
CURRENT LEGAL DEVELOPMENTS

The Northern Ireland Peace Agreement: Evolving the Principle of Self-Determination

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Keywords: democracy; human rights; Northern Ireland; Northern Ireland Peace Agreement; self-determination.

Abstract: Central to this article is the evolution of the nature of the principle of self-determination. The main focus will be on the examination of a recent instance of state practice – the Northern Ireland Peace Agreement. In particular, the way in which the Northern Ireland Peace Agreement has given effect to the primary elements of self-determination, including democratic self-government, the protection of human rights, and the protection of minority rights will be discussed.

In Northern Ireland, the conflict about national identity is increased because it coincides generally with a division in respect of religious belief, which in turn creates differences about philosophy and language. At times, the two communities in Northern Ireland, even when trying to reach out towards one another to find an accommodation, speak in such radically different language that they do not understand one another. What one side sees as a gesture of conciliation is seen by the other as an aggressive proposal simply because the modes of thinking are so different.

The Taoiseach of Ireland¹

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1. Taoiseach of Ireland, February 1996, Northern Ireland Peace Process: Statements, Parliamentary Debates' Official Report Unrevised, Vol. 461, n. 6, at 1739 (1996).

1. INTRODUCTION

The principle of self-determination has a long history in state practice and *opinio iuris*. Despite this long history, there exists much disagreement among foreign policy practitioners and scholars as to the exact nature of the principle, and to its applicability to current conflict situations. This article seeks to shed light on the evolution of the nature of the principle of self-determination by examining one additional notable instance of recent state practice – the Northern Ireland Peace Agreement. In particular, this article examines the way in which the Northern Ireland Peace Agreement has given effect to the primary elements of self-determination, including democratic self-government, the protection of human rights, and the protection of minority rights.

To explore the extent to which the Northern Ireland Peace Agreement has contributed to the evolution of the principle of self-determination, this article briefly summarizes the history of the Anglo-Irish conflict, identifies the major provisions of the Peace Agreement, discusses in detail those provisions relating to the principle of self-determination, and then concludes with a brief assessment of the political factors that will determine whether this attempt to structure peace on the basis of self-determination will be successful.

2. HISTORY OF THE ANGLO-IRISH CONFLICT

Until April 1998, historical divisions within Northern Ireland had prevented the crafting of a lasting peace settlement, which would provide both the Catholic and the Protestant communities with what they perceived as adequate political representation and protection of their human rights and economic interests. As a result, the Protestant majority in Northern Ireland had traditionally sought to maintain an unbreakable union with Britain, while the significant Catholic minority, which considers itself distinctly Irish, had consistently sought to promote greater integration and potential union with Ireland. These sectarian divisions have fueled a political conflict in Northern Ireland, which over the years has accounted for approximately 3,500 people killed and over 40,000 injured.²

The formal link between Great Britain and Ireland dates to the introduction of English forces into Ireland in the late 12th century, when a number of English settlers migrated to Ireland and ultimately established a system of Colonial rule.³ After centuries of conflict between the Irish Catholics and the British, in 1918 Irish nationalists elected to the British House of Commons decided to set up

2. K. Cullen & E. Neuffer, *A Resounding Vote for Irish Peace*, *The Boston Globe*, 24 May 1998, at A1.

3. J. Darby, *Historical Background*, in J. Darby (Ed.), *Northern Ireland: The Background to the Conflict*, at 14.

their own parliament in Dublin.⁴ In 1922, the southern Irish established the Irish Free State, which in 1949 left the Commonwealth to become an independent republic.⁵ Irish Nationalists in the north, led by the Irish Republican Army (IRA), strongly opposed Britain's continuing claims to Northern Ireland.⁶ Britain, for its part, insisted that it retain control over Northern Ireland as it held strategic interests in controlling Irish territory, ports, and air-corridors for the purposes of national defence.⁷

Inspired by Martin Luther King and American civil rights leaders, the Northern Ireland popular civil rights movement began in 1967, when Catholic families squatted in newly-built council housing in Derry. Vocal unrest peaked in late 1968, with frequent demonstrations and marches bringing the plight of the Catholic minority to the public's eye. On 5 October 1968, the Royal Ulster Constabulary (RUC) violently quashed a civil rights march in Londonderry, which was internationally televised. The steady stream of violence led the British government to authorize military deployments in 1969 to maintain order. The British also began making mass arrests and implemented an internment policy. Subsequently, on 24 March 1972 the British government disbanded Northern Ireland's Stormont parliament, replacing it with direct rule from London.⁸

The first attempt to devise a new political structure for Northern Ireland resulted from negotiations in 1973 that led to the Sunningdale Accord, a power-sharing agreement which lasted only five months.⁹ Many Protestants opposed the agreement and a general Protestant strike was held across Northern Ireland, shutting roads and cutting off power and water.¹⁰ The accord collapsed and in 1974, the British government again suspended and later abolished the regional parliament at Stormont, resuming direct rule from Westminster. Both Unionists and Nationalists paramilitaries continued their campaign of violence.¹¹

The British government tried subsequently to devolve power back to the regional level with the Northern Ireland Act of 1982. It provided a framework for legislative and executive responsibilities to be resumed by a 78-seat assembly and executive branch in Northern Ireland. Elections were held to the assembly in October 1982, but the main Nationalist party, the Social Democratic and Labour

4. *Id.*, at 16-17.

