1990

THE RIGHT To BE ARRESTED: BRITISH GOVERNMENT SUMMARY EXECUTIONS

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The right to life is the fundamental human right. Its absence renders all other rights meaningless. For example, if one may be summarily executed, one's right to free speech or a fair trial becomes irrelevant.

The right to life has implications for a government's treatment of persons suspected of illegal activity. In that narrow sphere, the right translates into a suspect's right to be arrested, charged and tried rather than killed outright. In most of the United States, for instance, statutes protect that right by severely limiting the circumstances under which police may use deadly force against criminal suspects.

In recent years, a number of unarmed persons, mostly Catholics, have died at the hands of British security forces in Northern Ireland. Repeated incidents have led some to allege that Britain has a "shoot-to-kill" policy with respect to suspects in or from Northern Ireland whereby members of security forces shoot these suspects instead of arrest them.
Britain governs Northern Ireland. Irish nationalists, most of whom are Catholic, seek freedom from British rule and unification of Northern Ireland and the Republic of Ireland. Loyalists, most of whom are Protestants, desire continued British rule, devolved government or independence. Both nationalists and loyalists have long decried the absence of certain rights in British courts in Northern Ireland, such as the absence of the right to silence and to trial by jury. Yet nationalists now assert that they lack a more basic right: the right to get to court at all.

This Article considers the right to be arrested rather than killed without legal process as it exists with respect to persons from Northern Ireland. Section II of the Article sets forth the legal bases for such a right. Section III discusses killings without legal process by British security forces of persons from Northern Ireland and the investigations that followed. Section IV examines the British government's defense of killings by the security forces. The Article concludes that: (1) the perception that Britain has a shoot-to-kill policy has a strong basis in fact; (2) British government actions in response to investigations of killings lend credibility to that perception; and (3) such a policy is contrary to both international and British domestic law.

II. LEGAL BASES FOR THE RIGHT TO LIFE

A. International Law

Britain has voluntarily submitted itself to several international pacts which prohibit summary execution. The United Nations International Covenant on Civil and Political Rights (the "Covenant") provides that "[e]very human being has the inherent right to life. This right shall be..."
protected by law. No one shall be arbitrarily deprived of his life.”

The European Convention for Protection of Human Rights and Fundamental Freedoms (the “Convention”) provides:

1. 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 for a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

   (a) in defense of any person from unlawful violence;

   (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

   (c) in action lawfully taken for the purposes of quelling a risk of insurrection.

Britain has ratified both the Covenant and the Convention. Yet even if it had not, the general prohibition against summary executions contained in other international laws still apply to it. A United Nations resolution concerning executions describes article 6 of the Covenant as expressing a “minimum standard” for all member states, not only ratifying states. Consistent with that standard, the Code of Conduct for Law Enforcement adopted by the United Nations General Assembly in 1979 limits the ability of law enforcement officers to kill suspects, permitting them to “use force only when strictly necessary and to the extent required for the performance of their duty.”

Britain is also subject to non-treaty sources of international law: international custom (i.e., practices which states accept as legally binding); general principles of law recognized by civilized nations; judicial decisions; legal scholarship; and resolutions of universal international


organizations that state the rule as international law, if adopted by consensus or virtual unanimity.\textsuperscript{14} The author is aware of no source of international law which condones summary executions.

Both the Convention and the Covenant feature a mechanism known as derogation, by which a ratifying state can indicate its intention not to comply with particular provisions. The provisions forbidding summary execution, however, are considered so important that no country may derogate from them except during wartime, and then only under certain conditions. Article 15 of the Convention provides that no party may derogate from provisions forbidding summary execution "except in respect of deaths resulting from lawful acts of war."\textsuperscript{15} Article 4 of the Covenant contains a similar provision.\textsuperscript{16}

Britain is currently in derogation from article 5(3) of the Convention\textsuperscript{17} and from article 9(3) of the Covenant\textsuperscript{18} to avoid violations based

\begin{itemize}
\item \textsuperscript{14} RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 103(2) comment c (1986).
\item \textsuperscript{15} European Convention, supra note 11, art. 15, para. 2.
\item \textsuperscript{16} International Covenant, supra note 10, art. 4.
\item \textsuperscript{17} AMNESTY INT’L, AMNESTY INTERNATIONAL CONCERNS IN WESTERN EUROPE 64 (May-Oct. 1990). Article 5(3) of the Convention provides:
\begin{quote}
Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
\end{quote}

European Convention, supra note 11, art. 5, para. 3.

The derogation followed a judgment of the European Court of Human Rights that Britain had violated article 5(3) of the Convention by arresting and detaining four men from Northern Ireland for various time periods (from four days and six hours to six days and sixteen hours) without bringing them before a judge. See Brogan & Others v. United Kingdom, 145-B Eur. Ct. H.R. (ser. A) (1988); see also Note, Pre-Trial Detention of Suspects in Northern Ireland: A Violation of Fundamental Human Rights, 11 N.Y.L. SCH. J. INT’L & COMP. L. 297 (1990); Whitney, Britain, Citing Ulster Terrorism, Keeps Detention, N.Y. Times, Dec. 25, 1988, at A4, col. 1.

\item \textsuperscript{18} Britain derogated in 1976 from articles 9, 10(2), 10(3), 12(1), 14, 17, 19(2), 21 and 22 of the Covenant. In 1984, Britain withdrew its derogations from all the foregoing provisions. In 1988, Britain derogated from article 9(3) in aftermath of the Brogan case. U.N. Doc. ST/LEG/SER.E/8/Add.1 at 157-58.

Article 9(3) of the Covenant provides:
\begin{quote}
Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
\end{quote}
on Britain's actions in Northern Ireland. These derogations, however, do not excuse Britain from complying with other articles of the Convention and the Covenant, including the right-to-life provisions. Britain is therefore prohibited from carrying out summary executions not only under the "minimum standard" set by United Nations resolution, but also under provisions of human rights treaties from which it has not formally derogated.

B. Domestic Law

Britain has no written constitution guaranteeing the right not to be deprived of one's life without legal process. It does, however, have laws limiting the amount of force which can be used in apprehending persons suspected of illegal activity.

Under feudal law, anyone breaching feudal obligations could be killed without regard to whether he could be captured instead. It was irrelevant if the suspect was killed in the process of capture since by breaching his obligations he had already forfeited his life. Breachers of feudal obligations punished by this sort of killing were known as felons.

