

## International Human Rights and the Northern Ireland Constitutional Identity

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### Abstract

In his farewell address given on 14 January 1981, Jimmy Carter declared “America did not invent Human Rights. In a very real sense, Human Rights invented America”. Couldn’t this statement be applied to Northern Ireland whose constitutional inception was based upon the concept of Human Rights? It has been repeatedly asserted that the thirty years of escalating violence, commonly called “The Troubles”, were fuelled by systematic Human Rights violations. For a long time, Human Rights were an unknown notion in Northern Ireland simply because such rights were not defined in any legal document, hence they were unprotected. The new constitutional framework for Northern Ireland hinged upon Human Rights values which were eventually enshrined in the Good Friday Agreement in April 1998.

This paper intends to demonstrate how international Human Rights documents have helped introduce new concepts into Northern Ireland and incorporate them into Northern Irish constitutional law, especially the governmental framework of consociationalism designed by Dutch political scientist Arend Lijphart. It will seek to show how such international influence came to bear upon the Peace Process. It will provide evidence on the peace situation which has prevailed since 1998 thanks to models borrowed from outside the UK, notably with the reforms of the police service and of the criminal justice system. How can a culture of Human Rights help Northern Ireland start a “new departure” and therefore invent a new Northern Ireland?

**Keywords:** human rights – constitutional law – Good Friday Agreement – consociationalism – police service – criminal justice

### Résumé

Dans son discours d'adieu prononcé le 14 janvier 1981, Jimmy Carter déclarait: « L'Amérique n'a pas inventé les Droits Humains. En réalité, ce sont les Droits Humains qui ont inventé l'Amérique ». Peut-on dire que cette affirmation s'applique à l'Irlande du Nord dont la Constitution a été fondée sur les principes des Droits Humains? On n'a cessé de répéter que les trente années de violence endémique, que l'on nomme communément « les Troubles », ont été entretenues par les violations systématiques des Droits Humains. Ceux-ci furent longtemps méconnus en Irlande du Nord car aucun document officiel ne les mentionnait et n'offrait donc aucune protection. Le nouveau cadre constitutionnel conçu pour l'Irlande du Nord se fonde sur les valeurs propres aux Droits Humains qui furent finalement intégrés à l'Accord du Vendredi Saint en avril 1998.

Cette article se propose de montrer comment les textes internationaux sur les Droits Humains ont permis d'introduire de nouveaux concepts en Irlande du Nord afin de les adopter dans la nouvelle Constitution, notamment le principe de consociationalisme, un format de gouvernance conçu par le politologue néerlandais Arend Lijphart. Il montrera aussi comment l'influence de modèles internationaux a pesé sur le processus de paix. Il démontrera comment des modèles étrangers ont permis d'instaurer un climat de paix depuis 1998, en particulier dans le cadre des réformes de la police et de la justice pénale. Enfin, comment une culture fondée sur les Droits Humains peut-elle aider l'Irlande du Nord à envisager un « nouveau départ » et par conséquent contribuer à construire une Irlande du Nord différente?

**Mots-clés :** droits humains – droit constitutionnel – consociationalisme – police – justice pénale – Accord du Vendredi Saint

Many observers have often asserted that the three decades of Troubles in Northern Ireland stemmed from repeated human rights abuses. Throughout the years of negotiations leading up to the signing of the Good Friday Agreement (GFA) in April 1998, the language of Human Rights reached a prominent position among politicians and stakeholders. That historic period offered Northern Ireland the opportunity to introduce international principles, norms, values along with reforms of the most sensitive institutions (such as those in the police and the criminal justice system) that borrowed models that had previously been implemented elsewhere in jurisdictions emerging from long and violent conflicts. The Agreement itself rested upon a consociational structure that had been designed by Dutch political scientist Arend Lijphart and had often been previously introduced in conflict zones. Since Human Rights were at the heart of the peace process and of the future constitutional framework, Northern Ireland – whose culture of division had prevailed since its creation – was, for the first time, offered a neutral space where traditional enemies could be brought together and reconciled around a new set of international values that had been designed, not within Northern Ireland itself, but at an international level to be later implemented throughout the world. As we will see, the internationalization of the peace negotiations in the run-up to the final agreement was a means to depart from internal considerations which would otherwise have led nowhere.

The negotiations leading to the final agreement did offer Human Rights a central position. “Human Rights have been at the heart of the conflict in Northern Ireland and they must be central to any realistic resolution of the conflict” stated The Friends of Ireland on St Patrick’s Day in 1997.<sup>1</sup> In a speech given in 1998, the United Nations High Commissioner for Human Rights, Mary Robinson, described the Good Friday Agreement as

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

<sup>1</sup> Statement by the Friends of Ireland on St Patrick’s Day in the House of Representatives, Monday 17 March 1997.

<http://www.gpo.gov/fdsys/pkg/CREC-1997-03-17/html/CREC-1997-03-17-pt1-PgE485-2.htm> (accessed on 08/05/15)

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

It was noticeable that the way in which Human Rights were addressed by the major actors of the peace process proved a radical change in the way in which they approached the resolution of the conflict.

