The Northern Ireland Problem in the 21st Century European Context

(The Queen's University of Belfast - 11th June 2004)

1. Introduction

The Charter of Paris for a New Europe - 21st November 1990 - 'A New Era of Democracy, Peace and Unity' stated:

> We the Heads of State or Government of the States participating in the Conference on Security and Co-operation in Europe, have assembled in Paris at a time of profound change and historic expectations. The era of confrontation and division of Europe has ended. We declare that henceforth our relations will be founded on respect and co-operation.

> Europe is liberating itself from the legacy of the past. The courage of men and women, the strength of the will of the peoples and the power of ideas of the Helsinki Final Act have opened a new era of democracy, peace and unity in Europe.

> Ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries.

Today: the world is ever changing and the world is never without problems to solve. It is, however, often easier to define a problem than it is to secure a solution.

In this ever-changing world there are from time to time new paradigms. One such paradigm, I believe, was the break-up of the USSR. A major result of this break up was that the threat to peace and stability within Europe is now more intra-State than inter-State.

Intra-State conflict within the European theatre is additional to other problems such as the transition from totalitarianism to pluralist democracy and the social and economic move from centrally planned economies to market economies.

Within this new order the tradition of non-intervention no longer holds: legitimate intervention, via the United Nations, has occurred, not infrequently, in recent years. Intervention, coupled with a commitment to peace and stability, has been supported on occasion by recourse to arbitration by the International Court at The Hague. In addition, the Organisation for Security and Co-operation in Europe (OSCE) has played a conciliatory role in various countries including Albania, Croatia, Hungary and Slovakia.

2. The Problem

'Northern Ireland: A Route to Stability?' Robin Wilson & Rick Wilford (ESRC Research programme) stated:

> … a refocusing from the procedure for constitutional change towards a new and positive statement of Northern Ireland's constitutional character, recognising that the region will exist for some time to come as a ***unique*** intercultural entity, while removing any barriers…

I believe that part of the inherent difficulty in the way previous United Kingdom, and Irish, Governments approached a resolution to our divided society was based on a belief that they faced a unique problem.

In February 1995, the United Kingdom and Irish Governments brought forward proposals entitled 'A Framework for Accountable Government in Northern Ireland'. In this document Northern Ireland was described as being in a *"special position"*. The then Prime Minister, John Major, described Northern Ireland in the foreword as *"unique"*.

However:

Professor Kevin Boyle (Law professor & Director of the Human Rights Centre, Essex) wrote: "Northern Ireland is only unique in the sense that any society is *unique."*

Asbjorn Eide - writing for the Forum for Peace and Reconciliation (Dublin 1996), Consultancy Studies No. 3 - described the situation [when two groups, defining themselves as Nations in an ethnic sense conflict with each other over the same territory and they claim: discrimination, second class citizenship, parity of esteem, self-determination in the form of independence, merger with neighbouring State or autonomy] as an Ethno-Nationalist conflict and one of the most difficult to resolve. He added: *"These are the conflicts which receive most attention at present."*

Definition:

This solution of intra-State conflict has often been referred to as 'group accommodation' or 'minority protection'. A former senior member of the SDLP, Mr Austin Currie - now a member of Dail Eireann – defined the problem in Northern Ireland as follows:

> "Fundamentally the Northern Ireland conundrum is one of conflicting national identities between those who believe themselves Irish and those who believe themselves British. There are religious, social, cultural, political and other dimensions to the problem but they are only dimensions of that central issue." [1]

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[1] Cadogan Group (Belfast): 'Blurred Vision'; 1994, page 3

3. Post USSR

The Council of Europe, and in particular its Parliamentary Assembly, has maintained that from its beginning (1949) it has repeatedly concerned itself with the rights of minorities.

However the concerns of the past cannot alone explain the sudden revival of interest in minority interests in: Council of Europe, OSCE, United Nations, European Union and within National governments.