5. E. Curtis, *A History of Ireland* 404-405 (1996).

6. T. P. Coogan, *The IRA: A History* 508 (1994).

7. J. McGarry & B. O'Leary, *Explaining Northern Ireland* 31 (1995); and R. Foster, *Modern Ireland: 1600-1972*, at 469 (1988).

8. *Thirty Troubled Years*, *The Economist*, 18 April 1998, at 20.

9. See J. O. Ranelagh, *A Short History of Ireland* 277-278 (1997).

10. *Northern Ireland's Search for Peace*, *The Washington Times*, 10 April 1998, at A20.

11. Ten Nationalists prisoners starved themselves to death in 1981, reinforcing the demand for a change in Northern Ireland's political status. See *Thirty Troubled Years*, *supra* note 8, at 20. According to Gerry Adams, the President of Sinn Fein - the political arm of the IRA - the hunger strikes created serious public relations problems for the British, "and their aftermath marked [...] the beginning of the end of British rule in Ireland." See G. Adams, *Before the Dawn* 315 (1996).

Party (SDLP), did not participate in or support the process. It perceived of the Act as a unilateral initiative undertaken by the British without the consultation of the Irish government.¹² Although Sinn Fein took part for the first time in an election in Northern Ireland, the party then boycotted the assembly for not having Irish unity on its agenda. The British government subsequently dissolved the Assembly in June 1986.¹³

Despite the Assembly's failure, efforts to develop local rule in Northern Ireland continued. The Anglo-Irish Agreement (also known as the Hillsborough Agreement), was signed by Garret Fitzgerald and Margaret Thatcher on 15 November 1985, and aimed to promote lasting peace and stability by endorsing the devolution of power.¹⁴ This agreement was novel in that for the first time Ireland was provided with a consultative role in decisions regarding Northern Ireland. The agreement also provided for an Intergovernmental Conference that allowed for regular meetings at the ministerial and other official levels.¹⁵

After months of preparatory discussions, in March 1991, the four main constitutional parties in Northern Ireland, the Social Democratic and Labour Party, the Ulster Democratic Unionist Party, the Ulster Unionist Party, and the Alliance Party, along with representatives of the British and Irish governments, announced a framework agenda for formal talks.¹⁶

These preliminary talks were held in three phases, with phase one occurring between the British government and the four main Northern Ireland parties. They addressed the relationship between Northern Ireland and the Westminster Parliament. In phase two, the Irish government joined the talks and the relationship between the people of Ireland was considered. In phase three the governments of Ireland and Britain engaged in direct discussions concerning their joint efforts to bring peace to Northern Ireland. These talks, the first of their kind since 1920 were, however, undermined by strident Unionist and Nationalist opposition. Even though these preliminary talks did not succeed in resolving any major points of contention, the discussions helped identify the main issues at hand and laid the basis for further meetings. Throughout 1993, private bilateral discussions continued between the British government and Northern Ireland political parties; secret discussions also included Sinn Fein.¹⁷

The Joint Declaration (also known as the Downing Street Declaration) made in December 1993 by British Prime Minister John Major (1991-1997) and the

12. B. Ahern, *Northern Ireland Peace Process: Statements, Parliamentary Debates Official Report Unrevised*, Vol. 461, n. 4, at 1110 (1996).

13. See *Northern Ireland's Search for Peace*, *supra* note 10.

14. P. O'Malley (Ed.), *The Uncivil Wars: Ireland Today xvii-xviii* (1997).

15. Gerry Adams argued that the agreement was also an attempt to counter the rise of Sinn Fein, which had developed a solid political platform and following. Adams, *supra* note 11, at 317.

16. The 1991 talks lasted from 1 June through 3 July and resumed again sporadically in the spring of 1992.

17. See Coogan, *supra* note 6, at 486-495. Lines of communication between Sinn Fein and the British had been opened since 1990 and in early 1993, the British proposed that Sinn Fein and the British meet for an intensive round of negotiations. See also Adams, *supra* note 11, at 318.

former Taoiseach Albert Reynolds (1992-1994) underlined the right to self-determination and the need to find a comprehensive peace settlement.¹⁸ The document also promised a Northern Ireland Bill of Rights. John Major reaffirmed that the British government had "no selfish strategic or economic interest in Northern Ireland."¹⁹ The Irish Taoiseach Albert Reynolds emphasized that "it would be wrong to attempt to impose a united Ireland, in absence of the freely given consent of a majority of people of Northern Ireland."²⁰

On 31 August 1994, the IRA announced the end of its military operations, and this announcement was followed by a cease-fire called by radical Unionists.²¹ In February 1995, the British and Irish governments set forth the Framework for the Future document. The Joint Framework Document, as this initiative was also known, provided for the first time, an outline of what a comprehensive political agreement might involve. The intensive preparatory talks were one part of a twin track process.²² The discussion in the political track involved an unprecedented degree of contact between the relevant parties, paving the way for all-party negotiations. The other track, an international body chaired by Senator George Mitchell, independently assessed the decommissioning of weapons. In January 1996, the international commission recommended that all-party talks and decommissioning occur simultaneously. The report also emphasized the need for "a decommissioning of mind sets", as well as weapons.²³

As a framework for the negotiations, George Mitchell articulated six principles of democracy and non-violence upon which negotiators were required to agree before entering Northern Ireland's peace talks. The 'Mitchell Principles' written in January 1996 with Canadian Defence Chief General John de Chastelain and former Finnish Prime Minister Harri Holkeri, included: the use of democratic and exclusively peaceful means to resolve political issues; total disarmament of all paramilitary organizations; agreement that an independent

18. See A Joint Declaration 1993 in B. O'Brien, *The Long War: The IRA and the Sinn Fein* 369, para. 3 (1995).

19. *Id.*, para. 4.