This paper intends to show that Human Rights principles were introduced into the Northern Ireland conflict resolution years before the Agreement was signed. It will demonstrate that Human Rights instruments brought in new values that were enshrined in the Agreement and Northern Ireland constitutional law. It will seek to show how international influence came to bear upon the peace process, moving the traditional lines of local identity towards a larger dimension encompassing foreign influences. Finally, opening up to foreign models of governance and Human Rights principles introduced intercultural influences which offered Northern Ireland the opportunity to start a new beginning. Though it will be a very long process, we can assume that identities may and will be reconstructed around common values within a globalized legal framework, Human Rights being universal.

## 1 – The development of Human Rights in Northern Ireland

Though the demand for civil rights for all had been in the forefront of the 1968 demonstrations that started three decades of escalating violence in Northern Ireland, the successive governments had never responded favourably through new legislation, but had continued to rely on emergency laws and practices that had been found to have violated international human rights law.<sup>3</sup> However, in the aftermath of the IRA and Loyalist ceasefires in the summer of 1994, the Human Rights issue was raised repeatedly by the Human Rights community both in Ireland and Britain as they felt that an unprecedented opportunity for change existed in Northern Ireland.

Still, introducing Human Rights in the UK was no easy task, even though a group of British lawyers had taken part in the drafting of the European Convention on Human Rights under the guidance of Sir David Maxwell Fyfe, the former Nuremberg prosecutor and Chair of the Council of Europe’s legal division. The Conservative government in power from 1951 resisted the right to petition to the European Court of Human Rights on the grounds that British Common law would come under scrutiny from an international court. It was only in 1966 that British citizens were given the right to take their cases before the European Court of Human Rights. Over the following three decades, several leading judicial and political figures such as Lord Scarman and Lord Hailsham, as well as former Home secretary Lord Roy Jenkins, along with active national organisations such as *Liberty*

<sup>3</sup> Derogation from Article 5 of the ECHR.

and *Charter 88*, appealed through stronger calls and campaigns for incorporation of the European Convention on Human Rights into British law. However, the process was slow owing to the reluctance of the Conservative governments of Margaret Thatcher and John Major, which remained distinctly unenthusiastic about anything linked to Europe, even though the Convention and the Court of Human Rights have nothing to do at all with the European Commission. However, in 1993, the then Labour Party leader, John Smith, committed the next Labour government to a “new constitutional settlement, a new deal between the people and the state that puts the citizen centre stage” (Forman 2002: 327). Once the Labour government took office in 1997, Tony Blair, the new Prime Minister, honoured John Smith’s commitment, with the Human Rights Act becoming a major piece of legislation in England’s legal history. In 1998, when it completed its passage through the Houses of Parliament, it was, according to the then Home Secretary Jack Straw, a “historic day” for rights in Britain.<sup>4</sup> *The Human Rights Act 1998* is now enshrined in the English Constitution along with the Magna Carta.

On 10 December 1994, five prominent Human Rights groups<sup>5</sup> produced an optimistic analysis called *The Declaration on Human Rights, the Northern Ireland conflict and the Peace Process* in which they echoed the hopes of the public opinion in declaring that “at this historic moment, there is a unique opportunity to put in place new structures which will defend and promote human rights”.<sup>6</sup> As local Human Rights activists later testified:

The groups called for the recognition, on the part of all those involved in negotiating a new political framework in Northern Ireland, of the centrality of Human Rights in the search for a just and lasting peace. New systems of justice were called for that would address the injustices of the past and ensure proper investigation of future violations. These systems included a Commission on Policing, an independent system for the investigation of police complaints, the introduction of a Bill of Rights, a reform of the criminal justice system that had been badly undermined by successive emergency legislations, a Commission of Investigation to examine Human Rights abuses arising from the emergency legislation and the introduction of Human Rights education into the school curriculum. The end of all forms of discrimination and the strengthening of anti-discrimination legislation were also keenly demanded. (Magean & O’Brien 1998: 1501).

4 Ward Ben, “This insidious assault on the Human Rights Act”, *The Independent*, 9 February 2009.

5 Committee on the Administration of Justice (CAJ), Liberty, the Irish Council of Civil Liberties, the Scottish Council of Civil Liberties and British Irish Rights Watch.

6 CAJ et al, *Declaration on Human Rights, the Northern Ireland Conflict and the Peace Process* (1994).

Several conferences were organized in Belfast to which representatives of the Irish and British governments and of civil society were invited to discuss the proposals made in the 1994 Declaration (Magean: 1502) An examination of the Human Rights aspect of the Agreement reveals that the proposals contained in the 1994 Declaration were met and the agenda the Human Rights community had put together had obviously had an impact on the various negotiators of the Agreement. Clearly the nationalist/catholic stakeholders had paid great attention to the definition and protection of rights in the peace process (Magean: 1502–1503).

Even though most unionists had always been reluctant to embrace Human Rights issues which they always considered alien to their culture but traditionally rather part of nationalists’ demands, some progressive elements within unionism saw the validity of providing extensive safeguards that all citizens from both communities would enjoy.