English common law adopted the term "felon" to describe one who commits serious offenses against the Crown. Only a few crimes, all of which involved force or violence, were felonies. Law enforcement officers could arrest anyone reasonably suspected of having committed a felony (if a felony had in fact been committed) or anyone committing a felony in their presence. Deadly force was permissible to effect

International Covenant, supra note 10, art. 9, para. 3.

19. The right of British subjects are "residual," that is, individuals have the right under an unwritten "constitution" to do whatever is not prohibited by law. See E.C.S. WADE & G. GODFREY PHILLIPS, CONSTITUTIONAL AND ADMINISTRATIVE LAW 441 (1977). "[I]n the constitution of this country, there are no guaranteed or absolute rights. The safeguard of British liberty is in the good sense of the people and in the system of representation and responsible government which has been evolved." Liversidge v. Anderson, [1942] A.C. 206, 261, [1941] All E.R. 338.


21. Id. at 122.

22. Id.

23. Id.

24. Id.

25. Id.

26. Id. at 122-23.
arrests.\textsuperscript{27}  

At common law, an offense other than treason or a felony was a misdemeanor.\textsuperscript{28} Officers were not permitted to use deadly force to effect misdemeanor arrests since the interest in effecting such arrests was not as vital as the interest in apprehending felons.\textsuperscript{29}  

In 1967, the common law standard was altered by the Criminal Law Act, section 3(i) of which provides that "a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."\textsuperscript{30} There is no statutory definition of the circumstances in which a person, including members of British forces, may use deadly force.  

Decisions of Northern Ireland courts have done little to clarify the circumstances under which deadly force would be unreasonable. Northern Ireland judges, acting without juries, have acquitted members of the security forces charged with murder on the basis of their suspicion that the victim was a "terrorist."\textsuperscript{31}  

British security forces have received a set of instructions called a "yellow card" on the use of weapons in apprehending suspects.\textsuperscript{32} The instructions state that firearms must only be used as a last resort; a challenge must be given before opening fire.\textsuperscript{33} The card also states that British forces may only open fire if a person "is committing or about to commit an act likely to endanger life and there is no other way to prevent the danger" or if "there is no other way to make an arrest."\textsuperscript{34} The

\textsuperscript{27} Id. at 123.  
\textsuperscript{28} Id. at 124.  
\textsuperscript{29} Id.  
\textsuperscript{30} Criminal Law Act, § 3(i) (N. Ir. 1967).  
\textsuperscript{31} See supra notes 149-51 and accompanying text.  
\textsuperscript{32} See Harper, supra note 20, at 72-78.  
\textsuperscript{33} Id.  
\textsuperscript{34} Instructions for Opening Fire in Northern Ireland, Army Code No. 70771 (restricted) (the "1980 Yellow Card"), reprinted in SHOOT TO KILL?, supra note 4, at 75-76. The text of the 1980 Yellow Card is as follows:

RESTRICTED  
Army Code No. 70771  
Instructions for Opening Fire in Northern Ireland  
General Rules
1. In all situations you are to use the minimum force necessary. FIREARMS MUST ONLY BE USED AS A LAST RESORT.
2. Your weapon must always be made safe: that is, NO live round is to be carried in the breech and in the case of automatic weapons the working parts are to be forward, unless you are ordered to carry a live round in the breech...
memories of a British army captain who served in Northern Ireland state, however, that "people are willing to turn a blind eye to any infringements of the letter of the yellow card." 35 That view is borne out by decisions of Northern Ireland courts which interpreted yellow card instructions as mere "guidelines" rather than legally binding limitations. 36

III. Killings and Investigations

There have been civilian deaths at the hands of British security forces since Northern Ireland's inception in 1919. 37 This Article, however, will

or you are about to fire.

Challenging

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.

4. You are to challenge by shouting:
   ARMY: STOP OR I FIRE or words to that effect.

Opening Fire

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. The following are some examples of acts where life could be endangered, dependent always upon the circumstances:
      (1) firing or being about to fire a weapon.
      (2) planting detonating or throwing an explosive device including a petrol bomb.
      (3) deliberately driving a vehicle at a person and there is no other way of stopping him.
   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.

6. If you have to open fire you should:
   a. fire only aimed shouts,
   b. fire no more rounds than are necessary,
   c. take all reasonable precautions not to injure any one other than your target.

35. A.F.N. Clarke, CONTACT 98 (1983). Clarke writes, "Sure as hell, if I see some bastard with a gun, I'm not about to ask him to surrender. Shoot first, then ask questions after." Id.


37. See generally J. O'Brien, BRITISH BRUTALITY IN IRELAND (1989). This Article does not discuss deaths caused by plastic or rubber bullets fired by British security forces.
focus only on deaths which have occurred since Britain dispatched army troops to Northern Ireland in 1969. The treatment of killings discussed below is not meant to be exhaustive; rather, it serves to illustrate the circumstances in which such killings have occurred and the typical aftermath.

A. Particular Incidents and Government Investigations

1. Bloody Sunday

On January 30, 1972, thirteen unarmed civilians were killed during a public demonstration in Londonderry, Northern Ireland. British army troops blocked the marchers, and a lieutenant fired unprovoked shots into the crowd. When demonstrators panicked and tried to flee, troops fired on the crowd. No gunfire was returned against the British army. When the shooting ceased, thirteen Catholic men were dead; six victims were seventeen years old. One man was shot as he went to the aid of the wounded carrying a white flag in one hand.

An investigating body, the Widgery Tribunal, was formed to examine the killings. Testimony before the tribunal established that troops operated under a plan approved by a British general. It was suggested that the plan was to open fire on any troublemakers in hopes of flushing out Irish Republican Army (IRA) gunmen returning fire and to continue

Seventeen people in Northern Ireland have died after being shot with such bullets; only one of the victims was Protestant. AM. PROTESTANTS FOR TRUTH ABOUT IR., NORTHERN IRELAND HUMAN RIGHTS REPORT 8-9 (Nov. 20, 1989); see also ASS'N FOR LEGAL JUST., 2ND INTERNATIONAL TRIBUNAL OF INQUIRY INTO DEATHS AND INJURIES BY PLASTIC BULLETS (Oct. 1982), reprinted in 8 Hum. Rts. Internet Rep. 551 (Apr.-June 1983).

