Ms Elaine Moore and Canon David Porter. Martti Ahtisaari and Brian Currin were international advisors to the group. The Group appointed as its legal adviser Mr Jeremy Hill. The Group was supported by Sinead Simpson, Secretary to the Group, and Brendan Giffen, Sandra Holben, Jan Cole, and Lynn Baird.

Brief Biographies

Robin Eames has for many years been involved in community life in Northern Ireland, and has been a prominent advocate for peace and understanding. He was born in 1937, the son of a Methodist minister and his early years were spent in Larne, with the family later moving to Belfast. Educated at the city's Belfast Royal Academy and Methodist College he then went on to study at the Queen's University of Belfast, graduating LLB in 1960, and earning a Ph.D. in Ecclesiastical Law and History in 1963. In May 1975 he was appointed Church of Ireland Bishop of the cross-border diocese of Derry and Raphoe, and in 1980 he was elected the Bishop of Down and Dromore. In 1986 he became the 103rd Archbishop of Armagh and Primate of All Ireland, holding this position until 2006. He was created Life Peer in August 1995 and on June 13, 2007 he received the Order of Merit from the Queen.

Denis Bradley is a former vice-chairman of the Northern Ireland Policing Board. Born in Buncrana, Co. Donegal, he was educated in St. Columb's College, Derry and the Lateran

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University in Rome. He served as a priest in the Bogside in Derry/Londonderry during the early days of the Troubles. He is a co-founder of Northlands Centre, Northern Ireland's largest independent treatment facility for alcohol and drug problems. He still works, on a part-time basis, as a clinical and management consultant. Denis Bradley received the Honorary Degree of Doctor of Laws (LLD) for his contribution to policing and community issues in Northern Ireland.

Jarlath Burns played Gaelic football for Armagh between 1986 and 1999 and was captain when the team won the Ulster championship for the first time in 17 years. He is vice principal of one of the largest post-primary schools in Northern Ireland and is a fluent Irish speaker, spending three weeks every summer as headmaster of an Irish language residential course for young people in Donegal. He is also an analyst for the BBC on its Gaelic games and writes a weekly column in the paper 'Gaelic Life'. He has held high office in the GAA, most notably as the first Players' Representative and latterly as Chairman of the Irish Language and Cultural Committee. He was the chairman of the GAA's 125th Anniversary committee and was the Irish Language officer in the Armagh County Board of the GAA. He comes from a republican background and lives in Mullaghban in south Armagh.

Lesley Carroll was born and grew up in Coalisland, Co Tyrone. She has worked in North Belfast for twenty years and is minister at Fortwilliam & Macrory Presbyterian Church, Belfast. She co-convenes the Presbyterian Church in Ireland's Church & Society committee and is a member of the General Board. She is a regular broadcaster and has been involved in community projects, including work in schools.

James Mackey is a retired Lecturer of Philosophy and a Professor of Theology. Born in Waterford, he holds a doctorate in philosophy from Queens University and has taught various courses including ethics, human rights and philosophy of religion. In 1979 he was appointed Thomas Chalmers Professor of Theology at the University of Edinburgh and held this chair for 20 years. In 1992 James organised and directed an international conference on the cultural diversity and unity of the European Community, as part of Derry's IMPACT 92 PROGRAMME. Between 1985 and 1987 he also scripted and presented two television series

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on world religions for Channel 4: *The Hall of Mirrors* and *The Gods of War*; as well as two series for BBC Northern Ireland on Northern Ireland's divided society: *Perspectives* and *Perspectives II*. In 2005 he served on the Independent Assessment Panel for the assessment of the Northern Ireland Policing Board and took special responsibility for the matter of Human Rights implementation.

Willie John McBride MBE is a former rugby union player who played for Ireland and the British and Irish Lions. He played 63 Tests for Ireland including eleven as captain, and toured with the Lions five times - a record that gave him 17 Lions Test caps. After retiring from rugby, Willie John coached the Irish team and in 1997 he was an inaugural inductee into the International Rugby Hall of Fame. In 2004 he was named in Rugby World magazine as 'Heineken Rugby Personality of the Century'. He is also a past President of Ballymena RFC. Willie John worked in the banking industry from 1959 to 1994. He is currently the Vice President of the Riding for the Disabled Association Northern Ireland and is President of the Wooden Spoon Society, Ulster region. He has received many honours including being made a freeman of Newtownabbey Borough Council and being conferred with a Doctorate of Law by University College Dublin in 2004. He was awarded an MBE for services to Rugby football in 1971.

Elaine Moore is an addiction counsellor with Northlands Drugs and Alcohol Project based in Magilligan prison. Born in Derry/Londonderry, Elaine started her career as a detached youth worker in Liverpool and subsequently worked in a rehabilitation unit in Belize before working for the Northern Board on the 'tackling drugs together' initiative. Her work has mainly been in the voluntary sector, focusing on community development and working with drug and alcohol users in a number of different settings.

David Porter is Canon Director for Reconciliation Ministry at Coventry Cathedral, England. He has over twenty years experience in faith based peace building and reconciliation work in Northern Ireland as co-founder and Director of Evangelical Contribution on Northern Ireland (ECONI), which in 2005 became the Centre for Contemporary Christianity in Ireland. A graduate of the London School of Theology, with a Masters in Peace Studies from the

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University of Ulster, in 2006 he was Visiting Practitioner Fellow at the Centre for Reconciliation, Duke University Divinity School, North Carolina. In 2000 he was appointed a member of the Civic Forum and is currently a member of the Community Relations Council.

Martti Ahtisaari is the former President of Finland and a Nobel Peace Prize Laureate. Since leaving office, he has accepted positions in various international organisations. In 2000, the British Government appointed him to the team overseeing the inspections of IRA weapons decommissioning in Northern Ireland (see Chapter Four). He also founded the Crisis Management Initiative (CMI), an independent, non-governmental organisation with a goal in developing and sustaining peace in troubled areas. On 1 December 2000, he was awarded the J. William Fulbright Prize for International Understanding by the Fulbright Association in recognition of his work as peacemaker in some of the world's most troubled regions. In 2005, he successfully led peace negotiations between the Free Aceh Movement and the Indonesian government through his non-governmental organization, CMI.

Mr Brian Currin is the former chair of the South African Prison Audit Committee and founder of the National Directorate of Lawyers for Human Rights. During 1995 and 1996 Mr. Currin represented victims of gross human rights violations before the Amnesty Commission of the Truth and Reconciliation Commission in South Africa. In 1998 he was appointed by the British government to Chair the Sentence Review Commission of Northern Ireland, established in the terms of the GFA to adjudicate on applications for the early release of politically motivated prisoners.

Effects of mediator identity

Mediator identity can have an effect on mediation type in two ways. Firstly the relationship between the mediator and the conflicting parties affects mediation type and secondly mediator status affects mediation type. In terms of past relationship the local nature of the members of the CGP meant that the members all had existing relationships in the region and where these are highlighted by the group or others the effects were considered. In the existing literature high mediator status is associated with directive mediation. It is posited that the high status allows the mediator to be more interventionist and to engage in

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activities such as verifying and pressing for implementation of recommendations. The converse of this would be that low mediator status would result in less interventionist mediation such as the facilitative-procedural mediation in which the CGP predominantly engaged.

The formation of the CGP was rejected by Sinn Féin who argued that it was 'unilateral' and was not independent, as a result of being formed by the British government: 'Martin McGuinness...claimed the decision to establish the new body was a "unilateral move by Peter Hain dressed up as consultation between Ian Paisley and myself,"' and 'said there was a conflict of interest between the group's independence and the fact that it was appointed by the British government and would report back to it'.⁶²⁸ These comments were in keeping with its approach to truth recovery and its insistence that any such body must have an international element. Despite this official position, significant republicans did engage with the group and encouraged others to do so.

It is worth noting that Lundy too stated that its appointment by the British government: 'cast doubt on its independence'.⁶²⁹ In particular the failure to involve the Irish government may have damaged the group's credibility. This failure seemed to result from reluctance on the part of the Irish government to get involved. Denis Bradley stated that he always felt that peace initiatives in Northern Ireland only worked when both governments worked together. He agreed to get involved in the Group despite the lack of Irish government involvement, as they were not prepared to act even after he begged.⁶³⁰ James Mackey said everyone involved was disgusted by their lack of interest.⁶³¹ Lesley Carroll, while less ardent in her criticism, also acknowledged a lack of interest from the Irish government, and that this led to disaffection in the Catholic-Nationalist-Republican community.⁶³² A Sinn Féin

628 Marie O'Halloran & Dan Keenan, 'McGuinness in surprise attack on Hain', *Irish Times*, June 25, 2007. Dan Keenan, 'SF says Britain should admit role as "key protagonist" in Troubles', *Irish Times*, January 10, 2008.

629 Patricia Lundy, 'Commissioning the Past in Northern Ireland'. *Review of International Affairs, Special Edition on Transitional Justice*, vol. LX, no. 1138-1139 (2010): 101-133.

630 Denis Bradley, interview by Dawn Walsh, March 4, 2013.

631 James Mackey, interview by Dawn Walsh, February 21, 2013.

632 Lesley Carroll, interview by Dawn Walsh, February 26, 2013.

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official also argued that the fact the group was only set up by the British was problematic.⁶³³ Caitriona Ruane, former minister in the Northern Ireland executive and current Sinn Féin MLA, argued that: 'when the Irish government allowed the British government to do solo runs, well it is not acceptable...which was unfortunate... it is disappointing and that is when nationalists and republicans feel let down'.⁶³⁴

The reason for the Irish government's failure to become involved is unclear. Dermot Ahern could not recall why it was not involved in setting up the commission, but defended the Irish government. He argued that it responded to the report positively and that he met with its members on a number of occasions.⁶³⁵ Sinn Féin argued that the Irish government was wary of the British government's approach given that it had been an actor in the conflict and thus had its own agenda and furthermore that they realised that there was not sufficient support for the initiative.⁶³⁶ Jeffery Donaldson went further and argued that in his opinion:

the Irish government is nervous about the legacy of the past because there is a reluctance to place itself under the spotlight of dealing with that legacy and this is an issue whether it is the Smithwick enquiry, allegations of collusions, whether it is the extradition policy operated by the Irish government, whether it is the Arms trial back in the early 70s. All of these things, the Irish government wants to try, is desperate to come out of this whole process with clean hands.⁶³⁷

Stewart Dickson of the Alliance party shared a similar outlook arguing that the British government was brave to set up such a group, as it meant looking at their role in the conflict too and that perhaps the Irish government did not want to do this. However he went on to say that the Irish government probably cooperated as much with the group as the British did.⁶³⁸

633 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

634 Caitriona Ruane, interview by Dawn Walsh, November 29, 2013.

635 Dermot Ahern, interview by Dawn Walsh, November 8, 2013.

636 Sinn Féin official, interview by Dawn Walsh, November 25, 2013.

637 Jeffery Donaldson, interview by Dawn Walsh, November 8, 2013.

638 Stewart Dickson, interview by Dawn Walsh, November 27, 2013.

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The members also expressed a low level of international involvement. While the Group was given two international advisors, these only met with the Group on two or three occasions.⁶³⁹ Denis Bradley argued they were not central to the process and that their appointment was more a political move.⁶⁴⁰ Similarly, Lesley Carroll argued that they were not central to the process and that: 'what they added was credibility and probably an anticipated clout that didn't materialise... we could probably have managed without them'.⁶⁴¹ Furthermore, they stated that there was no US involvement.⁶⁴² Here the CGP differed from the other commissions examined in this dissertation which were all, to differing degrees, more international. This shows that the CGP had a very local character which was also stressed by its co-chairs as discussed below.