20. *Id.*, para. 5. This agreement was reached in part as a result of signals by the IRA that it would be willing to call a cease-fire in return for official Sinn Fein representation in talks. The Irish Peace Initiative (also known as the Hume-Adams Agreement), reached earlier in 1993, symbolized the rapprochement between the SDLP, the moderate Catholic Nationalist party, led by David Hume, and Sinn Fein, led by Gerry Adams. This agreement helped to move Sinn Fein leaders, already interested by the previous British admission by Northern Secretary Peter Brooke in 1990 that it had no "selfish" interest in Northern Ireland, towards a commitment to ending IRA violence. See O'Brien, *supra* note 18, at 211 and 297. Throughout the 1980s and early 1990s, terrorist activity by the IRA and other extremist Republican and Unionist groups had undermined any attempts at negotiations and peace talks. By 1993, however, internal divisions and war-weariness had generated debate about the sustainability of the IRA's violent tactics. In addition, in February 1994, US President Bill Clinton allowed Gerry Adams to come to the US, in return for a promise to produce a cease-fire.

21. See Ahern, *supra* note 12, at 1102.

22. Taoiseach of Ireland, *Northern Ireland Peace Process: Statements, Parliamentary Debates & Official Report Unrevised*, Vol. 462, n. 34, at 895 (1996).

23. *Id.*, at 896.

commission must be able to verify the disarmament satisfactorily; renunciation and opposition to the use of force to influence the course of all-party negotiations; agreement to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and peaceful methods to alter any aspect of the outcome; and finally, the mandate to stop and prevent 'punishment' killings and beatings.

The Mitchell plan for decommissioning, however, contradicted the British government's firm adherence to prior decommissioning. Prime Minister John Major therefore ignored the report and instead called for Northern Ireland elections as an entry mechanism into all-party talks. At this point Major's slim majority in the UK parliament relied upon six Unionist MPs from Northern Ireland. These MPs therefore essentially had veto power over Major's decisions.

Since the outcome of elections before talks would have clearly heavily favoured the Unionists, based on the size of the Protestant population as compared to the Catholic community, the nationalists widely regarded this proposal as impractical. Furthermore, the IRA operated on the belief that it was not a 'paramilitary' group, but an army: as such, no army has ever historically had to lay down its arms before negotiating a treaty. Exacerbating Nationalist dismay, a scathing report on the deteriorating conditions of political prisoners in Northern Ireland was released in mid-January 1996.²⁴ The combination of these developments led the IRA to believe that Major's government was unwilling to address its concerns. The IRA called off its cease-fire, detonating a bomb in Londonderry, and dropped out of talks in February 1996.²⁵

Nevertheless, negotiations between the constitutional parties of Northern Ireland and the two governments continued in 1996. In order for Sinn Fein to regain its status as a full participant in the negotiations, the IRA had to restore its cease-fire of August 1994, which it was unwilling to do. A representative of Ireland's opposition party underlined in parliamentary debate the main reason for continuing even fragmented negotiations:

[n]obody wants to live in a society where more than 40 per cent of the people are completely alienated. Unionism and Nationalism are not compatible but it is possible to create structure and institutions where they both can be accommodated and to which each person, regardless of his identity, can give his allegiance.²⁶

The May 1997 British election, which brought Tony Blair's Labour party to power reinvigorated the peace process. Importantly, the Labour party was able quickly to begin to draw Sinn Fein into talks as Tony Blair led a majority government less beholden to Unionist pressure. Bertie Ahern, the Taoiseach, was

24. F. Fitzgerald, *Northern Ireland Peace Process: Statements, Parliamentary Debates & Official Report Unrevised*, Vol. 462, n. 3, at 1722 (1996).

25. See O' Malley, *supra* note 14, at xi.

26. See statement by Miss Harney, *in* Fitzgerald *supra* note 24, at 911.

also considered a more pragmatic, reliable, and less ideological leader than his predecessors. A new IRA cease-fire was announced 20 July 1997. The Democratic Unionist Party, led by Ian Paisley, withdrew from the talks, angered by the lack of prior decommissioning. Yet, discussions between eight political parties and the two governments continued until 10 April 1998, when the parties reached a comprehensive agreement.

3. THE PRIMARY PROVISIONS OF THE NORTHERN IRELAND PEACE AGREEMENT

The Declaration of Support for the Northern Ireland Peace Agreement issued by the British and Irish governments declares they are "committed to partnership, equality and mutual respect as a basis of relationships within Northern Ireland, between North and South, and between these Islands."²⁷ Consistent with this declaration, the Peace Agreement sets forth a comprehensive plan for bringing peace to Northern Ireland, promoting political and social equality and engaging all relevant parties in the decision-making process.