Five years after the GFA was signed, unionist mistrust of Human Rights was explained by Arlene Foster, then an MLA and member of the DUP, to *Fortnight Magazine*: “the human rights discourse still remains largely alien to most grassroots members of my community ... there is a world of difference between meeting up with unionists and telling them about human rights being good for all and actually trying to discover why human rights is like a foreign language to most of them”.<sup>7</sup>

A new influence was introduced by the Anglo–Irish Agreement of 1985 which is believed to have been the cornerstone of the peace process. It was considered as an external influence in the sense that it was designed by both British and Irish governments in order to settle the conflict and it allowed the Irish government to hold an advisory and consultative role in Northern Ireland’s government. The intention was to encourage the unionists into a power-sharing devolved government, but the presence of Irish civil servants incensed them. Both British and Irish governments reaffirmed their commitment to a society “free from discrimination and intolerance and with the opportunity for both communities to participate fully in the structures and processes of government”.<sup>8</sup> An intergovernmental conference was set up under Article 2 of the Anglo–Irish Agreement which was given authority to deal with “legal matters, including the administration of justice”. The intergovernmental conference was also to address the “avoidance of economic and social discrimination and the advantages and disadvantages of a Bill of Rights in some form in Northern Ireland” (Article 5). It was stressed that security accepted there was a need for measures to improve relations between the security forces and

7 *Fortnight Magazine*, *Protestants need rights explained to them*, January/February 2003, p. 13.

8 “Agreement between the Government of the United Kingdom of Great-Britain and Northern Ireland and the Government of the Republic of Ireland”, 15 Nov 1985, U.K.–Ir, Cmnd.9657.

the community (Article 7). Article 8 admitted the importance of public confidence in the administration of justice. Eventually, all these issues were addressed in the Agreement.

Similarly, the Downing Street Declaration of 15 December 1993 included the acceptance by the then Taoiseach, Albert Reynolds, that the exercise of the right of self-determination on the part of the Irish people must “respect the democratic dignity and the civil rights and religious liberties of both communities” including a number of basic rights which were eventually fully listed in the Agreement five years later.<sup>9</sup>

Moreover, once elected in 1997, the new Labour government made Human Rights a cornerstone of its foreign policy. Foreign Secretary Robin Cook declared that if “Britain is to carry credibility when we talk to other governments about their observance of Human Rights, we must command respect for our Human Rights record”<sup>10</sup>. In her speech to the Labour Party annual conference in 1997, Mo Mowlam, Secretary of State for Northern Ireland, insisted that “the principles of fairness, justice and equality of opportunity ... should be used to resolve the problems of Northern Ireland”.<sup>11</sup> She talked of the legacy of unfairness and injustice that haunted both communities, announced the incorporation of the European Convention on Human Rights into British law, changes to the policing, changes to emergency legislation and measures to combat employment inequality.<sup>12</sup> Indeed, Britain had been criticized on several occasions for its Human Rights record in Northern Ireland, which may have led to changes in policy since the official position was that such criticism should be avoided in the future. In March 1998, the US Congress passed a resolution stating its view that any peace agreement in Northern Ireland “must recognize the state’s obligation to protect human rights in all circumstances”<sup>13</sup> after describing Human Rights violations and the lack of accountability by those responsible for such violations.

As Human Rights experts emphasized, such initiatives undoubtedly had an impact on the negotiations and those engaged in them. Therefore, the two governments and the US administration realized the important role that Human Rights could play in assisting the negotiation process. Even though there had been a widely held view that the rights agenda was mostly a nationalist one, both nationalist and, to some extent unionist, communities eventually shared an interest in the promotion and protection of Human Rights. Both believed in basic rights like freedom of

9 The Joint Declaration by an Taoiseach, Mr Albert Reynolds, T.D. and the British Prime Minister, the Rt Hon. John Major, M.P., 15 December 1993, U.K.-Ir., Cm 2442

10 Robin Cook, Speech at the Labour Party Conference, July 1997.

11 Mo Mowlam, Speech to the Labour Party Conference, Nov. 1997.

12 Mo Mowlam, Speech to the Labour Party Conference, Nov. 1997.

13 144 Cong. rec. H1196-01, 17 March 1998.

expression and religion, freedom from discrimination and other fundamental liberties. Moreover, most political parties were then committed to the introduction of a Bill of Rights (Maegan: 1513).

## 2 – Human Rights instruments introduced new values

No doubt, Human Rights provided neutral ground in the negotiation process and it was therefore easier to go forward since the international standards for the protection of Human Rights already existed. Basic human rights principles are set out in a number of international instruments, notably the *Universal Declaration of Human Rights*, the *European Convention on Human Rights (ECHR)* and the *1966 International Covenant on Civil and Political Rights (ICCPR)*. Building on these are a range of declarations, principles, codes of conduct and guidelines which elaborate on specific areas. In this way, the various means provided to defend those rights were externalized and therefore alien to the potentially divisive nature of an internal debate in Northern Ireland.

Apart from the establishment of a “democratically elected Assembly capable of exercising executive and legislative authority”, one of the safeguards in Strand 1 of the Agreement concerns the incorporation of the European Convention on Human Rights (ECHR), a Bill of Rights for Northern Ireland, a Human Rights Commission, arrangements to ensure that key decisions and legislation are proofed to ensure that they infringe neither the ECHR nor any Bill of Rights, and a possible Equality Commission. It was an important step for the British government to incorporate the ECHR into domestic law: this means litigants are now able to rely on protections offered by the ECHR in local courts. Whenever it is necessary, the government must legislate to ensure compliance with international obligations.

