



**Bill of Rights for Northern Ireland**

**'The Particular Circumstances'**

**The Ulster Unionist Party's  
Position**

by

**Dermot Nesbitt**

## 1. Introduction:

At the conclusion of an 'away day' for Forum members/observers on 13 October 2007, and after a discussion on the term 'particular circumstances', the Chairman of the Forum requested that each considers what one understands to be the meaning of the term 'particular circumstances' and report to the Forum. This submission is in response to this request.

In considering the aspect of 'the particular circumstances' regarding a Bill of Rights, it is useful to consider the background context that led to this section in The Belfast Agreement.

The agreement reached at the multi-party talks in Belfast on 10 April 1998 (known as 'The Agreement' or 'The Good Friday Agreement' but in law called 'The Belfast Agreement') stated in the opening section that there should be: *"the protection and vindication of the human rights of all."*<sup>1</sup> It is thus clear that the rights of the resident population within Northern Ireland are to be protected in both a reasonable and justifiable manner. Prior to agreement, the UK Government indicated that: *"the protection of rights will be of central significance for the achievement of a lasting settlement."*<sup>2</sup>

Yet agreement as to the rights to be protected has not been forthcoming. Each community grouping's representatives within the negotiation process (known as 'the Talks') has had a different viewpoint as to the concept of the 'rights' to be protected. Professor Brice Dickson, then head of the NI Human Rights Commission, wrote as follows:

*"In the case of Northern Ireland, the environment in which this holding to account takes place is politically very sensitive. We are all familiar with the phenomenon of politicians taking a view of human rights which happens to accord with their personal political persuasions rather than with a more independent analysis."*<sup>3</sup>

Nevertheless, this submission to the Bill of Rights Forum is an earnest endeavour to demonstrate that the Ulster Unionist Party's (UUP) analysis is firmly grounded on accepted international conventions. This submission, aiming to be both objective as well as evidence and historically based regarding the Talks, uses quotations extensively to reflect the attitudes of human rights experts. The UUP's view in this submission is more by way of commentary, believing that the norms of international human rights were and are the basis for progress.

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<sup>1</sup> The Agreement: 'Declaration of Support' par. 2.

<sup>2</sup> UK Government: 'Rights and Safeguards', paper submitted to multi-party talks on 6 February 1998.

<sup>3</sup> Brice Dickson: Platform Article; Belfast Telegraph, 30 June 2004.

## 2. Background:

Many have articulated a perspective on the root cause of 'the troubles'. Perhaps the following encapsulates the position:

*"Fundamentally the Northern Ireland conundrum is one of conflicting national identities between those who believe themselves Irish and those who believe themselves British. There are religious, social, cultural, political and other dimensions to the problem but they are only dimensions of that central issue."*<sup>4</sup>

But what rights are to be considered, given the above view of the problem, in order to provide the basis for a democratic and peaceful society?

The UUP's aim during the Talks was to subscribe fully to the principle alluded to by Professors Boyle, Campbell and Hadden, commenting prior to the commencement of the Talks, as follows:

*"The substance of fundamental human rights is now determined by international agreement and there is an obligation on all States to protect them. To this extent the identification of the human rights to be protected is not a matter for bargaining between the parties to the peace process."*<sup>5</sup>

This last quotation is contained in one of a series of booklets related to the political situation in Northern Ireland and published by a Dublin Forum. The Forum decided to publish several documents in 1996 in view of their: *"relevance to the peace process and the all-party negotiations."*<sup>6</sup> This was against the background of elections in Northern Ireland in June 1996 from which came 'negotiation teams' to the inter-party talks ('The Talks') that in-turn concluded with The Belfast Agreement on 10 April 1998.

By way of background to these Talks, the British and Irish governments had published the: 'The Framework Documents', comprising two sections: 'A New Framework for Agreement' and 'A Framework for Accountable Government in Northern Ireland'. The document referred to *"guiding principles...[including] that any new political arrangements must be based on full respect for, and protection and expression of, the rights and identities of both traditions in Ireland."*<sup>7</sup>

The Governments stated that their views represented *"a shared understanding between the British and Irish Governments to assist*

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<sup>4</sup> Austin Currie: (SDLP Minister in 1974 Executive) 'Blurred Vision' Cadogan Group, 1994.

