A NEW REMEDY FOR NORTHERN IRELAND: THE CASE FOR UNITED NATIONS PEACEKEEPING INTERVENTION IN AN INTERNAL CONFLICT

Roger Myers

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A NEW REMEDY FOR NORTHERN IRELAND: THE CASE FOR UNITED NATIONS PEACEKEEPING INTERVENTION IN AN INTERNAL CONFLICT

ROGER MYERS

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A NEW REMEDY FOR NORTHERN IRELAND: 
THE CASE FOR UNITED NATIONS PEACEKEEPING 
INTERVENTION IN AN INTERNAL CONFLICT

ROGER MYERS *

It is a proverb of Old date, 
that the pride of France, the treason of England, 
and the war of Ireland, shall never have end. 
Which proverb, touching the war of Ireland, 
is like always to continue, without God set it in men's breast 
to find some new remedy that was never found before. 

—English civil servant, 16th Century

I. INTRODUCTION

August 1990 marked the twenty-first anniversary of the inception of 
England's most recent effort to end the War of Ireland. On August 14,
1969, British troops, bayonets fixed, marched into the Bogside to protect the Catholic ghetto outside the ancient walls of Derry from marauding armed Protestant police forces incensed by a two-year civil rights campaign challenging a half-century of Protestant economic and political domination in the North of Ireland. There is some evidence that at least one of Prime Minister Harold Wilson's motivations in dispatching soldiers to the besieged Catholic quarter was to preempt international intervention. The previous day, the Taoiseach of the predominately Catholic Republic celebrate the siege of that city in 1689, a march which quickly disintegrated into the cataclysmic Battle of the Bogside that led to the introduction of British troops two days later. During the battle, eight died and at least 189 police and nearly 1,000 total were injured. Two of the most exhaustive examinations of this turning point in Ulster's modern history are the government's own two-volume TRIBUNAL OF INQUIRY, VIOLENCE AND CIVIL DISTURBANCES IN NORTHERN IRELAND IN 1969, REPORT TO PARLIAMENT, 1972, CMND. 566 [hereinafter SCARMAN REPORT] and R. STETLER, THE BATTLE OF BOGSIDE (1970).

2. Derry is the Catholic name for the town, Londonderry the Protestant. Since a majority of the town is Catholic, its Catholic name will be used throughout this report. Cf. Thomas, Bloody Ireland, COLUM. JOURNALISM REV., May-June 1988, at 31, 37.

3. Northern Ireland had been building to the August 1969 conflagration for months. The previous October, a march by more than 2,000 unarmed Catholics to protest discrimination in employment and public housing was attacked by the Protestant police force, the Royal Ulster Constabulary (RUC), which charged without warning and, in the words of a governmental committee of inquiry, "used their batons indiscriminately" and "wholly without justification or excuse." See DISTURBANCES IN NORTHERN IRELAND, REPORT OF THE COMMISSION APPOINTED BY THE GOVERNMENT OF NORTHERN IRELAND, 1969, CMND. 532, at 24-29 [hereinafter CAMERON REPORT]. Hospital officials treated 96 casualties, R. STETLER, supra note 1, at 40, including two policemen. CAMERON REPORT, supra, at 30. In January, more than 200 armed Protestant extremists and police, led by the Reverend Ian Paisley, ambushed unarmed Catholic civil rights marchers on the Burntollet Bridge outside Derry, sending 13 marchers to the hospital. Id. at 45-48; R. ROSE, GOVERNING WITHOUT CONSENSUS: AN IRISH PERSPECTIVE (1971); R. STETLER, supra, at 47. The next 48 hours witnessed violent clashes in the Bogside, as Catholic men, women and children were batoned on the streets and inside their homes. R. ROSE, supra, at 104; R. STETLER, supra, at 48-49. In April, a civil rights gathering in Derry was pummelled by Paisleyites and police, erupting into a full-scale battle when police again invaded the Bogside, beating Catholics "without mercy." J. CONROY, BELFAST DIARY: WAR AS A WAY OF LIFE 27 (1987); see CAMERON REPORT, supra, at 53; T. HADDEN & P. HILLYARD, JUSTICE IN NORTHERN IRELAND: A STUDY IN SOCIAL CONFIDENCE 21-23 (1973); R. STETLER, supra, at 50-58. Despite guarantees of certain violence, Protestant authorities refused to ban the annual Protestant marches commemorating Protestant victories at the Battle of the Boyne in 1690 (July 12) and in the siege of Derry in 1689 (August 12). The first led to severe rioting in Belfast and Derry, leaving more than 100 injured and an elderly Catholic man dead. 1 SCARMAN REPORT, supra note 1, at 45; R. STETLER, supra, at 59. The second resulted in the aforementioned Battle of the Bogside. See 1 SCARMAN REPORT, supra, at 68-69.

4. "Taoiseach"—pronounced "Tee-shock"—is Gaelic for leader or prime minister.
of Ireland, Jack Lynch, had broadcast his plea that "the British Government . . . apply immediately to the United Nations for the urgent dispatch of a peace-keeping force to the six counties of Northern Ireland."

As violence subsequently spread throughout Ulster, especially Belfast, C.C. Cremin, the permanent representative of Ireland, on August 17 sent a letter to the president of the United Nation's Security Council, requesting an urgent meeting of the Council. At the debate that followed, the British representative, Lord Caradon, announced, "A United Nations force is unnecessary and inappropriate. It is unnecessary because my Government is already taking action. It is inappropriate because United Nations intervention against our wishes would be in violation of Article 2(7) of the [United Nations] Charter." On the crucial issue of whether British soldiers, for eight centuries considered by Irish Catholics to be the representatives of a government bent on colonial conquest, could fulfill the role of neutral peace keepers, Caradon informed the Council that "British troops were discharging their duties with absolute impartiality; no better peace-keeping force could be there."

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5. 24 U.N. SCOR Supp. (July-Sept. 1969) at 159, U.N. Doc. S/9394 (1969). Unable to remain idle while Catholics in the North were "injured and perhaps worse," Lynch also ordered Irish troops to the border, ostensibly to erect field hospitals and refugee camps, but with the potential to invade if the Protestant police overcame the Bogside defenders. J. Conroy, supra note 3, at 28.

6. As news of the battle spread through the Catholic ghettos of Ulster, fighting erupted in the towns of Lurgan, Armagh, Dungiven, Enniskillen and Dungannon. See 1 Scarman Report, supra note 1, at 1-2.

7. The battle raged longest in Belfast. By the evening of the 14th, a fitful calm had descended on Derry, but that night and the next day heavy rioting ripped West Belfast. Catholics stoned police stations and Protestants, led by members of the B-Specials auxiliary police, undertook incendiary attacks on Catholic enclaves, burning somewhere between 48 and 200 families out of their homes. See J. Conroy, supra note 3, at 29; K. Kelley, supra note *, at 118; see also 1 Scarman Report, supra note 1, at 244. Members of the RUC entered the Falls Road ghetto in armored cars equipped with Browning machine guns, firing the Brownings into a row of homes and killing a nine-year-old boy and an off-duty British soldier visiting his Catholic parents. Id. at 172; J. Conroy, supra, at 29; J. Holland, Too Long a Sacrifice: Life and Death in Northern Ireland Since 1969, at 35 (1982). In all, six Catholics and two Protestants were killed. Id. Afterwards, Northern Ireland's prime minister and other Protestant officials blamed a group of Catholic republicans for the deaths. R. Rose, supra note 3, at 107. London disagreed; within days 6,000 British soldiers were deployed within the province to prevent further attacks on Catholic areas. Id. They were only partially successful. See J. Conroy, supra, at 32-33.


This Article will illustrate how history, the development of international law and United Nations practice have proven Caradon wrong on both counts. A United Nations peacekeeping force in Northern Ireland is necessary, for Caradon’s appraisal of the ability and neutrality of the British army proved overly optimistic. More accurate was the prediction by Taoiseach Lynch that the British-backed “Royal Ulster Constabulary [(RUC) would] no longer [be] accepted as an impartial police force, and that the employment of British troops would not be acceptable and would not be likely to restore peaceful conditions, and certainly not in the long term.”

In the intervening two decades, approximately 3,000 have died and 30,000 have been maimed and injured in the latest renewal of the War of Ireland. “[T]oday the division between the Catholic minority and the Protestant minority seems as wide as ever.” In 1988, the Six Counties suffered their bloodiest year since 1981, the year of the


12. IRA Bomb Kills 4 Soldiers in Ulster, San Francisco Chron., Apr. 10, 1990, at A17, col. 2 [hereinafter IRA Bomb]. Exact figures for the number killed since the current incarnation of the War of Ireland first flared in 1969 are difficult to ascertain. Official figures list 2,849 dead through the end of 1990. Violence in Ulster Claims 76 Victims, The Independent (London), Jan. 2, 1991, at 3, col. 1 [hereinafter Violence in Ulster]. These figures, however, only include deaths in Northern Ireland. See IR. INFORMATION PARTNERSHIP, SUMMARY OF CONFLICT-RELATED FATAL CASUALTIES IN 1988, at 13 (1990). Thus, the many political killings in the Republic of Ireland, in Britain and in Western Europe are not reflected in official statistics. Id. In addition, as Associated Press reporter Ed Blance pointed out in an article on the 15th anniversary of the Battle of the Bogside, official figures “do[] not include 10 guerrilla hunger strikers who starved themselves to death in 1981, [nor the scores of] paramilitary fighters secretly buried by their comrades or soldiers mistakenly shot by their own men.” Blance, Irish Eyes Are Still Crying in Belfast, Daily Ledger-Post Dispatch (Antioch-Pittsburgh, Calif.), Aug. 12, 1984, at 9, col. 1. Thus international observers estimate the total death toll at roughly 3,000. See IRA Bomb, supra, at A17, col. 2.


hunger strike deaths, prompting one of Britain's leading political publications to opine that the "holy grail [of a political solution] seems as elusive as ever."15 Things have improved little since then.16

As Section II of this Article explains, Britain's political and military strategies, coupled with the historic context of the Irish conflict, have brought British troops into the cross hairs of Northern Catholic animosity, ensuring sufficient communal support for the Irish Republican Army's (IRA) guerrilla campaign to rid Ireland of the British and to unite the island under Irish rule.17 It was, for example, the army's ambush and killing of three unarmed IRA suspects in March 1988 that ignited the violence to follow that year.18 Because the British army—both of itself and as a symbol of Britain's control—has evolved into one of the primary causes of continued violence, its withdrawal has become a necessary condition precedent to the creation of a political climate in which the Northern Irish can initiate the process that might lead to negotiations between the antagonists and to eventual peace.

But while the British cannot achieve peace by remaining in Northern Ireland, neither can they, alone, ensure it by leaving. Violent Protestant reaction to threats against its control in the North led to armed British military intervention, and British withdrawal would remove the only current safeguard, however imperfect, against a conflagration that could dwarf the guerrilla war of the past twenty-one years.19 A British military pullout can only succeed in reducing the climate of violence if accompanied by some strategy to keep the peace without provoking the population into full-blown civil war.


17. See infra notes 29-285 and accompanying text.
18. See infra notes 271-83 and accompanying text.
19. See infra notes 286-315 and accompanying text.
The recent renaissance of the United Nations, highlighted by the 1988 Nobel Peace prize for the United Nations peacekeeping forces, is an overdue recognition that, in the words of the Norwegian Nobel Committee, "the [United Nations] forces have, by their presence, made a decisive contribution toward the initiation of actual peace negotiations." A peacekeeping force in Northern Ireland could not itself remedy the War of Ireland, but that is not its function. As the United Nations has explained, the purpose of peacekeeping operations is to "create the climate, buy the time, and promote the minimum goodwill necessary for settlement [of conflicts] through negotiations or other peaceful means"—in short, to "create[e] conditions conducive to negotiations." With the British army unable to do so, despite twenty-one years' effort, it is difficult to imagine that even Lord Caradon would not concede the necessity of experimenting with the new remedy of United Nations intervention.

Sections III through VI address Lord Caradon's second contention, that United Nation's intervention into what Caradon described as "an internal matter" was "inappropriate." Section III of this Article describes how the United Nations, forged in the wake of World War II, was designed to prevent the historic mode of warfare between sovereigns; it thus has been slow to build a consensus on how best to keep the peace when it is threatened by modern, largely internal conflict, such as in Northern Ireland. The organization's reluctance to intrude on what its member states have perceived to be predominantly internal affairs has rendered the United Nations largely impotent to prevent the widespread deprivation of life and basic human rights created by internal conflicts.

As internal conflicts now represent by far the most frequent threats to international peace and to human rights, it is imperative that the United Nations recognize them as such. As United States ambassador to the United Nations, Adlai Stevenson, said shortly before his death, "[The issue] is, in essence, whether or not we intend to preserve the effective capacity of this Organization to keep the peace. It is whether to continue the difficult but practical and hopeful process of realizing in action the potential of the Charter for growth through collective responsibility, or turn toward a weaker concept and a different system."


22. Id.

23. See infra notes 326-38 and accompanying text.

24. See infra notes 339 & 413 and accompanying text.

Section IV details both the threats to international peace and the abuses of human rights created by the Ulster crisis and determines that United Nations' peacekeeping is warranted by the exigencies of the situation to prevent further escalation of hostilities and to promote a climate suitable for negotiation. Section V traces the mechanisms by which the United Nations may introduce a peacekeeping mission into an internal disturbance and concludes that, despite considerable political obstacles, such a force could be authorized to patrol Northern Ireland.

Section VI answers a more difficult question—whether United Nations peacekeeping could succeed in Northern Ireland—by analyzing previous deployments of United Nations troops. This Article concludes that the judicious use of peacekeeping forces would not only offer the best and perhaps only opportunity to create the potential for peace in Northern Ireland, but also would signify a substantial step by the United Nations toward finally fulfilling its fundamental tenets.

II. THE WAR OF NORTHERN IRELAND

When Francis Bradley died in the Northern Ireland town of Toomebridge on February 18, 1986, the world did not note his passing. The killing of the twenty-year-old Catholic was newsworthy, however, for Bradley became at least the thirty-fifth person in little more than three years to be shot dead by undercover units of the British army in Ulster.
under circumstances where the shooting appeared to violate domestic\textsuperscript{31} and international law, including the Universal Declaration of Human Rights,\textsuperscript{32} the International Covenant on Civil and Political Rights,\textsuperscript{33} and the European Convention for the Protection of Human Rights and

\textsuperscript{31} British criminal law restricts police to the use of reasonable force in the prevention of crime. Police and Criminal Evidence Act, 1984, § 117; Criminal Law Act, § 3 (N. Ir. 1967). While the state of emergency-type legislation in effect in Ulster broadens police powers of search, arrest, detention and questioning, it does not give security forces a license to kill. \textit{Cf} Northern Ireland (Emergency Provisions) Act, 1978, §§ 11-20. Thus, any injury inflicted by a soldier or policeman deliberately and without lawful justification constitutes a criminal offense. T. HADDEN & P. HILLYARD, supra note 3, at 36. Indeed, none of the martial laws in place in Northern Ireland lessen the restriction on the use of force in effecting an arrest, which remains the same as under British law; \textit{i.e.}, that the force be "reasonable." B. DICKSON, THE LEGAL SYSTEM OF NORTHERN IRELAND 87 (1984). While the definitions of "reasonable force" and "lawful justification" are vague and dependant largely on the circumstances in which the force was used, Criminal Law Act, § 3(1) (N. Ir. 1967); Farrell v. Secretary of State for Defence, [1980] 1 All E.R. 166, 172, 70 Crim. App. 224, 230 (per McGonigal, L.J.), the "yellow cards" issued to every British soldier clearly circumscribe the circumstances in which a soldier may with lawful justification open fire:

1. In all situations you are to use the minimum force necessary.
   FIREARMS MUST ONLY BE USED AS A LAST RESORT.

3. A challenge MUST be given before opening fire unless:
   a. to do so would increase the risk of death or grave injury to you or any other person.
   b. you or others in the immediate vicinity are being engaged by terrorists.

5. You may only open fire against a person:
   a. if he is committing or about to commit an act LIKELY TO ENDANGER LIFE AND THERE IS NO OTHER WAY TO PREVENT THE DANGER . . .
   b. if you know that he has just killed or injured any person by such means and he does not surrender if challenged and THERE IS NO OTHER WAY TO MAKE AN ARREST.


\textsuperscript{33} "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." International Covenant on Civil and Political Rights, \textit{in force} Mar. 23, 1976, art. 6, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 5, U.N. Doc. A/6316 (1966) [hereinafter International Covenant].
Fundamental Freedoms, all of which Britain has ratified. The vast majority of those killed were members of the minority Catholic community, unarmed and shot where an arrest "could probably have been safely effected." By late 1988, the number of "suspicious shootings" by police or army undercover units since 1982 had climbed to at least fifty-three and by the end of 1990 the total killed during alleged shoot-to-kill

34. "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law." European Convention for the Protection of Human Rights and Fundamental Freedoms, in force Sept. 3, 1953, art. 2, 213 U.N.T.S. 221 [hereinafter European Convention]. Although paragraph 2 limits the scope of the protection to where force is "absolutely necessary" to defend others, effect arrest, prevent escape or quell insurrection, the use of such force must be lawful under domestic law to qualify as an exception to article 2. Id. art. 2, para. 2. Since shoot-to-kill is illegal under British law, it is not a valid exception.

35. See infra note 424.

36. Thomas, supra note 2, at 33; Thomas, supra note 29, at A2, col. 2.

37. K. BOYLE & T. HADDEN, supra note 14, at 69-70; accord Thomas, supra note 29, at A2, col. 3. Jo Thomas, who covered Northern Ireland for the New York Times, reports that police statistics listed 21 of the victims as unarmed. Thomas, supra note 2, at 33. Moreover, "[o]n the basis of the available evidence, it's doubtful that those who were carrying weapons were given any opportunity to surrender before they were killed or—in the cases of three who lived—seriously wounded." Id.

38. Reports list at least 47 such killings through 1987. Thomas, supra note 2, at 33. Army ambushes killed at least six more IRA suspects in 1988. See generally Lohr, 3 I.R.A. Slain, supra note 14, at A3, col. 1; Gibraltar's Secret, ECONOMIST, July 23, 1988, at 15; Raines, 3 British Servicemen Are Killed by I.R.A. Attacks in Netherlands, N.Y. Times, May 2, 1988, at A1, col. 6 [hereinafter 3 British Servicemen Killed]. Three of these were highly controversial. On March 6, an ambush by troopers of the British army's anti-terrorist unit, the Special Air Services (SAS), killed three IRA members on the island of Gibraltar. See Lawlessness in Ulster, NATION, Apr. 2, 1988, at 445; Raines, supra, at A18, col. 1. All three, one of whom was a woman, were unarmed. See Gibraltar's Secret, supra, at 15; Lawlessness in Ulster, supra, at 445. The IRA "volunteers" were apparently on Gibraltar to detonate a bomb during a British military parade. Gibraltar's Secret, supra, at 15. The ambush occurred in an area 30 miles from where the explosives were stored, however, and the unarmed suspects apparently presented no threat to the commandoes when they were killed. See id.; Lawlessness in Ulster, supra, at 445. All three were reportedly shot at close range. Gibraltar Duo Shot While Surrendering, IR. AM., June 1988, at 11 [hereinafter Gibraltar Duo Shot]. A British Independent News (ITN) documentary quoted eyewitnesses who asserted that two of the IRA members killed on Gibraltar had their hands in the air and were apparently attempting to surrender when shot. Id.; Raines, supra, at A18, col. 1. According to a Gibraltar resident, the soldiers, who were not in uniform, shot the unarmed suspects "in cold blood" and without warning. Clines, Killing of I.R.A. Suspects Angers Thatcher Critics, N.Y. Times, Mar. 10, 1988, at A7, col. 1. One of the three was shot as he lay on the ground. Gibraltar's Secret, supra, at 15; Gibraltar Duo Shot, supra, at 11. By a 9-2 vote, a coroner's inquest later
operations neared 80. Through 1988 well more than half the 326 individuals killed by security forces in Northern Ireland since 1969 had been civilians. The British attitude toward these questionable methods was summarized by a leading London publication. Regarding a May 1987 British army ambush that killed eight IRA suspects, it commented that trials “are a casualty of civil wars.”

These victims of an alleged shoot-to-kill policy employed by certain


In a report released April 1989, Amnesty International concluded the coroner’s inquest was “inadequate” and had failed to establish that the Gibraltar killings were not “extrajudicial executions.” *AMNESTY INT’L, INVESTIGATING LETHAL SHOOTINGS: THE GIBRALTAR INQUEST* 1 (1989) [hereinafter *AMNESTY INT’L, GIBRALTAR INQUEST*]. Amnesty International uses this term to “describe unlawful and deliberate killings which can reasonably be assumed to be the result of a policy, at any level of government, to eliminate or to permit the elimination of specific individuals rather than to arrest them.” Id. To date, Amnesty’s call for “a full judicial inquiry” to review “not only the effectiveness of the Gibraltar inquest in investigating all the circumstances surrounding the Gibraltar killings, but also the government’s overall response to the Gibraltar killings” has not been accepted. *Id.* at 32.

39. The preceding figure includes only those shoot-to-kill incidents after 1981. “This is not when the shootings began—there had been some particularly infamous cases in earlier years . . . .” Thomas, supra, at 32. For example, at least nine men and a teenaged boy were the victims of alleged shoot-to-kill operations between December 1977 and November 1978. K. BOYLE, T. HADDEN & P. HILLYARD, TEN YEARS ON IN NORTHERN IRELAND: THE LEGAL CONTROL OF POLITICAL VIOLENCE 28-29 (1980). Between March and August 1980, army and police patrols recorded another seven such killings. *Id.* at 33. Nor did shoot-to-kill end in 1988. In 1990, the British army ambushed at least six individuals in circumstances typical of shoot-to-kill operations: three robbery suspects shot 28 times; two joyriding teenagers shot dead; the unarmed 20-year-old father of a 12-month-old son killed when his car was hit by at least a dozen bullets at an army checkpoint in South Armagh. *Violence in Ulster*, supra note 12, at 3, col. 1. Thus, the total killed during alleged shoot-to-kill operations is at least 78. The latest killing, of the unarmed father on the penultimate day of 1990, resurrected the shoot-to-kill controversy both within and without Northern Ireland. *See McKittrick, Archbishop Joins Call for Inquiry into Army Killing*, The Independent (London), Jan. 2, 1991, at 3, col. 1; Victor, *Dublin Government Concerned Over Checkpoint Death*, The Times (London), Jan. 1, 1991, at 3, col. 1. The soldiers involved were not suspended. *Id.*

40. IR. INFORMATION PARTNERSHIP, supra note 12, at 14 (table 1) (listing 178 of the 326 security force victims—or 54.6%—as civilians); cf. Jennings, Preface to 1990 Edition, in *JUSTICE UNDER FIRE*, supra note 31, at xix-xx. Of the 178 civilians killed by security forces, more than 83%—148—were known to be Catholic. IR. INFORMATION PARTNERSHIP, supra, at 14 (table 1).

elements of the British army\textsuperscript{42} constitute only one chapter in Europe's

\textsuperscript{42} British authorities deny the existence of an official shoot-to-kill policy under which the security forces in Northern Ireland shoot suspected IRA volunteers rather than arrest them. \textit{See, e.g.}, Thomas, \textit{ supra} note 2, at 37; Thomas, \textit{ supra} note 29, at A2, col. 3. If such a strategy exists, it directly contradicts London's assertions regarding its neutral, peacekeeping role in Ulster. \textit{See supra} note 10 and accompanying text. According to the United States Department of State, the British government neither practices nor condones political killings. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985, at 1137 (Joint Comm. Print 1986) [hereinafter U.S. STATE DEP'T REPORT]. Britain has no death penalty. \textit{See} Murder (Abolition of Death Penalty) Act, 1965.

Nevertheless, the evidence strongly suggests that during 1977-78 the army developed a policy of ambushing and killing suspected terrorists about whom it would be difficult to obtain evidence sufficient for convictions. K. BOYLE & T. HADDEN, \textit{ supra} note 14, at 69; K. BOYLE, T. HADDEN & P. HILLYARD, \textit{ supra} note 40, at 28-39; Jennings, \textit{ supra} note 31, at 104-05. In unusually strong language, Amnesty International in 1988 concluded that:

\begin{quote}
[S]ome of the killings by the security forces may have resulted from a deliberate policy at some official level to eliminate, or permit elimination of, rather than to arrest individuals whom they identified as members of armed opposition groups. \ldots The existing investigative procedures have failed to eliminate the possibility that they were killed with premeditation as a result of operations deliberately planned to this end.
\end{quote}

AMNESTY INT'L, NORTHERN IRELAND: KILLINGS BY SECURITY FORCES AND “SUPERGRASS” TRIALS 59 (1988) [hereinafter AMNESTY INT'L, KILLINGS BY SECURITY FORCES]. The existence of this policy was all but confirmed by one of the two soldiers charged with and eventually acquitted of the murder of a Catholic man. When asked during his July 1979 trial if he had heard of any patrol with a main objective of capturing, rather than killing, Cpl. Michael Alan Bohan reportedly replied, “I have read of such patrols in World War Two literature.” E. MCCANN, WAR AND AN IRISH TOWN 164 (rev. ed. 1980). Before he was removed from his investigation into whether the RUC was the European equivalent of “a Central American assassination squad—truly of a policy force out of control,” mainland British police investigator John Stalker had amassed sufficient evidence to conclude that, at the least, “[t]he circumstances of those shootings pointed to a police inclination, if not a policy, to shoot suspects dead without warning rather than to arrest them. Coming, as these incidents did, so close together, the suspicion of deliberate assassinations was not unreasonable.” J. STALKER, STALKER 67, 253 (1988) (published as \textit{The Stalker Affair} in the United States). For more on the Stalker investigation, see \textit{infra} notes 169-75 and accompanying text. For a more detailed analysis of shoot-to-kill, see INT’L LAWYERS’ INQUIRY INTO THE LETHAL USE OF FIREARMS BY THE SECURITY FORCES IN N. I.R., SHOOT TO KILL? (1985); Greer, \textit{Crown Snub Fails to Impair Impartiality}, FORTNIGHT, July 1985, at 10-11; Jennings, \textit{ supra} note 31, at 104-30.

This practice has certain shortcomings. On February 21, 1988, a young Catholic named Aidan McAnespie was shot to death without warning by British soldiers as he walked past an army checkpoint. He was not a member of the IRA. The army admitted its mistake and expressed its regrets. Thomas, \textit{ supra} note 2, at 37. The army’s apology neglected to mention, however, that McAnespie’s sister had run for office as a candidate for Sinn Féin, the republican political party; that he had been frequently interrogated and
longest conflict since World War II, the ongoing sectarian guerrilla war in Northern Ireland, known euphemistically as "the troubles." In turn, these troubles constitute only the latest chapter in a 800-year tragedy. As it is impossible to understand the need for international intervention absent some knowledge of the context of the long-running Anglo-Irish conflict, I trace first the historical roots of the troubles. I then turn to England’s policy these past two decades to examine the tension between Westminster’s avowed end, peaceful reconciliation of the Protestant and Catholic communities, and its contradictory means. I conclude the latter have in fact broadened the sectarian divide by driving a significant minority of the Catholic community to support armed republican revolution against occasionally beaten by soldiers when he passed the checkpoint each day on his way to work; and that he came from several generations of Irish nationalists. Id. The killing of innocent Irish is not unusual. Of the 10 killed in alleged shoot-to-kill operations between December 1977 and November 1978, three, including a teenaged boy, were admitted by the army to have been killed in error. K. BOYLE, T. HADDEN & P. HILLYARD, supra, at 28-29. Charges were filed in only one of these cases; the soldiers were acquitted. Id. at 28.

43. The historical and political context of the war largely goes unreported. See Thomas, supra note 2, at 32 ("The silence about what is going on in Northern Ireland troubles me, and it should worry people who care ... about justice—or the lack of it—in that place."). Most reports out of Northern Ireland highlight the often-spectacular atrocities of the IRA. See, e.g., Lohr, I.R.A. Claims Killing of 8 Soldiers as It Steps up Attacks on British, N.Y. Times, Aug. 21, 1988, § 1, at 1, col. 1; I.R.A. Ambush Kills 2 Ulster Policemen, N.Y. Times, Jan. 2, 1986, at A3, col. 4; IRA Bomбард Police Base, L.A. Times, Mar. 1, 1985, at 1, col. 5. Conversely, Protestants have wielded their political power in an "unspectacular but effective" manner against the Catholic minority. M. O'BRIEN & C. O'BRIEN, supra note 30, at 167. In addition, reporters are not encouraged to dig deeply into allegations of institutional violence. When New York Times reporter Thomas began investigating the shoot-to-kill allegations, she was "abruptly ordered home." Thomas, supra note 2, at 32.

44. Republicans are Catholics who favor unification with the Republic of Ireland. They are also referred to as nationalists. Conversely, those who wish to preserve partition of the island and the north's link with Britain are almost exclusively Protestant, and are called unionists or loyalists. The principal armed segment of the republican movement is the IRA, more correctly, the Provisional IRA, which in 1970 split from what became the Official IRA when the latter chose to emphasize ballots over bullets. See, e.g., S. BELFRAGE, supra note 30, at xiii. For simplicity's sake—and because the Official IRA has subsequently been largely absorbed into the Worker's Party, Id.—this Article generally refers to the Provisionals as the IRA. The IRA is the most active and bloodiest of Northern Ireland's paramilitary organizations. See, e.g., Thomas, Anglo-Irish Agreement Pits Both Ends Against the Middle, N.Y. Times, Nov. 24, 1985, at A3, col. 1. The IRA's strategy is to launch intermittent, yet sensational strikes against military targets so as to persuade British public opinion and votes to do what IRA bombs cannot: force the British troops to withdraw from the island. See, e.g., A Battle of Gestures, supra note 15, at 45. The IRA's occasional major military "victories" also help ensure continued financial aid
British rule, which violence, directed as it is against both the British and their Protestant allies, drives Protestant extremists to armed resistance and transforms British troops into partisan enforcers of what Catholics perceive as British rule and Protestant control.

A. Historical Roots

The troubles are the bitter fruit of 800 years of British colonial policy in Ireland and fifty years of Protestant domination in Northern Ireland, which in 1921 became a province of the United Kingdom when the rest of the island gained home rule.45 The following passage is indicative of the ties that bind modern Ulster with its unhappy past; though an accurate assessment of the post-1969 situation, it was actually penned to describe a pattern that emerged in the mid-seventeenth century:

It was a vicious circle. English consciousness of [Irish resentment] produced a feeling of insecurity . . . the need for security produced strong measures, thus intensifying the Irish feelings at the root of the original feeling of insecurity, and creating the need for still further strong measures.46

from supporters in the United States. The American support network is considered vital to the IRA's continued armed struggle. The Provisionals "earn" about $1 million annually from illicit enterprises within Ireland and another $250,000 each year from overseas contributions, approximately $100,000 of which comes from Irish organizations in the United States. J. HOLLAND, supra note 7, at 146. Intelligence officials estimate that 75% of the money collected in the United States by the Irish Northern Aid Society is used to purchase weapons. D. CLARK, IRISH BLOOD: NORTHERN IRELAND AND THE AMERICAN CONSCIENCE 71-72 (1977).

The IRA is not the only armed republican organization. Most extreme of the others is the Marxist Irish National Liberation Army (INLA), which emerged in 1975 as the military wing of the Irish Republican Socialist Party (IRSP). Some of its members overlap with the Provisional IRA. White, From Conflict to Violence: The Re-emergence of the IRA and the Loyalist Response, in NORTHERN IRELAND: THE BACKGROUND TO THE CONFLICT 195 (J. Darby ed. 1983) [hereinafter BACKGROUND TO THE CONFLICT]. The INLA is believed to be responsible for such attacks as the 1979 deaths of Airey Neave, Conservative spokesman for Northern Ireland, and of Sir Richard Sykes, British ambassador to the Hague. Janke, Ulster: A Decade of Violence, 108 CONFLICT STUD. 14 (1979). The INLA also claimed responsibility for the Ballykelly disco bombing that killed 16 in 1979. P. O'MALLEY, THE UNCIVIL WARS 409 (1983).

45. See generally K. KELLEY, supra note *, at 33-77.

46. M. O'BRIEN & C. O'BRIEN, supra note 30, at 61; see also C. CARLTON, BIGOTRY AND BLOOD: DOCUMENTS ON THE ULSTER TROUBLES at xiii (1977) ("In Northern Ireland the cliche that the past creates the present is particularly true."); L. URIS, TRINITY 751 (1976) ("In Ireland, there is no future, only the past happening over and over."). See
The Anglo-Norman invasion of Ireland in 1169 A.D. marked the beginning of English attempts, never fully successful, to conquer the island. Native hostilities were especially strong in the North, so England concentrated its seventeenth century plantation of Protestant settlers in Ulster, hoping to solve its Irish problem by uprooting the Catholics. This was the same tactic later employed in North America against the Native American population. Unlike the United States, the colonizers of Northern Ireland never fully drove out or defeated the "natives," so that Ulster became what it is today, a province of two mutually antagonistic populations.

The Anglican-landed minority that gained political power never constituted more than one-tenth of the island's population and could not hope to rule without force. Catholic attempts to alter the balance of power were swiftly and ruthlessly suppressed. This also held true after generally R. ROSE, supra note 3, at 74-112.

47. See, e.g., R. ROSE, supra note 3, at 76-78.
48. For example, the first rebellion against British rule occurred in Ulster in the 1560s. M. O'BRIEN & C. O'BRIEN, supra note 30, at 56.
49. Id. at 61.
50. See C. CARLTON, supra note 46, at xiv; R. ROSE, supra note 3, at 78-79.
51. M. O'BRIEN & C. O'BRIEN, supra note 30, at 62. The 1981 census reported a total population in Northern Ireland of 1,562,200, of which 951,300 were Protestant and 610,900 Catholic. Thomas, supra note 44, at A3, col. 1; Thomas, supra note 2, at 35. There has been little change in the intervening years. See IR. INFORMATION PARTNERSHIP, supra note 12, at 13 (as of March 31, 1988, the government estimated that 60.9% of the Northern Ireland population over the age of 16 was Protestant, 36.8% was Catholic and 2% was unknown).
53. This did not escape the commander in chief of the British regular army in Ireland, who in 1787 noted, "but for the military there would be no government at all." Id. at 165.
54. C. CARLTON, supra note 46, at 23. In retaliation for Catholic attacks against Protestant settlers during the uprising of 1641, British forces conducted an 11-year campaign that left 600,000 (out of an estimated population of a million and a half) Irish dead, forced 40,000 Irish to flee into exile, caused another 100,000 to be shipped as virtual slaves to the Americas, and saw at least 6,000 Catholics lose their land (amounting to 55% of the island's total area). Id. In 1795, some 30 Catholics were killed in a reprisal attack, and shortly thereafter, the Orange Order was established to "support the Protestant ascendancy" and quickly intimidated another 700 Catholic tenant families to flee Armagh. R. ROSE, supra note 3, at 81 (citing H. SENIOR, ORANGEISM IN IRELAND AND BRITAIN, 1795-1836, at 21 (1966)). The Orange Order exists to this day and is largely responsible for Protestant agitation in the north against the 1985 Hillsborough Treaty, see infra note 230 and accompanying text, granting the South a token role in Northern Ireland's internal affairs. See 200 Injured as Ulster Notes Battle of Boyne, San Francisco Exam., July 14,
full union with Britain in 1800. Fifteen of the leaders of the brief 1916 Easter Rising in Dublin were executed, a harsh reaction that contributed to the resolve of the Irish when in 1921 they overthrew English rule in the South.35

By 1703, the Protestant ascendancy was complete: native Catholics owned less than 14% of all of Ireland, and in eight of Ulster’s nine counties, Protestants owned 95% of the land.56 The eighteenth century Irish were no longer citizens in their own country. So it would remain, even after the official abandonment of anti-Catholic legislation, for the next 200 years.57 Neither union with England nor emancipation in 1829 ended Catholic subjugation. Catholics remained dispossessed and were treated as inferior subjects until the Irish Free State was established in 1921.58 As the terms of the Free State Treaty excluded the six counties of Ulster, Catholics in the north remained under the domination of Protestant authority until the introduction of direct rule from Westminster in 1972.

The most draconian measures approved by the seventeenth and eighteenth century Protestant Parliament in Dublin to control the Catholics were the penal laws, under which Catholics could do none of the following: vote or hold any administrative, judicial or political office; join the bar; teach at or attend the university; establish their own schools; own...

1988, at A6, col. 1 [hereinafter 200 Injured]; see also infra notes 238-40 and accompanying text.

55. M. O’BRIEN & C. O’BRIEN, supra note 30, at 141.
56. R. ROSE, supra note 3, at 79.
57. Id. at 80-81.
58. The Great Famine of the 1840s illustrates the impoverished state of the Irish in the mid-19th Century. From 1845-47, an estimated one million Irish died and another one million emigrated to the United States. M. O’BRIEN & C. O’BRIEN, supra note 30, at 103-05. The failure of the potato crop was the overt cause of the devastation. The manner in which Catholics were forced to live and the slow reaction of the British government to the crop failure, however, contributed greatly to the magnitude of the disaster. The majority of Catholics were landless and wholly dependant on the potato as a source of income and nourishment. A commission established to investigate land holdings in Ireland reported in 1845: “In many districts, their only food is the potato, their only beverage water... their cabins are seldom a protection against the weather... a bed or a blanket is a rare luxury... nearly in all cases their pig and manure heap constitute their only property.” J. BIGGS-DAVISON & G. CHOWDHARAY-BEST, THE CROSS OF SAINT PATRICK 165 (1984) (quoting commission report). Since the British government concerned itself with Ireland only in the event of a threat to English security, and since the famine actually had the opposite effect by reducing the population of potential agitators against the Crown, London did little to ease the situation, M. O’BRIEN & C. O’BRIEN, supra, at 106, and nothing substantial until 1847, too late to avert catastrophe. J. BIGGS-DAVISON & G. CHOWDHARAY-BEST, supra, at 166.
land or a horse worth more than five pounds. All Catholic bishops and higher church officials were banished from the country and executed upon return. The laws, intended to coerce the Irish peasantry into assimilating into the Anglican culture and religion, in fact did the opposite; by making the Catholic church and the people partners in deprivation, the laws actually cemented the bonds between the Irish and their church. Thus did the Protestants of the seventeenth and eighteenth centuries sow some of the seeds of the current unrest. The church’s grip on the Irish remains unshaken to this day, effectively undermining proposals for political resolutions to the Irish problem, since northern Protestants fear that inclusion in the Republic of Ireland would force them into a theocracy alien to their faith and antagonistic toward rights presently enjoyed, such as divorce, birth control and non-Catholic education.


60. Id.


62. “[T]he Catholic Church . . . has a practical stranglehold on the regulation of morality in the South . . . .” S. BELFRAGE, supra note 30, at 290. The Republic’s 1937 constitution ordained an “ecclesiastical imperialism” of the Catholic Church in Ireland.” Id. at 291. It begins:

In the name of the Most Holy Trinity, from Whom all Authority flows and to Whom as our first end all actions both of men and states must be referred. We, the people of Eire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial . . . . do hereby adopt, enact, and give to ourselves this Constitution.


63. S. BELFRAGE, supra note 30, at 290-91. “Britain can’t leave until Ireland is tolerable for the other side to join.” Id. at 290 (quoting BBC political commentator); see also K. BOYLE & T. HADDEN, supra note 14, at 63, 88. To some extent this is a red
This is not to say that the reasons behind the repression of the Catholics are religious in nature, a misconception bred by the use of religious labels to identify the antagonists. In Northern Ireland, being born Catholic or Protestant has historically dictated much more than religious affiliation. To a large degree religious affiliation still dictates origin and culture,64 class standing,65 the access—or, more accurately

herring, for the Protestant clergy in the North has been equally active in dictating social mores and public laws. Abortion is illegal, forcing an annual migration to the mainland of more than 2,000 Northern women who can afford to obtain a legal abortion. S. BELFRAGE, supra, at 116. Paisley, with his "Save Ulster from Sodomy" campaign, see id., stood with Catholics to proscribe homosexuality until the European Court of Human Rights found the law to be in violation of the European Convention on Human Rights. See The Dudgeon Case, 45 Eur. Ct. H.R. 13, 24-25, 27 (ser. A) (1981) (judgment) (holding sections 61 and 62 of the Offenses Against the Person Act of 1861 and section 11 of the Criminal Law Amendment Act of 1885 violated article 8 of the European Convention). Although banning is not lawful, Paisley and other Protestant leaders have led demonstrations against a number of movies and publications, see J. CONROY, supra note 3, at 125, and they favor parochial, albeit Protestant, education. Id. Thus it has been said that Northern Protestants "seem to object not to the interference of church with state in the South, but to the fact that it is not the Protestant church that is doing the interfering." Id.

In any event, there is a belief in Ireland that the November 1990 election of Mary Robinson to the republic's presidency "...signals a change in Irish society and a shift away from traditional [i.e., Catholic] attitudes and allegiances." Leftist Lawyer Is Elected President of Ireland, N.Y. Times, Nov. 10, 1990, at A3, col. 2 (quoting the Irish Press newspaper). As a lawyer and legislator, Robinson fought to legalize divorce, contraception and abortion information, and to decriminalize homosexuality. Id.; Fresh Breeze in Ireland, San Francisco Exam., Jan. 3, 1991, at A18, col. 1 (editorial). In response to Robinson's election, Prime Minister Charles Haughey introduced a "10-year strategy" to modernize Irish life, including consideration of legalized divorce and legislation to legalize homosexuality. Joyce, Plan to Liberalize Ireland, Manchester Guardian Weekly, Dec. 16, 1990, at 7, col. 4. Robinson is an outspoken critic of violence in Northern Ireland and, interestingly, is married to a Protestant. Here's to You, Mrs. Robinson, IR. AM., Dec. 1990, at 9.

Almost all Catholics are of Celtic stock native to the island while most, if not all, Protestants are of British or Scottish ancestry, though intermarriage has slightly diluted the purity of bloodlines on both sides. See R. STETLER, supra note 1, at 33 (quoting O'Brien, Holywar, N.Y. REV. BOOKS, Nov. 6, 1969, at 10). Catholics regard themselves as part of a historic Irish nation. They believe in a unified island, they fly the Tricolor, the flag of the Republic and their national anthem is the "Soldier's Song." Protestants' allegiance is to the British Crown, their flags are the Union Jack or the flag of Ulster and their national anthem is "God Save the Queen." By the end of the seventeenth century, Protestant settlers had eliminated the native Gaelic social order and culture and begun the substitution of English for the Gaelic language that would be largely completed by the mid-nineteenth century, leaving only the Catholic church as a badge of identification for the native populace. Id. Restoration of the Celtic traditions began in the late nineteenth century and has been encouraged by the southern state, which, after partition, undertook the revival of the Gaelic language. Vaizey, The Mind of Republicanism, in THE
in the case of Catholics, who in certain neighborhoods suffer rates of unemployment as high as eighty percent,\textsuperscript{65} the inaccess—to employment\textsuperscript{67} and political control.\textsuperscript{68} The Unionist Party used its position to


65. Catholics largely constitute the lower class in Northern Ireland. In 1970, only four percent of Ulster residents with annual incomes of £2,000 or more (about $5,000 at the time) were Catholic. \textit{See} R. \textsc{Stetler}, \textit{supra} note 1, at 35-36. This situation has not changed much. One study of Northern Ireland after 10 years of the latest troubles found a persistent “high level of financial deprivation in many Catholic areas.” K. \textsc{Boyle}, T. \textsc{Hadden} \& P. \textsc{Hillyard}, \textit{supra} note 40, at 10. A primary cause of this financial deprivation is the Payment for Debt (Emergency Provisions) Act, §§ 1, 3, 8 (N. Ir. 1971).

“[O]ne of the most vicious pieces of legislation to be passed this century,” S. \textsc{Belfrage}, \textit{supra} note 30, at 170 (quoting Child Action Poverty League), the act allows the government to confiscate from any government benefit check—including social security, unemployment and welfare—as well as from any paychecks whether issued by governmental or private employers, money owed for past due rent or utility bills. \textit{See} Payment for Debt (Emergency Provisions) Act (N. Ir. 1971). “The effect on the poor and the unemployed was disastrous,” leaving families without sufficient resources to feed their children or heat their homes in the winter. S. \textsc{Belfrage}, \textit{supra}, at 170-71; J. \textsc{Conroy}, \textit{supra} note 3, at 77; K. \textsc{Kelley}, \textit{supra} note 1, at 158. Thus 35% of Northern Irish households live below the official British poverty line. S. \textsc{Belfrage}, \textit{supra}, at 170. Meanwhile, there is “relative prosperity in the majority community.” K. \textsc{Boyle} \& T. \textsc{Hadden}, \textit{supra} note 14, at 17.


67. Catholic unemployment has historically been more than double Protestant levels. It is currently 2\frac{1}{4} times that of the Protestants and is worse than anywhere in Britain. K. \textsc{Boyle} \& T. \textsc{Hadden}, \textit{supra} note 14, at 17; Ross, \textit{supra} note 66, at A12, col. 6; Whitney, \textit{supra} note 66, at A13, col. 1. In 1981, at the depths of Ulster’s near-depression, the unemployment rate among Catholic males was 33\%, compared with 15\% for the rest of Northern Ireland’s population. K. \textsc{Boyle} \& T. \textsc{Hadden}, \textit{supra}, at 75. By the end of 1988, only 7\% of Protestant men were unemployed, but 17\% of Catholic men. Whitney, \textit{supra}, at A13, col. 1. The reasons for this disparity are no mystery. For Catholic enclaves such as Derry, the 69 years since partition have seen “rapidly accelerating underdevelopment,” R. \textsc{Stetler}, \textit{supra} note 1, at 9, caused in large part by discrimination in employment and favoritism in the allocation of new industries. During the worldwide depression of the 1930s, the Ulster Protestant League publicly campaigned against the employment of Catholics, a movement endorsed by Sir Basil Brooke, who later, as Viscount Brookeborough, became prime minister. R. \textsc{Rose}, \textit{supra} note 3, at 95. Ulster’s primary employers’ workforces remain “overwhelmingly Protestant.” Ross, \textit{supra}, at A12,
control local governments, even in areas of Catholic majorities, "by barring tenants and lodgers (usually Catholics) from voting in local elections and by allowing owners of business property (invariably Protestants)" plural votes, up to a maximum six. Unionists employed the consequential illegitimate majorities to appoint Protestants to almost all high level public positions and to protect their political grip by gerrymandering ward boundaries for local elections. The result was that in Catholic areas permanent Unionist majorities were entrenched which, in the words of the government's own investigating commission, bore "little or no resemblance to the relative numerical strength of Unionists and non-Unionists in the area." In sum, disputes in Ulster have not focused on points of religious doctrine, but on the use and abuse of political

col. 6. Between 1945 and 1966, 217 new companies came to Northern Ireland, but only 17 to Catholic areas. R. STETLER, supra, at 22; Ross, supra, at A12, col. 6. Under the Stormont reign, Catholics were also discriminated against in public employment: only 12% of those employed by local governments, and only 6% of those working for the central government, were Catholic. R. STETLER, supra, at 36. Westminster has been unable to improve the situation. Despite the Fair Employment Agency, established in the Fair Employment Act (N. Ir. 1976), "the proportion of Catholics holding high level civil service jobs in 1983 was only 8%, down from 8.4% a decade earlier." J. CONROY, supra note 3, at 215. It remains to be seen whether the new antidiscrimination law will be more effective. See Whitney, supra, at A13, col. 1.