In addition, the coupling of Human Rights with a concern for “safeguards” made it clear how a commitment to Human Rights had to underpin any long-term resolution of the conflict. While Human Rights protections are vital in their own right, as a matter of principle, it is also recognized that they are necessary to create the framework within which political accommodation can be reached and peace ensured. Thus, regardless of whatever structures emerge, each community and the individuals within each community should be assured that their Human Rights will be respected.

The rights listed in the Agreement are those that were previously inserted into the Downing Street Declaration signed between the Irish Republic and the British government on 15 December 1993. In the Agreement, “parties affirm their commitment to the mutual respect, the civil rights and the religious liberties

of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular:

- the right of free political thought,
- the right to freedom and expression of religion,
- the right to pursue democratically national and political aspirations,
- the right to seek constitutional change by peaceful and legitimate means,
- the right to freely choose one's place of residence,
- the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity,
- the right to freedom from sectarian harassment and
- the right of women to full and equal political participation.”<sup>14</sup>

These are the basic fundamental rights that the whole community is invited to enjoy in Northern Ireland in order to establish a fair, stable and peaceful society. Negotiations were driven by an agenda agreed on by the parties to address matters on which there was already an element of consensus. This mode of dealing with Human Rights issues ensured that the vindication of Human Rights would be seen as an integral part of the process as opposed to being part of political horse-trading accompanying the peace process.

### 3 – External influences

External influences played a major role in the peace process though it is difficult to determine to what extent talks participants in Northern Ireland learned from the successes and failures of similar processes in foreign jurisdictions. With the Human Rights issue in mind, the parties to the talks process often looked to the experiences of other jurisdictions that were emerging from conflicts. In the Preamble to the Universal Declaration of Human Rights, it is stated that: “it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”. It also stresses that: “the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.<sup>15</sup> Several international institutions dedicated to the protection of Human Rights (such as the UN Human Rights Commission) confirm the link between repeated Human Rights abuse and violent conflict.

<sup>14</sup> Good Friday Agreement, Rights, Safeguards and Equality of Opportunity, Human Rights.

<sup>15</sup> Universal Declaration of Human Rights, U.N. Doc. A/810 (1948).

Experience in other affected jurisdictions has obviously provided empirical support to the claim of NGOs and international documents. It has been clearly established that it was the massive and widespread violation of Human Rights that fuelled the conflict in apartheid South Africa. It has also been estimated that the relative success of the transition from apartheid to a multi-racial democracy had been based on the centrality of Human Rights and mechanisms for their protection. Not only did the 1994 South African Constitution detail the fundamental freedoms that are to be protected, but it also went even further in trying to develop a Human Rights culture throughout the country. It also directed all South African courts “to promote the values which underlie an open and democratic society based on human dignity, equality and freedom”.<sup>16</sup>

A quick examination of peace processes in the world tends to support the idea that the introduction of Human Rights concerns in the negotiating process made it easier to reach an agreement in Northern Ireland. In Guatemala, the agenda for negotiations set up in 1991 between the government, the army and the main guerrilla groups included “human rights, the identity and rights of indigenous peoples, socio-economic issues, a truth commission and the role of the army during peacetime”.<sup>17</sup>

Obviously, there was an international institutional presence in the talks process in Northern Ireland in the role of Senator Mitchell and the co-chairs of the talks process, Mr Harry Holkeri from Finland and General John de Chastelain from Canada: in this way, the debate could never be internally focused.

Many times, the conflicts in Northern Ireland, South Africa and the Middle East were compared and common features were identified while the peace processes were carefully launched.<sup>18</sup> Given the Human Rights language and commitments that ultimately ended up in the Good Friday Agreement, it appears that the general international trend towards linking the protection of Human Rights to peace was followed by most of the talks participants in Northern Ireland.

The notion that international involvement is a prerequisite in seeking to resolve longstanding political conflicts has increasingly become an established principle in conflict resolution. Peacemaking, in particular, requires, so it seems, sustained and strategic international support and encouragement.

<sup>16</sup> South African Constitution 1996, Par.39(i).

<sup>17</sup> Wilson, R., *The People's Conscience? Civil Groups, Peace and Justice in the South African and Guatemalan Transitions*, Catholic Institute for International Relations (CIIR), London, 1997.

<sup>18</sup> Gidron, B., Katz, S.N., Hasenfeld, Y., *Mobilizing for Peace: Conflict Resolution in Northern Ireland, Israel/Palestine, and South Africa*, Oxford University Press, 2002.

On the whole, international interest has been central to the process of peacemaking in Northern Ireland. During the conflict, it seemed the issue was so complex and unique that it was intractable. Placing the Northern Ireland peace process on the international stage was crucial in removing that belief. International influences at all levels of the negotiations were essential. Changes in the international political configurations, including the collapse of the Berlin Wall indicating the end of the Cold War, the end of apartheid in South Africa, the willingness of an American administration to become directly involved, certainly changed the context in which the negotiations occurred.<sup>19</sup> Northern Ireland was no longer an isolated territory left to itself, to deal on its own with its conflict resolution. It was open to outside expertise and influences. The constitutional architecture of the Agreement itself drew heavily upon international experience and the work of Dutch political scientist Arend Lijphart. Indeed, he himself argued that the intellectual precedence of such arrangements can be traced to include the work of Dutch politicians in 1917, Lebanese politicians in 1943, Austrian politicians in 1945, Malaysian politicians in 1955, Colombian politicians in 1958, Indian politicians in the 1960s and 1970s, South Africa in the early 1990s, and Northern Ireland in 1973: clearly the Good Friday Agreement was international in its essence, a sort of global entity.<sup>20</sup> Moreover, the process of completing the negotiations and managing the post-conflict transformation concerning a number of particularly difficult issues has been explicitly internationalized, notably the most sensitive issues such as the reform of policing or the decommissioning of paramilitary weapons.