It is necessary to make some general comments on how the identity of the groups was perceived. The identities of the co-chairs dominated the discussion of the identity of the CGP. The commission was constantly referred to as the Eames-Bradley commission. The identity of the six other members was very rarely mentioned – though occasionally there were very general comments regarding the other members' identities. While all six were broadly overlooked, it is worth noting that some members had successfully been involved in cross-community work. However these members had almost no public profile outside of their direct locality and among those who they had previous contact with. Furthermore the members were overwhelmingly from outside the Belfast area (with the exception of Lesley Carroll, and even she was not born in Belfast). This is significant as many of the atrocities which they were dealing with had occurred in Belfast and so their direct experience of these was limited.

Robin Eames' identity was consistently framed in terms of his previous role as the leader of the Church of Ireland on the island of Ireland: 'the former Anglican archbishop of Armagh',

639 James Mackey, interview by Dawn Walsh, February 21, 2013.

640 Denis Bradley, interview by Dawn Walsh, March 4, 2013.

641 Lesley Carroll, interview by Dawn Walsh, February 26, 2013.

642 Lesley Carroll, interview by Dawn Walsh, February 26, 2013. Denis Bradley, interview by Dawn Walsh, March 4, 2013. James Mackey, interview by Dawn Walsh, February 21, 2013.

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and 'Former Church of Ireland primate Lord Robin Eames'.⁶⁴³ Conversely Denis Bradley's identity was framed in a number of different ways including his previous role on the Policing Board, his role as a priest in the Bogside in Derry/Londonderry in the 1970s and as an intermediary between the IRA and British government: 'Denis Bradley, the first vice-chairman of the policing board' and 'former priest, who was a secret conduit between the IRA and British intelligence up to the 1994 ceasefires'.⁶⁴⁴ The accusations regarding his truthfulness in the role of conduit resulted in a lack of trust in Bradley from the republican movement. Denis Bradley himself saw his involvement in policing as the reason for his involvement in the Group.⁶⁴⁵

On announcing the appointment of Robin Eames and Denis Bradley to co-chair the group, Secretary for State Peter Hain stated that: 'Eames and Bradley – who are highly respected across both communities'.⁶⁴⁶ They appeared to be viewed this way in the media: 'Archbishop Robin Eames and Denis Bradley, in their own way twin pillars of integrity, common-sense and compassion, to head a group to recommend ways of dealing with unfinished business'.⁶⁴⁷ This citation demonstrated that at the time of appointment, the co-chairs enjoyed a certain level of status across Northern Ireland. This view continued to be expressed in the media over two years after the report was published: 'high profile figures representing the unionist and nationalist communities respectively'.⁶⁴⁸ This suggested that the CGP may have been able to use its status (especially as seen in its co-chairs) to engage in its elements of directive mediation and may seem inconsistent with its primary activity as a facilitative-procedural mediator. On examination one found that identity was used to press for the group's recommendations on the rare occasions where directive mediation was used. However, in more instances where identity was referred to recommendations were rejected either *in spite of or because of identity of the group*.

643 'Eames and Bradley group to address legacy of Troubles', *Irish Times*, June 22, 2007. 'Ahern welcomes work of group set up to look at hurts of Troubles', *Irish Times*, June 23, 2007.

644 'Let's find a way to stop paying for the past', *Irish Times*, June 22, 2007. Henry McDonald, 'UN truth commission on Troubles "impossible"', *Observer*, October 11, 2009.

645 Lesley Carroll, interview by Dawn Walsh, February 26, 2013.

646 Press Release on behalf of Peter Hain, Secretary of State for Northern Ireland, about the formation of an independent consultative group to look at the legacy of the past, (22 June 2007), (Belfast: NIO, 2007).

647 'Thirty years of bloodshed but don't mention the war', *Irish Independent*, January 14, 2008.

648 'New Troubles debate urged', *Belfast Telegraph*, June 13, 2011.

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The respect for the co-chairs (and the group more widely) was used to engage in directive mediation. At the launch of its report the independent and representative nature of the group was stressed: 'independence as a group', 'varying experiences of the conflict', 'different political outlooks' and 'eight different people from different places, upbringings and experiences'.⁶⁴⁹ Lundy noted that the group was seen to be 'broadly representative of the political and religious communities in Northern Ireland'.⁶⁵⁰ Lesley Carroll argued that: 'The different backgrounds, I think it brought a great base of experience to the group and of contacts etc.'⁶⁵¹ However as has already been mentioned, with the exception of Lesley Carroll herself, none of the members were from the Belfast area.

Robin Eames also stressed the local experiences of members to strengthen its role and reinforce its recommendations: 'I have walked beside too many coffins and comforted too many families, to allow those stories of dedication to go untold', and 'Robin and I...we are part of the problem'.⁶⁵² Given the context at the launch, which will be discussed more in the section on intensity, it is reasonable to summarise that the identity of the group was being stressed to counter this reaction, and to underscore the representativeness of those involved in drafting the report and thus of the recommendations. Hence this was an example of the group and the media attempting to use the identity of the group, particularly its diversity, to advocate for its recommendations; which is an example of directive mediation.

However it is worth noting that despite the co-chairs and the other members being referred to favourably, their local identity and past experiences meant that there was no international status or expertise and experience which it could highlight here. As an Irish

649 Consultative Group on the Past, *Text of Report Launch Address by Denis Bradley and Robin Eames of the Consultative Group on the Past*, (28 January 2009), (Belfast: CGPNI, 2009).

650 Patricia Lundy, 'Commissioning the Past in Northern Ireland'. *Review of International Affairs, Special Edition on Transitional Justice*, vol. LX, no. 1138-1139 (2010): 113.

651 Lesley Carroll, interviewed by Dawn Walsh, February 26 2013.

652 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008). Consultative Group on the Past, *Text of Report Launch Address by Denis Bradley and Robin Eames of the Consultative Group on the Past, (28 January 2009)*, (Belfast: CGPNI, 2009).

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official put it: 'if you look at the difference between indigenous commissions versus international commissions, there is no doubt that an international commission brings a degree of objectivity and a sense of we will sit back from this and do the best job we can on the terms of reference, so yes the international dimension is hugely important'.⁶⁵³ High level expertise may also have ensured that the report included necessary detail and was of a sufficient quality making its implementation easier.

In the aftermath of the report's launch the identity of the group was again emphasized to defend its recommendations and press for their implementation. While being cautious the SDLP stated that the CGP was a: 'serious group of people, who have earned a serious response'.⁶⁵⁴ Robin Eames again stressed his personal involvement and local ties to the region in order to counter criticisms regarding the recognition payment stating that he had: 'stood beside more graves than any of you of those who were victims of the Troubles'.⁶⁵⁵ The past roles of Robin Eames and Denis Bradley (and international norms) were also cited to defend the group's recommendations, again particularly the recognition payment recommendation: 'The former Church of Ireland primate Lord Eames and the former Northern Ireland policing board chairman Denis Bradley defended their suggestion, pointing out that other countries, including Rwanda, had similar schemes'.⁶⁵⁶ This showed their past roles being used as part of a defence of a recommendation. The use of the Rwanda example may have underscored the role of the international experts particularly Brian Currin who worked in Rwanda. Three years later the group was described as some of 'best minds' in the country', in order to suggest that the CGP's recommendations should be revisited.⁶⁵⁷ Again while the identity of the co-chairs was presented favourably here, that it had relatively little leverage; the level of status and experience on which it could draw on were much lower than the other commissions. The members had no substantial international status nor did they have expertise in the areas of victims' services or transitional justice. As was previously

653 Irish official, interview by Dawn Walsh, May 1, 2013.

654 Alex Attwood, *Many concerns on Eames/Bradley Proposals: media release on behalf of Alex Attwood, Social Democratic and Labour Party (SDLP) MLA, (28 January 2009)*, (Belfast: SDLP, 2009).

655 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

656 Henry McDonald, 'National: Northern Ireland: Troubles compensation ruled out by government', *Guardian*, February 26, 2009.

657 'The compelling case for victims isn't waning, it's getting stronger', *Belfast Telegraph*, January 12, 2012.

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mentioned this may have indirectly undermined the report by effecting the nature and quality of its recommendations.

Within the media there was a clear idea that the recommendations of the CGP would and should not be implemented *despite* the high respect held for the chairs of the group: 'How on earth can two clever, worldly churchmen like Robin Eames and Denis Bradley have heaped so much ill will on themselves by proposing that families of all 3,500 people killed during Northern Ireland's 30-year Troubles be paid £12,000 per victim?' and

It would be hard to think of two more thoughtful, more compassionate or better informed men than Robin Eames and Denis Bradley...And yet when these two, and like-minded people on the Consultative Group on the Past, draw back the veil on their ideas, having consulted widely for most of a year, and reflected deeply on the issues, all hell breaks loose. So, far from prescribing a cure, they seem to be reopening old sores and setting back the healing process.⁶⁵⁸

These comments clearly indicated that the recommendations of the CGP were being resisted despite the respect and status of Robin Eames and Denis Bradley. Here the CGP cannot engage in directive mediation despite the positive identity of its co-chairs. This highlighted the difference between being respected locally and having significant expertise and international reputation. Actors could have made a general positive comment about an individual but still dismiss their work. However it would have been more difficult to dismiss specific expertise, furthermore if the members enjoyed higher international profiles they could have used this to attempt to press for their recommendations, and engage in directive mediation despite opposition, as Chris Patten did.

Identity was also used to directly denigrate the CGP and to resist the implementation of its report. David Simpson, of the DUP, directly attacked Denis Bradley, claiming that he 'had an

⁶⁵⁸ Northern Ireland families quietly say yes to £12,000 after all?' *Guardian Unlimited*, January 29, 2009. 'Payment for all who died would re-open old wounds', *Irish Independent*, January 26, 2009.

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agenda'.⁶⁵⁹ While this attack was halted by the Chairman of the committee, Sir Patrick Cormack, it clearly indicated that the identity of Denis Bradley was problematic for some members of the unionist community represented here by David Simpson. There was a similarly strong attack on certain members of the group by the Church of Ireland Gazette. Denis Bradley and Lesley Carroll were described as 'spoilt children who had not got their way' for pressing for the implementation of the CGP's recommendations.⁶⁶⁰ Again this attack was rebuked, this time by the churches, with the Standing committee of the Church of Ireland arguing that: 'A concentration on the issues seems...now to be more important than the plethora of personal comments made thus far on the personalities of the authors of the Report of the Consultative Group, particularly its co-chairpersons.'⁶⁶¹ Despite the fact these attacks on the identity of CGP members were rebuked, they demonstrated a clear attempt to use identity to counter pressure to implement the group's recommendations - and thus to counter directive mediation.