68. "[A] Protestant Parliament for a Protestant people," Ulster's first prime minister, Lord Craigavon, proclaimed shortly after partition of the island in 1921. See R. ROSE, supra note 3, at 92. And so Stormont was. Though patterned after Westminster, it was only a replica of democratic government. Usually, due to gerrymandering and growing feelings of political impotence that led to general withdrawal from the electoral process, Catholics, who constituted more than a third of the population, were only slightly represented there. J. HOLLAND, supra note 7, at 21. Ulster was a one-party state where Unionist members of Parliament did not fear political repercussion from anti-Catholic acts. Thus, the Unionists in 1922 approved the Special Powers Act. Initially passed to defend partition from republican terrorists, it remained in force until 1973, when it was replaced by the Northern Ireland (Emergency Provisions) Act of 1973. The Special Powers Act allowed flogging and internment without trial. The Civil Authorities (Special Powers) Act, §§ 3-4 (N. Ir. 1922). Though nonsectarian in theory, in reality it was used almost exclusively against Catholics. From 1921, when a predecessor to the Special Powers Act was in place, through 1924, 2,000 suspected republican terrorists were interned. The act was similarly used in 1938, 1940, and 1956-1962 to quell IRA uprisings. See K. BOYLE & T. HADDEN, supra note 14, at 59; R. ROSE, supra, at 95-96.

69. C. CARLTON, supra note 46, at 77.

70. CAMERON REPORT, supra note 3, at 13-14.

71. The most blatant example was Derry, where in 1967 the 18,429 Catholic voters elected eight members of the city council, while 8,721 Protestant voters elected twelve. C. CARLTON, supra note 46, at 77.

72. CAMERON REPORT, supra note 3, at 13.
power. In retrospect, it is difficult to believe Protestant leaders did not realize their discriminatory abuse of political control would inevitably lead to violent confrontation.

B. The Civil Rights Movement of the 1960s

The plight of Ulster's Catholics bore strong similarities to the despair of blacks in the United States, especially in the southern states, where segregation was legally enforced. It was not surprising, then, that in 1967 the civil rights campaign in the United States would set the example for a similar nonviolent uprising in Northern Ireland. With the military wing of the IRA inactive since the defeat of its 1956 campaign,


74. Ironically, it was fear of that very event—a Catholic uprising—that motivated the Protestants, who were concerned that, given the higher Catholic birth rate, the nationalist population might outgrow their own and someday overthrow Protestant rule. K. Boyle & T. Hadden, supra note 14, at 60. The strategy of denying Catholics a place in the electoral process, in the job and housing markets, in fact, in the societal fabric of majority Northern Ireland, was a conscious attempt to force a high rate of Catholic emigration. Id. at 59-61; see also Devlin, The Playboy Interview, PLAYBOY, Sept. 1972, at 78-81. The ploy succeeded, to a degree: the excess Catholic birth rate has been almost exactly equalled by the high Catholic emigration rate. See R. Stetler, supra note 1, at 26. Yet, as the past 20 years bear testimony, this “success” came at great cost.

75. The parallels between the United States South and Ulster are striking. Both were officially and thoroughly segregated. For details on the segregation of Ulster, see infra notes 871-84 and accompanying text. Moreover, “[f]rom Reconstruction [through] the 1950s, Washington left the South free to deal with its minority” population, while London did the same in Ulster from partition through 1969. Where the strong military tradition of the United States South led to the formation of an ultraconservative paramilitary organization, the Ku Klux Klan, in Ulster the strong military tradition led to the formation of the Orange Lodges. Just as in the United States conservative politicians used the fear of blacks to win the votes of “poor whites,” the Ulster politicians used the fear of Catholics to gain support from the Protestant working class. C. Carlton, supra note 46, at xvii-xviii; see J. Holland, supra note 7, at 24.

76. Catholic demands were identical to many of those made earlier by southern blacks: equal voting rights, fair and responsive local governments, freedom of speech and association and freedom from discrimination, specifically in housing and employment. T. Hadden & P. Hillyard, supra note 3, at 8. The nonviolent tactics employed by the Irish movement were also motivated by the United States experience, including the frequent singing of “We Shall Overcome” during marches. J. Conroy, supra note 3, at 26. The ill-fated Belfast to Derry march of early 1969 was modeled on the famous Selma to Montgomery march of 1966. J. Feehan, Bobby Sands and the Tragedy of Northern Ireland 63-64 (1983); see supra note 3.

77. A British inquiry following the conflagration of August, 1969 found the IRA
Catholic frustrations in 1967 found expression in a new form, the embryonic Northern Ireland Civil Rights Association, which cast aside the historic Catholic goal of a united Ireland while pressing for a more democratic state in Northern Ireland. For the first time, Protestant leaders were presented with a mainstream, primarily Catholic organization that conceded the continued existence of partition in exchange for social, economic and political reform. Significant concessions at that time would have begun to instill in Catholics an acceptance of partition and perhaps forever consigned the IRA to Irish folklore. As in the United States, however, the civil rights movement in Northern Ireland was perceived by the majority as a threat to its privileged position and was rebuffed violently by official police suppression and unofficial civilian terrorism, leading to bloody confrontation. As one observer aptly noted, during the short life of the civil rights movement Northern Ireland had "stood at the crossroads; and it took the wrong turning."

Though some reforms were introduced by then-prime minister Terence O'Neill, they were too insignificant to bridge the chasm between the promise of reform and the reality of discrimination. Meanwhile, even the most modest reforms invoked angry reaction from the right, and civil rights marchers fell under brutal physical attack from Protestant extremists and the police. This fed Catholic misgivings toward Protestant rule, already deeply ingrained by a history of subjugation. The rebirth of the guerrilla faction of the IRA, and the end of hopes for a peaceful resolution to the Irish problem, had always been as close as renewed confirmation unprepared to take any action during the Battle of the Bogside, and reported that the IRA at that time did not pose a serious terrorist threat. REPORT OF THE ADVISORY COMMITTEE ON POLICE IN NORTHERN IRELAND, 1969, CMND. No. 535, at 12 [hereinafter HUNT REPORT].

78. See, e.g., J. HOLLAND, supra note 7, at 31; K. KELLEY, supra note *, at 99.


80. See R. STETLER, supra note 1, at 43.

81. C. CARLTON, supra note 46, at 78.

82. See, e.g., J. HOLLAND, supra note 7, at 33; R. ROSE, supra note 3, at 104; R. STETLER, supra note 1, at 42-43.

83. See CAMERON REPORT, supra note 3, at 44-48. Exact figures on the number of civil rights marchers and Catholic civilians injured during the 1968-69 movement is impossible to accurately assess. Id. at 46-47. More than 1,200 casualties were reported prior to the August 1969 riots, including at least six fatalities. Id. at 30, 46-47, 51, 53; J. HOLLAND, supra note 7, at 35; R. STETLER, supra note 1, at 40, 48; see also supra notes 1-7 and accompanying text.

84. See T. HADDEN & P. HILLYARD, supra note 3, at 21.
that Catholics could place no confidence in the Protestant state or its forces of law and order. 85 Once the civil rights campaign had begun, that confirmation was not long in coming. 86

During the civil rights campaign, Catholics saw those who had forsaken the gun for nonviolent protest beaten by the Protestant police. Nonprotesting Catholics bore the brunt of the August 1969 riots. Of the eight people killed in Belfast on August 14 and 15, six were Catholics. 87 Catholics occupied more than eighty-three percent of the homes damaged or destroyed during the riots. 88 Catholic neighborhoods, besieged by police and Protestants, had no organized protection. 89

For the first time in decades, the British army was officially called in to aid civil authorities in keeping the peace. 90 For the first time in

85. A British report predicted in October 1969:
If the conflict between these forces, working upon the tensions in society, were again to recreate the explosive atmosphere of last August, and the IRA terrorists were ready to take advantage of it, it is possible that they might resume attacks on police stations and . . . RUC and British Army personnel.
HUNT REPORT, supra note 77, at 12. This forecast was only half right; the events of August 1969 had been sufficient on their own to put in motion the split in the organization that led to the formation of the Provisional IRA. See T. HADDEN & P. HILLYARD, supra note 3, at 23; K. KELLEY, supra note *, at 124-34. The Stormont-established Scarman Tribunal later asserted that, "[t]he major casualty of the [final Protestant reprisal against the civil rights movement in August 1969] was the complete loss of confidence by the Belfast Catholic community in the police force as then constituted and the determination thereafter by subversive elements such as the IRA to exploit the opportunities for urban guerrilla warfare in Belfast." 1 SCARMAN REPORT, supra note 1, at 135.

86. For more detailed accounts of the Northern Ireland civil rights movement, its roots and its aftermath, see generally CAMERON REPORT, supra note 3; CAMPAIGN FOR SOCIAL JUSTICE IN N. IR., NORTHERN IRELAND—THE MAILED FIST (1971); B. DEVLIN, THE PRICE OF MY SOUL (1969); K. KELLEY, supra note *, at 81-139. For an excellent chronology of events, see 2 SCARMAN REPORT, supra note 1, at 55.

87. J. HOLLAND, supra note 7, at 35. Of the nearly 1,000 injuries suffered during the battle, 300 of the civilians were injured by CS tear gas, a particularly noxious and potentially lethal gas used by United States combat troops in Vietnam. The British government had previously sworn that CS would not be used in riot situations anywhere in the United Kingdom. R. STETLER, supra note 1, at 145, 162-63, 176-95.

88. 1 SCARMAN REPORT, supra note 1, at 244.

89. The IRA was nowhere to be found. Id. at 11-12; see supra note 77.

90. See supra notes 1-10 and accompanying text. Although the British government maintained a permanent force of about 3,000 soldiers in Northern Ireland, K. BOYLE, T. HADDEN & P. HILLYARD, supra note 40, at 25, British policy since the 1920s had been not to use the troops to intervene in internal Ulster affairs. K. BOYLE & T. HADDEN, supra note 14, at 59, 64. See generally M. FARRELL, ARMING THE PROTESTANTS: THE FORMATION OF THE ULSTER SPECIAL CONSTABULARY AND THE ROYAL ULSTER
history, the British army, responding to Catholic pleas for help, was assigned the task of protecting the Catholic community of Northern Ireland. Catholics, feeling abandoned by the IRA, openly welcomed the British troops as guarantors against further Protestant and police attacks, offering the bemused soldiers the ultimate in British hospitality—tea. But this unprecedented comraderie between Catholic natives and British soldiers was short-lived. Within a year, army counterinsurgency tactics on behalf of the Ulster regime and almost entirely within Catholic areas led to repeated confrontations with Catholic crowds in Derry and Belfast and to the deaths of several unarmed Catholic protesters, driving the most moderate Catholics to press for communal self-protection. In Northern Ireland, that could mean but one thing. As one Belfast woman lamented, "The IRA have been waiting for this for years. Till this all happened no one listened to them . . . ." Paisley and his crowd


91. See J. Holland, supra note 7, at 49; R. Stetler, supra note 1, at 88-90 (quoting M. Wallace, Drums and Guns: Revolution in Ulster 4 (1970)).

92. Immediately after the Belfast riots, graffiti slogans began to appear in Catholic ghettos: "IRA = I Ran Away." J. Holland, supra note 7, at 43.

93. See, e.g., id. at 38; T. Hadden & P. Hillyard, supra note 3, at 23.

94. From the Catholic perspective, the first British actions were hopeful. The British disarmed and disbanded the openly sectarian B-Specials, prompting Protestant riots in the Shankill area of Belfast, in which a Protestant gunman shot dead an RUC constable. J. Holland, supra note 7, at 49-51. As pressure from Protestant politicians intensified, however, the army began to take a tougher line against local defense groups and increased its search for arms in the Catholic community without undertaking similar operations in Protestant areas. T. Hadden & P. Hillyard, supra note 3, at 25. Initially, the incidents were minor, consisting of verbal abuse and harassment, especially from the Scottish regiments which were particularly partial toward the Protestants. Within a short time, the rioters were throwing petrol bombs in place of stones, and the army was firing CS gas and bullets. Id. at 23-24. April 1970 brought the first open conflict between the British army and Catholics, as severe rioting broke out in West Belfast. General Sir Ian Freeland, the British army commander in the north, announced a new "get tough" policy, whereby soldiers would shoot demonstrators throwing petrol bombs. K. Kelley, supra note 1, at 142. British fear of IRA mobilization resurfaced thereafter. Id. A July 1970 joint army-RUC raid for arms in the Catholic Lower Falls Road area of Belfast (conducted after the IRA had killed six Protestants, reportedly while defending Catholic areas of Belfast from Protestant invasion) led to Catholic stoning of soldiers. Id. at 146-47. The army responded with CS-gas canisters, rubber bullets, live ammunition, pick-axes and rifle butts. The troops broke down doors, ransacked homes and imposed a 35-hour curfew. Five Catholic's were killed and a dozen injured, and over 300 were arrested in what became known in the Catholic community as "the Rape of the Falls." Id. at 147-48. See generally R. Rose, supra note 3, at 110-11. The IRA killed its first British soldier eight months later. T. Hadden & P. Hillyard, supra, at 24.

95. R. Stetler, supra note 1, at 164.
have played right into their hands. . . . [T]he IRA will get more support than it knows what to do with.  

Limiting itself at first to defense and policing of Catholic neighborhoods, the IRA went on the offensive after the new Tory government under Edward Heath and the British army instituted an ill-conceived policy of confrontation with the Catholic community, and a twenty-year-old gunner became the first British soldier killed in Ireland in more than fifty years. Both the Protestant prime minister and the British home secretary declared war on the IRA. The rapidly deteriorating crisis tumbled into the abyss on August 9, 1971, when British prime minister Heath and the new Northern Irish prime minister Brian Faulkner initiated internment, without charges or trial, of any suspected terrorists or terrorist sympathizers. During the next four years, 2,158 orders of internment were executed, predominately against Catholic males, most of whom had no connection with the IRA or any other republican organization. A majority of detainees were held without charges for more than a year. Heath would later concede internment was not only a political

97. See K. KELLEY, supra note *, at 134-45.
98. Id. at 146-48; see J. CONROY, supra note 3, at 36.
99. K. KELLEY, supra note *, at 150.
100. Id.
101. Id. at 154. Code-named “Operation Demetrius,” the indefinite detention of hundreds of Catholic men, was instigated by Heath’s government in response to a growing IRA summer offensive—its own reaction to the army’s killing of several Catholics. Id. at 154-55. It was also instigated at the insistence of the Faulkner’s Unionist Stormont regime. K. BOYLE & T. HADDEN, supra note 14, at 65; J. HOLLAND, supra note 7, at 59. This was not the initial introduction of internment to Northern Ireland. The legal basis for the operation was the Civil Authorities (Special Powers) Act of 1922, until it was replaced by the Northern Ireland (Emergency Provisions) Act in 1973. See K. BOYLE & T. HADDEN, supra, at 67. The 1922 act and its predecessor were used to intern republican sympathizers at three stages of unrest during the 50 years prior to 1971. See id. at 59.
102. K. KELLEY, supra note *, at 155.
103. K. BOYLE & T. HADDEN, supra note 14, at 67; J. CONROY, supra note 3, at 36; J. HOLLAND, supra note 7, at 60.
104. See K. BOYLE & T. HADDEN, supra note 14, at 65. Suspected republican sympathizers were detained on the basis of information supplied by the RUC Special Branch from outdated and highly inaccurate files. Id. Of the 342 detained in the first 24 hours, 116 were released within the next two days; a tacit admission of error. K. KELLEY, supra note *, at 155. As few as 20% of the internees had any connection with the IRA. J. CONROY, supra note 3, at 36.
105. A British commission reported that of the 540 in detention as of November 1974, nearly 60%, 321, had been held for more than a year; of those, 63 had been detained for more than two years and 15 for more than three. REPORT OF A COMMITTEE TO CONSIDER
mistake but “an affront to human rights,” not least because it resulted in hundreds of cases of physical abuse of detainees, administered by both the British army and the RUC. In 1976, the European Commission of Human Rights unanimously found Britain to be guilty of torture, as well as inhuman and degrading treatment, of republican detainees in Northern Ireland, in violation of the European Convention on Human Rights. The European Court of Human Rights sustained the commission’s rulings as to inhuman and degrading treatment, finding a “practice” by police of subjecting those in custody to “repeated violence,” leading to “intense suffering.” The British government admitted to the commission it had authorized the use of the so-called “five techniques” of

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IN THE CONTEXT OF CIVIL LIBERTIES AND HUMAN RIGHTS MEASURES TO DEAL WITH TERRORISM IN NORTHERN IRELAND, 1975, CMND. 5847, at 38 [hereinafter GARDINER REPORT].


107. Internment resulted in at least 1,105 complaints of assault and maltreatment against the RUC and another 1,268 alleging assault or shooting against the British army. Ireland v. United Kingdom, 25 Eur. Ct. H.R. 56-57 (ser. A) (1978) (judgment). Between August 1971 and January 1975, compensation totalling £302,043 was paid to settle 473 civil claims for wrongful arrest, false imprisonment, assault and battery, with 1,193 claims outstanding. Id. By October 1975 the British government had paid out at least £420,000, with 567 claims still to be resolved. D. REED, IRELAND: THE KEY TO THE BRITISH REVOLUTION 170, 247 (1984). The last internees held under emergency legislation were released December 5, 1975. Ireland v. United Kingdom, 25 Eur. Ct. H.R. at 39.

108. Ireland v. United Kingdom, 1976 Y.B. EUR. CONV. ON HUM. RTS. 512, 794 (Eur. Comm’n on Hum. Rts.). Although this case was brought by the Republic of Ireland to challenge interrogation techniques applied by the British army and the Ulster RUC against citizens of Northern Ireland detained in Northern Ireland Interrogation Centres in 1971 through 1974, the commission restricted its ruling to only those interrogations conducted in 1971. Id. Article 3 of the convention echoes the Universal Declaration’s absolute prohibition against torture and maltreatment, but the convention explicitly protects individuals even within their home countries. European Convention, supra note 34, arts. 1, 3; see also J. FAWCETT, THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 34 (1969).

109. Ireland v. United Kingdom, 25 Eur. Ct. H.R. at 67, 94. Yet the court decided the pain inflicted was not of the intensity required to constitute torture. Id. at 66-67, 94. In so ruling, the court apparently ignored the definitions of torture set down in the Greek Case, where the commission found physical torture was that “used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions,” The Greek Case, 1969 Y.B. EUR. CONV. ON HUM. RIGHTS 186 (Eur. Comm’n on Hum. Rts.), and established that non-physical torture amounted to “the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault.” Id. at 461. These definitions have been accorded nearly universal deference; they have, for example, been adopted by Northern Irish courts in cases regarding the Emergency Provisions Act. See, e.g., R. v. McCormick, [1977] N. Ir. 105, 110-11.
110. According to the committees established by the British government to investigate the allegations of prisoner maltreatment that arose in 1971, the five techniques consist of wall-standing, hooding, noise, bread and water diet, and deprivation of sleep. REPORT OF THE ENQUIRY INTO ALLEGATIONS AGAINST THE SECURITY FORCES OF PHYSICAL BRUTALITY IN NORTHERN IRELAND ARISING OUT OF EVENTS ON THE 9TH AUGUST, 1971, CMND. No. 4823, at 13 [hereinafter COMPTON REPORT]; MAJORITY REPORT OF THE COMMITTEE OF PRIVY COUNSELLORS APPOINTED TO CONSIDER AUTHORISED PROCEDURES FOR THE INTERROGATION OF PERSONS SUSPECTED OF TERRORISM, 1972, CMND. No. 4901, at 2-3 [hereinafter PARKER REPORT] (public outcry against the Compton Report "whitewash," especially in the House of Commons and from Amnesty International, forced the British government to appoint the second committee of enquiry. P. TAYLOR, BEATING THE TERRORISTS? 22 (1980)). The actual applications of the techniques are much more onerous than the bare definitions make them appear. Men had black hoods placed over their heads for days at a time; occasionally the hoods were tightened so the men nearly suffocated. J. HOLLAND, supra note 7, at 67. Men were forced to stand in the "search" position, fingers only touching the wall, hands fully stretched to their limit, with feet as far from the wall as possible, back rigid and head held up. If any part of the body was relaxed, security personnel violently forced it back into position, often using batons to do so. When heads became relaxed, they were "banged" against the wall. When the pain became too extreme, or the extremities became numb, men collapsed, only to be violently forced back against the wall. This continued for many hours, in some cases as many as 43 and in no case less than nine. See COMPTON REPORT, supra, at 16-17; J. HOLLAND, supra, at 64-67. Detainees reported being severely beaten, J. CONROY, supra note 3, at 37, an allegation rejected by the first tribunal. See COMPTON REPORT, supra, at 16-17. While under interrogation, or against the wall, the men were subjected to incessant and monotonous noise at a high volume, described by one detainee as a "constant whirling noise, like a helicopter blade going around." Id. at 15, 21; J. HOLLAND, supra, at 65. The level of noise was between 85 and 87 decibels; subjection to such noise levels for as little as 48 hours can result in 8% temporary hearing loss and 1% permanent hearing loss. MINORITY REPORT OF THE COMMITTEE OF PRIVY COUNSELLORS APPOINTED TO CONSIDER AUTHORISED PROCEDURES FOR THE INTERROGATION OF PERSONS SUSPECTED OF TERRORISM, 1972, CMND. No. 4901, at 16 [hereinafter GARDINER DISSENT]. Men were not allowed to sleep for days on end. COMPTON REPORT, supra, at 15. The official diet for detainees was bread and water every six hours. But while against the wall for 40 hours, one detainee received bread and water once and water alone on two other occasions. Id., at 16-17; J. HOLLAND, supra, at 66. The non-physical torture reportedly consisted of hooded men being placed in an operating helicopter for a period of time, then being pushed out; since the helicopter was on or nearly on the ground, the men suffered only minor bruises when they fell, but since the men were hooded, they were terrorized, believing they were being pushed out of the helicopter to die. The Compton enquiry, based largely on the testimony of a British helicopter crewman—whom the commission labeled an "independent" witness—denied this deception had consisted of anything more than placing the hooded men in the helicopter and leading them out again. COMPTON REPORT, supra, at 23-26. The effects of this "in-depth interrogation" on the detainees: prisoners believed they were about to be executed or "tortured to death." J. HOLLAND, supra, at 68. Lord Gardiner listed the possible long-term effects of sensory deprivation as "permanent" psychotic symptoms such as delusions and hallucinations, and persistent anxiety attacks,
non-physical torture.\textsuperscript{111} Internment sparked a bloodbath. The Catholic population rallied behind the IRA, which promptly ordered a fullscale bombing campaign.\textsuperscript{112} More than 100 explosions ripped Belfast in August 1971 and thirty-five people were killed, compared with four in July.\textsuperscript{113} In the
tremors, insomnia, nightmares and other symptoms of neurosis. \textit{Gardiner Dissent, supra, at 17}. Of the twelve men subjected to the five techniques in 1971, none were subsequently charged with any crimes. \textit{J. Holland, supra, at 68}.

British military officials developed the five techniques after World War II as a means of combating insurrections in British possessions, including Palestine, Malaya, Kenya, Cyprus, the British Cameroons, Brunei, British Guiana, Aden, Borneo/Malaysia, the Persian Gulf and Northern Ireland. \textit{Parker Report, supra, at 3}. These classic techniques of sensory deprivation were pioneered by the Soviet KGB. \textit{P. Taylor, supra, at 20}. As some if not all of the techniques in question would constitute criminal assault and might also give rise to civil proceedings under English law, \textit{Parker Report, supra, at 8}, the government maintained that neither the techniques nor any guidelines governing their use were written down, but that soldiers were orally trained in their use at special intelligence centres. \textit{Id. at 3}. During cross-examination before the European Commission on Human Rights, an expert witness produced written army instructions on the use of the techniques. \textit{J. Holland, supra, at 75}. As only Parliament can make or alter laws, the unauthorized development and use of these techniques was, and is, illegal under British law. \textit{Gardiner Dissent, supra, at 14}. The Compton Commission whitewashed the use of the techniques by determining they did not inflict "physical brutality" upon the victims, but instead constituted "mere" ill-treatment. \textit{Compton Report, supra, at 21-23}. The Compton Commission's definition of "brutality," however, was novel: as long as the authorities did not reflect a "disposition to inflict suffering coupled with indifference to, or pleasure in, the victim's pain," then torture was not brutal. \textit{Id. at 21-23}. As Lord Gardiner, pointed out:

\begin{quote}
[U]nder this definition, which some of our witnesses thought came from the Inquisition, if an interrogator believed, to his great regret, that it was necessary for him to cut off the fingers of a detainee one by one to get the required information out of him for the sole purpose of saving life, this would not be cruel and, because not cruel, not brutal.
\end{quote}

\textit{Gardiner Dissent, supra, at 13}.

\textsuperscript{111} Ireland v. U.K., 1976 Y.B. Eur. Conv. on Hum. Rts. at 746. The martial law-type legislation under which the prisoners were detained allowed for the detention of any person for up to 48 hours for purposes of interrogation. \textit{Civil Authorities (Special Powers) Act, § 1 (N. Ir. 1922) }. Indeed, Lord Parker justified the use of the five techniques by claiming it provided the authorities with much needed information about terrorists. \textit{Parker Report, supra note 110, at 5-6}. British officials knew little about the Provisionals at the time internment was instituted in 1971. \textit{J. Holland, supra note 7, at 69}. In November 1971, a spokesman for Lord Carrington, British defense secretary, told the House of Commons the five techniques were officially authorized by Ulster prime minister Faulkner and approved by the British government. \textit{Id. at 72}.

\textsuperscript{112} K. Kelley, \textit{supra note *}, at 156-57; \textit{Lohr, I.R.A. Blast, supra note 14, at A3, col. 1}.

\textsuperscript{113} J. Holland, \textit{supra note 7, at 60}; see K. Kelley, \textit{supra note *}, at 156.
seven months prior to internment, 1971 had seen thirty-four conflict-related deaths; from August 9 through the end of that year the war claimed another 139. The following year was the bloodiest of the current crisis, adding 474 to the conflict's burgeoning death toll. Intermittent won renewed support for the IRA at home and abroad, especially in the United States, and helped the guerrillas recruit volunteers. Moderate Catholics joined huge republican protests, held despite an official ban, and the Catholic opposition to the Protestant government and its British overseers crystallized in a massive civil disobedience campaign, including tax and rent strikes that lasted more than three years.

One of the largest anti-internment protests occurred on January 30, 1972, and when the British army opened fire on an estimated 20,000 unarmed marchers, thirteen died, seven of these teen-agers. "Bloody Sunday," as the massacre became known, ignited rioting in both Northern and Southern Ireland and launched a new IRA campaign, the old having ended in a Christmastime truce. By March 20, the IRA had killed 56 British soldiers and four days later Heath ordered Faulkner to suspend the Northern Irish government at Stormont and submit to direct rule, which the violent crush of events forced London to institute on an interim basis. It has, however, proven rather more than temporary—the British still govern Northern Ireland.

**C. The Current State of the Crisis**

As the government's inability to halt the violence indicates, England's policy in Northern Ireland has failed. "The scale of the death and

114. P. BEW & H. PATTERSON, supra note 79, at 3. There was an average of three explosions, five shootings and 47 house searches per day during those five months. J. CONROY, supra note 3, at 37.


116. A Battle of Gestures, supra note 15, at 43; Lohr, supra note 43, at 12, col. 1; see also J. CONROY, supra note 3, at 37.

117. J. CONROY, supra note 3, at 37; see J. HOLLAND, supra note 7, at 60; D. REED, supra note 107, at 165-72; Lohr, I.R.A. Blast, supra note 14, at A3, col. 3.

118. J. CONROY, supra note 3, at 37; see J. HOLLAND, supra note 7, at 61. See generally K. KELLEY supra note *, at 161-64. A 14th was to die later of wounds sustained that day. Id. at 163; D. REED, supra note 107, at 172.

119. J. CONROY, supra note 3, at 38; see K. KELLEY, supra note *, at 163-64; D. REED, supra note 107, at 173.

120. See J. CONROY, supra note 3, at 38. For a more exhaustive analysis of the events that led to London instituting direct rule, see H. KELLY, HOW STORMONT FELL (1972).

121. The commanding officer of the 3rd Battalion Royal Green Jackets, stationed in
destruction seems unimaginable in a British context," stated the authors of a recent study. Some 3,000 have died in a province of only 1.5 million; a proportional figure in Britain would exceed 100,000 deaths. In the United States, a comparable number of dead would be 450,000, far more than died in the United States Civil War. Government statistics report approximately 30,000 civilian injuries—4.5 million adjusted for an American scale. London points to a reduced level of violence as vindication of its involvement. From 1980 through 1985, for example, official figures list 469 dead in political violence, two more than the number killed in 1972 alone. Yet even at this lower rate, for the same percentage of Britain’s population to fall victim to political violence, between 3,000 and 4,000 would have to die each year. Although the magnitude of this failure should be enough to pique international concern, it is the explanations for England’s failure that truly reveal the necessity of international intervention.

Since instituting direct rule in 1972, London’s strategy for restoring peace to the province has evolved along two fronts, one military, the other socioeconomic. To a large degree, these twin tactics are inseparable. By vanquishing the IRA, British authorities believed they could force Catholics to surrender their nationalistic aspirations and accept partition. Meanwhile, politicians speak of compromise and reform reducing support for the IRA among Ulster’s Catholic community to a level too small to perpetuate urban guerrilla warfare. This dual

Belfast for two tours of duty, in 1972 and 1973, wrote: “The turbulence, the disorder, the killing, the maiming, the misery, the fear and the unhappiness have already lasted for several years. That in itself is a failure.” R. EVELEGH, PEACEKEEPING IN A DEMOCRATIC SOCIETY 1 (1978). “What have we changed here in the last ten years?” asked another soldier. “The people are more segregated than they were before the troubles. Children are still being taught the same things they were taught when the troubles started, and in ten years a new generation of bigots will be on the street and new riots will break out.” J. CONROY, supra note 3, at 61-62.

123. See supra note 12 and accompanying text.
125. To compute comparable figures for the United States, Northern Ireland statistics must be multiplied by 150. See P. O’MALLEY, supra note 44, at 11.
126. Id; see supra note 12 and accompanying text.
128. Id.
130. See P. O’MALLEY, supra note 44, at 207-09.
131. FitzGerald, Optimism on Northern Ireland, N.Y. Times, Mar. 24, 1986, at A19,
approach is flawed in at least three respects.

First, as the army privately concedes, the IRA is highly resilient and largely immune to such tactics.\(^{132}\) The IRA admits it cannot overthrow British rule through military might; its goal is to simply outlast the British.\(^{133}\) To accomplish this, the IRA need not maintain a consistent


132. As early as 1979, leading British military authorities were secretly conceding the impossibility of a military victory. Well before the famous 1981 hunger strike—in which elected Westminster member of Parliament Bobby Sands and nine other IRA inmates died and the Provisional movement gained international support and subsequent political victories—Brig. James Glover, later general commanding officer of British forces in Ulster, authored a classified analysis contradicting official statements that the IRA was a weak foe, soon defeated. Among Glover's observations: "The Provisional leadership is deeply committed to a long campaign of attrition. . . . [T]hough PIRA may be hard hit by security force attention from time to time, they will probably continue to have the manpower they need to sustain violence." *Northern Ireland: Future Terrorist Trends* (Jan. 4, 1979), reprinted in *J. HOLLAND*, supra note 7, at 142-44; P. O'MALLEY, supra note 44, at 261-64; see also J. CONROY, supra note 3, at 55-58. For extensive examinations of the hunger strike episode, see generally D. BERESFORD, *TEN MEN DEAD* (1987); J. CONROY, supra, at 135-204; J. FEEHAN, supra note 76, at 100-48.


133. P. O'MALLEY, supra note 44, at 258. "The Provisional fight a war of attrition, not a war of body counts. A spokesman interviewed in 1980 said the organization was 'prepared for the long haul, thirty, forty, fifty years if necessary.'" J. CONROY, supra note
level of violence, but need only rear its head intermittently and with sufficient frequency so that Britons tire of the deepening bloodshed. Consequently, even Tom King, then Britain's secretary of state, admitted recently the IRA cannot be defeated, "only subdued for limited periods of time." Consequently, even Tom King, then Britain's secretary of state, admitted recently the IRA cannot be defeated, "only subdued for limited periods of time." 3

Second, Britain's inability to dent the effects of sectarian discrimination and colonial rule, coupled with its unwillingness to curb abuses in the military and police, ensured the collapse of its reform program. Discrimination and its effects continue, albeit slightly reduced. The supply of homes available to Catholic families remains woefully inadequate. Overt discrimination persists in employment, evidenced

3. at 55.

134. P. O'MALLEY, supra note 44, at 258.

135. For example, two months after Irish and British forces seized seven tons of incoming rifles, pistols, submachine guns, hand grenades and other arms shipped to the IRA from the United States, Goldman & Tuohy, Catch of the Year—IRA Arms Seized at Sea, L.A. Times, Jan. 13, 1985, at 1, col. 1, the Provisionals killed nine Ulster police and wounded 40 in a major mortar attack on a fortified police compound. I.R.A. Bombards Police Base, supra note 43, at 1, col. 5. The accuracy and power of the mortars "shocked" British security officials. Id. It was not the first time IRA ingenuity escalated the war—car bombs, made infamous in Lebanon, were invented by the IRA in 1972, causing a huge increase in damage and doubling casualty figures. White, supra note 44, at 194. Nor was it the last. Despite losing at least 20 members in clashes with security forces in little more than a year, largely due to effective infiltration by informers, the IRA turned the tables last year and launched a major offensive with such effectiveness that officials now fear the IRA may have infiltrated the security forces. See What's the Point?, supra note 41, at 48; Lohr, I.R.A. Blast, supra note 14, at A3, col. 1; Lohr, supra note 43, at 1, col. 1.


137. See supra notes 47-74 and accompanying text.

138. Indeed, it is unlikely the second major focus of British rule—an attempt to "pacify" the Catholic population by replacing discriminatory Stormont policies with even-handed direct rule from Westminster, thereby reducing communal support for the IRA—could ever succeed. As the IRA plan is simply to survive, it requires less communal support than a typical gurilla-style war of liberation. One expert estimates the Provisional can function sufficiently with a mere three percent of the Catholic population behind it. Clutterbuck, Comment on Chapter 7: Security Constraints, in THE CONSTITUTION OF NORTHERN IRELAND 141 (D. Watt ed. 1981). As the army concedes, "We see no prospect in the next five years of any political change which would remove PIRA's raison d'être . . . . We see little prospect of political development of a kind which would seriously undermine the Provisionals' position." P. O'MALLEY, supra note 44, at 263 (quoting former commanding officer of British troops in the Six Counties); see J. CONROY, supra note 3, at 60 ("I see it continuing at its present level indefinitely.") (quoting army major).

139. D. DOUMIT, supra note 132, at 216. As long as Protestants ran the agencies that
by the staggering Catholic unemployment rate. The political violence has also taken its toll, damming the flow of foreign investment and contributing to the loss of more than 60,000 jobs. For this bleak economic situation each side blames the other, creating yet another allocated housing, a scarce resource in Northern Ireland, Protestants were routinely favored in the allocation process, both as a source of political patronage and as a means to manipulate the demographics to ensure Protestant political control even in areas of Catholic majorities. See CAMERON REPORT, supra note 3, at 21, 24, 91; R. ROSE, supra note 3, at 292-93; R. STETTLER, supra note 1, at 14; see also G. BELL, THE PROTESTANTS OF ULSTER 26-27 (1976). When public housing became available, Protestant-dominated councils were unwilling to let Catholics move from their overcrowded units. Only after Patricia McCluskey organized the Homeless Citizens League in 1963 and led protests and “squat-ins” did the Protestant council of Dungannon grant Catholics tenancies to vacant units. R. ROSE, supra, at 101. In other areas, Protestant councils refused to allow new homes to be built for Catholics. CAMERON REPORT, supra, at 21. Although direct rule by the British Parliament in Westminster brought the Northern Ireland Housing Executive and significant progress in eradicating the worst housing conditions, see K. BOYLE & T. HADDEN, supra note 14, at 75; J. CONROY, supra, note 3, at 215, there remains considerable unfit housing conditions in inner-city areas. See G. BELL, supra, at 26-27. For vivid depictions of the squalid state of the Catholic ghettos of West Belfast, see S. BELFRAGE, supra note 30, at 1-4; J. CONROY, supra, at 72-76. The credit the government can take in this area is largely due to the establishment in 1972 of a government-controlled Northern Ireland Housing Executive. K. BOYLE & T. HADDEN, supra, at 75. The price, however, has been a permanent segregation of Catholic communities into walled developments with limited, easily policed entrances and reinforced pavement to bear the weight of armored vehicles, a price extracted by members of the security forces who sit on official housing commissions in a vain attempt to confine the violence within certain Catholic areas. Hillyard, Law and Order, in BACKGROUND TO THE CONFLICT, supra note 44, at 47. This technique of deliberately creating ghettos in which the dissident population can be contained was a feature of Nazi policy in Warsaw. Id. The forbidding 20 foot-high concrete barrier that now divides Belfast has been likened to the Berlin Wall and is a symbol of deepening sectarian hatred. Marshall, Ulster—the Sectarian Hatred Deepens, L.A. Times, Aug. 10, 1985, at 1, col. 4. Segregation is not the only controversial housing plan. Although housing officials have been generally exonerated of all conscious desire to discriminate, the policies of allocating units to more “responsible” tenants and of building homes near new factories for skilled (i.e., Protestant) workers invariably mean great advantages to Unionists in the housing market. See Tomlinson, Housing: the State and the Politics of Segregation, in L. O'DOWD, B. ROLSTON & M. TOMLINSON, NORTHERN IRELAND: BETWEEN CIVIL RIGHTS AND CIVIL WAR 123-31 (1980); Rolston, Reformism and Sectarianism, in BACKGROUND TO THE CONFLICT, supra, at 221.

140. See supra note 67 and accompanying text.

141. See supra notes 66-67 and accompanying text.

142. P. O'MALLEY, supra note 44, at 245; see also Simpson, Economic Development: Cause or Effect in the Northern Irish Conflict, in BACKGROUND TO THE CONFLICT, supra note 44, at 79-109.

143. D. DOUMIT, supra note 132, at 216. Northern Ireland is the least affluent region
vicious circle—violence begets greater unemployment and poverty, which begets greater violence.\textsuperscript{144}

Third, and most fundamentally, because Britain is waging military as well as socioeconomic war in Ulster, it can never win Catholic hearts and minds. For many Catholics, the problems created by British "anti-terrorist" policies and its military presence have superseded those created by Protestant rule. Discrimination is no longer the primary issue. Perhaps it never was; although the civil rights movement focused upon it, the subsequent violent conflict erupted after more than a decade of rising living standards and a reduction in the jobless rate,\textsuperscript{145} indicating the depth of Catholic enmity, and bitterness toward monolithic Protestant control, ran much deeper than economic standing. In any event, the past eighteen years of British rule has intensified Catholic sentiments. Due to the dual nature of British policy, the increase in economic and political reforms was matched by an increase in military repression,\textsuperscript{146} confirming Catholic suspicions that the British were not in Ulster to keep the peace, but to maintain the status quo.\textsuperscript{147} The British, in the eyes of many Catholics, have acted not as neutral saviors, but as an occupying army bent on suppression of the minority community, thereby feeding sufficient support to the IRA to ensure its campaign will continue.\textsuperscript{148}

\textit{D. Great Britain's "Law and Order" Strategy in Northern Ireland}

A full appreciation of Catholic animosity toward British "peacekeepers" requires a more detailed review of the nature of England's "law and order" strategy in Northern Ireland. Broadly speaking, British tactics

of the United Kingdom and one of the least prosperous within the European Economic Community. Simpson, supra note 142, at 79. As of 1987, Ulster had "the highest infant mortality, the highest unemployment, the lowest wages, the lowest standard of living, and the lowest life expectancy in the United Kingdom." J. CONROY, supra note 3, at 216.

144. \textit{See} D. DOUMITT, supra note 132, at 217.

145. I. MCALLISTER \& R. ROSE, supra note 73, at 12.

146. L. O'DOWD, B. ROLSTON \& M. TOMLINSON, supra note 139, at 205.

147. The British military admitted as much. Said Commanding Officer Evelegh, "[T]he Army, when operating in the suppression of civil disorder within the United Kingdom, acts generally as the direct instrument of the Government of the day." R. EVELEGH, supra note 121, at 3; \textit{accord} S. BELFRAGE, supra note 30, at 284 ("'It's commonly accepted that the British army is there to protect the Protestants, no matter what anyone says'" (quoting British soldier)).

148. J. CONROY, supra note 3, at 54-55. A \textit{New York Times} survey of West Belfast found "[n]ot many Catholics see the soldiers as necessary peacekeepers." Prokesch, \textit{With the World Made Over, Can Even Belfast Change?}, N.Y. Times, Apr. 2, 1990, at A10, col. 4. "Most resent them, and that resentment is sometimes turned into hatred by the soldiers' actions or patrol, which are heavyhanded at times." \textit{Id.}
to defeat the IRA revolve around the security forces and the legal system. Beyond the elimination of discrimination, what was needed in Northern Ireland, after the excesses of the RUC and the B-Specials that forced British intervention, was an evenhanded military approach, focused on rooting out extremists elements in Northern Ireland’s police and preventing abuse by the British army, as well as on subduing the IRA. What developed was something else.

The most publicized practice—and one that incenses the minority community—is the shoot-to-kill policy, which has extracted a heavy toll on innocent Catholics unaffiliated with the republican movement, as well as on republican paramilitarists who were unarmed at the time of their deaths.149 Another source of Catholic grievance is England’s refusal to curb security force use of the supposedly non-lethal plastic bullet as a method of riot control.150 In 1984, the European Parliament passed a non-binding resolution calling for member states to ban the use of plastic bullets,151 specifically in Northern Ireland.152 Plastic bullets are used in no other Council of Europe country,153 although they are used by the

149. *See supra* notes 29-42 and accompanying text.

150. A plastic bullet is a solid cylinder 3¾ inches long and 1¾ inches in diameter. It weighs five ounces and has an operational range of up to 72 yards. Unlike its rubber predecessors, the plastic bullet is designed to be fired directly at its targets at speeds of 130 to 170 miles per hour. Research by the United States Law Enforcement Assistance Administration, however, revealed that any direct-impact, crowd-control device can cause severe damage—including skull fractures, rupture of the kidney and heart, fragmentation of the liver and hemorrhaging—if its energy at impact exceeds 90 foot-pounds. At a range of five yards, the plastic bullet has an energy impact of 210 foot-pounds, and at 50 yards, it still maintains an energy impact of 110 foot-pounds. Jennings, *Bullets Above the Law*, in *JUSTICE UNDER FIRE*, *supra* note 31, at 131, 133 (quoting United States study); *A Short History of the Plastic Bullet*, *FORTNIGHT*, July-Aug. 1981, at 6.


153. *Stewart*, 39 Eur. Comm’n H.R. at 166; 10 Hum. Rts. Internet Rep. 86 (Sept.-Dec. 1984). London claims plastic bullets are less dangerous than live ammunition. U.S. STATE DEP’T REPORT, *supra* note 42, at 1138. Plastic bullets are not used in place of live rounds, but rather in situations where soldiers and police would otherwise not fire, such as riot control. Id. at 1137. Consequently, the ability of plastic bullets to inflict injury must be compared with the potential for injury of other riot control gear, such as tear gas and batons. The plastic bullet is much more deadly; it is, according to an international tribunal, “a lethal weapon capable of causing horrific injuries.” *PLASTIC BULLETS INQUIRY, supra*
South African and Israeli armies. Through mid-1989, plastic bullets and their rubber predecessors had killed seventeen Northern Irish, at least eight of whom were children. A third irritant is army harassment of suspected republicans, which reportedly is common practice, if not policy. Warrantless searches of Catholic homes are sanctioned by law, routine and, complain Catholics, result in needless destruction of Catholic property. Equally lawful, and nearly as prevalent, are

note 151, at 551.

154. Viets, Blinded Belfast Woman Aims to Ban a Bullet, San Francisco Chron., May 7, 1988, at A13, col. 5. The Israeli government, through Defense Minister Yitzhak Rabin, concedes the purpose of firing plastic bullets at demonstrators "is to increase the number (of wounded)." Broder, Israelis Aim to Wound More Arabs, San Francisco Exam., Sept. 28, 1988, at A1, col. 2 (quoting Rabin). The press quickly labeled this a "shoot-to-wound" policy. See id. In effect, the result was a de facto shoot-to-kill policy. The day Rabin announced the new policy, two Palestinians were killed by plastic bullets. Id.

155. On August 9, 1989, 15-year old Seamus Duffy became the fourteenth person killed by plastic bullets. Jennings, supra note 40, at xxvi; three others had been killed by rubber bullets until those rounds were replaced by plastic bullets in 1973, Jennings, supra note 150, at 135; see K. BOYLE & T. HADDEN, supra note 14, at 70. In the month of rioting that followed the death of the IRA hunger strikers in 1981, 16,656 plastic bullets were fired into Catholic crowds. P. O’MALLEY, supra note 44, at 215. In that May and June alone, plastic bullets killed four, including two girls, aged 12 and 14 years, id., partially blinded three, inflicted permanent brain damage on another three and forced 100 more to the hospital for treatment of injuries ranging from flesh wounds to broken bones and damaged internal organs. Id. Since their introduction in 1973, some 54,000 plastic rounds have been fired, inflicting injuries on more than 400 victims. Jennings, supra note 40, at xxvi. Another 55,834 rounds of rubber bullets were fired before they were entirely withdrawn from use in 1975. Jennings, supra note 150, at 133.

156. Duffy was the eighth victim aged 15 or younger. Jennings, supra note 40, at xxvi; Jennings, supra note 150, at 135; see Viets, supra note 154, at A13, col. 6. One of the most publicized victims was Brian Stewart, aged 13, who in October 1976 was struck on the head by a plastic bullet fired by a British soldier after a group of children threw stones at soldiers. 10 Hum. Rts. Internet Rep., supra note 153, at 86. Stewart died six days later of severe brain damage. Id. The European Commission declared the case brought by Stewart’s mother against the United Kingdom to be inadmissible and found the use of plastic rounds “less dangerous than alleged.” Stewart, 39 Eur. Comm’n H.R. at 172. An international inquiry disagreed, citing “case after case” where plastic bullets were used “in non-riot situations, indoors where crowd dispersal was impossible, at short-range where there was no threat to the security forces, on small children, and aimed at the head,” PLASTIC BULLETS INQUIRY, supra note 151, at 551, all in violation of army and RUC regulations governing the use of the weapon. Id.