In the same way, the various bodies created from Human Rights considerations were new experiments in Northern Ireland imported from external sources, thus creating diversity.

Clearly, the provisions in the area of equality of opportunity were probably the most innovative in the broad range of Human Rights provisions. New statutory provisions and statutory schemes were to promote equality of opportunity. They were to be developed further since the Equality Commission has no authority since it is limited to making recommendations.

Obviously, the GFA provided for the Northern Ireland Human Rights Commission, a body which was formally established under the Northern Ireland Act 1998 on 1 March 1999. It comprises a full-time Chief Commissioner and nine part-time Commissioners, all of whom were appointed initially for a three-year period.

19 Guelke, A., "The International System and the Northern Ireland Peace Process", *IBIS Working Paper* No.21, University College Dublin, 2002.

[www.ucd.ie/ibis/filestore/wp2002/21\\_gue.pdf](http://www.ucd.ie/ibis/filestore/wp2002/21_gue.pdf) (accessed on 08/05/15).

Cox, M., Guelke, A., Fiona, S., A. (eds), *Farewell to Arms? From Long War to Long Peace in Northern Ireland*, December 2000, Manchester University Press.

20 O'Leary, B., "The Nature of the Agreement", *Fordham International Law Journal*, Volume 22, Issue 4, 1998, page 1629, footnote 5.

The Commission adopted the following Mission Statement based on its statutory duties and powers:

The Northern Ireland Human Rights Commission will work vigorously and independently to ensure that the human rights of everyone in Northern Ireland are fully and firmly protected in law, policy and practice. To that end the Commission will measure law, policy and practice in Northern Ireland against internationally accepted rules and principles for the protection of human rights and will exercise to the full the functions conferred upon it to ensure that those rules and principles are promoted, adopted and applied throughout Northern Ireland.

In carrying out its functions, the Northern Ireland Human Rights Commission will be independent, fair, open and accessible, while maintaining the confidentiality of information conveyed to it in private. It will perform its functions in a manner which is efficient, informative and in the interests of all the people of Northern Ireland.<sup>21</sup>

Apart from advising the Assembly on new legislation that had to comply with the European Convention on Human Rights (ECHR), the new Northern Ireland Human Rights Commission would have to consult and to advise in order to define, in Westminster legislation, rights supplementary to those in the ECHR, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights are to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland to help secure peace by protecting the rights of everyone. So far, the Northern Ireland Human Rights Commission has done a lot of work and submitted a draft Bill to the British government which has not yet responded.

The Irish government also committed itself to "ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland".<sup>22</sup> In concrete terms, the Irish government agreed to establish a Human Rights Commission in the Republic with a remit and mandate equivalent to that in Northern Ireland. In 2003, the Oireachtas passed the *European Convention on Human Rights Act 2003*, which was an explicit commitment made by Ireland under the Good Friday Agreement. In doing so, Ireland became the last State in the Council of Europe to have incorporated the European Convention into domestic law, (although it had

21 <http://cain.ulst.ac.uk/othelem/organ/docs/nihrc.htm> (accessed on 08/05/15).

22 GFA, Rights, Safeguards and Equality of Opportunity, Human Rights, Comparable Steps by the Irish Government, §9.

been one of the first countries to sign and ratify the Convention in 1953). Strand 3 of the British–Irish Intergovernmental Conference made it clear that the Irish government would continue to have the opportunity to raise issues of concern on human rights matters with the British government through this conference.

In addition, there would be a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of Human Rights issues in the island of Ireland. “The joint committee will consider among other matters, the possibility of establishing a Charter, open to be signed by all the democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland”.<sup>23</sup>

Nevertheless, most of these provisions remain to be implemented. However, the two major reforms scheduled in the Agreement were implemented and drew heavily upon external influences.

## 4 – Policing and Justice

The Agreement referred to “a new beginning to policing with a police service capable of attracting and sustaining support from the community as a whole”.<sup>24</sup> The RUC was largely composed of Protestant officers and was seen as a tool of state oppression by the nationalist/republican/Catholic community. An independent commission on Policing was appointed in June 1998 with Chris Patten as chairperson. Thousands of people attended a series of consultation meetings throughout Northern Ireland which revealed the amount of hope people were vesting in the work of the Policing Commission. The Commission visited a number of police services in the Republic of Ireland, Great Britain, Canada, South Africa, Spain and the United States. They also visited the Council of Europe in Strasbourg and attended a number of policing conferences and conferences concerned with human rights (Patten Report 1999: para 2.3, 11). The influence of these international experiences was

obvious throughout the Patten Report, released in November 1999. For example, the Patten recommendations on public order policing and the District Policing Partnership Boards drew considerably upon the South African experience. The recommendations regarding the policing board and Police Ombudsman referred to similar concepts in Canada, and much of the “partnership” discussion in the Report drew heavily on the U.S. community policing experience.

