Summary of the main points

Convention central to peace in Northern Ireland

The lesson of past decades is that it is only when states abide by the rule of law and respect people’s rights that a safe and secure society can flourish. The centrality of human rights was one of the key reasons the Belfast /Good Friday Agreement was possible, and why it has been successful in maintaining peace notwithstanding periodic uncertainty over the political institutions. The Agreement provided that: “The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.” Any move to withdraw from the Convention or its incorporation in the Human Rights Act would be a breach of the Belfast Good Friday Agreement and deal a serious and gratuitous blow to the Northern Ireland peace process.

CONTRIBUTION:

The 1998 Belfast Good Friday Agreement and human rights

It has increasingly been recognised that infringing rights feeds and prolongs conflict. The lesson of past decades is that it is only when states abide by the rule of law and respect people’s rights that a safe and secure society can flourish. The centrality of human rights was one of the key reasons the Belfast /Good Friday Agreement (hereafter ‘the Agreement’) was possible, and why it has been successful in maintaining peace notwithstanding periodic uncertainty over the political institutions.

As merely one example of the spirit of transformation that suffuses the Agreement and the role of rights within that transformation, it is worth quoting the declaration of support at the start of the Agreement:

The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.¹

That human rights were at the heart of the Agreement is beyond question. A cursory search of the text of the Agreement shows that the words ‘right’ or ‘rights’ appears 61 times. As noted by the then UN High Commissioner for Human Rights, Mary Robinson:

...the Good Friday Agreement is conspicuous by the centrality it gives to equality and human rights concerns. Few documents emerging from divisive and difficult political negotiations have so well captured the importance of fairness in creating right relationships...equality and human rights have now moved from the margins into the

¹ Multi-Party Agreement, Declaration of Support, Paragraph 2.
mainstream of Northern Ireland life.\textsuperscript{2}

The Agreement made a commitment to enshrining in Westminster legislation a Bill of Rights for Northern Ireland that would include and expand on the rights in the ECHR. It also committed the UK to incorporate the European Convention on Human Rights (ECHR) in Northern Ireland:

There will be safeguards...including...the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe... ...arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR...

The Assembly will have authority to pass primary legislation for Northern Ireland in devolved areas, subject to: ...the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void;\textsuperscript{3}

The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.\textsuperscript{4}

These commitments were given effect in domestic law through both the Human Rights Act 1998 and the relevant provisions of the devolution statute (Northern Ireland Act 1998). Although we still await the “supplementary rights” that, together with the ECHR, would form the Northern Ireland Bill of Rights, the above quotes demonstrate that the ECHR itself was fundamental to the peace agreement and to the architecture of a rights based society that was meant to guarantee a peaceful society.

Since then, the Human Rights Act and the ECHR itself have permeated many critical areas of Northern Ireland society, especially those institutions that rely on public confidence as a vital part of upholding the rule of law. The example of policing is perhaps the most important. The ECHR has become a foundation stone of policing in Northern Ireland. For example, the first clause of the Code of Ethics for police officers of the Police Service of Northern Ireland (PSNI) includes the following statement:

When carrying out these duties, police officers shall obey and uphold the law, protect human dignity and uphold the human rights and fundamental freedoms of all persons as enshrined in the Human Rights Act 1998, the European Convention on Human Rights and other relevant international human rights instruments.\textsuperscript{5}


\textsuperscript{3} Strand 1 of the Agreement paragraphs 5(b-c) and 26(a) respectively, emphasis added.

\textsuperscript{4} Rights, Safeguards and equality of opportunity, paragraph 2, emphasis added.

\textsuperscript{5} http://www.nipolicingboard.org.uk/final_code_of_ethics-2.pdf Page 8
Throughout the document, various articles of the Code note that they are “sourced from” elements of the ECHR and the jurisprudence of the European Court. For example, an article on planning operations where the use of force is a possibility notes that it is: “Sourced from: European Court of Human Rights: McCann -v- UK (1995) 21 EHRR para. 194.”

The Police (Northern Ireland) Act 2000 s.3(3)(b)(ii) lays on the Policing Board for Northern Ireland (PBN) the duty to monitor the performance of the police in complying with the Human Rights Act. This duty is taken extremely seriously. There is a detailed monitoring framework and Annual Human Rights Reports are prepared by the Board’s Human Rights Adviser on all aspects of police work. Thematic reviews are also carried out into aspects of work such as Stop and Search, based on compliance with the Act and the ECHR.

The PSNI also employ their own human rights advisers and police spokespersons frequently reference human rights in general and the ECHR in particular as the framework within which they take both police and operational decisions.

In terms of litigation, the Human Rights Act has become one of the most widely used pieces of legislation, especially in judicial review cases where the decisions of public authorities may be challenged. It is invoked in many areas of litigation and its loss would cripple the process of public interest litigation in Northern Ireland. Direct litigation to the European Court has also ensured that the Article 2 investigative obligation has been placed firmly on the UK Government in respect of modes of investigating conflict-related killings. Jurisprudence from Northern Ireland cases has also been generally influential in this and other areas.

In conclusion, Northern Ireland massively values the ECHR and its incorporation (mainly) into domestic law. Any move to withdraw from the Convention or its incorporation in the Human Rights Act would be a breach of the Belfast Good Friday Agreement and deal a serious and gratuitous blow to the Northern Ireland peace process.

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6 Ibid. Page 11