157. For one soldier’s description of how he harassed Catholics, see S. BELFRAGE, supra note 30, at 281.

158. U.S. STATE DEP’T REPORT, supra note 42, at 1140; K. BOYLE, T. HADDEN & P. HILLYARD, supra note 40, at 26. Anti-terrorist laws in Ulster allow security forces to search without warrant any premise to determine if any arms or radio transmitters are
warrantless arrests.\footnote{159} Moreover, as powerless as the British are to stem IRA attacks on Protestants, the army has proven equally incapable of preventing Protestant paramilitary executions of Catholic civilians.\footnote{160} Through 1988, Protestant paramilitarists—especially the Ulster Defense Association (UDA), which the British have yet to ban as they have the IRA\footnote{161}—had killed more civilians during the course of the troubles than stored therein. \textit{See} Northern Ireland (Emergency Provisions) Act, 1978, \S\ 15. No suspicion, reasonable or otherwise, is required. \textit{Id.} The searches, initially conducted primarily by the army and more recently by the RUC, were never intended to uncover significant caches of arms or IRA supplies; rather, the broad power to search homes at will was used almost exclusively against the minority community as a means of gathering information on the IRA. K. Boyle, T. Hadden & P. Hillyard, \textit{supra}, at 26. At the program’s peak in 1974, the army and police searched 71,914 homes, or more than 200 per day. J. Feehan, \textit{supra} note 76, at 30-31; Tomlinson, Reforming Repression, in L. O’Dowd, B. Rolston & M. Tomlinson, \textit{supra} note 139, at 195. The figure subsequently leveled off at 15,000 annually. \textit{Id.} During these searches, there have been numerous complaints of soldiers smashing furniture and destroying other aspects of the home, looting, and beating those who tried to stand in the way. \textit{See}, e.g., S. Belfrage, \textit{supra} note 30, at 10-11. From 1971 to 1986, security forces searched 338,803 houses—some 75\% of all houses in Northern Ireland, and, more to the point, the equivalent of searching twice each of the 170,000 Catholic houses in Northern Ireland. Hillyard, \textit{Political and Social Dimensions of Emergency Laws in Northern Ireland}, in \textit{Justice Under Fire}, \textit{supra} note 31, at 191, 197.


\textit{160.} \textit{See} K. Boyle, T. Hadden & P. Hillyard, \textit{supra} note 40, at 19; D. Clark, \textit{supra} note 44, at 76; P. O’Malley, \textit{supra} note 44, at 259. In early 1989, the British junior Home Office minister, Douglass Hogg, appeared to encourage the execution of Catholic lawyers by Protestant gunmen. Hogg alleged that a number of Northern Irish lawyers were “unduly sympathetic to the cause of the IRA,” apparently because they represented suspected Catholic terrorists in court. Hogg omitted that many Catholic lawyers also represent suspected Protestant terrorists. Even the moderate, anti-IRA Catholic Social Democratic Labor Party proclaimed that Protestant extremists would likely interpret Hogg’s statement as a call to arms. Within two weeks, the Protestant Ulster Freedom Fighters assassinated Pat Finucane as he, his wife and three children were taking Sunday tea in the kitchen. Finucane had represented several IRA defendants in highly publicized cases. \textit{See} Whitney, \textit{Sectarian Killings in Ulster Are Continuing to Increase}, N.Y. Times, Mar. 12, 1989, at A8, col. 5.

\textit{161.} The UDA is the largest of the Protestant organizations openly engaged in paramilitary activities. K. Boyle, T. Hadden & P. Hillyard, \textit{supra} note 40, at 19-20; see P. Bew & H. Patterson, \textit{supra} note 79, at 48, 61. The UDA is not banned. \textit{See} S. Belfrage, \textit{supra} note 30, at xiv. Since May 1973, the UDA has used the \textit{nom de guerre} Ulster Freedom Fighters (UFF) as cover. S. Belfrage, \textit{supra}, at xiv; K. Boyle, T. Hadden & P. Hillyard, \textit{supra}, at 20. J. Holland, \textit{supra} note 7, at 93. The British government responded by banning the UFF, which never existed, but not the UDA, which
had their Catholic counterparts.162

These excesses and omissions might not have cost the British at least the tepid support of some Catholics—the majority of whom do not support the IRA's armed campaign—had the British and British-backed provincial authorities investigated and prosecuted unlawful violence perpetrated by members of security forces and Protestant paramilitary with the same vigor as they did violence perpetrated by Catholics.

Unhappily, there is substantial evidence that authorities block full and fair prosecutions of security personnel. In 1984, when Amnesty International undertook an investigation into whether the killings of unarmed republican suspects resulted from a deliberate policy to eliminate the government's opponents, its inquiry was "hindered by the inadequacy of official information on suspicious killings."163 A coroner informed the Amnesty team that police supplied his office with incomplete and misleading information on some of the more suspicious killings.164 The Amnesty probe concluded that the British government failed to investigate and prosecute unlawful killings by the security forces.165 At the trial of

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162. From 1969 through December 31, 1988, loyalist paramilitarists had killed 610 civilians, republican paramilitarists 562. IR. INFORMATION PARTNERSHIP, supra note 12, at 14 (table 1).

163. AMNESTY INT'L 1985, supra note 159, at 298. "Inquests were held only after long delays, and in the cases of particular interest . . . still had not been held after 26 months." Id.

164. Id.

165. Id.
a policeman charged with murder for one of the 1982 RUC killings of unarmed Catholics, the officer testified his superiors had ordered him to prepare false reports and destroy evidence. In some of the more egregious incidents, witnesses reported being harassed and shot at by soldiers to prevent their giving evidence that might lead to conviction. Thus in 1988, Amnesty International seriously called into question the government’s commitment to investigate fully disputed killings by its security forces and to prevent the possibility of unlawful killings in the future.

In 1984, John Stalker, the deputy chief constable for the Greater Manchester Police Force, was assigned by the British government to investigate six 1982 killings. In May 1986, however, Stalker was abruptly removed just three days shy of completing a two-year inquiry that would have revealed the involvement of British domestic intelligence in one of the killings and that pointed to a conclusion that the RUC had killed "in cold blood... and then plotted to hide the evidence." Stalker concluded that "[t]he circumstances of those shootings pointed to a police inclination, if not a policy, to shoot suspects dead without warning rather

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166. Thomas, supra note 29, at A2, col. 2. Constable John Robinson of the RUC appeared before Justice McDermott in a Northern Ireland court on April 3, 1984 for a trial on charges of murdering Seamus Grew. Robinson was acquitted, as expected, but the testimony he gave in his own defense shocked the British public. Robinson stated under oath that Grew was not shot at a random police road check, as police claimed, but rather following a long surveillance operation that had included an RUC sortie into the Republic of Ireland. Neither had the two men been killed by regular police, as claimed, but rather by members of a highly trained special squad, including Robinson, which had planned the operation. Robinson testified that he had been instructed by senior police officers to lie in his official statements to protect the secrecy of the operation. J. STALKER, supra note 42, at 13; see R. v. Robinson, [1984] 4 N.I.J.B. 65.

167. One such incident involved the killing of a civilian shot dead by the Paratroop Regiment in the Ardoyne area in April 1973. T. HADDEN & P. HILLYARD, supra note 3, at 38.

168. AMNESTY INT’L, KILLINGS BY SECURITY FORCES, supra note 42, at 3.

169. J. STALKER, supra note 42, at 256; Thomas, supra note 2, at 32. Stalker had learned that anti-terrorists operatives from MI5 had installed electronic surveillance in the hayshed where 17-year-old Michael Tighe, a lad unaffiliated with the IRA, mistakenly walked into an ambush. The MI5 bug recorded the entire event. J. STALKER, supra, at 50-51, 65-66, 256. It was Stalker's efforts to obtain the tape, despite official obstruction, especially from the RUC, which eventually led the British government to pull Stalker off the case. See id. at 65-110, 256, 261-271. Stalker subsequently obtained a government document establishing that senior British civil servants conspired to remove him from the investigation. Rule, London Linked to '86 Ouster of Ulster Investigator, N.Y. Times, Jan. 21, 1990, at A8, col. 1.

170. J. STALKER, supra note 42, at 67; see id. at 9.
than to arrest them."\(^{171}\) He uncovered a corps of senior Special Branch officers of the RUC whose job it was to concoct stories to cover the truth of the pre-planned killings.\(^{172}\) A year into his investigation, Stalker submitted "a very damaging political document"\(^{173}\)—an interim report, unreleased by the government—which recommended prosecutions of eleven RUC officers and high-ranking officials for a variety of criminal offenses, including conspiracy to pervert the course of justice and penury.\(^{174}\)

Early in 1988, the British attorney general announced he would prosecute none of the officers implicated in the 1982 killings or in the intricate cover-up because of "considerations of national security."\(^{175}\) The 1982 shootings did, however, receive considerably more official attention than is typical. Less than a third of civilian allegations against security forces are even investigated. In 1981, for example, while complaints against the RUC rose by 19.3% to 1,715, the number actually investigated fell by 21% to 519.\(^{176}\)

171. Id. at 253.
172. Id. at 59; cf. S. BELFRAGE, supra note 30, at 32-37.
173. J. STALKER, supra note 42, at 264.
174. Id. at 254.
175. 126 PARL. DEB., H.C., (6th ser.) 425 (1988); Clines, British Stand on Ulster Police Reopens the Rift with Dublin, N.Y. Times, Feb. 23, 1988, at A1, col. 4; Thomas supra note 2, at 32. Sir Patrick Mayhew, Britain's attorney general, further defended the government's refusal to prosecute on grounds that although he was aware of "attempts to subvert the course of justice," the prosecutions would not be "in the public interest." R.U.C. Cleared Over 'Shoot-To-Kill' Policy, IR. AM., Mar. 1988, at 13. Instead, the government announced that 20 RUC officers involved in the 1982 shoot-to-kill deaths and subsequent cover-up would face unspecified disciplinary action for their role in "pervert[ing] the course of justice." Ulster Officers to Be Disciplined, San Francisco Exam., July 5, 1988, § 1, at 2, col. 3. None of the officers, however, were even placed under suspension. Id. Eighteen low-ranking officers were eventually reprimanded and one was cautioned. Whitney, 18 Ulster Officers Are Reprimanded, N.Y. Times, Mar. 16, 1989, at A15, col. 1. Such mild disciplinary proceedings for criminal prosecutions did not assuage the public. Ulster Officers to Be Disciplined, supra, at 2, col. 3. Both Sinn Féin, the political branch of the republican movement, and one of the widows of the 1982 killings decried the action, Sinn Féin calling it "a farce." Whitney, supra, at A5, col. 1.
176. P. BEW & H. PATTERSON, supra note 79, at 148. British authorities insist that each complaint against security personnel is investigated and that the director of public prosecutions has complete independence to decide whether to initiate criminal proceedings. In fact, the director is subject to the attorney general, who in 1978 admitted that such cases were discussed with him. See K. BOYLE & T. HADDEN, supra note 14, at 70. After soldiers shot and killed 13 unarmed Catholic civil rights demonstrators on "Bloody Sunday" in January 1972, the failure to take legal action against the officers involved led to specific allegations that such proceedings had been prevented by a directive from the attorney general. T. HADDEN & P. HILLYARD, supra note 3, at 38; Tomlinson, Reforming
When charges are brought against security personnel, convictions are rare; most cases result in acquittals.\footnote{177} Of sixty known cases through 1980 where troops fatally shot innocent persons, only seven soldiers were brought to trial and none convicted.\footnote{178} The decade since has seen little improvement.\footnote{179} Conversely, Catholics too frequently are convicted on less than compelling evidence. One Catholic teenager was convicted despite police admissions on the witness stand that they had lied, upon orders from senior officers, about the facts of his arrest.\footnote{179} The "Birmingham Six"—six Irishmen sentenced to life imprisonment in 1975 for allegedly killing twenty-one people in a 1974 IRA bombing in Birmingham, England—remain in jail, although the British government now concedes that the confessions used to convict the six likely were concocted by police; in August 1990, the government referred the case for a second time to the Court of Appeal, which in 1988 upheld the convictions.

Reprennion, in L. O'DOWD, B. ROLSTON & M. TOMLINSON, supra note 139, at 192. Officially, a government tribunal concluded that some of the dead men might have been armed. REPORT OF THE TRIBUNAL APPOINTED TO INQUIRE INTO THE EVENTS ON SUNDAY, 30TH JANUARY 1972, WHICH LED TO THE LOSS OF LIFE IN CONNECTION WITH THE PROCESSION IN LONDON DERRY ON THAT DAY, 1972, H.L. 101, H.C. 220 (the WIDGERRY REPORT); see J. CONROY, supra note 3, at 37. The city coroner of Derry, where the incident occurred, concluded otherwise:

> It strikes me that the army ran amok that day and they shot without thinking of what they were doing. They were shooting innocent people. These people may have been taking part in a parade that was banned, but I don't think that justifies the firing of live rounds indiscriminately. I say it without reservation it was sheer unadulterated murder.

Statement of the Derry city coroner, reprinted in K. KELLEY, supra note *, at 163.

\footnote{177} See K. BOYLE \& T. HADDEN, supra note 14, at 70.

\footnote{178} Tomlinson, supra note 176, at 193.

\footnote{179} Two soldiers who in 1981 drove their army Land Rovers into a crowd of Catholic youths at 50 miles an hour, and then backed up over the body of one of the two teenagers to die that day, were subsequently tried for reckless driving, not murder, and acquitted. J. CONROY, supra note 3, at 153, 205. The lone policeman tried as a consequence of the 1982 killings was acquitted. J. STALKER, supra note 42, at 13. The only officer tried for the RUC's 1984 plastic bullet assault on a peaceful rally in Belfast, which killed a young father and injured at least 20, was acquitted. S. BELFRAGE, supra note 30, at 32-37; see also Thomas, supra note 2, at 34. The British commandoes who shot and killed three IRA guerrillas on Gibraltar in March 1988 were found by a coroner's jury to have acted lawfully, although the suspects were unarmed. Jury Says Killings Lawful, supra note 39, at A9, col. 6; see supra note 39. Through late 1988, only 22 members of all security forces operating in Northern Ireland had been prosecuted for killings on duty involving firearms, and all but two of these (or 91\%) had been acquitted. JUSTICE UNDER FIRE, supra note 31, at xix-xx.

\footnote{180} J. STALKER, supra note 42, at 65.
notwithstanding new revelations by former police officers, who claimed to have witnessed the confessions being beaten out of some of the accused, and new challenges to the forensic evidence. Three other Irishmen and an English woman—the Guildford Four—served fourteen years in prison until the Court of Appeals quashed their convictions in late 1989 after the British government conceded they were wrongly convicted based on confessions and evidence “fabricated” by the police. Earlier this year, the government finally announced the convictions of the McGuire

181. AMNESTY INT’L, APPEAL HEARING OF SIX MEN CONVICTED OF BOMBINGS IN BIRMINGHAM 1-2, 5-7 (1988) [hereinafter AMNESTY INT’L, BIRMINGHAM SIX APPEAL]; No Retrial for Birmingham Six, IR. AM., Mar. 1988, at 14 [hereinafter No Retrial]; Clines, supra note 175, at A1, col. 4. Despite a petition signed by more than 130 members of Parliament demanding that the case be reopened, Lord Chief Justice Lane opined it would be “highly unsatisfactory and unjust” to retry the six after 13 years. No Retrial, supra, at 14. Photographs taken of the men after three days in a Birmingham prison reveal severe facial bruises and lacerations. C. MULLIN, ERROR OF JUDGMENT: THE BIRMINGHAM BOMBINGS 120-21 (1986) (reproducing photographs); AMNESTY INT’L, BIRMINGHAM SIX APPEAL, supra, at 2-3. Moreover, a Labour Party member of Parliament who interviewed the IRA guerrillas who actually executed the bombings, and documented his evidence in a recent book, was not allowed to testify before the appeals court. No Retrial, supra, at 14; see C. MULLIN, supra, at 247-60. The appeals court also ignored the 1985 findings of Dr. Brian Caddy, head of the forensic science unit at the University of Strathclyde, who proved that the forensic evidence upon which much of the government’s case rested was unworthy of any credence. See id. at 236-38. As Mullin concluded his report:

At the time of this writing, the six Irishmen have served nearly twelve years for a crime they did not commit. Had the death penalty been in force at the time of their conviction, they would all have hanged. Unless the Home Office and the judges can summon up the courage to admit publicly what many people are saying in private, these men are destined to remain in prison for the rest of their natural lives.

Id. at 261. The Home Office may have heeded Mullin’s call when, in 1990, after the convictions of 11 other bombing suspects were quashed because their confessions were concocted by police, see infra notes 182-83 and accompanying text, the Home Office asked the Court of Appeal to review the Birmingham Six case yet again because the government now doubted the authenticity of police records of “confessions” obtained from at least two of the six. Cowdry & Oakley, Birmingham Six Cases Go to Second Appeal, The Times (London), Aug. 30, 1990, at 1, col. 1; Rule, Britain to Allow Appeal for 6 Convicted of 1974 Pub Murders, N.Y. Times, Aug. 30, 1990, at A10, col. 1. As this Article went to press, the Office of the Director of Public Prosecutions in Britain admitted there was insufficient evidence to support the six convictions, an announcement that “made it all but certain the men would be freed when the Court of Appeal hears the case,” some sixteen years after the six were imprisoned. Prokesch, British Moves to Free 6 Linked to I.R.A., N.Y. Times, Feb. 26, 1991, at A3, col. 4.

182. R. v. Richardson, [1989] C.L.Y.B. 752 (quashing convictions of Guildford Four on reference from the home secretary since it appeared evidence, including confessions, had been fabricated by the police); Toolis, When British Justice Failed, N.Y. Times, Feb. 25, 1990, § 6 (Magazine), at 32.
Seven—one of whom died in prison during the fifteen years they have been incarcerated for crimes they did not commit—“cannot stand” because the government’s evidence, including the confessions, had been completely discredited.\textsuperscript{183}

Where convictions of security personnel are obtained, sentences often do not fit the crime. When a group of RUC men were convicted for murdering a Catholic man, kidnapping a Catholic priest and bombing a Catholic bar, only two of the policemen received life sentences. The rest were granted suspended sentences by Judge Lowry who called the murder of a Catholic father of eight, a man unaffiliated with the IRA, “‘understandable’ but ‘inexcusable’ . . . ‘really an act of retribution, or revenge because of other murders that had been committed.’”\textsuperscript{184} In early 1988, Britain announced the only soldier ever sentenced to life for fatally shooting a Northern Irish civilian had been pardoned and released after only twenty-six months incarceration and had been restored to active service.\textsuperscript{185} Meanwhile, “a young Nationalist was sentenced to six months imprisonment” for writing NO TEA FOR DAD’S ARMY on a wall,\textsuperscript{186} and another Catholic served a twelve-month term for shouting “Up the IRA.”\textsuperscript{187}

This appearance, at the least, of a two-track judicial system enhances Catholic antipathy toward the special “Diplock” courts, where judges sit without juries and may convict solely on the basis of uncorroborated confessions often obtained under questionable circumstances.\textsuperscript{188} or

\textsuperscript{183} Mills & Jones, Maguire Convictions ‘Cannot Stand,’ The Independent (London), June 15, 1990, at 1, col. 1.

\textsuperscript{184} J. HOLLAND, supra note 7, at 170.

\textsuperscript{185} See, e.g., A. GUELKE, supra note 127, at iii.

\textsuperscript{186} J. FEEHAN, supra note 76, at 55; see also K. KELLEY, supra note *, at 146.

\textsuperscript{187} T. HADDEN & P. HILLYARD, supra note 3, at 43.

\textsuperscript{188} See K. BOYLE & T. HADDEN, supra note 14, at 68-69. In 1972, a government commission chaired by Lord Diplock recommended the abandonment of jury trials for “terrorist” offenses and strongly urged admitting into evidence any confession, even those which breached the common law rules against coerced or involuntary statements, as long as the suspect could not introduce \textit{prima facie} evidence that the confession had been obtained by torture or maltreatment. REPORT OF THE COMMISSION TO CONSIDER LEGAL PROCEDURES TO DEAL WITH TERRORIST ACTIVITIES IN NORTHERN IRELAND 1972, CMND. 5185, at 30 [hereinafter DIPLOCK REPORT]. Even if the suspect introduced \textit{prima facie} evidence that the statement was coerced through torture or inhuman treatment, the committee recommended the confession still be admitted if the prosecution rebutted the suspect’s allegations. \textit{Id.} These recommendations became law a year later, see Northern Ireland (Emergency Provisions) Act, 1973, § 8, and remain in force. See Northern Ireland (Emergency Provisions) Act, 1987, § 5A. Under them, the outcome of the trial is actually determined in police interrogation centers, not in court. One study of the Diplock courts found 86% of all defendants had “confessed.” K. BOYLE, T. HADDEN & P. HILLYARD,
unsubstantiated and often-discredited testimony by paid informants.\textsuperscript{189}

\textit{supra} note 40, at 44. More recent studies reveal the same alarming pattern, Hillyard, \textit{supra} note 139, at 50, alarming because a wide body of evidence indicates that torture and ill-treatment have been—and continue to be—applied to obtain confessions, see AMNESTY INT'L, 1987 ANNUAL REPORT 325, 327 (1988) [hereinafter AMNESTY INT'L, 1987]; see also \textit{supra} notes 108-11 and accompanying text; infra notes 220-29 and accompanying text, yet the likelihood of excluding any such confession is minute. A government committee reported that of 2,293 cases in Diplock courts between 1976 and 1978 only 15 statements were ruled inadmissible on grounds of ill-treatment. REPORT OF THE COMMITTEE OF INQUIRY INTO POLICE INTERROGATION PROCEDURES IN NORTHERN IRELAND 1979, CMND. No. 7497, at 52 [hereinafter BENNETT REPORT]. The overall conviction rate in Diplock courts runs between 90-95%, and 80% of those convictions are based solely on the suspects' statements of guilt made while incarcerated. See K. BOYLE, T. HADDEN & P. HILLYARD, \textit{supra}, at 60. One RUC interrogator estimated that at least 2% of all those convicted in Diplock courts between 1976-79 were innocent, P. TAYLOR, \textit{supra} note 110, at 339, which translates into more than 290 wrongful incarcerations. In one case, a Belfast social worker was convicted of murder and membership in the IRA and sentenced to life imprisonment. The only evidence against him was a series of allegations by the police that he made a verbal, unsigned confession, which the suspect denied, maintaining that at the time of the alleged confession he was completely disoriented as a result of lack of sleep, continuous interrogation and forced standing for prolonged periods. The only issue was the admissibility of the verbal confession, which was allowed in as evidence. The man's appeal was denied. See 9 Hum. Rts. Internet Rep. 407 (Dec. 1983-Feb. 1984); AMNESTY INT'L, 1984 ANNUAL REPORT 319 (1985) [hereinafter AMNESTY INT'L 1984]. The Diplock courts also reveal the institutionalizing of a martial law-type state in Northern Ireland; while originally created to deal only with terrorist crimes, Diplock courts now hear cases involving ordinary crimes as well. J. CONROY, \textit{supra} note 3, at 98.

189. Another innovation of Lord Diplock has been the special courts' reliance on the testimony of accomplices, known as "supergrasses." At common law, courts refused to admit testimony "obtained by advantage ... held out by a person in authority." Director of Public Prosecutions v. Ping Lin, [1976] App. Cas. 574, [1975] 3 W.L.R. 419, [1975] 3 All E.R. 175. As in the case of confessions, the Diplock Commission urged that the detailed technical common law rules be replaced by more lenient standards. DIPLOCK REPORT, \textit{supra} note 188, at 30. They were. Northern Ireland (Emergency Provisions) Act, 1973, § 6, superseded by the Northern Ireland (Emergency Provisions) Act, 1978, § 8; see also AMNESTY INT'L 1987, \textit{supra} note 188, at 326-27; Greer, Admissibility of Confessions Under the Northern Ireland Emergency Provisions Act, 31 N. IR. L.Q. 210 (1980). The Cobden Trust, a civil liberties research and education organization, studied the cases of three witnesses—all of whom had committed violent crimes—who were granted immunity in 1982-83 in exchange for their testimony, on which 47 men were convicted. See generally L. GIFFORD, SUPERGRASSES: THE USE OF ACCOMPLICE EVIDENCE IN NORTHERN IRELAND (1984). There were several disturbing traits common to these and other supergrass cases. First, the witnesses were highly motivated to lie, yet even when judges recognized the falsity of the supergrass' testimony, convictions often resulted. One judge noted that the supergrass before him was "a ruthless, resourceful and experienced criminal ... who has committed murder" and whom, the judge admitted, had lied in court. \textit{Id.} at 14-16. Nonetheless, the judge convicted 15 of the 16 defendants solely on the basis of this perjured testimony, with sentences ranging as high as life. \textit{Id.} at 16-17. Second,
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Inevitably, the minority community came to place no stock in either the military or the legal system as a means of reform. Stalker learned firsthand the depth of Catholic distrust of Protestant and British “justice.” “None of them believed the investigation would actually achieve anything or lead to prosecutions of policemen,” wrote Stalker of the Catholics he interviewed, “and several of the people I saw said prophetically that I would never finish the enquiry, particularly if it began to threaten the RUC or the British government.” The results of such a pervasive distrust are predictable: “Where lack of confidence of this kind is combined with deep seated and fundamental differences in political objectives, the temptation to resort to violence and terrorism is great, particularly when as in Ireland there is a lively tradition of paramilitary activity . . . .”

London’s response to the recent wave of violence illustrates Britain’s incapacity to implement a political resolution in Northern Ireland, for it reveals a government insensitive to the need for neutral policymaking and, at the same time, a government so at a loss for constructive solutions that it instead launched a broadside attack on fundamental individual freedoms. In 1988, Prime Minister Thatcher publicly vowed to “wip[e] the IRA off the face of the civilized world.” Toward achieving Thatcher’s

even when some of the supergrass-based charges were dismissed because the testimony was perjured, judges remain willing to convict on other charges resting on different testimony from the same witness. In one case, the judge conceded the witness had lied and dropped 30 of 45 counts, yet convicted seven of the 10 defendants on other charges. Id. at 23. See generally U.S. STATE DEP’T REPORT, supra note 42, at 1142. Third, even when all charges were dismissed, this only occurred after the suspects had been held in jail for months and even years, based on unsubstantiated allegations. K. BOYLE & T. HADDEN, supra note 14, at 69. In one case three men were held for five years—four before trial—solely on the testimony of three supergrasses, all of whom the courts later deemed not credible. AMNESTY INT’L, KILLINGS BY SECURITY FORCES, supra note 42, at 61. In another, 17 of 18 men spent 21 months incarcerated, until a judge determined that the witness “lived in a sort of half-world between reality and charade. . . . He had little or no regard for the truth.” L. GIFFORD, supra, at 9, 25. In 1984, the much-awaited report of the Baker Committee urged the continued use of the Diplock courts. REVIEW OF THE OPERATION OF THE NORTHERN IRELAND (EMERGENCY PROVISIONS) ACT 1978, 1984, CMND. NO. 9222 [hereinafter BAKER REPORT]. According to Amnesty International, the reforms recommended were insufficient to remove the risks of unfair trial. AMNESTY INT’L 1985, supra note 159, at 297. While no supergrass charges have been brought since October 1986, the British government has refused to rule out reinstituting supergrass trials despite procedures Amnesty International concluded “do not provide adequate safeguards for . . . fairness.” AMNESTY INT’L, KILLINGS BY SECURITY FORCES, supra, at 62.

190. T. HADDEN & P. HILLYARD, supra note 3, at 5; see, e.g., Thomas, supra note 29, at A2, col. 2. See generally K. BOYLE, T. HADDEN & P. HILLYARD, supra note 52.

191. J. STALKER, supra note 42, at 46; see Thomas, supra note 2, at 31-32.

192. T. HADDEN & P. HILLYARD, supra note 3, at 5.

193. What’s the Point?, supra note 41, at 48; see McKibben, Thatcher Vows to Snuff
decidedly non-neutral military solution, her government, in addition to again deploying army reinforcements in the North, took desperate steps.

In late 1988, the British secretary of state renounced the centuries-old right of criminal suspects to remain silent by announcing that, henceforth in Northern Ireland’s courts, the finder of fact may draw “whatever inferences would be proper from the fact that an accused remained silent.” This legal sanction against suspects who refuse to respond to police questioning, which reverses the presumption of innocence fundamental in Anglo-Saxon law since the Star Chamber was abolished in 1641, and which would appear to allow conviction solely on the basis of a suspect’s silence, was directed primarily at the IRA.

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Inflation, San Francisco Exam., Oct. 15, 1988, at A8, col. 4. Thatcher made no similar pledge against Protestant paramilitarists, nor would it have made sense from a British standpoint for her to do so. As one British soldier explained, “It’s commonly accepted that the British army is there to protect the Protestants, no matter what anyone says.” S. BELFRAGE, supra note 30, at 284 (quoting soldier).

194. Britain sent a new army brigade to patrol Ulster’s border with the Republic of Ireland. A Battle of Gestures, supra note 15, at 45. This contradicts British policy, which for more than a decade has been to “Ulsterize” the war; i.e., to portray Northern Ireland as a problem of law and order to be solved by Northern Ireland’s police. See Thomas, supra note 2, at 34. Toward that end, Britain has attempted to shift primary security responsibility to the RUC and the UDR. See IRA: Going Soft, ECONOMIST Aug. 6, 1988, at 44, 45. “Send in too many troops, and it becomes harder to pretend that the conflict has a political solution.” A Battle of Gestures, supra, at 45.


196. Boudin, Northern Ireland: Freedom vs. Law and Order, N.Y. Times, Nov. 19, 1988, at A15, col. 2; see U.S. CONST. amend. V (“No person . . . shall be compelled in any criminal case to be a witness against himself.”). The right is considered so important that a 1981 government commission recommended it not be diminished, even against suspected terrorists. ROYAL COMMISSION ON CRIMINAL PROCEDURE, 1981, CMND. 8092, para. 4.52; see Boudin, supra, at A15, col. 2; Jackson, supra note 195, at 112. It is difficult to reconcile excising of this right with England’s pledge in the Hillsborough Treaty to protect basic rights in Northern Ireland and to consider drafting a Bill of Rights for the province. See Hillsborough Treaty, infra note 230, art. V(a).

197. Jackson, supra note 195, at 108; No Right of Silence, supra note 195, at A2, col. 3.
At the same time, Thatcher's government exercised its power under the Broadcasting Act\(^9\) to ban British electronic media from airing interviews not only with Catholic and Protestant paramilitarists, but also with certain Catholic elected and other political representatives affiliated with Sinn Féin, the republican political party, which holds a seat in British Parliament and which draws 11% of the Northern Irish vote,\(^9\) and between 35% and 42% percent of the Catholic vote.\(^{200}\) In late November, the government proposed another measure aimed at Sinn Féin: a law permitting prosecution and removal of elected political officials who publicly support the IRA campaign.\(^{201}\) As expected the law easily passed the 650-member House of Commons, where Thatcher commanded

198. Broadcast Act, 1980, § 29; see Hillyard & Percy-Smith, The Coercive State Revisited, 42 PARLIAMENTARY AFF. 533, 538 (1989); Whitney, supra note 14, at A5, col. 4. Thatcher used this and other powers to thwart media coverage of Northern Ireland. In 1985, Home Secretary Leon Brittan, without having viewed the program and with full support from the prime minister, pressured the British Broadcasting Corporation into announcing it would not air a 45-minute documentary on the province because Britain found the program "contrary to the national interest." Wilson, Cracking Down on Coverage: Britain's Blurred TV Picture, COLUM. JOURNALISM REV., May-June 1988, at 33; Marshall, Strike Halts BBC News Worldwide, L.A. Times, Aug. 8, 1985, § IV, at 1, col. 6. Only a 24-hour walkout by nearly every television reporter in Britain forced the BBC to finally broadcast an amended version three months later. Wilson, supra, at 33; British Media Strike Ends as BBC Decides to Show IRA Documentary, L.A. Times, Aug. 8, 1985, § I, at 9, col. 5. Previously Thatcher had thrice publicly scolded the BBC for its coverage of Ulster. Wilson, supra, at 33. Police have seized film footage and government officials have launched investigations into television producers and correspondents who have produced stories on Northern Ireland not to the government's liking. Id. Through the end of 1985, the British government had caused more than 50 programs on Northern Ireland to have been canceled, censored, withdrawn or at least delayed. J. CONROY, supra note 3, at 38.

199. Northern Ireland: Whose Oxygen?, ECONOMIST, Oct. 22, 1988, at 62; Boudin, supra note 196, at A15, col. 2; Whitney, supra note 14, at A5, col. 4. Although the ban covers all outlawed paramilitary organizations, Protestant and Catholic alike, the only legal political party affected is the Catholic Sinn Féin. See Whitney, supra, at A5, col. 4. The ban, imposed by decree, was approved after a single, three-hour debate in Commons on November 2, 1988, Shell, supra note 195, at 291, and was immediately decried by the BBC. Whitney, supra, at A5, col. 4. Among the ban's earliest effects: a song about the Birmingham Six by the Pogues was not broadcast; interviews with politicians and citizens about civil liberties in Northern Ireland and the Guildford Four case were banned or canceled; and, although the ban technically covers only electronic media, the April 1989 edition of Playboy appeared on the stands in Britain with pages from an interview with Sinn Féin's Gerry Adams torn out of the magazine. Hillyard & Percy-Smith, supra note 198, at 539.


a considerable majority.\textsuperscript{202}

On their face, these actions run contrary to international law.\textsuperscript{203} At the least they reveal a disregard for fundamental rights and freedoms unhealthy in a government charged with the extraordinarily difficult task of maintaining an appearance of fairness and lawfulness in its handling of the Ulster crisis.\textsuperscript{204} Renewed calls, both at home and abroad, demand that Britain finally adopt a written Bill of Rights,\textsuperscript{205} incorporating the terms of the European Convention on Human Rights so as to force the government to pay closer attention to them. Britain has been hauled before the European Commission on charges of violating the Convention more than any other signatory nation\textsuperscript{206} and has lost more cases than any

\begin{itemize}
\item \textsuperscript{202} Elected Authorities (Northern Ireland) Act, 1989; see British Proposals on IRA Terrorism, supra note 201, at A28, col. 2. In 1982, the first year Sinn Féin stood for elections, it garnered 64,000 votes—more than one-third of all Catholic votes cast, see K. KELLEY, supra note *, at 350, and in the May 1989 local elections fell 11 votes shy of 69,000, good for roughly 35\% of the Catholic vote. See Pyle, SDLP Makes Gains as DUP Slumps in Poll, Irish Times (Dublin), May 20, 1989, at 1, col. 3.
\item \textsuperscript{203} Allowing Northern Ireland courts to use as evidence against an accused the fact that she refused to cooperate with the police or take the stand to testify violates article 14(3)(g) of the International Covenant, supra note 33, ("In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: . . . Not to be compelled to testify against himself or to confess guilt."). Interestingly, the European Convention contains no such protection. Cf. European Convention, supra, note 34, art. 6(3)(c) ("Everyone charged with a criminal offense has the following minimum rights . . . to defend himself in person . . . "). The ban on interviews with members of Sinn Féin, as well as with members of outlawed Catholic and Protestant paramilitary groups, and the proposed law preventing politicians from publicly supporting the IRA, arguably violates article 10(1) of the European Convention, although under subsection (2) governments may curtail the freedom of expression as "necessary" to protect "national security." Id. art 10(2); see also International Covenant, supra, art. 19(3)(b) (same). Official notifications of derogation, however, are required, see infra note 577, and none appears to have been filed by the British government. In addition, the Universal Declaration contains no such qualification. Under it "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Universal Declaration, supra note 32, art. 19. Moreover, both the Universal Declaration and the International Covenant guarantee the right to be elected regardless of political opinions. See id. art. 21; International Covenant, supra, art. 25(b).
\item \textsuperscript{204} For further discussion on this point, see supra notes 145-94 and accompanying text.
\end{itemize}
other country.\footnote{Jones, supra note 206, at 34. Roughly one-in-three Commission decisions against a government have been against the British. \textit{Id}.}

Most recently, the European Court of Human Rights, in an opinion issued November 29, 1988,\footnote{Brogan \& Others v. United Kingdom, 145-B Eur. Ct. H.R. (ser. A) (1988) (judgment). The case was brought by four Northern Irish men—Terence Brogan, Dermot Coyle, William McFadden and Michael Tracey—detained for between four and six days, but never charged with any crime. \textit{Id}. at 19-21; see Anti-Terrorism: What's European for Justice?, \textsc{Economist}, Dec. 3, 1988, at 52.} found Britain in violation of the European Convention on Human Rights,\footnote{The 19-member court, composed of justices from as many countries, ruled 12-7 that all four men had been denied their right to “be brought promptly before a judge or other officer authorised by law to exercise judicial power” after their arrests, as required by article 5(3) of the European Convention, \textit{supra} note 34, art. 5(3), and ruled 13-6 that the four had been denied “an enforceable right to compensation,” as guaranteed by article 5(5). \textit{Brogan}, 145-B Eur. Ct. H.R. at 30-37. A majority of the court, however, rejected the detainees’ argument that they had been deprived of their rights under the Convention to “liberty and security of person” and to “proceedings by which the lawfulness of [their] detention[s] shall be decided speedily by a court.” \textit{Id}. at 28-30, 34-35, 37; see European Convention, \textit{supra}, arts. 5(1), 5(4).} affirming the determination by the European Commission on Human Rights that Britain’s security law allowing detention for up to seven days without charges\footnote{See D. Reed, supra note 107, at 245. Detention without charges did not end with the official cancellation of internment in December 1975. From 1975 through 1978, some 12,605 Northern Irish were arrested under emergency police powers; the equivalent figure in Britain would be nearly 450,000. \textit{Id}. at 246. No reasonable grounds are required to justify an arrest under the Emergency Provisions Act of 1973, as modified by the 1978 Act, and the Temporary Provisions Acts of 1984 and 1989. Of the 2,960 detained for more than four hours during the period between September 1977 and August 1978, only 1,029, or 35\%, were charged with an offense. \textit{Id}. Under section 4 of the Prevention of Terrorism (Temporary Provisions) Act of 1989, security personnel can detain without warrant persons on suspicion of terrorist activities for up to seven days without filing criminal charges; the first 48 hours under the RUC’s own authority, the remaining five days by approval of the secretary of state. The acts, however, allow those charged to be held almost indefinitely without trial, in one case, for 3\frac{1}{2} years. U.S. \textsc{State Dep’t Report}, \textit{supra} note 42, at 1140. Under these regulations, which in 1989 Parliament made permanent in the Prevention of Terrorism (Temporary Provisions) Act of 1989, \textit{see} Jennings, \textit{supra} note 40, at xxv (“the expression ‘Temporary Provisions’ is highly misleading as the Act no longer has a maximum lifespan like its 1984 predecessor . . . .”); Jackson, \textit{supra} note 195, at 237-45, 256; \textit{Northern Ireland: Whose Oxygen?}, \textit{supra} note 199, at 63, the focus of the police shifts from pre-arrest acquisition of independent evidence to post-arrest interrogation. These detentions have escaped condemnation as “internment” largely due to Britain’s “criminalization” strategy, under which arrests are carried out by the RUC, not the British army, and are thereby described as police action against criminal suspects, not military action against political opponents. \textit{See generally} D. Reed, \textit{supra}, at 244-46; Note, \textit{Pre-}} breached the
Convention's requirement that a detainee be presented promptly to a judge or other official empowered with judicial authority.\textsuperscript{211} Thatcher's government announced it would refuse to abide by the court's ruling, choosing instead to derogate from its obligations under the Convention.\textsuperscript{212} Moreover, Thatcher refused to rule out reinstating internment of suspected IRA members and sympathizers,\textsuperscript{213} a practice of incarceration without trial not unlike that employed by South Africa\textsuperscript{214} and Israel,\textsuperscript{215} which, when initially implemented in 1971, was followed by the bloodiest year of Northern Ireland's present troubles and brought down on 'the cradle of democracy' international condemnation for blatant violations of basic civil rights.\textsuperscript{216} That Thatcher was unable prior to her ouster as prime minister to reimpose this drastic measure was due solely to political and military concerns,\textsuperscript{217} confirming commentators' conclu-
sions that due process of law is another casualty of a war Britain refuses to admit it is waging.218

The decision to retain detention raises worrisome possibilities. Perhaps most ominous is the combination of continued detention and the detainee’s loss of the right to silence.219 While the British vowed that the practices of “torture” and “inhuman treatment,” as found by the European Commission and Court, respectively, had been abandoned,220 the evidence is to the contrary. Earlier this year, Ireland’s Supreme Court unanimously voted to disallow the extradition of two convicted IRA members on the ground that the court found a “probable risk” that the men would be assaulted by the prison staff in Northern Ireland upon their return.221 In 1989, Amnesty International reported evidence supporting allegations of ill-treatment of suspected terrorists— including perforated eardrums—sustained during RUC interrogation.222 In 1985, an Amnesty International investigation reported “considerable evidence” that torture and ill-treatment were applied to a prisoner during interrogation by the RUC in Castlereagh Police Holding Centre, Belfast.223 In March 1979,

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218. See What’s the Point?, supra note 41, at 48; Thomas, supra note 2, at 33.

219. Jenkins, Not-So-Free Speech in Britain, N.Y. REV. BOOKS, Dec. 8, 1988, at 23 (“In British law this right goes back to the mid-seventeenth century and was the response to the inquisitorial methods employed in such courts as the Star Chamber. One may doubt whether matters have significantly improved in some Northern Ireland police stations.”).

220. In March 1972, Prime Minister Edward Heath told the House of Commons, “[T]hese techniques will not be used. . . . The statement that I have made covers all future circumstances.” 832 PARL. DEB., H.C. (5th ser.) 743 (1972); see P. TAYLOR, supra note 110, at 26. In June 1972, the Palace Barracks Interrogation Centre, where much of the torture had been applied, was closed. Id. British representatives to the European Commission’s hearings at Strasbourg informed the commission that both the attorney-general and the army had issued directives ordering the immediate disuse of the five techniques. Id. For details of the European Commission and Court rulings, see supra notes 108-09 and accompanying text.


222. AMNESTY INT’L, 1989 ANNUAL REPORT 241 (1990) [hereinafter AMNESTY INT’L 1989]. An Amnesty surgeon concluded the injuries were not self-inflicted. Id.

223. AMNESTY INT’L, NORTHERN IRELAND: ALLEGED TORTURE AND ILL-TREATMENT OF PAUL CARUANA (1985) [hereinafter AMNESTY INT’L, ALLEGED TORTURE]. The man, arrested under the Prevention of Terrorism (Temporary Provisions) Act of 1984, section 12, was held 72 hours before allowed to see his attorney, id. at vi, in direct violation of RUC regulations that dictate access to counsel after 48 hours. B. DICKSON,
Dr. Robert Irwin, a Protestant doctor at Castlereagh, resigned, announcing he had treated dozens of injuries suffered by prisoners, such as fractured eardrums, that could not possibly be self-inflicted, as the RUC claimed. In June 1978, Amnesty International published a detailed report of interrogation violations in Northern Ireland. The Amnesty mission investigated seventy-eight cases of alleged torture and ill-treatment of prisoners between the ages of thirteen and sixty and found medical evidence substantiating the claims of abuse, findings later confirmed by a government committee of inquiry. Two United States Congressmen later in 1978 reported to President Carter their investigation in Northern Ireland had revealed "harsh interrogation methods" and "suppression of human rights." As the International Commission of

supra note 31, at 86. An Ulster surgeon and an Amnesty physician examined the suspect and found the physical evidence consistent with his allegations. AMNESTY INT'L, ALLEGED TORTURE, supra, at vii. Amnesty International also noted reports of ill-treatment against a pregnant woman and her mother in late 1983 as Castlereagh. AMNESTY INT'L 1985, supra note 159, at 296-97.

224. J. HOLLAND, supra note 7, at 168. Dr. Denis Elliott, another Protestant physician and a former councilor for the loyalist Official Unionist Party, also resigned after stating that his professional oath made it impossible for him to continue at Castlereagh. Id. Beginning in 1977, the chief forensic officers charged with examining prisoners at Castlereagh and Gough, the two primary police centers, protested increasing discoveries of bruising, contusions and abrasions, serious injuries, increasing mental agitation, hypertension and hyper-flexion of joints. INT'L COMM'N OF JURISTS, STATES OF EMERGENCY: THEIR IMPACT ON HUMAN RIGHTS 230 (1983).

225. AMNESTY INT'L, REPORT OF AN AMNESTY INTERNATIONAL MISSION TO NORTHERN IRELAND 12, 20 (1978) [hereinafter AMNESTY INT'L, N. IR. MISSION]. The Amnesty report concluded by announcing that "maltreatment of suspected terrorists by the RUC has taken place with sufficient frequency to warrant the establishment of a public inquiry to investigate it." Id. at 70.

226. The British responded to the Amnesty report by appointing yet another commission to investigate police interrogation procedures. The results were devastating. Where the Compton and Parker committees essentially had acquitted the security forces of wrongdoing, the Bennett Report produced a large volume of evidence sustaining the Amnesty allegations. Amnesty had commented on the high number of complaints filed in 1971-75. Id. The Bennett Committee reported similarly high numbers in 1976-77.' BENNETT REPORT, supra note 188, at 52. The Bennett Committee concluded that in many of the cases it investigated, "injuries whatever their precise cause had not been self-inflicted and had been sustained in police custody. . . Moreover, we cannot blind ourselves to the possibility that if, as we have found on the basis of medical evidence, ill-treatment causing injury could occur, so could ill-treatment which leaves no marks." Id. at 55. The report also noted, "[w]e have to consider the unwelcome possibility that the questioning by the officers investigating complaints may not be as searching or persistent as it might be." Id. at 115.

Jurists concluded in 1983, still in Northern Ireland "safeguards against torture, inhuman or degrading treatment generally, and against improper interrogation techniques in particular, are required." In the first decade of the conflict alone, security forces subjected an estimated 20,000 Catholics to some form of torture or ill-treatment.229

E. The 1985 Anglo-Irish Agreement and Its Aftermath

The 1985 Hillsborough Treaty230—which establishes an intergovernmental conference involving representatives from Britain, Ulster and Ireland—offers little hope of curbing repression or curtailting IRA activity. It is intended to do what the British alone could not, give Catholics a measure of power and erode support for the IRA.231 On paper, this will be accomplished if Britain allows mixed courts with judges from the Irish Republic and drafts a Bill of Rights for Ulster, in exchange for a greater Dublin commitment to crack down on the IRA, which operates from south of the border.232 Yet London need only consider these reforms: it is under no obligation to institute them, or to listen to Dublin’s concerns at all,233 and, in fact, Britain has not instituted any of the major reforms in the accord’s five-year existence.234

Meanwhile, Prime Minister Thatcher and her aides consistently claimed the pact ensures Ulster will never leave the union.235 This in turn hands the IRA a fresh reason to fight. The day the pact was signed,

Northern Ireland Report].