In Europe the intensification of interest has been due to the destabilising effects of the 'ethnic factor' in Central and Eastern Europe. The end of oppression, which had suppressed minorities' search for identity now led to a resurgence – and often violent.

This led governments to believe that international norms on minority rights would be a contribution to stability - memories of the Europe of the 1930's were still clear.

But, it could not always be said that governments of Western Europe were enthusiastic about binding rules for the protection of minorities in their own countries, where States have been essentially stable.

There was also the fear, possibly, of promoting disintegration by awakening ambitions of cultural autonomy and possibly secession. The principle of universality of rights, they would claim, would not admit the definition of special rights for specific groups within the population. (See: French Constitution: Art. 2 "equality of citizens before the law without distinction of race origin or religion")

4. Concept of a Minority

The word 'minority' is often used in reference to Northern Ireland. This is a word that in many quarters, understandably, is not liked because it carries an implication of being somewhat less in importance.

The Council of Europe has referred to a national minority [2] as a group of persons within a State *"who display distinctive ethnic, cultural, religious or linguistic characteristics"* and are *"motivated by a concern to preserve together that which constitutes their common identity."* Such a national minority is to be *"sufficiently representative, although smaller in number than the rest of the population of that State or a region of that State."* This reflects more truly my concept of a minority and that of the Belfast Agreement - merely smaller in number than other groupings within a State.

My hope is that no grouping will consider itself as a minority within Northern Ireland, in the sense of being lesser in importance. The Celtic Romansch in Switzerland consider themselves, not as a minority with all its connotations, but rather the fourth

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[2] Human Rights Law Journal Vol. 16 No. 1-3, page 114

and smallest language group in Switzerland and equal in status to the French, German and Italian speakers.

Dr. Michael Breisky ('Dealing with Minorities: A Challenge for Europe'; The Institute of European Studies, The Queen's University of Belfast, October 1998) [3] was very clear on this point. While it is necessary, as a first element, that minorities are protected by the norms of international rules, a second and equally important element, requires the breaking down of psychological barriers: the sense of superiority/inferiority must be eliminated. The building of confidence and trust is required.

We in the Unionist party have endeavoured to convince Nationalists/Republicans that there will be a fair deal for all within Northern Ireland - that they have a stake in Northern Ireland and will play an important role at each level of government.

Equally, Nationalists/Republicans must convince Unionists that they will work within the institutions of government in Northern Ireland and in the context of a peaceful environment. This is where real confidence building is required. The structures of government contained in 'The Agreement' reflect this inclusive dimension. [4]

5. Approach to the Problem

The basic requirements for order in any democratic society today are found within international Human Rights law. In the context of Northern Ireland there is no more important issue to be addressed than how we organise our society with respect to human rights.

This corpus of rights embraces a number of categories: civil, political, economic, social, religious and cultural. The question is how can we manage the differences that exist in Northern Ireland in ways consistent with democratic values and human rights?

The Northern Ireland conundrum is not insoluble. Real progress has been made and will continue to be made if we follow agreed international norms, which will provide the fullest guarantees to all traditions within Northern Ireland. Unionism has no difficulties with these norms.

The Party is committed to accepting, and help implement, agreed international norms for the protection and development of all groups within Northern Ireland. The Party has no desire to seek to define these rights in any restrictive manner.

This pledge reflects much more than a party obligation; it is an obligation on all involved to subscribe to international norms. The Irish Government convened a 'Forum for Peace and Reconciliation'. Like similar fora elsewhere, this Forum heard evidence and commissioned studies. One study document stated that:

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[3] Dr. M. Breisky: 'Dealing with Minorities: A Challenge for Europe'; The Institute of European Studies, The Queen's University of Belfast, October 1998.
[4] See Strand One of Belfast Agreement, paragraphs 8 and 16

> "The human rights to be protected … are defined by established conventions drawn up by international agreement…. As such they form part of international law and must not be thought of as subject to bargaining between parties." [5]

I was a little surprised (though I suppose I should not have been) that the UK government, in considering this matter during the multi-party talks process, indicated that: *"there may be some existing models"* or that *"the provisions of certain international instruments on human rights might contain elements"* [6] relevant to Northern Ireland. The UK government seemed clearly to have had a 'blind spot' regarding human rights protection within a divided society.

