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## An Irish View of the Northern Ireland Peace Agreement: The Interaction of Law and Politics

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# An Irish View of the Northern Ireland Peace Agreement: The Interaction of Law and Politics

David Byrne

## Abstract

They include the treatment of the issues of self-determination, consent, and the status of Northern Ireland in the Irish Constitution and in British constitutional legislation; the establishment of new democratic institutions in Northern Ireland on a partnership basis; the creation of formal new links between the two jurisdictions in Ireland through a North/South Ministerial Council and a number of related bodies exercising executive functions; and the development of wider connections within Britain and Ireland through a British-Irish Council involving the two governments and devolved institutions in Scotland, Wales, and Northern Ireland, as well as a continuing British-Irish Intergovernmental Conference. There was already in existence an international agreement between the two governments—the Anglo-Irish Agreement of 1985 (“1985 Agreement”), which was reached following confidential negotiations between the two governments alone, and which included a measure of agreement on the status of Northern Ireland. It concerns the related issues of the status of Northern Ireland, the principles of consent and self-determination, the recognition and protection of the equality of the identity, ethos, and aspirations of both communities in Northern Ireland, and guarantees of dual citizenship rights in all circumstances. In the Multi-Party Agreement, the participants endorsed those commitments made by the two governments, and also noted that they had undertaken to propose and to support changes in, respectively, the Constitution of Ireland and in British legislation relating to the constitutional status of Northern Ireland. The interlinkage and synchronization of the various elements is also reflected in the Multi-Party Agreement itself, which firmly links the Northern Ireland Assembly to the other new institutional arrangements. The amendments to our Constitution were passed in the referendum on May 22, 1998. This change is aimed at allowing for and facilitating the practical coming together of the people of the island for our mutual benefit through the North/South Ministerial Council and implementation bodies.

# AN IRISH VIEW OF THE NORTHERN IRELAND PEACE AGREEMENT: THE INTERACTION OF LAW AND POLITICS

*David Byrne\**

The conflict in Northern Ireland cost close to 3500 lives and had other huge human, political, financial, and economic costs. While many of us never lost faith in the capacity of the political process to achieve a comprehensive and balanced settlement, inevitably security issues, not least the problems connected with emergency legislation and special judicial arrangements, loomed very large.

## I. *THE NEGOTIATIONS*

There have been important developments over the past twenty years where democratic principles, consent, and the establishment of the rule of law have become the tools for legal and political change and not terrorism and violence. During this period, the lawyer has become a more effective champion of freedom and justice than the terrorist or urban guerrilla. International lawyers well know the skills required of a practitioner, whether in private or in public international law. Fact analysis, negotiation, dispute resolution, and the drafting of legally enforceable written agreements are the most important of these skills. In achieving the Agreement in Belfast on Good Friday, these skills were used by a great number of people, many of them lawyers.

I am convinced that the Agreement has truly marked a new beginning and will prove to be the foundation of both a lasting peace and a durable political accommodation. Inevitably, as events such as the Omagh bombing have proven, the Agreement, and the spirit of tolerance, reconciliation, and mutual trust that runs through it, will for some time continue to face challenges and to endure stresses. I am, however, confident that

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\* Senior Counsel and Attorney General, Ireland, and participant in the Peace Talks leading to the Good Friday Agreement in Belfast on April 10, 1998. This Essay is based on an address given by Mr. Byrne to the American Bar Association (International Law and Practice Section) in Toronto on August 3, 1998.

the new institutions and arrangements established by the Agreement, which have the support of large majorities in both parts of Ireland, will endure and thrive, and that the evil forces of violence and sectarianism will wane.

Of course, the achievement of peace in Northern Ireland has been, and indeed continues to be, a highly complex and intricate endeavor. The talks lasted the better part of two years, following earlier years of intense preparatory work. They involved two sovereign governments, the British and the Irish, and eight extremely disparate Northern Ireland political parties, all of whom were under the independent chairmanship of an American (George Mitchell), a Finn (Prime Minister Harri Holkeri), and a Canadian (General John de Chastelain). The formal negotiations were conducted on the basis of detailed rules of procedure that established an intricate structure for the consideration of the various elements of the negotiations. Equally, informal channels also proved to be of vital importance. There was a careful program of fact analysis that was followed by negotiation and dispute resolution. Lawyers for the parties, primarily the two governments, reduced the matters agreed upon by the parties into two legally enforceable and interdependent agreements: the Multi-Party Agreement,<sup>1</sup> to be signed by all parties, and the British-Irish Agreement,<sup>2</sup> solely between the two governments.

