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'Constructive Ambiguity' or Internal Self-Determination? Self-Determination, Group Accommodation, and the Belfast Agreement

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Abstract

This Essay examines the Belfast Agreement (or "Agreement") in the light of international law on self-determination and minority rights. Northern Ireland cannot be evaluated in a vacuum; already it is being suggested that the Northern Ireland peace process and the formula devised in the 1998 Belfast Agreement may serve as a model for other divided societies. Indeed, this possibility was raised by President Clinton during his September 1998 visit to Belfast and was reiterated by the U.N. High Commissioner for Human Rights on her more recent visit in December 1998. International law claims to address many of the issues central to ethnic conflict, preeminently self-determination, the legitimate basis for statehood, the exercise of state power, territorial integrity, and the cultural rights of groups and individuals. By comparing international law and the Belfast Agreement, this Essay examines whether the international instruments provide a useful measuring stick, or indeed whether the Belfast Agreement has anything to contribute to the current international debate on self-determination versus minority rights.

'CONSTRUCTIVE AMBIGUITY' OR INTERNAL SELF-DETERMINATION? SELF-DETERMINATION, GROUP ACCOMMODATION, AND THE BELFAST AGREEMENT

*Christine Bell**
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INTRODUCTION

This Essay examines the Belfast Agreement¹ (or "Agreement") in the light of international law on self-determination and minority rights. Northern Ireland cannot be evaluated in a vacuum; already it is being suggested that the Northern Ireland peace process and the formula devised in the 1998 Belfast Agreement may serve as a model for other divided societies. Indeed, this possibility was raised by President Clinton during his September 1998 visit to Belfast and was reiterated by the U.N. High Commissioner for Human Rights on her more recent visit in December 1998. International law claims to address many of the issues central to ethnic conflict, preeminently self-determination, the legitimate basis for statehood, the exercise of state power, territorial integrity, and the cultural rights of groups and individuals. By comparing international law and the Belfast Agreement, this Essay examines whether the international instruments provide a useful measuring stick, or indeed whether the Belfast Agreement has anything to contribute to the current

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

international debate on self-determination versus minority rights.

This exercise is not just a simple comparison of political agreement on one hand and law on the other. A review of the present state of the field in the study of ethnic conflict reveals that politics and law often intersect, complement, and, at times, overlap. As one commentator has argued, by claiming to regulate aspects of ethnic disputes, international law in fact shapes the dispute and becomes a vital part of the way that actors engage both with one another and with international mechanisms.² Failure to understand this inextricable link often leaves those seeking to clarify the appropriate role of international law at the wrong starting point.³ This attempt to offer a situated analysis is also an attempt to demonstrate the interaction between the different players with regard to self-determination and minority rights, international law and negotiated agreement, a point that we return to later.

I. *INTERNATIONAL LAW OF SELF-DETERMINATION AND MINORITY RIGHTS*

The demands posed by ethno-nationalist disputes have exposed the limitations, both practical and legal, of international law relating to self-determination. These limitations center around international law's distinctions between "peoples" and "minorities," and the remedies available to either a people or a minority who are effectively excluded from government processes and fair treatment.

All the international documents that set standards in the area of self-determination refer to self-determination as a right of "peoples." The United Nations Charter refers to self-determination of peoples in Article 1(2), stating that one of the purposes of the United Nations is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."⁴ Article 1 of both the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural

2. Nathaniel Berman, *The International Law of Nationalism: Group Identity and Legal History*, in *INTERNATIONAL LAW AND ETHNIC CONFLICT* 25 (David Wippman ed., 1998).

3. *Id.* at 28.

4. U.N. CHARTER art. 1(2).

Rights ("ICESCR") states that "all peoples have the right of self-determination . . . to freely determine their political status and freely pursue their economic, social and cultural development."⁵ The two main U.N. General Assembly Resolutions dealing with self-determination, the Colonial Declaration No. 1514 (or "Declaration 1514") and the Friendly Relations Declaration No. 2625 (or "Declaration 2625"), provide further articulation of the right to self-determination as belonging to "peoples."⁶ That said, nowhere in international law is a "people" defined, and this lack of a definition allows ethno-nationalist groups to claim such status and therefore self-determination.

International instruments, however, seem to contemplate a distinction between peoples and ethnic minorities.⁷ Espiell, a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, argued in his report to the United Nations that "[s]elf-determination is essentially a right of peoples. . . . It is peoples as such which are entitled to the right to self-determination. Under contemporary international law minorities do not have this right."⁸ Despite this conclusion, it has been argued that the definition of "peoples" is not limited to the entire people of a territory, such as the peoples of a colony.⁹ This alternative definition of "peoples" is fur-

5. International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 1, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 1; U.N. GAOR, 21st Sess., Supp. No. 16, at 165, U.N. Doc. A/6316 (1966) [hereinafter ICESCR].

6. See Declaration on the Granting of Independence to Colonial Countries and People, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960) [hereinafter Colonial Declaration 1514]; Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 123, Doc. A/8028 (1970) [hereinafter Friendly Relations Declaration 2625]; see also U.N. CHARTER arts. 2.4, 55; ICCPR, *supra* note 5, art. 1(3), 999 U.N.T.S. at 173, 6 I.L.M. at 369; ICESCR, *supra* note 5, art. 1(3), at 165; Vienna Declaration and Programme of Action (World Conference on Human Rights), art. 2(1), U.N. GAOR, 48th Sess., U.N. Doc. A/Conf. 157/24 (1993).

7. For example, while Article 1 of the International Covenant on Civil and Political Rights ("ICCPR") establishes a right to self-determination for "peoples," Article 27 gives members of minority groups only "the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." ICCPR, *supra* note 5, art. 27, 999 U.N.T.S. at 179, 6 I.L.M. at 375.

8. HECTOR ESPIELL, THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS 9, para. 56 (1980).

9. Robert McCorquodale, *Self-Determination: A Human Rights Approach*, 43 INT'L &

ther supported by instruments relating to indigenous peoples that have blurred the distinction between peoples and minorities by their use of the term "peoples" for indigenous groups who are almost always minorities within states.¹⁰

A second difficulty with delimiting the normative scope of the self-determination norm lies in evaluating the permissible remedy for a self-determination claim. While self-determination is often associated with independent statehood as an outcome, self-determination is only one of a number of possibilities mentioned in international instruments. Both the Colonial Declaration No. 1514 and the Friendly Relations Declaration No. 2625 identify several possible means of exercising the right of self-determination: emergence as a sovereign independent state, free association with an independent state, integration with an independent state, and "any other political status freely determined."¹¹ The key is that the choice should be free and voluntary and "expressed through informed and democratic processes." International practice has also established that varieties of territorial change by consent can occur. Examples include the dissolution of the Union of Soviet Socialist Republics in 1991, the "velvet divorce" of Czechoslovakia into its two constituent republics, and the reunification of Germany.¹²

COMP. L.Q. 857 (1994); ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES* (1995); see Patrick Thornberry, *The Democratic or Internal Aspect of Self-determination with Some Remarks on Federalism*, in *MODERN LAW OF SELF-DETERMINATION* 114-119, 124-131 (Christian Tomuschat ed., 1993); Lea Brilmayer, *Secession and Self-determination: A Territorial Interpretation*, 16 *YALE J. INT'L L.* 177 (1991) (arguing, in essence, that link between self-determination and territoriality is not close enough, due in part to the definitions of "peoples" as holders of the right).