As previously stated, Northern Ireland is not a unique problem: it may have its own particular characteristics, but that is all. I believe that part of the inherent difficulty in the way previous United Kingdom, and Irish, Governments approached a resolution to our divided society was based on a belief that they faced a unique problem.

In February 1995, the United Kingdom and Irish Governments brought forward proposals entitled 'A Framework for Accountable Government in Northern Ireland'. In this document Northern Ireland was described as being in a *"special position"*. The then Prime Minister, John Major, described Northern Ireland in the foreword as *"unique"*.

What threatened to make our conundrum insoluble was thinking that Northern Ireland was uniquely complicated to the extent that it could only be tackled by pursuing untried, dangerously innovative and complex measures without precedent elsewhere, and which would offer only continued instability.

The assertion that the central problem in Northern Ireland is unique is not based on objective judgement: there are perhaps a hundred million people across Europe who consider themselves to be on the wrong side of a border.

Nor does the presumed size of the Nationalist community in Northern Ireland make it unique. There are national minorities in some countries that constitute majorities in their own regions, such as the German speakers in the South Tyrol region of Italy, yet a solution was found there within current internationally accepted norms.

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

In Eastern Europe there are many areas that have intra-state division. Most cases are like Northern Ireland in that a large minority within a State borders another State to which the minority feels culturally close.

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[5] Forum for Peace and Reconciliation: 'The protection of Human Rights in the Context of peace and Reconciliation in Ireland' Dublin, May 1996, page 23

[6] UK Government's tabled document at the multi-party negotiations, 6th February 1998

I wish to make it abundantly clear, from a Unionist viewpoint the legitimacy of Irish Nationalism is not rejected in the sense that it is entitled to wish for a united Ireland, though Unionism does not accept the validity of the Nationalist argument.

In this context, previously both the United Kingdom and Irish Governments treated both Unionism and Nationalism as equal. This is a fundamental flaw in principle. London and Dublin jointly stated that they wished to "reconcile the rights of both traditions in the most equitable manner" but equity means to be fair and just which may, or may not, mean equal - yet it had been the position that both governments interpreted equity to mean equal.

The Unionist and Nationalist viewpoints have equal legitimacy as viewpoints but legally they are entirely different. Northern Ireland, as part of the United Kingdom, is the legal position accepted by international law whereas the status of the Nationalist viewpoint is that of a legitimate right to wish for a change in Northern Ireland's position within the United Kingdom.

6. The European Model

Let me look briefly at the principles enshrined in the array of international agreements and conventions agreed at both European and wider international levels with the aspiration of guaranteeing the rights of citizens within States and the obligations of States towards their citizens. 'The Belfast Agreement' reflects, in a maximalist way, these international norms: for example, an inclusive form of government and methods of cross-border co-operation.

The international agreements now in place represent the collective wisdom of all involved and have been based on the often bitter experience of the realities of differing allegiances within a State - the intrinsic problem in Northern Ireland.

What is indisputable I believe, is that the overwhelming consensus emerging from these agreements is that the best deal for all, and the best hope for stability, is to be found in accepting the territorial integrity of existing States [7] and offering maximum internationally defined guarantees to national minorities within them.