This complexity was, however, the inevitable result of our conviction that the negotiations needed to be as inclusive as possible. In particular, we thought it essential that, in addition to the parties who had previously been involved in the talks, the negotiations should also be open to those parties linked to the main paramilitary organizations, on condition that complete and unequivocal ceasefires were maintained, and that all parties made a clear commitment to exclusively peaceful and democratic means. Likewise, the international dimension proved to be essential in building the confidence of the parties in the fairness and openness of the process. The three independent chairmen displayed remarkable balance, patience, and wisdom in

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1. *See* Agreement Reached in the Multi-Party Negotiations, Apr. 10, 1998 [hereinafter Multi-Party Agreement].

2. *See* Agreement Reached Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, Apr. 10, 1998 [hereinafter British-Irish Agreement].

their work. Equally, the support of a wide range of foreign governments, above all that of the U.S. Administration, has been invaluable.

## II. *THE SUBSTANCE OF THE AGREEMENT*

The substance of the Agreement is equally complex. Again, it seemed to us essential that the talks should address all issues of concern to every party and that the ensuing settlement should, as much as possible, seek to meet those concerns in a radical, balanced, and wide-ranging way. Attempts to resolve one issue, or cluster of issues, without reference to others, or to start from an assumption that all that was required was tinkering with present arrangements, had been tried, and had failed, in the past.

Thus, the Multi-Party Agreement between the two governments and local parties in Northern Ireland covers a very wide range of matters. Just to list them in summary indicates its extraordinary scope. They include the treatment of the issues of self-determination, consent, and the status of Northern Ireland in the Irish Constitution and in British constitutional legislation; the establishment of new democratic institutions in Northern Ireland on a partnership basis; the creation of formal new links between the two jurisdictions in Ireland through a North/South Ministerial Council and a number of related bodies exercising executive functions; and the development of wider connections within Britain and Ireland through a British-Irish Council involving the two governments and devolved institutions in Scotland, Wales, and Northern Ireland, as well as a continuing British-Irish Intergovernmental Conference.

Additionally, there are to be new and strengthened safeguards and institutions in the field of human rights; measures to promote social, economic and cultural equality; and practical measures to encourage reconciliation and to recognize the needs of victims of violence. The future of policing in Northern Ireland is being examined by a major independent commission, chaired by the former Governor of Hong Kong, Chris Patten. A review of the criminal justice system is also being undertaken.

Last, but by no means least in significance or in terms of political sensitivity, arrangements and commitments have been made with respect to the various immediate consequences of the conflict. Among these include the accelerated release of prison-

ers associated with paramilitary organizations, maintaining a complete and unequivocal ceasefire, the decommissioning of illegally-held weapons and explosives, and the normalization of security arrangements within Northern Ireland. Most of these elements are themselves individually complex. Taken together, they represent a remarkably ambitious attempt to address the multiple pathologies that have afflicted relationships within Northern Ireland, between North and South, and between Britain and Ireland.

The very first sentence of the Agreement states that the participants "believe that the agreement we have negotiated offers a truly historic opportunity for a new beginning."<sup>3</sup> That opportunity, in this generation and at the end of the twentieth century, to make a fresh start in the life of our island, is what connects all of the complex details of the Agreement. It is also what persuaded the people, both North and South, to endorse it so massively in simultaneous referendums held on May 22, 1998, by a margin of ninety-five percent to five percent in the South, and seventy-one percent to twenty-nine percent in the North. I would like, in the remainder of this essay, to focus on two related aspects that are, from a legal viewpoint, of particular importance: first, how the Agreement has and is to be given legal effect, both in international and domestic law, and second, the nature of the changes to the Irish Constitution and to British constitutional legislation.