10. See, e.g., Convention Connecting Indigenous and Tribal Peoples in Independent Countries, International Labour Organisation (ILO) Convention No. 169, June 27, 1989, arts. 1.1, 1.2, 28 I.L.M. 1382, 1384 (entered into force Sept. 5, 1991) (although Article 1.3 denies that this has any implications as to rights, in an oblique reference to self-determination); United Nations Draft Declaration on Indigenous Peoples, U.N. Doc. E/CN.4/sub.2/1992/33, Aug. 20, 1992 (referring to the holders of rights as "peoples"); Christian Tomuschat, *Self-determination in a Post-Colonial World*, in *MODERN LAW OF SELF-DETERMINATION*, *supra* note 9, at 13 (stating that "at least verbally, it brings indigenous populations close to peoples that are undeniably holders of the right of self-determination").

11. Friendly Relations Declaration 2625, *supra* note 6.

12. See Asbjørn Eide, *A Review and Analysis of Constructive Approaches to Group Accommodation and Minority Protection in Divided or Multicultural Societies*, Forum for Peace and Reconciliation/Forum um Shiochain agus Athmhuintearas, CONSULTANCY STUDIES No. 3, July 1996. This practice is recognized by the United Nations and the OSCE; see also THOMAS MUSGRAVE, *SELF-DETERMINATION AND NATIONAL MINORITIES* (1997).

In fact, secession as an outcome is clearly in conflict with the principle of territorial integrity, which has a clear prior place in the norm. Both declarations establish self-determination explicitly with the caveat that its exercise should not disrupt "territorial integrity."¹³ This central paradox of the self-determination norm, whereby it claims to grant both peoples and states rights that may be incompatible, has been described as its "Janus-like" nature.¹⁴ This paradox leads to a situation where "[m]inorities appropriate the language of self-determination whether governments approve or not."¹⁵ This is reinforced by the possible caveat to the principle of territorial integrity, which fuels the claims of ethnic groups within states. The Friendly Relations Declaration No. 2625 and the 1993 Vienna Declaration and Programme of Action link the principle of territorial integrity to the conducting of representative government. Declaration 2625 states that territorial integrity attaches to "sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."¹⁶ While Declaration 2625 marked an attempt to universalize the self-determination norm and to extend it from colonial situations, it also opened up the question of how representative a government has to be to earn its claim to territorial integrity. Further, it is unclear what the remedy for unrepresentative government is, as no clear means for attaining self-determination are specified. Cassese has suggested that, for the most part, it involves a right to representative government,

13. Colonial Declaration 1514 states that "[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." Colonial Declaration 1514, *supra* note 6, art. 6. Friendly Relations Declaration 2625 states that "[n]othing in the foregoing paragraphs [dealing with self-determination] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States . . ." Friendly Relations Declaration 2625, *supra* note 6, at 123.

14. CASSESE, *supra* note 9, at 5.

15. Patrick Thornberry, *Self-Determination, Minorities, Human Rights: A Review of International Instruments*, 38 INT'L & COMP. L.Q. 867, 868 (1989).

16. Friendly Relations Declaration 2625, *supra* note 6, at 122. This is effectively restated in Article 2.3 of the Vienna Declaration and Programme of Action. Vienna Declaration and Programme of Action (World Conference on Human Rights), *supra* note 6, art. 2.3, at 1665.

or internal self-determination, but that secession is possibly available in exceptional circumstances involving gross breaches of fundamental human rights.¹⁷

The claims of ethnic minorities are further fueled by the fact that the political realities of a self-determination claim are, on occasion, endorsed retrospectively even when the legal criteria are not strictly fulfilled, as was the situation in the former Yugoslavia.¹⁸ Thus, despite previous attempts by western states to resist the formation of new ethnically-based nation states, the international community ultimately did accept these as member states, even though they had emerged unilaterally. This fact, together with international law's acknowledgment that "peoples" struggling against "colonial domination and alien occupation and against racist regimes"¹⁹ have a license to use force, gives minority groups a justification for the use of force, whether they technically constitute a "peoples" or not.

Trying to extract a clear normative content from international instruments is not an easy task. Cassese, locating his normative evaluation clearly in the context of its historical and political background, suggests that "self-determination appears firmly entrenched in the corpus of international general rules in only three areas: as an anti-colonialist standard, as a ban on foreign military occupation and as a standard requiring that racial groups be given full access to government."²⁰ However, he suggests that these rules have an overarching principle that "transcends, and gives unity to" these customary rules, and "cast[s] light on borderline situations."²¹ Self-determination, according to this principle, requires "a free and genuine expression of the will of the people concerned." Nonetheless, Cassese notes that this principle "neither points to the various specific areas in

17. See CASSESE, *supra* note 9, at 108-125; see also MICHLA POMERANCE, *SELF-DETERMINATION IN LAW AND PRACTICE* 39 (1982).

18. See, e.g., Rosalyn Higgins, in *PEOPLES AND MINORITIES IN INTERNATIONAL LAW* 29, 30 (Catherine Brolmann et al. eds., 1993) (stating that "even if international law does not authorize secession, it will eventually recognize the reality once it has occurred and been made effective")

19. See Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1), June 8, 1977, art. 1(4), 1125 U.N.T.S. 3, 6, 16 I.L.M. 1391, 1396 (1977); see also Friendly Relations Declaration 2625, *supra* note 6, at 123.