Certain victim groups were vitriolic in their rejection of the recommendations, and included the identity of the group in this rejection. *The West Tyrone Voice* argued that: 'had victims of terrorism been included on this panel, then it could have been argued that it was attempting to be victim-centred', 'The various church authorities ought to call clergy members in for questioning for their insulting behaviour...If the churches represented on the CGP...do not discipline these offending clergy and church members, then they too will be condoning what this quango has said'.⁶⁶² Similarly, Families Acting for Innocent Relatives (FAIR) claimed that the: 'Group was not representative and that this would lead inexorably to a flawed partisan report'.⁶⁶³ Even a more benign assessment concluded that the 'team

659 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

660 Church of Ireland Gazette, 'Back to the Past?' June 17 2011. Claire Harrison, 'Presbyterian anger over 'spoilt child' jibe at cleric', *Belfast Telegraph*, June 16, 2011.

661 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

662 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

663 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010). FAIR was founded by Willie Frazer in 1998 and claimed to represent the victims of IRA violence in South Armagh. It was criticized by some for not representing

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was oddly assorted and lacked visible expertise...Eames and Bradley are way out of their depth at best naïve'.⁶⁶⁴ These claims all clearly also showed the use of identity to counter efforts the recommendations of the CGP and thus to counter and pre-empt any attempts at directive mediation.⁶⁶⁵ Again had the members had more significant expertise and international status this denigration would have been more difficult and it would have been easier for the CGP to use leverage to press for its report's implementation; engaging in directive mediation.

It may be argued that some of the rejections of the appropriateness of the CGP's identity were political and driven by the intensity felt around the issue of the past - particularly in the unionist community and above all surrounding the recognition payment recommendation. This may well be the case, but questions around the group's identity were reinforced by comments made by Secretary of State Peter Hain on the CGP's formation and by the group itself. An implicit acknowledgement of the lack of necessary expertise of the group was seen in the inclusion and discussion of the role of the international experts. Peter Hain stated that the groups could seek: 'impartial advice...from their wide-ranging experience' and that it 'may choose to engage additional advisers to ensure it has access to a wide range of expert advice'.⁶⁶⁶ Robin Eames and Denis Bradley stated that they would: 'listen to these experts'.⁶⁶⁷ These comments indicated that neither Peter Hain nor Robin Eames and Denis Bradley felt the members of the group had the necessary expertise to carry out the task without outside input. While groups with high level of expertise may still engage experts these comments - when taken in conjunction with the background of the CGP members and the other identity based rejections of its recommendations - indicated

victims of loyalists or state security forces. It also came under criticism in 2011 when the Special EU programmes body stopped its funding and sought reimbursement of previous funding due to accounting irregularities.

664 'No sign yet of truth, justice or reconciliation', *Irish Times*, January 31, 2009.

665 The Northern Ireland Retired Police Officers Association also commented on the identity of the CGP members, arguing that the use of language of forgiveness and reconciliation was unsurprising given 'the former professions of the co-chairs as clergymen' House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010). However this comment shows how identity affected the content and not the process of the mediation and therefore is not directly relevant to this dissertation.

666 Press Release on behalf of Peter Hain, Secretary of State for Northern Ireland, about the formation of an independent consultative group to look at the legacy of the past, (22 June 2007), (Belfast: NIO, 2007).

667 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008).

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that the CGP did not possess the necessary identity to press for the implementation of its recommendations, and act as directive mediators.

The lack of expertise may have made the group more likely to use facilitative-procedural mediation where formulative mediation may otherwise have occurred. The group members had no substantial experience of providing victims' services or transitional justice. This lessened their ability to make detailed recommendations and to claim ownership of recommendations made. Lack of expertise (and TOR discussed later) made what could have been formulative mediation become facilitative-procedural mediation. This contrasts with the ICP which claimed ownership of its recommendations and provided detail, thus engaging in formulative mediation.

There were references to the respect held for the co-chairs of the CGP and their status in Northern Ireland society. Some of these established a high status for the group at its inception and others were used to press for the implementation of its recommendations and thus engage in directive mediation. However, identity was predominantly unable to assist the group to engage in directive mediation. Actors countered attempts to engage in directive mediation - here pressing for the implementation of recommendations - despite or because of its identity.

Moreover, while in some ways the past experiences of the members as church figures or sportsmen, for example, may have somewhat predisposed the group to the most frequently used type of mediation; facilitative-procedural mediation. However, church and sporting organisations are not always consensus-based and community driven, there are often hierarchical and power-based structures. Thus such past experiences could also be predisposed to directive mediation. No actor made a connection between these pasts and the activities of the CGP. Thus the use of facilitative-procedural mediation seems more the result of a lack status to carry out directive mediation combined with TOR (discussed below) which drove the use of facilitative-procedural mediation.

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Issue intensity

There was a high level of intensity surrounding the issue of how to deal with the past, both generally and in relation to specific incidents in Northern Ireland. This was acknowledged by Secretary for State Peter Hain when he announced the setting up of the CGP: 'I know that this will not be easy. I understand that many do not want to discuss the past. It is too painful and personal and I respect those views'.⁶⁶⁸ This understanding of the high level of intensity was also recognised by the group itself. During its work it recognised the 'emotive issues' involved in general, and specifically in relation to the relatives of members of the security services and past members it realised that they felt:

Obvious anger....at being attacked and killed as they performed their duty, which as they saw it was - defending society from falling into anarchy... Their desire was that such people should be dealt with through the criminal justice system and they are dismayed at the prospect that no-one will be prosecuted for the death of their loved ones.⁶⁶⁹

This indicated how high the level of intensity around this issue was and how difficult it would be to find a system which would meet the needs of these people.

In its report the CGP continued to recognise this high level of intensity. It acknowledged 'the depth of hurt and suspicion that still exists in every part of our society'.⁶⁷⁰ During the consultation on its report the House of Commons Northern Ireland Affairs Committee Denis Bradley declared that: 'This one could not have been dealt with at the Good Friday Agreement and was not dealt with at the Good Friday Agreement' and the report of the committee argued that 'given the nature of the past and the raw hurt many still feel in Northern Ireland' that it would be difficult to deal with the issue and that the group's effort

668 Press Release on behalf of Peter Hain, Secretary of State for Northern Ireland, about the formation of an independent consultative group to look at the legacy of the past, (22 June 2007), (Belfast: NIO, 2007).

669 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008).

670 Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

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to do so would spark debate.⁶⁷¹ This indicated that there were high levels of intensity around the issue of the past.

It is also important to note that the intensity around the issue was felt differently across the two main communities. The nationalist community had particularly strong feelings around the actions of the British state, whereas in the unionist community the focus was on defending elements of the state, such as the RUC, and on the activities of the IRA. It is arguable that the intensity of feeling was heightened by the CGP's report, though it is most likely more accurate to say it exposed underlying intensity of feeling. This was particularly evident in the case of the recognition payment, which was utterly rejected in the unionist community, as drawing no moral distinction between innocent victims and terrorists.⁶⁷² In many ways the intensity of feeling around the issue of the past and how it manifested itself in general and as a reaction to the report occurred in a very similar way to the issue of policing.⁶⁷³ Having established that there were high levels of intensity around the issue, this chapter now recaps what effect the current literature predicts this will have on mediation type before examining the data for the CGP.

As discussed in previous chapters, existing literature finds that the greater the intensity of a conflict the more interventionist the type of mediation which will be used. The theoretical reasoning offered for this finding is that the more intense a conflict, the more difficult it is for the conflicting parties to reach an agreement alone, and the more assistance they will need from third parties. Therefore high levels of intensity of feeling around the past were expected to be accompanied by a highly interventionist mediation type such as directive mediation. If the intensity of feeling around an issue is affecting the type of mediation used, more interventionist mediators should refer to it and justify their involvement in terms of

671 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010). The broader effect of the GFA on the CGP is dealt with in the relevant section in this chapter.

672 Nigel Dodds, *Dodds lashes Eames-Bradley at PM's Question Time': media release on behalf of Nigel Dodds, Democratic Unionist Party (DUP) MP, (28 January 2009)*, (Belfast: DUP, 2009).

673 The broader connections between the different issues are explored in the second chapter.

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overcoming the associated challenges. Conversely, if the intensity of feeling around an issue is low, and thus leads to the use of less interventionist mediation, mediators would highlight how the parties can reach a compromise with a lower level of assistance. As is predicted by the current literature, this high level of intensity made engaging in facilitative-procedural mediation difficult. The CGP commented that: 'One of the Group's main challenges has been consulting a society which, despite the significant achievements made towards peace and stable government, remains divided along age old lines deeply rooted in the past', this suggested that this level of intensity made it difficult for the group to engage in facilitative-procedural mediation.⁶⁷⁴ This confirmed the expectations of the current literature. The CGP's facilitative-procedural mediation activities, consultation and the consequent proposing of recommendations which have been drawn from the conflict society, were made more difficult by the high level of intensity around the issue of the past, and particularly how this intensity was felt across 'old lines'. The existing literature would suggest that in response to this the group would engage in more interventionist types of mediation.

Yet the high levels of intensity surrounding the issue of the past were also used to counter the more interventionist type of mediation which the CGP engaged in; directive mediation. The unionist dominated House of Commons Northern Ireland Affairs Committee used the intensity surrounding the issue as a reason not to implement its recommendations, and went so far as to suggest that doing so would have negative effects on Northern Ireland: 'sectional divisiveness of that reaction in itself highlighted the danger that implementing proposals', and 'much of the Report could lead to further division', arguing that 'even an incremental approach' to implementing its recommendations should be avoided.⁶⁷⁵ The intense political response provided 'a way out of the main proposals in the Eames-Bradley report'.⁶⁷⁶ The Oireachtas Joint Committee on the Implementation of the Good Friday Agreement also noted that 'Given the deep divisions, raw feelings, profound hurt and strong

674 Consultative Group on the Past, *Report of the Consultative Group on the Past*, (23 January 2009; launched on 28 January 2009), (Belfast: CGPNI, 2009).

675 House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

676 'We should know soon if Denis Bradley is right', *Belfast Telegraph*, May 18, 2010.

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opinions that exist in a society that has suffered decades of violence, it is not surprising that some of the 31 recommendations outlined in the report have proven to be controversial.⁶⁷⁷ Thus the intensity was being used to counter attempts to push for implementation; this is evidence of directive mediation.

At the launch of the report there were 'angry and emotional scenes'. The governments also indicated at this point that 'it would take months before they would issue their definitive response to the report'.⁶⁷⁸ The scenes at the launch of the report made responding to the report more difficult for the governments and thus there were no moves to implement its recommendations immediately. This made it more difficult for the group to push more the implementation of its report, limiting its ability to engage in directive mediation, as it took the impetus out of the process.

This use of the intensity around the issue to counter directive mediation did not just occur as a general reaction to the report. It was also a very specific response against attempts to defend or push for the implementation of the most controversial recommendation, the recognition payment. Nigel Dodds, Deputy Leader of the DUP, 'called upon the Prime Minister to reject the recommendation of the Eames-Bradley Consultative Group on the Past to make a £12,000 payment to the families of everyone who lost their lives in Northern Ireland regardless of whether or not they were a terrorist' describing it as 'morally obscene' and argued that it had 'provoked a furious backlash right across the community'.⁶⁷⁹ Reg Empey of the UUP stated that 'The outrage felt right across the community in Northern Ireland', as a response to this recommendation meant that 'it is impossible to envisage how a report that has provoked such justifiable outrage with its failure to distinguish between terrorists and victims will be able to offer a way forward for our society in addressing the past'.⁶⁸⁰ The report 'politically self-destructed over its call for £12,000 "recognition

677 Oireachtas Joint Committee on the Implementation of the Good Friday Agreement, *Consultative Group on the Past outlines findings of its report on dealing with the legacy of the North's Troubles*, (March, 5, 2009).