### III. GIVING LEGAL EFFECT TO THE AGREEMENT

The great bulk of the negotiations involved several political parties and two governments. What emerged was, therefore, in essence a political agreement, expressed in the language of political negotiation. We were, however, anxious to give the Agreement as authoritative a standing as possible. There was already in existence an international agreement between the two governments—the Anglo-Irish Agreement of 1985<sup>4</sup> ("1985 Agreement"), which was reached following confidential negotiations

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3. Multi-Party Agreement, *supra* note 1, Declaration of Support ¶ 1.

4. Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland, Nov. 15, 1985, U.K.-Ir., Cmnd. 9657, *reprinted in* TOM HADDEN & KEVIN BOYLE, *THE ANGLO-IRISH AGREEMENT* 15-48 (1989) [hereinafter *Anglo-Irish Agreement*].

between the two governments alone, and which included a measure of agreement on the status of Northern Ireland. In addition, the 1985 Agreement established an Anglo-Irish Intergovernmental Conference enabling the Irish Government to put forward views and proposals on matters affecting the interests of the nationalist community in Northern Ireland.

The 1985 Agreement was registered at the United Nations. It was strongly opposed by the Unionist parties in Northern Ireland, and the prospect of replacing it was, for them, a major incentive to come to the negotiating table. The two governments more than once affirmed that they would be prepared to consider a new and more broadly-based agreement, if that could be achieved through direct discussion and negotiation between all the parties concerned. At the same time, we wanted to be sure that any new arrangements or commitments carried the same weight as those they were to replace. Equally important, given the interrelationship between the various aspects of the Agreement, we wanted to make sure that key commitments—in particular those relating to new constitutional and institutional arrangements—were all implemented together. There was an understandable fear that political pressures, on one side or another, might lead to just a partial implementation of commitments. The parties wanted to ensure that what had been negotiated as a totality would be given effect as a totality.

Therefore, side-by-side at the multi-party negotiations, the governments framed an agreement between them. It is referred to as the British-Irish Agreement and consists of four articles. Article 1, which has six sections, essentially codifies and, where necessary, brings to completion a developing joint understanding between us, achieved over many years and set out in a series of earlier documents—including the 1985 Agreement, the Joint Declaration of 1993, and the Joint Framework Document of 1995. It concerns the related issues of the status of Northern Ireland, the principles of consent<sup>5</sup> and self-determination, the recognition and protection of the equality of the identity, ethos, and aspirations of both communities in Northern Ireland, and

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5. The present Articles 2 and 3 of the Irish Constitution (*Bunreacht na hÉireann*) will be replaced by new text in the event that the Government of Ireland declares that the State has become obliged pursuant to the Agreement to give effect to the amendment of the Constitution at Annex B of the section headed "Constitutional Issues" in the Multi-Party Agreement.

guarantees of dual citizenship rights in all circumstances.<sup>6</sup>

Without seeking further to summarize or to paraphrase what is an exceedingly finely-balanced text, what I can say is that it represents, for the first time ever, a complete understanding between the two governments on these absolutely fundamental issues. Moreover, the resolution of these matters was of great importance in giving the Northern Ireland parties a firm assurance that basic interests and fundamental principles were solidly guaranteed. In the Multi-Party Agreement, the participants endorsed those commitments made by the two governments, and also noted that they had undertaken to propose and to support changes in, respectively, the Constitution of Ireland and in British legislation relating to the constitutional status of Northern Ireland.

Article 2 of the British-Irish Agreement links it directly to the Multi-Party Agreement, which was achieved simultaneously in the talks. In the British-Irish Agreement, the two governments affirm their solemn commitments to support, and where appropriate, to implement the provisions of the Multi-Party Agreement, in particular those relating to the establishment of new North/South and British-Irish institutions.<sup>7</sup> Article 3 provides that, on its entry into force, the new agreement will replace the existing Anglo-Irish Agreement, and the current Intergovernmental Conference will cease to exist.<sup>8</sup>

Article 4 sets out three requirements for the entry of the force of the Multi-Party Agreement. The first is the enactment of British legislation making changes in its constitutional provisions which are consistent with the joint understanding, and as specified precisely in the Multi-Party Agreement.<sup>9</sup> The second requirement is the approval by referendum in our jurisdiction of specified amendments to our Constitution.<sup>10</sup> The final mandate is the enactment of such legislation as may be required to establish the North/South and British-Irish institutions already re-

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6. See British-Irish Agreement, *supra* note 2, art. 1(i)-(vi).