20. CASSESE, *supra* note 9, at 319.

21. *Id.*

which self-determination should apply, nor to the final goal of self-determination (internal self-government, independent statehood, association with or integration into another State)."²²

The "lacunae, ambiguities and loopholes" in the current legal regulation of self-determination leave it open to other groups, such as ethnic or national minority groups within state territories, to claim a right to self-determination.²³ Moreover, the norm's inability to address the situation of divided societies gives it an "internal instability."²⁴ Ethnic groups, whose need for effective participation in government and public life is not addressed, can often increasingly mount strong arguments that principles of self-determination, such as the need for representative government, if objectively applied, would grant them independent statehood, and secession.²⁵ Northern Ireland is a case in point. A traditional legal approach would dismiss the claims of Nationalists to Irish Unity as those of a minority within the internationally-accepted borders of Northern Ireland. Given the self-determination norm's affirmation of "territorial integrity," this would mean that the people of Northern Ireland (in effect a Unionist majority) must agree to any change in its status, with the consent of any other implicated state, that is Britain, and, depending on the change contemplated, Ireland.²⁶ However, Nationalists can point to the lack of a clear ending to colonial occupation in Northern Ireland, continual emergency legislation, systematic discrimination against the Catholic minority as regards civil, political, social, and economic rights, and a general lack of "representative government" both during Direct rule and the Stormont Parliament that preceded it. Given the ambiguities of the norm, these factors can be used to mount a self-determination claim to Irish unity.²⁷ Application of self-determination law, therefore, invites a restatement of the political self-determination dispute in terms of who is the appropriate "people" and what is the proper territorial unit for adjudicating the self-

22. *Id.* at 320.

23. *Id.* at 327.

24. ROBERTO UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986).

25. See Thornberry, *supra* note 15.

26. See, e.g., Eide, *supra* note 12.

27. See, e.g., Richard Harvey, *The Rights of the People of the Whole of Ireland to Self-determination, Unity, Sovereignty and Independence*, 11 N.Y.L. SCH. J. INT'L & COMP. L. 167 (1990).

determination claim. It does not satisfactorily resolve the dispute.

The need for international law to respond effectively to ethno-national disputes has led commentators to explore possible re-interpretations of the "breadth" of the notion of self-determination through the idea of "internal self-determination."²⁸ The concept of "internal self-determination" involves an evolutionary approach to the principle of self-determination with a focus on finding ways of enabling groups to decide their own political status and form of government. In divided societies, it is suggested that the rhetoric and underlying rationales of the notion of self-determination can support the development of policies of group accommodation such as autonomy regimes, or other minority protection less than secession. This theory constitutes an attempt to link the concepts of self-determination and minority rights through a notion of internal self-determination that defies traditional international legal dichotomies of sovereign statehood and secession, or domestic state matter and legitimate area of international interference.²⁹ It is an approach that is consistent with the underlying idea of self-determination as a notion of effective participation in government. It also means that the self-determination norm, rather than assuming homogeneity within territories, is responsive to the political reality of heterogeneous societies with minority populations. Despite these developments, it is certainly too early to talk of a legal "right" to internal self-determination. Internal self-determination does, however, find increasing support in proliferating international instruments on minority rights, which as some commentators have argued, may be "international law's long-term response to ethnic conflict."³⁰

Minority rights protection is most fully articulated and extended in the recent U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,³¹ and by both the Council of Europe's Framework Con-

28. See, e.g., McCorquodale, *supra* note 9. See generally HURST HANNUM, *AUTONOMY, SOVEREIGNTY AND SELF-DETERMINATION* (1990); Tomuschat, *supra* note 10, at 11-17; Thornberry, *supra* note 15.

29. See CASSESE, *supra* note 9, at 341-365.

30. Anne-Marie Slaughter, *Pushing the Limits of the Liberal Peace: Ethnic Conflict and the 'Ideal Polity'*, in *INTERNATIONAL LAW AND ETHNIC CONFLICT*, *supra* note 2, at 134.

31. Declaration on the Rights of Persons Belonging to National or Ethnic, Reli-

vention on the Protection of National Minorities ("Framework Convention") and CSCE (now OSCE) documents that preceded it.³² The U.N. Declaration as a General Assembly Resolution does not have the force of binding law, and the Council of Europe's Framework Convention is not yet in force and contains provisions of a programmatic, rather than a rights-based character. However, both documents clearly contemplate policies of recognition and accommodation as opposed to assimilation, as illustrated by continual reference to "the right to participate effectively."³³ States have obligations not just to prevent discrimination, but "to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs."³⁴ Underlying the text of both documents is the idea of "effective participation" in all of society's institutions. Interestingly, as well as preserving inter-group contacts within the territory, the Framework Convention and the U.N. Declaration refer to the right of ethnic groups to maintain cross-border contacts with ethnic counterparts in other jurisdictions. Article 2(5) of the U.N. Declaration provides a right of minorities to maintain "contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties."³⁵ Under Article 17(1) of the Framework Convention, states must 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 a common cul-

gious and Linguistic Minorities, G.A. Res. 47/135, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/135, 32 I.L.M. 911 (1993) [hereinafter U.N. Declaration on Minorities].

32. See, e.g., Conference on Security and Cooperation in Europe: Report of the CSCE Committee of Experts on National Minorities, 30 I.L.M. 1692, 1695 (1991).

33. U.N. Declaration on Minorities, *supra* note 31, art. 1.1, at 914; Council of Europe, Framework Convention for the Protection of National Minorities, Feb. 1, 1995, art. 5(2), 34 I.L.M. 351, 354 (1995) [hereinafter Framework Convention]. Article 5(2) states that "[w]ithout prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any actions aimed at such assimilation." *Id.* at 354.

34. U.N. Declaration on Minorities, *supra* note 31, art. 4(2), at 915; see also Framework Convention, *supra* note 33, *passim*.

35. U.N. Declaration on Minorities, *supra* note 31, art. 2(5), at 915.

tural heritage.”³⁶ More proactively Article 18 states that “[p]arties shall endeavor to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighboring States, in order to ensure the protection of persons belonging to the national minorities concerned.”³⁷

II. *THE BELFAST AGREEMENT, SELF-DETERMINATION, AND MINORITY RIGHTS*

Examination of the Belfast Agreement from the perspective of international law indicates an example of an agreement that embraces and embodies the suggested re-workings of the self-determination norm. In this context, the Belfast Agreement has moved towards a form of “internal self-determination” demonstrated by four key elements:

- language dealing with self-determination,
- protection for civil, political, social, economic, and cultural rights,
- an assembly with power-sharing and mutual vetoes, and
- cross-border linkages between Northern Ireland and the Republic of Ireland and a regional structure in the British-Irish Intergovernmental Conference.

The self-determination language ostensibly deals with the issue directly. The civil, political, social, economic, and cultural rights protections address the issue of lack of democracy and equality of the state, which as we have seen were a part of the self-determination claim. The Assembly with its power-sharing system aims to ensure “effective participation in government” of Unionist and Nationalist groups, a key group right to be found in both the Framework Convention and the U.N. Declaration. The cross-border linkage can also be seen to be a creative way of building on the right in Articles 17 and 18 of the Framework Convention to cross-border contacts for minorities with kin groups in neighboring states.