38. The legal name given by Britain to Northern Ireland's second largest city is "Londenderry," although the Republic of Ireland and many of the city's residents refer to it as "Derry." The City Council of the city voted several years ago to change its name to the "Derry City Council." Interview with David Davies, Mayor of Londonderry, in Londonderry, N. Ir. (Mar. 30, 1990).


40. Id. at 289.

41. Id.

42. Id.

43. 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 LONDONDERRY ON THAT DAY, 1972, H.L. 101, H.C. 220 [hereinafter WIDGERY REPORT].

44. Id. at 6.
firing in the area where gunmen were thought likely to appear.\textsuperscript{45} The troops carried out the operation despite the absence of two circumstances anticipated by the plan: there were no troublemakers and no IRA gunmen.

The tribunal concluded that "there was no general breakdown in discipline" of the troops; they acted according to orders.\textsuperscript{46} No British soldier was charged with any crime in connection with the killings.\textsuperscript{47}

2. 1982 Killings

During a three-week period in 1982, the Royal Ulster Constabulary (RUC), Northern Ireland's police force, killed six unarmed Catholic men in three separate incidents.\textsuperscript{48} A Catholic civil rights lawyer, Patrick Finucane, represented some members of the victims' families in their attempt to seek legal redress for the killings.\textsuperscript{49} In 1983, four RUC officers were charged with the murder of two of the men.\textsuperscript{50} All four were acquitted in 1984, in courts without juries.\textsuperscript{51}

In May 1984, the British government assigned Manchester deputy chief constable John Stalker to head an inquiry into charges that the RUC murdered the six men.\textsuperscript{52} Stalker's investigation uncovered a police practice of lying in court to conceal contradictory information and fabrication of evidence. After two years of investigation, Stalker said he had enough evidence to suspect the killings were the "act of a Central American assassination squad—truly of a police force out of control."\textsuperscript{53} Just as the investigation reached the point of establishing obstruction of justice, the government removed Stalker from the inquiry.\textsuperscript{54} He quit the police force in 1987.\textsuperscript{55} Discussing his investigation in his autobiography,

\begin{enumerate}
\item Id. at 8.
\item Id. at 39.
\item Id. at 38-39.
\item See generally INT'L ASS'N OF DEMOCRATIC LAWYERS, LEGAL DEFENCE IN NORTHERN IRELAND FOLLOWING THE MURDER OF PATRICK FINUCANE, REPORT OF AN INTERNATIONAL DELEGATION OF LAWYERS (1989). Finucane himself was shot and killed in his own home in 1989 by loyalists. Id.; see also Whitney, Sectarian Killings in Ulster Continue to Mount, N.Y. Times, Mar. 12, 1989, at A6, col. 1.
\item B. ROWTHORN & N. WAYNE, supra note 48, at 58.
\item Id. at 58-59.
\item J. STALKER, STALKER 9, 22-25, 284 (1988).
\item Id. at 67.
\item Id. at 9, 114, 287.
\item Id. at 237-52, 289.
\end{enumerate}
Stalker writes, "[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 assassination was not unreasonable." On another occasion, he was even blunter, stating, "I'm a hard-nosed copper, but I draw the line at murder." The inquiry concluded under Stalker's replacement, Colin Sampson, but resulted in no prosecutions. Sampson concluded that there was "no evidence that there were instructions to any police officers in Northern Ireland to use other than legitimate methods to bring offenders to justice." In March 1989, eighteen policemen implicated in the investigation received minor reprimands.

3. Thomas Reilly

In 1984, a fracas developed when a group of Irish youths were sunbathing in Belfast. A British soldier shot and killed a Catholic band manager, Thomas Reilly, as he ran away. The soldier, Pvt. Ian Thain, became the first British soldier convicted of murder while on duty in Northern Ireland. Thain was sentenced to life imprisonment. In February 1988, however, it was disclosed that Thain had been released from prison after serving less than three years of his sentence and had returned to his regiment.

4. Aidan McAnespie

On February 21, 1988, Aidan McAnespie, twenty-three years old, was walking unarmed to a football match when a British soldier shooting from

56. Id. at 253.
63. Id.
64. Id.
an observation post killed him.\textsuperscript{65} A police investigation found that one of three shots fired had bounced off the road and hit McAnespie in the back.\textsuperscript{66}

McAnespie's family said soldiers had repeatedly threatened his life prior to the shooting.\textsuperscript{67} The soldier, David Holden, said a heavy machine gun slipped from his hands and discharged accidentally.\textsuperscript{68} Irish prime minister Charles Haughey charged that Holden's explanation "must give rise to disbelief."\textsuperscript{69}

Manslaughter charges were brought against Holden but were dropped.\textsuperscript{70} The British army fined him and returned him to full duty with his regiment.\textsuperscript{71}

5. Gibraltar

In March 1988, soldiers from an undercover unit of the British army called the Special Air Services (SAS) shot and killed two Irish men and an Irish woman in a public street in Gibraltar.\textsuperscript{72} The IRA later acknowledged that the three people were IRA members.\textsuperscript{73}

The next day the British foreign secretary, Goeffrey Howe, admitted to the House of Commons that the three were unarmed and that there were no explosives in the car they had parked earlier in the day.\textsuperscript{74} Howe said they made movements which led the SAS to fear for their lives.\textsuperscript{75} Eyewitnesses, however, said two were shot with their hands in the air, apparently trying to surrender.\textsuperscript{76} When the victims fell to the ground,
eyewitnesses said, SAS soldiers continued to fire shots into their bodies. The human rights organization Amnesty International, in a letter to British prime minister Margaret Thatcher, condemned the shooting as "extrajudicial executions." 

In September 1988, a coroner's inquest into the killings in Gibraltar convened. The British government was permitted, in the name of security, to bar all inquiry into the decision to send an SAS regiment from England to arrest three people when a battalion of Royal Anglians were already in Gibraltar. The SAS soldiers, who did not have to give their identity, testified they were within arresting distance of all three. They admitted they had given no warning. One soldier testified he had fired to kill because that was the way he was trained; another testified that once firing began, the intention was to kill all three victims. The jury at the inquest deadlocked and were instructed to reach a majority verdict. On September 30, 1988, the jury returned a verdict of lawful killing.