7. See *id.* art. 2.

8. See *id.* art. 3(1)-(2).

9. See *id.* art. 4(1)(a). These changes in British legislation are set forth in Annex A to the section entitled "Constitutional Issues" of the Multi-Party Agreement.

10. See *id.* art. 4(1)(b). These constitutional amendments are set forth in Annex B to the section entitled "Constitution Issues" of the Multi-Party Agreement.

ferred to.<sup>11</sup> There is also an arrangement for the exchange of notifications that these steps have been completed, with the British-Irish Agreement entering into force on the date of the receipt of the later of these notifications.<sup>12</sup> Furthermore, immediately upon that entry into force, the Irish Government is to ensure that the amendments to the Constitution take effect.<sup>13</sup>

The Agreement reached in the multi-party talks forms an annex to the British-Irish Agreement, and, conversely, the British-Irish Agreement was annexed to the Multi-Party Agreement. The interlinkage and synchronization of the various elements is also reflected in the Multi-Party Agreement itself, which firmly links the Northern Ireland Assembly to the other new institutional arrangements. While the Assembly has already been elected and has held meetings, the devolution to it of legislative and executive powers will only take place at the same time as the establishment of the North/South Ministerial Council,<sup>14</sup> North/South implementation bodies (which are, under the aegis of the North/South Council, to exercise executive responsibilities in defined areas),<sup>15</sup> the British-Irish Council, and the British-Irish

11. *See id.* art. 4(1)(c).

12. *See id.* art. 4(2).

13. Article 29(7)(3) of the Constitution, as inserted on June 3, 1998, provides, *inter alia*, that "[i]f the Government declare that the State has become obliged, pursuant to the Agreement, to give effect to the amendment of this Constitution referred to therein, then notwithstanding Article 46 hereof, this Constitution shall be amended as follows . . . ." Multi-Party Agreement, *supra* note 1, Constitutional Issues, Annex B.

14. At the time of this writing, the North/South Ministerial Council, which was to have met in transitional form after the elections to the Northern Ireland Assembly, has not yet been convened predominantly due to UUP objections to Sinn Féin members of the Assembly becoming members of the transitional executive in Northern Ireland pending the decommissioning of arms.

15. The implementation bodies referred to under paragraph 9(ii) of Strand Two of the Multi-Party Agreement were agreed upon in December 1998. They are Inland Waterways (management, maintenance, development, and restoration of the inland navigable waterway system throughout the island principally for recreational purposes); Food Safety; Trade and Business Development (to exchange information and to coordinate work on trade, business development, and related matters in areas where the two administrations specifically agree that it would be in their mutual interest in certain specified areas; existing economic agencies, both North and South, however, would continue to be funded by and operate under the direction of the respective administrations); Special EU Programs; Language (seven functions are specified in relation to the Irish language and the promotion of greater awareness and use of Ullans and of Ulster Scots' cultural issues in Northern Ireland and throughout the island); and Aquaculture and Marine Matters (in relation to Lough Foyle and Carlingford Lough, and functions with respect to lighthouses).

Intergovernmental Conference—that is, on the entry into force of the British-Irish Agreement.

The various steps required to bring the Agreement into force are now being taken. The Northern Ireland Act of 1998 is the British legislation addressing both the constitutional and institutional issues.<sup>16</sup> The amendments to our Constitution were passed in the referendum on May 22, 1998.<sup>17</sup> The identity of the North/South implementation bodies has been agreed upon between the Irish Government and the Northern Ireland parties in consultation with the British Government. Those bodies are to be established by supplementary international agreements. Legislation will be required in each jurisdiction.

The two governments now face the task of legislating and

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16. See Northern Ireland Act, 1998, ch. 47 (Eng.).