Together with the British-Irish Intergovernmental Conference, this “regionalisation” of Northern Irish affairs helps to integrate the separate poles of self-determination and minority rights by making the concepts of sovereignty, statehood, and ex-

36. Framework Convention, *supra* note 33, art. 17(1), at 357.

37. *Id.* art. 18, at 357.

ternal interference less absolute. We will now look at these in more detail.

A. *Constitutional Issues: Explicit References to Self-determination*

After a declaration of support, the Belfast Agreement opens by addressing "Constitutional Issues." It is here that the explicit references to self-determination can be found, although the mechanism for documenting it is a little convoluted. The participants to the talks endorse the commitment made by the British and Irish Governments to make a new British-Irish Agreement, replacing the Anglo-Irish Agreement, which incorporates the new self-determination language as set out in the following subparagraphs. The actual text of this "British-Irish Agreement," which unlike the rest of the document has treaty status, is set out at the end of the "Belfast Agreement" document. This British-Irish Agreement restates and incorporates the provisions in paragraph 1 of "Constitutional Issues," which includes the self-determination language in its first article. Article 2 goes on to affirm the commitment to set up the "cross-border" institutions—the North/South Ministerial Council, cross-border implementation bodies to be set up by the Council, the British-Irish Council, the British-Irish Intergovernmental Conference. An Annex to the Constitutional Issues section of the Belfast Agreement provides the actual text of legislative and constitutional changes to be made by the British and Irish Governments to the Government of Ireland Act 1920, and the Irish Constitution, respectively.

"Constitutional Issues," paragraph one of the Belfast Agreement, is a masterpiece of ambiguity, violating all rules of legal drafting and testifying to the political nature of the document. In subparagraph (i), it would seem that the self-determination issue is settled. The governments will recognize "*the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland*" (emphasis added). Thus, the unit commanding territorial integrity would appear to be Northern Ireland, and "the people" all of its people (which at present would mean a Protestant majority). However, subparagraph (ii) goes on to:

recognize that it is for the people of the Island of Ireland alone, by agreement between the two parts respectively and

without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

In its opening, this paragraph suggests that the unit for self-determination is "the Island of Ireland" and "the people" the people of that Island "alone." Yet then the ambiguity re-enters. It seems that the two parts must agree separately that while exercising a right to self-determination (presumably by vote) "concurrently," it is ultimately "subject to the agreement and consent of a majority of the people of Northern Ireland." It is the stuff of lawyer's nightmares (or perhaps dreams). All sorts of unlikely hypotheticals jump to mind. What happens if the North voted by majority for Irish unification and the South did not? The need for the consent of both parts would suggest that unification would not happen, yet the specific need for majoritarian Southern consent is not reinforced, as it is in the case of the North, by specifically subjecting unification to it. On the other hand, if it is only the consent of a majority of people in the North that has any practical relevance, why frame the paragraph in terms of "the people of the island of Ireland alone" and call for a two-way vote?

Of course the answer is simple—the above is a politician's paragraph premised on a technique known as "constructive ambiguity." Constructive ambiguity is a classic maneuver when agreeing on a hotly-disputed text. Actors deliberately adopt language that is vague and can, simultaneously, mean different things to different people. Thus, Irish Nationalists get a reference to "the people of the island of Ireland alone," and British Unionists get a reference to the "consent of the majority" of the people of Northern Ireland. Each side knows that it is a "fudge" but can live with it, and "sell" it to their own constituents as victory, or at least not a defeat. The classic problem with constructive ambiguity is that it postpones real agreement until some future date. The result is that disputes over interpretation, or the uncertainty created by the deliberate ambiguity of the language, may undermine the integrity of an agreement as a whole, including areas where agreement has been reached on substance and not just on words (as current log jams indicate).

Subparagraph (iii) returns to the theme of consent of a majority of the people of Northern Ireland and notes that

the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland's status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people.³⁸

Subparagraph (iv) affirms that if this situation should change and "the people of the island of Ireland" chose a united Ireland, then "it will be a binding obligation on both Governments to introduce and support in their respective parliaments legislation to give effect to that wish." The remaining two paragraphs affirm that whatever choice is freely exercised, all "the people" of the entity should be entitled to equality and rights, and that people in Northern Ireland can identify, and hold citizenship, as Irish, British, or both.

Unclear as it is, the self-determination language is not without significance in international law terms. The opening of the Constitutional section notes the "endorsement" of the parties of the joint governmental commitment to this language. This party endorsement was then agreed to by the people of the island of Ireland, including a majority in the North, in the "Yes" vote. It can therefore be argued that the choice, freely exercised, to implement the Belfast Agreement was itself an exercise in self-determination. The "people," whatever way they are defined, agreed to accept the Agreement as the mechanism for devolution and political progress generally. This means that the other often posited "solutions" to Northern Ireland, such as full incorporation into the United Kingdom, full and permanent joint sovereignty, and Ulster Independence, are ruled out for the time being and until the Agreement is positively and uncategorically rejected by both peoples. The only options that are left on the table are either union with Britain within the framework of the Agreement or Irish Unity achieved using the voting mechanisms set out in the Agreement. While British legislation has only ever contemplated the two options of full Irish or British sover-

38. Belfast Agreement, *supra* note 1, Constitutional Issues ¶ 1(iii).

eignty,³⁹ the Belfast Agreement with its all-Ireland vote lifts this from being merely government policy to an exercise of self-determination, and in doing so significantly reshapes both the options.

In political terms, the Belfast Agreement therefore represents a partial resolution of the competing self-determination claims and a partial postponement of them. The self-determination claim is partially resolved through the affirmation of the Agreement as the framework both for present government and for future Constitutional change. The latter is supported by constitutional and legislative changes in Ireland and the United Kingdom, respectively. Articles 2 and 3 of the Irish Constitution, which claimed territorial sovereignty over the "island of Ireland," including the North, have been changed giving up this claim. It is replaced with both a right to all "persons born in the island of Ireland" to be "part of the Irish Nation" and a recognition that "a united Ireland shall be brought about only by peaceful means with the consent of majority of the people, democratically expressed, in both jurisdictions in the island."⁴⁰ Similarly, the British Government, in provisions now adopted in the Northern Ireland Act 1998,⁴¹ repeals the remaining sections of the Government of Ireland Act 1920 and affirms that the Northern Ireland Act "shall have effect notwithstanding any other previous enactment."⁴² Debate—political and academic—has already started around whether these previous enactments include the Acts of Union, which are not specifically mentioned.⁴³ We suggest, however, that the absence of a specific mention to the Acts of Union is also better understood with reference to "constructive ambiguity" than to legal argument. While the Belfast Agreement and Northern Ireland Act arguably provide little change from earlier statements as to Northern Ireland's constitutional status, such as in the Northern Ireland Constitution Act of 1973 and the Anglo-Irish Agreement of 1985, they do provide a clear procedure whereby the Union with Britain could be ended.⁴⁴

39. Brigid Hadfield, *The Belfast Agreement, Sovereignty and the State of the Union*, 1998 PUBLIC LAW 599-616.

40. Belfast Agreement, *supra* note 1, Constitutional Issues, Annex B.

41. Northern Ireland Act, 1998, ch. 47, §§ 1, 2, and Sched. 1 (Eng.).

42. *Id.* § 2.