B. Extending the Boundaries

Tom King, former British secretary of state for Northern Ireland, stated on March 15, 1988, that "steps have been taken to ensure that the events that resulted in the Stalker/Sampson investigation will not occur again." Yet in recent years several killings in Northern Ireland have indicated not only that suspicious deaths are continuing to occur but also that the types of circumstances in which suspicious deaths occur are expanding rather than contracting. These new circumstances involve the

77. Id.
78. Letter from Amnesty International to British Prime Minister Margaret Thatcher (Mar. 25, 1988) [hereinafter Amnesty Letter]. Amnesty International pointed out that the fact that the three shooting victims were IRA guerrillas did not justify British troops' conduct in killing rather than capturing them. Id.; see also K.D. EWING & C.A. GEARTY, FREEDOM UNDER THATCHER 235 (1990) (calling the Gibraltar incident "the most dramatic and controversial 'shoot to kill' to date").
79. AMNESTY GIBRALTAR INQUEST, supra note 72, at 9.
80. Id. at 2.
81. Id. § 4.2.2, at 14.
82. Id.
83. Id.
84. Id. § 5.4, at 30.
85. Id. § 4.2.5, at 20.
direct participation of and allegations of collusion by the security forces.

1. Loyalist Paramilitary Assassinations

Between August and October 1989, loyalist paramilitary groups made public the names, addresses, and, in some cases, photographs of more than 400 Catholics in Northern Ireland. The documents were leaked from files maintained by British security forces. Several people whose names were leaked were killed by loyalists. The British government and police denied charges of collusion.

In September 1989, the British government launched an investigation known as the Stevens Inquiry into collusion allegations. During the inquiry, approximately sixty people were questioned and thirty people charged with offenses, twenty-eight of whom were members of the Ulster Defence Regiment (UDR), a locally-recruited unit comprised mostly of Northern Ireland Protestants. No members of the RUC were charged, despite the fact that the leaked information came from RUC files. Only two members of the security forces were charged in connection with the inquiry; both were members of the UDR. The findings of the Stevens Inquiry were not made public.

2. Graveyard Killings

On the eve of St. Patrick’s Day 1988, about 5,000 mourners gathered in Belfast’s Milltown Cemetery to bury the three victims of the Gibraltar killings. The heavy police and army presence usually surrounding nationalist funerals was absent.

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88. Id.
89. Id.
90. Id.
92. Flanders, supra note 87, at 492.
94. Id.
95. Reed, Terror in the Cemetery: An IRA Funeral Brings Death, Another Funeral and More Deaths, TIME, Mar. 28, 1988, at 34; Clines, Gunman Terrorizes Belfast Crowd at Rites for 3 Guerrillas, N.Y. Times, Mar. 17, 1988, at A1, col. 2; see supra notes 72-85 and accompanying text.
96. Reed, supra note 95, at 34.
As the coffins were being lowered into graves, a loyalist attacker threw grenades and fired shots into the crowd.\textsuperscript{97} Three people died and sixty were injured.\textsuperscript{98} No police appeared on the scene during the assault; they arrived only when a group of mourners pursued, captured and began beating the gunman, Michael Stone.\textsuperscript{99} Witnesses suggested that Stone had accomplices who escaped in a van even though an army checkpoint was set up along the nearest possible escape route.\textsuperscript{100}

Nationalists alleged that the coincidence of the unusually low profile by the security forces with the attack was evidence of their collusion in the killing.\textsuperscript{101} British officials responded that the forces were complying with repeated requests by nationalists not to intrude upon funerals.\textsuperscript{102}

3. Killing of Ordinary Thieves

On January 13, 1990, a British army undercover squad shot and killed three men who were holding up a bookmaker's shop in Belfast.\textsuperscript{103} None of the three had paramilitary connections; one of them previously had been the target of IRA punishment shooting for his criminal activity.\textsuperscript{104} The men were unarmed, although two of them carried replica weapons.\textsuperscript{105} Eyewitnesses said the soldiers gave no warning or call for surrender.\textsuperscript{106} They also said soldiers shot two of the men while they were standing and fired more shots into their bodies as they lay wounded on the ground.\textsuperscript{107} Soldiers shot the third man without warning as he sat in the getaway

\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} Id.
\textsuperscript{100} See Attacker Kills 3, Wounds 50 at I.R.A. Funeral in Belfast, Wash. Post, Mar. 17, 1988, at A1, col. 2. A New York Times editorial stated that the graveyard incident "may yet have a redeeming affect if it awakens Britain's Prime Minister, Margaret Thatcher, to the baleful succession of calamities involving British police." The Wearing of the Black, N.Y. Times, Mar. 17, 1988, at A30, col. 1 (editorial). The editorial cited the Gibraltar killings and the Stalker affair and concluded, "Yesterday's graveyard carnage makes inescapable the need for her to act, finally, with sensitivity and urgency." Id.
\textsuperscript{101} Reed, supra note 95, at 34.
\textsuperscript{102} Id.
\textsuperscript{104} Id.
\textsuperscript{105} Id.
\textsuperscript{106} Id.
\textsuperscript{107} Id.
car. On January 14, 1990, a spokesman for Britain's Northern Ireland Office said he knew of no plans for an inquiry into the killings. The British soldiers who shot the men were not suspended from duty, nor were their names revealed to the public.

4. Shooting Deaths of Teenage Joyriders

On September 30, 1990, British soldiers shot three teenagers joyriding in a stolen car in West Belfast. Two teenagers were killed; one was wounded but survived. Northern Ireland security minister John Cope and Northern Ireland secretary Peter Brooke said the three were shot because they had driven through an army roadblock. The British government established an RUC inquiry into the incident, but rejected public calls for an independent investigation. Brooke said the soldiers "should have the right to expect a police inquiry . . . rather than everybody in the community presuming to make judgments on what their actions were." The public's request arose from the wide discrepancy between the security forces' account of the shootings and the accounts of eyewitnesses. Witnesses said there was no checkpoint.

At a mass for the two dead teenagers, Canon Brendan McGee asked, "Why were trained professionals not able to disable the car and thus avoid directly killing two of its occupants? In the last analysis, everyone who uses a firearm on his neighbor has to answer to God. But citizens of a democratic state require from their civil authorities, in addition, that suspicion and mistrust be absent from all affairs of state."

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108. Id.
109. Id.
112. Id.
115. Witness Disputes Checkpoint Claim, Ir. Times (Dublin), Oct. 5, 1990, at 4, col. 3. The injured survivor of the shooting said she had seen no soldiers until after the shooting began. Id.
C. Independent Investigations

Legal and human rights experts have conducted their own investigations of shooting deaths in Northern Ireland caused by British security forces.