678 Gerry Moriarty and Dan Keenan, 'Governments give cautious response to Eames-Bradley plans', *Irish Times*, January 29, 2009.

679 Nigel Dodds, *Dodds lashes Eames-Bradley at PM's Question Time: media release on behalf of Nigel Dodds, Democratic Unionist Party (DUP) MP, (28 January 2009)*, (Belfast: DUP, 2009).

680 Reg Empey, *Report fails to distinguish between victims and terrorists', media release on behalf of Reg Empey, leader of the Ulster Unionist Party (UUP)*, (Belfast: UUP, 2009).

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payment” for victims’ families.⁶⁸¹ While this recommendation was only one of thirty one, and was arguably a minor element of the report, it came to dominate the report, 90 per cent of the public could only recall the proposal of a £12,000 pay-out to every bereaved family.⁶⁸² The fact that such intensity was evident around a recommendation that defined the CGP’s report in the public’s mind made it incredibly difficult for the group to press for the implementation of any of its recommendation; to be directive mediators. CGP member Lesley Carroll and Co-Chair Denis Bradley argued that there were three or four other issues, such as collusion and sectarianism, which were at least as controversial but did not receive attention.⁶⁸³

The publication of the Saville report, following the enquiry into the events of Bloody Sunday, refocused attention on the issue of dealing with the past. It was used by Robin Eames to suggest that the time was now right for the implementation of the CGP’s report, or that at the very least it should be revisited. ‘Speaking just days after publication of the Bloody Sunday report Lord Eames said he still believes a way forward can be found from the report of the Consultative Group on the Past’.⁶⁸⁴ This demonstrated how even in the most intense environments opportunities to engage in directive mediation can arise when the feelings around an issue change due to a particular event.

The level of intensity around the issue of the past made the use of facilitative-procedural mediation difficult, as was predicted by current literature. The intensity of the issue of the past generally, and the ‘recognition payment’ specifically, were used to counter attempts to push for implementation, thus to counter directive mediation. This may initially seem counter to the suggestions in current literature that high intensity would lead to directive mediation. Yet this intensity also led to members defending this recommendation and pressing for its implementation, attempting to engage in directive mediation. In this case it is important to note how the different variables interact. High intensity may only result in

681 Noel McAdam, ‘A tortuous process which shows little sign of resolution’, *Belfast Telegraph*, February 27, 2012.

682 John Burns, ‘Victim commission “exposes” its rival’s costliest mistake’, *Sunday Times*, December 20, 2009.

683 Lesley Carroll, interview by Dawn Walsh, February 26, 2013. Denis Bradley, interview by Dawn Walsh, March 4 2013.

684 ‘A new lease of life for Eames-Bradley; Saville Report “has revived the will to deal with the past”’, *Belfast Telegraph*, June 25, 2010.

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directive mediation where other variables also facilitate this - such as high status of the mediator. These issues of interaction are discussed in the conclusion to this dissertation.

The TOR

The TOR for the CGP were the most concise provided to the groups examined in this dissertation. Like the IMC they were not provided in the GFA. In his announcement of the formation of the CGP on the June 22nd 2007, the then Secretary of State for Northern Ireland, Peter Hain outlined the group's TOR. The Group was asked to:

- consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years;
- make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past;
- present a report, which will be published, setting out conclusions to the Secretary of State for Northern Ireland, by summer 2008.
- In going about its work, the Consultative Group should consider:
 - the landscape of initiatives that have already been taken by Governments and non-Governmental groups;
 - work already done – and ongoing – in this area, including consultation exercises;
 - the resources that would be required to implement any recommendations that it makes.

These TOR directly contributed to the use of facilitative-procedural mediation. This was as a result of both the explicit TOR provided and importantly the interpretation the group took of these TOR. These TOR could have led to formulative mediation but this did not occur. There were no indications in the TOR that the group would engage in directive mediation. The TOR explicitly outlined that the group should 'consult across the community'. This was indicative of facilitative-procedural mediation, and this language was used by the group both in a speech by the co-chairs in 2008 and in the group's report: 'we embarked on an extensive public consultation', and the 'the widest possible consultation'.⁶⁸⁵ Furthermore, the extent of this consultation was given as one of the reasons which the groups' report was

685 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008). Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

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delayed from 2008 to January 2009 due to ‘the extent of the consultation, the Group was not able to report until January 2009’.⁶⁸⁶ This consultation formed a large part of the group’s work, was directly provided for in the TOR and was indicative of facilitative-procedural mediation.

The instruction that the group should consult: ‘consider: the landscape of initiatives that have already been taken by Governments and non-Governmental groups’, and ‘work already done – and ongoing – in this area, including consultation exercises’, also led to facilitative-procedural mediation. The group praised work done by both the Historical Enquiries Team (HET) and Healing through Remembering (HTR): ‘the Group has been impressed by the HET. It considers the project to be innovative and valuable’ and ‘The Group fully supports the idea of a shared day of reflection (first initiated in Northern Ireland in 2007 by HTR, open to all, and accepts 21st June as an appropriate day’.⁶⁸⁷ The CGP highlighted that the work of these groups was broadly acceptable to both sections of Northern Ireland society, despite some concerns. This was in keeping with facilitative-procedural mediation.

Interestingly, the element of the TOR which was referred to most frequently was not included in the actual TOR. Rather it was used by Hain more broadly in the statement announcing the group’s formation: ‘Secretary of State Peter Hain MP has announced the formation of an independent consultative group *to seek a consensus across the community in Northern Ireland* on the best way deal with the legacy of the past’ (emphasis added).⁶⁸⁸

This issue of consensus became the definitive element of the groups’ work. Such seeking of a consensus across the community was indicative of facilitative-procedural mediation. The importance of this element can be seen in the group’s reference to it: ‘our remit was to seek a consensus’, ‘the Group has sought to judge where consensus may lie’.⁶⁸⁹ Peter Hain’s

686 Ibid.

687 Ibid.

688 Press Release on behalf of Peter Hain, Secretary of State for Northern Ireland, about the formation of an independent consultative group to look at the legacy of the past, (22 June 2007), (Belfast: NIO, 2007).

689 Consultative Group on the Past, *Speech given by Lord Robin Eames and Denis Bradley, co-chairpersons of the Consultative Group on the Past, at the Innovation Centre, Titanic Quarter, Belfast, (29 May 2008)*, (Belfast: CGPNI, 2008). Consultative Group on the Past, *Report of the Consultative Group on the Past, (23 January 2009; launched on 28 January 2009)*, (Belfast: CGPNI, 2009).

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successor Shaun Woodward also viewed the group in such a way, saying it would: ‘tell us whether consensus exists’.⁶⁹⁰ Both Denis Bradley and Lesley Carroll stated that the Group had to discuss what was meant by consensus, and that they felt that consensus could be seen as the report having something for everyone and that people could accept it, even if it involved some sacrifice.⁶⁹¹ The seeking of consensus and stressing areas where it felt there was agreement was in keeping with facilitative-procedural mediation. This is important as it demonstrated that the broader wording surrounding the announcement also affected what type of mediation was used and effectively became part of the TOR. In the Northern Ireland Assembly’s Committee for the Office of the First and Deputy First Minister SDLP politician Alex Attwood insisted that by seeking consensus the British government ensured that there would be no real progress.⁶⁹² This raised the issue of government openness to acting on the issue. This is further emphasised by the fact that there was a change of government in Britain and the newly elected conservative government may have not had the political will to follow through with a group set up by the previous government.

The reference in the TOR to ‘recommendations’ may lead to an expectation that the CGP would have engaged in formulative mediation, yet this was not the case. As has already been explained, the recommendations made by the group were not indicative of formulative mediation as there were questions surrounding whether they contained the necessary detail. In addition, and more fundamentally the group did not take responsibility for the recommendations or stress their authorship of the recommendations. Conversely it repeatedly stressed that they were effectively authored by those who engaged with the group, not the group itself. The group used the TOR to explain why it did not revisit the definition of ‘victim’ which resulted in much of the controversy surrounding its recognition payment: ‘We were not in a position, nor did we desire to go and seek the changing of that

690 Adam Harvey, ‘Ahern, Woodward discuss Miami Showband killings’, *Irish Times*, September 13 2007.

691 Lesley Carroll, interviewed by Dawn Walsh, February 26 2013. Denis Bradley, interview by Dawn Walsh, March 4 2013.

692 Northern Ireland Assembly, Committee for the Office of the First and the Deputy First Minister, Official Report, Northern Ireland Community Relations Council,(December, 9, 2009), (Belfast: NIO, 2009).

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definition'.⁶⁹³ This demonstrated that the group used its TOR to divest itself of responsibility for recommendations, thus not engaging in formulative mediation.

The CGP also used its TOR as justification to avoid engaging in directive mediation. Denis Bradley argued that it was not possible for the group to press for implementation of its report, given that the group ceased to exist when it issued its report to the Secretary of State:

Firstly, we will press nothing from here on in. Legally we are no longer in existence as a consultative group. That finished on the day of the launch of our report, so we will be pressing no one and we will not be lobbying any politician about anything. I think that is proper and correct that in some ways this consultation has now been done, been given to the Secretary of State and it is up for analysis and it is proper that the debate begins and continues.⁶⁹⁴

The ICP had ceased to legally exist after presenting its report. But while some CGP members went on to press for the implementation of its report, at certain points, it was not to the same extent as the ICP. This may have been affected by the fact the ICP had legislation to assess, whereas the CGP's report never reached this stage. However, the contrasting level of mediator status is likely to have played a key role - particularly as to the weight given to any comments that were made by former commission/group members.

The TOR directly contributed to the use of facilitative-procedural mediation. It led to widespread consultation and the highlighting of widely accepted existing initiatives. However there were effects which were less predictable. The language surrounding the announcement of the group's remit, which mentioned 'consensus', had a decisive role again leading to facilitative-procedural mediation. Furthermore, this emphasis on consensus also led the group to stress that its recommendations were effectively authored by the community and not by the group. Ensuring the CGP did not engage in formulative mediation. Finally, the group used its TOR to explain why it was not pressing for implementation of its report, but as members did go on to push for implementation on certain occasions this did not have a strong effect.

⁶⁹³ House of Commons Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*, (London: HMSO, 2010).

⁶⁹⁴ Ibid.

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The GFA

The GFA provided the broad environment in which the CGP operated. However the GFA's links to the CGP were arguably weaker than that of the three other commissions discussed in this dissertation, particularly the ICP and IICD. It is possible to argue that the GFA did deal with some issues regarding the past by 'disaggregating them and dealing with them incrementally', under headings such as prisoners and victims.⁶⁹⁵ However the reference to victims, which did overlap with the CGP's work, were general and fed more directly into the work of the work of commissioners designated to deal exclusively with victims. Despite the less direct link the GFA may still have affected what type of mediation the CGP used.