Specifically, the Northern Ireland Peace Agreement includes: a declaration of support for peace by the parties; a set of constitutional measures designed to remove the political and legislative barriers to peace; a detailed articulation of human rights, institutional safeguards and mechanisms for promoting social, political, and economic equality; a process for decommissioning weapons, and reform of the police, correctional and justice systems; and detailed implementation and review procedures.

To provide an institutional basis for implementing the Peace Agreement the parties also agreed to create three interconnected governmental entities: a Northern Ireland Assembly, a North-South Council, and a British-Irish Council. The new Northern Ireland Assembly, a 108-seat body elected in June 1998, is designed to replace the British government as the local governing authority. Elected by a system of proportional representation, with executive and legislative powers and minority safeguards, the new Assembly is designed to operate on the basis of cross-community support. The powers administered by Britain's Northern Ireland office are due to be transferred to the Assembly in early 1999, if the assembly members are able to reach agreement on the nature of their participation in the North-South Council.

The North-South Council was established as a forum for government ministers from Ireland to promote joint policy-making with the approval of the Northern Ireland Assembly on agriculture, transportation, policing, and relations with

27. Northern Ireland Peace Agreement, Declaration of Support, 10 April 1998, para. 3. The full text of the agreement can be found on Internet at <http://www.irlgov.ie/taoiseach/publication/niagreement/frame.htm>.

the European Union. The Council members, drawn from the Northern Ireland Assembly and from Irish Parliament are to meet at least twice a year at the summit level to discuss means for improving co-operation in the areas within its purview.

The Peace Agreement also establishes the British-Irish Council, wherein lawmakers from Ireland and Britain are to meet regularly with representatives from the Northern Ireland Assembly and the new legislatures in Scotland and Wales. Notably, the British-Irish Council will have no administrative or legislative powers, but will have summits at least twice a year, along with regular sectoral meetings to discuss specific issues.

In addition, Ireland also agreed to hold a referendum on amending Articles 2 and 3 of the country's constitution, which lay claim to the territory of Northern Ireland as an integral part of the Republic, and on offering formal recognition that Northern Ireland is legitimately part of the United Kingdom.²⁸ The Peace Agreement also provided that by the summer of 1999 an independent commission would make recommendations for future policing arrangements in Northern Ireland.²⁹ The deadline for review of the province's criminal justice system, to be carried out by the British government in conjunction with political parties and non-governmental organizations, is set for the fall of 1999. By May 2000, all arms held by paramilitary groups are to be decommissioned and by the summer of 2000, most paramilitary prisoners are to be released from prison.³⁰ Notably, the British government already began the early release of political prisoners in June 1998.³¹

4. GIVING EFFECT TO THE PRINCIPLE OF SELF-DETERMINATION

Although various charters, conventions, and court opinions vary slightly in their articulation of the exact nature of the right of self-determination, there is broad agreement that the right includes the ability of a self-identified group collectively to determine its political destiny through democratic means, and for the members of the group to be able freely to exercise fundamental human rights, and in particular rights which protect the interests of minority populations.

Despite the broad agreement on the various rights which make up the right of self-determination, scholars and foreign policy practitioners have debated

28. See Northern Ireland's Search for Peace, *supra* note 10, at A20.

29. See Peace Agreement, *supra* note 27, Policing and Justice, paras. 1-7.

30. *Id.*, Decommissioning, paras. 1-6. See also Prisoners, paras. 1-5.

31. At the end of July, the United Kingdom named ten Northern Ireland Sentence Review commissioners; on 1 August 1998, the Irish government freed six IRA prisoners under the peace accord. Moreover, preliminary inquiries into the events of Bloody Sunday, 26 years ago, were made in July, though the tribunal will not be hearing evidence until February 1999. The initial inquiry performed in 1972 was widely condemned as inconsistent and lacking eyewitness testimony.

whether the right to self-determination is a collective right, a group right or an individual right. Although there is no absolute consensus as to the exact nature of this right, most scholars and practitioners now acknowledge that a self-identified group may be accorded the right to self-determination if they demonstrate a central focus of identity, such as ethnicity, nationality, indigenous status or religion that makes them distinct from the dominant population. The self-identified group must also generally demonstrate a clear connection to a particular territory. Recently, scholars have begun to use the term 'ethno-national group' to define those groups entitled to a right of self-determination. As defined by Professor David Wippman, an ethno-national group is a politically self-conscious subnational group that asserts plausible historical claims to a particular territory, and that shares racial, linguistic, cultural, or historical characteristics that distinguish the members of the group from the dominant population.³²

Many scholars also draw a distinction between internal and external self-determination.³³ There is general consensus among scholars that under the principle of internal self-determination, members of a self-identified group are entitled collectively to determine their political destiny, democratically to participate in the government exercising control over the territory on which they reside, and freely to exercise basic human rights.