<sup>5</sup> Forum for Peace and Reconciliation, Dublin (Boyle, Campbell and Hadden): 'The Protection of Human Rights in the context of Peace and reconciliation in Ireland'; Consultancy Studies Number Two, May 1996, page 2.

<sup>6</sup> Opening commentary to both of the Dublin Forum's documents referred to in this submission.

<sup>7</sup> UK/Irish Governments: 'A New Framework for Agreement': 22 February 1995, par. 9.

*discussion and negotiation involving the Northern Ireland parties" adding that "it was not a rigid blueprint to be imposed but both Governments believe it sets out a realistic and balanced framework for agreement ..."*<sup>8</sup>

Asbjorn Eide (described by the Dublin Forum as: *"a leading international authority in the field of human rights"*<sup>9</sup>) commented as follows:

*"The sixth type of conflict, and often the most difficult one, arises when two groups, defining themselves as nations in an ethnic sense, conflict with each other over the same territory ... The claims of ethno-nationalists are the most difficult, since they constitute conflict over territory ... There is likely to be one or more minorities who might consider themselves discriminated against or treated as second class citizens ... This may be expressed in claims of self-determination, translated either into demands for independence for the particular territory in which they live, a merger with a neighbouring State, or autonomy for the area in which they live."*<sup>10</sup>

Asbjorn Eide further commented:

*"In November 1994 the Council of Europe adopted the Framework Convention on Minorities. The Convention is significant for two reasons. It is the first multilateral 'hard law' instrument devoted in its entirety to the protection of minorities, and it contains much more detailed provisions on such protection than any other international instrument ... building as it does on the United Nations Minority Declaration and on the Copenhagen Document of the CSCE (now OSCE)"*<sup>11</sup>

The UUP believes that the clear implication of the thrust of this Framework Convention is to provide a settled community. This Convention indicated:

*"that national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability."*<sup>12</sup>

Professors Boyle, Campbell and Hadden commented:

*"In a divided society the effective recognition of communal rights and the development of a concept of parity of treatment and esteem may be as important to the maintenance of peace and stability as the recognition of individual rights. Any entrenched bill of rights for Northern Ireland or other parts of the United Kingdom or for Ireland as a whole should include provisions to ensure that communal rights are effectively guaranteed. The best approach may be to incorporate the*

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<sup>8</sup> Ibid; 'Introductory Comments' and par. 8.

<sup>9</sup> Op cit: Consultancy Studies Number three; Biographical Note, page 133

<sup>10</sup> Asbjorn Eide: Ibid; pages 33 and 35, July 1996

<sup>11</sup> Ibid: page 69

<sup>12</sup> Council of Europe: 'Framework Convention for the Protection of National Minorities': 'Explanatory Report: Background', 1994, par. 5

*major provisions of the European Framework Convention on the Protection of National Minorities into any new bill of rights leaving the detailed provisions to be worked out in ordinary legislation.”<sup>13</sup>*

The UUP subscribed to the above view on group accommodation (or minority protection), which was also a reflection of a wider international consensus. It was expressed publicly on numerous occasions, for example:

*“International human rights law - in particular the protection of minorities - has been determined by international consensus within a range of bodies including the United Nations and Council of Europe. Just as each citizen should abide by domestic law so each sovereign state should abide by accepted principles of international law.*

*Though often misrepresented, the Ulster Unionist Party bases its approach squarely on the principles of international law and practice. It responds positively to international consensus on the treatment of minorities. The UUP says yes to participation in government at all levels by all constitutional parties and yes to full co-operation with Dublin on matters of mutual benefit to both jurisdictions.”<sup>14</sup>*

And the UK Government was challenged by the UUP, both within the Talks and publicly, to both ratify the Council of Europe’s Framework Convention for the Protection of National Minorities and to consider developing a Bill of Rights for Northern Ireland, as follows:

*“Firstly, the new Labour government has the key responsibility. It already has made proposals to incorporate into UK law the ‘European Convention on Human Rights’, which it views as a valuable step in protecting basic human rights.*

*It needs to go further for Northern Ireland by ratifying and implementing the 1995 ‘Convention for the Protection of Minorities’. This could best be done by incorporation into a Bill of Rights for Northern Ireland.*

*Both conventions, developed by the Council of Europe, conform to the ‘European model’ for solving the problems of a divided society. Since introduction in 1995, countries such as Estonia, Hungary, Romania and Slovakia have already ratified the convention: the question to London is: why are you delaying?”<sup>15</sup>*

As the Talks proceeded and from the perspective of a citizen of the United Kingdom; it was surprising that the UK government, in considering the matter of the protection of rights, indicated<sup>16</sup> that *“there may be some existing models”* or that *“the provisions of certain international*

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<sup>13</sup> Boyle, Campbell & Hadden: op cit; page 6

<sup>14</sup> Dermot Nesbitt: Platform Article; Belfast Telegraph, 19 September 1996.

<sup>15</sup> Dermot Nesbitt: Platform Article; News Letter, 5 June 1997.

<sup>16</sup> UK Government: op.cit. 6 February 1998.

*instruments on human rights might contain elements*" relevant to Northern Ireland. The UK Government clearly seemed to have had a 'blind spot' regarding its international obligations to all who resided in Northern Ireland.

The UUP's response was clear and simple:

*"We wish for the same rights and the same level of stability based on the same principles as are applied elsewhere in Europe"* <sup>17</sup>

Subsequently as part of The Belfast Agreement the UK Government agreed:

*"...to legislate as necessary to ensure the United Kingdom's international obligations are met in respect of Northern Ireland."* <sup>18</sup>

'Aspiration' dimension:

The UUP notes that the 'aspiration' dimension of the nationalist position has already been accommodated within the terms of The Belfast Agreement and needs no further accommodation by way of consideration of 'the particular circumstances'.

How is the aspiration for a united Ireland managed within The Agreement? The word 'aspiration' appears on THREE occasions. On one of these occasions it refers to the new British-Irish agreement, as part of the overall agreement, as follows:

*"The two Governments ... affirm [inter alia] that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities."* <sup>19</sup>

The above quotation refers to two aspects regarding rights: first, all people's diversity and, secondly, the particular circumstances of the two communities. It was the latter, excluding aspiration, that was specifically to be considered in the context of a proposed Bill of Rights for Northern Ireland.

The other two references to 'aspiration' are: first, that the participants:

*"...acknowledge the substantial differences between our continuing, and equally legitimate, political aspirations. However, we will*

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<sup>17</sup> UUP: 'Rights: Principles of Government', paper submitted to multi-party talks, 2 March 1998.

<sup>18</sup> The Agreement: 'Democratic Institutions in Northern Ireland', par. 33 (b).

<sup>19</sup> The Agreement: 'Agreement between UK/Irish Governments', Art 1(v), 10 April 1998.

*endeavour to strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements.”*<sup>20</sup>

Secondly, that:

*“...the parties affirm the right to pursue democratically national and political aspirations. [The latter included] the right to seek constitutional change by peaceful and legitimate means.”*<sup>21</sup>

The UUP, during the Talks process, accepted fully the right of aspiration to a united Ireland as exemplified by the following:

*“Each [aspirational] viewpoint has equal legitimacy as a viewpoint but legally they are entirely different. The legal position accepted by international law is that Northern Ireland is part of the United Kingdom whereas the status of the SDLP’s all-Ireland viewpoint is that of a legitimate right to wish for a change in Northern Ireland’s legal position.”*<sup>22</sup>

It is worth noting Asbjorn Eide’s comment in relation to territorial integrity:

*“... group accommodation must be effected within the limits of existing territorial integrity of States unless all parties agree to a voluntary territorial change.”*<sup>23</sup>