228. INT’L COMM’N OF JURISTS, supra note 224, at 246.
233. Hillsborough Treaty, supra note 230, arts. II, V-VII.
235. Thatcher Regrets Aide’s Remark on Ireland, N.Y. Times, Dec. 5, 1985, at A9, col. 1 [hereinafter Thatcher Regrets]. It does in fact accomplish this by guaranteeing that Ulster will never be united with the South unless a majority in Northern Ireland assent to it. Hillsborough Treaty, supra note 230, art. I. Two-thirds of Northern Ireland is, of course, Protestant and opposed to unification. See, e.g., S. BELFRAGE, supra note 30, at viii.
the IRA murdered a policeman in South Armagh.\textsuperscript{236} In the two months following announcement of the Anglo-Irish accord, the IRA killed at least six security personnel and wounded ten in six different attacks.\textsuperscript{237}

As expected, the thought of even \textit{de minimis} control over Ulster's affairs in the hands of the Irish Republic enraged many Protestants, who decried the accord as a sellout of unionism and merely the first step toward a united Ireland.\textsuperscript{238} In response to the Hillsborough Treaty, Protestant marauders armed with axes, clubs and guns terrorized Catholic sections of normally peaceful villages.\textsuperscript{239} Hundreds of loyalists occupied a Catholic border town and attacked Irish police.\textsuperscript{240}

It thus seems a significant measure of Britain's lack of progress that government ministers draw comfort from the accord's survival as a sign of hope,\textsuperscript{241} given that officials of the Irish Republic and representatives of the Northern Protestant community now concur that agreement has failed to narrow the fundamental chasm between Protestants and Catholics.\textsuperscript{242} Even the May 1989 local elections, which some in Britain perceived to be a victory for the accord,\textsuperscript{243} in fact undermined such hopes. On the Protestant side, while the most extreme of the Protestant parties—Paisley's Democratic Unionist Party (DUP)—lost considerable support,\textsuperscript{244} the party that gained in the polls—the Ulster Unionist Party

\begin{itemize}
\item[236.] Thomas, \textit{supra} note 231, at A8, col. 1.
\item[238.] Lelyveld, \textit{supra} note 232, at A1, col. 1. In a major blow to hopes the Hillsborough Treaty would be accepted by a majority of Protestants, all but one of the 15 Protestant members of Parliament who resigned their seats to protest the agreement were overwhelmingly re-elected in January 1986, revealing that the insecurity of the past continues to permeate throughout the majority community. Unionist candidates received 418,230 of the votes cast, or 43.86%, to only 70,917 votes for the only Protestant party to favor the agreement. Thomas, \textit{14 Unionists Win Elections}, N.Y. Times, Jan. 25, 1986, at A6, col. 1; Thomas, \textit{Ulster Protestants See Vote as Challenge to Pact}, N.Y. Times, Jan. 23, 1986, at A7, col. 1.
\item[239.] 200 Injured, \textit{supra} note 54, at A6, col. 1.
\item[240.] Clines, \textit{Not All Ulster Catholics Like English-Irish Accord}, N.Y. Times, Aug. 11, 1986, at A2, col. 3.
\item[241.] \textit{A Battle of Gestures, supra} note 15, at 46.
\item[242.] \textit{See, e.g.} Frankel, \textit{supra} note 234, at A3, col. 1 (Irish officials "concede they may have 'oversold' the healing powers of the agreement."); McCreary, \textit{Irish Court Blindsides 1985 Accord}, San Francisco Chron., May 9, 1990, \$ Z-1, at 2, col. 1 (accord has failed to mollify Protestant fears).
\item[243.] \textit{A Battle of Gestures, supra} note 15, at 46.
\item[244.] Support for Paisley's DUP "slumped from 24.3% in 1985 to 17.8%." Pyle, \textit{supra}
is equally hostile to the Anglo-Irish pact. The Catholic side was mildly more hopeful; the moderate, anti-IRA Social Democratic Labor Party (SDLP) achieved unprecedented gains, an event immediately hailed "as a reaction in the nationalist community to IRA violence as well as overwhelming endorsement of the Anglo-Irish Agreement." Nonetheless, electoral support for Sinn Féin, which opposes the agreement because it maintains British presence and control in the North, was "virtually unshakable" in republican strongholds throughout the Catholic community.

Aware that Protestant resistance to the Anglo-Irish accord may again, as in the past, translate into an armed invasion of Catholic neighborhoods, the IRA will continue to garner sufficient communal support and will attract new recruits, thus increasing the Provisionals' striking power; as long as Protestant leaders remain united in defiance, therefore, the pact remains a dead letter insofar as ending the war is concerned. Indeed, critics argue the accord itself has become part of the problem, in that the pact allows Britain and Ireland to give an illusion of progress without the reality of providing any real possibility of peace. The Northern Irish are not fooled, however; a recent province-wide poll found only four percent of Protestants, and only one-in-six Catholics, believe the agreement has benefitted their respective countries.

Fifteen years earlier, the Hillsborough compromise might have restored peace. But now certain segments of Northern Irish society

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245. Id. The UUP gained 1.9%. Id. at 10, col. 1.
246. Pyle, A Kick in the Teeth for the Bad Guys, Irish Times (Dublin), May 20, 1989, at 8, col. 1. The defeat for the Paisleyan forces seems more a backlash against certain DUP tactics, not a repudiation of Protestant resistance to the Anglo-Irish agreement. Id.
247. The SDLP increased its share of the vote to 21.2%, up from 17.8%, the highest level of support the party has achieved in local elections in its 21-year existence. Pyle, supra note 202, at 1, col. 3.
248. Id.
249. See id. Though Sinn Féin's total fell 0.5%, to 11.3% of the total vote, most of the seats it lost were in rural areas. Id.
251. See Frankel, supra note 234, at A3, col. 1.
252. Wilson, Poll Shock for Accord, FORTNIGHT, Apr. 1988, at 68. More significantly, perhaps, only 25% of Catholics believe the Anglo-Irish pact benefits Protestants while only 9% of Protestants think it aids Catholics, id., demonstrating that antipathy in Ulster toward the accord is based not on subjective fears as much as it is based on objective recognition that the agreement has not, and cannot, deliver a meaningful solution.
have resigned themselves to violence. Sectarian assassinations, terrorist bombings and urban guerrilla warfare have become a routine part of a life that otherwise appears normal. Violence has cemented the extremists on both sides into hardline positions that they defend with the bullet and the bomb, making compromise implausible, if not impossible. One study reported that the psychological harm inflicted on children reared in areas where political violence is a constant to be so great that it "seriously decreased the probable survival of the group," largely because these children can only be expected to intensify that violence as they become adults and move into leadership positions within the two communities. The polarization of society, coupled with the indoctrination of the young into a psychological acceptance of violence as a legitimate or even preferred means of dealing with the situation, may well create a country divided into two sides whose leaders possess no belief in their ability to effect change absent violence.

Proof of this trend is the violent Protestant reaction to the Hills-
borough Treaty,\textsuperscript{261} despite assurances from then-prime minister Thatcher and her aides that the pact ensures "there will never be a united Ireland,"\textsuperscript{262} Protestants in response assaulted British officials,\textsuperscript{263} rioted against Ulster police,\textsuperscript{264} and returned to the sort of vicious attacks against moderate Catholics that marred the 1968-69 civil rights movement and initiated the current era of the troubles.\textsuperscript{265} As in 1969, this Protestant violence forced Britain to send in the army; for the first time since 1981, reinforcements were ordered into the province.\textsuperscript{266}

Even the authorities concede that while the statistical level of violence dropped in the several years prior to 1988, bitterness and fear had not.\textsuperscript{267} So much hatred has been injected into the system that it has become impregnable.\textsuperscript{268} Consequently, even in an environment where violence is superficially suppressed, the smallest provocation may spawn a major escalation of the war.\textsuperscript{269} "Even if 'peace' is restored, the motivation for politically inspired violence will remain," army Brigadier Glover predicted several years ago. "Any peace will be superficial and brittle. A new campaign may erupt in the years ahead."\textsuperscript{270}

And so it did. The March 6, 1988 shooting by British SAS soldiers

\begin{itemize}
\item \textsuperscript{261} See supra notes 238-40 and accompanying text.
\item \textsuperscript{262} Thatcher Regrets, supra note 235, at A9, col. 1.
\item \textsuperscript{263} Northern Ireland secretary Tom King was accosted by about 50 Protestants, who trapped him in Belfast's City Hall for two hours. Belfast Protestants Pummel British Aide, N.Y. Times, Nov. 21, 1985, at A3, col. 3.
\item \textsuperscript{264} The rioters injured 78 officers in one incident alone. Ulster Violence Rekindled with Marches in 19 Cities, San Francisco Exam., July 13, 1986, at A3, col. 2.
\item \textsuperscript{265} In February 1986, for example, Protestant gunmen murdered a Catholic man with no known political connections as he lay in his North Belfast bed. Gunmen Kill Belfast Catholic, N.Y. Times, Feb. 2, 1986, at A12, col. 4. The following month, during a one-day strike by Protestants that paralyzed the province, Protestants burned a factory where 200 Catholic women were working, Thomas, Irish Premier Vows to Press On With Ulster Accord, N.Y. Times, Mar. 6, 1988, at A17, col. 1, and were responsible for more than 500 incidents of intimidation and property damage. Lohr, supra note 250, at A8, col. 1. In July of that year, scores of Protestant extremists armed with clubs, pickax handles and hatchets staged a predawn raid on Catholic homes in the normally peaceful village of Rasharkin. 200 Injured, supra note 54, at A6, col. 1.
\item \textsuperscript{267} Marshall, supra note 139, at 17, col. 1.
\item \textsuperscript{268} Id.
\item \textsuperscript{269} See J. Holland, supra note 7, at 171.
\item \textsuperscript{270} Id. at 143 (quoting "Northern Ireland: Future Terrorist Trends," Brigadier Glover's 1979 analysis of the IRA); see also P. O'Malley, supra note 44, at 261.
\end{itemize}
of the three unarmed IRA suspects on Gibraltar,\textsuperscript{271} and the Protestant grenades and gunfire that killed three Catholic mourners at the Belfast funeral of the Gibraltar victims,\textsuperscript{272} ignited the simmering powderkeg that is British-occupied Northern Ireland. Two armed British plainclothes soldiers watching the mourners' funeral were dragged from their car, beaten and shot to death in full view of the world's television cameras,\textsuperscript{273} capping "one of the grisliest weeks in the last two decades of violence in Northern Ireland."\textsuperscript{274} They were only the first; the IRA killed at least forty-four British soldiers in 1988\textsuperscript{275}—compared with just three in all of 1987\textsuperscript{276}—the highest figure since 1973.\textsuperscript{277} The Irish Republic's extradition of an escaped IRA prisoner back to the North touched off a fierce republican response, a spree of at least forty bombings and shootings in Belfast and Derry that injured twelve security personnel and four civilians\textsuperscript{278} in the most intense and widespread civil disruption in recent years.\textsuperscript{279} In reply, SAS soldiers killed three more IRA suspects.\textsuperscript{280} During 1988, more than 100 died, forty-eight of these civil-

\textsuperscript{271} Clines, \textit{British Amend Account of Killing of 3 in Gibraltar}, N.Y. Times, Mar. 8, 1988, at A7, col. 1 [hereinafter Clines, 3 Killed in Gibraltar]. The shooting prompted even moderate Catholics to decry a "'license to kill' attitude among antiterrorist agents" of the British army. Clines, \textit{supra} note 38, at A7, col. 1; see supra note 38.

\textsuperscript{272} Clines, \textit{3 Killed by Grenades at I.R.A. Funeral}, N.Y. Times, Mar. 17, 1988, at A1, col. 2; \textit{Lawlessness in Ulster, supra} note 39, at 445. "Dozens" were wounded by the gunman, widely believed to have been a member of one of the paramilitary Protestant gangs. Clines, \textit{supra}, at A1, col. 1.

\textsuperscript{273} Clines, \textit{2 British Soldiers Killed at I.R.A. Rites}, N.Y. Times, Mar. 20, 1988, § 1, at 1, col. 3; \textit{Lawlessness in Ulster, supra} note 38, at 445.

\textsuperscript{274} Clines, \textit{supra} note 273, at A1, col. 3.

\textsuperscript{275} \textit{I.R.A. Bomb Damages 100 Homes, supra} note 14, at A16, col. 1. In May, the IRA killed three British servicemen in the Netherlands, Raines, \textit{supra} note 39, at A1, col. 6, in June blew up an army van, killing six soldiers, \textit{Blast at Race in Ulster Kills 6 British Soldiers}, N.Y. Times, at A5, col. 1, and in August blew apart a busload of British soldiers, killing eight and wounding 28, Lohr, \textit{supra} note 43, at A1, col. 1, the deadliest attack on British forces since the signing of the Hillsborough Treaty. \textit{See 8 British Soldiers Die, supra} note 132, at A23, col. 5.

\textsuperscript{276} Lohr, \textit{I.R.A. Blast, supra} note 14, at A3, col. 1.

\textsuperscript{277} \textit{See K. BOYLE & T. HADDEN, supra} note 14, at 14.

\textsuperscript{278} In little more than 24 hours after the Irish Republic in Dublin turned over to Northern Irish officials Robert Russell, an IRA member convicted of terrorist activities who had escaped prison in 1983, the IRA detonated 17 bombs and was reportedly responsible for 23 separate shootings. Lohr, \textit{3 I.R.A. Slain, supra} note 14, at A3, col. 2; \textit{Aftermath of I.R.A. Blitz, N.Y. Times, Aug. 29, 1988, at A13, col. 4.}

\textsuperscript{279} Lohr, \textit{3 I.R.A. Slain, supra} note 14, at A3, col. 3; \textit{Aftermath of I.R.A. Blitz, supra} note 278, at A13, col. 5.

\textsuperscript{280} \textit{See Lohr, 3 I.R.A. Slain, supra} note 14, at A3, col. 1.
ians, in ten months that witnessed 244 separate bombing incidents. The intensification of conflict, initiated in 1988, shows no signs of abating even now, nearly three years later. A wave of merciless IRA and unionist paramilitary attacks, and controversial security force counterattacks, swept Northern Ireland, the British mainland and European continent in 1990, killing at least another 76. This bloody wave had not crested as this Article went to press, as the IRA redoubled its campaign on the mainland in the dawning days of 1991 while Protestant paramilitarists accelerated assassinations of Catholic civilians.

The ongoing escalation of violence forced the conservative Irish prime minister Charles Haughey to concede that the Hillsborough Treaty has failed to prevent a severe deterioration of the solution in the North, and to admit that peace in Northern Ireland could only be achieved through a broader, international approach than the Anglo-Irish accord.

F. The Likely Scenario of Britain Unilaterally Withdrawing

In 1969, a tribunal commissioned to investigate violence by Northern Ireland’s security forces warned that lawlessness by the government as well as the paramilitarists would bring dire consequences. “[W]e cannot stress too strongly,” the committee cautioned with deadly accuracy, “the catastrophe which must befall any society which ceases to respect the rule of law or takes the law into its own hands.” Britain’s failure to heed

281. Whitney, supra note 14, at A5, col. 6; see supra note 14.
285. In a 1988 speech in New York, Haughey acknowledged that, despite the Hillsborough Agreement, the situation was even worse than in the past. A. GUELKE, supra note 127, at iv.
286. HUNT REPORT, supra note 77, at 9.
this warning proved disastrous, for within the decade a United States' congressional fact-finding mission reported that Belfast of 1978 was "worse than Saigon in 1968."287 Six years later, the former commander of Britain's Ulster forces predicted that "violence is likely to continue while the British remain in Northern Ireland."288 The deepening bloodshed of the past three years confirm the accuracy of this forecast; significantly, it was the British army, in its role as enforcer of British policy, that reopened the festering wound.289

Simply put, the record supports neither of Lord Caradon's early claims about the impartiality and ability of the British army vis-à-vis Northern Ireland. The army cannot serve two masters; it cannot enforce the political dictates of one party to the conflict and remain faithful to the peacekeeper's principal obligation of neutrality.290 Neither, quite clearly, can it end the war.291 This failure of policy and implementation led the authors of one comprehensive study to conclude that "[t]he [United Kingdom] is not 'above' the [Northern Irish] problem, it is an integral part of that problem."292

Equally clear is Britain's inability to end the war with a unilateral withdrawal. Whatever their shortcomings, the mere presence of the British troops does prevent fullscale sectarian warfare of the type that threatened to erupt in 1969.293 Without some buffer between the two communities, civil war far bloodier than the present conflict would likely ensue.294

British withdrawal would no doubt be interpreted by the vast majority of Protestant paramilitarists as London abandoning them to the evils of the republic to the south.295 The sentiments of the majority community would probably be those expressed by one middle-aged Protestant: "A

288. P. O'MALLEY, supra note 44, at 263.
289. See supra note 272 and accompanying text.
290. Indeed, this is the exact conclusion to which the United Nations came more than three decades ago. See infra notes 380 & 812-17 and accompanying text.
291. See supra notes 132-36 and accompanying text.
292. L. O'DOWD, B. ROLSTON & M. TOMLINSON, supra note 139, at 208.
293. See Northern Ireland Report, supra note 227, at 114. Recall that in 1969 the British army was sent into the Northern Irish fray in response to urgent international appeals from Catholic leaders for protection for the minority community from armed Protestant mobs, backed by the RUC and other Protestant security and paramilitary forces. See supra notes 2-10 & 90-93 and accompanying text.
295. See generally P. O'MALLEY, supra note 44, at 249.
united Ireland is inevitable, but we'll go down fighting." And they have the means to do so. Tens of thousands of armed Protestant paramilitarists, and another 20,000 armed members of the Ulster Defense Regiment (UDR), the RUC and the RUC reserve, would likely attempt to establish a provisional independent Protestant government and at the same time invade Catholic neighborhoods in an attempt to be "finished with this problem once and for all."

In the war that would ensue, the IRA would be capable initially of mustering at most 1,000 volunteers to protect Catholic enclaves, though recruits would certainly flock to its side as refugees by the thousands fled to the South. Experts expect the fighting would spill across the border, and the Republic would be forced to send troops into the fray. Like the Turkish government during the Cyprus crisis, it could not stand by and watch a minority comprised of its "own" be slaughtered. The conflict would escalate quickly into a civil war on the scale of Cyprus. Vowed one Protestant, "Belfast will look like Berlin after the war." Nor would the battle be contained in Ireland. There are approximately one million native Irish—and another four million

\[\text{296. Blance, supra note 12, at 10, col. 4; see also S. BELFRAGE, supra note 30, at xv, 211, 235.}\]

\[\text{297. As of the end of 1985 there were 123,169 licensed firearms in Northern Ireland, a count that excludes, of course, many of the weapons in paramilitary hands. S. BELFRAGE, supra note 30, at xv.}\]

\[\text{298. Northern Ireland Report, supra note 227, at 71 (estimating armed Protestant paramilitarists number between 70,000 and 80,000).}\]

\[\text{299. K. BOYLE, T. HADDEN & P. HILLYARD, supra note 40, at 99.}\]

\[\text{300. Northern Ireland Report, supra note 227, at 114.}\]

\[\text{301. K. BOYLE, T. HADDEN & P. HILLYARD, supra note 40, at 99.}\]

\[\text{302. P. O'MALLEY, supra note 44, at 248.}\]

\[\text{303. Id. at 251.}\]

\[\text{304. From late December 1963 through 1974, when a separate Turkish state was established in the north of Cyprus, Turkey on many occasions threatened to invade the island when the Greek Cypriot majority appeared on the verge of full-scale war on the Turkish minority. Though it did not invade until 1974, Turkey did send in additional men, guns and supplies when fighting broke out. 2 S. BAILEY, HOW WARS END: THE UNITED NATIONS AND THE TERMINATION OF ARMED CONFLICT 1946-1964, at 667-702 (1982).}\]

\[\text{305. K. BOYLE, T. HADDEN & P. HILLYARD, supra note 40, at 99; M. O'BRIEN & C. O'BRIEN, supra note 30, at 176.}\]

\[\text{306. K. BOYLE, T. HADDEN & P. HILLYARD, supra note 40, at 99. "The casualties in a week would probably exceed the number of victims of political violence in Northern Ireland in the past fifteen years and large numbers of people, both Catholic and Protestant, would also be rendered homeless." M. O'BRIEN & C. O'BRIEN, supra note 30, at 176.}\]

\[\text{307. Blance, supra note 12, at 10, col. 4.}\]
first-generation Irish—in Britain who may be driven to take sides, especially in cities with large Irish concentrations, triggering severe rioting in England.  

The IRA scoffs at this grim scenario, maintaining that Protestants would grudgingly accept the inevitability of unification rather than initiate an irrational and disastrous civil war. The experts, however, do not agree. They point out that in 1912, 1920 and 1972, Protestant paramilitarists mobilized in defense against anticipated attempts at unification, attracting tens of thousands of volunteers. When the British withdrew in 1920, for example, Protestant police auxiliary units immediately grew to more than 50,000-strong. In the early 1920s and in 1972, substantial numbers of Catholics were murdered by Protestants fearful that unification was at hand. Home rule meant “Rome Rule” to Northern Protestants then, and unification remains anathema today. The intensity of this fear is strong incentive to what would appear in some quarters to constitute “irrational” behavior.

The guarantee of continuing bloodshed whether Britain stays or goes has left many observers of Irish affairs exceedingly pessimistic. “Many talk about a solution to Ulster’s political problem but few are prepared to say what the problem is. The reason is simple. The problem is that there is no solution.” This appears true if Britain insists on proceeding alone—and nothing in the Hillsborough Treaty suggests that the policing of Northern Ireland will not remain the sole province of the British authorities.

308. P. O’MALLEY, supra note 44, at 248, 251.
309. Id. at 247; see K. BOYLE & T. HADDEN, supra note 14, at 38.
310. See K. BOYLE & T. HADDEN, supra note 14, at 38.
312. K. BOYLE & T. HADDEN, supra note 14, at 38.
314. See, e.g., P. BEW & H. PATTERSON, supra note 79, at 2-3; J. CONROY, supra note 3, at 117-26. I refer those who doubt that this view persists to the recent article by Alf McCreary, supra note 242, at 2, col. 1 ("Unionist politicians, their worst fears appearing to have been realized by the Irish Courts [which ruled that the Irish Constitution gives the Republic claim to all of the island which and which refused to extradite two suspected terrorists for fears they could be ill-treated], have even more reason to drag their heels and cry, 'No Surrender' ").
317. While the Hillsborough Treaty lists a number of security issues to be discussed by the intergovernmental conference, the use of Irish or any other non-British or non-Protestant security force in Northern Ireland is never mentioned. Hillsborough Treaty,
In the past when Britain was unable alone to solve a deteriorating situation in a former possession, it turned to the United Nations for assistance. It should do so again in regards to Northern Ireland. Specifically, it should request a United Nations peacekeeping force to replace a withdrawing British army. This would remove the IRA's raison d'etre. Since the IRA has made withdrawal its immediate goal, and because a sizable majority of the Catholic population has grown weary of IRA violence—which it tolerates because it sees no other options, given Great Britain's mission in the North—it is likely the guerrilla crusade would lose much of its communal support once the British went home. This in turn would reduce the intensity of the Protestants' own paramilitary movement. Assuming United Nations' troops could provide a buffer between the two communities in the immediate post-withdrawal period, when emotions would run exceedingly high, an environment could be created in which negotiations toward a peaceful resolution of the conflict finally could begin.

III. UNITED NATIONS PEACEKEEPING: JUSTIFICATIONS FOR INTERVENTION IN INTERNAL CONFLICTS

The concept of a peacekeeping force in Northern Ireland is not novel, but such a strategy has never been thoroughly considered.

supra note 230, art. VII.

318. After the Cyprus Christmas riots in 1963, Britain called for United Nations' aid, which led to the sending of United Nations peacekeeping troops to the troubled island. See 19 U.N. SCOR (1095th mtg.) at 10, U.N. Doc. S/PV.1095 (1964); see also 2 S. BAILEY, supra note 304, at 676; Ehrlich, Cyprus, the 'Warlike Isle': Origins and Elements of the Current Crisis, 18 STAN. L. REV. 1021, 1045 (1966).

319. There are two main categories of United Nations peacekeeping operations: the observer mission and the peacekeeping force. Personnel in the former are not armed and are dispatched to oversee truces and cease-fires. In the latter, the soldiers are armed and are deployed between the hostile powers or communities to prevent an escalation and facilitate conditions under which a meaningful cease-fire can take hold. I have used the terms "force" and "mission" interchangeably to refer to United Nations peacekeeping; unless otherwise specified, all references to United Nations peacekeeping are to the latter form.

320. See R. ROSE, supra note 316, at 324.

Critics have dismissed the idea in a conclusory fashion, asserting that Ulster's troubles are not of a sufficiently serious or international nature to warrant such a force; that Britain would never allow one to be deployed in Northern Ireland; that previous peacekeeping missions have failed; and that, even had they succeeded, such an attempt would produce chaos in Ulster. It is to the first contention, and the clash between conflicting norms of state sovereignty and the protection of international peace and human rights, that this Article now turns.

A. Intervention in Internal Conflicts Is Essential if the United Nations Is to Keep the Peace

When world leaders gathered in San Francisco in April 1945, the still-unconcluded Second World War had already killed nearly fifty million. A considerable proportion of these deaths were civilian casualties of totalitarian policies that had resulted in violations of human rights unequaled in human history. The League of Nations, an

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322. At the Security Council meeting on August 20, 1969, called to discuss the burgeoning crisis in Northern Ireland, the British representative proclaimed that, "Northern Ireland is and has long been an integral part of the United Kingdom. Events in Northern Ireland are accordingly an internal matter for the United Kingdom Government... United Nations intervention against our wishes would be in violation of Article 2(7) [the domestic jurisdiction exclusion] of the Charter." 24 U.N. SCOR (1503d mtg.) at 1, U.N. Doc. S/PV.1503 (1969); see also C. CARLTON, supra note 46, at 143.


325. See S. BELFRAGE, supra note 30, at 193; P. O'MALLEY, supra note 44, at 250-51.


international alliance formed in the wake of the First World War to "abolish[ ] war from the earth and substitut[e] the saner procedures of international conciliation,"328 utterly failed to prevent the epic tragedy of World War II. The League of Nations proved ineffective as an instrument of international peacekeeping because it had no practical basis for employing force to keep the peace.329 Not surprisingly, then, the primary purpose of the United Nations' founders, when they met to create an organization to succeed the League of Nations, was to cure this defect by providing for armed collective security when necessary.330

This ambitious aspiration was inscribed in the preamble of the United

328. 1 E. LUARD, A HISTORY OF THE UNITED NATIONS 3 (1982). The language of its Covenant committed the League:

[T]o promote international cooperation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another ... .

LEAGUE OF NATIONS COVENANT preamble (1919).

329. The League clearly contemplated the use of "collective security" to prevent international acts of aggression. The covenant explicitly declared that "[a]ny war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations." LEAGUE OF NATIONS COVENANT art. XI, para. 1. Any member nation who resorted to war in disregard of the League's Covenant was "deemed to have committed an act of war against all other Members of the League," id. art. XVI, para. 1, and therefore "[t]he Members of the League undert[ook] to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." Id. art. X. Toward this end, the League's council had authority "to recommend to the several Governments concerned what effective military or naval forces the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the league." Id. art. XVI, para. 2. Member nations, however, were not obligated to commit armed forces to do so. L. GOODRICH, E. HAMBRO & A. SIMONS, CHARTER OF THE UNITED NATIONS 290 n.1 (3d ed. 1969).

Consequently, "while nations would readily subscribe to the abstract theory of 'collective security,' they were not usually willing, in concrete situations, to undergo the strenuous sacrifices involved in going to war to fulfil it." 1 E. LUARD, supra note 328, at 5; see also Wise, Veto Cannot Bar U.N. General Assembly from Establishing a Peacekeeping Force, 51 A.B.A. J. 1169, 1169 (1965). When Japanese, Italian and German aggression were bringing the world once against to the brink of war, "the League proved incapable of putting into effect the main principle to which it was committed." 1 E. LUARD, supra note 328, at 4; see also W. SHIRER, supra note 327, at 398-400.

Nations Charter:

*We the peoples of the United Nation determined* to save succeeding generations from the scourge of war, which twice in our lifetime has brought sorrow to mankind, and . . . to *unite our strength* to maintain international peace and security, and to ensure . . . that armed force shall not be used, *save in the common interest . . . have resolved to combine our efforts to accomplish these aims.*

This broad guarantee is reaffirmed throughout the Charter. The first sentence of the text emphasizes that the United Nations’ purpose is “[to] maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace . . . .” Chapter VII of the Charter authorizes the United Nations to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.” An early United Nations report which gained unanimous support from the Security Council members included the proposition that the United Nations should be able to employ armed forces to enforce the provisions of the Charter. The collective security measures outlined in the Charter, combined with other key sections mandating that all member states refrain from threatening or using force against any other state and prescribing methods for the pacific settlement of disputes, signaled that the United Nations in 1940 launched what United States ambassador Philip Jessup labeled “our war against war.” Yet as the nature of war evolved during the subsequent decades, the United Nations’ strategy for combating the threat of war stagnated, captive of a myopic post-war vision. While “the most typical, and quite possibly the most dangerous, threats to peace in our time are not situations in which one state may choose to resort to aggressive war, but situations of actual or incipient turbulence in which

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331. U.N. CHARTER preamble (second and third emphases added).
333. U.N. CHARTER art. 42.
335. U.N. CHARTER art. 2, para. 4.
336. *Id.* ch. VI.
rival powers may become so entangled that they cannot ultimately escape violent confrontation," the United Nations has—with few exceptions, at least until recently—proven largely ineffective at disarming internal conflicts and deterring civil wars. Thus the United Nations has become, like its predecessor, impotent in many situations to eradicate the seeds of war before they germinate into hostilities between nations. The organization also has failed to halt the widespread deprivation of human rights that accompanies such "civil" strife, in contravention of its duty under the Charter to promote universal respect for human rights and fundamental freedoms.

This is not to say the United Nations should or could intervene whenever internal disputes threaten international peace or the abridgement of human rights. The historic concept of state sovereignty retains considerable vitality. In addition, even where a state's internal conduct exceeds its domestic jurisdiction, other factors—such as the political realities of the United Nations, including the need to maintain states' confidence in and adherence to a fragile international order, and the practical constraints presented by certain internal crises, which render peacekeeping ineffective—counsel against intervention in many cases. These latter concerns are considered in Sections V and VI. As the next few pages demonstrate, while the norm of state sovereignty is still valid, the post-Charter limitations placed upon that sovereignty are sufficient to defeat challenges to United Nations peacekeeping intervention where the internal conflict threatens the peace or significantly imperils human rights.

**B. The Traditional, Expansive View of State Sovereignty**

At first blush, the evidence against intervention in internal affairs

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341. See L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 291; Friedman, supra note 340, at 36; see also infra note 354 and accompanying text.

342. See infra notes 745-46 & 801-04 and accompanying text.

343. There has been considerable discussion of what constitutes intervention. See, e.g., L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 67. This debate is irrelevant
appears considerable. The prohibition against intervention in matters within the domestic jurisdiction of states is recognized expressly in all major instruments establishing international organizations, the most important of which is the United Nations Charter, which provides:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter... 

This proscription was reinforced later in the Charter by a limitation on Security Council competence to matters affecting "international peace" and by two subsequent United Nations declarations, the first on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, the second on... 

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344. See, e.g., G.A. Res. 2131, 20 U.N. GAOR Supp. (No. 14) at 11-12, U.N. Doc. A/6014 (1966) ("No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State [including] ... armed intervention and all other forms of interference... "). I therefore do not consider whether and how less-intrusive United Nations responses, such as diplomatic pressure or economic sanctions, might alter the balance between state sovereignty and international obligations to protect the peace and human rights, or might be permissible regardless of state sovereignty because not rising to the level of intervention. For examinations of these questions, see J. NICKEL, MAKING SENSE OF HUMAN RIGHTS 56 (1987); Buergenthal, Domestic Jurisdiction, Intervention, and Human Rights: The International Law Perspective, in HUMAN RIGHTS AND U.S. FOREIGN POLICY 111, 113, 116-17 (P. Brown & D. MacLean eds. 1979); see also Leary, When Does the Implementation of International Human Rights Constitute Interference into the Essentially Domestic Affairs of a State?, in INTERNATIONAL HUMAN RIGHTS: LAW AND PRACTICE 15, 20 (J. Tuttle ed. 1978); Wieclair, Human Rights and Intervention, in HUMAN RIGHTS AND U.S. FOREIGN POLICY, supra, 142-44.

345. U.N. CHARTER art. 2, para. 7. An important exception allows the United Nations to apply "enforcement measures" against a state without regard to whether the matter creating the need for such measures falls within or without that state's domestic jurisdiction. Id. ("the principle [of non-intervention in matters within the domestic jurisdiction] shall not prejudice the application of enforcement measures under Chapter VII"). As peacekeeping is not, despite appearances, an "enforcement measure[.]", see infra notes 619-24 and accompanying text, this exception is inapplicable to an analysis of the propriety of peacekeeping in Northern Ireland.


Principles of International Law Concerning Friendly Relations and Cooperation Among States,\(^{348}\) which expounded upon the Charter's limitation:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.\(^{349}\)

These international pronouncements are, in effect, a codification of a doctrine well-etched into customary international law.\(^{350}\) Deriving from the fundamental principles of sovereignty, equality of states and nonintervention, or independence,\(^{351}\) this rule of international law was so firmly established that "[u]ntil the formation of the United Nations, there was virtually no significant challenge to the proposition that what a government does to and for its citizens within its own territory is its own business, in the absence of a specific provision to the contrary."\(^{352}\) From the practical policy underlying this principle—restraining the freedom of the stronger nations to impose their will on the weaker\(^ {353}\)—flows a corresponding purpose for applying the principle in the United Nations, where it was emphasized that allowing some powerful states to use the organization as a surrogate to do what international law prohibited would bring the United Nations into such disrepute its very existence would be threat-
It was no surprise, then, that the early United Nations' armed operations in Korea\(^\text{355}\) and the Middle East\(^\text{356}\) were responses to undisputed international interstate crises, while the Congo mission, though an internal operation, was justified by Belgian invasion.\(^\text{357}\) Moreover, in his 1958 report to the General Assembly,\(^\text{358}\) then-secretary-general Dag Hammerskjold enunciated general principles, drawn from the experiences of the early missions, to govern United Nations peacekeeping activities. A basic tenet of such exercises, Hammerskjold wrote, "precludes the employment of United Nations elements in situations of an essentially internal nature."\(^\text{359}\)

The weight to be accorded to state sovereignty therefore appears

\(^{354}\) See Friedman, supra note 340, at 36.

\(^{355}\) There has been much debate whether the intervention in Korea in 1950 by the United States and other countries under both their own flags and that of the United Nations was actually a measure taken by the United Nations or a war fought by its member states. Compare Gross, Voting in the Security Council: Abstention from Voting and Absence from Meetings, 60 Yale L.J. 209, 254-55 (1951) (the Korean operation was an action of the United Nations, at least to the extent of requiring members, under article 2(5) of the Charter, to "give the United Nations every assistance in any action it takes in accordance with the present Charter") with J. Stone, Legal Controls of International Conflict 234 (1954) (intervention in Korea was not a United Nations operation and thus had the legal nature of war). The former view, that it was indeed a United Nations operation, is supported by the United Nations General Assembly resolution of February 1, 1951, which affirmed the "determination of the United Nations to continue its action in Korea to meet the aggression" of China and North Korea. G.A. Res. 498, 5 U.N. GAOR Supp. (No. 20A) at 1, U.N. Doc. A/1775/Add.1 (1951).

\(^{356}\) The United Nations Emergency Force (UNEF) was dispatched in great haste in 1956 to check the invasion into the Suez Canal Zone by France and England after the Israeli invasion of Egypt. The force succeeded in keeping the Soviet Union and the United States out of the fray, and within six weeks of its arrival the 6,000-strong UNEF had completely replaced the British and French troops. Shortly thereafter the Israelis withdrew in return for UNEF acting as a buffer between Israel and Egypt. For overviews of UNEF, see W. Frye, A United Nations Peace Force (1957); Goodrich & Rosner, The United Nations Emergency Force, 11 Int'l Org. 413 (1957).

\(^{357}\) In 1960, a Belgian force invaded the Congo to rescue its nationals when the government installed after Belgium granted independence to its colony was unable to maintain order. A United Nations force that grew to 20,000 men, known by the initials ONUC of its French title, Operation des Nations Unies au Congo, succeeded in allowing a central government to be restored without interference by the major powers. See Blue Helmets, supra note 21, at 215-19; see also L. Goodrich, E. Hambro & A. Simons, supra note 329 at 71-72. For the controversial history of ONUC, see 3 R. Higgins, United Nations Peacekeeping, 1946-1967 (1980); Blue Helmets, supra, at 215-57.


\(^{359}\) Id. at 29.
significant, even dispositive. Domestic jurisdiction has been alternately
described as "exclusive" and "absolutist," which would seem to bar United Nations intervention in any internal affair. Indeed, no sooner was the organization formed, under a Charter expressly acknowledging international responsibility to prevent war and human rights violations, than countries guilty of blatant deprivation of residents' rights began playing the familiar trump card of state sovereignty. The first objection to United Nations competence to entertain complaints of internal human rights violations came, not surprisingly, from South Africa, which, when challenged for its treatment of Indians, declared that international action would be unlawful: "The Union of South Africa is a sovereign state and cannot acquiesce in any interference in its domestic concerns by any other State . . . ." Among other strong opponents of international intervention were the pre-glasnost Eastern European states. The stated position of the Soviet Union, as enunciated by a senior researcher at the Institute of State and Law in Moscow, was that "the ensurance and direct protection of human rights and fundamental freedoms is the internal affair of every state." The Russian delegation to the United Nations has argued repeatedly that any criticism of its unenviable human rights record constitutes illicit interference in its domestic affairs. In sum, the most frequent argument against Security Council competence to even consider concerns about internal violence has been the contention that the matter is "essentially within the domestic jurisdiction" of a state, or

361. Friedman, supra note 340, at 37.
362. See Marković, supra note 339, at 53.
364. When, for example, Australia and Bolivia in 1949 requested the General Assembly to consider "the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms," 3 U.N. GAOR Annex 2 at 31-32, 36, U.N. Docs. A/820, A/821, and A/829 (1949), the representatives of the Soviet Union and Poland, as well as the countries involved, argued that the matter was within the domestic jurisdiction of the two states and therefore beyond the reach of the General Assembly. See 3 U.N. GAOR Gen. C. at 7, 10, 26, U.N. Doc. A/820 (1949).
366. See J. Nickel, supra note 343, at 64.
367. U.N. Charter, art. 2, para. 7. Several countries have challenged the Security Council's competence to intervene in the internal affairs of a state. See, e.g., Czechoslovakia, 3 U.N. SCOR Supp. (Apr. 1948) at 6, U.N. Doc. S/718 (1948) ("[T]he discussion of internal matters of Czechoslovakia in the Security Council is contrary to the basic principles of the Charter, inspired by the aim of protecting the sovereignty and independence of the
the closely related objection that the situation presented no possible threat to international peace. Fortunately, the ancient concept of state sovereignty, while still powerful, is no longer dispositive. The domestic jurisdiction doctrine "has yielded much ground. From absolutist heights it has declined to a relativist status."

C. The Shrinking Scope of State Sovereignty

Assertions that the conduct of governments affecting human rights is a matter solely within states' domestic jurisdiction suggests, as Professor Buergenthal notes, that under international law human rights are by definition domestic issues. Implicit in this view is the proposition that because human rights are inherently domestic, they can never be internationalized and therefore are permanently beyond the reach of the United Nations. Despite the continued popularity of this argument in some darker corners of the globe, it finds no support in contemporary international law.
1. Matters of International Concern Are Not Within the "Domestic Jurisdiction" of the States

The argument that domestic issues were always and forever outside international jurisdiction was first authoritatively rejected in 1923, when the Permanent Court of International Justice in the *Tunis and Morocco Nationality Decrees* declared that "the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations." The court went on to give at least a partial definition of when "the development of international relations" would overrule claims of domestic jurisdiction. After noting that the question of nationality at that time constituted a matter of domestic jurisdiction, the court stated that if a nation entered into international agreements on a particular subject, such as nationality, this action would remove the subject from the nation's domestic jurisdiction. This relative, flexible approach, under which domestic jurisdiction shrank as international law expanded—at least to the extent a given nation obligates itself to respect the latter by subscribing to international agreements circumscribing the ability of states to do unto their own as they saw fit—has been adopted by the Institute of International Law, has gained support from leading scholars and has consistently prevailed in the United Nations. Its place in customary

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375. Id. at 156.

376. Id.; see Buergenthal, supra 343, at 114; Leary, supra 343, at 19.

377. The Institute declared: "The reserved domain is the domain of State activities where the State is not bound by international law. The extent of this domain depends on international law and varies according to its development." 45 ANNUAIRE DE L'INSTITUTE DE DROIT INT'L 150 (1954).

378. Professor Louis Henkin writes: "That which is governed by international law or agreement is ipso facto and by definition not a matter of domestic jurisdiction." Henkin, *Human Rights and Domestic Jurisdiction,* Paper Presented to the American Society of International Law Conference on the Helsinki Accord (June 1977) (Strasbourg, Fr.), reprinted in Leary, supra 343, at 19; accord Buergenthal, supra 343, at 114.

international law cannot be denied.\textsuperscript{380}

2. Determining When Matters Are of International Concern

Whether particular governmental conduct is within the domestic jurisdiction, and thus insulated from international intervention, depends on whether the conduct has been internationalized, which occurs if that government has undertaken international obligations governing the general area or the specific conduct.\textsuperscript{381} Threatening or breaching the peace and violating human rights have both been proscribed by international agreements to which the United Kingdom is a party.

U.N. GAOR (Agenda Item 7) (381st mtg.) at 63, U.N. Doc. A/PV.381 (1952) ("[i]t is possible to know when a matter is not within the exclusive jurisdiction of States; it is when the matter in question is the subject of an international agreement, whether bilateral or multilateral.") (statement of Chilean representative); G.A. Res. 385, 5 U.N. GAOR Supp. (No. 20) at 16, U.N. Doc. A/1775 (1950) (condemning "the wilful refusal of the Governments of Bulgaria, Hungary and Rumania to fulfil their obligations under the provisions of the Treaties of Peace").

380. It is, of course, possible for the United Nations viewpoint to become part of customary law over time, at least where, as here, repeatedly endorsed without significant opposition. See D. Forsythe, Human Rights and World Politics 228 n.6 (1983). The opposition of a handful of nations—such as South Africa and the former Communist bloc—cannot be considered a legitimate challenge to the relativist theory of domestic jurisdiction. And the admonitions of former secretary-general Hammarskjold with respect to peacekeeping, see supra notes 358-59 and accompanying text, are not to the contrary. It is clear from their content that Hammarskjold intended not to prohibit intervention by United Nations forces simply because the conflict was physically internal, or largely so, but rather he wished to prevent the United Nations troops from being employed to enforce a political solution sought by one side or the other, or to tip the political balance in any armed dispute, especially those contained within a given country. See Nathanson, Constitutional Crisis at the United Nations: The Price of Peace Keeping, II, 33 U. Chi. L. REV. 249, 295 (1966) [hereinafter Nathanson II]. His guiding principle, then, was simply that any United Nations peacekeeping force must remain impartial with respect to political conflicts, be they internal or external. Id. Similarly, the United Nations declarations on state sovereignty do not preclude intervention sanctioned by international law. See Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, supra note 343, at 12 ("Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United States relating to the maintenance of international peace and security, in particular those contained in Chapter VI, VII and VIII."); Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 123, preamble, U.N. Doc. A/8028 (1971) (same).

381. See Buergenthal, supra 343, at 114.
a. Threats to, and Breaches of, the Peace

Both article 1(1)\textsuperscript{382} and article 39\textsuperscript{383} of the United Nations Charter identify "threats to the peace, . . . acts of aggression or other breaches of the peace" as sufficient to justify the use of collective measures, including "provisional measures"\textsuperscript{384} and "land forces," to "maintain international peace and security."\textsuperscript{385} Although there has been considerable debate over what constitutes a threat to the peace,\textsuperscript{386} it is clear that, at the least, the Charter provides the Security Council with the power to respond to internal conflicts when it "determines that a threat to international peace is involved."\textsuperscript{387} This interpretation is reinforced by the doctrine of paramount purpose. It is generally conceded that, "'[t]he Charter is surely not to be construed like a lease of land or an insurance policy; it is a constitutional document whose broad phrases were designed to meet changing circumstances for an undefined future.'"\textsuperscript{388} When a constitu-

\begin{itemize}
\item \textsuperscript{382} This article provides:
  The Purposes of the United Nations are:
  
  1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace . . . .

  U.N. CHARTER art. 1, para. 1.
\item \textsuperscript{383} This article provides:
  The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

  Id. art. 39.
\item \textsuperscript{384} "In order to prevent an aggravation of the situation," the Charter allows the Security Council, "before making the recommendations or deciding upon the measures provided for in Article 39," to "call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable." \textit{Id.} art. 40.
\item \textsuperscript{385} \textit{Id.} art. 42.
\item \textsuperscript{386} See, e.g., L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 295-97.
\item \textsuperscript{387} Fox, \textit{Collective Enforcement of Peace and Security}, 39 AM. POL. SCI. REV. 970, 971 (1945).
\end{itemize}
tion is being considered, the so-called "doctrine of paramount purpose" requires that, where feasible, the document should be interpreted so its purpose can be implemented.\textsuperscript{389} The first among the United Nations four purposes is "[t]o maintain international peace and security."\textsuperscript{390} It is unlikely the United Nations founders considered an absolutist interpretation of state sovereignty to be inconsistent with the organization's obligation to protect international peace. It is evident that when they decried "the scourge of war" they were referring to the conditions created by interstate war.\textsuperscript{392} Within their experience and knowledge, "war" had described military contests between sovereigns.\textsuperscript{393}

The structure of the United Nations quite naturally was predicated on the belief that threats to international peace and security would continue to arise out of disputes between nations.\textsuperscript{394} But now the line separating matters of internal concern from those of international importance is blurry at best.\textsuperscript{395} This has understandably become a "major problem" for the United Nations; international peace is often endangered by actions other than interstate warfare. Although much armed conflict has occurred since 1945, very little of it has involved traditional interstate war.\textsuperscript{396} Were the Hammerskjold admonitions taken to their literal extreme, and domestic jurisdiction treated as synonymous with any internal conflict or affair, then the United Nations "would be condemned to sitting on the sidelines" in many of the disputes most likely to threaten world peace.\textsuperscript{397} Were governments permitted to claim immunity from international action for any activity, however vile or threatening, because contained within its own borders, then the United Nations would be useless, unable to fulfill its paramount purpose.\textsuperscript{398} To fulfill the Charter, the United Nations must recognize that internal strife can outgrow domestic jurisdiction and

\textsuperscript{389} Wise, supra note 329, at 1171. Justice Stone explained the essence of the paramount purpose doctrine when he wrote, "If we remember that 'it is a Constitution we are expounding,' we cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the Constitutional purpose." United States v. Classic, 313 U.S. 299, 316 (1941).