Scholars, however, disagree as to whether self-identified groups possess a right of external self-determination – which is defined as the right of the group to secede from the state which exercises jurisdiction over the territory on which they reside.³⁴ Recently, however, in considering whether Quebec could legitimately secede from Canada, the Canadian Supreme Court ruled that,

[a] right to secession only arises under the principle of self-determination of peoples at international law where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.³⁵

32. D. Wippman, *Hearing Voices Within the State: Internal Conflicts and the Claims of Ethno-National Groups*, 27 *New York University Journal of International Law and Politics* 585, at 586 (1995).

33. For a review of this distinction, see A. Cassese, *Self-Determination of Peoples* (1995).

34. R. Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 *AJIL* 713, at 732 (1971); V. Nanda, *Self-Determination Under International Law: Validity of Claims to Secede*, 13 *Case Western Reserve Journal of International Law* 257 (1981); H. Hannum, *Autonomy, Sovereignty and Self Determination* 27 (1990); T.M. Franck, *Fairness in the International Legal and Institutional System*, 240 *Recueil des Cours* 135 (1993-III); and F.L. Kirgis, Jr., *The Degrees of Self-Determination in the United Nations Era*, 88 *AJIL* 304, at 308 (1994).

35. Decision of the Supreme Court of Canada in the Matter of Section 53 of the Supreme Court Act, R.S.C., 1985, C. S-26; and in the matter of A Reference by the Governor in Council Concerning Certain Questions Relating to the Secession of Quebec from Canada, as set out in Order in Council P.C. 1996-1497, dated 30 September 1996, para. 154 (Decision of the Supreme Court of Canada).

The Court further declared:

[a] state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have the territorial integrity recognized by other states.³⁶

The ruling of the Canadian Supreme Court is the most recent articulation of a conception of external self-determination which is based on the idea that as a government's legitimacy derives from a people's exercise of the right of internal self-determination and from its conduct in accordance with its obligation to protect and promote the fundamental human rights of all of its people, a self-identified group may become entitled to secession (external self-determination) if a state fails adequately to provide them an opportunity to participate in the democratic governance of that state and fails to protect their exercise of fundamental human rights.³⁷ Under this approach, the denial of the exercise of the right of internal self-determination is considered a necessary precondition to the attainment of a right of external self-determination.

Interestingly, the Peace Agreement provides that the people of Northern Ireland are entitled to the right of internal self-determination, and then also permits them to exercise the right of external self-determination – by seceding from the United Kingdom and joining with the Republic of Ireland upon a majority vote of the population – without requiring, as a precondition to secession, that the right of internal self-determination be denied. While this arrangement furthers the understanding of the relationship and distinction between internal and external self-determination, it likely does not serve as a precedent for the position that a self-identified group is entitled to external self-determination even in situations where it is able to exercise all of its rights associated with internal self-determination.

Importantly, the Peace Agreement has furthered the development of the understanding of the principle of self-determination, as well as its substantive content, as it has carefully followed the prescriptions of international law and has sought to give effect to all the various requirements of the principle. The

36. Decision of the Supreme Court of Canada, *supra* note 35, para. 154. As the Court found that the people of Quebec had not been "denied meaningful access to government to pursue their political, economic, cultural and social development, they were not entitled to secede from Canada." (*Id.*)

37. See also Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations, UN Doc. A/RES/22625 (XXV) of 24 October 1970, which declares: "nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."

primary areas in which the Peace Agreement has contributed to the understanding and development of the principle of self-determination is with respect to the right to democratic self-government and to the exercise of fundamental human rights. By including detailed provisions relating to these two issue areas, the Peace Agreement elaborates the mechanics and procedures associated with the implementation of the right to self-determination, and establishes relevant state practice for future interpretations of that right. The Peace Agreement may thus come to serve as a useful model for resolving conflicts consistent with the principle of self-determination in crises such as Kosovo, the Congo, Chechnya, Abkhazia, Kashmir, Tibet, and Cyprus.

To explore the various means by which the Peace Agreement incorporates the rights associated with the principle of self-determination, this section first defines the right to democracy and highlights the various provisions of the Peace Agreement embodying this right. It then defines the entitlement to basic human rights and highlights the various provisions of the Peace Agreement that embody those rights and which create procedures for their fulfilment.

4.1. The right to democracy

In its essence, the principle of self-determination holds that members of an identifiable group are entitled to determine their collective political fate through democratic self-government.³⁸ More specifically, the principle of self-determination provides that members of a group are entitled to determine the structure of the institutions designed to represent public will, are entitled freely to elect representatives to those institutions, and are entitled to hold those representative accountable through requirements of transparency and judicial review.³⁹ In addition, members of a group are entitled to exercise rights generally

38. See Western Sahara, Advisory Opinion of 16 October 1975, 1975 ICJ Reports 12, at 33-35; H. Hannum, *Autonomy, Sovereignty and Self-Determination* 27 (1990) (citing J. P. Humphrey, *Political and Related Rights*, in T. Meron (Ed.) 1 Human Rights in International Law: Legal and Policy Issues 193 (1984)); see also, Decision of the Supreme Court of Canada, *supra* note 36, paras. 63-65, which finds that "democracy is fundamentally connected to substantive goals, most importantly, the promotion of self-government," and that "democracy accommodates cultural and group identities," and "must be guided by the values and principles essential to a free and democratic society [...] [which embody] respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society."