43. Hadfield, *supra* note 39.

44. *See* Northern Ireland Act 1998, ch. 47, § 1, sched. 1. As Hadfield notes, "sec-

The self-determination claims are partially postponed by several factors. Most obviously, through the lack of clarity of the self-determination provisions. The “constructive ambiguity” acts as a holding device for absolutist and abstract claims to self-determination, which enables a process capable of delivering increased participation in government for both sides. However, if the all-Ireland vote itself is an act of self-determination, then “Union with Britain” now has meaning, which includes the limitations on majoritarianism and the cross-border cooperation also included in the Agreement.⁴⁵ Indeed, the contingency of devolution is underlined by the contingency of the changes to the Irish Constitution. If the Irish Government does not make a declaration within a year of the referendum—that is by May 22, 1999—(or such longer time as they may provide for by legislation), then the changes to Articles 2 and 3 of the Constitution will lapse.⁴⁶ The Irish Government is not obliged to “ensure that the amendments to the Constitution of Ireland . . . take effect” until the British-Irish Agreement comes into force and therefore is unlikely to make the requisite declaration until that point.⁴⁷ The British-Irish Agreement does not come into force until three factors are fulfilled: British legislation is amended, as agreed to in Annex A to the Belfast Agreement’s “Constitutional Issues” (this has happened with the Northern Ireland Act); the Irish Constitutional amendments have been approved by Referendum as set out in Annex B to the Belfast Agreement’s “Constitutional Issues” (this has happened); and the institutions referred to in Article 2 of the British-Irish Agreement (the North/South Ministerial Council, the cross-border implementation bodies, the British-Irish Council, and the British-Irish Intergovernmental Conference) have been legislated for (this has not yet been fully completed).⁴⁸ The Constitutional amendments are

tion 1 is a provision which, at the least, would delight those of a Scottish nationalist persuasion if an equivalent had been included in the Scotland Act 1998.” Hadfield, *supra* note 39, at 609.

45. Discussed more fully in the next section. Note the objections of Conor Cruise O’Brien to the Agreement, on the very grounds that the options open to Unionism have now been unjustifiably limited to the Agreement or Irish Unity. CONOR CRUISE O’BRIEN, *MEMOIR: MY LIFE AND THEMES* 435-447 (1998)

46. Belfast Agreement, *supra* note 1, Constitutional Issues, Annex B.

47. *Id.*, Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland.

48. The North/South implementation bodies have yet to be fully constituted and

therefore contingent upon the legal establishment of these institutions and at present, this in effect includes the transfer of power to the "cross-border" implementation bodies, which according to the Northern Ireland Act 1998, still requires legislation from the Secretary of State or the Northern Ireland Assembly.

While the clear reference to the "people of the island of Ireland alone" may, in practical terms, seem irrelevant to the exercise of self-determination (given the need for the consent of a majority in the North), it has immense symbolic importance. It reaffirms the continued involvement of the people of the Republic of Ireland, and not just its government, in future major decisions on the Constitutional status of the North. Indeed, it could be argued that the clear location of self-determination in an all-Ireland framework goes beyond the purely symbolic. In particular, it addresses one of the very problems created by the international law of self-determination—the perpetuation of two irreconcilable self-determination claims that both have validity. Thus, the Agreement refers to the two groups, the "people of the island of Ireland" and a "*majority of the people of Northern Ireland*,"⁴⁹ arguably Irish Nationalists and British Unionists respectively.⁵⁰ In doing so, it addresses what Adrian Guelke has argued is a lack of international legitimacy to the current borders and status of Northern Ireland.⁵¹ He has argued that this international illegitimacy is underpinned by several factors: the fact

given powers either by Order by the Secretary of State or by Act of the Assembly. Northern Ireland Act 1998, ch. 47, §§ 53, 55.

49. Emphasis added.

50. In reviewing the United Kingdom's approach to self-determination in 1995, McCorquodale argued that while the United Kingdom had sought to define in legislation the people of Northern Ireland as a "people," given the competing British and Irish identities, this was legally incoherent. Robert McCorquodale, *Negotiating Sovereignty: The Practice of the United Kingdom in Regard to the Rights of Self-determination*, BRIT. Y.B. INT'L L. 283, 315 (1995). We suggest that in looking at the Agreement and indeed its precursors (examined by McCorquodale), the people of Northern Ireland are not defined as a "people" in the same sense as the people of Scotland or Wales, but the reference, as we have noted is to "a majority of" the people, even though this cumbersome phrase contains a singular "people." Although the phrase, "a majority of the people" increasingly does not mean a British Unionist majority, traditionally its usage was code for that majority. With the Agreement vote in the North at around 71%, which is a clear majority, reflecting a slim majority of Unionist voters, political rhetoric is currently changing to a clearer notion of a "majority of Unionist people."

51. Adrian Guelke, *International Legitimacy, Self-determination and Northern Ireland*, 11 REV. INT'L STUD. 37 (1985).

that application of self-determination law can be used to support radically-opposed solutions; the dominance of nationalist self-determination analysis externally; and the conflict itself, which lends support to “external perceptions of the fragility of Northern Ireland’s position.”⁵² On this analysis, a vote supporting the Agreement, which arguably constitutes an act of Irish self-determination, goes far to restore legitimacy, particularly when supported by IRA and Loyalist cease-fires.