The legitimacy of the GFA may have affected the mediation type used by the CGP. The popular endorsement of the agreement may have allowed the CGP to engage in more interventionist forms of mediation if it could connect its work to the GFA. If the nature of the GFA was affecting the type of mediation in which the CGP engaged, the group and/or others should be seen referring back to the GFA in explaining its activities. Actors may have highlighted areas where the group's activities appeared not to be consistent with the GFA.

The specific nature of the GFA as a consociational agreement also had to be considered. As has already been established, there are three ways in which the GFA's consociationalism may be seen affecting the mediation type. There may have been an indirect effect as the international and Lijphartian elements may have encouraged the inclusion of international and/or local members respectively. In the case of the CGP it is important to note that international element which affected the three other commissions under examination in this dissertation did not affect the CGP. There was no international member on the CGP, thus the international nature of the GFA did not indirectly affect mediation type, by leading to the inclusion of an international member. Rather, the failure of the CGP to follow the internationalised pattern of the GFA and other commissions inhibited its ability to engage in more interventionist forms of mediation.

695 Patricia Lundy, 'Commissioning the Past in Northern Ireland', *Review of International Affairs, Special Edition on Transitional Justice*, vol. LX, no. 1138-1139 (2010): 108-109.

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The Lijphartian elements of consociationalism may have also indirectly affected mediation type by leading to the inclusion of local members seen as representative of the local communities. This may be seen in the inclusion of a number of members and particularly in the co-chairing of the group by two individuals from the different backgrounds. Thus the representative identity of the CGP is in keeping with this aspect of consociationalism. The effect of this representativeness was examined under the mediator identity section of this chapter. Here it is worth noting that the representation was not political but religious (and cultural) which is slightly different from consociationalism's usual focus on the political.

The Lijphartian elements of the GFA are also seen as a cooperative and voluntary form of power-sharing this creates an expectation that it would lead to facilitative-procedural or formulative mediation. Key elements of consociationalism, such as power-sharing and minority veto would appear to be incompatible with the power and leverage elements of directive mediation. Finally, the GFA incorporated a coercive element; the two governments essentially pressed the parties into the arrangement by making alternatives very unattractive. Given the coercive nature of the consociationalism associated with the GFA, the agreement may have been more likely to lead to directive mediation.

The relatively high regard in which the GFA was held, as it had been signed by all but one of the main political parties in Northern Ireland and endorsed in popular referendums, was used by the CGP to engage in one of its rare uses of directive mediation. The group argued that it: 'recognises the considerable achievements of the last ten years, starting with the Agreement...But these achievements must be consolidated, the institutions of the future must build for the future, and the past dealt with in a safe, but time-limited, framework'.⁶⁹⁶ Here the group use the GFA and its achievements to press for the implementation of its framework to deal with the issue of the past. They go as far as to imply that if the past is not dealt with that the gains made could be reversed or lost.

⁶⁹⁶ Consultative Group on the Past, *Report of the Consultative Group on the Past*, (23 January 2009; launched on 28 January 2009), (Belfast: CGPNI, 2009).

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No other actor sought to substantially link the work of the CGP to the GFA. There were no efforts to use the CGP's links to the agreement to justify its engaging in any particular activities. The lack of direct provision for the group in the GFA was not utilised in attempts to undermine it - unlike comments Sinn Féin made regarding the IMC. However, the legitimacy that the GFA afforded to commissions which were directly provided for in its text did not apply to the CGP. Jeffery Donaldson argued that it was not a connection to the GFA or lack thereof that was important but rather the commission's communication skills; the commission undermined its own work by allowing its recommendations to be leaked out before the report was released. This allowed journalists to focus on the most controversial elements out of context and this wholly undermined its work.⁶⁹⁷

The CGP engaged predominantly in facilitative-procedural mediation which is seen as consistent with the Lijphartian elements of consociationalism such as consensus. Consensus itself was an important issue for the Group as discussed above. There were no indications that the position which consociationalism takes on consensus had an effect on the mediation type used by the group. No actor made this link, and the significance of consensus arose from the TOR rather than the GFA. The small aspect of directive mediation attempted by the CGP, and the statements of support by others, were in keeping with the coercive element of the GFA. However this was a very minor part of the CGP's work. The GFA seems to have had substantially less effect on the CGP than the other commissions. This is logical due to the fact it was not directly provided for in the agreement and was established later than the other commissions. These factors distanced it further from the GFA.

The consociational nature of the GFA did contribute indirectly to the need for and formation of the CGP. As has already been mentioned, the GFA did not comprehensively address the issue of the past. This has been explained by the desire to avoid potentially disruptive issues

⁶⁹⁷ Jeffery Donaldson, interview by Dawn Walsh, November 8, 2013.

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which could have prevented the ability to reach an agreement.⁶⁹⁸ Both Denis Bradley and Lesley Carroll said that it would have been helpful if the past was more comprehensively addressed in the GFA but that it is understandable that it was not and it was probably unachievable at the time.⁶⁹⁹ However it can also be attributed to the nature of the Agreement. Consociational agreements and the GFA in particular, are forward-looking and do not make judgements regarding the causes of the conflict.

Consociationalism's four main elements do not deal with the issue of the past which is unsurprising given that it originated in states which had not suffered a violent conflict.⁷⁰⁰ Its protection of communal identity may imply that both associated narratives of the past are valid, though this is problematic given their incompatibility. This meant that there was no clear framework offered by the GFA's consociationalism to deal with the issue of the past. Furthermore, it is possible to argue that in order to build the trust and working relationships necessary to allow consociationalism to function one must avoid focusing on the past. Past focused mechanisms may designate blame in a manner that makes the operation of the consociational institutions difficult. This raised a serious question as to the relationship between dealing with the past and consociationalism.

The GFA had a limited effect on the CGP. Its international nature did not lead to an international member being included in the CGP. The focus on power-sharing may well have contributed to an inclusion of members from the different communities. The effect of these identities on mediation type is explored in the section of this chapter on mediator identity. On only one occasion the group used the GFA and its associated gains to press for the implementation of its framework. These small pieces of directive mediation attempted by the CGP, and the statements of support by others were consistent with the coercive element of the GFA. However these made up a small element of its work and the discussions surrounding it.

698 Patricia Lundy and Mark Mc Govern, 'Truth Justice and Dealing with the Legacy of the Past in Northern Ireland, 1998-2008'. *Ethnopolitics*, 17, no. 1 (2008): 180-182.

699 Lesley Carroll, interview by Dawn Walsh, February 26, 2013. Denis Bradley, interview by Dawn Walsh, March 4, 2013.

700 Austria had experienced violent conflict in the 1930s. It chose to avoid examining this conflict once it had set up consociational institutions.

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There were no indications that the GFA had any effect on the group's predominant use of facilitative-procedural mediation. The legitimacy which the GFA lent to other commissions did not apply in this case, arguably due to the weakness of the link between the CGP and the GFA. The examination of the relationship between the group and the agreement did raise an interesting question as to the role that consociationalism played in relation to dealing with the past in the case of Northern Ireland. This also raises a more general question regarding the relationship between dealing with the past and consociational agreements. This issue is not directly relevant to this dissertation but the author would encourage future research regarding the relationship.

Conclusion

The CGP engaged predominantly in facilitative-procedural mediation with some minor use of directive mediation. It engaged in a broad consultation, controlled its interactions with actors, highlighted broadly accepted existing initiatives, and forwarded what it felt was a consensus on how to deal with the issue of the past. It attempted to defend its recommendations and push for their implementation at certain points. The GFA had a very small effect on mediation type and was referred to once to engage in directive mediation. It did indirectly affect mediation type by influencing the composition of the group regarding the inclusion of local members but these members were not explicitly political representatives. The more significant link between the GFA and the CGP was observed in the difficulty that consociationalism has in dealing with past conflicts. While not being directly relevant to this dissertation it has highlighted an important and neglected question relating not only to the Northern Ireland case but to the use of consociationalism in general.

Mediator identity, issue intensity, and the TOR all affected the use of mediation type. The high status of members was referred to by the group and others, particularly the co-chairs, in relation to directive mediation relating to pressing for implementation, and engaging in directive mediation. These comments aside, the CGP's members - even the co-chairs Robin

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Eames and Denis Bradley - had a much lower status than members of other commissions. Directive mediation was generally resisted despite or because of the identity of the CGP. The group had low international status and lacked substantial expertise in the areas of victims' services and transitional justice. This lack of expertise and very low level of internationalisation made it difficult for the group to engage in interventionist types of mediation.

The intensity of feeling around the issue of the past and victims made facilitative-procedural mediation difficult, as would be expected, but this intensity was also used to counter directive mediation rather than contribute to its use. This case contrasts with that of the ICP, where attempts to use issue intensity to resist directive mediation were overcome by the high status of the commission. This comparison underscored the interaction of variables, which is explored in the conclusion of this dissertation.

The TOR directly led to the facilitative-procedural mediation used. The group used the TOR to shift the responsibility and authorship of the recommendations. This can be seen in relation to the definition of a victim, which became very contentious. The term 'consensus', used by Peter Hain in announcing the group's formation, was pivotal. As a result, all recommendations were presented as stemming directly from the public at large, and the group was effectively demoted to communicating these. This again showed the interaction of two variables as the lack of mediator expertise may also have led to reticent authorship. This may be contrasted with the ICP, where the status and expertise of the commission led to it having the necessary identity to take ownership of its recommendations regardless of their contentiousness.

Conclusion

CONCLUSION

This dissertation began by asking how independent commissions charged with managing certain contentious issues in Northern Ireland after the Good Friday Agreement operated, and how key variables affected their behaviour. This is a subject which has received little consideration. This research allows Northern Ireland scholars to identify precisely what role the independent commissions played. There is a large quantity of literature on the Northern Ireland process and considerable claims have been made as to its international implications and value. However, these international interventions had not been systematically studied in order to compare or assess their value. This dissertation adds to our understanding of mediation, highlighting its importance in the implementation phase of peace processes. This phase of a peace process is very challenging and in most cases the sources of conflict remerge. This analysis addresses the potential for mediators to help conflict parties navigate this challenging phase. As current literature shows more interventionist mediations to be more successful, this dissertation ascertains what combination of factors will facilitate such interventions.

Most peace agreements fail.⁷⁰¹ One of the key elements of this success (or failure) is the role of third parties.⁷⁰² Regional and global powers often have a key role in facilitating the signing of peace agreements. Vitrally, they must remain involved after the agreement is concluded. Yet how these third parties should act and what role they can play in implementing peace agreements is not clear. This dissertation addresses this crucial question. A type of mediation is used to provide meaningful distinctions regarding the different types of activities the commissions engaged in and levels of intervention in the process which these represented. This type includes facilitative-procedural mediation, formulative mediation, and directive mediation.

⁷⁰¹ John Stedman, *Implementing Peace Agreements in Civil Wars: Lessons and Recommendations for Policymakers*, (Stanford University: Centre for International Security and Cooperation, 2001) 1.

Conclusion

Bercovitch and Wells lamented the failure of scholars to adequately address the question of what affects mediation type.⁷⁰³ It is unlikely that the activities undertaken - i.e. the type of mediation used by third parties - is coincidental. Speaking to this question, this dissertation examined how four key factors (mediator identity, issue intensity, TOR and the peace agreement) affected the choice of mediation type.