\textsuperscript{390} U.N. CHARTER art. 1, para. 1.

\textsuperscript{391} Id. preamble.

\textsuperscript{392} 1 S. BAILEY, supra note 304, at 20-21.

\textsuperscript{393} Id. at 20.

\textsuperscript{394} Id.

\textsuperscript{395} Nathanson II, supra note 380, at 308.

\textsuperscript{396} 1 S. BAILEY, supra note 304, at 20.

\textsuperscript{397} Nathanson II, supra note 380, at 308.

become a matter of international concern within the competency of the United Nations if it threatens the organization's ability to fulfill its principal purpose of maintaining international peace.\textsuperscript{399}

In practice, the United Nations has recognized that certain internal problems are properly the subject of international intervention.\textsuperscript{400} The deployment of United Nations peacekeeping troops on the island of Cyprus in 1964, for example, signaled that the organization realized it had a duty to intervene in internal situations if it was to keep international peace.\textsuperscript{401} Indeed, the Cyprus intervention indicates an internal episode need not actually threaten international peace before peacekeeping is proper, for in establishing the Cyprus peacekeeping force the Security Council noted "only the situation was likely to threaten international peace and security."\textsuperscript{402}

At a minimum, no nation that is a party to the United Nations Charter can argue that a situation is still within its domestic jurisdiction if the Security Council determines the situation constitutes at least a live threat to international peace, regardless of the source of the threat. Rather, "[i]t is so patently a matter of international concern that the Council is under an obligation to take the necessary measures to maintain or restore international peace and security."\textsuperscript{403}

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399. Significantly, the word "internal" appears nowhere in the text of the Charter. Instead, the document only excludes from Security Council consideration those matters "within the domestic jurisdiction" of a state. U.N. CHARTER art. 2, para. 7.

400. See, e.g., id. art. 14; Sohn, Introduction to Panel III: Regional and Other International Organizations Response to Internal Conflicts, 13 GA. J. INT'L & COMP. L. 323, 324 (1983 Supp.).

401. Nathanson II, supra note 380, at 308. For details of the Cyprus situation, see infra notes 834-35 & 845-70 and accompanying text.

402. S.C. Res. 186, 19 U.N. SCOR Res. & Dec. (1102d mtg.) at 2, U.N. Doc. S/INF/19Rev.1 (1964) (emphasis added). The resolution left unstated whether the legal support for the mission was based on chapter VI or chapter VII of the Charter. Commentators generally read the Cyprus resolution as invoking chapter VI jurisdiction sub silentio. See, e.g., D.W. Bowett, UNITED NATIONS FORCES 553 (1964); Theodorides, The United Nations Peace Keeping Force in Cyprus, 31 INT'L & COMP. L.Q. 765, 766 (1982). If correct, this reveals that the Security Council may, in general, invoke its authority to promote pacific settlements of dispute in order to send peacekeepers into any dispute "likely to endanger the maintenance of international peace and security." U.N. CHARTER art. 33, para. 1. If the Security Council may invoke chapter VI as the constitutional basis of a peacekeeping operation, the specific provision within that chapter to which the Council would look is article 36, which allows the Council to, "at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment." Id. art. 36, para. 1; see infra notes 626-32 and accompanying text.

403. See L. Goodrich, E. Hambro & A. Simons, supra note 329, at 292.
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b. Human Rights Violations

Significant violations by a government of its residents' fundamental rights present an issue of international concern in at least two different ways: first, by a Security Council determination that the level of rights deprivation in a particular country is so severe it amounts to a threat to the peace, breach of the peace or act of aggression; and second, by a determination that a nation's internal conduct is in violation of an international obligation by which it is bound to abide.

It is unquestionable, being evident from the very text of the provision itself, that the reservation [against United Nations' action on matters within domestic jurisdiction] is immaterial when we are faced with such violations of human rights as might lead to a threat to or to a breach of peace and security in the world, or to aggression, according to Art. 39 of the Charter.

In such a case, "there is no possibility of invoking the reservation of non-interference in internal affairs." 405

It is not mere rhetoric to suggest that human rights violations may threaten the peace or result in acts of aggression, as evinced by the United States' "Operation Stanleyville" to rescue some westerners from internal violence in the Congo, 407 or Israel's raid on the Entebbe airport in Uganda to free hostages taken during an airline hijacking. 408 When violations reach the level of international condemnation, they have been used as justification for invasion by another country to achieve some other political goal, as in the Indian "humanitarian intervention" to stop the slaughter in East Pakistan, 409 which served the purpose of dismembering


405. Marković, supra note 339, at 55.

406. Id.

407. See D. Forsythe, supra note 380, at 28; L. Sohn & T. Buergenthal, supra note 352, at 195-211.


arch-rival Pakistan, and Vietnam's invasion of Cambodia to oust the murderous Pol Pot regime, which also served to install a Vietnamese-backed government. Practice confirms the denial of basic rights that begins as domestic policy toward an indigenous population, clearly confined within national boundaries, may "easily" cross borders and become international.

While the United Nations has too often failed to respond to such widespread atrocities, the Security Council has on occasion recognized that internal deprivation of human rights required the Council to issue a binding judgment that the violations constituted a threat to the peace. In 1966, for example, the Council declared the racial policies of the white government of Rhodesia represented a "threat to the peace" justifying

410. See D. Forsythe, supra note 380, at 28.
411. See id.
412. McDougal & Reisman, supra note 398, at 13 ("It has been too often confirmed that practices of indignity and strife which begin as internal in physical manifestation in a single community quickly and easily spread to other communities and become international.").
413. Among the worst examples are: the United Nations' failure to respond to the year of terror in Indonesia, 1965, in which not less than 300,000 persons of Chinese origin were murdered, see Brownlie, Humanitarian Intervention, in Law and Civil War in the Modern World 219, 224 (J.N. Moore ed. 1974); Cambodia, where the horrors of the Khmer Rouge's reign of terror from 1975-79 did not even provoke so much as a finding of human rights violations by the United Nations Commission on Human Rights, see R. Lillich & F. Newman, supra note 409, at 386-87; and Bangladesh, where "an orgy of terror" by the Pakistani army in March 1971 killed thousands of civilians in one 48-hour period Id. at 486-87. Regarding this last situation, the International Commission of Jurists later reported that "[it] is difficult to resist the conclusion that if the Security Council had met before [India's invasion in] December 1971 to consider the situation they would have determined that it constituted a threat to the peace." INT'L COMM'N OF JURISTS, THE EVENTS IN EAST PAKISTAN, 1971, at 79 (1972).
414. It is of course for the Security Council, the General Assembly, or whichever United Nations committee is hearing the complaint, and not the government at issue, to determine whether the circumstances represent a threat to the peace or any other international concern, thus conveying competence over the matter upon the United Nations.
415. See L. Goodrich, E. Hambro & A. Simons, supra note 329, at 296, 297 n.24;
selective but mandatory economic sanctions against that country, the first such action ever undertaken by the Security Council. As the situation in Rhodesia deteriorated, this determination was reiterated, and fresh sanctions imposed, in 1968, 1973 and again in 1976. In a strongly worded 1977 resolution, the Security Council pronounced the policies and acts by the Republic of South Africa to protect its apartheid system, including violence against its own black residents, to be "fraught with danger to international peace and security," and imposed a mandatory arms embargo against the country binding on every United Nations member state. Seventeen years earlier, before widespread violence had taken hold, the Council had determined that the very existence of South Africa's highly discriminatory racial policies, created "international friction, and if continued, might endanger the maintenance of international peace and security." Practice and policy thus recognize that once human rights violations create a threat to the peace of international proportions they can no longer be considered within the domestic jurisdiction of a state.

Even absent such a finding, the large number of international conventions, which together establish a vast network of human rights obligations, leave any nation that has accepted some or all of these obligations powerless to hide systematic deprivation of human rights.

see also R. LILLICH & F. NEWMAN, supra note 409, at 392.


417. R. LILLICH & F. NEWMAN, supra note 409, at 401.


423. See McDougal and Reisman, supra note 398, at 13.

424. As Professor Bilder explains:

In determining whether a treaty is a potential source of obligation with respect to a situation involving a particular country, it is of course important to ascertain: (1) whether the treaty is in force, since multilateral treaties typically do not take effect until a certain number of nations have deposited ratification; (2) whether the nation in question has ratified the treaty, since signature alone in the absence of
from international scrutiny and intervention behind a cloak of "domestic jurisdiction."

International documents recognize that protection of human rights in all nations "is the foundation of freedom, justice and peace in the world." Chief among these is the United Nations Charter itself, which elevates protection of human rights to a position of high priority, listing among its four "Purposes and Principles" the "promoting and encouraging respect for human rights and fundamental freedoms." Equally significant, in article 55, the Charter expressly recognizes that "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" is "necessary for peaceful and friendly relations among nations." This provision indicates strongly that any failure of a country to observe and respect such rights creates a threat to "peaceful and friendly relations among nations," or, in other words, a threat to international peace. Moreover, article 56 requires all members "to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

It would not be stretching the doctrine of paramount purpose to recognize it would utterly frustrate the primary policies underlying this

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subsequent ratification does not normally legally bind a nation to the obligations of a multilateral treaty and (3) whether the nation in question has ratified the treaty with any reservations which expressly modify its treaty obligations.


425. "In practice, the most important source of international human rights law . . . is international treaties, which clearly and directly create obligations for the states parties." Bilder, *supra* note 424, at 7 (emphasis in original); see McDougal and Reisman, *supra* note 398, at 13.


427. *U.N. CHARTER* art. 1, para. 3.

428. *Id.* art. 55.

429. *Id.* art. 56. For discussions of other charter provisions pertinent to human rights, see L. SOHN & T. BUERGENTHAL, *supra* note 352, at 505-06; Marković, *supra* note 339, at 51.

430. *See supra* notes 388-89 and accompanying text.
“global constitution” for member states to treat violations of human rights as outside the United Nations’ purview.\textsuperscript{431} While the architects of the United Nations Charter saw violations of human rights as a concern arising largely out of interstate conflict,\textsuperscript{432} such conflicts between belligerent states no longer constitute the principal enemy of human rights, an ignominy now bestowed on government and government-orchestrated counter-insurgency campaigns.\textsuperscript{433}

\begin{itemize}
  \item \textsuperscript{431} See McDougal & Reisman, \textit{Response to Comment by Charles Marshall}, 3 INT’L LAW. 438, 444 (1969) (“Any other interpretation would be suicidally destructive of the explicit purposes for which the United Nations was established.”).
  \item \textsuperscript{432} See D. FORSYTHE, supra note 380, at 4. The first multilateral treaty on human rights—the Geneva Convention of 1864—was an attempt by major states to mitigate the type of “appalling suffering” witnessed on the battlefield of Solferino in 1859, Draper, \textit{Human Rights and the Law of War}, 12 VA. INT’L L. 326, 326-27 (1972), and the oldest branch of human rights law therefore is that devoted to protecting against violation in interstate armed conflict. See D. FORSYTHE, supra, at 4. In addition, the founders had just lived through the atrocities of World War II, and to the extent the various delegates were determined to protect human rights, they were determined to do so by preventing a repeat of Nazi-style aggression and oppression. \textit{Id.} at 8; see also L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 371-72; J. NICKEL, \textit{supra} note 343, at 1. Finally, the argument was frequently advanced in the early years of the United Nations that a broad grant of domestic jurisdiction, and a correspondingly narrow international competence to interfere in internal affairs, was necessary, since the converse would only lead to intervention, thus generating tension and likely resulting in breaches of the peace and interstate hostilities. \textit{See} Friedman, \textit{supra} note 340, at 36.
  \item \textsuperscript{433} Insecure or threatened governments often attempt to impose order or preserve power by abusing their own. \textit{See} J. NICKEL, \textit{supra} note 343, at xi. Thousands of civilians are starved to death to advance political or military objectives. \textit{See, e.g.}, \textit{The Famine Effects on African Refugees: Hearings on Oversight on the Issue of Emergency Food Aid and Famine Relief to Refugees in Sub-Saharan Africa Before the Subcomm. on Immigration and Refugee Policy of the Sen. Comm. on the Judiciary, 99th Cong., 1st Sess. 3, 10, 22, 38 (1985); Ethiopia: Alive Another Year, ECONOMIST, Dec. 3, 1988, at 50 (civil war contributed greatly to the 1984-85 famine in which at least 500,000 died); Perlez, \textit{A Further Lesson on the Politics of Swollen Bellies}, N.Y. Times, Nov. 22, 1988, at A5, col. 2 (“Both the Government and the rebel group use food as a weapon” in the Sudan, where at least 8,000 died between June and September 1988 because the government barred food deliveries to areas believed sympathetic to rebels); Perlez, \textit{In Town 'Liberated' by Sudan Rebels, Refugees Wither as Food Trickles In}, N.Y. Times, Nov. 13, 1988, at A3, col. 1. Prisoners are maltreated and tortured and “[t]he lives of thousands of citizens [are] taken by the state,” AMNESTY INT’L 1985, \textit{supra} note 159, at 1, many of these “the victims of deliberate political killings in various countries: unarmed civilians [are] killed in large numbers by the army and the police, by other security forces or by ‘death squads’ sanctioned by the authorities.” \textit{Id.} While rebel troops are often far from innocent, \textit{id.} at 3; \textit{see, e.g.}, J.L. ANDERSON & S. ANDERSON, \textit{supra} note 327, at 173-77 (1988) (in Sri Lanka the civilian population is “under siege” from Tamil separatists and the government’s counter-insurgency campaign); NORWEGIAN HUM. RTS. PROJECT, \textit{HUMAN RIGHTS IN DEVELOPING COUNTRIES} 1986, at 266 (1986) (in Nicaragua, “there are many examples of
The United Nations has remained ineffective in preventing the repression practiced by member nations because of an unhealthy unwillingness to override states' assertions of sovereign control over internal affairs. Yet if, in fact, international organizations "do not have the authority or power to enforce rights" in such situations, as one scholar claims, then there is "no alternative to assigning sovereign states the main responsibility for upholding the rights of their residents." This is an unappealing alternative, for it is those governments that most flagrantly mistreat their own citizens who still take refuge in "the ancient diplomatic canon" of state sovereignty. As the American Association for the International Commission of Jurists warned, "those with the most dubious records are often the most vehement in their insistence on the need for greater respect for sovereign rights." For the contra's conscious use of terror to reach their goals, including documented episodes where "contra groups killed, tortured and raped civilians"; see also supra notes 566-72 and accompanying text (detailing IRA violations of human rights in Northern Ireland), Amnesty International and other human rights organizations view governmental abuses as the primary problem:

The taking of human life by the state must be recognized as an urgent and imperative issue for the international community. The exercise of state power to end a citizen's life strikes at the heart of two of the most fundamental of all human rights: the right of life and the right not to be cruelly treated. International public opinion should no longer tolerate the use by governments of executions and assassinations, whether to address political difficulties or problems of law and order. Whatever the circumstances, torture and political killings by governments can never be justified.

AMNESTY INT'L 1985, supra, at 1; see also J.L. ANDERSON & S. ANDERSON, supra, at xxi ("Today, civilians are once again war's primary victims, but their killers are rarely invaders; usually, they are the soldiers of their own governments, or the guerrillas of the local 'national liberation movement'.")


435. See L. HENKIN, supra note 404, at 110-12; Marković, supra note 339, at 53.

436. J. NICKEL, supra note 343, at 42. Nickel says this is so because "national governments are unlikely to give them this authority." Id.

437. Id.; see also Bilder, supra note 424, at 9.


439. Id. "A historical reference on how the world community reacted not too long ago to state-inflicted tyranny can be a reminder of the potential consequences of international indifference and passivity." Id. In 1938 the western powers refused to act in the face of the German Reich's anti-Semitic campaign, the French going so far as to send the German Foreign Ministry a message stressing that "[n]one of the states would dispute the absolute right of the German government to dictate with regard to its citizens such measures as are
example, long before embracing its current "reformist" attitude, South Africa attempted to fend off international intervention by insisting it had made "striking advance... in human welfare." Were the rhetoric of countries such as South Africa—where it is no exaggeration to say that violations of human rights were until very recently, and to a lesser degree continue to be, national policy—the only protection against deprivation of human rights available to their residents, then the Charter's promise of protection for human rights would be without value. Fortunately, it is widely accepted by scholars and the United Nations itself that member states, bound by the Charter, cannot claim human rights are matters within their exclusive domestic jurisdiction, at least not where a

within its own sovereign powers." Id. Thus assured, the Gestapo newspaper Das Schwarze Korps just four months later proclaimed, "Because, after all, no power on earth can hinder us, we will now bring the Jewish question to its totalitarian solution... The result will be the actual and definite end of Jews in Germany and their complete extermination." Id. As noted, it was exactly this international faindance in the face of the genocidal pogroms of Nazi Germany that prompted the formation of the United Nations, and it was the organization's mission to prevent similar quiescence in the future. See supra notes 327-30 and accompanying text.


441. L. HENKIN, supra note 404, at 109.


443. See, e.g., AM. A. FOR THE INT'L COMM'N JURISTS, supra note 438, at 51; L. HENKIN, supra note 404, at 94; Buergenthal, supra note 343, at 115; Markovic, supra note 339, at 55.

government's acts or policies evoke "a consistent pattern of gross violations of human rights." 445

Although the Charter does not define what rights are considered "human," 446 the Universal Declaration of Human Rights, 447 adopted by the United Nations General Assembly in 1948 without dissent, is considered an authoritative definition of Article 55. 448 Among other significant rights declared to be "universal" and "protected by the rule of law" are "the right to life, liberty and the security of person," 449 freedom from "torture or . . . cruel, inhuman or degrading treatment or punishment," 450 equal protection of the law, 451 freedom from "arbitrary arrest, detention or exile", 452 and the right to a fair trial. 453 More importantly, although the Declaration was originally non-binding on member states, it has assumed the status of mandatory customary international law, 454 having been reaffirmed without opposition countless times within the United Nations, 455 incorporated into several national


446. See U.N. CHARTER art. 55, para. c.


448. See D. FORSYTHE, supra note 380, at 9; Buergenthal, supra note 343, at 115 & n.23.

449. Universal Declaration, supra note 32, art. 3.

450. Id. art. 5.

451. Id. art. 7.

452. Id. art. 9.

453. Id. art. 11.

454. See Montreal Statement of the Assembly for Human Rights, March 22-27, 1968, reprinted in 9 J. INT'L COMM'N JURISTS 94, 95 (1968) ("The Universal Declaration of Human Rights constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become a part of customary international law."); see also D. FORSYTHE, supra note 380, at 9; L. HENKIN, supra note 404, at 96-97 n.8; R. LILlich & F. NEWMAN, supra note 409, at 65; Bilder, supra note 424, at 8; Buergenthal, supra note 343, at 115; Humphrey, The International Bill of Rights: Scope and Implementation, 17 WM. & MARY L. REV. 527, 529 (1976); Marković, supra note 339, at 57.

455. Two of the most important statements in this regard were issued by the General Assembly. See United Nations Declaration on the Elimination of All Forms of Racial Discrimination, G.A. Res. 1904, 18 U.N. GAOR Supp. (No. 15) at 35, U.N. Doc. A/5515 (1963) (every state "shall fully and faithfully observe the provisions of . . . the Universal Declaration of Human Rights") (adopted unanimously); Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960) (affirming states duty to "observe faithfully and strictly" the provisions of both the Charter and the Universal Declaration) (also adopted unanimously); see also Report of the Commission on Human Rights in the Twenty-Seventh
constitutions, and in practice invoked as if legally binding.

There are a number of other international, multilateral agreements on human rights, the most important of which are the International Covenants, one on Civil and Political Rights and the other on Economic, Social and Cultural Rights, which reiterate and expand the rights enumerated in the Universal Declaration and which became legally binding on ratifying states in 1976. Among the many regional human rights accords, the most effective is the European Convention on Human Rights and its protocols, which created a European Commission.
and Court on Human Rights to safeguard most, but not all, of the rights guaranteed in the International Covenant on Civil and Political Rights. As noted above, it has been accepted by, and is therefore binding upon, the United Kingdom.

Accordingly, "[a]ll the signatories of the United Nations Charter have pledged themselves to observe and to respect basic human rights. Thus, no member of the United Nations can claim that mistreatment of its citizens is solely its own business." The several international accords on human rights carry considerable normative impact, as confirmed by United Nations practice, which treats their provisions as legally binding. Consistent and systematic governmental breaches of this duty to safeguard human rights justify "joint" action by United Nations member states.

To say that world peace and human rights are matters of international concern, protected by mandatory international law, does not end the debate, however. Just as the concepts of state sovereignty and "domestic jurisdiction" do not automatically bar international intervention, neither do threats to the peace or violations of basic rights automatically require intervention. Before any institutional United Nations' effort can be undertaken to end the bloodshed in the North of Ireland, the Security Council, or, the General Assembly in limited circumstances, must determine that the crisis in Ulster warrants international action. The United Nations, in other contexts, has been reluctant to take action because of its reticence to intrude in the allegedly internal affairs of a sovereign state, even if the issue involved appears to be of international dimensions, such as an apparent threat to or breach of the peace or gross violations of fundamental human rights. Nevertheless, there are strong precedential and policy arguments favoring United Nations' intervention in Northern Ireland.

464. Id. §§ II, IV.
465. See supra note 424 and accompanying text.
467. See, e.g., L. HENKIN, supra note 404, quoted in Leary, supra note 343, at 20.
468. At the very least, such violations of the Charter, and, by extension, of any binding resolutions or declarations approved under the Charter, may be the subject of joint action. See U.N. CHARTER art. 56.
469. See L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 294.
470. See L. HENKIN, supra note 404, at 110; R. LILlich & F. NEWMAN, supra note 409, at 487.
IV. INTERNATIONAL INTERVENTION IN THE CONTEXT OF THE NORTHERN IRELAND CONFLICT

As discussed in section III, there are at least two theoretical bases upon which the United Nations could rely to justify intervention in the war of Northern Ireland, despite its "civil" nature. Theory and reality, however, are often at odds in the United Nations, and were the Ulster crisis placed on the Security Council's agenda, Great Britain would

471. The dispute could be put to the General Assembly initially, but under the Charter, the Security Council has "primary responsibility for the maintenance of international peace and security," U.N. CHARTER, art. 24, para. 1, so that the Assembly is likely to send the issue to the Security Council. Once the issue is before the Council, the Assembly can take no action unless the Council sends the dispute back to the full Assembly. See id. art. 12, para. 1. Only the Council can order that peacekeeping action be taken; the Assembly merely can recommend such action. See id. arts. 10, 13, 39; see also D. ZIEGLER, WAR, PEACE AND INTERNATIONAL POLITICS 310-11 (3d ed. 1984). The dispute can be brought before the Council by any of the following: the General Assembly, U.N. CHARTER arts. 11-12; the secretary-general, id. art. 99, and any country that is a current member of the United Nations, whether or not a current member of the Council, id. art. 35, para. 1. Thus, Britain would not have to initiate the debate; either Ireland or the United States could do so. Scholars have suggested that in the case of armed civil conflict, a request by the rebels—in this case, the IRA—could be sufficient to trigger United Nations consideration of a peacekeeping operation in that country, see, e.g., Sohn, The Role of the United Nations in Civil Wars, 57 AM. SOC'Y INT'L L. PROC. 208, 215 (1963), although in practice the participation of "other persons"—that is, non-states—can only occur by invitation from the Council. The Charter makes no provision for participation of non-states, but Security Council Procedure Rule 39 permits the Council to invite "other persons" whom it considers competent to supply it with information or to give other assistance, see S. BAILEY, THE PROCEDURE OF THE SECURITY COUNCIL 124, 131 (1988), and persons not representing a recognized state who wish to address the Council may request such an invitation, as have, for example, representatives of such groups as the Jewish Agency for Palestine before the creation of the State of Israel, id. at 131, the Turkish community on Cyprus, id., and various liberation movements. Id. Beginning in 1971, liberation movements were fairly freely invited to participate in debates on issues with which they were directly concerned. Id. at 139. Examples include Yassar Arafat, who was invited to address the General Assembly on behalf of the Palestine Liberation Organization in 1974 and did so a month later, id. at 131 & n.152, and again in 1988 despite a negative vote by the United States, see 43 U.N. SCOR (2780th-2784th mtgs.) at 1-2, U.N. Doc. S/INF/44 (1988), as well as several leaders of the anti-apartheid movement, who have been invited to speak to the Security Council. S. BAILEY, supra, at 139. While the decision whether to extend an invitation to address the Council is procedural, and therefore beyond the reach of a superpower veto, see 5 U.N. SCOR (507th mtg.) at 4-5, U.N. Doc. S/PV.507 (1950) (invitation to representative of China to attend Council meeting extended under article 32 of the Charter, one of four articles on Council procedure); 1 U.N. SCOR (50th mtg.) at 4, (1946) (same regarding invitation to Canada); S. BAILEY, supra, at 199 (invitation to participate clearly procedural), the United States possesses an extra-organizational de facto veto—it can prevent the invited party from appearing by denying him or her a visa to enter.
likely repeat its objection of 1969, when it argued that the conflict is a matter of domestic concern and therefore not a proper target of international peacekeeping.\textsuperscript{472}

The point at which the importance of maintaining peace or protecting human rights outweighs the countervailing norm of nonintervention in what would otherwise be "domestic" affairs\textsuperscript{473} has never been precisely identified.\textsuperscript{474} Critics of the United Nations' ability or willingness to designate Ulster a matter of international concern, and to take action predicated upon that conclusion, have generally ignored the Security Council's historic belief that it has an extremely broad mandate under the Charter.\textsuperscript{475} While precedents are hardly binding on a political body such

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472. Britain failed to block Ireland's request for an urgent meeting in August 1969 to consider the situation in Northern Ireland, despite arguing the strife was a matter of domestic jurisdiction and thus beyond the Council's competence. 24 U.N. SCOR (1503d mtg.) at 1-2, U.N. Doc. S/PV.1503 (1969); see S. BAILEY, \textit{supra} note 471, at 129-30; Note, \textit{supra} note 9, at 483-85; \textit{supra} notes 6-11 and accompanying text. As London's failure indicates, it is extremely difficult for a Council member to muster the seven votes needed to bar Council consideration of an issue sought by any United Nations member state. It is not impossible, however; in the 1950s, for example, France persuaded the Council, for the same reason raised by Britain, to deny requests from member states to consider issues regarding French colonies in Northern Africa. See 7 U.N. SCOR (547th mtg.) at 5-12, U.N. Doc. S/PV.574 (1952). It is nonetheless a rarely violated rule that the Council will not remove an item from its agenda when challenged under the "domestic jurisdiction" clause, but will hear debate and then decide whether the clause bars any action the Council might contemplate taking. See L. GOODRICH, E. HAMBRO & A. SIMONS, \textit{supra} note 329, at 273-74 (discussing cases).


475. The Charter delegates competence to the Council in rather sweeping terms: it has the power to investigate, and by implication to discuss, "any dispute, or any situation which
as the United Nations, to the extent practice in the United Nations takes on the sheen of customary international law, it cannot be ignored. At the very least, past practice is illustrative of how the Council would treat a request for intervention in Northern Ireland. Significantly, then, past practice reveals the persuasiveness of the state sovereignty defense declines as the gravity of the situation increases and disappears altogether when the Council determines a threat to international peace.

A. Why the Irish Conflict Constitutes a "Threat to the Peace"

The importance of a Security Council determination that the Irish conflict represents a threat to the peace cannot be overstated. Unlike a finding of a "consistent pattern of gross violations of human rights," a threat to the peace is not a matter of concurrent jurisdiction shared by individual states and the international community. There is in the Charter's treatment of threats to the peace no analog to article 56, which permits "joint and separate action" by member states to promote human rights. Rather, the Security Council has "primary responsibility for the maintenance of international peace and security," and plenary

might lead to international friction or give rise to a dispute," U.N. CHARTER, art. 34, and the only meaningful limitations on this power are the domestic jurisdiction in article 2(7) and the provision that in discharging its duties the Council "shall act in accordance with the Purposes and Principles of the United Nations." Id. art. 24, para. 2. In practice, these have proven limitations without much teeth; studies of Council voting patterns reveal that members of the Council have "taken a broad view of the kinds of questions with which the Council may concern itself," L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 207, and "have considered that any effort by the Council to resolve a dispute or ease a situation is a legitimate exercise of its powers." Id. at 268-69. Despite appearances to the contrary, this broad usurpation of power is not inconsistent with the Council's historic reluctance to interfere in "domestic" affairs. See supra notes 338-40 and accompanying text. Rather, it reveals the political nature of Council decisionmaking. Once convinced of the political correctness of addressing a particular, purportedly "domestic" situation, Council members will go to great lengths to prevail, as illustrated by Council action on Cyprus, the Congo, Rhodesia and South Africa.

476. See, e.g., 2 U.N. SCOR (160th mtg.) at 1377-78 (1947) (Soviet representative arguing that the Council must make its determinations on a case-by-case basis and cannot bind itself in advance to consider some acts to be threats to the peace, or breaches of the peace, or acts of aggression); see also 2 U.N. SCOR (159th mtg.) at 1353 (1947).

477. See supra note 380.


479. U.N. CHARTER art. 56 (emphasis added); see id. art. 55, para c.

480. Id. art. 24, para. 1.
power to determine whether a threat to the peace exists. Any situation that in the Council's opinion threatens the peace is so palpably a matter of international concern that it constitutes a de facto exception to the "domestic jurisdiction" clause of article 2(7), and empowers the Council to take whatever measures it deems necessary to maintain or restore international peace and security, including peacekeeping.

Although there has been some debate over whether a situation must constitute a "threat to the peace," a "threat to international peace," or merely appear "likely to endanger" international peace, in practice it seems to have mattered little. Broadly speaking, there are at least three ways in which internal strife can acquire Council recognition as a threat to international peace: if it induces armed intervention by another nation, thus taking on the characteristics of an interstate war; if, in the absence of outside aggression, it constitutes a prolonged civil war; and if, though not a full-fledged civil war, it nonetheless possesses certain features likely to create international friction, including significant violation of human rights.

1. Armed Intervention

It is beyond dispute that the introduction of outside troops into an existing internal conflict without the consent of the invaded government represents a serious threat to international peace. On at least two

481. See id. arts. 34, 37, 39. This does not mean the General Assembly has no role to play. The Charter allows the Assembly to discuss, to consider, to call the Council's attention to, and to recommend action on, a threat to the peace, id. arts. 11, 14, as long as the Council has ceased to deal with the matter. Id. art. 12, para. 1. The Uniting for Peace Resolution allows the Assembly to recommend collective measures in response to threats to the peace, if the Council is paralyzed by superpower veto and transfers the matter to the Assembly. See G.A. Res. 377, 5 U.N. GAOR Supp. (No. 20) at 10, U.N. Doc. A/1175 (1950); see infra notes 644-51 and accompanying text.

482. L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 292.

483. U.N. CHARTER arts. 37, 39. Consequently, article 2(7) has had little practical effect. See L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 292-93.

484. In one Council debate, for example, the United States argued that because article 39 did not specify that the threat must be to "international" peace, wholly internal disturbances and rebellions could satisfy the requirement of a "threat to the peace," but the United Kingdom argued to be cognizable by the Council any threats to the peace must be threats to international peace. 3(2) U.N. SCOR (296th mtg.) at 2, 7 (1948).

485. See S. BAILEY, supra note 471, at 240-44; see also L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 296-97.

486. In fact, it would seem to present the more aggravated offense of breach of the peace, see 2(2) U.N. SCOR (173d mtg.) at 1692 (1947) ("If military operations by one country against another cannot be called a breach of international peace, then I am at a loss
occasions—the Belgian invasion of the Congo to "restore law and order and to protect Belgian nationals" and the Israeli invasion of southern Lebanon following the 1975-76 Lebanese civil war—the Security Council not only declared a threat to the peace, but also found the circumstances so threatening as to require physical United Nations intervention, with a considerable peacekeeping force in the first instance and with an interim force in the second.

It is less clear whether the unilateral introduction of British troops in 1969, without the approval of the Protestant government at Stormont, and their continuous twenty-one-year presence in the province, represent acts of outside aggression and therefore by definition a threat to international peace. While the so-called Irish conflict is more accurately defined as the Anglo-Irish conflict—since the principal combatants are the IRA and the British security forces—London could, if it decides to dispute United Nations jurisdiction or block Security Council action, argue that it cannot be considered an "outside" intervenor in any affair within "the United Kingdom of Great Britain and Northern Ireland," as it is officially described, for example, in the United Nations Charter. This is

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490. See supra notes 2-11 & 90-93 and accompanying text.

491. See supra notes 1 & 90-120 and accompanying text.

492. See U.N. CHARTER art. 23, para. 7. This is, of course, the exact argument Britain raised in 1969 in its attempt to defeat Ireland's proposal for United Nations intervention at that time. See 24 U.N. SCOR (1503d mtg.) at 1, U.N. Doc. S/PV.1503 (1969) ("Northern Ireland is and has long been an integral part of the United Kingdom. Events in Northern Ireland are accordingly an internal matter for the United Kingdom Government.")
especially true now that Northern Ireland is under direct political rule from London.

This argument is probably invulnerable, even though it is at least partially refuted by United Nations' precedent. The Congo had been independent for only ten days when Belgian troops returned. The Treaty of Friendship between the two countries established Belgian bases within the Congo and allowed Belgian troops to assist the Congolese government in maintaining law and order. This did not prevent the United Nations from treating the Belgian incursion as a threat to international peace, and within forty-eight hours the first United Nations peacekeepers landed in the Congo. In the case of Cyprus, the mere threat of a Turkish invasion was considered by the Council to be a "likely" threat to international peace and security sufficient to justify United Nations peacekeeping intervention even though Turkey was bound by treaties establishing the Cypriot Republic to station troops on the island and to intervene under certain conditions.

Distinguishing the Council resolutions on, and consequential peacekeeping operations in, the Congo and Cyprus from the Council's potential treatment of Northern Ireland, however, is the crucial fact that neither "invading" party in the prior cases, Belgian and Turkey, contested United Nations intervention. If Britain did so in regard to Northern Ireland, it is quite likely the Council would be reluctant to base action on British armed intervention in the province and would require something more.

493. *Blue Helmets*, supra note 21, at 218.


495. See supra notes 487-88 and accompanying text.

496. *Blue Helmets*, supra note 21, at 222.

497. See S.C. Res. 186, 19 U.N. SCOR Res. & Dec. (1102d mtg.) at 2, U.N. Doc. S/INF/19/Rev.1 (1964) (considering "the present situation with regard to Cyprus is likely to threaten international peace and security").


499. France's ability to convince the Council not even to discuss the often violent problems in its North African colonies, especially Algiers, is perhaps the best example, see supra note 472, although the General Assembly's refusal to criticize the United States in response to the Bay of Pigs invasion of Cuba is also illustrative. See G.A. Res. 1616, 15 U.N. GAOR Supp. (No. 16A) at 3, U.N. Doc. A/4684/Add.1 (1961).
2. Civil War

It would seem beyond dispute that, in the words of Louis Sohn, "every civil war, if not ended quickly, is likely to become a threat to the peace, and the United Nations would be entitled to step in to remove such a threat." Several empirical studies conducted during the 1970s supported Sohn’s theory. They revealed that the more intense the internal conflict the more likely ultimate foreign military intervention, with a consequential escalation of repression against internal opposition groups. It is simply unreasonable to argue that civil wars do not carry international repercussions in an increasingly interdependent world awash with ideological, strategic and regional alliances implicated in most, if not all, civil conflicts.

United Nations practice is in accord. While the original United Nations foray into the Congo was in response to the Belgian incursion, subsequent resolutions, and the continued presence of the United Nations peacekeeping force even after Belgium withdrawal, were premised on the threat to international peace presented by the ongoing civil war within the Congo, including the secessionist activities in the Katanga province. Similarly, the United Nations refused to categorize the armed conflict arising out of Biafra’s attempts to secede from Nigeria as solely a matter of domestic jurisdiction. By most definitions except Great Britain’s,

500. Sohn, supra note 471, at 215.
501. See Rasler, Internationalized Civil War: A Dynamic Analysis of the Syrian Intervention in Lebanon, 27 J. CONFLICT RESOLUTION 421, 422 (1983) (collecting studies); see also 1 S. BAILEY, supra note 304, at 20 (noting eight examples in the post-World War II era where “external intervention ha[d] the effect of making the [erstwhile internal] conflict a matter of international concern”).
503. See generally S. BAILEY, supra note 471, at 141-43 (showing how the world is influenced by various ideological blocks).
505. The vast majority of countries to address the Nigerian civil war in General Assembly debates called for international intervention to halt the slaughter. See, e.g., 24 U.N. GAOR (1760th mtg.) at 2, U.N. Doc. A/PV.1753-1773 (1969) (“We must devise means of restoring the peace . . . without infringing the right of non-intervention.”) (statement of Dominican Republic); id. (1763d mtg.) at 14 (“The United Nations has no excuse for standing idly by.”) (statement of Tanzania); id. (1765th mtg.) at 11 (“How can we preserve the fiction of the internal nature of conflicts such as that between Nigeria and Biafra . . . ?”) (statement of Belgium); id. (1769th mtg.) at 8 (“The principle which induces some countries to ignore this tragedy, on the pretext that it is simply a matter for
the two decade-old conflagration in Northern Ireland is a civil war.\textsuperscript{506} The Institute of International Law has defined "civil war" as an armed conflict between an established government and one or more insurgent movements whose aim is to overthrow the government or the political, economic or social order of the state.\textsuperscript{507} Although mere disorders and rioting are insufficient to qualify as civil war,\textsuperscript{508} the battle between the IRA and the British army and British-backed militia and police, as well as the Protestant paramilitarists, has involved numerous bombings, mortar attacks, military ambushes and occupations of towns or sections of cities by both sides.\textsuperscript{509} Simply put, representatives of a significant portion of the minority community in Northern Ireland have arisen in arms against the state, a classic condition of civil war,\textsuperscript{510} and the interminable nature of the uprising has placed it among the world's most notorious "war zones."\textsuperscript{511}

It is therefore entirely plausible that the Security Council would consider the Ulster crisis to be a civil war and, accordingly, a threat to
international peace.

3. Internal Friction Shy of Civil War

There is also widespread support for the proposition that internal strife that has yet to ripen into civil war represents a significant threat to international harmony under certain conditions fairly universal to most modern insurgencies. The Office of the United Nations Legal Counsel has identified seven factors, any one of which can thrust an internal conflict into the international arena:  

1. The occurrence of major acts of international outrage during the course of the conflict;
2. The size, intensity and length of the conflict;
3. The likelihood of outside intervention;
4. The spillover of the dispute across international borders;
5. The classification of the dispute as a colonial conflict;
6. The significant violations of human rights; and
7. The subjection of some parts of the dispute to international agreements.

United Nations practice has affirmed most of these.

Perhaps the most significant Security Council action regarding an internal disorder that may or may not have fallen shy of true civil war was its reaction to the crisis in Cyprus. In its earliest stages, when the Security Council acted, that episode consisted of severe intercommunal strife between Greek and Turkish Cypriots in the form of rioting and other disturbances, wholly contained on that island. Prompted by both concern for the serious violations of human rights occurring on the island and by the likelihood of invasion by Turkish armed forces, the Security Council declared a "likely" threat to the peace and, at Britain's urgent request, created a peacekeeping force there. Concern for human rights has also been at the core of Security Council resolutions decrying threats to the peace in South Africa and Rhodesia. Acts of inter-

512. Szasz, supra note 404, at 346-50.
513. Id.
514. See infra notes 845-53 and accompanying text.
515. See infra notes 850-53 and accompanying text.
national outrage, such as the Sharpeville massacre in South Africa, have been determined by the Council to lead to “international friction” and, if continued, to “endanger international peace and security.”

Several internal disputes have spilled across international borders, prompting Council resolutions condemning the act as a threat to the peace, and several of the previous United Nations peacekeeping forces or observer missions were dispatched to internal disputes subject to international instruments. Since the 1960 adoption by the General Assembly of its decolonization resolution, it is impossible for the United Nations to characterize any uprisings against colonial powers as “domestic.” A “colonial revolution is now legally as well as practically a matter of concern to the whole community,” and its suppression a threat to the peace as a matter of international law.

To the seven factors set forth by the United Nations Legal Counsel against the black majority as a “threat to international peace”:


524. Sohn, supra note 471, at 209.

525. See S.C. Res. 435, 33 U.N. SCOR Res. & Dec. (2087th mtg.) at 13, U.N. Doc. S/INF/34 (1978) (condemning South Africa’s efforts to prevent Namibian independence). “Since the adoption of the Declaration . . . there has been a tendency in the Assembly in particular, to consider that no aspect of ‘colonialism’ should be treated as a matter falling ‘essentially’ within the domestic jurisdiction of a state.” L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 70; see also Szasz, supra note 404, at 349-50.
and upheld by practice, the Security Council has added an eighth. Early in the organization's existence a majority of the Council members found support by Albania, Bulgaria and Yugoslavia for armed bands operating inside Greece constituted a "threat to the peace," indicating that foreign support for guerrilla organizations operating within the country threatens international peace. The following year the United States reiterated this assessment during Council deliberations and this interpretation has been expanded by an outside study reporting that internal insurgency is especially likely to produce international fallout when it is linked to a revolutionary movement.

In an organization historically reluctant to intrude on allegedly domestic domain, it is foolhardy to suggest that the existence of one, some, or all of these eight factors would automatically result in the Security Council finding a threat to the peace requiring United Nations action. On the other hand, the greater the number of factors present in any given internal conflict, the higher the international political pressure upon the Security Council not to wish it away as a matter essentially of domestic concern. It should be significant, therefore, that the conflict in Northern Ireland bears all eight characteristics.

Major acts of international outrage have become almost commonplace in the War of Ireland. The related second and sixth factors—the size, intensity, and length of the conflict and its consequences for human rights, respectively—are clearly extant in this latest round of Northern Ireland's troubles, with its twenty-one years, 3,000 deaths, 30,000 injuries and countless abuses of human rights. As for the third and fourth characteristics, it is by now well-accepted that serious escalation of the fighting in the North would force the Irish Republic to intervene by sending troops

526. See 2(2) U.N. SCOR (170th mtg.) at 1604 (1947); 2(2) U.N. SCOR (188th mtg.) at 2098 (1947).
527. See 3(2) U.N. SCOR (298th mtg.) at 7-9 (1948) (statement of the United States representative).
528. F.S. Northedge, The Use of Force in International Relations 115-16 (1974); see also I S. Bailey, supra note 304, at 20-21 ("International peace has often been endangered by ... dissident political organizations, insurgent groups, liberation movements, communal minorities and the like.").
529. A far-from-exhaustive list would include: the Battle of the Bogside; internment; Bloody Sunday; Bobby Sands and the prison hunger strike deaths; revelations of the use of torture by security force personnel; the Birmingham Six, Guilford Four and McGuire Seven; innumerable IRA attacks; Protestant death squad atrocities; shoot-to-kill; the Brighton Hotel; the Stalker Affair; Enniskillen; Gibraltar; the 1988 funeral slayings. See supra notes 1-3, 29-42, 101-11, 118-19, 132, 160-62, 169-75, 181-83, 208-12 & 271-74 and accompanying text; infra notes 566-72 & 684 and accompanying text.
530. See supra notes 12 & 149-229 and accompanying text.
across the border, a border that has been consistently violated by the IRA, the RUC and the British army. Indeed, the European Court on Human Rights has already concluded that border raids conducted by the IRA pose a threat to international peace.

The Irish conflict has also spawned a series of grisly attacks on the English mainland and the European continent, one part of what many Catholics believe is a struggle to end more than 800 years of colonial oppression. Beyond the conventions and declarations that the United Nations has promulgated, the Northern Irish situation is subject to two other international agreements. The European Convention constrains Britain's treatment of the rebellious population and the rebels themselves, as the opinions of the European Commission and Court of Human Rights condemning British practices makes clear, and the 1985 Hillsborough Treaty between Ireland and Britain is directed specifically at resolving the Anglo-Irish conflict. Finally, leaders of the provisional republican movement have reportedly met with leaders of the Basque Revolutionary Party and the Portuguese Workers’ Unitary Organization to draw guidelines for a revolutionary strategy to combat NATO and the European

531. See R. Rose, supra note 3, at 374; see also notes 295-308 and accompanying text.


533. The Lawless Case, 1 Eur. Ct. H.R. (ser. A) at 56 (1961) (IRA raids threatened not only peace within Northern Ireland, but also the external relations of the Republic of Ireland, and thus constituted a threat to the life of that nation).

534. See, e.g., J. Conroy, supra note 3, at 212 (describing 1982 Hyde and Regents Parks bombings that killed 11 soldiers and seven horses); C. Mullin, supra note 181, at 1-7 (describing 1974 Birmingham pub bombing that killed 21 and injured 162); infra text accompanying note 684 (discussing 1984 Brighton Hotel bombing that narrowly missed killing Prime Minister Thatcher); 3 British Servicemen Killed, supra note 38, at A1, col. 6 (reporting bombing in Netherlands); Rule, Tory Legislator, Foe of the I.R.A., Is Killed by Bomb, N.Y. Times, July 31, 1990, at A1, col. 3 (reporting London bombing that killed close Thatcher ally); Rule, Four I.R.A. Suspects Seized in Europe, N.Y. Times, June 20, 1990, at A3, col. 4 (reporting recent attacks in West Germany, Netherlands and England); Whitney, supra note 284, at A1, col. 3 (reporting mortar attack on office of British prime minister); Schmidt, supra note 284, at A1, col. 3 (reporting rail terminal bombings in London).

535. After bombing a British base in central England in February 1989, the IRA announced that, “[w]hile Britain maintains its colonial grip on the north of Ireland, the I.R.A. will continue to strike at those who oversee and implement British Government policy in our country.” Rule, British Base Is Bombed; Soldiers Unhurt, N.Y. Times, Feb. 21, 1989, at A3, col. 4; see also supra notes 53-74 and accompanying text.

536. See supra notes 108-09 & 208-11 and accompanying text.

Economic Community. They have also drawn support and shelter from extremist groups in West Germany and Belgium, and have received huge munitions shipments from Libya, including anti-aircraft missiles and Czech-made Semtex explosives, the vast volume and enhanced efficiency of which have armed the IRA with the terrifying potential to markedly escalate and extend its offensives. The avowedly Marxist Irish National Liberation Army (INLA) has been linked to the Soviet Union, received arms exclusively from Soviet bloc countries and apparently pooled information with terrorist organizations in West Germany, Holland and Italy, developments one British researcher called "cause for concern" and "the catalyst for internationalising the Irish conflict." On the Protestant side, the British recently uncovered a plot by South African diplomats to sell arms to unionist paramilitarists.

