

Rights: Principles of Government

1. INTRODUCTION

1. The UK Government indicated in its paper (6 Feb. '98) 'Rights and Safeguards' that, "the protection of rights will be of central significance for the achievement of a lasting settlement." The Ulster Unionist Party's manifesto for the Forum Election stated that rights were, "the fundamental building block in any agreement regarding the future governance of Northern Ireland." These statements reflect a broad consensus among the Talks participants as to the importance of 'rights'.
2. It is true that the basic requirements for order in any society today are to be 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. The UK Government is correct to indicate that, "it is important to establish what rights are to be protected."
3. The corpus of Rights embraces a number of categories: civil, political, economic, social and cultural. The problem is to manage the differences that exist in Northern Ireland in ways consistent with democratic values and Human Rights; indeed Human Rights are integral to democracy and can provide a check on majorities.
4. These Rights have developed largely since 1945 via the United Nations and other such bodies as the Organisation for Security and Co-operation in Europe. However, since the demise of the USSR there has been a sudden revival, especially within Europe, in the particular aspect of Minority Human Rights protection. This is primarily a consequence of the destabilising effects of the 'ethnic factor' in central and eastern Europe in that national minorities are now wishing to affirm their individuality - a wish that had been for many years suppressed.
5. Today it is generally accepted that the Council of Europe has developed the most effective mechanisms for dealing with such rights. The major 'rights' are now in place, the challenge is to ensure that these rights are upheld.
6. Against this background the Talks process is endeavouring to resolve our central problem where communal identity and allegiance do not coincide with the State. There are other aspects to this problem but they are only a dimension of this central problem of conflicting national identities. Therefore, rights relevant to this central problem are particularly important.

2. TWO FUNDAMENTAL PRINCIPLES

1. Two fundamental principles are clearly identified. Firstly, the United Nations has endorsed the primacy of the territorial integrity of the State: all international law has

consolidated this principle. Secondly, accommodation of differences within a State is to take place within the existing borders.

2. The Council of Europe's Framework Convention (implementation - February 1998) consolidates the fundamental principle of all international law that accommodation of all citizens must be done within the limits of existing territorial States.
3. However, though borders are protected by international law, no individual government of a democratic State has absolute sovereignty: governments must subscribe to international principles for the protection of citizens (whether majority or minority) within a state. Human rights protection cannot be determined solely by individual states but rather subject to supranational standards.
4. It is worth noting that this obligation on all States to abide by these international rules was referred to by the Forum for Peace and Reconciliation consultancy studies document Number Two, as follows:

"Decisions on what should constitute fundamental human rights can no longer be regarded as a matter for people in individual States to decide as best they can. The substance of fundamental human rights is now determined by international consensus"

5. In addition, this document stated:

"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."

3. IS NORTHERN IRELAND UNIQUE?

1. In the above context, how have both governments approached the Northern Ireland problem? They state that Northern Ireland is in a "special position" (A New Framework for Agreement - page 26/paragraph 14) Also, the former Prime Minister, Mr Major, writing in the foreword to the 'Frameworks for the Future' described Northern Ireland as "unique". This clearly is the two governments' rationale justifying the major suggestions contained in the 'Frameworks for the Future' document.
2. The Ulster Unionist Party is firmly of the opinion that Northern Ireland is not unique with respect to the central problem of conflicting national identities. Whether it be: Russians in Estonia; Hungarians in Slovakia; Austrians in Italy; or Muslims in the Philippines - to name but some examples - they are all similar to NI's central problem and, therefore, subject equally to the principles of international human rights law.
3. Professor Kevin Boyle [Professor of Law & Director of the Human Rights Centre at the University of Essex] wrote:

"Northern Ireland is only unique in the sense that any society is unique".

4. UK GOVERNMENT'S RESPONSIBILITY

1. The UK Government has a key responsibility and has placed human rights at the heart of its foreign policy. If the Government promotes the importance of fundamental rights and freedoms abroad, how much greater is its responsibility to ensure that these are honoured within the United Kingdom?
2. The Labour Party stated ('Bringing Rights Home' - February 1997) that: "Parliament itself should play a leading role in protecting the rights which are at the heart of a parliamentary democracy".
3. The Labour Government has already made proposals to incorporate into UK law the 'European Convention on Human Rights'¹ (ECHR), which it views as a valuable step in protecting basic human rights. Recently (15 January 1998) it ratified the Framework Convention for the Protection of National Minorities. The UUP believes that both conventions, developed by the Council of Europe, provide a 'European model' for solving the problems of a divided society.