Entrusting the management of specific issues to independent bodies - including the issues of reforming policing, decommissioning paramilitary arms, demilitarization and monitoring paramilitary activity and addressing the past violent conflict and victims' issues - provided a means through which third parties could continue to be involved in the Northern Ireland peace process. The British, Irish, and US governments had been instrumental in the reaching of the 1998 agreement. Their role in achieving a peace agreement has been examined but their role in the implementation stage had not been addressed. This dissertation addresses the role of these actors and other third parties and in doing so fills an important gap in the narrative of the Northern Ireland peace process.

This conclusion combines the findings of this analysis on each commission and explicates what a comparison between the different commissions reveals. The effect of each factor on the mediation type used by the commissions is outlined and the interactions between the different variables are examined. Finally how these findings are more widely applicable to other conflicts is outlined.

Variables (mediator identity, issue intensity, TOR, GFA)

This section outlines what this research has found regarding the effects of the four variables on mediation type. These variables were drawn from the current literature on mediation and adapted for the post-agreement context and the Northern Ireland environment. The commissions examined engaged in all three types of mediation: facilitative-procedural

703 Jacob Bercovitch and Richard Wells, 'Evaluating Mediation Strategies'. *Peace & Change*, 18, no. 1 (1993): 3.

Conclusion

mediation, formulative mediation, and directive mediation. The ICP and the IICD engaged primarily in directive mediation. The IMC had significant elements of both facilitative-procedural and formulative mediation and the CGP engaged chiefly in facilitative-procedural mediation. There was clear evidence that, taken in combination, the four variables examined were instrumental in deciding what mediation type was used. This research confirmed and underscored the current perception that perceived mediator identity strongly affects the activities in which a mediator engages. It also indicated that the direct mediation context - operationalized as TOR - affects mediation type. While there were some indications that issue intensity affected mediation type, this was largely mitigated by mediator identity and TOR. Finally, this dissertation found that peace agreements can bestow legitimacy on mediators and that mediation type is likely to be consistent with the principles and nature of the agreement. Findings regarding each individual variable are now discussed, followed by an examination of how the variables interacted.

Mediator identity

Before the effects of mediator identity on mediation type were discussed it was necessary to confirm how the individual members worked together. Each of the commissions worked as a team. Where a commission made recommendations or decisions these were reached on a consensus-basis. Work was divided on the basis of the expertise, experiences, and contacts of the various members.

The commissions varied regarding the balance of power/attention given to the different members. The IICD was dominated by John De Chastelain's identity and high status due to his previous military position and experience. The ICP became known as the Patten commission, clearly reflecting that Chris Patten's identity dominated, though Peter Smyth and Maurice Hayes also attracted some attention as local members. Similarly, the CGP was referred to as Eames-Bradley; this again showed that the identity of the co-chairs dominated the group. The IMC was the most collegial of the commissions - though John Alderdice was occasionally mistakenly referred to as the chair - different members identities were focused on at different times.

Conclusion

The role of past relationships with conflict parties was generally very moderate and did not lead to commissions using certain mediation types. John De Chastelain's role on the IBD was referred to by several parties; it was considered to have been a very positive contribution and gave him increased standing among actors. Despite this positive past relationship, additional actors, international inspectors, and local clergy were needed during decommissioning to make its verification acceptable across the communities. This fact showed that a positive past relationship alone does not allow the mediator to act as a unilateral verifier. The lack of trust between Denis Bradley and republicans - particularly Martin McGuinness - due to the former's role as conduit between the British government and republicans in the early 1990s may have made the republicans less trusting of the CGP. However, it seemed unlikely that republicans would engage with the CGP regardless of identity, given their lobbying for a United Nations led truth commission.

Past relationships were also multifaceted and complex and this weakened the effect they could have on mediation type. Maurice Hayes had previously worked on policing in Northern Ireland. He argued that this had mixed effects on his role on the ICP; it had made some actors more positive towards him, but others less receptive.⁷⁰⁴ Kathleen O'Toole's past relationship with the RUC was seen as negative by nationalists in Northern Ireland, but this was somewhat offset by her origins in Boston, and her name, which led actors to believe she would be predisposed towards nationalist/republican concerns.⁷⁰⁵

Expertise was a critical factor that allowed the members of the commissions to engage in formulative mediation. It provided them with the knowledge needed to make recommendations; this can particularly be seen with the ICP and IMC.⁷⁰⁶ Expertise was also important in allowing for directive mediation. John De Chastelain's military expertise was cited when the IICD verified decommissioning; it clearly provided him with necessary

704 Maurice Hayes, interview by Dawn Walsh, April 18, 2012.

705 Kathleen O'Toole, interview by Dawn Walsh, April 18, 2012.

706 E.g. David McKittrick, Politics: Sinn Féin faces fines over IRA links financial sanctions', *The Independent*, April 20, 2004.

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technical knowledge regarding how weapons operated and thus how they could be put beyond use.⁷⁰⁷

High international status was key in the use of directive mediation. For example, John De Chastelain's status, as a retired Canadian General, was critical in allowing him to verify decommissioning. The involvement of Marti Athisaari and Cyril Ramaphosa as international arms inspectors further underlined how international status allows mediators to act as verifiers. Similarly, the high international status of Chris Patten was essential in allowing the ICP to push for the effective full implementation of its report, despite unionist concerns and Peter Mandelson's efforts to implement a diluted version. Conversely, the lack of substantial international involvement meant that the CGP lacked the necessary status to press for the implementation of its report. While Dick Kerr's international status did not receive the same level of attention as John De Chastelain or Chris Patten, his experience from an internationally renowned intelligence service undoubtedly equipped him with the expertise needed to provide detailed and broad ranging recommendations on security issues. Furthermore his international level experience was referred to by others when they used IMC reports in a directive manner.

Commissions also needed a local element to underpin international status. Despite the high international status of John De Chastelain the IICD alone could not verify decommissioning. The use of two local clergymen was an effort to reinforce this international with with local status. In the case of the ICP, Chris Patten's international status was combined with Peter Smith and Maurice Hayes' local status. This shows the strength of this combination in allowing for directive mediation. Furthermore, these cases show that it is not simply the inclusion of local actors which strengthens the commissions' ability to engage in directive mediation. It is notable that in both cases two local actors seen as representatives of their respective communities were involved. There is a clear link here to Lijphart's recommendation that both (or all significant) groups be represented in important bodies.

⁷⁰⁷ 'Arms issue "litmus test" Trimble; Canada speech broadcast on TV', *Belfast Telegraph*, October 16, 1998.

Conclusion

It is important to remember that the identification of actors as international, EEG or local is not always straight-forward. This is highlighted in relation to Chris Patten. He could have been seen as British and thus an EEG because he was a former British minister. However his past in British politics was not the element of his identity which was focused on. Rather his extremely high profile role as the last Governor of Hong Kong gave him an international profile. This was further enhanced by his appointment as a European Commissioner. This demonstrates that identity classification must be done in such a manner as to consider not only an actor's origins or past but also which elements of such are treated as most significant.

There were also a number of occasions when actors within Northern Ireland rejected a commission's attempt to engage in interventionist forms of mediation (both formulative and directive) *despite* the commission members' identity. Though they initially had much respect for and trust in John De Chastelain, unionists later refused to trust him when he verified that the IRA had decommissioned.⁷⁰⁸ Unionists also rejected the ICP's recommendations, despite admitting that the members had a high status and a great deal expertise and experience.⁷⁰⁹ Similarly, the CGP's report was rejected by various groups despite the fact that some actors acknowledged that the members were respected in their local communities - though their status was undoubtedly not as high in comparison to the other commissions.⁷¹⁰

An alleged lack of independence was also used to try and prevent certain commissions from engaging in interventionist forms of mediation. Sinn Féin tried to cast doubt on the independence of the IMC when it made recommendations, when it acted as a formulative

708 Dan Keenan, 'Paisley rails at "duplicitous" and "lack of evidence"', *Irish Times*, September 27, 2005.

709 'Changing name of RUC would cause much hurt - Flanagan', *Irish Times*, December 2, 2000.

710 'Payment for all who died would re-open old wounds', *Irish Independent*, January 26, 2009.

Conclusion

mediator (particularly where the recommendations were aimed at republicans).⁷¹¹ Similarly, unionists tried to cast doubt on the ICP's independence in order to counter its recommendations and attempts to press for implementation. They argued that the commission was essentially just an agent of the GFA.⁷¹² Both these attempts were seen as politically motivated and failed to prevent the commission engaging in formulative or directive mediation. This highlights the difficulty in opposing such bodies when the members are seen as expert and a party's opposition is simply seen as partisan.

Issue intensity

Feelings around each of the issues managed by the commissions were intense. The decision to set up a commission to manage each of the issues largely resulted from an understanding by the governments that the issues were too intense to be resolved by the British and Irish governments and/or local parties. Despite the fact that all commissions managed issues which were very intense, they engaged in all three types of mediation. This suggests that issue intensity alone was not definitive in deciding what type of mediation was used. Existing literature suggests that high levels of intensity lead to more interventionist mediation types. This dissertation, while not contradicting this suggestion, finds that this can only occur where other variables also accommodate interventionist mediation types. The difference between the amount of directive mediation which the ICP and CGP engaged in illustrates this point. Both managed very intense issues, and there was a hostile reaction to both reports in some sections of Northern Ireland. Despite this the ICP was able to press for the implementation of its report because of its identity and TOR. The CGP could not engage in much directive mediation because of its weaker identity and TOR.

Certain actors tried to use the high intensity of the issues to counter directive mediation and particularly to counter efforts to press for the implementation of recommendations. This had mixed results; if the other variables allowed for directive mediation it was still used. David Trimble argued that the ICP's recommendations should not be implemented because

711 Mark Hennessy, 'Worlds Apart Sanctioned for links with the IRA', *Irish Times*, April 24, 2004. Gerry Moriarty 'Onus on Ahern to justify bank claim', *Irish Times*, January 25, 2005.

712 Janet Devlin, 'Fury at Patten claims', *Belfast Telegraph*, November 18, 1998.

Conclusion

of the intensity of feeling on policing.⁷¹³ The high status and balance of the international and local identities on the ICP meant directive mediation still occurred. The intensity of feeling on the past was also cited as a reason not to implement the CGP's recommendations.⁷¹⁴ But unlike the ICP the CGP did not have the status to press for implementation over objections, so could not engage in directive mediation. This again indicates that the effect of issue intensity on mediation type is mitigated by other variables.

By examining temporal variation in intensity on individual issues some evidence can be found to support what is suggested in existing literature; which is that intensity leads to more interventionist mediation types is evident (with the above caveat regarding the moderation of the effect by other variables). The CGP's own report increased the level of intensity around the issue of the past. However the CGP reacted by strongly defending its recommendations and suggesting that they needed to be implemented for society to move forward. In particular, this can be seen in the recommendation for a 'recognition payment'. While reaction to this idea was very hostile the CGP pressed for its implementation, citing its origins and a similar payment in the Republic of Ireland.⁷¹⁵ Interestingly, the temporal variation of intensity on an issue also made others more likely to see a commission as directive. After events such as the Northern Bank robbery ensued, other parties were more forceful in their views that the IMC was a verifier - a directive mediator.⁷¹⁶

TOR

The TOR that provided for the commissions had a substantial effect on the mediation type which the commissions used. The ICP and the IICD's activities clearly followed on very closely from the TOR which they were provided with. Different articles from the TOR allowed the commissions to engage in different mediation types. The ICP's mediation types followed on closely from its TOR. These allowed for the making of substantial

713 Darwin Templeton, 'Trimble fury over Patten proposals', *Belfast Telegraph*, August 26, 1999.

714 House of Commons Northern Ireland Affairs Committee. *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*. (London, House of Commons, 2009).