Under United Nations policy and precedent, then, it simply cannot be denied that the troubles of Northern Ireland, whether "war" or something less, present a clear and present danger to peace among, and within, nations. The evidence is overwhelming that in Northern Ireland the primary objective of United Nations peacekeeping—to promote conditions for pacific settlement by preventing the conflict from attracting foreign involvement and thereby precluding an otherwise localized struggle from potentially evolving into broader, even international, conflict—cannot be assured absent United Nations intervention.

Yet, political concerns often cloud policy and precedent and blind the

539. See Raines, supra note 39, at A4, col. 5; 3 British Servicemen Killed, supra note 39, at A1, col. 6.
541. See id.; Mallie, supra note 132, at 7. The British government expressed alarm at the weaponry provided to the IRA by Libyan leader Col. Moammar Khadafy, Northern Ireland secretary King explaining that "[t]he interjection by Colonel Khadafy of more powerful explosives and additional weapons may have given some people the idea that somehow violence can actually win." IRA's New Bombing Threat, San Francisco Chron., Aug. 26, 1988, at A22, col. 1.
543. Id. at 23.
545. D. ZIEGLER, supra note 471, at 321.
546. See Claude, supra note 338, at 52. This is especially true in Northern Ireland because the mere continuance of the conflict prolongs the very real threat that one of Ulster's periodic escalations might exceed internal control and force the Republic of Ireland to intervene, as it nearly did in 1969.
Council, or some of its members, to the evidence. It is worth emphasizing, then, the extent to which the current situation in Northern Ireland is unacceptable if for no other reason than the human rights violations occurring there.

B. Human Rights Abuses in Northern Ireland
   Demand United Nations Attention

Violations of human rights, even on a mass scale, have never alone been sufficient to provoke the Security Council or the General Assembly to invoke the peacekeeping alternative. Although preventing further deprivation of basic rights undoubtedly played a significant role in prompting United Nations intervention in Cyprus, the Congo and, much belatedly, Bangladesh, these actions were all justified primarily by foreign aggression or other threats to the peace. When faced with severe abuses of fundamental rights absent such aggression or threats, the Security Council and General Assembly have limited themselves to attempting to coerce compliance with international law through external measures, such as embargoes and sanctions, which have proven largely ineffective in curbing such abuses in any sort of timely manner.

The point of this portion of the Article is not that the United Nations should invoke peacekeeping in response to every widespread violation of human rights, although a strong argument can be made that such a step is necessary and proper, at least where practicable, to allow the United Nations to fulfill its mandate of promoting universal respect for human rights.


548. See supra notes 415-20 (Rhodesia), 421-22 (South Africa) and accompanying text.


550. U.N. CHARTER art. 1, para. 3, & arts. 55-56; see supra notes 430-68 and
Ireland is likely in the near-term to provoke the Republic of Ireland to send its troops across the border; clearly Ireland has no intention of doing so absent considerable escalation of the violence. Rather, my purpose is simply to point out that deprivation of fundamental human rights will continue on a significant scale in Northern Ireland absent United Nations intervention and that these violations cannot be justified by the British government as required by the exigencies of the situation.

1. Nonderogable Rights

There are, of course, "a number, albeit a small one, of international obligations which, by reason of the importance of their subject-matter for the international community as a whole, are—unlike the others—obligations in whose fulfillment all States have a legal interest." These have been described by the International Court of Justice, in the phrase made famous by the Barcelona Traction case, as "droits fondamentaux de la personne"—the basic rights of the human person. Despite their differences, the secretaries of state for both the Nixon and Carter administrations agreed that there are standards below which no government can fall without offending fundamental values, such as genocide, officially tolerated torture, mass imprisonment or murder, or the comprehensive denial of basic rights to racial, religious, political or ethnic groups. "Any government engaging in such practices must face adverse international judgment."
Neither the International Covenant on Human Rights nor its European counterpart countenance suspension of certain of these rights even in times of war or national emergencies. Immune from state violation under any conditions are the right to life; freedom from torture, inhuman or degrading treatment or punishment; freedom from slavery or servitude; and prohibitions against ex post facto laws or punishment, among others.

Conversely, both the international and the European covenants allow derogation in times of emergency from a state's obligation to protect individual liberty by allowing states to conduct arbitrary arrests, detentions and irregular trials. While a strong case can be made that certain minimum due process protection should be nonderogable, it is enough political liberties 

556. See International Covenant, supra note 33, art. 4; European Convention, supra note 34, art. 15.

557. See International Covenant, supra note 33, arts. 4, 6; European Convention, supra note 34, arts. 2, 15 ("except in respect of deaths resulting from lawful acts of war").

558. See International Covenant, supra note 33 arts. 4, 7; European Convention, supra note 34 arts. 3, 15.

559. See International Covenant, supra note 33, art. 4 & art. 8, para. 1; European Convention, supra note 34, art. 4.

560. See International Covenant, supra note 33, arts. 4, 15; European Convention, supra note 34, arts. 7, 15.

561. The International Covenant also forbids derogation from the freedom from imprisonment for failing to fulfill contractual obligations, International Covenant, supra note 33, art. 11; the right to be recognized as a person before the law, id., art. 16; and freedom of thought, conscience and religion, id., art. 18, para. 1.

562. See id., arts. 4, 9; European Convention, supra note 34, arts. 5, 15.

563. The loophole allowing derogation has been much criticized, for it is during episodes of internal crisis that the rights to liberty and security are most vulnerable. The most frequently invoked rationale for derogation from due process obligations has been internal political unrest, see, e.g., U.N. Hum. Rts. Comm., U.N. Doc. CCPR/C/6/Add. 10 (1983) (notification by Dominican Republic of intent to derogate from International Covenant) (citing "widespread acts of terrorism"); U.N. Hum. Rts. Comm., U.N. Doc. CCPR/C/2/Rev.1 at 40-42 (1976, 1984) (notifications by Chile of intent to derogate from International Covenant) (citing "extremist seditious groups whose aim is to overthrow the established Government"), including Britain's derogation in Northern Ireland, id. at 57 (1976) (notification by Britain of intent to derogate from International Convention) (citing "campaigns of organized terrorism related to Northern Irish Affairs"); Whitney, supra note 212, at 4, col. 1 (announcing derogation from European Convention) (citing "the threat of terrorism in Northern Ireland"). Yet denial of fair hearings to those charged with security offenses or tried before nontraditional tribunals, such as the Diplock courts, see supra notes 188-89 and accompanying text, and maltreatment of those arrested, detained and imprisoned under such circumstances, "are among the most pervasive abuses during [these] states of
for purposes of this Article to recognize that under international law, detention in a manner requiring derogation from the human rights covenants is only permissible if "the person concerned constitutes a clear and serious threat to society" and that threat "cannot be contained in any other manner."\textsuperscript{564}

2. Nonderogable Rights Are Violated in Ulster

The evidence suggests that the British have reneged on their obligations to refrain from murder, torture, inhuman treatment and arbitrary and unlawful denial of liberty in Northern Ireland.\textsuperscript{565} Great Britain has also

emergency." Hartman, Working Paper for the Committee of Experts on the Article 4 Derogation Provision, 7 HUM. RTS. Q. 89, 120 (1985). Thus minimum due process is widely considered essential during states of siege to prevent murder, torture and other ill-treatment of prisoners and detainees. See RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED) § 702 comment n, Reporter's Note 10 (Tent. Final Draft 1985) [hereinafter DRAFT RESTATEMENT] (listing the right to be free from "prolonged arbitrary detention" among preemptory norms such as the rights to be free from murder and torture); The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 7 HUM. RTS. Q. 1, 12 (1985) (Principle 70); INT'L COMM'N OF JURISTS, supra note 224, at 42-43; DWORKIN, TAKING RIGHTS SERIOUSLY 203-04 (1977); J. NICKEL, supra note 343, at 42, 52, 111; H. SHUE, BASIC RIGHTS 19-21 (1980); Beitz, Human Rights and Social Justice, in HUMAN RIGHTS AND U.S. FOREIGN POLICY, supra note 343, at 45, 51-61; Meron, On a Hierarchy of International Human Rights, 80 AM. J. INT'L L. 1, 11 (1986); Hartmann, supra, at 120; Kissinger Statement, supra note 555, at 3; Vance Address, supra note 466, at 1 (violations "of the integrity of the Person" include "arbitrary arrest or imprisonment").

564. The Campora Schweizer Case, HRC/66/1980, U.N. Doe. A/38/40 Annex VIII at 122 (1983). The extent of Britain's derogations in Northern Ireland, especially of the rights to free speech, association and political participation, seems to exceed the proportionality requirement of both the International and European Conventions. See International Covenant, supra note 33, art. 4, para. 1 (derogation only proper to the extent "strictly required by the exigencies of the situation"); European Covenant, supra note 34, art. 15, para. 1 (same). For example, there is no evidence that banning interviews with republican politicians is "strictly required by the exigencies of the [Northern Irish] situation." Actually, the nearly universal opinion of those outside the British government is that such a measure, and others directed at limiting or eliminating political representation for the Northern Irish who support the republican movement, will only help the IRA. See Northern Ireland: Whose Oxygen?, supra note 199, at 63. But see Wilkinson, Northern Ireland: Freedom vs. Law and Order, N.Y. Times, Nov. 27, 1988, at A27, col. 4.

565. See supra notes 101-19, 149-89, 208-12 & 220-29 and accompanying text. Other rights, such as the right to be free from discrimination, the right to speak and associate freely, and the right to participate in the political decisionmaking are also denied in Northern Ireland. See, e.g., Elected Authorities (Northern Ireland) Act, 1989 (political participation); Prevention of Terrorism (Temporary Provisions) Act, 1989, pt. I (association); K. BOYLE & T. HADDEN, supra note 14, at 76 (political participation); J.
proven incapable of protecting the Northern Irish from widespread acts of murder, torture and inhuman treatment perpetuated not by the government, but by individuals and private groups aligned either with the government or against it. 566 Given Britain's unwillingness to accede to repeated calls by Amnesty International to review and revise its laws so as to better safeguard basic human rights of security and liberty, 567 its insistence that security forces are neither guilty of rights abuses nor of sparking abuses by the paramilitaries on both sides 568 and recent actions by the Thatcher administration and Parliament designed to further curtail the enjoyment in Ulster of basic rights, 569 there is strong reason to believe, as Amnesty International concluded in 1988, that human rights violations will continue to occur in Northern Ireland. 570 The British government attempts to justify the deprivation of basic rights within Northern Ireland on grounds of national security. National security, however, can never justify unlawful killings. 571 Few of the killings committed by the security forces, and none of the killings and maimings carried out by republican or Protestant paramilitarists, are lawful. Any killing, even ones in defense of "national security," violates the European Convention unless the consequence of a lawful act of war, 572 or of a lawful "use of force which is no more than absolutely necessary" to prevent unlawful arrest,

566. See, e.g., Aitken, The Handbag Diplomat's Obsession, Manchester Guardian Weekly, Dec. 11, 1988, at 6 (John Hume, head of the Catholic SDLP, calling the IRA the greatest violator of human rights in Northern Ireland). Beyond the murderous sectarian warfare that has killed hundreds of combatants, and caught hundreds of civilians in the crossfire, see supra notes 112-20, 160-62, 236-40, 263-65, 272-83 & 529-34 and accompanying text; infra note 811 and accompanying text, "paramilitary gun squads throughout the province have shot more than 1,500 people and in other ways assaulted at least another 850 as punishment for 'anti-social behavior'" as the Catholic and Protestant paramilitaries act as unofficial but brutal police forces in their respective communities. Pogatchnik, Harsh Brand of Justice in Belfast, San Francisco Chron., Dec. 5, 1990, § Z-1, at 1, col. 1; see infra note 822 and accompanying text.


568. See infra note 595 and accompanying text.

569. See supra notes 195-202 and accompanying text.

570. See AMNESTY INT'L, KILLINGS BY SECURITY FORCES, supra note 42, at 2.

571. See International Covenant, supra note 33, arts. 4, 6; European Convention, supra note 34, arts. 2, 15.

572. Id. art. 15, para. 2.
to effectuate a lawful arrest, prevent an unlawful escape or lawfully quell an insurrection. The shooting of unarmed suspects is unlawful under both domestic and European human rights law. The International Covenant is far more restrictive; it admits of no exemption from the government's responsibility to prevent the violent death of its residents, save only for lawful executions of death penalties pursuant to final judgments of a competent court.

The covenants also forbid derogation from the prohibition against any form of torture or inhuman, cruel or degrading treatment, or maltreatment, of prisoners. Therefore, while the prohibition against arbitrary arrest, detention and other denials of due process is derogable, the

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573. Id. art. 2, para. 2.
574. British law violates Britain's obligations under the European Convention by allowing the use of force not only where absolutely necessary, as required by article 2(2) of the Convention, but also where "reasonable in the circumstances," a less exacting limitation on the official use of force. See Criminal Law Act, § 3, para. 1 (N. Ir. 1967); Stewart v. United Kingdom, 39 Eur. Comm'n H.R. 162, 170-71 (1982) (European Commission on Human Rights noting that "absolutely necessary" is more strict than "reasonable"). Northern Irish courts have held army and police use of lethal force is reasonable if a person suspected of a minor, non-violent offense refuses to stop for questioning, as long as the soldier or police officer believes the failure to stop indicates the individual might commit more serious crimes at some point in the future. See Attorney-General for Northern Ireland's Reference (No. I of 1975), [1977] H.L. (N.I.) 105, 135, 138 (per Lord Diplock); Lynch v. Ministry of Defense, [1983] N.I. 216 (Q.B.D.). Worse, Ulster's courts have held that circumstances to be considered in determining whether the use of force was reasonable includes the "general wartime situation," the local terrain, that the area was hostile to the security forces, evidence of IRA activity and the likelihood of ambush. R. v Jones, [1975] 2 N.I.J.B. at 18. Moreover, a soldier's or police officer's testimony that he believed his actions required by his sense of duty is considered compelling evidence of reasonableness. Id at 22; see Jennings, supra note 31, at 111. Thus, under the law, soldiers and police are "encouraged to make a 'pre-emptive strike' rather than to await the threat of imminent violence." G. Hogan & C. Walker, POLITICAL VIOLENCE AND THE LAW IN NORTHERN IRELAND 66 (1989). Even under this relaxed standard of reasonableness, many of the alleged shoot-to-kill incidents involved use of excessive force, unreasonable under the circumstances, and therefore unlawful. The Gibraltar Three, for example, were apparently attempting to surrender, and were not attempting to flee, when shot and killed. See supra note 38; see also AMNESTY INT'L, KILLINGS BY SECURITY FORCES, supra note 42, at 3, 59-60. For those who wish to draw their own conclusions, see concise summaries of the circumstances surrounding 32 alleged shoot-to-kill incidents, involving 49 victims, in id. at 17-58. Of course, if these killings were unreasonable, they could not have been "absolutely necessary," and thus violated the European Convention.

575. International Covenant, supra note 33, art. 4, para. 2 & art. 6.
576. See supra note 558 and accompanying text.
577. Derogation is valid only upon immediate and proper notification. International Covenant, supra note 33, art. 4, para. 3; cf. art. 15, para. 3 (requiring full notification);
The rights of these detainees to security of the person are not. The evidence indicates not only that Britain was guilty in the past of severe maltreatment.

The Lawless Case, 1 Eur. Ct. H.R. (ser. A) at 62 (1961) (implying that European Convention requires notification be "without delay"). The British recently took steps—after the European Court's ruling in Brogan & Others v. United Kingdom finding that detention as used in Northern Ireland violated international law—to derogate from its obligations under the European Convention to forbid unlawful detention. See supra note 212 and accompanying text. The European Convention permits derogation in cases of a "public emergency threatening the life of the nation," European Convention, supra note 34, art. 15, and the Northern Irish crisis likely qualifies. See Lawless, 1 Eur. Ct. H.R. at 472-74 (defining public emergency as "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed"); Whitney, supra note 212, at 9, col. 3 ("Thatcher's Government argues that I.R.A. terrorism is such a threat and it is treated as such in the British press."). By requiring immediate notification, however, both the drafters of the International Covenant and the justices of the European Court perceived a need to guard against arbitrary and ex post facto justifications offered by a government for depriving its citizens of liberty and other basic rights. Hartman, supra note 563, at 99-100; see Lawless, 1 Eur. Ct. H.R. at 62 (finding sufficient a notice of derogation filed within 12 days of nonconforming act coming into force). Britain's belated notification of its derogation from the European Convention's prohibition against lengthy detentions seems violative of this requirement. Similarly, Britain's 1977 derogation notice to the United Nations Human Rights Committee regarding Northern Ireland stated:

The Government of the United Kingdom has found it necessary (and in some cases continue to find it necessary) to take powers, to the extent strictly required by the exigencies of the situation, for the protection of life, for the protection of property, and the prevention of powers of arrest and detention and exclusion. In so far as any of these measures is inconsistent with the provisions of Articles 9, 10.2, 10.3, 12.1, 14, 17, 19.2 [right to freedom of expression], 21 [right of peaceful assembly] or 22 [right to freedom of association) of the [International] Convention, the United Kingdom hereby derogates from its obligations under those provisions.

U.N. Hum. Rts. Comm, U.N. Doc. CCPR/C/2/Rev.1 at 57 (1976). This notification was not only six years late, but it has been criticized as "wholly inadequate" because it gave "no explanation of the extent, duration, or scope of the limitations." Hartman, supra, at 100. The United Nations Human Rights Committee has on several occasions refused to treat as legitimate any derogation not supported by "submissions of fact or law to justify such derogation." The Garcia Case, HRC/8/1977, U.N. Doc. CCPR/C/OP.1, at 48; The Weinberger Case, HRC/28/1978, U.N. Doc. CCPR/C/OP.1, at 60; see also The Salgar de Martejo Case, HRC/64/1979, U.N. Doc. CCPR/C/OP.1, at 129 ("[T]he Committee is of the view that the State party, by merely invoking the existence of a state of siege, cannot evade the obligations which it has undertaken by ratifying the Covenant. Although the substantive right to take derogatory measures may not depend on a formal notification being made pursuant to article 4(3) of the Covenant, the State party concerned is duty bound . . . to give a sufficiently detailed account of the relevant facts to show that a situation of the kind described in article 4(1) of the Covenant exists in the country concerned.").
of prisoners and detainees, but also that such violations continue. Moreover, the British government does not usually present evidence establishing that those detained in derogation of the European and international covenants "constitute a clear and serious threat to society" or that this threat "cannot be contained in any other manner."

3. The Persistent Violations of Rights in Ulster Breach Britain's International Obligations

The United Nations Charter mandates international protection of fundamental rights and in 1968, the British representative, in arguing for a United Nations response to an escalation in the then four-year-old Cyprus crisis, told the General Assembly that "Article 56 of the Charter makes it clear that no country can say that the human rights of its citizens are an exclusively domestic matter. A country that denies its citizens the basic human rights is by virtue of Article 56 in breach of international obligation." The International Court of Justice has said that the "basic rights of the human person" create obligations erga omnes, to be protected by states regardless of the nationality of the victim. The United Nations' subcommittee on human rights has proclaimed "consistent patterns of gross violations of human rights" to constitute violations of customary international law, and the draft Restatement of the Foreign Relations Law of the United States, expounding on the United Nations' position, recognizes that "some rights are fundamental and intrinsic to human dignity, and consistent patterns of violations of such rights as state policy may be deemed 'gross' ipso facto."

More specifically, the International Court has considered the Iranian government to be bound not to take internal action against United States citizens at odds with the "imperative character of [its] legal obligations," a United Nations report has indicated that Chile cannot allow the deaths of detainees at the hands of government officials to go

578. See supra notes 108-09 & 220-29 and accompanying text.
580. See U.N. CHARTER arts. 1, 55, 56.
584. DRAFT RESTATEMENT, supra note 563, § 702 comment.
unpunished without violating its "international responsibilities, especially in regard to the Geneva Convention," and the International Law Commission has drafted articles on state responsibility which provide that "a state of necessity may not be invoked by a State as a ground for precluding wrongfulness . . . if the international obligation with which the act of the State is not in conformity arises out of a preemptory norm of general international law." These statements indicate that when a government carries out counterinsurgency measures over a sustained period of time that result in frequent violations of the right to security and liberty or other fundamental rights, as the British government has done in Northern Ireland, then that government stands in breach of customary international law, and of its obligations under international agreements to which it is a party.

4. The Inadequacy of Internal Safeguards in Northern Ireland

It has been argued that international intervention is unwarranted if there is evidence indicating that internal change or non-intrusive external forces might ameliorate an abusive internal situation. Whatever the merits of this argument, the evidence with respect to Northern Ireland offers little hope for either alternative.

The Northern Irish have repeatedly employed means of self-help in attempts either to end the conflict or to eradicate its roots and have repeatedly been rebuffed by force and by fierce hatred. The civil rights movement of 1968-69 provoked extreme, violent Protestant reaction but produced only limited reforms. The 1976 nonviolent Peace People Movement attempted to end the Irish conflict, but floundered within months of the Nobel Peace Prize being bestowed upon its founders. In the last two years, sectarianism has been blamed for the breakdown in secret talks between Protestant and Catholic politicians that were intended to pave the way for negotiations aimed at eventually ending the stalemated


588. See Meron, supra note 563, at 6.

589. See supra notes 446-65 and accompanying text.


591. See supra notes 80-89 and accompanying text.

592. S. BELFRAGE, supra note 30, at 186-88; Clines, The Laurels of Peace Were Green (for a Season), N.Y. Times, May 2, 1988, at A4, col. 1. For a more detailed review of the Peace People Movement, founded by two Belfast women, Mairead Corrigan Maguire, and Betty Williams, see K. KELLEY, supra note *, at 252-57.
situation. It therefore is not remarkable that when asked in a recent poll “are there any events that now give you hope for the future here,” fully two out of three Northern Irish surveyed could think of no hopeful indicia whatsoever.

The sheer length of the conflict, the inability of Great Britain to curtail the causes of the conflict or its casualties and the unwillingness of the Thatcher government to abide by minimum international standards of behavior—indeed, its insistence in the face of overwhelming evidence that its actions are consistent with those standards—reveal not only that the British regime is unlikely to end the crisis on its own within the near future, but is also unlikely either to end its own consistent policy and practice of abuse or to prevent violent acts by Catholic and Protestant paramilitarists.


594. Wilson, Poll Shock for Accord, supra note 252, at 6. Aware, perhaps, that the aforementioned “talks about talks” would bear little fruit, only 11% thought them to be an optimistic event. Id.

595. See AMNESTY INT’L, KILLINGS BY SECURITY FORCES, supra note 42, app. (letter from the secretary of state for Northern Ireland insisting British policy conforms to international law and denying any need for further safeguards in respect to security force killings in Northern Ireland); AMNESTY INT’L, N. IR. MISSION, supra note 225, at 4-7 (RUC maintaining that allegations of abuse of prisoners was nothing more than a concoction of the IRA); Clines, supra note 175, at 1, col. 4 (chief of the RUC charging that John Stalker’s revelations of an RUC cover-up of potential shoot-to-kill incidents were “untruths and distortions”).

As noted above, supra note 163-75 and accompanying text, the security forces are utterly unwilling to police themselves; nor are the courts likely to curtail administrative or legislative excesses. According to Richard Shepard, a Conservative Party member of Parliament, “What I’m wary of is that our courts have lost their feel for being a check on government actions, and that there really aren’t any others.” Whitney, supra note 205, at 2, col. 1. The European Court’s decision against the government in Brogan “very clearly shows that there’s no machinery in our own country to insure such rights, or redress for their violation.” Whitney, European Court Finds British Law on Detention a Breach of Rights, N.Y. Times, Nov. 30, 1988, at A1, col. 5. In one case, for example, the trial judge acquitted three RUC officers charged with murdering three unarmed Catholic men, whose car the officers sprayed with 56 bullets (out of 109 fired by the policemen), after the trial judge held the policemen “absolutely blameless” and commended the officers for “courage and determination in bringing the three deceased men to justice, in this case, to the final court of justice.” R. v. Montgomery & Others, [1984] 4 N.I.J.B. 65. Perhaps the most blatant example of the courts’ unwillingness to check security force abuse was given by Lord Justice Denning, who rejected pleas by the Birmingham Six that the Court of Appeal allow the Six to present new evidence that they had been assaulted during police interrogation because:

If the six men win, it will mean that the police were guilty of perjury,
Economic sanctions would seem to offer no better chance of success. The Thatcher Government proved itself largely immune to international pressure regarding human rights in Northern Ireland.596 Moreover, it is all but certain that key nations such as the United States and France would refuse to partake in such punitive action. If the United Nations has a difficult time enforcing sanctions against a pariah nation such as South Africa,597 it is difficult to believe it would fare better taking on a

that they were guilty of violence and threats, that the confessions were involuntary and were improperly admitted and that the convictions were erroneous. That would mean the Home Secretary would either have to recommend they be pardoned he would have to or remit the case to the Court of Appeal . . . . This is such an appalling vista that every sensible person in the land would say: It cannot be right that these actions go any further. They should be struck out . . . . [T]he actions should be stopped.

Mcllkenney v. Chief Constable, [1980] 2 All E.R. 227, 239-40; [1980] 1 Q.B. 283, 323; aff'd, Hunter v. Chief Constable, [1982] A.C. 529 (H.L.); see Ross, Strife Tests British Justice, San Francisco Exam., Jan. 30, 1989, at A1, col. 4. Indeed, when it comes to suspected Irish terrorists, it appears British courts are unwilling to throw out the convictions of clearly innocent defendants unless and until the government first concedes the convictions are too tainted to stand. See R. v. Richardson, [1989] C.L.Y.B. 752 (convictions of so-called Guildford Four—three Irishmen and a woman imprisoned since 1974 for bombings they did not commit—quashed, but only after the government's home secretary conceded evidence had been "fabricated by the police"); Toolis, supra note 182, at 32, 62 (noting that Guildford Four's original appeals were denied, and their convictions upheld, because "[t]he judges could not bring themselves to believe that the terrorists could tell the truth and the police could tell lies") (quoting Guildford Four's solicitor); Mills & Jones, supra note 183, at 1, col. 1 (home secretary, not a court, announced convictions of Maguire Seven could not be allowed to stand because they had been convicted on the basis of discredited Guildford Four confessions and other tainted evidence); AMNESTY INT'L, BIRMINGHAM SIX APPEAL, supra note 181, at 7 (expressing "the most grave doubts" about the Court of Appeal's denial of the 1988 appeal because "even though according to the Court the prisoners' convictions rested on their confessions, the testimony of every fresh witness in support of the submission that the confessions were involuntary, was dismissed as being either dishonest or mistaken or irrelevant"); Prokesch, supra note 181, at A3, col. 4 (only after government prosecutors conceded evidence was insufficient to support Birmingham Six convictions did it appear the men would be freed by the Court of Appeal); Routledge, British Justice Facing a Crisis of Confidence Over 4 IRA Trials, San Francisco Exam., Sept. 4, 1990, at A9, col. 1 (noting that government's 1990 referral of Birmingham Six case back to Court of Appeal brings to four the number of cases involving Irish suspects in which the judicial system had been called into question since 1989); see supra notes 181-83 and accompanying text.


permanent member of the Security Council strongly allied with the two other Western superpowers. In such a situation, peacekeeping enjoys two considerable advantages over coercive measures such as embargoes or sanctions. First, peacekeeping need not be characterized as punishment, but rather may be viewed as international assistance with an intractable dilemma, as in Cyprus,\textsuperscript{598} the Congo\textsuperscript{599} and, most recently, Iran-Iraq\textsuperscript{600} and Namibia.\textsuperscript{601} Second, as will be shortly explained, peacekeeping would represent a fiscal boon to Great Britain.\textsuperscript{602}

In sum, the ineffectiveness of sanctions in this context, and the absence of internal protections, underscore the severity of the threat to human rights, and, by extension, to international peace, in Northern Ireland. It is not this Article's purpose to identify with any certainty the point at which that threat supersedes state sovereignty from international intervention, a task difficult at best. Wherever that line might be drawn, however, clearly the crisis in Northern Ireland long since crossed it. United Nations' intervention in the Northern Irish conflict is therefore warranted under international law.

V. OBTAINING UNITED NATIONS APPROVAL FOR A PEACEKEEPING FORCE IN NORTHERN IRELAND

On a number of previous occasions the United Nations has dispatched peacekeeper or observer missions where the crisis both endangered international peace and encumbered human rights.\textsuperscript{603} Indeed, such a

\footnotesize{A/8028 (1970) ("Strongly deploring] the continued co-operation by certain States and foreign economic interests with South Africa . . .") (emphasis in original); G.A. Res. 2396, 23 U.N. GAOR Supp. (No. 18) at 19-21, U.N. Doc. No. A/7218 (1968) ("Condemning] the actions of those States, particularly the main trading partners of South Africa, and the activities of those foreign financial and other interests, all of which, through the political, economic and military collaboration with the Government of South Africa and contrary to the relevant General Assembly and Security Council resolutions, are encouraging that Government to persist in its racial policies") (emphasis in original).

598. See infra notes 740-41 & 852-57 and accompanying text.


602. See infra notes 685-87 and accompanying text.

603. Examples include Cyprus, the Congo, West New Guinea and Namibia. Future}
situation would seem to present the greatest need for United Nations intervention. Yet even were the Security Council to determine that Northern Ireland constituted such a crisis, practical constraints might preclude United Nations involvement. Although policy and precedent would seem to demand peacekeeping intervention in Northern Ireland, politics dominate the United Nations. The type of decisionmaking undertaken by the Security Council is not the jurisprudential balancing of so-called "neutral principles," but rather is an essentially political activity, heavily influenced by strategic, ideological and regional alliances.

In the United Nations, as in other such bodies, political cards are often played in the form of procedural devices. Some authorities believe Great Britain has two trump cards, either of which would prevent a United Nations peacekeeping force from undertaking operations in Northern Ireland. First, as a permanent member of the Security Council, Great Britain could employ the "superpower veto" to kill any Council resolution creating such a force. Second, even if an Ulster peacekeeping resolution passed the Security Council, or the General Assembly by way of the Uniting for Peace Resolution, Great Britain could refuse to grant the force permission to deploy in Northern Ireland.

These authorities may be wrong. The superpower veto is not absolute, but instead is dependent upon the Charter basis for the resolution at issue and upon the political willpower of the Security Council and the General Assembly. Furthermore, Britain's unwillingness to consent to United Nations peacekeeping is far from certain, given Ulster's high cost to the British people in lives, liberties, economic resources and international prestige.

A. Avoiding the Superpower Veto

Any of the Security Council's five permanent members—the United States, the Soviet Union, China, the United Kingdom and France—can prevent the Council from adopting a substantive proposal simply by voting no, even if the Council's fourteen other member nations cast votes in the resolution's favor. This superpower veto is frequently used, examples may include the contemplated United Nations forces for Palestine and Central America.

604. See D. FORSYTHE, supra note 380, at 56; L. HENKIN, supra note 404, at 112.

605. See generally S. BALEY, supra note 471, at 141-43 (discussing political influence on Security Council policy).

606. See infra notes 644-51 and accompanying text.

607. See U.N. CHARTER art. 27, para. 3.

608. The Soviet Union has called this the "unanimity rule," see 1 S. Bailey, supra note
especially on the most politically sensitive or embarrassing proposals involving a permanent member or a key ally. Britain and the United States might well perceive a proposal for United Nations peacekeeping troops in Northern Ireland as an attack on British ability and objectivity and attempt a veto. There are, however, procedural and political reasons why such an attempt might not be possible, and even if possible and undertaken, might not succeed.

1. Britain's Obligation to Abstain from Voting

Under article 27(3), any member of the Security Council—permanent or not—"shall abstain from voting" on certain substantive proposals relating to the peaceful settlement of a dispute to which that nation is a party. Although the Charter requires nine affirmative votes for a resolution to pass the Council, including the affirmative vote of all five permanent members, the "obligatory abstention" of a permanent member under article 27(3), cannot defeat a proposal that garners eight Council votes and is not vetoed by another permanent member, because obligatory abstentions are treated as a form of concurrence. While

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304, at 45, but this Article adheres to the more common "veto."

609. A total of 242 times in the first 41 years of the United Nations. S. BAILEY, supra note 471, at 201-09 (table 12) (listing these vetoes).


611. This article reads, in pertinent part, "Decisions of the Security Council on all other [than procedural] matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI . . . a party to dispute shall abstain from voting." U.N. CHARTER art. 27, para. 3.

612. Id.

613. Id.

614. During the United Nations Conference on International Organizations, held in San Francisco from April 25 to June 26, 1945 to prepare, approve and sign the United Nations Charter, the view was expressed by the United States that obligatory abstentions under article 27(3) could not block otherwise-valid resolutions. See Doc. 967, III/1/48, 11 U.N.C.I.O. Docs. 513 (1945). This view prevailed. In 1960, for example, Argentina, then a member of the Council, abstained from voting on its own resolution condemning Israel's capture of Nazi Adolf Eichmann as a violation of Argentine sovereignty which, if repeated, would threaten international peace and security. The resolution passed with only eight affirmative votes; the obligatory abstention from Argentina supplied the deciding vote. See S.C. Res. 138, 15 U.N. SCOR Res. & Dec. (868th mtg.) at 4, U.N. Doc. S/INF/15/
the obligatory abstention rule has not been rigidly enforced, it is a guideline that member states have been reluctant to ignore.\textsuperscript{615} When the issue arises, the Council members who are parties to a dispute generally abstain if a proposal is taken to a vote,\textsuperscript{616} as has the United Kingdom on occasion.\textsuperscript{617} This limitation on the superpower veto only applies, however, to proposals brought under chapter VI of the Charter,\textsuperscript{618} and whether a peacekeeping operation can be founded upon chapter VI remains unclear. When the Security Council has in the past established peacekeeping contingents, it has not explicitly stated the Charter provisions upon which its action was based. Although article 42, in chapter VII, authorizes the use of land forces as an enforcement measure to maintain or restore international peace, it contemplated use of a permanent armed United Nations force that has never been created,\textsuperscript{619} and therefore article 42 has never been applied by the Council and is now considered a dead letter.\textsuperscript{620} Moreover, in the seminal opinion on the constitutional validity of United Nations' peacekeeping, the International Court of Justice distinguished between "peace-keeping operations" and "enforcement action" under article 42 and concluded that the former "did not involve 'preventive or enforcement measures' against any state under Chapter VII."\textsuperscript{621} Yet the court stopped short of determining from where,  

\textsuperscript{615} See L. Goodrich, E. Hambro & A. Simons, supra note 329, at 229.  
\textsuperscript{616} See S. Bailey, supra note 471, at 225-31 (listing the Soviet-Iranian dispute of 1946, in which the Soviets abstained from or did not attend substantive votes; the Indian-Pakistani question of 1948 to 1952, in which both countries abstained; and the 1960 Argentine-Israeli dispute over Eichmann).  
\textsuperscript{617} See id. at 226-28 (listing the 1947 Corfu Channel incidents, in which the United Kingdom voted on the procedural question of whether a subcommittee should be established to report on the situation, but abstained from the vote on the composition of the subcommittee—considered to be substantive—and abstained from two clearly substantive votes, and the 1947 complaint by Egypt regarding the incursion of British troops into Egypt and the Sudan, in which the British abstained from voting on all proposals and amendments).  
\textsuperscript{618} See U.N. Charter art. 27, para. 3. It also applies to resolutions for pacific settlements by and through regional arrangements under article 52(3), see id., a provision inapposite to the present discussion.  
\textsuperscript{619} See L. Goodrich, E. Hambro & A. Simons, supra note 329, at 314-17.  
\textsuperscript{620} See id. at 317; Blue Helmets, supra note 21, at 6-7.  
\textsuperscript{621} See Certain Expenses of the United Nations, 1962 I.C.J. 151, 177 (advisory opinion). Although only seven of the nine judges who concurred in the court’s judgment expressly joined this portion of the opinion—only half of the court’s 14 sitting judges—the General Assembly accepted the court’s opinion by a 76-17 vote, considerably more than a two-thirds margin. G.A. Res. 1854, 17 U.N. GAOR Supp. (No. 17) at 54-55, U.N.
Exactly, peacekeeping drew its Charter support, leaving unresolved whether non-enforcement provisions in chapter VII or the measures for pacific settlement outlined in chapter VI were more appropriate constitutional foundations.

Early in the history of United Nations' peacekeeping, the secretary-general on several occasions opined that a peacekeeping contingent is a non-fighting force and therefore its constitutional basis is found not in Chapter VII, which authorizes the use of force, but in Chapter VI, which seeks to prevent or end international strife through peaceful means.


622. The court hinted that the former might be a more correct reading of the Charter, noting, "Articles of Chapter VII of the Charter speak of situations and it must lie within the power of the Security Council to police a situation even though it does not resort to enforcement action against a state." Certain Expenses of the United Nations, [1962] I.C.J. at 167. But the court did not elaborate sufficiently to allow a definitive conclusion to be drawn.

623. In his 1958 report on the United Nations' first peacekeeping operation, the Emergency Force in the Middle East, the secretary-general distinguished between combat operations against an aggressor state and peacekeeping of the type undertaken by UNIF and said the former "would require a decision under Chapter VII of the Charter and an explicit, more far-reaching delegation of authority to the Secretary-General than would be required for any of the operations discussed here." 13 U.N. GAOR Annex (Agenda Item 6(c)) at 31, U.N. Doc. A/3943 (1958). In his 1957-58 annual report, Hammarskjold was more explicit:

It should, of course, be clear that any such Force, unless it were to be called into being by the Security Council under Chapter VII of the Charter, must constitutionally be a non-fighting force, operating on the territories of the countries concerned only with their consent and utilized only after a decision of the Security Council or the General Assembly, regarding a specific case, for those clearly international purposes relating to the pacific settlement of disputes which are authorized by the Charter.

A similar belief has been expressed by member states during debate on the constitutional underpinning of peacekeeping, although it has by no means enjoyed unanimous support.

If chapter VI may provide the basis for a peacekeeping resolution, the most likely source within that chapter is article 36(1), which allows the Security Council to respond to any dispute or situation “likely to endanger the maintenance of international peace and security” by recommending any “appropriate procedures or methods of adjustment.” Several nations, including the United States, have voiced the view that the Security Council’s powers under this subsection are sufficiently broad to allow it to request states to undertake the same type of “provisional measures” that article 40 allows the Council to require states to employ, while both the United Kingdom and the United States have argued that article 36(1) permits the kind of coercive measures, short of force, explicitly authorized under article 41. This is significant because both article 40 and 41

and the circumstances it faces in the field.


626. U.N. CHARTER art. 36, para. 1. Under this article, "[t]he Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment." Id. Article 33 refers to "any dispute, the continuance of which is likely to endanger the maintenance of international peace and security." Id. art. 33.


628. The representative from Belgium noted that there is "no legal problem about applying" the concept of provisional measures from chapter VII "to the matters referred to in Chapter VI," 11 U.N. SCOR (743d mtg.) at 11, U.N. Doc. S/3654 (1956), a position also taken by Peru. Id. at 15.

have been identified as the most likely foundations within chapter VII for peacekeeping operations in the vacuum created by the premature death of article 42, and this has been especially true of article 40. The broad interpretation of article 36(1) is supported by the resolution creating the peacekeeping operation most analogous to one that might be deployed in Northern Ireland, the United Nations Force in Cyprus, for it relied on the Council's power to "recommend" action, which mirrors article 36(1), rather than its power to demand action under article 40.

This application of chapter VI, through article 36, to Northern Ireland would allow the Council to recommend that the United Nations create and dispatch a peacekeeping force in a resolution that could not be subject to a superpower veto by Britain, since it is a party to the dispute and thus barred from voting. Even if the Council's resolution draws on article 36, however, Britain would have an effective veto, for actions under that provision still must obtain the consent of the parties; that is, article 36 does not provide for coercive measures.


631. U.N. CHARTER art. 40. Article 40, which allows the Security Council to call upon the parties to a situation before the Council to comply with such provisional measures as the Council deems necessary or desirable, has been cited as a basis for the Congo peacekeeping operation by the secretary-general, see 16 U.N. SCOR Supp. (Jan.-Mar. 1961) at 71, U.N. Doc. S/4651 (1961) (letter discussing Belgian bases in the Congo); see also L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 310; Halderman, supra note 332, at 988. In 1985, the United Nations Department of Information wrote, in regard to "peace-keeping operations," that "[t]hese operations can be considered as based on Article 40 of the Charter." BLUE HELMETS, supra note 21, at 6-7.

632. S.C. Res. 186, 19 U.N. SCOR Res. & Doc. (1102d mtg.) at 2-4, U.N. Doc. S/INF/19/Rev. 1 (1964). The resolution "recommends the creation, with the consent of the Government of Cyprus, of a United Nations peace-keeping force in Cyprus" and "recommends that the function of the force should be, in the interest of preserving international peace and security, to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions." Id. (emphasis in original); cf. U.N. CHARTER art. 36, para. 1 ("The Security Council may . . . recommend appropriate procedures . . . .").

633. Conversely, if the Council wished to order the creation of such a force, it could not do so under article 36, but would have to invoke article 40 and thus subject the order to a British veto.

induce British consent are discussed below; for now it is enough to note that if the Council wished to pressure Britain into accepting a peacekeeping force in Northern Ireland its best strategy would be to invoke article 36(1), so that Britain could not veto the idea at its inception. Once a resolution recommending a United Nations force for Northern Ireland passed the Council, the political situation, and any momentum gathering behind a new hope for Ulster, would make it more difficult for Britain to refuse to comply.

2. The Prospects of a United States Veto

Whether a resolution creating a Northern Ireland force was premised on chapter VI or on chapter VII of the Charter, the United States could veto the proposal, because it is a permanent member of the Security Council and not a party to the Ulster crisis. The United States has not been shy about exercising its veto power; its fifty-seven vetoes through 1986 are second only to the Soviet Union among the five superpowers. Whether it would do so to kill a chance to bring peace to Northern Ireland is a difficult question. On the one hand, the United States' historic alliance with the United Kingdom on votes within the Council indicates it would do so, at least if the resolution appeared to cast Britain in a negative light and the British communicated their displeasure with the resolution. On the other, the United States has refused, on admittedly rare occasions, to veto Council resolutions highly critical of staunch allies when the evidence could not be ignored, or when countervailing political considerations dictated, even when the allies objected vehemently.

In fact, it was the United States which responded to the British-French-Israeli invasion of Egypt by submitting the proposal that eventually led to the withdrawal of the objecting allies, under withering international pressure, in favor of the United Nations' first peacekeeping force.
Moreover, there is strong sympathy for the plight of Northern Ireland in general, and its Catholic population in particular, among the estimated forty million United States citizens who claim Irish blood, many of whom have family in the troubled province. The Bush administration is heavily dependent on the white ethnic vote, causing the administration at least to pause before casting a veto that might alienate such a central component of the Bush electorate. More plausible, perhaps, would be voluntary abstention, to which the United States has resorted when it decided not to veto certain Council resolutions pertaining to Israel and Britain. Like obligatory abstentions, voluntary abstentions have been treated since 1949 as concurring votes.

3. The “Uniting for Peace” Resolution

Even if a veto killed a Security Council resolution calling for or recommending a United Nations force in Northern Ireland, a mechanism exists by which the other members of the Council and the General Assembly could resurrect it. Under the Uniting for Peace Resolution of


643. In 1946, the Soviet Union became the first permanent member of the Security Council to express a preference to abstain rather than to veto, and the other members did not object. See 1 U.N. SCOR (39th mtg.) at 243 (1946). By the end of 1948 all the other permanent members had followed suit. See 1 S. BAILEY, supra note 304, at 47 & n.98 (citing examples). In 1971, the International Court of Justice noted that the procedure of treating these abstentions as a form of concurrence “has been generally accepted by the Members” and is evidence of “a general practice” within the United Nations. Namibia (S.W. Africa Advisory Opinion), 1971 I.C.J. 3, 22; see also 1 S. BAILEY, supra, at 47. By the end of 1979 the permanent members had cast some 200 voluntary abstentions. S. BAILEY, supra note 471, at 225.
1950, devised by the United States to circumvent Soviet opposition to United Nations intervention in Korea and based on the United States' constitutional system for overriding presidential vetoes.

[If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making the appropriate recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.]

The constitutional basis of this resolution was subsequently affirmed by the International Court of Justice, which recognized that article 24 confers on the Security Council "primary responsibility for the maintenance of international peace," but noted that this authority was "not exclusive."
The terms of the resolution are not unlimited; they do not, for example, empower the Assembly to recommend collective peacekeeping in response to violations of human rights not considered a threat to the peace. In such a situation, the resolution would have to pass the Council. And unlike the Council, the Assembly cannot require action; it can only, by a vote of at least two-thirds of the Assembly, recommend collective peacekeeping in response to a threat to the peace. This, however, seems a semantic distinction, for when the General Assembly, acting pursuant to Uniting for Peace Resolution, "requested" the Secretary-General to draw up plans for an emergency force to contain the Suez crisis, despite Security Council vetoes by Britain and France, both of which had invaded Egypt, the plans were ready within a day and within three the force was authorized by the Assembly. At the very least, an overwhelming General Assembly vote to recommend peacekeeping in Northern Ireland would "serve as a rallying point for voluntary collective action."

It seems likely a peacekeeping proposal in Northern Ireland could

the proposal to the General Assembly:
Article 24 of the Charter gives the Security Council primary responsibility for the maintenance of peace and this is the way it should be. But if the Security Council is not able to act because of the obstructive tactics of a permanent member, the Charter does not leave the United Nations impotent. The obligation of all Members to take action to maintain or restore the peace does not disappear because of a veto. The Charter, in Articles 10, 11, and 14, also vests in the General Assembly authority and responsibility for matters affecting international peace. The General Assembly can and should organize itself to discharge its responsibility promptly and decisively if the Security Council is prevented from acting.

5 U.N. GAOR (279th mtg.) at 24, U.N. Doc. A/PV.279 (1950). It thus has been said that "[t]he Uniting for Peace resolution proclaimed the paramountcy of the purpose of the United Nations as stated in Article 1(1): 'To maintain international peace and security,'" which cannot be abridged by superpower veto. L. GOODRICH, E. HAMBRO & A. SIMONS, supra note 329, at 124.