The all-Ireland vote also addresses a lack of internal legitimacy alleged by Republicans to be the source of a just war of national liberation, a position not entirely without support in international documents, as we have seen.⁵³ The dynamics of this can be illustrated by examining the role of the vote to the Belfast Agreement itself. After the breakdown of the first IRA cease-fire in February 1996, John Hume in public statements challenged the Provisional IRA directly to let “the people of Ireland” self-determine not just their future, but the means that they would choose to reach that future—violence or dialogue.⁵⁴ At that time, he asked for a vote on the issue of violence. Although this was not taken up at that time, John Hume continued to push for an all-Ireland vote to any agreement.⁵⁵ The eventual all-Ireland pro-Agreement vote in effect performed a similar function. As a straight yes/no vote for a composite package, its significance as a cross-community consensus on any one part of the package is arguable (as current log jams illustrate). However, the vote strongly endorses negotiation, within this particular framework, over return to political violence.

52. *Id.* at 45.

53. The symbolism of the vote addressed, for example, the vote in 1918 in which Sinn Féin won over 70% on an Irish independence platform, and which formed in part a basis for present day legitimacy.

54. For example, in a BBC radio interview February 10, 1996, the day after the breach of the 1995 IRA cease-fire by the Canary Wharf bomb, John Hume stated: “My strong message to the leadership of the IRA is that since you say you believe in the right of the Irish people to self-determination, the Irish people also have the right to self-determine their methods, and—particularly during the visit of President Clinton, and particularly since the cease-fire—they have made their self-determination on methodology very, very, clear.” PAUL BEW & GORDON GILLESPIE, *THE NORTHERN IRELAND PEACE PROCESS 1993-1996: A CHRONOLOGY* 164 (1996) (quoting John Hume).

55. Of course, any change to the Republic of Ireland Constitution was always going to need a referendum in any case.

B. Group Accommodation: Consociational Government

The argument that the Belfast Agreement encapsulates a notion of internal self-determination involves looking beyond the self-determination language alone. As we have seen, the evolution of self-determination in international law is moving from concern with defining who a "people" is in the self-determination context, to a greater concern with what a people have a right to in this area. Such an approach is particularly valid in Northern Ireland where deciding the appropriate unit of the people is especially difficult. The dilemma is that if the people's only right is to statehood, this right is at variance with international law principles of territorial integrity. On the other hand, defining a people's rights purely in terms of individually-asserted minority rights within the state ignores the more fundamental prior challenge asserted by minorities as to the nature of that state. The Belfast Agreement does encompass minority rights that can be enforced individually, such as non-discrimination rights and equality in a range of civil, political, social, and economic rights. Thus, the many references to protection of individual rights, through a Bill of Rights, and the human rights and equality commissions, can be seen as part and parcel of democratic government and an aspect of internal self-determination.

However, the Agreement also includes what we suggest is a group right that takes the "minority rights" protection beyond negative or positive non-discrimination rights. With regard to the Belfast Agreement, there are three main group aspects, all of which could be said to be consistent with international instruments, in particular the Framework Convention and the U.N. Declaration. First, there is a consociational form of government,⁵⁶ where participation is linked to group membership rather than majority decision-making. Second, the cross-border aspects can also be seen as a creative way of fulfilling Framework Convention programmatic rights to a connection with kin groups in neighboring states, while at the same time copper-fastening rights protection for nationalists, such as are offered in

56. The functioning of the Assembly has been adequately outlined in other contributing Essays in this book. See Colin Harvey, *Legality, Legitimacy, and Democratic Renewal: The New Assembly in Context*, 22 *FORDHAM INT'L L.J.* 1389 (1999); Brendan O'Leary, *The Nature of the Agreement*, 22 *FORDHAM INT'L L.J.* 1628 (1999).

the Framework Convention.⁵⁷ Third, the equality provisions, which among other things place new statutory duties on public authorities, have a clear group dimension. In particular, they open up the possibility of a group claim through a judicial review action, if the group is not consulted as specified in the schemes to be published by all public authorities setting out how their statutory obligation will be implemented.⁵⁸

It is the provisions for power-sharing, parallel consent and vetoes, and weighted majorities, in particular, which seek to provide for “*effective* participation” in government for both communities, borrowing on the South African idea of “sufficient consensus” (where a majority from each community is required for controversial decisions). Indeed, they are first introduced in the Agreement under the heading of “Safeguards” to the Assembly, “to ensure that all sections of the community can participate and work together successfully . . . and that all sections of the community are protected.”⁵⁹ In addition to the proportional representation voting system, proportionality is extended to the whole of government. Assembly committees established to review the operation of each government department and their chairs and deputies are all to be selected in proportion to party strength.⁶⁰ Ministers in charge of departments are to be selected on a strictly proportional basis.⁶¹ This proportional approach is complemented by “cross-community procedures”; certain key decisions will require cross-communal support, either by a majority of members representing each main community or by a weighted majority of sixty percent including at least forty percent of members representing each community.⁶² These decisions include the appointment of a chief minister and a deputy, the establishment of cross-border bodies, or any other matter on

57. This will be discussed further in the next section.

58. Belfast Agreement, *supra* note 1, Rights, Safeguards and Equality of Opportunity, Human Rights, United Kingdom Legislation ¶ 3; *id.*, Rights, Safeguards and Opportunity, New Institutions in Northern Ireland ¶ 6; *see* Northern Ireland Act 1998, ch. 47, §§ 75, 76, sched. 8.

59. Belfast Agreement, *supra* note 1, Strand One, Democratic Institutions in Northern Ireland, Safeguards ¶ 5.

60. *Id.*, Strand One, Democratic Institutions in Northern Ireland, Operation of the Assembly ¶ 8; Northern Ireland Act 1998, § 29.

61. Belfast Agreement, *supra* note 1, Strand One, Democratic Institutions in Northern Ireland, Executive Authority ¶ 16; Northern Ireland Act 1998, § 18.

62. Belfast Agreement, *supra* note 1, Strand One, Democratic Institutions in Northern Ireland, Safeguards ¶ 5; Northern Ireland Act 1998 § 4(5).

the petition of at least thirty Assembly members. Each party must opt to be counted as "Unionist," "Nationalist," or "Other," for the purposes of voting,⁶³ a matter that has been criticized as placing center parties under pressure to align or be effectively ignored on crucial issues.

These group rights do clearly trump individual rights, as anti-agreement Unionists are quick to point out. Thus, anti-agreement Unionists claim that enforced power sharing is anti-democratic and will not work, and that cross-border cooperation is a diminution of sovereignty. When asked what their alternative to the Agreement is, they question why Northern Ireland cannot have the majoritarian system such as that of Scotland or Wales. Why should Nationalists and Republicans have places as of right in government, why should the Unionist and Nationalist First and Deputy Ministers be co-equal? Clearly, the answer is that unlike Scotland and Wales, Northern Ireland is a deeply-divided society where majoritarianism exacerbates rather than addresses communal divisions. Thus, the Belfast Agreement re-defines self-determination by giving both of the competing "peoples" a veto power as to the nature of the state. This is a form of internal self-determination, which clearly goes beyond minimal conditions for democratic self-governance (free elections and basic civil and political rights) because the demographics of ethnic conflict mean that one group would be permanently locked out of power with this arrangement. Indeed, the force of this argument may mean that this mechanism would prevail even if there is a demographic change and a majority, both North and South, that favors Irish unity (although this is not provided for in the Agreement or Northern Ireland Act).