715 House of Commons Northern Ireland Affairs Committee. *The Report of the Consultative Group on the Past in Northern Ireland, Second Report of Session 2009–10: Report, together with formal minutes, oral and written evidence*. (London, House of Commons, 2009).

716 Liam Clarke, 'No more pandering to the lies and deceit of Sinn Fein', *Sunday Times*, January 9, 2005.

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recommendations such as to: 'bring forward proposals for future policing structures and arrangements'. This facilitated formulative mediation, and the commission engaged in this type. ICP members also stressed that the structure of its recommendations flowed directly from its TOR. This in turn allowed the group to press for the implementation of these recommendations by stressing that they were the result of approved TOR, enabling engagement in directive mediation.

The TOR of the IICD allowed for verification both by the group and through the use of 'agents', which led to directive mediation. Confidentiality was also provided for in the TOR, which led to controlling information i.e. facilitative-procedural mediation. Although these provisions allowing the group to propose different modalities for decommissioning existed, they did not result in formulative mediation. The commission did not provide detailed recommendations regarding modalities, but rather assessed and used those provided by the paramilitaries (perhaps as modalities suggested by the paramilitaries were more acceptable to said paramilitaries). This showed that, despite the TOR allowing for formulative mediation this type was not used.

For the IMC and the CGP the TOR also informed the mediation types used but there was more interpretation at play. The TOR for the IMC (particularly articles 4 & 5) would have allowed it to position itself as a verifier, i.e. a directive mediator. Instead it focused on the provisions for making recommendations (article 7) and interpreted this broadly, making a wide range of recommendations. By making such recommendations it was acting as a formulative mediator. It also focused on the provision that charged it with 'promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland' (article 3). This strategy led to a highlighting of progress, i.e. facilitative-procedural mediation.

The TOR provided for the CGP were concise, general and less legalistic than those provided for in the other three commissions. Given this, it is unsurprising that there was more space

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for interpretation. The TOR allowed for both the making of recommendations (formulative mediation) and consultation (facilitative-procedural mediation). The CGP focused more on the latter rather than the former, in so far as it stressed consultation and framed recommendations as the result of this rather than originating with the group. This interpretation led directly to it engaging in facilitative-procedural mediation rather than formulative mediation, and therefore being less interventionist and impactful than the other commissions. Members of the group also highlighted that the use of the term 'consensus' in the setting up of the CGP called for interpretation. This term could have led to facilitative-procedural mediation through highlighting existing agreement, or building consensus through making owned recommendations and pressing for their implementation (formulative or directive mediation). Members argued that they interpreted the term to mean that the report's recommendations should have 'something for everyone'.⁷¹⁷ This resulted in the group stressing how different recommendations originated from society, i.e. facilitative-procedural mediation.

Interestingly, CGP member Lesley Carroll argued that had the TOR allowed the group to continue after it issued its report it could have built consensus by explaining its recommendations.⁷¹⁸ By terminating the group immediately after the release of its report they were prevented from engaging more strongly in directive mediation. The ICP also officially ceased to exist when its report was released but despite this the commission members continued to press for its recommendations. However the ICP did have draft legislation to comment on which arguably made it easier for members to remain engaged. However this contrast showed that commissions can press for implementation and be directive mediators, even if its TOR do not directly allow for it.

GFA

The GFA had a number of interesting effects on the mediation types which the different commissions used. Mediation type was affected both by the existence of a peace

⁷¹⁷ Denis Bradley, interview by Dawn Walsh, March 4, 2013.

⁷¹⁸ Lesley Carroll, interview by Dawn Walsh, February 26, 2013.

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agreement, which was seen as legitimate given its approval in referendums and its consociational nature. Links to the GFA afforded mediators the leverage to engage in directive mediation. The GFA was informed by an innovative and multi-faceted application of consociationalism that was internationalised, Lijphartian, and coercive. In general, these elements were consistent with mediation types used by the commissions. Furthermore, the consociational nature of the agreement had an effect on the content of the mediation in relation to both policing and the past.

There were indications that commissions directly provided for in the GFA were viewed as having a high degree of legitimacy. This gave those commissions leverage to use interventionist mediation types. The IPC and the IICD referred to their connections to the GFA to engage in directive mediation.⁷¹⁹ Even where groups were not directly provided for by the GFA they often suggested that their work was key to the success of the agreement in order to stress the legitimacy and importance of their work. Both the IMC and the CGP did so.⁷²⁰

The appointment of international figures to the ICP, IICD and the IMC (and to a much lesser extent the minor use of international consultants by the CGP) was in keeping with the international element of the GFA (and the wider peace process). In relation to the Lijphartian consociationalism, three groups, (the ICP, the IICD and the CGP) included representation from the two main communities in Northern Ireland. The IMC differed in this regard, opting to have a local member who was neutral rather than two local members representing the different communities.⁷²¹

How the inclusion of EEGs is best seen in relation to consociationalism is complex. In terms of the IMC it could be suggested that John Grieve and Joe Brosnan as EEGs are indirectly representing nationalist and unionist concerns respectively. However their inclusion still differs significantly from the inclusion of members who are directly drawn from the local

719 Desmond McCartan 'Twin attack on Police reform', *Belfast Telegraph*, November 14, 2000. 'UK: Northern Ireland Chastelain "confident of success"', BBC. Last modified September 14, 1999.

720 Independent Monitoring Commission, *Second report of the independent monitoring commission*, (London, House of Commons, 2004).

Consultative Group on the Past, *Report of the Consultative Group on the Past*, (Belfast, CGPNI, 2009).

721 Although Sinn Féin saw John Alderdice as a unionist.

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communities. Furthermore, in terms of the IPC there is no suggestion that John Smith as a British member was representing unionism. Chris Patten, who could have been seen as an EEG, was viewed as international given his high international status. This highlights the complexity of the role of the British and Irish governments in Northern Ireland; they are viewed as internal to the conflict at times, external at others, and supportive of their ethnonational community at times but disinterested at others.

Relating to the consociational nature of the GFA, the use of commissions is in keeping with purposive depoliticization as discussed by Nordlinger. Here parties agree not to involve the government in public policy areas that impinge upon one or more the communities' interests or values.⁷²² This is a classic consociational device. Furthermore the commissions made consensual decisions with all points of view being considered and all efforts being made to include them. Members suggested that these behaviours resulted from the fact that the commission members were the type of people who were predisposed to acting in this way rather than as a result of consociationalism. The governments and the public very much saw this mode of operation as being based on cross-community representation and supported efforts to include opinions from both communities. The appointment of members from both communities and the view of the public of these individuals as representatives, was undoubtedly in keeping with the power-sharing element of traditional consociationalism.

The coercive elements of the particular consociationalism used in the GFA, i.e. the governments compelling the Northern Ireland parties into the arrangements by making alternatives less attractive, is mirrored in the work of the groups. Similarly, the strong external actors such as Chris Patten and John De Chastelain acted as directive mediators. The IICD made implicit threats to resign if decommissioning was not progressed. This would have left the groups in a worse position. Thus they presented the internal parties with an even less attractive alternative to the unattractive reality. The ICP pushed its

⁷²² Erik Nordlinger, *Conflict regulation in divided societies*, (Center for International Affairs, Harvard University, 1972) 26-27.

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recommendations through despite the objections of some in Northern Ireland.⁷²³ There is no evidence that the commissions engaged in this pressurising, directive mediation as a result of being aware of the coercive consociationalism of the GFA. Nevertheless, the groups may have found it easier, and been predisposed to this, due to the fact that similar activities had already been used in the peace process. This suggests that post-agreement mediation will be in keeping with the characteristics of earlier negotiations/mediations.

The use of consociationalism to inform the GFA also had an effect on the work of the CGP. Consociationalism does not provide any express guidelines regarding how to deal with issues related to a violent conflict resulting from a divided society. This is unsurprising as consociationalism largely originated in societies where divisions had not resulted in violence. Yet the failure of those employing consociationalism post-violence to integrate into it a way to deal with issues resulting from violence is problematic. Consociationalism provides for the recognition and protection of communal identity. Given the close connection between communal identity and perceptions on the conflict in Northern Ireland it could be argued that consociationalism implies that both readings of the conflict are legitimate. However, given that these readings are incompatible this remains problematic. The result was that the CGP had very little guidance from the GFA as to how the past might be managed. However members of the CGP suggested that it would not have been possible to get agreement over how to deal with the past at the time of concluding the GFA.⁷²⁴

Unlike the CGP the ICP was able to refer directly to the GFA to defend why its recommendations took a particular form. For example, the recommendation for recruitment to police boards: 'We recommend that the Policing Board should have 19 members, 10 of whom should be Assembly members drawn from the parties that comprise the new Northern Ireland Executive, selected on the d'Hondt system'.⁷²⁵ This showed consociationalism affecting mediation outcome.

⁷²³ Unionists were stronger in their rejection of some of the ICP recommendations seeing them as insulting the work of the RUC. However Sinn Féin also rejected the IPC's report, arguing that it did not go far enough.

⁷²⁴ James Mackey interview by Dawn Walsh, February 21, 2013. Lesley Carroll, interview by Dawn Walsh, February 26, 2013. Denis Bradley, interview by Dawn Walsh, March 4, 2013.

⁷²⁵ Independent commission on policing. *A new Beginning: Policing in Northern Ireland: The Report of the independent commission on policing for Northern Ireland, September 1999*, (Belfast, HMSO, 1999) 30.

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Factor interactions

As well as having individual effects on mediation type, the different factors interacted in important ways. As has already been mentioned, high levels of issue intensity must be combined with other factors - chiefly high mediator status, but also TOR - if it is to result in more interventionist forms of mediation. Despite John De Chastelain's high status, the IICD was unable to engage in directive mediation without adding local agents in the form of two clergymen. This shows that a combination of international status and local representation, in keeping with Lijphartian consociationalism, enables directive mediation. High issue intensity was not sufficient to allow directive mediation; a combination of international and local mediators was also necessary. Similarly, the ICP was able to engage in interventionist forms of mediation not simply because the issue of policing was intense but because of its mediator identity. The combination of Patten, Hayes and Smyth provided the necessary international status and local balance - in keeping with consociationalism - to make directive mediation possible. Certain actors, such as the two governments, also highlighted the high international status and local neutral status of the IMC members to use its work in directive fashion at highly intense moments, both to press parties to act, and as verification of ceasefires, particularly the IRA ceasefire.

The converse can be seen in the work of the CGP. The group lacked international status - its members were all local - and its international advisors were not significantly involved in its work. This meant that when it encountered high levels of issue intensity engaging in more interventionist mediation types was more difficult. Furthermore, the intense response to some of the groups' recommendations, notably the 'recognition payment', actually lowered the status of the members. Descriptions of the group's identity in the press and by politicians went from highlighting how members were respected in their local communities to stressing that they did not have expertise in the area of victims or post-conflict justice etc. This augmented the difficulty that the group had in engaging in interventionist mediation types.