39. P. Thornberry, *The Democratic or Internal Aspect of Self-Determination With Some Remarks on Federalism*, in C. Tomuschat (Ed.), *Modern Law of Self-Determination* 101 (1993); T. M. Franck, *The Emerging Right to Democratic Governance*, 86 AJIL 46, at 52 (1992); A. Eide, *Minority Situations: In Search of Peaceful and Constructive Solution*, 66 Notre Dame Law Review 1311, at 1335 (1991); L. Chen, *Self-Determination and the World Public Order*, 66 Notre Dame Law Review 1287, at 1291 (1991); S. J. Anaya, *The Capacity of International Law to Advance Ethnic or Nationality Rights Claims*, 75 Iowa Law Review 837, at 842 (1990); and L.C. Buchheit, *Secession: The Legitimacy of Self-Determination* 14 (1978).

deemed necessary to ensure the adequate operation of a democratic system of governance, such as freedom of speech, freedom of political association, and freedom from political or religious discrimination.⁴⁰ Finally, there is some support for the assertion that the principle of self-determination requires states to permit its citizens the right not only freely to determine their political status, but also freely to pursue their economic, social, and cultural development.⁴¹

To protect minority populations against a tyranny of the majority, the principle of self-determination also incorporates a requirement that identifiable minorities be guaranteed the right not to have their ability democratically to determine their political fate infringed upon by the majority population during the exercise of its democratic rights.

The Peace Agreement seeks to give effect to the right to democracy in four important ways. Firstly, and most important, the Peace Agreement provides for the creation of a democratically elected Assembly in Northern Ireland which is capable of exercising both executive and legislative authority on matters currently within the purview of the six Northern Ireland Government Departments.⁴² The 108-member Assembly is elected on the basis of proportional representation, with the allocation of Committee Chairs, Ministers, and Committee membership being in proportion to the electoral strengths of the various parties.⁴³ On June 25 1998 elections were held for the Assembly, wherein over 70% of the voters backed pro-peace parties.⁴⁴

Secondly, and in keeping with the obligation to permit those entitled to self-determination to decide the structure of the institutions giving effect to their right to democracy, the Peace Agreement provides that it would only come into force upon an affirmative vote in a consultative referendum in Northern Ireland,⁴⁵ followed by an affirmative vote of the British Parliament.⁴⁶ On 22 May

40. Universal Declaration of Human Rights, UN Doc. A/RES/217 (1948) A (III), Arts. 18, 19, 21, 26, and 29.

41. 1966 International Covenant on Economic, Social and Cultural Rights and 1966 International Covenant on Civil and Political Rights, UN Doc. A/RES/2200 (XXI) (1966), Ann., Arts. 1-2, reproduced in 6 ILM 360 (1967) and 6 ILM 386 (1967) respectively; and Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance With the Charter of the United Nations, UN Doc. A/RES/22625 (XXV).

42. Peace Agreement, *supra* note 27, Strand One: Democratic Institutions in Northern Ireland, paras. 1, 3. Notably, the Peace Accords provide that the Assembly, once elected, shall be responsible for creating its own rules of procedure, for determining the specific structure of its competencies, and for determining its relationship with other institutions.

43. *Id.*, para. 5. For a review of the specific authority of the Assembly, see Peace Agreement, *id.*, Strand One: Legislative Authority, paras. 14-29. The Westminster Parliament will retain authority over non-devolved issues, the implementation of international obligations, and oversight of the Secretary of State. *Id.*, para. 34.

44. *Trimble Survives Poll Crash*, Boston Globe, 29 June 1998, at A1.

45. The question put forward in the referendum was: "[d]o you support the agreement reached in the multi-party talks on Northern Ireland and set out in Command Paper 3883?" See Peace Agreement, *supra* note 27, Validation, Implementation and Review, para. 2.

46. *Id.*

1998, the Peace Agreement received the necessary majority (71%) approval of a high turnout of voters.⁴⁷ Subsequent to the vote, the British and Irish governments are required to adopt and implement the legislation necessary to give effect to the Agreement.⁴⁸ The Peace Accords also require the Government of Ireland to modify its constitution such that it no longer holds territorial claims to Northern Ireland and to subject this Bill to a referendum,⁴⁹ and to recognize that at present the majority of the people in Northern Ireland wish to maintain the Union with the United Kingdom and that Ireland must respect this wish.⁵⁰

Thirdly, the Peace Agreement provides that the people of Northern Ireland may by majority vote determine their political status, in particular whether they wish to remain a part of the United Kingdom, or whether they wish to unite with Ireland.⁵¹ To ensure the fulfilment of this right, the Peace Agreement requires the British Parliament to adopt legislation which recognises that Northern Ireland remains part of the United Kingdom and shall not cease to be so without the consent of the majority of the people of Northern Ireland, but that upon a scheduled date the British government must conduct a poll to determine whether the majority of the population wish to cease to be part of the United Kingdom and associate with Ireland.⁵² The British government must then conduct subsequent polls, when it appears likely that a majority wish to change the status of Northern Ireland, but not sooner than seven years from the previous poll.⁵³ The Peace Agreement further provides that the Government of Ireland must amend its constitution such that it may be united with Northern Ireland only as the result of peaceful means and with the consent of a majority of the people in both Northern Ireland and Ireland.⁵⁴