17. There was an attempt to restrain the holding of the referendum in the High Court in the case of *Denis Riordan v. An Taoiseach Bertie Ahern, the Government of Ireland, Dáil Éireann, the Minister for the Environment Noel Dempsey, the Attorney General David Byrne, and Ireland*, [1998] 213 JR, Ir. S.C., 202/98. The applicant was a lay litigant and brought the application by way of judicial review. The High Court Judge delivered a written *ex tempore* judgment on May 20, 1998. The applicant asserted that Article 46 of the Irish Constitution, which makes a provision for amendment of the Constitution, was violated in the procedure that was adopted. Essentially, Mr. Riordan was taking exception to Article 29(7)(3), whereby the proposed Articles 2 and 3 will only come into effect on foot of a Government declaration that the State has become obliged pursuant to the British-Irish Agreement to give effect to these amendments. Mr. Riordan asserted that the procedure in Article 46 of the Constitution for amendment was thereby breached. It was held by the High Court:

- (a) that a consideration of Mr. Riordan's point on Article 46 involved a consideration of the merits of the proposal contained in the Nineteenth Amendment to the Constitution Bill, something the court could not do;
- (b) that the appropriate procedures in Article 46 had been complied with in relation to the Bill;
- (c) in the alternative, there is nothing in the form of the amendment which runs counter to either the letter or the spirit of Article 46 of the Constitution because it would be the people who would decide the matter in a referendum. There is nothing objectionable to the amendment occurring only where certain conditions precedent were met (the coming into effect of the British-Irish Agreement, and the Government making a declaration that it has become obliged pursuant to the Agreement to give effect to the amendment of the Constitution).
- (d) the applicant failed to apply for judicial review promptly.

*See id.* The applicant appealed to the Supreme Court but also brought a motion, *inter alia*, to add further grounds of relief, essentially taking into account that the referendum had been passed by the people and that the Bill, the subject matter of the proceedings, was now an Act. In effect, Mr. Riordan was now challenging a provision of the Constitution. Mr. Riordan failed in his application to add additional grounds to his appeal (Unreported, Supreme Court, Nov. 19, 1998), and his appeal is listed for hearing on March 25, 1999.

making other enabling preparations to ensure that the implementation bodies function at the time of the inception of the British-Irish Agreement.<sup>18</sup> In order for the bodies to operate on an all-island basis, it is obvious that close cooperation between the two jurisdictions will be required, especially in drafting domestic legislation. In addition to provisions specific to individual bodies, legislation will also be required in relation to certain horizontal issues such as personnel, funding, auditing, choice of currency, and application of non-financial regulatory regimes such as data protection, freedom of information, ethics, ombudsman, etc.

The implementation of the other, non-institutional aspects of the Agreement is not quite so explicitly or rigorously inter-linked. However, with regard to most of these aspects, clear timetables for review or action have been set out, together with commitments to legislation where required. Thus, for example, the two governments have already introduced the regulations necessary to permit the decommissioning of paramilitary weapons;<sup>19</sup> the British Government has included sections relating to human rights in the Northern Ireland Act,<sup>20</sup> and parallel legislation is being prepared in the Republic; and the legislation necessary to allow for early release of prisoners has already been enacted in both jurisdictions and the process of early release is under way.<sup>21</sup> The Commissions on Policing in Northern Ireland and the Review of the Criminal Justice System have begun their work, which must be completed by next summer.

#### IV. *CHANGES TO THE IRISH CONSTITUTION*

On May 22, 1998, the people of Ireland, North and South, had, for the first time in eighty years, the opportunity to vote simultaneously on an issue of fundamental national importance. In essence, they were asked the same question: whether the settlement reached on April 10, 1998, was a fair, reasonable, and honorable basis on which they could together chart the future of

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18. See Multi-Party Agreement, *supra* note 1, Strand Two, North/South Ministerial Council ¶ 10.

19. See Decommissioning Act of 1997 §§ 5, 6 (Commencement) Order, 1988, 1998 S.I. 215 (Ir.); see also Decommissioning Act of 1997 (Decommissioning) Regulations, 1998 S.I. 216 (Ir.).

20. See Northern Ireland Act, 1998, pt. VII.

21. See Criminal Justice (Release of Prisoners) Act of 1998, No. 36 (1998) (Ir.).

the island. Both answered with a resounding "yes," therefore making this exercise profoundly significant in terms of national self-determination, and removing whatever shred of presumed legitimacy might have been thought to attach to those who sought to effect change, or to achieve Irish unity, other than by consent and through peaceful and democratic means.