Mediation in an international context

Conclusion

This dissertation's findings show how four key factors affected the choice of mediation type in relation to independent commissions during the implementation phase in the Northern Ireland peace process. The particular and unique context which each conflict or post-conflict environment provides is imperative. However, the findings of this dissertation are generalizable particularly to the implementation phase of other peace processes. Their generalizability is strengthened by both their relationship to the existing theory and the choice of methods. Where findings from the post-GFA Northern Ireland case confirm relationships posited by existing literature confident claims regarding generalizability can be made. These claims are further reinforced through the use of detailed case studies which allowed the uncovering of sufficient detail and extensive information, which clarify the exact nature of the relationships and show which findings are particular and which are generalizable.

The findings highlight that the identity of mediators is pivotal in deciding what type of mediation an individual or group will engage in. This factor proved more influential than the others in terms of its effect on mediation type. The identity of mediators was referred to more often than the other factors. The centrality of mediator identity to the type of mediation employed was a relationship which had been posited by existing literature and supported by previous research on mediation aimed at reaching a peace agreement. This analysis finds that this is also true in the implementation phase of peace processes. This indicates that those interested in facilitating certain mediation types should be very aware of the identity of the mediator used. The expertise, status, and past relationship of the mediator to the conflict all have a significant impact on the type of mediation used.

This analysis showed that mediators must have sufficient expertise to engage in formulative mediation. This is logically consistent; a mediator must have expertise in an area if he or she is to make substantial and detailed recommendations in that area. Furthermore, if the mediator has significant professional expertise and experience in the policy area in which they are working they are likely to act as formulative mediators. They employ their experience to make detailed recommendations. Moreover, given their experience or

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expertise, they are seen as the authors of these recommendations. If the mediator does not have expertise any recommendations may be seen as originating elsewhere and the mediator may find it difficult to claim ownership over the recommendations.

High levels of experience or expertise are also important if a mediator is to act as a verifier; one of the key elements of directive mediation. A high level of knowledge is also necessary if it is to be verified that certain behaviours are genuinely being engaged in. Expertise allows a mediator to assess whether or not activities being undertaken indicate that a conflict group or party is implementing agreements. Without this expertise any verification that a mediator makes may be subject to questioning; there may be claims that conflict parties are deceiving the mediator.

There is also a clear need for a mediator to have high international status in order to engage in the other main element of directive mediation: the application of leverage. This relationship is in keeping with current literature. High international status can be drawn from a number of sources. Previous activities which the mediator engaged in, for example the successful conclusion of previous mediation efforts, or having held other international positions, increases their status. The country of origin of the mediator can also provide them with status. Importantly, this status makes it difficult for other actors to resist the leverage applied by such mediators. Mediators with high international status are also able to attract the support of other actors. Their ability to build coalitions of powerful actors to support their efforts reinforces the power of the leverage which they apply.

The international element of a mediator's identity further allows them to engage in directive mediation. They are somewhat removed from the conflict, may be seen as more balanced, and have a greater chance of not being seen as biased. Thus they are in a stronger position to verify behaviours by different conflict parties. Their international nature defends against claims that they are being more lenient in their treatment of a particular conflict actor. Furthermore, when they apply leverage it is seen as being employed to achieve

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progress rather than simply to forward their own interests. The international element of a mediator's identity is very important if a mediator is to engage in either of the key elements of directive mediation; verification and applying leverage. More interventionist types of mediation such as directive mediation are linked to more successful outcomes. Therefore, those who hope to use mediation successfully should strongly consider including mediators with a high international status.

The mediators in this dissertation were all groups; this presents an interesting finding which has not been addressed in the current literature. International high status should be combined with local involvement from conflicting parties if a mediator is to engage in directive mediation. Mediators that are solely external may not have sufficient trust to allow them to engage in deep interventions. The local actors involved should have relevant experience or expertise and should enjoy high status locally. The involvement of these actors in mediation increases local respect for the mediation. The use of a combination of local actors from the different conflict parties can further reinforce the idea that a mediator is not biased and treats different groups in a fair and balanced manner. It also defends the relevant commission against the potential claim that international actors engaging in directive mediation are simply using their powerful status to dominate weaker groups.

The role of the EEGs as mediators is complex. In some cases EEGs may appear or act as international mediators. A particular individual from an EEG may have a high international status due to previous positions. Yet at other times EEGs may appear to act more as direct representatives of their ethnonational partner. Byrne's work on EEGs may be instructive here as it indicates that the latter behaviour is not conducive to de-escalating conflict.⁷²⁶ This shows that the complex relationship which EEGs have to a conflict does end when an agreement is reached but continues into the implementation phase.

726 Sean Byrne, 'The Roles of External Ethnoguarantors and Primary Mediators in Cyprus and Northern Ireland'. *Conflict Resolution Quarterly*, 24, no. 2 (2006): 149-169.

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The advantages garnered by using a combination of international and local actors to engage in directive mediation highlights the potential advantage of using teams of mediators with complimentary identities. If a certain type of mediation is to be encouraged, it may be difficult to find an individual with all the necessary aspects to encourage the use of this type. It may be much easier to find these characteristics if the identities of a number of individuals are combined. The use of a team of mediators also allows the different individuals to be more prominent at different stages if this is more helpful.

The analysis also shows that the role of the TOR is considerable. This is significant because TOR are malleable and thus by carefully crafting TOR there can be a substantial degree of control over the type of mediation a group engages in. Again, as existing research indicates that more interventionist mediation types are more successful, TOR should be crafted in order to facilitate the activities indicative of these more interventionist mediation types. The explicit use of language such as 'recommend' or 'verify' in the TOR of a mediator increases the possibility that a mediator will engage in formulative or directive mediation. While there is always space for some interpretation, and groups can choose to focus on one article over others, the TOR are very influential as to the mediation type used.

However TOR are open to interpretation. In some cases they have been worded in a general manner and a large degree of interpretation is required. However even when TOR are crafted in a clear manner there is still a degree of interpretation or emphasis involved. Where the issue of interpretation or emphasis arises, the centrality of mediator identity becomes fundamental. It is likely that mediators interpret or place emphasis on the TOR in order to engage in the type of mediation which is facilitated by their identity. Thus a combination of mediator identity and TOR determines what mediation type a group engages in. Current research, including this dissertation, finds that more interventionist types are more successful. Given that those involved in providing mediators should pay close attention to including actors with high international status, a significant local element from conflict parties, and TOR that allow for deeper interventions.

Conclusion

The effect of issue intensity on mediation type is very much mediated by the other factors, particularly mediator identity and TOR. This research is one of the very first to focus on post-agreement mediation. This provides the author with a first opportunity to explicate how this stage of the process affects mediation type. Current literature indicates that the more intense a conflict the more interventionist mediation is in *attempting to reach an initial agreement*. Mediation in the post-agreement context often focuses on particular unresolved issues, as it did in this case. Their nature as continually unresolved is indicative of their contentiousness. The current literature fails to recognise that issue intensity is much less significant than mediator identity or TOR in affecting mediation type. High intensity issues do not lead to interventionist mediation unless mediator identity and TOR can facilitate it. The fact that it is not one of the most significant factors is important as issue intensity is not malleable. This means that mediation can be designed to encourage a particular type even though issue intensity cannot be easily affected.

This analysis provides initial and important indications of how mediation operates in a post-agreement context. If certain issues cannot be resolved during the conclusion of a peace agreement, which is common, the explicit provision of mechanisms through which these issues can be mediated is important. Making provisions for mediators in agreements increases their legitimacy, making it easier for them to engage in more interventionist mediation. It particularly makes it easier to engage in directive mediation, through applying leverage. Given that more interventionist forms of mediation are found to be more successful, providing for such mediators in a peace agreement makes success more likely. This legitimacy can be further strengthened if the peace agreement has been popularly endorsed; for example in a referendum. The mediator is seen as being indirectly sanctioned by the public, and when they engage in interventionist mediation they are perceived as having a mandate to do this. The inclusion of the mediator in a popularly endorsed peace agreement makes it more difficult for parties to resist its work. Those who do can be seen as trying to undermine the agreement more broadly.

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The nature of the peace agreement may have a significant effect on the identity of mediators chosen, and thus have a strong indirect effect on mediation type. Where a peace agreement has included international elements, the involvement of international mediators may be easier as the conflict is not represented as a wholly local or internal matter. Furthermore, where conflict parties have become accustomed to the support of international actors, mediators which do not have this international element may be seen as particularly weak. Where a peace agreement has had a significant international element, the inclusion of international mediators is more likely and more important for mediators to engage in directive mediation.

If a peace agreement is based on Lijphartian consociationalism the concept of representing both (or all significant) communities becomes institutionalised. Mediation teams may be chosen that are representative of the conflicting communities. In turn, as has already been indicated, this representation helps mediators to engage in directive mediation, where these local representatives are used in conjunction with international mediators. Consociationalism, like other arrangements, may be externally compelled; for example by regional powers or international organisations or agreements. Where this is the case mediators may be more likely to act in a directive manner, as some tacit coercion has been established as useful in securing agreement/progress.

Consociationalism may also affect mediation outcome. Unsurprisingly, during the implementation phase the general principles that have been agreed on will guide further concession or reforms. For those interested in the use of consociationalism, it is important to note that its failure to provide guidance on how to deal with the aftermath of violent conflict may hamper societies where consociationalism is used in dealing with this issue.

Conclusion

Third parties frequently play an indispensable role in the reaching of historic peace agreements. They must also remain committed to the broader peace process during the

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implementation stage, which is often fraught with difficulty and delay. This dissertation explains the role they play at this stage, using the case of the implementation of Northern Ireland's seminal 1998 peace agreement. It used mediation theory to capture and differentiate the activities which third party actors may engage in, and how these are affected.

These findings build on existing work on mediation at other stages of peace processes and apply not only to this specific case but more broadly where third parties may intervene in implementing peace agreements. It highlights the crucial role of mediator identity in determining the mediation type used. High international status combined with the involvement of conflicting parties, leads to interventionist behaviour. TOR were found to be reasonably decisive regarding mediation type with limited interpretation occurring. High issue intensity was indicative of more interventionist forms of mediation, but this was very much mitigated by mediator identity.

This dissertation is the first piece of research focused on mediation in the post-agreement context. Thus it makes original and crucial findings regarding the effect of peace agreements. The existence of a peace agreement afforded legitimacy to a mediator associated with it and thus facilitated interventionist mediation. Consociational agreements facilitate the selection of actors from conflict groups as part of mediation teams; this in turn facilitates interventionist mediation, as has already been mentioned. Such agreements also guided the outcomes (or lack thereof) of mediations. Peace agreements that have significant international elements may also make it more likely that international agents are used as mediators. Where coercion has been used in other stages of the peace process, such as in the setting up of consociational institutions, mediators with the requisite status may well continue this pattern: applying leverage in attempts to compel behaviours.

We in Ireland appreciate this solidarity and support - from the United States, from the European Union, from friends around the world - more than we can say. The

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*achievement of peace could not have been won without this goodwill and generosity of spirit.*⁷²⁷

⁷²⁷ John Hume, 'Nobel Lecture', Oslo, December 10, 1998.

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