It is worth noting that anti-agreement Unionist objections mirror those of international lawyers opposed to group rights, namely to what extent is it legitimate to have group rights, and how are they to be reconciled with individual rights?⁶⁴ Does consociationalism conflict with a more traditional notion of self-determination as inherently majoritarian, or individual rights, such as to equality? However, most commentators seem agreed that

63. Belfast Agreement, *supra* note 1, Strand One, Democratic Institutions in Northern Ireland, Operation of the Assembly ¶ 6; Northern Ireland Act 1998, § 4(5).

64. See David Wippman, *Practical and Legal Constraints on Internal Power Sharing*, in *INTERNATIONAL LAW AND ETHNIC CONFLICT*, *supra* note 2, at 211.

in deeply-divided societies, "consociationalism is not only compatible with self-determination but may be the only way to give effect to self-determination that is consistent with the rights of minorities to effective political participation."⁶⁵

C. *Cross-Border Contacts and "Regionalism":
Watering Down Sovereignty*

The final component to the "internal self-determination" package is the provision for cross-border elements, and also regional British-Irish cooperation (what O'Leary has called the "plus" factor).⁶⁶ There are several elements. Most obviously, the Strand Two North/South Ministerial Council and implementation bodies for cross-border cooperation, and the Strand Three British-Irish Intergovernmental Conference, but also the cross-border vote, as already discussed, and the joint human rights committee of the two new Human Rights Commissions.⁶⁷ Together, these structures give government in Northern Ireland a new supra-state structure. Although not obviously related to self-determination, these structures tap into "new trends currently emerging in the world community towards both greater political and economic integration at the 'supranational' level and, at the same time, the growing emphasis on the ethnic and cultural distinctiveness of groups, at the 'intrastate' level."⁶⁸ The effect of these apparently contradictory trends is a "weakening of the traditional national-State, which is gradually losing its authority and legitimacy."⁶⁹ This again enables self-determination "solutions," which begin to transcend the sovereignty/territorial integrity versus minority rights divide and, as Cassese has suggested, may be useful in divided societies.⁷⁰

III. INTERNATIONAL LAW IMPLICATIONS

The Belfast Agreement, in summary, plays out in practice the current normative trend towards a gradually expanding legal

65. *Id.* at 230; see CASSESE, *supra* note 9, at 353. However, it is worth noting that in South Africa international consensus did not support a consociational type arrangement to protect white minority rights, except as a transitional arrangement.

66. See generally Belfast Agreement, *supra* note 1, Strand Two.

67. *Id.*, Rights, Safeguards and Equality of Opportunity, A Joint Committee, ¶ 10.

68. CASSESE, *supra* note 9, at 362.

69. *Id.*

70. *Id.*

principle of internal self-determination. Self-determination is dealt with by explicitly using the language of self-determination, coupled with institutional mechanisms that move away from absolute notions of statehood, sovereignty, and territorial integrity. Second, human rights are guaranteed to all groups equally, regardless of where borders are, or how they might change in the future, taking the “sting” out of whichever constitutional arrangement might prevail. Third, effective participation of all groups in decision-making is guaranteed by a consociational arrangement (power-sharing and mutual vetoes). Fourth, the entire Agreement is copper-fastened through “regional” mechanisms that reassure competing nationalisms and potentially offer new ways of thinking about sovereignty and, indeed, new ways of “getting government done.”⁷¹ Indeed, it is interesting to compare the Belfast Agreement with Prof. Asbjørn Eide’s 1996 publication for the Irish Forum for Peace and Reconciliation set up after the cease-fires, as well as Cassese’s blueprint for dealing with self-determination and what he calls the “new tribalism” of ethnic conflict.⁷² Their proposals for how group accommodation could take place in accordance with international instruments have much in common with the Belfast Agreement. The Agreement is responsive, in particular, to the plea to fuse the area of self-determination and minority rights in a creative way, thus overcoming the tension between territorial integrity and minority rights in the current normative standards. Overcoming this tension is vital to international law if it is to address ethnic conflict effectively.⁷³

The compatibility of the Agreement with international law developments was not, of course, a coincidental convergence of political pragmatism with international law standards. It is clear from analysis of contributing paragraphs, phrases, and ideas to the Agreement, that international law formed an important backdrop to negotiations.⁷⁴ At key moments, parties felt they had to address international law, and on other occasions it gave

71. John Morison, *Constitutionalism and Change: Representation, Governance, and Participation in the New Northern Ireland*, 22 *FORDHAM INT’L L.J.* 1608 (1999).

72. Eide, *supra* note 12, at 341; CASSESE, *supra* note 9, at 341.

73. BOUTROS-BOUTROS GALI, *AGENDA FOR PEACE* (1992).

74. This influence by international law did not “just happen” and was, of course, the fruit of many years of hard work by groups and individuals, and in particular, the Committee on the Administration of Justice.

parties new ways of relating to the conflict. In turn, the Belfast Agreement may give support to current trends in international law in developing the notion of internal self-determination, and more abstractly, in bolstering a conceptualization of minority rights and self-determination whereby they are not two alternative branches of law for two different types of situation. This is an approach to internal self-determination that expands on, but is broadly in line with, the traditional U.K. approach to self-determination.⁷⁵

Berman's insight, noted in our introduction, of a complex interaction between law, states, and ethnic groups, is reaffirmed in this process. For Republicans, agreement could only have been reached when their self-determination claims were addressed. The history of the self-determination paragraph is beyond the scope of this Essay, save to say that the formulation as first accepted by the British Government in the Downing Street Declaration was vital to reaching the first IRA cease-fire.⁷⁶ As we have pointed out, John Hume also saw the value of making non-violent method itself a self-determination issue. This viewpoint answered the Provisional IRA's national liberation agenda, which drew support from international standards and conflicts elsewhere.

Similarly, however, in debating whether to enter talks, Unionists reframed their claim from a right to majoritarianism to one of "consent." In essence, this reframing was a shift to self-determination language—a claim that Unionists should not be forced into a form of government or a different state against

75. See McCorquodale, *supra* note 50.

76. Downing Street Declaration, paragraph 4, stated:

The British Government agree that it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish. . . . [I]t would be wrong to attempt to impose a united Ireland, in the absence of the freely given consent of the people of Northern Ireland. . . . [T]he Irish Government [accepts] that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with the consent of a majority of the people of Northern Ireland.