1. The International Lawyers’ Inquiry

In 1984, an international panel of lawyers went to Northern Ireland to investigate claims of the existence of a shoot-to-kill policy. The panel found that the number of civilians shot dead by security forces in Northern Ireland was “unacceptable” and that the law governing the use of deadly force by the police and army in Northern Ireland is “inadequate.” The panel criticized judges in Northern Ireland and the British House of Lords for interpreting the law in a manner which allows too much scope for members of the security forces, calling it a virtual “endorsement of martial law.” It also criticized the security forces for allowing internal army and police instructions on the use of firearms to be kept secret from the public and allowing breaches of those instructions to go unpunished.

The panel found the procedures for investigating questionable killings by the security forces ineffective. It found coroners’ inquests to be unreasonably delayed and the scope of their inquiry too narrow. It also found that political considerations have influenced the decision whether to prosecute in a number of cases, and that such influence is “improper.”

The panel concluded:

The continuing failure of successive British Parliaments to bring domestic law into line with Article 6(1) of the International Covenant on Civil and Political Rights and Article 2 of the European Convention on Human Rights and Fundamental Freedoms, to both of which the United Kingdom is a party, reflects an administrative policy and practice which seeks to place

117. See SHOOT TO KILL?, supra note 4, at 10; see also Thomas, In Ulster, the ‘Shoot to Kill’ Rumors Will Not Die, N.Y. Times, Mar. 17, 1986, at A2, col. 2.
118. SHOOT TO KILL?, supra note 4, general findings 224-25, at 125.
119. Id. general finding 225, at 125.
120. Id.
121. Id. general finding 226, at 126.
122. Id.
123. Id.
the security forces outside the law.

While the Nationalist (and predominantly Roman Catholic) community makes up approximately 40% of Northern Ireland's population, members of this community account for the vast majority of civilians killed by the security forces. By contrast, less than 10% of the security forces come from the Catholic community. We find that this community suffers disproportionately from the unrestrained use of firearms by the security forces and the Nationalists have become especially alienated from the administration of justice.

We conclude that the British government has a clear and immediate duty to introduce legislation complying with the United Nations Covenant and the European Convention and to institute genuinely independent machinery for investigating and prosecuting unlawful killings by the security forces.

If the British Government fails or refuses to act, we believe that the Government of Ireland would be justified in referring Britain's violations of the European Commission on Human Rights in Strasbourg. 124

2. Amnesty International

Amnesty International conducted an investigation and prepared a report in 1988 calling for a British judicial inquiry on killings by security forces in Northern Ireland. 125

Citing twenty-five deaths since 1982 of unarmed people at the hands of security forces, Amnesty's report stated that an inquiry was "vital to ensure that effective procedures and safeguards are instituted" to prevent "unlawful killings." 126 It called existing rules "inadequate in enforcing exacting standards for the behavior of security forces to prevent the excessive use of lethal force." 127

Amnesty noted that Britain admitted that Northern Ireland police officers tried to pervert the course of justice, but that for "national security" reasons no one would be prosecuted. 128

124. Id. general findings 227-30, at 126.
125. AMNESTY KILLINGS REPORT, supra note 61, at 1.
126. Id. at 60.
127. Id. at 59.
128. Id. at 4.
The report also noted that most unarmed victims of police and army shootings since 1982 were Catholics and that some belonged to nationalist paramilitary organizations.\(^{129}\) Amnesty's report stated that regardless of the fact that the security forces were often targets of military attack, "the rule of law does not permit the exclusion of any citizen from the criminal justice system."\(^{130}\)

The report complained that since prosecutions of members of the security forces were so rare, coroners' inquests were one of the few methods of discovering the truth about a disputed death.\(^ {131}\) The report, however, stated that the coroner's inquest "is so severely restricted that it cannot serve as a mechanism for investigating the full circumstances surrounding any incident of killing."\(^ {132}\)

The British government refused to set up a judicial inquiry in response to the report, contending that the police and army were equipped to investigate disputed incidents.\(^ {133}\)

**IV. BRITAIN'S DEFENSE**

Britain has advanced several arguments in defense of killings by the security forces.

**A. The "Bad Apple" Argument**

The "bad apple" argument posits that killings are the work of an individual soldier or police officer run amok rather than the result of official policy. Under this argument, the death of an Irish person results from a soldier's disobedience of, rather than obedience to, orders from above.

Evidence surrounding several killings refutes that notion. Some members of British forces not only have not been punished for taking Irish lives; they have been commended.\(^ {134}\) Nine months after the Bloody Sunday killings, the officer commanding the regiment that day was awarded the Order of the British Empire.\(^ {135}\) One judge who heard a case against an officer involved praised him for bringing the men he killed

\(^{129}\) *Id.* at 42-58.

\(^{130}\) *Id.*

\(^{131}\) *Id.* at 59.

\(^{132}\) *Id.*


\(^{134}\) J. O'BRIEN, *supra* note 37, at 106.

\(^{135}\) *Id.*
to "the final court of justice."\textsuperscript{136}

Evidence about orders given to officers who caused disputed deaths does not indicate an intention to capture rather than kill. The Widgery Tribunal inquiry into the events of Bloody Sunday suggested an advance plan to flush out and shoot IRA gunmen.\textsuperscript{137} The SAS squad that killed three unarmed Irish people in Gibraltar testified at an inquest that their orders were to kill once firing began.\textsuperscript{138} Those instructions were echoed by RUC officers during their trial on murder charges in connection with the 1982 killings. An RUC deputy chief constable testified that "[o]nce you have decided to fire, you shoot to take out your enemy [permanently]."\textsuperscript{139}

A description by civil rights leader Bernadette Devlin McAliskey of the 1981 attempt on her life is illustrative. According to Ms. McAliskey, British soldiers lay outside her house on the morning that loyalist gunmen burst in and riddled her body with bullets.\textsuperscript{140} Soldiers entered the house after the shooting.\textsuperscript{141} Wounded but still conscious, she asked one soldier why the army had not stopped armed men from breaking into her home.\textsuperscript{142} The soldier replied that his orders were to arrest the men coming out of the house.\textsuperscript{143}