<sup>23</sup> Human Rights, A Joint Committee, §10.

<sup>24</sup> The Good Friday Agreement, 1998, Rights Safeguards and Equality of Opportunity, Policing and Justice (i).

Clearly, the Patten Commission put Human Rights at the centre of policing asserting that “the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all” (Patten Report: para 4.1) The Patten Report recommended a comprehensive programme of action to focus policing in Northern Ireland on a human rights–based approach (Patten: para 4.6). It underlined the importance of training police officers in the fundamental principles and standards of human rights, and in the practical implications of these principles and standards for policing (Patten: para 4.9). No other policing oversight body in the UK had had that role previously. The Patten report added that “awareness of and respect for human rights should be part of police officers’ appraisal system” (Patten: para 4.10). It is clear then that protection of human rights and civilian oversight became institutionalized as a result of the reforms.

Northern Ireland’s police reform is often held up as a model for other post–conflict countries. Indeed, the transformation of the Royal Ulster Constabulary (RUC) into the Police Service of Northern Ireland (PSNI) has been mostly successful. Close to 30% of the PSNI is now made up of individuals from a catholic background.<sup>25</sup> Following the reforms, the PSNI emerged as a more accountable, professional and legitimate police service than its predecessor. However, despite the significant gains made in transforming the police, the events of the past continue to resurface.

While the Patten Report was largely silent on dealing with the past, the PSNI has been at the forefront of initiatives to tackle the unsolved murders and abuses committed during the almost thirty–year period of conflict in Northern Ireland known as the Troubles.<sup>26</sup>

The lack of consensus on how to deal with the past, from addressing victims’ needs to investigating unsolved crimes, remains a significant obstacle for peace–building as well as policing a divided post–conflict society. Crucially, the disputes over

contested parades, the illegal flying of flags, and the legacy of the past conflict have continued to test the strength of the reformed police service. The Patten report noted the contentious nature of the history of policing and outlined the need for stronger community involvement. In requiring greater community participation, the PSNI became susceptible to political and civil society demands to police the past in order to secure continued community support to police the present.

<sup>25</sup> In 2011, Secretary of State Owen Paterson ended the “50–50” recruiting system. “Police 50–50 recruiting system is to end”, BBC News, 28 March 2011.

<sup>26</sup> Marijan, B., & Brennan S., *Policing the Past and Present in Northern Ireland*, 18 September 2014, <http://www.ssrresourcecentre.org/2014/09/18/policing-the-past-and-present-in-northern-ireland/> (accessed on 08/05/15).

As a result, the PSNI has found itself unable to address the competing narratives and political battles over the past. While the nationalist/republican/catholic community pushes for more investigations into the intervention of the state during the conflict, the unionist/loyalist community calls for more attention to be paid to crimes committed by the republican paramilitary groups. For example, Sinn Féin condemned the Historical Enquiries Team (HET) – established in 2005 by then PSNI Chief Constable Hugh Orde to investigate unsolved crimes – for being too lenient on state violence. On the other hand, unionist politicians criticized the police for focusing on past loyalist violence while ignoring republican crimes. At the same time, families of victims have also criticized the police for not doing enough to discover who killed their loved ones.

In response to such criticisms, a 2013 review by Her Majesty's Inspectorate of Constabulary found that the police investigated past crimes involving state actors with "less rigor" than paramilitary related murders.<sup>27</sup> In August 2014, this led Sir Hugh Orde to claim HET was "set up to fail" by the Inspectorate, Dr Patricia Lundy, and, as a consequence, "the police could not resolve" historical crimes "alone".<sup>28</sup> PSNI responded to unionist and victims' criticisms and arrested Sinn Féin's president Gerry Adams, in relation to the historical murder of Jean Mc Conville, another reminder of unresolved issues from "the Troubles".

In an attempt to regain community confidence, the new PSNI Chief Constable, George Hamilton, highlighted the need for politicians and civil society to start addressing the history of the conflict and remaining contentious issues, such as historical enquiries, the flying of the Union flag, and parades. He argued that: "action is needed if policing, and indeed our peace process, is not to be dragged backward".<sup>29</sup> Recent events in the peace process demonstrate that, despite positive reforms and improving confidence in policing, the PSNI continues to expose its own shortcomings in trying to police a still deeply divided society. Despite much progress made in Northern Ireland, tensions remain within the devolved government and between the unionist and nationalist communities. Many nationalists continue to press for more progress in the area of Human Rights and equality, arguing in particular that Northern Ireland needs its own Bill of Rights. Meanwhile, unionists remain concerned with the sectarian mode in which parades are managed.

In July 2013, the Northern Ireland Executive appointed former U.S. diplomat and special envoy for Northern Ireland, Richard Haass, as the independent chair of inter-party talks aimed at tackling some of the most divisive issues in Northern Ireland. In particular, Haass was tasked with setting out recommendations by the

27 "Historical Enquiries Team treats state cases with 'less rigour' ", BBC News, 3 July 2013, <http://www.bbc.com/news/uk-northern-ireland-23161353> (accessed on 08/05/15).

