

# How is Northern Ireland to be Governed?

(Political choice & democratic freedom in Ireland  
MacGill Summer School, 22<sup>nd</sup> July 2004)

## Abstract

Northern Ireland has been viewed by some as a unique problem needing therefore unique solutions. It has been classified as a 'divided society' problem. But against the background of European events in the latter part of the 20<sup>th</sup> Century and the beginning of the 21<sup>st</sup> Century, perhaps world events, it is by no means unique.

Since the demise of the Union of Soviet Socialist Republics (USSR) in 1989 there have been minority problems within many countries. Many of these countries have recently joined the European Union. There was in the 1990's a sudden revival of interest in minority (or group) protection and there is today an established body of international law and practice to deal with such problems. The Council of Europe has been at the forefront in this development.

At the heart of the matter is a principle common to all international law, namely that accommodation of different groups is done within the limits of existing borders unless all parties involved agree to a change in the border. In short, current borders are protected but this must be complemented by genuine efforts to build confidence and promote equality among different groups within a State.

Many States within Europe reflect the political dynamics of Northern Ireland in that a large grouping within a State could have ethnic affinity with a neighbouring State. The 'model' for the 21<sup>st</sup> century already exists and thus a stable peaceful Northern Ireland should have occurred some time ago. The United Nations Vienna Declaration (1993) declared that the population of a sovereign State has a right to democracy. This challenge must not only be confronted but also acted upon.

## 1. Introduction

The Charter of Paris for a New Europe <sup>1</sup> 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.

---

<sup>1</sup> 'A New Era of Democracy, Peace and Unity' – Paris, 21<sup>st</sup> November 1990

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.

I believe that lasting peace in Northern Ireland, as elsewhere, will be founded upon the above principles. Peace does not emanate from Agreements (like the German/Russian pact of the 1930's) nor from international organisations (like the League of Nations) but from adherence to the central tenants of democracy and human rights.

Also it is worth noting that 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**

What matters in addressing any problem is first to understand the problem. Without knowledge of the causes of a problem it is extremely difficult, if not impossible, to solve the problem. It is not symptoms but causes that need to be addressed and addressed in accordance with internationally accepted norms.

The problem, though often not explained, has been viewed by many as unique. For example, the authors of a recent ESRC sponsored research project on Northern Ireland<sup>2</sup> stated that they recognised “*that the region will exist for some time to come as a unique intercultural entity...*”

In particular, I believe that part of the inherent difficulty has been the way previous United Kingdom, and Irish, Governments approached a resolution to our divided society, which 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”.

There is however a counter-view, that I support, as expressed by Professor Kevin Boyle (Law professor & Director of the Human Rights Centre, Essex). He described Northern Ireland as being unique only in the sense that any society is unique.

Also, Asbjorn Eide described<sup>3</sup> a situation where two groups, defining themselves as Nations (in an ethnic sense), conflict with each other over the same territory as an Ethno-Nationalist

---

<sup>2</sup> ‘Northern Ireland: A Route to Stability?’ Robin Wilson & Rick Wilford (ESRC Research programme), 2003

<sup>3</sup> Forum for Peace and Reconciliation (Dublin 1996), Consultancy Studies No. 3

conflict and one of the most difficult to resolve. Such a conflict, he stated, also involved claims regarding discrimination; second class citizenship; parity of esteem; and, self-determination in the form of independence or merger with a neighbouring State or autonomy.

My firm view is that what threatens to make the Northern Ireland problem insoluble is thinking that Northern Ireland is uniquely complicated to the extent that it can 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.

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 have stated that they wish 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 often 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.

Mindful of the above comments a description of the Northern Ireland problem by Austin Currie is I believe appropriate. Austin Currie, a former senior member of the SDLP and then 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.<sup>4</sup>

### 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: the Council of Europe, OSCE, United Nations, European Union (EU) 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 Communist oppression - which had suppressed many minorities' search for identity - led to a resurgence in the interest of some groupings in their identity. This was often manifested by violence.

This in turn led governments to believe that international norms on minority rights would make a contribution towards stability: memories of the Europe of the 1930's were still clear in many people's minds.

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

There was also the fear, possibly, of promoting disintegration by awakening ambitions of cultural autonomy and possibly secession. The principle of universality of rights, it could be claimed, would not admit the definition of special rights for specific groups within a country's population.<sup>5</sup>

### 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<sup>6</sup> 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 '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,

---

<sup>4</sup> Cadogan Group (Belfast): 'Blurred Vision'; 1994, page 3

<sup>5</sup> For example: French Constitution, Art. 2 "equality of citizens before the law without distinction of race origin or religion

<sup>6</sup> Human Rights Law Journal Vol. 16 No. 1-3, page 114

not as a minority with all its connotations, but rather the fourth and smallest language group in Switzerland and equal in status to the French, German and Italian speakers.