Asbjorn Eide made this point abundantly clear. He stated: "The Framework Convention on Minorities of the Council of Europe therefore consolidates a principle basic to all international instruments in this field: group accommodation must be effected within the limits of existing territorial integrity of States unless all parties agree to a voluntary change." [8]

Asbjorn Eide also described it as "the first multilateral…instrument devoted in its entirety to the protection of minorities and it contains much more detailed provisions on such protection than any other international instrument." [9]

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[7] See Belfast Agreement, 'Constitutional Issues' paragraph 1iii
[8] Dublin Forum: Consultancy Studies Number Three, Page 70 (1996)
[9] Dublin Forum, op cit. page 69. Note: the initial quotation was wrongly taken from page 68 of this document.

Some of the principles in the Convention are these: freedom of peaceful assembly and religion; access to the media for national minorities in order to promote tolerance and to permit cultural pluralism; usage of personal names in the minority language; the right to display minority language signs of a private nature visible to the public; and the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

'The European Model' relevant to our conundrum is as follows:

- where there is aggressive nationalism, borders are to be respected by way of the institutions of government;
- where there is dissension within a region of a State regarding the validity of that State, autonomous regional government is developed and it is expected that institutions will be created within that State in order to protect all ethnic groups;
- where there is tension, and a lack of trust, across borders co-operation is encouraged and expected to be built up slowly from the base of already existing regional government; and
- where there are States that have an ethnic affinity with a group of people in a neighbouring State, their interest is in ensuring that their kin flourish under conditions of good government in that neighbouring State and not to have a say in its government.

These fundamental democratic rights and freedoms are being advocated both fairly and equally, on the same footing and with the same emphasis, throughout the wider Europe. A full implementation of The Belfast Agreement would reflect broadly these rights and freedoms.

During the negotiations, matters relating to the relationship with Dublin were the most difficult to resolve. The main reference in international human rights law to the aspect of cross-border links is to be found in Article 17 of the Council of Europe's Framework Convention. It is worth quoting fully this article.

> The parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or common cultural heritage.

It is worth noting that this article supports persons belonging to a minority in establishing and maintaining free and peaceful contact across borders. Also Article 18, where necessary, encourages agreement with other - in particular - neighbouring States in order to ensure protection of national minorities in such areas as culture and education.

7. Reflections

a. The European Model

John Hume stated: *"the SDLP approach, as we have consistently made clear, is based upon the European Model, which is the greatest example in the history of the world of conflict resolution."* [10]

I readily accept that borders have become blurred by the pooling of sovereignty among the 15 nations (now 25) of the EU. Since Ireland and the UK are both EU members this situation already exists within the island of Ireland.

However, the 'European Model' is not about sovereign States, for example the UK and Ireland, encouraging a region of a State, Northern Ireland, to work towards a 'New Ireland'. Nor does the European Model involve the asymmetrical pooling of sovereignty - Ireland has 'a say' in UK affairs (Northern Ireland) but not the reverse.

b. Para-military violence

Though today borders have ceased to be as important as they were in the past - traditional bounds of sovereignty have become blurred in the new Europe - co-operation across borders, whether in the European Union or other geographical groupings, has succeeded only where all participating accept the internationally determined borders and have no linkages, overt or covert, to existing para-military organisations that have shown ruthless determination to eradicate such borders. [11]

Also, it goes beyond accepted international norms for a political section of any movement to participate in the government of a region when its para-military section has done no more than declare a cease-fire: the threat of a return to violence by the IRA is at present undiminished. The Council of Europe has recently made a pronouncement on such a situation.

The Parliamentary Assembly of the Council of Europe *"considers an act of terrorism to be any offence committed by individuals or groups resorting to violence or threatening to use violence ... being motivated by separatist aspirations ..."* [12]

The Council defined a terrorist act as an *"intentional act"* with the aim of *"seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country"*. Such an act could include simply the *"possession of weapons"*.

Progress has occurred - but further progress remains to be concluded before we can fully move to a peaceful stable and normal society.

Dermot Nesbitt

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[10] Sunday Independent, 16th February 1998
[11] See: The Belfast Agreement, 'Declaration of Support', paragraph 4
[12] Recommendation 1426, paragraph 5 (1999)