\textbf{B. The "Special Circumstances" Argument}

The "special circumstances" argument holds that British forces operate in conditions justifying departure from ordinary laws and procedures.\textsuperscript{144}

\begin{itemize}
  \item \textsuperscript{137} \textit{WIDGERY REPORT}, supra note 43, at 8.
  \item \textsuperscript{138} J. \textit{O'BRIEN}, supra note 37, at 114.
  \item \textsuperscript{139} \textit{SHOOT TO KILL?}, supra note 4, at 92 (testimony of Deputy Chief Constable Michael McAtamney).
  \item \textsuperscript{140} Interview with Bernadette Devlin McAliskey, in Chicago, Ill. (Sept. 28, 1989) [hereinafter McAliskey Interview]; see also W.D. FLACKES & S. ELLIOT, \textit{NORTHERN IRELAND: A POLITICAL DIRECTORY 1968-88}, at 176-78 (3d ed. 1989). It should be noted that one of Ms. McAliskey's attackers denied any collusion with British security forces in connection with the attempted assassination. Interview with Attacker, in Lisburn, N. Ir. (Mar. 29, 1990) (name of attacker withheld to protect identity).
  \item \textsuperscript{141} McAliskey Interview, supra note 140.
  \item \textsuperscript{142} \textit{Id.}
  \item \textsuperscript{143} \textit{Id.}
  \item \textsuperscript{144} See J. \textit{STALKER}, supra note 52, at 11, 71.
\end{itemize}
The argument contends that defeating paramilitary violence requires allowing greater latitude in conduct by the security forces.\footnote{Id.}

The problem with this argument is its inconsistency with Britain’s position on the nature of the Northern Ireland conflict. British officials have stated that persons who engage in paramilitary violence are common criminals governed by criminal law rather than the laws of war.\footnote{Indeed, Britain’s position on this point was the catalyst for the 1981 hunger strike in which 10 nationalist prisoners died. Britain claimed the men were criminals who should be required to wear prison uniforms and do prison work. The hunger strikers asserted that they were political prisoners of war to whom requirements applicable to common criminals should not apply. \textit{See generally} B. BERESFORD, TEN MEN DEAD (1987); T. COLLINS, \textit{The Irish Hunger Strike} (1987).} At the same time, Britain has contended that there is a “war situation” in Northern Ireland to which ordinary criminal laws should not be applied.\footnote{Remarks of John Matthew, Prosecutor, at the Trial of William Quinn, Feb. 12, 1988 (author’s notes at trial) (Quinn was the first United States citizen to be extradited to Britain for a political offense.). Prosecutors argued at Quinn’s trial that the government’s failure to follow identification procedures under British law in Quinn’s case were excusable because there was a “war situation” in Northern Ireland in which “lives were at stake.” \textit{Id.} The judge agreed. \textit{See Quinn v. Robinson}, 783 F.2d 776 (9th Cir. 1986); \textit{see also} R. v. Jones, [1975] 2 N.I.J.B. 82 (Mr. Justice MacDermott holding that one of the circumstances justifying a soldier’s use of deadly force was the “general wartime situation in Northern Ireland”).} Britain cannot have it both ways.

\textbf{C. The “Suspected Terrorist” Argument}

The “suspected terrorist” argument maintains that killings were justified because the victims allegedly had connections to paramilitaries or allegedly intended to commit so-called “terrorist” acts.\footnote{See \textit{Amnesty Letter}, \textit{supra} note 78.} The killings were necessary, the argument goes, to prevent those acts from being committed.\footnote{Id.}

One problem with this view is the potential for the abuse it creates. The Stalker investigation, for example, revealed police attempts to fabricate evidence of paramilitary connections in the case of one unarmed person killed by police.\footnote{See \textit{ supra} notes 52-60 and accompanying text.} The deeper problem is why suspected paramilitary ties matter when a suspect can be arrested rather than killed. Under British law, a suspect is deemed innocent until proven guilty.\footnote{Archbold, \textit{Pleading, Evidence \& Practice in Criminal Cases} 659-60, para. 1154.(1) (S. Mitchell 39th ed. 1976).}
Killing rather than capturing a suspect deprives the justice system of the opportunity to test whether the government has sufficient evidence to defeat that presumption in court.

V. CONCLUSION

British security forces have killed more than 160 civilians in Northern Ireland since 1969. Only one member of the security forces has been convicted of committing a murder while on duty. That soldier served less than three years in prison and returned to service in the British army. No subsequent British government investigation of disputed killings by the security forces has concluded that a killing constituted wrongdoing which warranted criminal prosecution for murder. The British government removed the only investigator who did verge on reaching that conclusion: John Stalker.

The almost total failure of the British government to punish members of the security forces for killing people who instead might have been arrested suggests that Britain condones such killings. Orders which several soldiers admitted they received suggests that Britain encourages them.

Indeed, it can be argued that the presence of British army troops and quasi-military units like the UDR in Northern Ireland makes the killing of unarmed civilians inevitable. The primary purpose and training of such forces are not suited to enforcing law and order; for precisely this reason, Americans have balked at the idea of using the military to enforce anti-drug laws in the United States. As Northern Ireland human rights activist Oliver Kearney remarked, explaining his lack of faith in the British government investigations into the shooting deaths, “[s]oldiers are trained to kill. That is their function. When British soldiers in Ireland kill Irish people they are doing their job.”

Killing criminal suspects without arrest, charge, trial and sentence constitutes summary execution forbidden by British domestic and international law. Such killings violate British domestic law because they use more force than is reasonable in the circumstances to effect an arrest. Shooting an unarmed person without warning seems unreasonable if the

152. SHOOT TO KILL?, supra note 4, at 10.
153. One other British soldier, Pvt. Robert Davidson, was convicted of manslaughter and given a 12-month suspended sentence. Davidson fired at a car passing through a checkpoint at Strabane, North Ireland, and killed a woman passenger. SHOOT TO KILL?, supra note 4, para. 103, at 80.
154. Id.
155. See generally J. STALKER, supra note 52.
156. Interview with Oliver Kearney, in Antrim, N. Ir. (Feb. 12, 1988).
object is to arrest him. It seems reasonable only if the object is to kill.

Such killings violate the United Nations International Covenant on Civil and Political Rights, to which Britain is subject, because they arbitrarily deprive persons of their lives. The killings violate the European Convention for Protection of Human Rights and Fundamental Freedoms by depriving persons of their lives intentionally without the sentence of a court following conviction for a crime for which the death penalty is provided by law. Britain has no death penalty.

Britain has expressed a desire to instill in Irish nationalists confidence in the system of government in Northern Ireland. But how can this confidence be born, much less thrive, when Irish lives can be snuffed out with impunity?