And fourthly, the Peace Agreement provides that in order for the people of Northern Ireland to be able effectively to partake of their right democratically to determine their political fate, they must be entitled freely to exercise certain hu-

47. Support from the Ulster Unionist Party, Northern Ireland's largest Protestant party, for the agreement in Northern Ireland marked a victory for party leader David Trimble, whose decision to back the multi-party agreement was crucial. Trimble's hard-line past helped garner Protestant support for the peace agreement, since Unionists trusted him not to "cave in" to a weak compromise. Tony Blair also assured Unionists that Northern Ireland would not break from United Kingdom entirely without the support of the majority of the population. Trimble's support for the peace process, however, prompted a furious reaction from radical Protestant dissenters such as hard-line Reverend Ian Paisley and others who splintered off to form new unionist parties in opposition. See F. O'Toole, *Trimble's Troubles: Ulster's Protestants Ponder Peace*, *The New Republic*, 4 May 1998, at 11; T.R. Reid, *Key to N. Ireland Pact: Slaving Over the Details*, *The Washington Post*, 12 April 1998, at A1. For more background history on Paisley, see Paisleyism: A Question of Intent, in O'Malley, *supra* note 14, at 169-203.

48. Peace Agreement, *supra* note 27, Validation, Implementation and Review, para. 3.

49. *Id.*, para. 2.

50. *Id.*, Constitutional Issues, para. 1(iii).

51. *Id.*, para. 1(i).

52. *Id.*, Constitutional Issues, Ann. A, para. 1.

53. *Id.*, Schedule 1, paras. 2-3.

54. *Id.*, Ann. B, para. 3.

man rights directly associated with democracy. In particular, the Peace Agreement provides that the United Kingdom and Ireland affirm their commitment to ensure that the people of Northern Ireland are entitled to exercise specific human rights such as the right of free political thought, freedom of expression, freedom of religion, and the right to pursue democratically national and political aspirations.⁵⁵ Moreover, the Peace Agreement provides that pending the devolution of powers to the new Northern Ireland Assembly, the British Government shall pursue policies designed to promote sustained economic growth in Northern Ireland and to promote social inclusion.⁵⁶

To protect the rights of the minority population in Northern Ireland, the Peace Agreement provides for a series of what it terms cross-community protections. Most importantly, the Peace Agreement provides that any 'key decisions' of the Northern Ireland Assembly must be adopted with 'parallel consent'. This means that a majority of both the unionists and nationalists representatives present and voting must support the decision, or that it is supported by a 'weighted majority', that is by 60 percent of the members present and voting, including 40 percent each of the nationalists and unionists delegations.⁵⁷ It may also be considered that the creation of the North/South Ministerial Council and the British-Irish Intergovernmental Conference are means of protecting the rights of minority populations by ensuring that states sympathetic to their interests will be provided an opportunity to consult on matters which may affect the rights and interests of minorities.⁵⁸

4.2. The protection of basic human rights

The right of self-determination also incorporates a host of traditional human rights such as political participation, non-discrimination, freedom of association, legal due process – including freedom from arbitrary incarceration, freedom from torture, and the opportunity to pursue economic advancement, which are necessary to prevent the persecution of members of a self-identified group.⁵⁹

55. *Id.*, Rights, Safeguards and Equality of Opportunity, para. 1. In this paragraph, the Peace Agreement also provides that the people of Northern Ireland are entitled to "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."

56. *Id.*, Economic, Social and Cultural Issues, para. 1.

57. *Id.*, Strand One: Democratic Institutions in Northern Ireland, para. 5(d). According to the Peace Agreement, "key decisions" must be designated in advance and can only be triggered by a "significant minority" of 30 Assembly members. *Id.*, para. 5(e).

58. *Id.*, Strand Two: North/South Ministerial Council; *See also id.* Strand Three: British-Irish Intergovernmental Conference.

59. The Human Rights Committee has underlined the importance of self-determination as a human right by noting that "[s]tates set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants."

Notably, in the 1993 Vienna Declaration, United Nations member states declared that they considered "the denial of the right of self-determination as a violation of human rights."⁶⁰ It should also be noted that the right to democratic self-government, as discussed above, is interrelated to the protection of basic human rights. By ensuring a democratic form of government, which international law has increasingly recognised as essential to the protection of human rights generally, the right of self-determination promotes the achievement of more specific human rights by the members of the group.⁶¹ Similarly, adherence to a range of human rights, no one of which may affect a citizenry as a whole, ensures that the members of the group will be more aptly able to exercise their right to participate in the democratic structures of the state.

The Peace Agreement seeks to provide for the protection of the basic human rights of the people of Northern Ireland in three important ways. Firstly, the Peace Agreement requires that the British government adopt the European Convention on Human Rights and provide direct access to the courts and remedies for breach of the Convention, including the right of the judiciary to overrule legislation from the Northern Ireland Assembly on the grounds that is inconsistent with the Convention.⁶² The British government is further required to create a Northern Ireland Human Rights Commission which shall propose the legislation by the British government of rights supplemental to those in the Convention which reflect the particular circumstances of Northern Ireland. These additional rights, taken together with those articulated in the Convention will constitute the Northern Ireland Bill of Rights. The Peace Agreement further provides that the Bill of Rights should reflect the

[f]ormulation of a general obligations on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland,

and "a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors".⁶³

nants." Human Rights Committee, General Comment No. 12, 39 UN/GAOR/Supp. No. 40 (1984), at 142.

60. Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/24 (Part I) (1993), para. 2.

61. *Id.*, para. 8, which provides that, "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing". See also CSCE, Charter of Paris for a New Europe, 30 ILM 190, at 194 (1991), which declares that "[d]emocracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person"; and UN Doc. A/RES/46/137 (1991), para. 3, which notes that "[t]he right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights."

62. Peace Agreement, *supra* note 27, Rights, Safeguards and Equality of Opportunity: Human Rights, para. 2.

63. *Id.*, para. 4.

Secondly, the Peace Agreement requires that Ireland too adopt the European Convention on Human Rights, as well as the Council of Europe Framework Convention on National Minorities, which has already been ratified by the United Kingdom.⁶⁴ The Peace Agreement also calls upon the Irish government to take all necessary steps further to strengthen the protection of human rights within its jurisdiction.⁶⁵

And thirdly, the Peace Agreement provides for the creation of a Victims Commission designed to promote reconciliation by addressing the suffering of the victims of the sectarian violence.⁶⁶ On matters related to the protection of human rights, the Peace Agreement provides for the normalisation of security arrangements,⁶⁷ the decommissioning of weapons,⁶⁸ and detailed provisions for the creation of a Policing Commission – with international participation, and a review of the criminal justice system.⁶⁹

To promote the protection of minority rights specifically, the Peace Agreement provides for the people of Northern Ireland to hold both British and Irish citizenship.⁷⁰ This provision enables the current minority of Irish Catholics to benefit from the protections accorded Irish citizens, while it permits the Irish Protestants to benefit from British citizenship should the majority of the people of Northern Ireland eventually vote to unite with Ireland.

The Peace Agreement also seeks to protect minority rights by providing for the creation of an Equality Commission to monitor the promotion of equality and the parity of esteem between the two communities.⁷¹ The Peace Agreement also provides for the possibility that the Northern Ireland Assembly may create a Department of Equality,⁷² as well as specific guarantees relating to the protection of the Irish language, including the obligation to promote the use of the language and facilitate its use in speech and writing in public and private life where there is appropriate demand.⁷³

5. POLITICAL ISSUES DETERMINING THE FATE OF THE AGREEMENT

Although the prospects for a lasting peace in Northern Ireland are strengthened by the solid incorporation of the principle of self-determination, several socio-

64. *Id.*, para. 9.

65. *Id.*

66. *Id.*, para. 11.

67. *Id.*, Security, paras. 1-5.

68. *Id.*, Decommissioning, paras. 1-6.

69. *Id.*, Policing and Justice, Ann. A: Commission on Policing for Northern Ireland; Peace Agreement, *id.*, Review of the Criminal Justice System, Ann. B.

70. *Id.*, Constitutional Issues, para. 1(vi).

71. *Id.*, Strand One: Democratic Institutions in Northern Ireland, para. 5(e).

72. *Id.*, Rights, Safeguards and Equality of Opportunity, para. 7.

73. *Id.*, Economic, Social and Cultural Issues, para. 4.

political factors will significantly determine whether the Peace Agreement is successfully implemented. Two primary factors in determining the success of the Peace Agreement are the ability of the parties to stem the marginalisation of many Catholic workers,⁷⁴ and promote greater integration among school children and young adults who are socialised in informally segregated educational systems and housing projects which foster cultural prejudices that are often carried through to adulthood.⁷⁵

In addition, the past 25 years in Northern Ireland have woven violence into the social fabric. Some lapses into violence have already marred the post-agreement peace, though it remains largely intact. Notably, Protestant marchers and Catholic protesters struck a compromise designed to prevent the typical clashes provoked during 'marching season', when more than 100,000 Protestants march across Northern Ireland to commemorate historical events significant to the Protestant community. Under the recent agreement the parade was permitted but fewer marchers were allowed near the town's main Catholic neighbourhood.⁷⁶ Despite these efforts, the marching of the Protestant order did trigger some sectarian violence, in which three Catholic children died.

Finally, frustration with a slow-moving peace process could quickly and easily lead to a return to violence as the most viable means of attaining Irish unity or autonomy in Northern Ireland. Militants on both sides of the spectrum often reiterate that having fought for 800 years, they are willing to fight for 800 more. In order to continue the process of marginalizing the paramilitary groups and prevent such violence, the political institutions founded upon the principle of self-determination must be implemented as quickly as possible.

74. R.J. Cormack & R.D. Osborne, *The Evolution of the Catholic Middle Class*, in A. Guelke (Ed.) *New Perspectives on the Northern Ireland Conflict*, at 64 (1994).

75. J. Hughs, *Prejudice in a Mixed Environment*, in A. Guelke (Ed.) *New Perspectives on the Northern Ireland Conflict*, at 86 (1994).

76. S. Pogatchnik, *Protestant March Reaches Compromise*, Associated Press, 3 August 1998.