28 *Ibid.*

29 "PSNI chief warns ignoring the past will have consequences", *Irish Times*, 7 September 2014.

end of 2013 on dealing with the past and the sectarian issues of parading, protests, and the use of flags and emblems.

At the end of December 2013, Haass released a draft proposal outlining the way forward in these areas, but he was unable to broker a final agreement among the Northern Irish political parties participating in the talks. The parties had been unable to reach consensus on any new policies surrounding the display of flags or emblems.

Following the lack of agreement on the Haass proposals, several events in 2014 highlighted the fragility of relations between the unionist and nationalist communities and renewed concerns about the stability of the devolved government. In early 2014, controversy arose over a past deal over "on the runs", individuals suspected of paramilitary offenses or escaped paramilitary prisoners.<sup>30</sup>

After months of turmoil and tense negotiations under the aegis of Haass, Northern Ireland's political parties and the British and Irish governments announced on 23 December 2014, that a broad, multifaceted agreement, named the Stormont House Agreement, had been reached which addressed financial and welfare reform, governing structures, and the contentious issues of parades, flags, and the past. Concerning the legacy of the Troubles, the Stormont House Agreement announced the creation of a number of new agencies such as the Historical Investigations Unit in order to examine unsolved murders carried out during the Troubles, the Independent Commission on Information Retrieval to help families learn more about the fate of their loved ones. Perpetrators with knowledge of killings during the Troubles would be able to give the Commission information on the basis of limited immunity from prosecution.

However, the UK government suggested that the powers of parading should be devolved to the Northern Ireland Assembly and new legislation should be drafted accordingly. Concerning disputes over flag flying, the Stormont House Agreement essentially endorsed the idea, put forward by Richard Haass, to set up such a commission to be established by June 2015. This commission will be composed of 15 members (seven to be appointed by Northern Ireland's main political parties and eight to be drawn from outside the government) and will be expected to report on its findings within 18 months.<sup>31</sup>

In addition, the Stormont House Agreement calls for the creation of two other entities to help address the legacy of "the Troubles". By 2016, the Northern Ireland Executive is expected to establish an Oral History Archive to provide a central

30 "Richard Haass warns NI violence could re-emerge without progress", 12 March 2014, [www.bbc.co.uk/news/uk-northern-ireland-26535987](http://www.bbc.co.uk/news/uk-northern-ireland-26535987) (accessed on 08/05/15).

31 The Stormont House Agreement, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390672/Stormont\\_House\\_Agreement.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf) (accessed on 08/05/15).



place for people from all backgrounds to share experiences and narratives related to “the Troubles”. An Implementation and Reconciliation Group (IRG) will also be set up to oversee work on themes, archives, and information recovery in an effort to promote reconciliation and reduce sectarianism. Under the terms of the Stormont House Agreement, up to £150 million (roughly \$226 million) will be provided over five years to help fund these various new bodies focused on dealing with the past. Even though a major step has been made through the December 2014 Agreement, future developments will tell in what ways these provisions have brought significant changes towards peace and reconciliation within a divided society.

Alongside the Commission on Policing, the Agreement promised “a parallel wide-ranging review of criminal justice”.<sup>32</sup> However, the review was not required to deal with emergency legislation, which was left to the British Government. The review was launched in June 1998 and it reported in March 2000. Members of the Commission visited other jurisdictions to see how other justice systems worked, to find out their strengths and weaknesses and to determine what lessons could be learned for their work: they visited Belgium, Canada, England and Wales, Germany, the Netherlands, New Zealand, the Republic of Ireland, Scotland, South Africa and the United States. Foreign models were therefore scrutinized as they appeared helpful and stimulating.

The Commission declared Human Rights central to the criminal justice system (Review of the Criminal Justice System in Northern Ireland 2000: para 3.1) since the fundamental principle is that people have basic rights by virtue of their common humanity (Review: 3.2). Three themes that underlie international human rights standards in the field of criminal justice were identified:

- 1) the protection of the individual against ill-treatment at the hands of law enforcement authorities
- 2) the protection of individuals against arbitrary arrest, detention, trial or punishment
- 3) the need for individuals to be protected against threats to their bodily integrity, liberty and dignity (Review : 3.4).

During the consultation process, several other themes emerged that the people expected would be addressed by the review team: fairness, justice, respect for victims, accountability, transparency, accessibility, independence and impartiality, prevention and efficiency.

Among other proposals, the Commission recommended that Human Rights issues should become a permanent and integral part of training programmes for all those working in criminal justice agencies, the legal professions and the relevant parts

<sup>32</sup> The Agreement, Policing and Justice.

of the voluntary sector (Review: 3.25), that lawyers should receive appropriate training in human rights principles before starting to practice (Review: 3.56). Outside influences clearly proved helpful. However, devolution of justice – but of policing too – to Northern Ireland was going to be a slow process owing to a lack of consensus of the local political parties.

Finally, on 4 February 2010, after 10 days of intense negotiations, the DUP and Sinn Féin announced that they had reached a deal on the devolution of policing and justice authority from London to Belfast. The resulting “Hillsborough Agreement” set 12 April 2010, as the date for this transfer of power, which was approved on 9 March by the Northern Ireland Assembly. On 12 April, as agreed and for the first time in 38 years, London transferred power over policing and justice affairs to Belfast. That same day, David Ford, of the smaller, cross-community Alliance Party, was elected as Northern Ireland’s new Justice Minister. It was seen as a significant step towards completing the full implementation of the Good Friday Agreement and securing a lasting peace in Northern Ireland.