It has been said that winning the hearts and minds of nationalists depends on convincing “the little old lady on the Falls Road,” a heavily nationalist area of Belfast. Lest we forget, the little old lady on the Falls Road is not stupid. It has not escaped her attention that British forces are killing her neighbors and walking free.
THE BORDER THAT WOULDN’T GO AWAY: 
IRISH INTEGRATION IN THE EC

HILARY HOUSE *

This Article examines the role of Ireland\(^1\) in the European Community (EC)\(^2\) in light of the following questions. How do the provisions for economic cohesion in the original European Economic Community (EEC) treaty, and the later-developed regional policies of the EC, influence the prospects for economic integration between Northern Ireland and the Republic of Ireland? How likely is such integration likely to translate into some form of political integration between these two regions? How much has membership in the EC helped the Republic of Ireland reduce its economic dependence on the United Kingdom? Finally, to what extent does the Community’s framework provide a different context for the settlement of the “Irish question” in Anglo-Irish affairs?

Section I explores the history of economic integration between North and South, examining the degree to which cooperation existed before accession to the EC. In the next section, economic integration since entry is analyzed, with special emphasis on regional policy, the European Monetary System and the effect of membership on Anglo-Irish economic relations. Section III provides a brief background of the political climate leading up to entry, particularly upon official attitudes towards the border and the revised view of Irish neutrality. The final section, discussing the development of political integration since entry, draws some conclusions about the implications of economic integration for political convergence between Northern Ireland and the Republic of Ireland.

I. ECONOMIC INTEGRATION BEFORE THE EC

Economic cooperation between the North and the Republic existed well before either’s accession to the EC. Functional cooperation became

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1. The term Ireland is used here when referring together to the Republic of Ireland, or the South, and Northern Ireland, or the North.

2. In 1967, the institutions of the European Coal and Steel Community (ECSC), established by the Treaty of Paris in 1951, the European Economic Community (EEC), established by the Treaty of Rome in 1957, and the European Atomic Energy Community (Euroatom), established by a separate Treaty of Rome in 1951, merged to form what now is known as the European Community. The terms EC and the Community are used here to refer to this latter entity. D. LASOK & J.W. BRIDGE, LAW & THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES 17-18 (4th ed. 1987).
a distinct possibility in the 1960s following the disastrous Irish Republican Army (IRA) campaign of 1956-62, which coincided with the coming to power in the Republic of an administration characterized by an explicitly cooperative attitude. Prime Minister Sean Lemass's de facto recognition of Northern Ireland and the subordination of traditional nationalist concerns came at a time of impressive economic growth in the South. The 1960s were indeed a lucrative time for the Republic, with the growth rate rising from 1.9% to 4.1%, unemployment falling and even the emigration rate decreasing.

Although much of this economic progress reflected a Europe-wide trend, it was also the result of a radical shift in Irish economic policy. Traditionally, the South's heavy trade dependence on Britain and its protectionist economic policies were a major obstacle to joining a tariff-free European market. It was not until the early 1960s that the Republic's attitude toward a European economic union began to change. Massive emigration, high unemployment and below-average growth throughout the 1950s led many political leaders to realize that protectionism was not working. Meanwhile, as free trade was discussed in the EEC, the Republic earnestly began reexamining that economic policy. As a sort of prelude to membership in the EEC, then, the Anglo-Irish Free Trade Area Agreement (the "Agreement") was established in 1966. It called for a gradual removal of industrial tariffs between the Republic and the United Kingdom and a general loosening of economic protection over a ten-year period.

The agreement marked a turning point in the decline of the economic significance of the border between North and South. The prospects for economic integration were mixed. On the one hand, Northern Ireland appeared to have more in common economically with the Republic than with Britain. Its dependence upon agriculture and the special needs of the border regions dictated that cooperation on an all-Ireland basis was more sensible than reliance upon London to honor promises of economic development. On the other hand, the two economies are very different.

4. Id.
6. Salmon, Ireland, in Building Europe: Britain's Partners in the EEC 192 (C. Twitchett & K. Twitchett eds. 1981). From 1948-60, for example, 75% of the Republic's exports went to Britain and 50% of its imports came from there. Id.
7. Id.
8. Id. at 194.
9. Id. at 194-95.
Northern Ireland claims traditional home industries, such as textiles and shipbuilding, which are typical of the older European industries which have declined. The South can boast no such home industries of like significance; instead, it depends upon a much heavier agricultural output. Nevertheless, the general trend towards trade liberalization, the free movement of capital and the attraction of foreign investment created favorable conditions for Irish entry into the EEC.

Republic attitudes toward a European economic union began to change in earnest in the 1960s, but were rendered powerless when Britain failed to join. When Britain finally did join, the Republic immediately followed suit. Due to the South's constitutional claims to sovereignty and its requirement that all legislative, judicial and executive powers be exercised by the state, a constitutional amendment, and hence a referendum, was necessary. The amendment to article 29 of the Irish constitution, which deals with international relations and regulates the treaty-making power of the state, was adopted by eighty-three percent in a referendum in May 1972. The amending clause states that the Republic may become a member of the EC's three institutions: the EEC, the ECSC and Euratom. It further explains that the constitution does not invalidate anything the state does in fulfilling its Community obligations. In deference to public concern over Irish neutrality, the amendment carefully precludes any actual transfer of power to the Community. Nevertheless, the scope of the amendment is rather wide, covering more, for example, than the British European Communities Act of 1972. The range of interpretation possible with respect to the amendment led some to fear that a ministerial order of an EC Commission decision could override some of the most fundamental provisions of the Irish constitution. This has yet to happen.

Arguments for and against membership were almost purely divided along economic and political lines. Four categories of arguments which colored the referendum debate are summarized in Table 1.