5. THE EUROPEAN DIMENSION

(a) ECHR

1. For almost 50 years UK citizens have been subject to the ECHR: the UK Government was its first signatory. The ECHR encompasses basic civil and political rights and freedoms. Incorporation into UK law enables UK courts to deal with citizens complaints. The ECHR could be incorporated into a Bill of Rights for Northern Ireland. There is widespread party-political support for such a Bill of Rights. The potentially difficult aspect relates to any additional aspects relevant to Northern Ireland.

(b) Framework Convention for the Protection of National Minorities

2. The UUP advocates that this Framework Convention be the guiding principle regarding additional provisions within a Bill of Rights.
3. The Council of Europe's Framework Convention represents potentially the most significant development to help resolve NI's central problem. The Convention, coming into force in the UK on 1st May 1998, is the first legally binding European agreement for the protection of national minorities.
4. It is surprising that the UK Government, in considering this matter, indicated on 6 February 1998 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 seems clearly to have a 'blind spot'.

¹ Full title is 'Convention for the Protection of Human Rights and Fundamental Freedoms' and it entered into force on 3 September 1953.

5. The Council of Europe (January 1995) described a 'national minority' 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". They are also to be "sufficiently representative, although smaller in number than the rest of the population of that State or a region of that State". It is estimated that there are 100 million persons in this category. The problems of Northern Ireland are clearly not unique within Europe.
6. Some of the principles in the Convention are as follows: 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.
7. Notwithstanding the above paragraph, there are specific Articles particularly relevant to difficult issues within the Talks process.
8. Article 4 refers to adopting measures to ensure "full and effective" political equality. It encourages the development of real equality within a State: all should have effective participation in the political decision-making process within a decentralised form of government.
9. Article 17 is the only reference in international human rights law to the aspect of cross-border links. It states:

"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."
10. This article supports persons belonging to a minority establishing and maintaining free and peaceful contact across borders. Thus, though encouraging trans-border co-operation, it does not extend to trans-border political institutions.
11. It must be clearly understood that a 'right' is extended to an individual (not to groups) to act either separately or in community with others. Also, Article 3 states that a person "shall have a right freely to choose to be treated or not to be treated" as a member of a national minority.
12. Article 21 relates to the interpretation and overall application of the Framework Convention. It states:

"Nothing in this present Framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental

principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States."

13. Thus, central to the Convention is the principle common to all international law, that accommodation of all citizens must be 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 citizens within a State.
14. John Hume, who often refers to the European dimension, recently stated that "the SDLP approach, as we have consistently made clear, is based on the European model, which is the greatest example in the history of the world of conflict resolution" (Sunday Independent - 16 Feb. '98). The UUP supports the concept of a 'European model'.
15. The UUP readily accepts that borders have become blurred by the pooling of sovereignty among the 15 nations within the EU. Since Ireland and the United Kingdom are both EU members this situation already exists within the island of Ireland.
16. However, the UUP believes that to compare the dynamics that have operated, and continue to operate, among the States of the EU with a political process designed to achieve a 'New Ireland' is taking the 'European model' too far.
17. The 'European model' is not about sovereign States, for example the UK and Ireland, encouraging a region of one State (Northern Ireland) to agree to cross-border political bodies aimed at integrating that region into the neighbouring State - all this being against a background of terrorist violence aimed at the same outcome. Such a process is anathema in the modern democratic Europe.
18. Mindful of the above 'European dimension', the UUP does not accept the Frameworks Document as a basis for negotiation. Paragraphs 19 & 20 of the Frameworks Document (page 27) indicate the "new approach" that both Governments in 1995 "strongly commend". They advocated the "equal legitimacy and worth" of both communities' aspirations and "consequently" there should be institutions in NI (and North/South) "with emphasis" on "equal treatment for the identity, ethos and aspirations of both communities."
19. Paragraph 21 indicates that conditional upon the above "the Irish Government will introduce and support proposals for change in the Irish Constitution."
20. The disparity between the Framework Document and European human rights consensus is breathtaking. For example, the Unionist and Nationalist viewpoints have equal legitimacy as viewpoints but legally they are entirely different. The legal position accepted by international law is that NI is part of the UK whereas the status of the Nationalist viewpoint is that of a legitimate right to wish for a change in NI's legal position. This position is compounded by the Irish Government's conditional support for change in its constitution.