The difference in our respective constitutional and legislative provisions meant that the wording of the questions, North and South, and their precise legal effects, were different. The people of the North were simply asked to approve the Good Friday Agreement, while in the South the referendum was on amendments to the Constitution. Despite these differences, both votes were exactly the same in their broad political implications. The Agreement was achieved as a totality, and was, effectively, endorsed as a totality. If there had been a "yes" vote in the South but a "no" vote in the North, then the Agreement would have fallen, and vice versa.

Our constitutional amendment was quite complex, but it had two broad purposes. Substantively, it sought to modernize Articles 2 and 3 of our Constitution<sup>22</sup> relating to the jurisdiction of the State, the nature of the nation, and the aspiration to unity, in ways that were fully in accord with the principles of self-determination and consent as elaborated by ourselves and the British Government and set out in the British-Irish Agreement. Procedurally, what was proposed was a mechanism whereby these substantive changes, even though approved by the people, would not come into effect until the rest of the package agreed to in the talks, and set out in the British-Irish Agreement, had also

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22. Article 2, as it presently stands, reads as follows: "The national territory consists of the whole island of Ireland, its islands and the territorial seas." IR. CONST. art. 2. Article 3 states:

Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and the Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.

*Id.* art. 3. "Saorstát Éireann" is the Irish translation of the "Irish Free State," which was established by the Constitution of the Irish Free State (Saorstát Éireann) Act of 1922. In effect, from a territorial point of view, the Irish Free State Act of 1922 continued the partition of the territory into Northern Ireland and Southern Ireland in the Government of Ireland Act of 1920, 10 & 11 Geo. 5, ch. 67 (Eng.). In *McGimpsey v. Ireland*, [1990] I.L.R.M. 441, the Supreme Court of Ireland set out the principles for the interpretation of Articles 2 and 3 of the Irish Constitution.

been implemented.<sup>23</sup>

The first part of the amendment to the Constitution states that “[t]he State may consent to be bound by the British-Irish Agreement . . . .”<sup>24</sup> Thus, the people of the State, while they were asked to agree to other specific constitutional changes, were also asked to approve the Agreement as a whole. By the same token, those specific constitutional changes, in particular Articles 2 and 3, were themselves set out in full in the Agreement<sup>25</sup> and thus formed part of what the people of Northern Ireland voted on.

In addition, it is provided that, in effect, the entry into force of the British-Irish Agreement is to be the trigger for giving effect to the substantive amendments to the Constitution: the Government is to make a declaration that the State has become obliged, pursuant to the British-Irish Agreement, to give effect to the amendment of the Constitution referred to in it. This was important in assuring voters that they would not find themselves to have made an unreciprocated gesture.<sup>26</sup> That substantive amendment in itself, when set against the matching change in British constitutional legislation and when seen as part of the Agreement as a whole, preserves, while modernizing, essential principles relating to the strong sense of the majority of the people of the island that all people born on it form part of one nation. At the same time, it removes from the Constitution those elements that were found offensive or threatening by Unionists in Northern Ireland.

As previously outlined, in the Joint Declaration and in the Framework Document, it was made clear that, as part of a comprehensive settlement, the Irish Government would be prepared to introduce and to support change to the Constitution, fully reflecting the principle of consent. We said that the changes would be such that “no territorial claim of right to jurisdiction

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23. See Multi-Party Agreement, *supra* note 1, Constitutional Issues, Annex B. Article 29(7) was added to the Irish Constitution on June 3, 1998, when the Nineteenth Amendment of the Constitution Act of 1998 was signed into law by the President in accordance with Article 46(5) of the Constitution.

24. *Id.*

25. In fact, the proposed new Articles 2 and 3 of the Irish Constitution are contained within the body of Article 29(7), which has been added to the Constitution. See *id.*

26. If the declaration is not made, Article 29(7), which includes the amendments to be made to Articles 2 and 3 of the Constitution, lapses. See *id.*

over Northern Ireland contrary to the will of a majority of its people is asserted . . . .”<sup>27</sup> We also said that we would recognize the legitimacy of the constitutional choice made by a majority of the people of Northern Ireland. The changes to the Constitution, together with Article 1 of the British-Irish Agreement, honor those commitments.