Dr. Michael Breisky, then Ambassador to Ireland, was clear on this point.<sup>7</sup> 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, the Ulster Unionist Party, have genuinely endeavoured to convince Nationalists and 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 us 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 Belfast Agreement' reflect this inclusive dimension.<sup>8</sup>

## 5. Approach to the Problem

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. The Ulster Unionist Party 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:

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.<sup>9</sup>

Yet the UK government, in considering this matter during the multi-party talks process, indicated <sup>10</sup> that: "*there may be some existing models*" or that "*the provisions of certain international instruments on human rights might contain elements*" 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, I believe that Northern Ireland is not a unique problem: it may have its own particular characteristics, but that is all.

---

<sup>7</sup> Dr. M. Breisky: 'Dealing with Minorities: A Challenge for Europe'; The Institute of European Studies, The Queen's University of Belfast, October 1998.

<sup>8</sup> See Strand One of Belfast Agreement, paragraphs 8 and 16

<sup>9</sup> Forum for Peace and Reconciliation: 'The protection of Human Rights in the Context of peace and Reconciliation in Ireland' Dublin, May 1996, page 23

<sup>10</sup> UK Government's tabled document at the multi-party negotiations, 6<sup>th</sup> February 1998.

## 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 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;
- 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.

## 7. Reflections

### a. The European Model

(i) 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.*”<sup>11</sup>

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.

(ii) Gerry Adams, in reference to the non-implementation of The Agreement, stated: “*Holding up a process which is essentially about basic rights and modest entitlements is counterproductive.*”<sup>12</sup> He firmly asserts that he is denied these basic rights.

---

<sup>11</sup> Sunday Independent, 16<sup>th</sup> February 1998

<sup>12</sup> Sinn Fein Dublin Conference, 28<sup>th</sup> February 2004

No Nationalist or Republican residing in Northern Ireland is denied any basic right or entitlement, nor indeed denied any right that any Unionist resident is afforded. Rather, Nationalist and Republican residents in Northern Ireland are afforded, in a maximum way, rights not found elsewhere for similarly disposed residents.

Gerry Adams' demands the right that: "*all our MLAs from every part and part of the six counties should not have to ask the Irish Government twice for our right to represent our people in Leinster House.*"<sup>13</sup> No such right is found anywhere within international human rights law. Quite the contrary, it is precluded.

### **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.

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 Provisional IRA is at present undiminished. In this regard the International Monitoring Commission (IMC) reported<sup>14</sup> as follows:

PIRA ... remains active and in a high state of readiness. It has been undertaking training in the early part of this year. It maintains a capability on intelligence, both on political events and on potential targets, and on weaponry. This provides ample evidence of an organisation maintaining its capacity to undertake acts of violence or to participate in a terrorist campaign if that seemed necessary.

Equally, the Council of Europe is clear regarding terrorism. It referred<sup>15</sup> to a precise definition of a terrorist act in the form of a list of "*intentional acts.*" One such act was the "*possession ... of weapons*" aimed at "*seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country*". It is clear beyond doubt that further progress in this area remains to be concluded before we can fully move to a peaceful, stable, fully inclusive and normal society.

### **c. Confident Unionism**

My unionist position is clear. Politically, we have wiped away all the negative perceptions of the past. We say "yes" to participation in government at all levels by all constitutional parties; and, in turn, "yes" to full co-operation with our nearest neighbour on matters that are of mutual benefit to both. The vision is clear the message is simple: we say yes to the same rights, same stability and same principles of government - including structures of government to accommodate diversity - that operate elsewhere in the democratic world.

---

<sup>13</sup> op.cit.

<sup>14</sup> Independent Monitoring Report (IMC): April 2004, 3.12

<sup>15</sup> 'Guidelines on human rights and the fight against terrorism' - adopted by the Committee of Ministers of the Council of Europe, 11<sup>th</sup> July 2002 (pages 16-17)

This is neither a policy of triumphalism nor a policy of triumph of Protestant over Catholic, but rather the triumph of logic and reason over narrow-minded dogma. I say clearly, I am confident of my unionism and my party has been consistent and is worthy of trust. We have sought to do what is correct for Northern Ireland. We openly, and with party approval, took risks for Northern Ireland (and for peace) by entering government with Sinn Fein.

It was never unconditional. We always stated publicly that a government in Northern Ireland, containing Sinn Fein, could not continue indefinitely unless we knew that the Republican movement was demonstrably and irrevocably committed to peace. Republicanism has not done so and thus we have now no local Administration.

Finally, the Ulster Unionist Party has faced unprecedented difficulties. We have done our utmost to ensure that devolution was given the opportunity to deliver benefits for all the people of Northern Ireland. We kept our side of the bargain; we have sought to make politics work in Northern Ireland and we remain willing again to give an opportunity for all to participate as democrats.

**Dermot Nesbitt**