21. Overall, it is abundantly clear that both Governments have merely subscribed to "adequate compliance" (Page 5/Par.5) regarding international human rights consensus - and consequently fallen far short of 'adherence to'.

5. THE EUROPEAN MODEL

1. Democrats throughout Europe accept that the foundations for peace, justice and stability are best maintained by effective democracy and a common understanding and observance of human rights. In practice - and for new countries wishing to be considered for membership - the following principles are applied by the European Union.
 - Where there is aggressive nationalism the EU expects current borders to be respected by way of the institutions of government: disagreements are to be settled by arbitration.
 - Where there is dissension within a region of a State regarding the validity of that State, autonomous regional government is developed and arrangements are expected to be created within that State in order to protect all citizens.
 - Where there is tension and a lack of trust across borders within Europe, co-operation is encouraged and expected to be built up slowly from the base of already existing, and functioning, regional government.
 - Where there are States that have an ethnic affinity with a group of people in a neighbouring State, their only interest is to ensure that their kin flourish under conditions of good government in that neighbouring State, not to have a say in its government.
2. These fundamental democratic rights and freedoms are being applied both fairly and equally, on the same footing and with the same emphasis, elsewhere in modern Europe - except in NI.

6. THE ULSTER UNIONIST PARTY'S POSITION

1. The UUP is not participating in these Talks to merely only win arguments: it believes that we can achieve a 'win-win' situation based on the practices applied elsewhere in the democratic world. However, the Frameworks Document advocates what is neither accepted, or practised, anywhere in the democratic world.
2. In the interests of reaching an accommodation, and above all to provide a basis for peace and stability, the UUP advocates that which it believes would be more than acceptable anywhere in the democratic world.
3. From the above analysis, certain principles are required for peace and stability in Northern Ireland.

1. *We wish for the same rights and the same level of stability based on the same principles as are applied elsewhere in Europe.*

At present, Unionism perceives that it is be 'shoe-horned' into an all-Ireland executive unit. It may not be called a 'United Ireland' or 'Joint Authority' but the end result will be the same. There is little point having a constitutional guarantee (the de juri position) when the proposed institutional arrangements (the de facto position) would be all-Ireland based.

2. *The structure of government in Northern Ireland should involve all parties participating at all levels of government in proportion to their strength; and, there should be the establishment of normal cross-border relationships which would benefit all, both socially and economically.*

The position fully reflects the accepted standards as laid down by the international community. The UUP cannot accept that a North-South Ministerial Council will: "be directly responsible for the establishment of an agreed policy and for its implementation" (Page 31 Frameworks Document). The UUP's document 'Proposals for Three Strands' (11 February 1998) indicates appropriate mechanisms which are in accordance with international practice.

3. *Within the Talks process, the Irish Government's interest in Northern Ireland should be only to ensure that their kin flourish under conditions of good government in Northern Ireland and not to seek to have a say in it's government.*

It has long been recognised by the international community that in order to preserve (or secure) peace and stability States should refrain from "any intervention, direct or indirect, individual or collective, in the internal affairs falling within the domestic jurisdiction of another State" (Helsinki Final Act, 1975). The UK Government could state that it is the sovereign authority regarding Northern Ireland since it, in the final analysis, makes the decisions: this in law is correct. However, to be required to consult the Dublin government which has a "recognised concern and role in Northern Ireland" and "to make determined efforts to resolve any differences between the two governments" is not a State acting with political independence. (These quotations are from the Anglo-Irish Agreement (1985) and repeated again in the Frameworks Document).

4. *For any process to succeed an environment of trust must be developed. This will require any political development to be slow, particularly cross-border co-operation.*

Trust will not be built up by trying to create all-Ireland political decision-making bodies that do not have the support of the majority in NI. For too long there has been a democratic deficit in NI which denies to all citizens - Unionist, Nationalist or other - ownership of and participation in the political process.

Power devolved is, potentially, power retained. Within one year of implementation of the Framework Convention for the Protection of National Minorities the UK Government must present to the Council of Europe a report. This report is to indicate

how the principles contained in the Framework Convention have been implemented. Without the removal of the democratic deficit there cannot be the full implementation of these principles.

Therefore, Government must begin now to eliminate the democratic deficit in NI and in turn this would allow the elected representatives of NI to begin the process of healing the community divisions.

Cross Strand sub-committee meeting
2 March 1998