In the new Article 2 of the Constitution, a description of the national territory as “the whole island of Ireland, its islands and the territorial seas”<sup>28</sup> has been replaced by a generous and inclusive definition of the Irish nation as all of those born in Ireland. For the first time in the Constitution, it has been made clear that it is the entitlement and birthright of every person born on the island of Ireland to be part of the Irish nation—but this also preserves the rights of those in Northern Ireland who may wish to opt out. We have also recognized the significance of the Irish diaspora by the inclusion of the words “[f]urthermore, the Irish nation cherishes its special affinity with the people of Irish ancestry living abroad who share its cultural identity and heritage.”<sup>29</sup> Moreover, in the British-Irish Agreement, there is for the first time an explicit acceptance by the British Government of the right of the people in Northern Ireland to hold Irish citizenship.<sup>30</sup> The rights of Northern Ireland nationalists have been copper-fastened, not diluted. The new definition of the Irish nation makes no distinction between the different parts of the island and makes clear that it is our shared relationship with the island as a whole that is the basic foundation of nationality.<sup>31</sup>

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27. A New Framework of Agreement 1995, ¶ 21 (1995). The text of the framework document can be located at Ronald A. Christaldi, *The Shamrock and the Crown: A Historic Analysis of the Framework Document and Prospects for Peace in Ireland*, 5 J. TRANSNAT'L L. & POL'Y 123, 166. See also paragraph 7 of the Joint Declaration of 1993. Joint Declaration by An Taoiseach, Mr. Albert Reynolds, T.D., and the British Prime Minister, the Rt. Hon. John Major, M.P., Dec. 15, 1993, ¶ 7.

28. IR. CONST. art. 2.

29. Multi-Party Agreement, *supra* note 1, Constitutional Issues, Annex B.

30. See British-Irish Agreement, *supra* note 2, art. 1(vi) (“[The two governments] recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.”).

31. Heretofore, the right of persons born in Northern Ireland to Irish citizenship was not specified in the Constitution. Article 9(1)(1) of the Irish Constitution provides as follows: “On the coming into operation of this Constitution any person who was a citizen of Saorstát Éireann immediately before the coming into operation of this Consti-

The proposed new Article 3 contains a powerful statement that highlights one of the central objectives of the Agreement: "the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland."<sup>32</sup> The aspiration to unity remains undimmed-but it is also recognized that a united Ireland shall be brought about only by peaceful means and with the consent of a majority of the people, democratically expressed, in both jurisdictions of the island. We have drawn a clearer distinction between the jurisdiction of the State on the one hand and the membership of the nation on the other hand. This shift of focus from land to people, from territory to nationhood, was of great significance in achieving a settlement.

It is also highly significant that, taking the proposed Article 3 and the proposed changes to British constitutional legislation together, there will be, for the first time, a clear mechanism through which a united Ireland may be achieved. The existing Article 3 is silent on this, while the Northern Ireland Constitution Act of 1973 does not address the situation in which a majority in Northern Ireland support a united Ireland. This deficiency has been rectified by the Northern Ireland Act of 1998, which will oblige the British Government to bring forward proposals to give effect to the wish of a majority for unity should such be the result of a referendum.<sup>33</sup>

It is now clear, through the repeal of the Government of

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tution shall become and be a citizen of Ireland." IR. CONST. art. 9(1)(1). Article 9(1)(2) states that "[t]he future acquisition and loss of Irish nationality and citizenship shall be determined in accordance with law." *Id.* art. 9(1)(2).