## Conclusion

The examination of the Agreement illustrates the extent to which Human Rights language and principles invaded all aspects of the Peace Agreement as well as the subsequent reforms of the police and criminal justice systems. Clearly, those notions and principles were borrowed from external sources, international documents and mechanisms which provided neutral ground to the antagonistic communities offering them new but common values, offering them the same protections for the same rights. In addition, the shared government format adopted in Northern Ireland was inspired from foreign experiments emerging in post-conflict states. The involvement of foreign key actors sensitive to Human Rights values at the various stages of the talks has also been instrumental to the achievement of the peace process. The local Human Rights organizations and the Northern Ireland Human Rights Bill that will hopefully be adopted in the future are all symbols of a new beginning, even though the recent violent events show that the past still weighs heavily upon the present. Further, the Human Rights values adopted throughout the various reforms such as that of the police have introduced new common goals despite the numerous difficulties to implement the various recommendations of the Patten Report or address the more recent problems such as dealing with the past, underlying violence, parading and flag flying.

US diplomat Richard Haass, the architect of the Stormont House Agreement, stressed that when “you walk down parts of Belfast, you are still confronted by concrete barriers separating communities. Upwards of that, 90% of young people still go to divided, single tradition schools, neighbourhoods are still divided... I don’t see society sowing the seeds of its own normalization, of its own unity, if

neighbourhoods and schools are still divided”.<sup>33</sup> Clearly, Northern Ireland remains a largely divided society, with Protestant and Catholic communities existing in parallel. So Human Rights values are offered as a common framework, although fear, suspicion, mistrust and resentment still prevail on both sides. So each community will only take what best fits their cultural background.

However, many initiatives – albeit minor and often marginal ones – deserve to be mentioned and praised for the efforts made over the years to bring young people from the two adverse communities together so that they meet and get to know each other. For example, “Spirit of Enniskillen” over the years brought hundreds of teenagers together allowing them to talk and discover each other through common experiences.<sup>34</sup> A more recent project called “Together: Building a United Community Strategy”, launched in May 2013, is a vast legislative programme that seeks to address persistent sectarian segregation in education and housing, as well as economic inequalities. The Strategy outlines a vision of “a united community, based on equality of opportunity, the desirability of good relations and reconciliation – one which is strengthened by its diversity, where cultural expression is celebrated and embraced and where everyone can live, learn, work and socialize together, free from prejudice, hate and intolerance”.<sup>35</sup> This new programme, clearly based upon Human Rights principles, provides the framework for government action in “tackling sectarianism, racism and other forms of intolerance while seeking to address division, hate and separation”.<sup>36</sup> This programme is mostly aimed at children and young people with the creation of 100 summer schools projects to be run in 2015,<sup>37</sup> the creation of 10 shared educational campuses and the organization of cross-community sporting events. The idea is to involve the younger generation, raise awareness among them and help them “discover” their counterparts from the other side, sharing the same interests and the same fears. The idea is to move from contested spaces to shared spaces. It is an ambitious project which unfortunately lacks a dynamic motivation to implement it in due time as it was initially presented. In spite of persisting tensions and divisions, such projects offering young people from both communities a common purpose participate in the search for unity and reconciliation.

33 “Richard Haass warns NI violence could re-emerge without progress”, BBC News, 12 March 2014, [www.bbc.co.uk/news/uk-northern-ireland-26535987](http://www.bbc.co.uk/news/uk-northern-ireland-26535987) (accessed on 08/05/15).

34 Unfortunately, Spirit of Enniskillen closed down in March 2013. “The primary reasons are the fall in value of property and also an increasing deficiency in the trust’s pension commitments”, [www.thedetail.tv/articles/the-spirit-of-enniskillen-trust-has-closed](http://www.thedetail.tv/articles/the-spirit-of-enniskillen-trust-has-closed) (accessed 08/05/15).

35 <http://www.ofmdfmi.gov.uk/review-good-relations-indicators-2014-consultation.pdf>, *Together: Building a United Community Strategy*, p.2 (accessed on 08/05/15).

36 <http://www.northernireland.gov.uk>, *The Panel of Parties in the NI Executive on parades and Protests: Flags, Symbols and Emblems and Related Matters and the Past*, Terms of Reference, p.1. (accessed on 08/05/15).

37 *OFMDFM launch summer camps pilot programme*, 17 April 2015, <http://www.nihe.gov.uk/news-ofmdfmi-launch-summer-camps-pilot-programme> (accessed on 08/05/15).

In the wake of the Good Friday Agreement, the various Human Rights institutions and documents along with the protections they contain offer a common framework to everyone with a wish to enjoy them equally. It will take time in such a deeply divided post-conflict society. The several bones of contention such as dealing with the past, parading and flag flying, can only be solved in the light of Human Rights principles and protection, as presented in the Northern Ireland Bill of Rights which is still in limbo. Obviously, in the long term, such values are bound to become part of every Northern Ireland citizen’s cultural background, hence of their identity, no matter what community they belong to. Human Rights are a universal legacy.

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