652. Editorial Comment, supra note 645, at 134.
garner the necessary two-thirds vote in the Assembly, at least if the Republic of Ireland supported it. As a neutral country, party to neither NATO nor the Warsaw pact, the Irish Republic is part of a bloc of more than 120 nonaligned nations. Although this bloc is not monolithic, it tends to take a common position on three issues that form the priority agenda of Third World concerns, two of which—ending colonialism and instituting self-determination for all people—are implicated in Northern Ireland. The preeminent concern of these countries is to ensure superpower respect for their sovereignty and territorial integrity. The colonial cast to the British presence in the North of Ireland would likely lead the nonaligned bloc to support a resolution calling for British withdrawal in favor of United Nations peacekeeping. Additionally, some of the twelve formerly communist bloc countries are now democratically socialist and thus still likely to support any proposal considered favorable to the socialist IRA. Those non-socialist former communist countries—such as Poland, Czechoslovakia and Nicaragua—are third world in nature, still suffering the effects of foreign domination and likely empathetic with the Ulster minority. In any event, the third world and socialist countries combined still exceed by a comfortable margin a two-thirds majority in the General Assembly, and this count excludes certain western countries that have been critical of Britain’s handling of the Ulster crisis, or have suffered violence within their borders as a consequence of the conflict, or have strongly supported previous peacekeeping efforts.

653. Since its inception, the Republic has maintained strict neutrality in order to fulfill a self-appointed role as a “link between the Western bloc and the Third World.” K. BOYLE & T. HADDEN, supra note 14, at 104.


655. Id. The third issue is realignment of the global economy to ensure a fairer allocation of resources to all nations. Id.

656. Id. at 8. For example, the invasion of Soviet tanks into nonaligned Afghanistan sparked a furor among the nonaligned nations and an emergency session of the General Assembly, which overwhelmingly approved a resolution calling for the withdrawal of Soviet troops from that country. See G.A. Res. ES-6/2, 35 U.N. GAOR E.S.S. No. 6 (Supp. 1) at 2, U.N. Doc. A/ES-6/2 (1980); see McHenry, supra note 655, at 5.

657. See supra notes 53-74 & 535 and accompanying text.

658. Cf. D. ZIEGLER, supra note 471, at 312 (“[E]ven fundamental questions of war and peace are of less interest to [the non-aligned] bloc than colonialism and distribution of global resources.”).

659. Cf. id.

660. As of January 1, 1987, the United Nations included 159 member states, see S. BAILEY, supra note 471, at 142 (table 8) (two-thirds equals 106 members).

661. This would include Belgium, the Netherlands, West Germany, Spain and the
Consequently, it seems probable proponents of a Northern Ireland peacekeeping force could override the threat of a superpower veto.

B. Obtaining British Consent to a Peacekeeping Force in Northern Ireland

Assuming the Security Council or General Assembly approved an Ulster peacekeeping resolution, Britain could play a final card to block United Nations intervention. The “Guiding Principles” for United Nations Peacekeeping authored by then-secretary-general Hammarskjold in 1956, explained that while the Assembly can establish the force, it cannot “be stationed or operate on the territory of a given country without the consent of that country.”662 This edict, that the Assembly cannot require any state to accept a United Nations force within its borders, has become a touchstone of the law, such as it is, governing peacekeeping.663 As will be seen, it also appears host state consent is required for Council-created forces, as well. Yet it is far from certain Britain would block deployment of a United Nations peacekeeping force once created.

1. The Requirement of Consent

Whether under the Charter consent is conditio sine qua non for deployment of forces created by the Security Council is an issue of heated debate.664 Some scholars argue that if the Council finds the threat to international peace and security sufficiently grave, articles 41 and 42 allow the Council to deploy a contingent regardless.665 This argument has been significantly undermined by the demise of article 42,666 which allowed the Council to employ force without regard for claims of domestic jurisdiction.667 Others, however, point to articles 25668 and 40,669

Scandinavian countries.


665. See id.; D.W. Bowett, supra note 402, at 413-17; D. Ziegler, supra note 471, at 308, Higgins, supra note 662, at 5.

666. See supra note 620 and accompanying text.

667. The principle of non-intervention “in matters which are essentially within the
which together require all member nations to "accept and carry out" all Council decisions, including those for collective measures, as evidence of the binding nature of Council resolutions, which renders consent unnecessary.670

There is some support for the latter position in United Nations' history. Hammarskjöld, in the same "Guiding Principles" discussed above, did not exclude the possibility of the Council stationing or operating a force even absent host state consent.671 More importantly, the United Nations' force in the Congo "appears not to [have been] predicated on the consent of the host state."672 Although the enabling resolution referred to the consent of the Congolese government,673 in fact the force operated independent of, and often at odds with, that nation's officials, and engaged in occasional military operations against,

domestic jurisdiction of any state," is limited under the Charter so that it does "no prejudice the application of enforcement measures under Chapter VII," such as those prescribed in article 42. U.N. CHARTER art. 2, para. 7. 668. This article stipulates: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Id. art. 25.

669. Under this article:

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Id. art. 40.

670. See Miller, Legal Aspects of U.N. Action in the Congo, 55 AM. J. INT'L L. 1, 15 (1961); Sohn, supra note 630, at 238.


672. See Miller, supra note 670, at 15. But see Nathanson I, supra note 623, at 652 (ONUC and other early peacekeeping efforts "introduced with the general consent of all the contending parties and with the specific consent of the state upon whose territory the force was to be stationed.").

673. The Security Council authorized the secretary-general:

[T]o take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance, as may be necessary, until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks.

and firefights with, the Congolese army. In response, the Security Council passed a resolution to remind the Congo, as well as Belgium, whose troops were aiding the secessionist movement in the Katanga province, of their obligation, "in accordance with Articles 25 and 49 of the Charter, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council." Nonetheless, the deployment of a peacekeeping force against the host state's will is highly unlikely to occur. A clear mandate of support from the parties involved is considered essential for the mission to succeed. Taking such a drastic step against the expressed will of a permanent member of the Security Council, such as Britain, seems unfathomable. Since its inception the United Nations has been loath to challenge any of the major powers on military matters. In practice, every peacekeeping effort since the Korean War has been initiated only at the request or consent of the host state, even the Congo force. Subsequent events in that fractured country may be better understood as standing for the proposition that the host government cannot unilaterally terminate the peacekeeping effort, at least not where its action stems from the unwillingness of the United Nations force to act as an arm of that government.

Thus Britain, even after a force has been established, can deny it permission to deploy within Northern Ireland. This need not prove fatal. There is nothing in the Charter or in United Nations' practice that

674. See Blue Helmets, supra note 21, at 224-27, 231-33, 245-46.
675. See S.C. Res. 146, 15 U.N. SCOR Res. & Dec. (886th mtg.) at 6-7, U.N. Doc. S/INF/15/Rev. 1 (1960). Although the resolution was directed at "member states," and the Congo had not yet joined the United Nations, it had previously agreed to accept article 49 as a prerequisite to United Nations involvement. See Miller, supra note 670, at 15 & n.63; see also Blue Helmets, supra note 21, at 224-25.
676. See Blue Helmets, supra note 21, at 4; Nathanson I, supra note 623, at 653; Comment, supra note 663, at 60-61 (quoting 12 U.N. GAOR E.S.S. No. 1, at 24, U.N. Doc. A/3302/Add.4/Rev.1 (1956)).
677. Indeed, the Charter, especially in installing the superpower veto mechanism in article 27(3), seems to recognize that the United Nations cannot challenge, effectively, a superpower bent on war or war-like designs. See L. Goodrich, E. Hambro & A. Simons, supra note 329, at 11.
679. ONUC was created and dispatched at the request of the Congolese Government. See Blue Helmets, supra note 21, at 218, 222-27.
conditions the creation of a peacekeeping force on host state consent; it is only the deployment of that force which cannot be undertaken absent such consent. Were the Assembly or Council to establish a peacekeeping force for Northern Ireland, it would certainly increase the political pressure upon Britain to allow the force to deploy and, perhaps, induce consent.  

2. The Pressure on Britain to Consent

The pressure on Britain is already considerable. There are those who believe Britain for years has been seeking a way to disentangle itself from the Ulster brier patch without pricking itself on the thorns of apparent defeat, humiliation or deeper civil war. Thatcher's personal vendetta against the IRA, stemming, understandably, from the guerrillas' nearly successful attempt to kill her in the Brighton hotel bombing of 1984, might well have led her to bar United Nations involvement; with Thatcher now out of power, there is substantial evidence that the British might welcome "withdrawal with honor." Economically, the cost of maintaining an armed presence in Northern Ireland through 1980 topped £499 billion, and from 1980 through 1985 ran between £111 million and £149 million each year. Total British financial support for Ulster from 1968 through 1985 exceeded an astronomical £13.65 billion, and the annual outlay has skyrocketed from £1.671 billion in the 1984-85 fiscal year to up to £4 billion in more recent years.

Thatcher's singleness of purpose also led to a sacrificing of civil
liberties in the name of national security.\textsuperscript{688} While this fallout might bring little discomfort to British politicians if confined to Ulster,\textsuperscript{689} Britain itself has not escaped unscathed. According to some accounts, Ulster has become Britain's Vietnam,\textsuperscript{690} at once both a testing ground for the latest devices and strategies in counter-insurgency warfare\textsuperscript{691}—which has brought Britain widespread condemnation at home and abroad\textsuperscript{692}—and a bloody quagmire that through late 1988 had claimed the lives of 850 British soldiers, local militia and police.\textsuperscript{693}

As one Labour Party spokesman reported, "Northern Ireland is being used as a laboratory for draconian measures to be used later in other parts of the United Kingdom."\textsuperscript{694} Apparently the tactics used to obtain confessions from detainees has been long since imported to the mainland;

688. See supra notes 149-229 and accompanying text.

689. Irish republicans have difficulty informing the British public of their complaints with the central government. See J. CONROY, supra note 3, at 215; Northern Ireland: Whose Oxygen?, supra note 199, at 62-63. Under new legislation, no person can run for elected political office unless s/he first takes an oath disavowing support for any proscribed organization, including the IRA. Elected Authorities (Northern Ireland) Act, 1989, §§ 5-8 & sched. 2. Moreover, proscription laws have allowed police to imprison members of legal non-proscribed organizations if, for example, they raised money to support non-violent republican activities and for selling republican newspapers. See C. WALKER, PREVENTION OF TERRORISM IN BRITISH LAW 50 (1986). Broadcast interviews with republicans have also been banned under the Broadcast Act of 1981. Broadcast Act, 1981, § 29; see Hillyard & Percy-Smith, supra note 198 at 538; Boudin, supra note 196, at A15, col. 2; Whitney, supra note 14, at A5, col. 4; see also supra notes 198-99 and accompanying text.

690. See, e.g., D. DOUMIT, supra note 132, at 228.


692. See, e.g., Murdoch, Rights of Public Assembly and Procession, in HUMAN RIGHTS: FROM RHETORIC TO REALITY 193 (T. Campbell ed. 1986) ("British civil liberties are in a state of moral crisis"); see also infra notes 704-20 and accompanying text; supra notes 108-09, 205-11, 223-28, 567-70 & 595 and accompanying text.

693. Police statistics through 1988 listed 850 military and police deaths from political violence. IR. INFORMATION PARTNERSHIP, supra note 12, at 14 (table 1); see Whitney, supra note 14, at A5, col. 6.

694. Radio Interview of Kevin McNamara, Labour Party spokesman, quoted in Britain Moves to End Right of Silence by Irish Suspects, San Francisco Exam., Oct. 20, 1988, at A2, col. 3; see K. KELLEY, supra note *, at 367 ("[D]emocratic accountability in Britain, corroded by the long and ugly experience in the North of Ireland, gives way to an authoritarian secrecy."); Jennings, supra note 150, at 140 ("[I]t has been argued for a number of years that Northern Ireland serves as a training ground for British security forces, who might need to apply the same techniques of population control in Britain."). See generally P. HAIN, supra note 687, at 226-28, 233-36 (detailing Northern Ireland's "Impact on the British Mainland").
in early 1988 Amnesty International released a report on Alleged Forced Admissions During Incommunicado Detention, which "questioned the fairness of British trials" on the mainland.\(^{695}\) This problem is also illustrated not only by case of the Birmingham Six,\(^{696}\) but also by the cases of the Guildford Four and McGuire Seven, in which the eleven defendants served more than fourteen years in prison—for crimes the government now concedes they did not commit—on the strength of confessions obtained under duress and evidence fabricated by the police.\(^{697}\) The Thatcher government also planned to extend to England and Wales the decree eliminating a suspect's right to remain silent,\(^{698}\) and introduced paramilitary-style policing of black and Asian neighborhoods.\(^{699}\)

In addition to restricting media coverage of Northern Ireland and attempting to ban or discredit reports with which the prime minister disagreed, the Thatcher government launched an extraordinary offensive against the freedoms of speech and press on the mainland.\(^{700}\) The 1986 Public Order Act introduced broad restrictions on the right of public protest, criminalizing, \textit{inter alia}, mere speech if it is insulting or disagreeable to another.\(^{701}\) Home Secretary Douglas Hurd's recent White Paper, Reform of Section 2 of the Official Secrets Act of 1911,\(^{702}\) was enacted as the Official Secrets Act of 1989 and criminalizes, on penalty of imprisonment, disclosure of governmental information even if doing so is in the public interest.\(^{703}\)


\(^{696}\) See supra notes 181 & 595 and accompanying text.


\(^{698}\) See \textit{A Half-Bill of Rights} supra note 205, at 15-16; Atlas, supra note 596, at 37; Jenkins, supra note 219, at 17, 23; Whitney, supra note 205, at 2, col. 1.

\(^{699}\) K. KELLEY, supra note *, at 366. The government also has authorized the use of plastic bullets by mainland police to squelch dissent on the mainland. P. HAIN, supra note 687, at 228; Jennings, supra note 150, at 141.

\(^{700}\) See \textit{BBC: Censorship in Northern Ireland}, supra note 565, at 32; \textit{Gibraltar Shootings}, INDEX ON CENSORSHIP, Sept. 1988, at 35; K. KELLEY, supra note *, at 366; Atlas, supra note 596, at 37; Wilson, supra note 198, at 33.


\(^{702}\) CMND. 408 (1988).

\(^{703}\) Official Secrets Act, 1989, §§ 1-6; see Hennessy, \textit{Not by Teabags Alone: British
The government's curtailment of fundamental rights in England sparked loud internal criticism. "The intensification of authoritarian rule in the United Kingdom has only recently begun," announced Charter 88, a manifesto issued by 250 members of England's intelligentsia who intend to pressure the government into enacting a written constitution. The Index on Censorship, a British publication previously devoted to monitoring suppression of speech in such places as eastern Europe, Africa and Asia, in 1988 released the first issue in its seventeen-year history devoted to suppression in a Western democracy. "Liberty is ill in Britain," begins Ronald Dworkin's keynote article in the Index. "The sad truth is that the very concept of liberty . . . is being challenged and corroded by the Thatcher government." Nor are only left-leaning intellectuals concerned. The conservative Sunday Times of London opined that "the defense of personal freedom has now slid alarmingly low in the priorities of Mrs. Thatcher's government," and the Economist decried Thatcher's trampling on the liberties of the subject.

International pressure is also increasing. As noted, Amnesty International in 1988 issued three well-documented reports of violations in Northern Ireland and England; the European Court of Human Rights found Britain's detention laws in violation of the European Convention on Human Rights; the New York Times ran an editorial, headlined "Mrs. Thatcher's Muzzle," decrying Britain's recent crackdowns on fundamental freedoms as "spectacularly wrong," and printed an opinion piece on "The Appeal of a British Bill of Rights"; and the New York Review of Books featured a cover story on "Not-so Free

Secrecy and the Proposed Reform of the Official Secrets Act, INDEX ON CENSORSHIP, Sept. 1988, at 9-12; Atlas, supra note 596, at 37; Jenkins, supra note 219, at 22.


705. Atlas, supra note 596, at 36.


708. Id.

709. Quoted in Atlas, supra note 596, at 37, col. 2.

710. A Half-Bill of Rights, supra note 205, at 15.

711. See supra notes 42, 168, 181, 595 & 695 and accompanying text.


Speech in Britain.\textsuperscript{715}

Once the connection is made between the War in Ireland and economic and political consequences in England, pressure at home and abroad may shift toward a call for withdrawal, if feasible, from Northern Ireland. This is all the more so because the cost in British lives and suffering has been equally high. Nearly half of the 850 security force personnel that have been killed as a consequence of the Anglo-Irish conflict\textsuperscript{716} have been British,\textsuperscript{717} and thousands more soldiers have been wounded.\textsuperscript{718} In the first ten years alone in Ulster, the British army suffered heavier casualties than it had during operations in Aden, Borneo or Cyprus.\textsuperscript{719} For every casualty there are relatives such as John Winter, father of one of the British soldiers killed in the summer bombings of 1988, who ask: "Why do we keep our forces in Northern Ireland? Why are our young men getting killed like this? Just what are we trying to achieve and is it really worth it? It is an unnatural war and the worst kind of war."\textsuperscript{720}

With answers to these questions not apparent, the British public has shown little enthusiasm for the War of Ireland. Polls reveal a majority of English citizens desire withdrawal and would approve a pull-out initiative on the ballot.\textsuperscript{721} London's policy of Ulsterization, by which the number of British troops are reduced as the RUC and UDR become the frontline fighters, has been called an attempt at a compromised form of withdrawal.\textsuperscript{722} Ulsterization succeeded in lowering army strength in Ulster from a peak of 23,000 in 1973 to 9,000 in 1984.\textsuperscript{723} Yet in the broader

\textsuperscript{715} Jenkins, \textit{supra} note 219.

\textsuperscript{716} \textit{See supra} note 693 and accompanying text.

\textsuperscript{717} K. BOYLE & T. HADDEN, \textit{supra} note 14, at 14.


\textsuperscript{719} Janke, \textit{supra} note 44, at 24.

\textsuperscript{720} \textit{What Is King's Answer?}, \textit{SPECTATOR}, Aug. 27, 1988, at 5, col. 1.

\textsuperscript{721} In the later 1970s, British polls showed 53\% of Britons favored withdrawal and only 30\% opposed it. J. HOLLAND, \textit{supra} note 7, at 198. By February 1987 a \textit{Daily Express} survey revealed the percentage advocating withdrawal had risen to 61\%. S. BELFRAGE, \textit{supra} note 30, at xiv; see K. KELLEY, \textit{supra} note *, at 368. A 1988 MORI poll found only 35\% of the British public supported the British military presence in Ulster. \textit{Backing of One in Five for Ulster Pullout Now}, \textit{The Times} (London), Mar. 25, 1988, at 24, col. 5 (finding 21\% desired immediate withdrawal and 29\% favored phased withdrawal within a preset time, while 14\% expressed no preference).

\textsuperscript{722} \textit{See J. HOLLAND, supra} note 7, at 200.

\textsuperscript{723} K. BOYLE & T. HADDEN, \textit{supra} note 14, at 70; Thomas, \textit{supra} note 161, at A2, col. 3.
sense, this strategy has failed; when violence escalates, London has no choice but to commit more troops, as it did, for example, in January 1986, increasing to 16,000 the number of soldiers in Northern Ireland.

The Hillsborough Treaty itself illustrates the lengths to which the British government is willing to go in an attempt to rid itself of its "Irish problem." In 1984, Thatcher cried "Out! Out! Out!" to the proposals of the New Ireland Forum in Dublin, rejecting any diminution of British sovereignty over the North that the concepts advocated by the Forum—a unitary state, or a federal state, or joint authority—might entail. Yet one year later Thatcher signed a treaty granting the Irish Republic a watered-down version of joint authority, revealing that her government was willing to defy even its allies, the unionists, in exchange for an opportunity to begin the process of disentanglement. In light of the pact's failure to remove the need for a British military presence in the North, and with international and internal criticism mounting, new prime minister John Major and his ministers might view a United Nations' force as the last chance for Britain to exit Ulster with some dignity intact.

It would not be the first time Britain reluctantly accepted United Nations' peacekeeping as the only avenue out of internationally disfavored military action. In late 1956, the United Kingdom joined France and Israel in an air and land assault on large portions of Egypt directed at gaining control of the Suez Canal and deposing Egyptian President Nassar. A draft Security Council resolution presented by the United States—calling for an immediate cease-fire, the withdrawal of Israeli troops and the termination by all parties of resort to force—was vetoed by Britain and France, as was a similar resolution by the Soviet Union. After the matter was removed to an emergency session of the

724. See supra note 266 and accompanying text. In late 1990, the British government was forced to escalate its troop-strength yet again to an anticipated IRA winter offensive. Violence in Ulster, supra note 12, at 3, col. 1.

725. O'Malley, supra note 315, at 29.


727. S. BELFRAGE, supra note 30, at xv; K. BOYLE & T. HADDEN, supra note 14, at 28. Thatcher's exact words were: "I have made it clear that a unified Ireland is out. A second solution was confederation—that is out. A third solution, joint authority, that is out . . . ." K. KELLEY, supra note *, at 368 (quoting Thatcher).

728. What is King's Answer?, supra note 720, at 5, col. 3.

729. See BLUE HELMETS, supra note 21, at 41-43; S. Bailey, supra note 304, at 120.


731. Id. at 112.
General Assembly under the Uniting For Peace Resolution,\textsuperscript{732} a similar resolution was overwhelmingly adopted, with Britain among the dissenters,\textsuperscript{733} and the next day the Assembly approved a resolution requesting the Secretary-General for the first time to prepare "an emergency international United Nations Force to secure and supervise the cessation of hostilities."\textsuperscript{734}

Although the resolution specifically linked "setting up" the force to "the consent of the nations concerned,"\textsuperscript{735} in fact none of the parties involved voted for the resolution.\textsuperscript{736} The shift in the Anglo-Franco position from outright rejection of United Nations' intervention to reluctant acceptance of UNEF and subsequent withdrawal of British and French troops has been credited to the political pressure created by the high-profile United Nations concern over, and rejection of, the Anglo-Franco invasion.\textsuperscript{737}

Other examples exist. Belgium, acceding to considerable international pressure, accepted United Nations' peacekeeping in the Congo, despite explicit United Nations condemnation of the Belgian invasion of its former colony.\textsuperscript{738} Similarly, Indonesia accepted United Nations' temporary political and security force control over West New Guinea—after its unilateral military action against Dutch rule in the territory provoked international concern—largely due to the persuasive efforts of Secretary-General Thant.\textsuperscript{739}

But perhaps the most apt analogy to Northern Ireland also involves Britain. When in 1964 interethnic hostilities escalated on Cyprus, a tiny republic bitterly divided into two communities, one a distinct minority,\textsuperscript{740} Britain deployed its own peacekeeping contingent on the island. Only after this force came under attack did London admit it could not handle the deteriorating situation alone and urgently seek United Nations'
If British soldiers could not keep the peace in a country of 600,000 where they were regarded as neutral, it makes little sense for Britain to argue that British soldiers can restore peace to a province of 1.6 million where they are definitely not considered neutral by a sizable minority of the population.

All things considered, if sufficient political pressure was brought to bear within the United Nations, it does not seem beyond possibility that Britain would consent, albeit reluctantly, to deployment of a United Nations Peacekeeping Force in Northern Ireland, especially if that force had already been created by either the Security Council or the General Assembly.

VI. THE POTENTIAL FOR SUCCESSFUL PEACEKEEPING IN NORTHERN IRELAND

There remains one considerable concern, voiced not infrequently by commentators, regarding the potential for United Nations peacekeeping in Northern Ireland: could it work? Prior 1988, the United Nations had invoked its peacekeeping power in response to thirteen different crises, seven of which entailed substantial military operations. While it is far too early to judge the effectiveness of recently established United Nations forces, it is undeniable that certain of the previous peacekeeping

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744. The United Nations Iran-Iraq Military Observer Group was created Aug. 9, 1988.
forces proved ill-advised, in large measure because they were deployed where conditions conspired against successful operations on the ground\textsuperscript{745} or because they were dispatched to "political graveyards"\textsuperscript{746} where there was little chance of achieving a negotiated resolution of the strife. Consequently, the propriety of communal peacekeeping at times has been severely undermined.\textsuperscript{747}

Although the Security Council has the authority to investigate any


745. This was especially true in Lebanon. \textit{See} \textit{BLUE HELMETS}, \textit{supra} note 21, at 114-29, 135-47; \textit{Wretched Are the Peacekeepers}, \textit{ECONOMIST}, Aug. 13, 1988, at 34.


dispute or situation into which the United Nations might send a peacekeep-
ing contingent, this fact-finding power has been underutilized in the past, occasionally leading the Council or the Assembly to underestimate the might and ability of the antagonist forces or to miscalculate the structural causes of the conflict and the prospects for pacific settlement. The result has been mistakes in attitude and approach that have profoundly impaired the subsequent conduct of certain operations. Admittedly, the possibility of similar errors in regard to Northern Ireland is not minimal; while some international organizations—most notably Amnesty International—have undertaken investigations of the situation there as recently as last year, these have focused on isolated aspects of the dispute and none have addressed the unique question of whether conditions in Northern Ireland auger ill or well for peacekeeping in the province.

As one scholar put it, "[k]nowledge of the essential facts is a prerequisite of wise diplomacy." Accordingly, the Security Council should invoke its investigatory authority and call for a fact-finding mission to Northern Ireland, prior to consideration of possible peacekeeping there. The following discussion provides a brief overview of the legal basis and political advantages of this proposal, a suggested mandate for the mission, and an analysis of the mission’s likely findings and conclusions.

A. The Legal Basis and Political Advantages of a Fact-finding Mission

Among its procedural powers, perhaps the Council’s most potent is its authority to “establish such subsidiary organs as it deems necessary for the performance of its functions,” which, according to the Repertory of United Nations Practice, includes the power to create “commissions or committees which deal with particular questions in the field.” Moreover, article 34 bestows on the Council broad substantive power to:

748. See D. ZIEGLER, supra note 471, at 318.
749. See I S. BAILEY, supra note 304, at 75.
750. INT’L PEACE ACADEMY, supra note 678, at 25.
751. Id.
752. See, e.g., AMNESTY INT’L, KILLINGS BY SECURITY FORCES, supra note 42.
753. 2 S. BAILEY, supra note 304, at 44; see also R. LILlich & F. Newman, supra note 409, at 266.
754. U.N. CHARTER art. 29.
[I]nvestigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.\footnote{756}

Nowhere does the Charter preclude the Council from undertaking investigations not explicitly contemplated in article 34, nor does it specify how the Council should conduct its inquiries. In this vacuum, the Council has considered itself competent to question the parties directly,\footnote{757} to establish subsidiary investigative organs,\footnote{758} or to request that the secretary-general do so.\footnote{759} The Council has twice instructed the secretary-general to investigate and recommend appropriate marching orders for peacekeeping forces,\footnote{760} but has not investigated to determine if peacekeeping was a viable option before dispatching the troops. The General Assembly also possesses general investigatory power,\footnote{761} which it in 1967 underscored in an influential resolution stressing the importance of the fact-finding function.\footnote{762}

\footnote{756. U.N. CHARTER art. 34.}
\footnote{757. See, e.g., 19 U.N. SCOR (1143d mtg.) at 112, U.N. Doc. S/PV.1143 (1964) (questioning representatives from Cyprus and Turkey); see also 1 S. BAILEY, supra note 304, at 44.}
\footnote{758. See, e.g., 14 U.N. SCOR (848th mtg.) at 1-3, U.N. Doc. S/PV.848 (1959) (establishing subcommittee to investigate the situation in Laos); S.C. Res. 39, 3 U.N. SCOR (230th mtg.) at 143 (1948) (India-Pakistan) (invoking article 34); S.C. Res. 19, 2 U.N. SCOR (114th mtg.) at 2-3 (1947) (Corfu Channel incidents); S.C. Res. 19, 2 U.N. SCOR (87th mtg.) at 6 (1946) (Greek border incidents) (citing article 34); see also 1 S. BAILEY, supra note 304, at 44; Ermacora, International Enquiry Commissions in the Field of Human Rights, 1 HUM. RTS. J. 180, 185 (1968).}
\footnote{760. See S.C. Res. 186, 19 U.N. SCOR (1102d mtg.) at 1; S.C. Res. 179, 18 U.N. SCOR (1039th mtg.) at 2-3.}
\footnote{761. The Assembly used this power to dispatch a Special Committee to Investigate Israeli Practices Affecting Human Rights of the population of the Occupied Territories, see G.A. Res. 2443, 23 U.N. GAOR Supp. (No. 4) at 50, U.N. Doc. A/7433 (1968), and to send a fact-finding mission to investigate allegations that the South Vietnamese government was persecuting Buddhists. See G.A. Res. A/L.425 & Add.1, 18 U.N. GAOR (1239 mtg.) (Agenda Item 77), U.N. Doc. A/7149 (1963).}
If the proposal for such an investigation were to originate in the Security Council, it would immediately enjoy important political advantages over a Council proposal to create a peacekeeping contingent. While the Charter basis for peacekeeping is somewhat amorphous—and it is therefore unclear whether chapter VI may or may not be invoked for this purpose—Council fact-finding may undoubtedly be based on article 34 of chapter VI. Under article 27, paragraph 3, then, Britain as a party to the dispute could not vote on any resolution ordering a chapter VI investigation into the situation in Northern Ireland, while it could veto a peacekeeping resolution if it was based on chapter VII rather than chapter VI.

Alternatively, the Council could create a fact-finding commission under article 29, so that the vote would be a procedural rather than a substantive one, thus prohibiting not only the United Kingdom, but also the United States from exercising the superpower veto to kill it. The investigatory commissions. See Ermacora, supra note 758, at 181. In response to the Assembly's influential 1967 resolution, the United Nations Economic and Social Council reversed its highly restrictive 1959 directive allowing the United Nations Commission on Human Rights no power to take any action in regard to any complaints concerning human rights, E.S.C. Res. 728 § F, 28 U.N. ESCOR, Supp. (No. 1) at 19, U.N. Doc. E/3290 (1959), and instead delegated to the Commission authority to study situations which reveal a consistent pattern of violations of human rights, E.S.C. Res. 1235, 42 U.N. ESCOR Supp. (No. 1) at 17-18, U.N. Doc. E/4393 (1967), a mandate broadened in 1970-71 to allow investigation into any reliably attested violations of human rights and fundamental freedoms. E.S.C. Res. 1503, 48 U.N. ESCOR, Supp. (No. 1A) at 8-9, U.N. Doc. E/4832/Add.1 (1970); see also Res. 2[XXIV], U.N. Doc. E/CN.4/1070, E/LN.4/Sub. 2/323, at 50 (1971). The primary restrictions on this otherwise-broad authorization are that the complainant must have exhausted domestic remedies, see id. § 4(b); E.S.C. Res. 1503 at § 6(b)(i), and that the complaint not relate to a matter pending before any other United Nations or regional body, such as the Security Council and the European Commission on Human Rights, respectively. See id. § 6(b)(ii).

Another advantage is that the Council itself may take the initiative to seek an investigation into a particular situation or dispute; it need not await the request of a concerned party. See L. Goodrich, E. Hambro & A. Simons, supra note 329, at 286; cf. supra notes 757-60 and accompanying text.

See supra notes 618-32 and accompanying text.

765. See supra notes 754-60 and accompanying text.

766. Britain has recognized this limitation. In 1947, when Australia proposed that a subcommittee be appointed to investigate incidents in the Corfu Channel, the British representative acknowledged that, "[a]s a party to this dispute, I am deprived of my vote under Article 27, paragraph 3, of the Charter when it is a matter of decision under Chapter VI." 2(1) U.N. SCOR (114th mtg.) at 425 (1947).

See supra notes 611-35 and accompanying text.

768. Article 29 is one of four articles governing Council procedure.
Council's practice, however, has been inconsistent. The four sponsoring governments of the United Nations prepared a statement in 1945 concerning Security Council voting procedure, which asserts that the principle of "unanimity of the permanent members applies" to those "investigations" which "initiate a chain of events which might, in the end, require the Council under its responsibilities to invoke measures of enforcement under [the Charter]." This statement supports the view that the vote would be procedural and thus shielded from the veto. As peacekeeping is a provisional measure, an investigation into the conditions in Northern Ireland would not "initiate a chain of events" leading to "measures of enforcement," and hence should be treated as procedural and not subject to the superpower veto.

Equally significant, it is widely believed that fact-finding does not constitute intervention into domestic affairs and consequently does not require host state

769. In 1948, a proposal that a subcommittee of inquiry be established in response to the Czechoslovakian coup was treated as substantive, and vetoed by the Soviet Union, over the protests of the United States and the United Kingdom. See 3(2) U.N. SCOR (303d mtg.) at 4-29 (1948); 3(2) U.N. SCOR (300th mtg.) at 30-43; 3(1) U.N. SCOR (288th mtg.) at 19. Yet both before and after the Czechoslovakian question the Council treated votes on similar commissions of inquiry to be procedural. In 1947, Britain was allowed to vote, but had no veto, on the resolution establishing a subcommittee to investigate the Corfu Channel incident. See 2(1) U.N. SCOR (114th mtg.) at 425-26 (1947). More importantly, in 1959 on a proposed subcommittee "to conduct such inquiries as it may determine necessary" into the situation in Laos, all members of the Council save the Soviet Union twice voted that the proposal was procedural, so that the Soviet's negative vote on the resolution itself did not constitute a veto. See 14 U.N. SCOR (848th mtg.) at 12, 22, U.N. Doc. S/PV.848 (1959).


771. Id.

772. See supra notes 621-32 and accompanying text.

773. Cf. S. BAILEY, supra note 471, at 222. Under the San Francisco Statement, however, if a Council member submits a motion that a proposal is procedural rather than substantive and it is put to a vote, that preliminary question is subject to a superpower veto. See also id. at 215. A successful negative vote on the preliminary question would force the proposal creating the fact-finding body to be treated as substantive, which could then be vetoed, as well. This "double veto," as it is known, can be avoided if the resolution creating the commission of inquiry is submitted without a preliminary question and the President of the Council then rules that the proposal is procedural; that ruling cannot be defeated by a superpower veto, but can only be successfully challenged by vote of nine members of the Council. Id. This procedure allowed the Laos investigative committee to be established despite negative votes by the Soviet Union on both the question of whether the matter was procedural or substantive and also the question of whether the committee should be created. See 14 U.N. SCOR (848th mtg.) at 12, 22, U.N. Doc. S/PV.848 (1959).
consent. This position has been borne out in practice, although where consent to enter the country is withheld the investigation must be conducted from a neighboring nation.

While on-site examination is preferable, the information the United Nations requires can be obtained through hearings held elsewhere—the Irish Republic, for instance—and thus British consent is not essential to creation and operation of a fact-finding commission on Northern Ireland. Moreover, there is some support for the proposition that if either the Council or Assembly decides it needs to order an investigative committee into an area under article 34 to determine whether the continuance of the dispute or situation is likely to endanger international peace, then the host government could not lawfully deny that committee entry into the country.

774. This position can be traced as far back as 1947, when the United States announced it during debates on the Greek Case. (2) U.N. SCOR (61st, 63-64th mtgs.) at 1423, 1523, 1540-41 (1947). In 1953, a United Nations commission issued a report, 8 U.N. GAOR Supp. (No. 16) at 16-22, 114-19, U.N. Doc. A/2505 (1953), that adopted as consistent with the view held by "the majority of the Members States" a definition of intervention as entailing only "dictatorial interference," so that "Article 2(7) can in no event exclude the study of a problem brought before the United Nations, the submission of the relevant reports, and the formulation of recommendations, since none of these acts constitutes intervention in the strictly technical sense." Id. at 17.

775. See 42 U.N. ESCOR Supp. (No. 6), at 77, U.N. Doc. E/4322 E/CN.4/940 (1967). When the Human Rights Commission, pursuant to a request from the General Assembly, established "an ad hoc working group of experts" to investigate allegations of torture and ill-treatment in South Africa, consent was neither sought nor given. Id. The mission subsequently operated without South African consent, holding hearings outside South Africa. See Ermacora, supra note 758, at 188. Similarly, both the Commission and the Assembly employed fact-finding bodies to investigate alleged human rights violations by Israel, see supra note 761 and accompanying text, although Israel withheld consent and denied the missions access to the affected areas. See R. LILlich & F. NewMan, supra note 409, at 315; Miller, United Nations Fact-Finding Missions in the Field of Human Rights, [1970-73] AUSTRI. Y.B. INT'L L. 40-49. The Commission's working group on human rights in Chile conducted a thorough investigation despite the withdrawal of consent by the Chilean government, which prevented the investigative mission from entering the country. See R. LILlich & F. NewMan, supra, at 298-303, 315 (collecting United Nations documentation on the Chilean investigation).

776. But see HUMAN RIGHTS IN UNITED STATES AND UNITED KINGDOM FOREIGN POLICY 26 (1979) (Niall MacDermot, then-secretary-general of the International Commission of Jurists, arguing that for an investigation to be successful "[t]here must be a real possibility of seeing and hearing evidence on the spot").

777. See Sohn, supra note 630, at 238-39. As one commentator said, "[i]n United Nations circles, it has long been held that a mere investigation of facts alone does not constitute an intervention in the domestic jurisdiction of any State." Miller, supra note 775, at 48. But see Leary, supra note 343, at 21 ("The sending of a fact-finding commission into a country without its permission would appear to be unwarranted
Finally, the findings of a United Nations' investigative commission on Northern Ireland, if consistent with this report, could significantly increase pressure upon Britain to accept United Nations peacekeeping as an alternative to the current unsatisfactory situation. Previous fact-finding bodies have, in some cases, noticeably influenced governmental behavior by focusing international attention on the problem.

B. A Proposed Mandate for a United Nations Fact-finding Mission

To adequately analyze the propriety and practicability of communal peacekeeping in Northern Ireland, a United Nations' fact-finding mission, however created, must carry a broad mandate to determine, after full and fair examination of all relevant information:

1. Whether the crisis in Northern Ireland currently endangers or is likely to threaten international peace and security;
2. Whether, and to what extent, human rights are violated in the course of the Ulster conflict, with special consideration of:
   a. whether, and to what extent, the non-derogable rights to life and to freedom from torture and other cruel and inhuman treatment of the person are violated;
3. Whether, and to what extent, such violations are in whole or intervention . . .


779. "Indisputably, this process can be productive," argue Lillich and Newman: Throughout the world there is proof that, partly because of UN and related international pressures, some death sentences have been voided, individuals have been freed from jail, fairer trials often have been procured, some governments (e.g., Greece and Pakistan) have been deposed, and many governments have become less shameless and less arrogant as to torture, oppression, starvation, and comparable evils.

R. LILLICH & F. NEWMAN, supra note 409, at 303. This is true even where the investigative commission is not allowed access to the country, as in the case of Chile, where the pressure applied by the United Nations fact-finding mission led to a considerable curtailing of the violence the Chilean junta committed against its own people. Id.; see Halderman, Advancing Human Rights Through the United Nations, 43 L. & CONT. PROB. 275, 284 (1979) ("Public opinion is important since . . . the consensus must be formed—the necessary consistency of thought patterns—which is the necessary substructure of any system capable of maintaining peace and security as well as assuring generally acceptable observances of human rights.") (emphasis in original).
in part the responsibility of the British government, either by positive acts of the security forces under its command or by negative acts, such as the failure to prosecute security force violations and the failure to prevent civilians and paramilitarists from violating human rights, with special consideration of:

a. whether, and to what extent, governmental derogation from its international obligation to protect human rights is justified "by the exigencies of the situation," and
b. whether, and to what extent, governmental derogation, even if justified, is likely to increase violations of the rights to life and to freedom from torture and inhuman treatment;

4. Whether, and to what extent, governmental violations, either positive or negative, are likely to increase tensions, escalate hostilities, and heighten the threat to international peace;

5. Whether political solutions are possible, and if so, whether they are likely, absent withdrawal of British troops;

6. Whether, and to what extent, any United Nations' peacekeeping force that might be deployed in Northern Ireland could be expected successfully to keep or restore the peace within the province, with special consideration of:

a. the level and nature of hostilities the force could be expected to face, and
b. the tasks the force could be required to undertake and the extent to which these tasks could successfully be completed;

7. Whether, after peacekeepers were deployed, negotiations could be initiated and, if so, the likelihood of whether such negotiations might succeed.

This Article has already attempted to predict, with the evidence available to it, the likely answers a fact-finding mission would supply to the first four of these questions. Following are analyses of the last three.

1. The Possibility of Political Situations

It seems likely that a United Nations' fact-finding mission would discover what a United States congressional fact-finding expedition learned a decade ago: that leaders on both the Catholic and Protestant sides of the Ulster conflict believe a permanent political solution cannot be designed

780. See, respectively, supra notes 484-546; 101-19, 149-89, 208-12, 220-29, 565; 146-48, 160-62, 564-95; & 149-285 and accompanying text.
while England’s army remains west of the Irish Sea. As one member of the 1978 United States fact-finding delegation declared, “We have heard everywhere from persons requesting that the British withdraw from Northern Ireland.”781

Moderate Catholics call British withdrawal “an essential precondition to peace in Ireland.”782 London’s ill-conceived strategy has led the British to employ wartime tactics against the noncombatant portion of the minority community,783 leading to deep-seated animosity within the Catholic population toward British policy and the soldiers who enforce it.784 Until Britain’s troops exit Ulster they will continue to supply the IRA with a justification for its campaign and a rallying cry—“Brits out”—to bolster recruitment785 and to solicit financial assistance from Irish descendants in the United States.786

Even some Protestant leaders also call for British withdrawal.787 The rationale of the extremists, such as the UDA, is that eventually British troops will be used to enforce unification, so it is preferable that Ulster become independent.788 They also recognize what London apparently will not, that the army only serves to foster support for the IRA.789

More moderate Protestants emphasize that the backing the unionist paramilitarist receive from the British army deters Protestants from seeking a realistic political solution.790

If there were any doubts that the British presence and policy have created a climate in which negotiated solutions are next to impossible,791 they were dispelled in 1989 when preliminary talks between Protestant and


782. So spoke Pat Fahy, Catholic member of the non-sectarian Irish Independence Party, in an interview with two United States Congressmen during their fact-finding expedition to Northern Ireland. Id. at 137.

783. See supra notes 29-42, 146-59 & 219-29 and accompanying text.

784. See supra notes 145-48, 190-92, 254-60 & 288-89 and accompanying text.

785. See supra notes 95-96, 132 & 320 and accompanying text.

786. See supra note 44 and accompanying text.

787. See, e.g., Northern Ireland Report, supra note 227, at 70.

788. See id. at 69.

789. Id.

790. “[T]he presence of Britain and the presence of the troops . . . in a sense undergirds the intransigence of the Loyalist politicians,” according to Reverend William Arlow Anglican clergyman and former secretary of the Irish Councils of churches. Id. at 114. John Turnley, moderate Protestant political activist, concurs: “We believe that if the British bayonets are taken from the backs of these people—in other words, they are not getting the military backup—they will be much more willing to talk with Irish throughout Ireland, North and South.” Id. at 133.

791. See supra notes 253-70 & 591-93 and accompanying text.
Catholic politicians, designed to do nothing more than find a way to create ongoing dialogue between the two sides, were scuttled by intransigent sectarianism. Just as many had predicted, with British troops to support them, militant unionists such as Paisley perceived no pressure to compromise and refused to remove the threshold barrier to further dialogue, their demand that the Anglo-Irish accord be suspended prior to substantive negotiations. Ironcally, while British officials welcomed the negotiations, British military policy and presence in Northern Ireland helped destroy any chance for their success. To quote a recent British editorial, "British [policies] in Ulster are [supposed] to help moderates, but as they invariably agitate the agonizing question of allegiance, they always help extremists."

2. The Role of the Peacekeepers in Northern Ireland

There are two significant indicators of a region's susceptibility to successful peacekeeping. Both exist in Northern Ireland. First, the hostilities have not escalated or fractured to such a point that peacekeeping becomes difficult if not impracticable. Second, and in part as a result of the first, the tasks which the peacekeepers would be called upon to undertake, while taxing, are not beyond their capabilities, at least on an interim basis.

a. Northern Ireland Is Ripe for Peacekeeping

Perhaps the most hopeful aspect of the situation in Northern Ireland is that it has not engulfed the entire island in a war on the scale of Lebanon. Peacekeeping functions best if employed before hostilities explode into such full-intensity warfare. Not coincidentally, the most troubled and controversial United Nations' peacekeeping efforts were the operations in the Congo and Lebanon, both of which were precipitated by foreign incursion into a deteriorating civil war. Repeated violations

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792. See Rule, supra note 593, at A4, col. 1.
793. Id. This frustrating scenario replayed itself in 1990. See infra notes 908-10 and accompanying text.
794. See Whitney, supra note 593, at 13, col. 1.
795. What Is King's Answer?, supra note 720, at 5, col. 3.
796. "[A] civil war [is] the worst possible situation in which a United Nations peacekeeping force could find itself." BLUE HELMETS, supra note 21, at 272.
of the peacekeeping agreement by the invading countries, Belgium and
Israel, made effective peacekeeping impossible in certain regions of the
invaded countries and, in the case of Lebanon, proved insurmount-
able. Those who doubt the efficacy of sending United Nations' troops into
Ulster are correct to argue that once the violence escalated to the point
that Ireland and Britain were thoroughly engaged militarily, a United
Nations' force would be of little use. That, of course, is the very
point of deploying peacekeepers now, before war eventually engulfs the
entire island, for the very intent of peacekeeping is to prevent such a war,
not to end it by forcing one side or the other to agree to terms.

The advantage presented by a relatively low level of armed aggression
might be lost if either side thought it could defeat the other through
military means, for peacekeeping is best able to achieve its goals if both
sides recognize they are incapable of imposing their terms upon the
other. As long as the Belgians believed they could force the Congo-
rese government to accept Katangese succession, or the Israelis insisted
they could control the political demographics of southern Lebanon, United
Nations' troops were hard pressed to prevent either army from violating
the ceasefire arrangements. Despite Thatcher's rhetoric, there is
substantial evidence that both sides recognize the Northern Irish conflict is
stalemated.

Lebanon presented an additional impediment to peacekeeping not
found in Northern Ireland. The Lebanese puzzle is one of many pieces
and repeated efforts to achieve something more than partial and inevitably
brief ceasefires collapsed due to the United Nation inability to control the
activities of the many factions engaged in the hostilities. But where there
were more than ten different armed parties battling for control in
Lebanon, a United Nations' force in Northern Ireland would have to

798. See BLUE HELMETS, supra note 21, at 112-20, 125-29, 131 (Israel); id. at 237-39
(Congo); Draper, supra note 432, at 403 (Belgium).

799. See, e.g., K. BOYLE & T. HADDEN, supra note 14, at 39; O'Brien, Scenarios for
the Future: The Best and Worst Alternatives, in C. CARLTON, supra note 46, at 149-50.

800. Claude, supra note 338, at 52 ([P]eacekeeping "represents an effort, not directly
to promote settlement of disputes, but to arrest or prevent their degeneration into violent
conflicts, and thus to restore or to maintain the possibility that peaceful solutions may be
found.").