### **3. Other viewpoints:**

#### **(a) Northern Ireland Human Rights Commission:**

Following the endorsement of The Belfast Agreement by way of referenda, the new N.I. Human Rights Commission was tasked with considering the scope for additional rights to the Convention (ECHR). It published a brochure which stated the following:

*“The Convention does not provide any general protection for the cultural or other rights of distinctive communities or any specific guarantee that they will be granted parity of treatment and esteem. Rights of this kind are covered in the United Nations’ Covenant on Economic, Social and Cultural Rights and in the European Framework Convention on the Rights of National Minorities.”*<sup>24</sup>

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<sup>20</sup> Ibid: ‘Declaration of Support’, par. 5.

<sup>21</sup> Ibid: ‘Rights, Safeguards and equality of Opportunity’, par. 1.

<sup>22</sup> Dermot Nesbitt: Platform Article; News letter, 8 January 1998.

<sup>23</sup> Asbjorn Eide: Op.cit. July 1996, page 70.

<sup>24</sup> NIHRC: ‘A Bill of Rights: your questions answered’, undated.

The Commission further stated that:

*"... it has chosen not to confine itself to advising on 'the scope for defining' the requisite rights but to advise on the rights themselves." And "In so far as a narrow interpretation of paragraph 4 might be thought to rule out the recommendation of certain rights, the Commission is satisfied that it can properly rely on its general power under section 69(3)(b) of the Northern Ireland Act 1998 to make recommendations for the better protection of human rights in Northern Ireland."* <sup>25</sup>

The Commission's thinking at the time was clear: let's take upon ourselves responsibilities beyond our remit by invoking the 1998 Act in order to attempt to advise on wide-ranging aspects to a Bill of Rights "as the Commission thinks appropriate." <sup>26</sup>

The Commission's clearly articulated position, from a UUP's perspective, went beyond both the intention of The Belfast Agreement and also the law based on this Agreement.

This Commission failed in its attempt to advise government on a Bill of Rights. A lesson must be learnt.

### ***(b) The Human Rights Consortium:***

The Consortium refers to the Belfast Agreement, answering its own posed question: what is the Bill of Rights for Northern Ireland?

*"Under the Belfast/Good Friday Agreement, the NI Human Rights Commission (NIHRC) was asked to consult with people in Northern Ireland and advise the Secretary of State on the scope for defining rights supplementary to the European Convention of Human Rights.*

*Such rights were to reflect the particular circumstances of Northern Ireland, and, taken together with the Convention, would constitute a Bill of Rights for Northern Ireland."* <sup>27</sup>

However, the Consortium failed in the above statement to state the one clear and discrete sentence as to what The Belfast Agreement considered were the particular circumstances, namely:

*"These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland."* <sup>28</sup>

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<sup>25</sup> NIHRC: 'Making a Bill of Rights for Northern Ireland', September 2001, page 14

<sup>26</sup> Northern Ireland Act 1998: Section 69(3)(b).

<sup>27</sup> Human Rights Consortium: 'Frequently Asked Questions', June 2005

<sup>28</sup> The Belfast Agreement: 'Rights Safeguards & Equality of Opportunity' par. 4, April 1998.



A further updated publication to the above was produced by the Consortium in 2007, asking the question: *“What does the ‘particular circumstances’ of Northern Ireland, as stated in the Good Friday Agreement, mean?”*<sup>29</sup>

In answer to this question, the Consortium addressed a wide-ranging set of circumstances that it believed should comprise a Bill of Rights. For example, it stated:

*“This is a society of great inequalities and divisions. As many as one in five people have a disability, racist attacks in Northern Ireland are on the rise, women earn on average 84% of a man’s salary, catholic men are twice as likely to be unemployed as Protestant men, we have the highest rate of child poverty in the UK, and the infant mortality rate among Travellers is unacceptably high.”*

These are valid concerns for any society, but are they those that are to be addressed in a Bill of Rights according to the terms of The Belfast Agreement?