Joint Declaration issued by the Prime Minister, the Right Honorable John Major M.P., and the Taoiseach, Mr. Albert Reynolds T.D. (Downing Street Declaration of 1993), Dec. 15, 1993, U.K.-Ir., Cm. 2442. For a fuller account of the influences on the IRA cease-fire, see E. MALLIE & DAVID MCKITTRICK, *THE FIGHT FOR PEACE: THE SECRET STORY BEHIND THE IRISH PEACE PROCESS* (1996).

their freely-determined choice. They also used international instruments to argue for an internal solution. In particular, Ulster Unionists made reference to C/OSCE standards, taking comfort from their references to "the integrity of borders."⁷⁷ But this assertion was not without consequence. Along with territorial integrity went human rights protections and minority rights. Arguably, this was one of the elements that moved key Ulster Unionist elites to a position where they accepted the affirmation that Northern Ireland as a political entity could and should go hand in hand with increased human rights protection and even group rights. International standards also gave some room for negotiation with more traditional party members who saw Unionism's claims as claims to a Unionist nation-state, rather than to pluralism. Under this traditional view, Northern Ireland is comprised of loyal British citizens, and those who dissent from this position constitute the disloyal "other" whose disloyalty cannot be accommodated. This view still characterizes, for example, current Democratic Unionist Party rhetoric of "ordinary citizens" (those with a pro-Union allegiance). Others do not register as a significant part of the polity. The Framework Convention was of course a child of CSCE documents and, therefore, relevant as well. It was only in January 1997 that the British Government exhibited a serious intent to bring the talks to an end game by publishing the heads of agreement documents. Interestingly, January 1997 was also the month in which they ratified the Framework Convention,⁷⁸ despite the fact that British Governments had traditionally denied the need for minority rights on the grounds that protection for individual rights was sufficient. Indeed, one Ulster Unionist Party politician has claimed in private that ratification took place on their insistence. To the extent that Unionists used the Framework Convention, it was to claim that it underwrote territorial integrity. But of course the convention also refers to cross-border linkages and rights to effective participation in all aspects of public life. Unionists insisted that cross-border linkages were purely cultural and did not imply any "right" to executive power for neighboring states with kin groups, such as was being contemplated in the cross-border bodies. Yet it does seem that when a crucial log jam

77. *A Blueprint for Stability*, (Ulster Unionist Party), Feb. 28, 1994, at 6-7.

78. Ratified January 15, 1998.

over the role and scope of cross-border bodies was reached, which had become whittled away until it hinged on whether they were free standing or subordinate to the Assembly, discussion of the Framework Convention came into play.

International law also, of course, affected the other human rights aspects of the Agreement such as the Bill of Rights, policing and criminal justice provisions, and equality and the mechanisms for enforcement, a matter that is dealt with more fully elsewhere in this collection.⁷⁹ It is worth noting, however, that this case also tells of the complex interaction between international and local interventions whereby each informs the other. Further, one important consequence of the international law basis to articulating human rights concerns was to influence human rights developments in the South of Ireland as embodied in the Agreement. Of particular note was the establishment of a parallel Human Rights Commission in the South, with a joint Committee with the one in the North. The overarching commitment to “ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland,” including consideration of incorporating the European Convention on Human Rights,⁸⁰ reflected the political irresistibility of mutuality in rights, which flowed from making international law arguments that by their very nature applied to the South as well as the North. It also flowed from the breaking down of the border’s relevance through mechanisms such as the cross-border bodies. Of course, political pressures are messy, conflicting, and paradoxical. Republicans saw mutual rights protection as part of the all-Ireland dimension, and Unionists saw it as saying “if you’re going to shove this down our throats you’re going to have it as well.”⁸¹ But it did happen.

Finally, while full analysis of the negotiation dynamics surrounding the “regional” aspects of the Agreement is beyond the scope of this chapter, it is important to note that the British-Irish Council was for Unionists a mechanism that mitigated and changed the significance of the North/South cross-border bod-

79. Chris McCrudden, *Mainstreaming Equality in the Governance of Northern Ireland*, 22 FORDHAM INT’L L.J. 1696 (1999).

80. Belfast Agreement, *supra* note 1, Rights, Safeguards and Equality of Opportunity, Comparable Steps by the Irish Government.

81. Ann Marie Hourihane, *King of the Hill*, SUNDAY TRIBUNE, Dec. 27, 1998 (quoting from interview with Stephen King of Ulster Unionist Party).

ies, so crucial to settlement for Nationalists and Republicans. The fact that both Unionists and Nationalists were able to reconcile their competing sovereign claims, in part, by adopting these overarching structures, lends support to this type of supra-state arrangement as useful to resolving competing self-determination claims.

IV. *THE BELFAST AGREEMENT AS INTERNATIONAL MODEL*

We began by asking whether the Belfast Agreement provides a possible model for other ethnic conflicts. Our analysis suggests that just as it borrowed from other processes (with concepts such as “sufficient consensus” borrowed from South Africa), so may it, in turn, provide a model for other divided societies. The idea of cross-border cooperation as transcending traditional notions of statehood, sovereignty, and territorial integrity may be a useful one to consider in other conflicts where neighboring states form kin groups with a minority, such as Kashmir, Sri Lanka, or Kosovo, controversial or unrealistic as this might seem at present in any of these situations. However, where there is no kin group neighbor or where populations are more territorially segregated than in Northern Ireland, the more flexible notion of sovereignty and statehood is more likely to take shape in autonomous government for regions. This raises quite different problems of balance between individual and minority rights, which are played out in the balance between central and regional power, and the rights protections offered to “new” minorities at the regional level. Experience has indicated that such solutions may be difficult to implement coherently after sustained and intensive war (as Bosnia illustrates).⁸² Further, rather than stemming secessionist claims, as recent experience in former Czechoslovakia and former Yugoslavia indicates, granting autonomy may fuel them.⁸³

The importance of the Belfast Agreement to international lawyers may, however, lie more intangibly in its demonstration that political pragmatism can be reconciled with international law. International lawyers can, with some excitement, point to a deal that has struck a balance between minority rights and self-determination and that conforms closely to international stan-

82. Wippman, *supra* note 64.

83. CASSESE, *supra* note 9, at 363.

dards. The Belfast Agreement can give new hope that this confused area of law, so often charged with creating conflict, may very well contribute to resolving conflict in divided societies. That is, of course, if the Belfast Agreement works.