Sections 6 and 7 of the Irish Nationality and Citizenship Act of 1956 set out the legal basis of acquisition of citizenship on the basis of birth on the island of Ireland, its islands and seas, and on the basis of descent. The main difference between those born in Ireland and those born in Northern Ireland is that persons born in Northern Ireland whose parents were not Irish citizens are not citizens "unless in the prescribed manner, that person, if of full age, declares himself to be an Irish citizen or, if he is not of full age, his parent or guardian declares him to be an Irish citizen. In any such case, the subsection shall be deemed to apply to him from birth." Irish Nationality and Citizenship Act of 1956, No. 26 (1956), ¶ 7(1). Accordingly, an additional formality was imposed on Northern citizens whose parents were not Irish citizens, for example people who moved to Northern Ireland from Great Britain. It should be noted that as part of the overall legislative proposals, it is suggested that the Irish Nationality and Citizenship Act of 1956 and the Irish Nationality and Citizenship Act of 1986 be amended.

32. Multi-Party Agreement, *supra* note 1, Constitutional Issues, Annex B.

33. *See* Northern Ireland Act, 1998, ch. 47, § 1 & sched. 1 (Eng.).

Ireland Act of 1920,<sup>34</sup> and a British declaration that their new legislation is to have effect notwithstanding any other previous enactment,<sup>35</sup> that there is no longer any vestige of a British claim to jurisdiction over Northern Ireland other than in explicit fulfillment of the wishes of its people. Moreover, the commitments in the British-Irish Agreement to equality of treatment and parity of esteem, and to the dual citizenship rights of the people of Northern Ireland, are explicitly to apply irrespective of the status of Northern Ireland.<sup>36</sup> It is therefore clear that key principles will apply no matter which government has jurisdiction on the basis of the principle of consent. Thus, the possibility of future change, however near or remote it may in practice prove to be, has been addressed in reassuring and confidence-building ways.

It is quite obvious from virtually every section of the Agreement that Northern Ireland is unique in terms of the United Kingdom. For example, the British acknowledge that "a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland,"<sup>37</sup> and they accept the right to dual citizenship.<sup>38</sup> A form of administration is to be established in Northern Ireland that has no parallel anywhere else, and that is based on a recognition that nationalism and unionism are the key determinants of identity in Northern Ireland and are both equally legitimate.

The new Article 3(2) of the Irish Constitution allows for the establishment of North/South institutions in which executive powers and functions are shared between the two jurisdictions.<sup>39</sup> This change is aimed at allowing for and facilitating the practical coming together of the people of the island for our mutual benefit through the North/South Ministerial Council and implementation bodies. Article 29(7)(2) allows any institution established under the Multi-Party Agreement to exercise the powers and functions conferred on it with respect to all or any part of the island of Ireland notwithstanding any other provision of the

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34. See *id.* § 100 & sched. 15. The Government of Ireland Act of 1920 is specifically repealed in Section 2 of the Northern Ireland Act of 1998.

35. See *id.* § 2.

36. See British-Irish Agreement, *supra* note 2, art. 1(v)-(vi).

37. *Id.* art. 1(iii).

38. See *id.* art. 1(vi).

39. See Multi-Party Agreement, *supra* note 1, Constitutional Issues, Annex B.

Constitution conferring a like power or function on any person or organ of State appointed, created, or established by or under the Constitution.<sup>40</sup> It also permits alternative dispute resolution procedures with respect to such institutions.<sup>41</sup>

Most of the people of Ireland would not believe that, in 1920, partition was right. However, the existence of two separate jurisdictions on the island is a fact, and it has been for close to eighty years. The great majority have come to see and to accept that, in terms of practical politics, of morality, and of international law and practice, unity can only come about as a result of the concurrent consent of majorities North and South. In addition, this majority understands that whatever the constitutional status of Northern Ireland, the rights and interests of both communities are equally deserving of respect and protection.

The Good Friday Agreement was, overwhelmingly, a political achievement—the seizing of an opportunity made possible by the vision, wisdom, and determination of an outstanding group of political leaders. It was founded, however, on the legal principles of consent to jurisdiction and the rule of law in the settlement of disputes. The vehicle that made the politicians' dream a reality was a sophisticated and complex legally enforceable agreement. The Agreement has been given firm foundations, and I believe that its structures will, based as they are in careful detail, succeed in advancing the vitally important cause of peace, reconciliation, and partnership in Ireland.

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40. *See id.*

41. Article 34 of the Irish Constitution provides as follows: "Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public." IR. CONST. art. 34(1). Accordingly, constitutional cover is required for any system obliging litigants to accept alternative dispute resolution.