#### ***(c) Some Sundry Comments:***

I attended a presentation by Thomas Hammarberg (Commissioner for Human Rights, Council of Europe) at the Stormont Hotel on 8 February 2007.

In referring to particular circumstances I was challenged from several participants, who now participate in the deliberations of the Bill of Rights Forum. Such comments were: *“there is no such thing as two communities in Northern Ireland”*; *“Dermot has to understand this is 2007 not 1997”*; and *“the problem in Northern Ireland is not because people see themselves as British or Irish”*.

These comments represent a lack of full appreciation of the intention of the Bill of Rights aspect that was contained in The Belfast Agreement.

#### **4. The UUP’s viewpoint:**

The UUP is clear, regarding ‘particular circumstances’, both on the process of development during the Talks and also the meaning contained in the Terms of Reference for a proposed Bill of Rights: the practical application of these circumstances is the remaining element to be considered. Nevertheless it has been conscious of those who hold to the strong viewpoint that the consideration of a Bill of Rights for Northern Ireland offers an opportunity for a wider consideration. The UUP does not doubt

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<sup>29</sup> Human Rights Consortium: ‘Frequently Asked Questions’, 2007, page 12.

the sincerity or integrity of, for example, the Human Rights Consortium position as to the way forward.

The UUP has responded in a flexible manner to some of these concerns. For example: minutes of the inaugural meeting of the Forum on 18 December 2006, paragraph 7; and minutes of the second UUP meeting of the Forum on 4 April paragraph 40. The latter stated, from a UUP perspective:

*"The Forum should respect what was said in 1998 but without prejudice to the fact that other groupings exist."*

Consequently, the party has participated fully in all the deliberations of the Forum.

## **5. Final Comment:**

Conscious of both the UUP perspective and other viewpoints cited above, the comments by Professor Michael O'Flaherty at the Forum's 'away day' on 13 October are viewed with deep concern by the UUP. He expressed the view that the Council of Europe's Minority Framework Convention *"referred to only national minorities, whatever that means"* adding that in any event the Convention *"does not allow for other groups to be considered."* It is a matter of public record how the phrase 'national minority' has been adopted by the UK government in both a flexible and appropriate manner in order to reflect the particular circumstances of the whole of the UK. Also, the UK's approach has been commended by the Advisory Committee of the Council of Europe.

Professor O'Flaherty quickly did accept that he was *"reflecting the perception as to the Convention"*. However, a person in his position should not reflect perception but rather actuality. Should this perception be held widely among civic society, if it holds any perception on this matter, it should be dispelled and the Bill of Rights Forum should play its full part in this regard.

## **6. Conclusion:**

1. The UUP is clear as to the meaning of the 'particular circumstances' with regard to consideration of a Bill of Rights, as contained in The Belfast Agreement. The boundaries for any discussion and agreement are clear.
2. The widening of the deliberation has had a detrimental effect on the timescale and in turn proceeding to a conclusion by the Northern Ireland Human Rights Commission as to any advice it may give on the *"scope for defining in Westminster legislation rights supplementary to*

*those of the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland”* <sup>30</sup>

3. The UUP, nevertheless, has been understanding of those who wish to consider a wider perspective and has responded positively. However, there is a limit to this understanding and the party does not support ‘mission creep’ becoming, as it has tended to do, ‘mission gallop’. A repeated mistake is a lesson not learnt.
4. The UUP sees merit in any Bill of Rights, but strongly believes that any short-term benefits have been over-emphasised. Any benefits are likely to be long-term in that a Bill of Rights could act as a catalyst from: an educational perspective; attitudinal perspective; and, providing guidelines to assist decision makers while at the same time assisting in making the decision process more clear.
5. The UUP believes in the authority vested in the elected democratic process and any Bill of Rights should act as a guide to decision makers but not supplant the democratic process. The decision as to the degree of application of rights and to the prioritising of competing rights is a political choice.

**Dermot Nesbitt**  
**Ulster Unionist Party**  
**15 October 2007**

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<sup>30</sup> The Belfast Agreement: ‘Rights Safeguards and Equality of Opportunity’, paragraph 4.