801. See D. ZIEGLER, supra note 471, at 324-25.

802. See BLUE HELMETS, supra note 21, at 117-18, 120, 125-29, 131, 237-39;
Schachter, Preventing the Internationalization of Internal Conflict: A Legal Analysis of the

803. See supra notes 132-36 and accompanying text.

804. The primary combatants were four: Lebanon, the Palestine Liberation Organiza-
tion, Israel and Syria. In addition, the Israelis armed and to some extent controlled the
monitor the activities of only three once the British army withdraws: on the Catholic side, the IRA; on the Protestant, the paramilitary UDA and the official security forces.

b. United Nations Forces Could Achieve Their Goal

Peacekeeping is not a panacea. The goal of peacekeeping is not to attempt to aggressively impose a settlement, but to provide a buffer between hostile communities while a settlement is sought. It is an interim measure, a holding action, designed to give the antagonists time and a relatively stable climate in which to meet at the bargaining table and, perhaps, to achieve a pacific solution. This Northern Ireland needs. One Protestant leader has pled for "referees . . . . What we are saying to people who have listened to us is, 'we need help.'" There are two reasons why British soldiers cannot fulfill the referee function. First, they are not perceived by the Catholic community to be neutral, the essential missing ingredient without which Ulster's violence will continue to recycle. Second, they have proven largely ineffective at preventing cross-communal violence, and for any peacekeeping effort to succeed in reducing tension in Northern Ireland it must reduce the number of paramilitary victims on both sides; the paramilitarists' murderous policy of "tit-for-tat" is a constant source of escalating animosity.

Christian militias led by Major Haddad, and later in the conflict began arming newly emergent militias. The PLO was allied with the Lebanese National Movement, "a loose association of Lebanese Moslem and leftist parties," but was often confronted with breakaway dissident groups, such as the one led by Ahmed Jebril. Syria, meanwhile, supported Amal and other Shiite Moslem paramilitarists. See , at 114, 119-20, 134-35, 141.

805. The INLA, the Marxist splinter group, always has been little more than a fringe player—albeit one capable of occasional violent acts—and it was largely eliminated by a murderous internecine feud late in 1986. See K. KELLEY, supra note *, at 373; see also J.L. ANDERSON & S. ANDERSON, supra note 327, at 58.

806. It bears repeating that the UFF, which is often blamed for Protestant paramilitary atrocities, is in fact the UDA operating under an assumed name. See supra note 161 and accompanying text. The UVF is still active, but much less so than the UDA, J. HOLLAND, supra note 7, at 220, and, in any event, operates in the same two parts of the province as the UDA—greater Belfast and Armagh-Tyrone. Violence in Ulster, supra note 12, at 3, col. 1; see also Protestant Group Admits Killing 4, supra note 284, at A8, col. 4.

807. See supra note 299 and accompanying text.


810. See supra notes 145-94 and accompanying text.

811. See K. BOYLE & T. HADDEN, supra note 14, at 71. In one recent example:
i. United Nations Forces Are Neutral

There is every reason to believe that a properly established United Nations' force would be considered neutral. "Peace-keeping is a neutralizing function," Inis Claude writes, "to be exercised by neutralist states under the auspices and direction of a neutral organization." Its troops should be, and generally are, drawn from "smaller" nations, uninterested in solidifying a particular sphere of influence. The peacekeeping effort that most blatantly violated this basic tenet was not a United Nations-sponsored effort, but rather was the United States-initiated multinational force in Beirut, in which the United States Marine Corps played such an unfortunate role. The spectacular and very bloody failure of this force should reinforce in the United Nations the elementary peacekeeping principle of "keep the major powers out." As in Lebanon, they lose their neutrality by supporting one side, or appearing to, in either case, the effectiveness of the unit is greatly diminished. Moreover, because they are considered allies of one party, to the other(s) they become "a continuing invitation to attack.

The United Nations seems to have heeded the lesson of Lebanon. Its recently created Iran-Iraq Military Observer Group, for example, consists

Masked gunmen in Northern Ireland killed a Roman Catholic man in front of his wife last night in what appeared to be a sectarian "tit-for-tat" slaying. Police said the gunmen used sledgehammers to smash down the victim's front door, shot him at point-blank range and fled in a stolen car. No group immediately claimed responsibility for shooting 42-year-old civil servant Niall Davies in Glengormely, three miles north of Belfast, police said. He was not thought to have had any connection with Republican paramilitary organizations. The St. Patrick's Day incident came just 24 hours after Irish Republican Army gunmen shot and killed Jackie Irvine, a prominent Protestant extremist, on the doorstep of his Belfast home.

Vicious Slaying in Ulster, San Francisco Chron., Mar. 18, 1989, at A12, col. 4. Davies was one of 12 such victims during a period of less than two weeks. See Rule, supra note 16, at A3, col. 1.


813. See id.; D. ZIEGLER, supra note 471, at 321.

814. This contingent, which was not attached to the United Nations mission in southern Lebanon, was the result of an agreement among Lebanon, the United States, France and Italy. See BLUE HELMETS, supra note 21, at 144.


816. Critics of United States involvement in Lebanon complained that the United States role changed from neutral peacekeeping to active military support of the Gemayel government. See, e.g., Magnuson, Nothing But Quicksand, TIME, Jan. 2, 1984, at 55.

817. Id. at 57.
of representatives from twenty-four mostly nonaligned countries, the most powerful of which might be Canada or Australia. There is no indication a United Nations peacekeeping force in Northern Ireland would be any different. Yet as the British army learned in Northern Ireland, it is as important to maintain an appearance of neutrality as it is to be welcomed as neutral upon arrival. Whether a United Nations force could do so in Northern Ireland would turn, in large part, on whether the force could carry out whatever functions it would be called upon to perform without appearing to take the government's side, or, conversely, to be fighting against it. The most difficult task facing the United Nations in this, and perhaps any, respect is the rather daunting prospect that the peacekeeping soldiers would have to assume regular police operations. As Professor Greer of the Queen's University of Belfast suggests, reducing tension within Northern Ireland "is not simply a matter of replacing the British."

ii. The United Nations Could Effectively Police Ulster, Temporarily

The overwhelmingly Protestant RUC and UDR have so completely lost credibility within the Catholic community that the IRA now operates as the lone police force within certain Catholic wards, further enhanc-

818. The 24 countries are: Argentina, Australia, Austria, Bangladesh, Canada, Denmark, Finland, Ghana, Hungary, India, Indonesia, Ireland, Italy, Kenya, Malaysia, New Zealand, Nigeria, Norway, Poland, Senegal, Sweden, Turkey, Yugoslavia and Zambia. Rule, supra note 744, at A7, col. 1.

819. Professor Newman advocates that a United Nations Peacekeeping Force in Northern Ireland should be comprised of troops from countries that are "very carefully picked so that they don't look British." Newman, supra note 321, at 342.


821. Letter from Professor D.S. Greer to the Author (May 10, 1988) (on file with the author) [hereinafter Greer Letter]. Professor Greer goes on to pose the following questions: "Would the Royal Ulster Constabulary also be superseded? If so, could a UN force both keep the peace and operate an effective police service?" Id.

822. Since the 1969 erection of the barricades and creation of "No Go" areas, the RUC—which played a violent role in invading and terrorizing the Catholic neighborhoods and has yet to live down its reputation in the eyes of many Northern Irish Catholics—has been effectively excluded as a normal police force in the Catholic quarters of Belfast and Derry. See P. BEW & H. PATTERSON, supra note 79, at 26; J. CONROY, supra note 3, at
ing the minority community's reliance on the gunmen. Moreover, since these homegrown security forces are almost entirely Protestant, they are inviting targets for the republican guerrillas.\textsuperscript{823} Either the RUC must be disarmed, disbanded and re instituted as nonsectarian,\textsuperscript{824} with considerably more success than were the notoriously and violently sectarian B-Specials in the early 1970s,\textsuperscript{825} or their movements must be restricted to wholly Protestant areas and a separate but official Catholic force recruited and established to police minority enclaves.\textsuperscript{826} The United Nations is not without experience in supervising such reorganizations of internal security forces, having done so in both the Congo and West New Guinea.\textsuperscript{827}


\textsuperscript{824} The UDR, which is 97\% Protestant and whose members have been found guilty of numerous sectarian attacks, should simply be disbanded. See Arnold, Crime, Ulsterisation and the Future of the UDR, FORTNIGHT, Oct. 1985, at 4-5; Thomas, supra note 161, at A2, col. 3. Due to their reputation for anti-Catholic violence, the UDR is a favorite target of the IRA; through early 1990, at least 187 members of the force had been killed since 1969. Prokesch, A Huge Bomb Kills Four British Soldiers in Ulster, N.Y. Times, Apr. 10, 1990, at A3, col. 1. A United Nations force could monitor the territory now patrolled by the UDR. See infra note 888.

\textsuperscript{825} After the B-Specials engaged in considerable violence against civil rights marchers and other Catholics in 1968-69, a government tribunal of inquiry in October 1969 recommended its disbandment, see HUNT REPORT, supra note 77, at 42, 46, which was accomplished within months. The UDR, however, which was envisioned as a non-sectarian civilian militia to replace the B-Specials, "was really only a face-lift for the Ulster Special Constabulary [the B-Specials]. . . . Many former B-men joined the U.D.R. and carried on, undisturbed by the British, with their sectarian mode of defending a deeply sectarian state." K. KELLEY, supra note *, at 123.

\textsuperscript{826} The IRA might decry Catholic participation in what would be an arm of the governing authorities, but it would be unable to target these men and women without losing nearly all its support within its own constituency. Cf. J. CONROY, supra note 3, at 68 (while the Protestant RUC police are considered by the IRA to be legitimate targets, Northern Irish firemen are not because there are "Catholics on the fire department, and firemen perform[] their duties as if there was no difference between a Protestant fire and a Catholic one.").

\textsuperscript{827} In the Congo, the peacekeepers disarmed overly zealous elements of the Congolese army, official militia and private forces and in this vacuum assumed policing duties for much of the country. See, e.g., BLUE HELMETS, supra note 21, at 226, 240-41; Miller, supra note 670, at 18-20. In West New Guinea, the United Nations supervised the creation and buildup of a viable indigenous police force after the Dutch withdrawal. See BLUE HELMETS, supra, at 307.
Whether the existing security apparatus in Northern Ireland is either completely dismantled and rebuilt or merely reorganized, the United Nations force would be called upon to perform the policing task on at least an interim basis in some parts of the province during the change. The policing of Northern Ireland, albeit temporarily, with a neutral United Nations force has certain advantages. Although United Nations troops would have investigative powers, they use no covert methods to gather intelligence, although they would likely possess the power to arrest armed paramilitarists, they would have no authority to interrogate; and although they have the authority to use force, they can do so only in self-defense and as a last resort. These restrictions would help to assure the Catholic community of the peacekeepers' objectivity and go far toward reducing Catholic reliance upon and support for the IRA. As this is likely to translate into fewer deaths at the IRA's hands, it should also undercut Protestant sympathies for their paramilitarists.

Policing is not a job with which the United Nations is unfamiliar. The United Nations' force in the Congo was "an 'essentially internal' police operation," responsible for normal police functions in certain portions of the country. In Cyprus, the United Nations Peace-keeping Force

828. INT'L PEACE ACADEMY, supra note 678, at 39.
830. See INT'L PEACE ACADEMY, supra note 678, at 300 (the role of civilian police in peacekeeping operations is generally limited to observation, liaison, advice and negotiation).
832. Cf. J.L. ANDERSON & S.' ANDERSON, supra note 327, at 3 ("The continued presence of British forces, the power of both Republican and Loyalist paramilitary organizations, and the lack of movement towards a political settlement have insured the violence continues today.").
833. Halderman, supra note 332, at 990. As Professor Miller explains:
The kind of military action which the [Security] Council authorized in the Congo was restricted essentially to the maintenance of internal law and order, the purpose of which was to enable the Belgian troops to be speedily withdrawn. While this was a use of armed force, it was essentially of a police or 'criminal law' character.
834. See BLUE HELMETS, supra note 21, at 225-26. Indeed, the force "had the authority to enforce the ordinary criminal laws applicable in that country," Halderman, supra note 332, at 989, to such an extent that for a time the United Nations was running the country. D. ZEIGLER, supra note 471, at 323.
in Cyprus (UNFICYP) in April 1964 received its own United Nations' civilian police force (UNCIVPOL), which, among other duties, staffed police posts in certain sensitive areas where the tension might be alleviated by its presence and undertook investigations into cross-communal incidents. In West New Guinea, the United Nations Security Force (UNSF), was the "police arm" of the United Nations provisional government, which ruled the territory under a ceasefire arrangement from October 1962 until April 1963. The UNSF successfully maintained internal law and order until administration of the territory was transferred to Indonesia.

Policing, however, also is not a job with which the United Nations is entirely comfortable. There is, as Professor Miller observed, a "delicate line between the maintenance of order and intervention in internal conflict." More concretely, "[t]he Gilbertian maxim that 'a policeman's lot is not a happy one' was amply confirmed by the experience of the United Nations in the Congo," where 234 peacekeepers died while attempting to maintain law and order. Nonetheless, the Congo operation, from a security standpoint, fulfilled its goals and all subsequent policing operations were largely, if not entirely, successful. The United Nation's faith in its policing abilities

835. See 19 U.N. SCOR Supp. (No. 1) (Apr.-June 1964) at 107, U.N. Doc. S/5679 (1964). In many of these areas UNCIVPOL took over most of the functions of a neutral police force after Turkish officers withdrew from the Cypriot police. INT'L PEACE ACADEMY, supra note 678, at 299-300; see also BLUE HELMETS, supra note 21, at 270-71.

836. See BLUE HELMETS, supra note 21, at 307.

837. Id. at 307, 310.


839. Claude, supra note 338, at 60. The United Nations itself conceded that "[t]he maintenance of law and order was the heaviest of all the tasks falling upon ONUC," BLUE HELMETS, supra note 21, at 225, and that, "[t]hinly deployed throughout the country, the United Nations Force had great difficulty in coping with its overwhelming tasks." Id. at 232.

840. BLUE HELMETS, supra note 21, at 344.

841. Law and order were restored; rebellious elements were brought under control and, in many cases, disarmed; mercenaries were arrested and deported; tens of thousands of civilian lives were saved, considerable property was protected, and, in the end, ONUC was able to leave domestic policing in the hands of an integrated, if inexperienced, force. See BLUE HELMETS, supra note 21, at 226, 228, 232-33, 237-38, 242-43, 255-56.

842. See supra note 835 and accompanying text (Cyprus); supra notes 836-37 and
prompted the Security Council to agree to send a 500-member police force to maintain law and order in formerly South African-controlled Namibia while Cuban and SWAPO troops withdrew under the supervision of nearly 5,000 United Nations' peacekeepers. If the United Nations is competent to police a vast expanse of southwestern Africa as part of the Namibia peace accord, it also should be capable of policing, temporarily, Northern Ireland.

iii. United Nations Cyprus Experience Predicts Success for Northern Ireland

There is substantial evidence, based on the United Nations efforts in Cyprus, that the organization could effectively undertake both the police and peacekeeping functions in Northern Ireland, and not only eliminate the violence perpetrated by the withdrawing British army, but also sharply curtail violence between the Protestant and Catholic communities. The parallels between the Cypriot and Ulster crises are striking. Prior to gaining independence in 1960, Cyprus was, like Northern Ireland today, governed by the British. After independence, the roots of Cyprus' strife were nearly identical to those of Ulster's—conflict between the government and a dissident minority, arising out of the majority community's control of a government openly hostile to the minority population and out of the long history of enmity between the two groups.

The consequence of the majority's grip on government was a vesting of ninety percent of Cyprus' wealth in the hands of the majority, leaving the minority in an economically subordinate position. Though citizens

accompanying text (West New Guinea).


844. See Wretched Are the Peacekeepers, supra note 745, at 34. Indeed, the primary problem facing the Congo force in its efforts to serve as policeman was the very size and population of the war-torn country. See BLUE HELMETS, supra note 21, at 225.

845. After a campaign "of terrorism and violence," Ehrlich, supra note 318, at 1039, led by EOKA, the Greek "terrorist" National Organization of Cyprus Fighters. Id. at 1030 & n.36.

846. Turks comprised 18-20% of the population. See I S. BAILEY, supra note 304, at 5; Ehrlich, supra note 318, at 1024 & n.3.


848. See D. ZIEGLER, supra note 471, at 89-90.

849. Professor Ziegler reports:

[The Turks] had poorer jobs and lived in poorer housing. Greek village mayors drove cars, Turkish village mayors rode bicycles. The
of one island, the majority Greek and minority Turkish communities on
Cyprus, as in Northern Ireland, cling to different faiths, cultures,
languages and philosophies, in a country that had been created but
was never independently viable; like Ulster, the artificial nature of the
state became a principal source of internal turmoil. In a foreshadow-
ing of what would follow in Ulster a few years later, the spark that
detonated the Cyprus crisis was excessive force by majority security
personnel against minorities, setting off widespread rioting in a major city
that spread quickly to other towns and erupted into a civil war that
threatened to become international.

Before the peacekeepers were sent in, hundreds were killed or
wounded. Despite the intensity of antagonistic sentiments on both
sides, the United Nations' force provided a moderating influence,
primarily because it never associated itself with the official view of the
majority government that the minority constituted a rebellious, unlawful
group. In early 1964, the international press corps reported that
majority fanatics "appear bent on a policy of genocide." The United
Nations' force could not prevent occasional attacks by either community
on the other, but minority leaders later wrote that UNFICYP prevented
minor clashes and local incidents from escalating and deterred Greek
Cypriots from committing greater atrocities. The peacekeepers
returned "a relative, if uneasy, calm on the Island" and "restored at least

Greeks admitted that they produced 90 per cent of the wealth on
Cyprus but argued that they did so because they were a more dynamic
people. Some people suspected the president of Cyprus (a representa-
tive of the Greek community), Archbishop Makarios, of following a
strategy of slowly strangling the Turks economically, forcing them out
of productive activity and government jobs until they would no longer
be able to resist Greek control.

Id. at 90-91 (footnote omitted).

850. See Z. M. NEJATIGIL, THE TURKISH REPUBLIC OF NORTHERN CYPRUS IN
PERSPECTIVE 3 (1985).


Add.1 & 2 (1964); Z.M. NEJATIGIL, supra note 850, at 4-5; 2 S. BAILEY, supra note 304,
at 670; Ehrlich, supra note 318, at 1046-49.

853. Five hundred Turkish Cypriots were reported killed, more than 1,000 wounded and
another 203 missing. R. DENKTASH, supra note 741, at 39. Some 103 Turkish villages
were totally or partially destroyed and about 25,000 Turks became refugees in their own
country. Z.M. NEJATIGIL, supra note 850, at 5; see Ehrlich, supra note 318, at 1051-52.


855. R. DENKTASH, supra note 741, at 40.

856. Id.
a semblance of normality." 857

The United Nations' force did not prevent partition in 1974 after the Turkish invasion, but its job was not to prevent partition, which the Turks always considered their primary political solution. 858 Peacekeepers did buy Cyprus ten years to negotiate a settlement that would have avoided partition; to the extent the negotiations failed, it was the fault of diplomats and politicians on both sides, not the United Nations contingent. Since partition, peacekeepers have patrolled the border between north Turkish Cyprus and the southern Greek Republic, allowing the Turkish Cypriots to luxuriate "in a sense of security which, to them, means more than anything else." 859 In contrast, British soldiers have been unable to bring security to either segment of Northern Ireland's divided society.

Professor Greer argues that Cyprus is an imperfect analogy to Northern Ireland, "because the [former] island was in effect partitioned geographically; that cannot be done in Northern Ireland." 860 Flowing from this assessment is the conclusion that peacekeeping's significant gains on Cyprus do not indicate similar success in Northern Ireland. Professor Greer's analysis fails, however, because his premises are incorrect; he overstates the extent to which Cyprus was segregated and understates the extent to which Northern Ireland is.

Taking the former first, "[o]ne of the factors that made the Cyprus problem so difficult was that the Turkish minority was not concentrated in one part of the island," 861 but rather was "scattered in enclaves throughout." 862 Pre-1974 Cyprus was "an ethnographical fruitcake in which the Greek and Turkish currants were mixed up in every town and village and often in every street." 863 This integration of the combating communities forced UNFICYP to deploy its men throughout the island, in each district on Cyprus 864 and to undertake frequent patrols to ensure safety on roads and within towns and villages in sensitive areas; 865 to prevent armed cross-communal infiltration; and to protect minority

857. Ehrlich, supra note 318, at 1051; see also Theodorides, supra note 402, at 775-76, 783 (1982).
858. See Ehrlich, supra note 318, at 1030-33.
860. See Greer Letter, supra note 821.
861. D. Ziegler, supra note 471, at 93.
862. Id. at 89.
863. C. Foley, Legacy of Strife: Cyprus From Rebellion to Civil War 87 (1964).
864. Blue Helmets, supra note 21, at 268.
865. Id. at 270.
enclaves and villages against attacks by the majority national guard. These tasks required UNFICYP to "bec[o]me involved, from its inception, in carrying out a vast array of activities that affected almost every conceivable aspect of life in Cyprus." For a decade, the United Nations successfully maintained this broad-based brand of peacekeeping in a largely nonpartitioned country; it was not until after the Turkish invasion of 1974 and the resettlement, voluntary and involuntary, of tens of thousands of members of both communities, that Cyprus became the highly partitioned state Professor Greer describes. Only then was UNFICYP's task reduced to patrolling a buffer zone along the ceasefire line between two segregated communities.

That Cyprus was not partitioned until the mid-1970s does not mean it was fully integrated, either. Even before the Turkish invasion, "Turkish and Greek Cypriots lived in separate villages or separate sections of the larger municipalities, shopped at separate stores, worked in separate businesses, were born in separate hospitals and buried in separate cemeteries." In short, when United Nations peacekeepers landed in Cyprus, its demographics were similar to, if not as segregated as, Northern Ireland is today.

Like Cyprus, the majority and minority community are dispersed throughout Ulster; however, with the exception of Belfast, Catholics are concentrated in the border areas, Protestants in the northeastern portion of the province. Like Cyprus, to the extent members of the one community are distributed in regions of Northern Ireland dominated by the other, they are highly concentrated and segregated. In Ulster's

866. Id. at 273, 276, 285.
867. Id. at 272.
868. Within two days of its July 20, 1974 invasion, Turkey controlled much of northern Cyprus, but 60,000 Turkish Cypriots remained outside their reach, while a number of Greek enclaves were within it. Eventually, more than 180,000 Greek Cypriots fled to the Greek-held southern part of the island and only 10,000 Turkish Cypriots were left outside what became an autonomous Turkish Cypriot state. See D. ZIEGLER, supra note 471, at 92-94.
869. Ehrlich, supra note 21, at 290; Theodorides, supra note 402, at 783.
870. Ehrlich, supra note 318, at 1039.
871. K. BOYLE & T. HADDEN, supra note 14, at 34-36. The 1981 census revealed that Catholics constituted no more than 74% and no less than 8% in any one of Northern Ireland's 26 council districts. Id.
872. Id. The six districts on or near the border are between 75% and 45% Catholic, id., and in the three counties nearest the border Catholics enjoy a 2-1 majority. Id. at 115 n.6. Conversely, in the 13 districts in the northeast, Protestant majorities range from 62 to 92%. Id. at 34 & n.3.
873. See id. at 34-35.
two largest cities, Belfast and Derry, where Catholics and Protestants live in close proximity, not only do they live in separate parts of the city, but the Catholic quarters are at least partially walled off from the Protestant in what "has been called the 'Warsaw ghettoization' approach." This policy, demanded in Belfast by the British army as part of its security measures, coupled with the increasing migration of "families mov[ing] to seek the protection of their own kind," has further isolated the two communities. "[S]egregation is worse now than it was twenty years ago."

Like Cyprus, the segregation of Northern Irish life is almost complete. "It is perfectly possible, and quite normal, to live a full and varied life in Northern Ireland without having any real contact with people from the other community." Discrimination and fear have forced Catholics and

874. As a governmental enquiry reported in 1969, it could not ignore "the segregation in housing which exists and persists." CAMERON REPORT, supra note 3, at 14.

875. This phrase was coined to describe the "ring of very permanent-looking security gates and a corrugated steel wall which divides the Catholic districts from their nearby loyalist neighbors" in Belfast. CONROY, supra note 3, at 9. One commentator likened the "forbidding concrete barrier, 20 feet high in some places, [which] cuts through working-class Belfast, separating not political ideologies but Protestants and Roman Catholics" to the Berlin Wall. Marshall, supra note 139, at 1, col. 4. Belfast is not the only city in Northern Ireland so divided:

The City of Londonderry is now compassed about with a very strong wall, excellently made and neatly wrought, being all of good lime and stone; the circuit whereof is two hundred and eighty-four perches and two-thirds, at eighteen feet to the perch; besides the four gates which contain eight-four feet, and in every place of the wall is twenty-four feet high and six feet thick.

J. URIS & L. URIS, IRELAND: A TERRIBLE BEAUTY 207 (1975). Although this report was written in 1618, see id., Catholics are still unwelcome within what remains of those walls, see id. at 209; cf. CAMERON REPORT, supra note 3, at 16, and are forced to live in the boglands beyond them. J. URIS & L. URIS, supra, at 211.

876. See J. CONROY, supra note 3, at 8.


878. J. CONROY, supra note 3, at 8; La Guardia, supra note 877, at 15.

879. J. CONROY, supra note 3, at 9. "[A]nd the government has given up all thought of housing working-class Protestants and Catholics in the same neighborhood." Id. at 9; see also La Guardia, supra note 877, at 15 ("Protestant areas have become more Protestant and Catholic areas have become more Catholic.").

880. K. BOYLE & T. HADDEN, supra note 14, at 57; see also La Guardia, supra note 877, at 15 ("[I]t is not surprising that youths in loyalist areas, such as the village on the other side of the motorway from Catholic west Belfast, only know Catholics from the hours
Protestants to work with and for their own to an extreme degree.881 Add the extensive segregation in education—of the nearly 350,000 school-aged youth in Northern Ireland, only slightly more than 1,000 attend integrated schools882—as well as in social and sporting activities,883 and “the extent to which Northern Ireland really is a divided society”884 becomes clear. Of all the problems the British army faces in Northern Ireland, finding ways to interpose itself between the two communities is not one of them,885 and there is no reason to believe the United Nations force would be any different.

What might be different is the reception the United Nations troops would expect; at least one Protestant paramilitary leader recently predicted that if United Nations’ peacekeepers replaced a withdrawing British army, “[e]verybody’d be shooting at the UN then.”886 Perhaps. Yet, as the British constantly reiterate, Ulster’s is a propaganda war, one in which both Catholic and Protestant paramilitarists are fiercely engaged. Toward winning that war, both sides have in recent months taken steps to reduce criticism that they target the innocent.887 Begin to shoot at United Nations’ soldiers and the propaganda war is surely lost. Whatever else the paramilitarists’ leaders might be, ignorant of the importance of public

spent hurling stones at them.

881. See K. BOYLE & T. HADDEN, supra note 14, at 56-57; D. REED, supra note 107, at 87, 117; see also S. BELFRAGE, supra note 30, at 269-70. See generally P. BEW & H. PATTERSON, supra note 79, at 148 (although the recruitment of Catholics by the Fair Employment Agency has risen since 1973, to 30.5%, the higher grades of employment remain overwhelmingly (80%) Protestant).

882. Rule, Where They Go to School to Learn Not to Hate, N.Y. Times, Dec. 15, 1988, at A4, col. 3. For a concise overview on the dual, sectarian school systems, see K. BOYLE & T. HADDEN, supra note 14, at 56; see also CAMERON REPORT, supra note 3, at 14.

883. See K. BOYLE & T. HADDEN, supra note 14, at 56.

884. Id. at 57.

885. A recent report revealed the ability of the British to determine where to patrol even in those urban areas in which Catholics are neither walled in nor out:

The British soldiers who stalk the streets here have little maps on the stocks of their automatic weapons. They are called “tribal maps,” and are divided in two colors, red for the Protestants and green for the Catholics. In this way the foreign soldiers can tell which street belongs to which tribe, and thus gauge their own level of safety.

J.L. ANDERSON & S. ANDERSON, supra note 327, at 2.

886. S. BELFRAGE, supra note 30, at 139.

opinion, and of the consequences of attacking United Nations' peacekeepers on public opinion, they are not.

In sum, the available evidence strongly suggests the tasks which a United Nations peacekeeping force in Northern Ireland would be called upon to perform are, while imposing, not impracticable.888

3. The Likelihood of Negotiations

No one can predict with anything approaching certainty that replacing British troops with United Nations' peacekeepers, even if accompanied by a unilateral IRA ceasefire of the type that recently has been advocated,889 could guarantee the initiation of negotiations for a political solution to the War of Ireland. The escalating paramilitary warfare, the consequences of British policy890 and the permeance of ingrained bigotry have deepened sectarian hatred in recent years, allowing militants on both sides to remain committed to armed struggle.891

Yet it would be blindly fatalistic to predict automatic failure. For more than a decade now observers have detected among the "political groups, clergy, government officials, and citizens of Northern Ireland . . .

888. One other important task the United Nations would inherit from the security forces would be patrol of the border with Ireland to prevent paramilitarists and munitions, primarily republican, from infiltrating into the North, a chore not dissimilar to those previously performed by United Nations peacekeepers in Cyprus, see, e.g., BLUE HELMETS, supra note 21, at 270-71; Theodorides, supra note 402, at 780-83, the Congo, see, e.g., BLUE HELMETS, supra, at 232-33; Miller, supra note 670, at 16-20, and, with less success, in Lebanon, see, e.g., BLUE HELMETS, supra, at 118-21. This task currently is performed by the British, RUC and especially the UDR on the Northern side and the Irish army and police on the Southern. There is also a need to guard against unionist excursions into the South. For example, in 1976, the UDA infiltrated into the Republic, set off 50 firebombs in Dublin and then blamed them on the IRA. See Clines, supra note 887, at A3, col. 1.

889. See K. KELLEY, supra note *, at 376-78.

890. "[T]he Provo are a logical reaction to the repressive measures of the British government. . . . That [any journalist] who spends time in the nationalist communities of Belfast, would arrive at a position of sympathy with the IRA, even though many of their methods repel him, will come as no surprise to anyone who has spent time there. The Diplock courts, dawn raids, discrimination in housing and the work-place, violence and intimidation are there for all to see. Unfortunately, very few take the time." English, Americans in the North (Book Review), IR. AM., Mar. 1988, at 49, 50 (reviewing S. BELFRAGE, supra note 30; J. CONROY, supra note 3); see also, e.g., J.L. ANDERSON, supra note 327, at 20-21, 24-25; S. BELFRAGE, supra, 290-92; J. CONROY, supra, at 14, 103, 120-21; Rule, supra, at 3, col. 1.

a thread of a possible compromise among the opposing factions which could eventually lead to progress in devising a solution acceptable to all parties concerned.\textsuperscript{892} That the thread of compromise and dialogue is frayed by war does not mean it has come completely unwoven. The lesson of recent vain attempts to initiate negotiations is not that they will never succeed, but rather that they will not succeed in the current climate of violence.\textsuperscript{893} Indeed, recent reports and electoral returns reveal a population overwhelmingly desirous of a negotiated peace,\textsuperscript{894} but impo-

\begin{itemize}
\item \textsuperscript{892} \textit{Northern Ireland Report}, supra note 227, at ix.
\item \textsuperscript{893} See Rule, supra note 593, at A4, col. 1; Whitney, supra note 593, at 13, col. 1.
\item \textsuperscript{894} It cannot be gainsaid that support for a political solution is widespread, even if agreement on what such a solution might entail is not:
\end{itemize}

Unionism seems more deeply divided today than 13 years ago, the current [Democratic Ulster Party-Official Ulster Party] electoral pact notwithstanding. . . . As is the case on the nationalist side, even some of the most ardent activists have grown weary of the interminable, intractable strife. These trends are heading in the direction of creating cleavages between hard-core loyalists and somewhat softer unionists, which can then be exploited in the interests of stabilizing a devolved, power-sharing political structure. . . . [As for Republicans, t]he results of the January 1986 Westminster by-elections showed plainly that at least a segment of the [IRA's] constituency seems willing to give Hillsborough the benefit of the doubt for the time being. Sinn Fein's candidate, standing on a rejectionist platform, was overwhelmed in the Newry-Armagh district by SDLP deputy leader Seamus Mallon, whose slogan urged a 'vote for hope'. In four contested races, the overall Sinn Fein vote fell by 12,000 from its 1983 level, while the SDLP share increased by an almost equal amount, with the result that the social democrats enjoyed a nearly 2-1 margin over the Provos.

K. KELLEY, supra note *, at 370. Despite the violence of 1988-89, or perhaps because of it, these trends away from the abyss continue. A long-secret communique from Protestant politicians to British officials, leaked to the press earlier this year, confirmed Kelley's analysis by revealing that more flexible Protestant leaders favor negotiations. Prokesch, \textit{Leaked Ulster Document Suggests Divisions in 2 Protestant Parties}, N.Y. Times, Feb. 28, 1990, at A6, col. 1. The May 1989 local elections gave the moderate Catholic SDLP the highest level of support in its 20-year history while Sinn Fein lost votes. The SDLP increased its share of the overall vote to 20.8\%, a gain of 3\%, and won 120 seats, a gain of 19 since the 1985 local elections. \textit{N. Ireland Election}, Wash. Post, May 20, 1989, at A17, col. 2. Sinn Fein's vote dipped slightly, from 11.7\% in the last election to 11\%, and the party lost 15 of its previous 59 seats. The mandate for a non-violent solution grew, and the electorate of the gunmen further declined, in the European Parliament elections the following month, when the SDLP received 25.5\% of the vote and Sinn Fein a mere 9.1\%. Prokesch, supra note 132, at 3, col. 1. On the Protestant side support for Paisley's extremist Democratic Unionist Party eroded by a significant 6.3\% in the May 1989 elections, and the more moderate Official party was the primary beneficiary. \textit{N. Ireland Election}, supra, at A17, col. 2; see also supra notes 244-49 and accompanying text.
tent to achieve it. 895 Mourned one Catholic priest, at yet another political funeral, "I think we're completely and utterly helpless." 896

Acknowledging voters' preference for negotiation over bloodshed, 897 Protestants of the far right have begun advocating dialogue, compromise and peace, but backed by British guns they will only proceed on their own terms, and then only if the IRA first lays down its guns. 898 Meanwhile, the IRA rejects negotiations on Protestant terms, 899 and resolutely refuses to abandon its military campaign for a wholly constitutional one, 900 in large part because the pressure Sinn Féin is feeling from its constituency to curtail violent republicanism 901 is at least partially relieved by the continuing British armed presence on the island. As Sinn Féin assemblyman Danny Morrison explained, "I can't go on television and say the IRA is right. But we will always cover ourselves by saying we believe that any oppressed people anywhere in the world have the right to resist foreign occupation." 902 The message transmitted by both sides is clear. The Northern Irish want peace, but are unable to obtain it alone. And, as we have seen, the British are equally unable to deliver it.

VII. EPILOGUE

When the United Nations concludes its crusade in the Gulf, 903 it will
find that throughout most of the world peace remains threatened by conflicts whose international ramifications are less obvious. This is certainly true in Northern Ireland, where the constant killing continues apace. Recent political and diplomatic maneuvers there, heralded as presaging peace, failed to prevent accelerated expansion of the violence beyond Ulster's borders.

Margaret Thatcher and her personal war against the IRA exited stage right in late 1990, following a dizzyingly swift descent from power, which raised hopes for a reconsideration of British tactics. Yet shoot-to-kill operations continue to claim unarmed Catholics in the North and to exacerbate tensions, emboldening the IRA to undertake a daylight mortar assault on Thatcher's successor, John Major, and his cabinet. Major, like Theatcher before him, seems less likely after an IRA attack on his life to look favorably on any settlement that allows the IRA to claim even partial victory.

Prior to Thatcher's fall, the British secretary of state for Northern Ireland, Peter Brooke, conceded a military solution is impossible and offered direct negotiations with Sinn Féin if the IRA first declares a ceasefire. Britain also announced that several of Ulster's political

remains most comfortable addressing interstate conflict, to the detriment of the vast majority of oppressed peoples, who suffer as a consequence of intrastate violence. See supra notes 338-39, 343-59 & 391-99. Second, the multinational coalition enforcing Iraqi compliance with United Nations resolutions has not been, and cannot be, described as a "peacekeeping force" in any sense of that phrase. See supra notes 345 & 619-24 and accompanying text ("peacekeeping" is not an enforcement measure and does not entail offensive operations). Third, the premature resort to force in the current campaign, when sanctions and negotiations remained viable options, perhaps indicates that the failure of the United Nations to raise its own army under article 42 of the Charter was no tragedy. See supra notes 619-20 and accompanying text.


905. Thatcher's vendetta against the IRA, though certainly understandable considering that the IRA assassinated her foremost allies and nearly killed her, too, clearly posed a formidable obstacle to constructive resolution of the conflict. See supra notes 534 & 684 and accompanying text.

906. See McKittrick, supra note 39, at 3, col. 1 (Archbishop of Armagh, the leader of the Catholic Church in Ireland, calling for an independent inquiry into army killing of an unarmed Catholic man in late 1990, the tenth victim of army shootings during the year); Victor, supra note 39, at 3, col. 1 (Irish government expressing concern over army killings).

907. See Whitney, supra note 284, at A1, col. 3.

908. High British Aide Suggest Talks With I.R.A. Political Wing, N.Y. Times, Nov. 5,
parties appeared on the brink of negotiations intended to terminate direct British governance of the province in favor of a return to self-rule. But Protestant intransigence, solidified by the presence of British troops to safeguard the majority position in the North, sabotaged both initiatives. Meanwhile, the IRA refused to assent to a ceasefire and escalated its campaign outside Ulster, deliberately targeting British civilians for the first time in eight years, killing one commuter and injuring 40 in bomb attacks on two rail terminals in central London. Such incidents—politically possible only because the IRA remains immunized from losing its foundational communal support, despite Catholic revulsion at such repugnant republican antics, by Catholics’ even-greater hatred of British troops and their repressive tactics—seem certain to fan the flames of prejudice among the British public and press, already criticized for heavy anti-Irish bias. This, in turn, seems likely to perpetuate an atmosphere much more conducive to prolonging the war than to conducting negotiations to end it.

1989, at A5, col. 1 [hereinafter High British Aide Suggest Talks].


910. Brooke’s unofficial offer to Sinn Féin was stillborn, assailed by leaders of both major Protestant political parties and from both sides in the British House of Commons. See High British Aide Suggests Talks, supra note 908, at A5, col. 1. A formal proposal has yet to be made. Similarly, negotiations among Ulster’s political parties are yet to begin, as Protestant leaders refuse to allow representatives from the Republic of Ireland to join the discussions. Prokesch, Ulster Negotiations Delayed As Dublin Considers Its Role, N.Y. Times, July 6, 1990, at A3, col. 3.

911. See High British Aide Suggests Talks, supra note 908, at A5, col. 1.

912. Schmidt, supra note 284, at A1, col. 3.

913. The New York Times earlier this year found continued “[e]nmity toward British troops,” among Ulster Catholics. Prokesch, supra note 148, at A1, col. 4. “Not many Catholics see the soldiers as necessary peacekeepers,” the Times reported. Id. “Most resent them, and that resentment is sometimes turned into hatred by the soldiers’ actions on patrol, which are heavy-handed at times.” Id. To take a concrete example, after the IRA forced civilian army employees to act as “human bombs” in attacks on British soldiers, many Catholics publicly condemned the IRA. See Prokesch, supra note 593, at 15, col. 1. However, most Catholics “were skeptical that it would result in a significant erosion of support for the I.R.A. or its political arm, Sinn Féin.” Id. “‘All the British have to do is raid 20 or 30 houses and start coming down heavy again,’ on republican areas and support for the IRA will bounce back, said Patrick McArt, editor of the Derry Journal, a twice-weekly newspaper.” Id.

914. To cite just one recent example, in October Britain’s own attorney general criticized the considerable anti-Irish slant among the British media. See British Press Slammed, IR. AM., Dec. 1990, at 9. As might be expected, IRA bomb sorties onto the mainland aggravate anti-Irish sentiments. See, e.g., C. MULLIN, supra note 181, at 7-8 (describing violence against Irish residents in Britain following 1974 pub bombings).
The disclosure during 1990 of covert governmental misdeeds against Ulster republicans heightened the atmosphere of distrust and antagonism that doomed the government's peace proposals and, concomitantly, strengthened the perception that Britain is incapable of neutrality in Northern Ireland.\textsuperscript{915} A report by government-appointed police investigators revealed that British security forces passed information about suspected IRA members to outlawed Protestant paramilitary organizations,\textsuperscript{916} who used the data to assassinate Catholics.\textsuperscript{917} The government also confessed that its security forces engaged in a deliberate campaign of disinformation about Irish republicans.\textsuperscript{918}

As Lord Caradon's proclamation of British neutrality rings more hollow by the year, the bell continues to toll for scores of innocent Northern Irish and British citizens. Hopes for peace in Northern Ireland burn bright but briefly, then dim again,\textsuperscript{919} illuminating only the bitter

\textsuperscript{915} Even absent these damaging revelations, the terms of the government's proposed negotiations were sufficient, alone, to ensure that the initiative could not succeed. By expressly excluding Sinn Féin from the contemplated discussions regarding the governance of Northern Ireland, see Prokesch, supra note 909, at A3, col. 1, British ministers informed 35-42\% of the Northern Irish Catholic community—that percentage which consistently votes Sinn Féin, see supra note 200 and accompanying text—that it would have no say in the future of the province. It is painfully obvious that no political solution can be negotiated without full participation of this critical element of Ulster's population, for if this sizable minority is excised from political dialogue it will see no alternative means to voice its concerns but through continued violence. See, e.g., Drexler, supra note 259, at 19. Equally clear to the Catholic minority is the partisan nature of Britain's terms. Britain's stated ground for excluding Sinn Féin is the latter's refusal to renounce IRA violence. Prokesch, supra note 909, at A3, col. 1. However, the British plans included both major unionist political parties—the UUP and the DUP, id.,—although neither party has explicitly rejected violence perpetrated by Protestant paramilitarists.

\textsuperscript{916} Rule, Study Finds Leaks of Data on I.R.A., N.Y. Times, May 18, 1990, at A11, col. 1. The report was issued by John Stevens, deputy chief constable of Cambridgeshire, England, who was appointed to conduct the investigation by Northern Ireland's chief of police. Id.

\textsuperscript{917} Rule, Ulster Group Says It Has Police Files, N.Y. Times, Aug. 31, 1989, at A6, col. 1. Irish republicans claimed the leak of information provided further evidence of collusion between British security forces and Protestant paramilitarists. Id.

\textsuperscript{918} Prokesch, Anti-I.R.A. Drive of 1970's Stirs Fervor in Britain, N.Y. Times, Feb. 1, 1990, at A7, col. 1. The government denied that the campaign involved smear tactics against Northern Irish and British politicians seen as sympathetic to the republican cause, id., but the former British army officer who originally disclosed the disinformation campaign maintains that the operation targeted politicians as well as the IRA. Id.

\textsuperscript{919} Compare, for example, the following articles. In February, the New York Times reported that Protestants and Catholics in Derry were attempting to put their differences behind them. Prokesch, Londonderry, Burying Strife, Starts to Rebuild, N.Y. Times, Feb. 19, 1990, at A1, col. 1. By November, the news was far less sanguine, as “optimism has
truth, for those who care to see it, that the war will continue at least until British troops withdraw and the dominant policy in Northern Ireland becomes something other than Britain's current strategy of suppression.\footnote{Prokesch, Peace Hopes Dim in Londonderry, N.Y. Times, Nov. 4, 1990, at A15, col. 1.} Injustice, perceived or real, sows hatred and then violence, which reaps hatred and violence in response, and greater injustice, which in turn sows more hatred and violence. A tragic cycle continues.

"The latest phase of the longest war [is now more than] 20 years old, and the question must be posed: is that not long enough?"\footnote{See S. BELFRAGE, supra note 30, at 17-18; see supra notes 130-285 and accompanying text.} The urgency of this question was never more apparent:

The decrepitude of the physical surroundings is reflected by the despair in many residents' hearts. Morale has not evaporated so much as it has been drained by the prospect of unchanging, unending desolation. Too much death has caused life to resemble a condition of numbness. Is the capacity to respond to loss forever undiminished? Will tears shed in the 20th century be heartfelt as on the first day? When wars go on too long, killing becomes an ordinary event, as steeped in ritual as the funeral processions that follow with dreary regularity.\footnote{K. KELLEY, supra note *, at 376.}

Despite these clear consequences of a war without end, concerned authorities both within and without the British government remain paralyzed by fears of greater calamity if the army withdraws. As an American congressional delegation concluded more than a year ago, "[a] paramount concern and a roadblock to a political solution is the prospect of bloodshed and violence following the withdrawal of British troops."\footnote{Id.} Thus are the Northern Irish trapped by the limitations of orthodox wisdom on, and conventional remedies for, the troubles. It is time to apply new remedies. "As the body count nears 3,000 people, consideration needs to be given to possible alternatives. Simply plodding on, soldier-like, in a 20-year-old direction may not be the same thing as moving forward."\footnote{Northern Ireland Report, supra note 227, at 220-21.}

Whether the intervention of a United Nations peacekeeping force, the withdrawal of the British army and the restructuring of the Northern Irish police force can initiate a process towards peace cannot be predicted with given way to foreboding" in the wake of the latest round of violence. See Prokesch, Peace Hopes Dim in Londonderry, N.Y. Times, Nov. 4, 1990, at A15, col. 1.

923. K. KELLEY, supra note *, at 376.

924. K. KELLEY, supra note *, at 376.
any precision. Yet this much is clear: the Northern Irish have very little to lose from the trying. 925 "It is simply too pat—and maybe even a bit immoral—to dismiss such a proposal before it has even been tested. Many of the objections in fact lose their persuasiveness when weighed against the alternative of piling on more of the same." 926

925. "Personally, I think the Brits are very blind," a Sinn Féin worker told Sally Belfrage:

How long are they going to stay here and try to keep this thing going? The longer they stay the worse the whole damn thing is for everybody. I mean let's get it over with once and for all. Do they want another 800 years? ... They're just prolonging the whole thing, for the Protestants as well as Catholics. I'd rather have it all over with. And if I die I die.'

"What about your kids?"

'If they die they die.'

S. BELFRAGE, supra note 30, at 19 (quoting Chrissie MeAuley) (emphasis in original).

926. K. KELLEY, supra note *, at 378 (arguing for the IRA to declare a unilateral ceasefire as a means to break the deadly stalemate in the North). Ulster's desperate condition has long produced such sentiments, and, with respect to the proposals put forward in this Article, I admit to sharing the attitude once expressed by James Prior, former secretary of state for Northern Ireland: "'In a way I have rather a fatalistic approach. I doubt if I can make a bigger bloody mess of the thing than it's in right now, so I may as well have a go. I might fail, but I reckon trying and failing isn't going to make things much worse.'" P. O'MALLEY, supra note 43, at 367 (quoting Prior's statement of April 2, 1982 in support of his ultimately unsuccessful plan for devolved government in Northern Ireland).