10. *Id.* at 195.
12. *Id.* at 30.
13. *Id.;* see supra note 2.
14. *Id.*
15. *Id.* at 32.
16. *Id.*; The EC Commission functions as an initiator of Community policy, an executive agency and a guardian of Community treaties. D. LASOK & J.W. BRIDGE, supra note 2, at 188.
### Table 1:

**Categories of Opinion Regarding Irish Membership in the EEC**

<table>
<thead>
<tr>
<th>Affiliates</th>
<th>Argument</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conservative in favor</strong></td>
<td><strong>Conservative in favor</strong></td>
</tr>
<tr>
<td>Fianna Fáil, Fine Gael, Irish Council of the European Movement</td>
<td>Mostly economic</td>
</tr>
<tr>
<td><strong>Conservative against</strong></td>
<td><strong>Conservative against</strong></td>
</tr>
<tr>
<td>Common Market Study Group</td>
<td>Sovereignty undermined right away; neutrality, eventually industrial sector, and small farmers vulnerable; associate membership possible</td>
</tr>
<tr>
<td><strong>Left-wing in favor</strong></td>
<td><strong>Left-wing in favor</strong></td>
</tr>
<tr>
<td>Irish Communist Organization</td>
<td></td>
</tr>
<tr>
<td><strong>Left-wing against</strong></td>
<td><strong>Left-wing against</strong></td>
</tr>
<tr>
<td>Labour Party, Workers' Party, Communist Party</td>
<td></td>
</tr>
</tbody>
</table>

Since that the pro-Community groups contained some of the most powerful and influential elements in Irish politics, enjoying the support of state institutions such as the Department of Foreign Affairs, the cards were stacked against opposition to membership quite early. More interesting, however, is the difference in emphasis the two most important groups, conservative-in-favor and left-wing-against, place on political and economic concerns. For proponents, only a vague reference to participation in the construction of a new Europe could be cited as a political argument in favor of joining; otherwise, the concentration is on the

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18. Salmon, *supra* note 6, at 200. The Labour Party, once in power in a coalition government with Fine Gael, eventually changed its role from an opponent of membership to that of a "constructive critic." *Id.* at 203.

19. Known as Official Sinn Féin at the time. *Id.*

economic benefits of joining and, perhaps more importantly, the consequences of not joining. At the time of accession, the Republic's two biggest parties believed that industry would benefit from multinational corporate investment as membership rendered the country more attractive to foreign investors. Higher prices would be paid for Irish goods and dependence on the British market would be reduced as more markets became available for the Republic's products. The left, on the other hand, while pointing out the vulnerability of certain sectors to a common European market and the effects of market integration, primarily stressed political factors, such as the abrogation of sovereignty and the threat to the tradition of Irish neutrality that a possible European defense policy would pose. Recognizing that pure isolationism was an outmoded and dangerous economic policy, the left preferred Sweden's solution.

II. ECONOMIC INTEGRATION SINCE THE EC

Regional policy on the Community level was not included in the original Treaty of Rome, but the case for one had essentially been made by the late 1960s. Enlargement and recession exacerbated regional disparities to the extent that economic and social cohesion assumed a more urgent meaning after the accession of the Republic in 1973. The common market of agriculture was a mixed blessing for less-developed regions in Europe. On the one hand, the price support system tended to ameliorate their heavy dependence on agriculture. On the other, the true beneficiaries were larger producers and wealthier regions whose output was greater and who were better able to specialize in well-supported products.

As "priority regions" in the EC, Northern Ireland and the Republic of Ireland are major recipients of its structural funds. These are the European Regional Development Fund (ERDF), the European Social Fund and The European Agricultural Guidance and Guarantee Fund.

21. Salmon, supra note 6, at 198.
22. See id.
23. See id. at 215.
24. Laffan, 'While You're Over There in Brussels, Get Us a Grant': The Management of the Structural Funds in Ireland, in 4 IRISH POLITICAL STUDIES 43 (J. Coakley & N. Rees eds. 1989); see infra note 76 and accompanying text.
1986, the Republic’s receipts from the Community budget represented fourteen percent of the country’s entire budget. Likewise, the United Kingdom’s Regional Development Plan for Northern Ireland (1989-1993) seeks £685 million in Community aid to fund projects directed at improving image, infrastructure and expertise in Northern Ireland. Of particular relevance to these two regions is the Community’s interest in cross-border projects and the availability of Community funds as an impartial source of revenue to finance functional North-South integration. These projects include the financing of joint drainage programs in border areas (1979) and a five-year plan for the use of funds from the non-quota section of the ERDF for cross-border projects (1980-85). These developments may be seen as accelerating the pace of economic integration between the two areas.

Regional policy was institutionalized by the Single European Act (SEA), and many have argued that the act, in theory at least, provides for an extension of regional policy and an official commitment by the EC to tackle the Republic’s problems of spatial disparity. Title V, inserted at the insistence of Southern Irish and Greek members, outlines an obligation to coordinate economic policies to strengthen economic and social cohesion and reduce disparities. There is little in the act, however, to suggest that anything new regarding regional convergence has been added, beyond the commitment to coordinate national economic policies and an intention to amend the rules of the structural funds. Michael Cuddy argues that this does not bode well for less-developed regions for two reasons. First, any move toward convergence, if it is to be effective, must involve significant economic transfers from wealthier

27. Laffan, supra note 24, at 49.
28. Id.
34. Single European Act, supra note 32, tit. V.
to poorer regions. At this time, there is no political consensus behind the need for this; the advocacy of income redistribution goes no farther than national boundaries. Second, notwithstanding a political commitment to provide sufficient funds for regional development, the finances for such a venture are conspicuously absent. Without the means, the aim of economic and monetary union will be more difficult to achieve.

Regional development for Northern Ireland is aimed at alleviating the economic problems caused by the decline in older traditional industries and the concentration of agriculture. Unemployment in Northern Ireland is twice the United Kingdom average; incomes are low, as is gross domestic product (GDP) per capita, and the birth rate exceeds that of the United Kingdom as a whole. Unemployment in agriculture is 8%, as opposed to 2.3% for the United Kingdom. The agricultural climate is not conducive to diversification, and the reforms of the Community's Common Agricultural Policy have impacted significantly on the North's concentration on milk, beef and sheep. In industry, the North has been dependent on a number of traditional industries which have been in decline. As a result, unemployment in the manufacturing sector has risen. Moreover, the United Kingdom's early industrialization leaves it with an old infrastructure desperately in need of revitalization.

Responding to these problems, the United Kingdom submitted to the EC Commission its Regional Development Plan for Northern Ireland (1989-1993). Table 2 outlines some of the salient aspects of the plan on an annual expenditure basis.

35. Cuddy, supra note 33, at 7, 17.
37. Id.
38. Id.
40. See id. at 111.
41. Id.
42. Id.
43. Id.
44. Id.
45. Id. at 111-12.
46. Id.
Table 2:

Expenditure in the Regional Development Plan for Northern Ireland

<table>
<thead>
<tr>
<th>Object of Expenditure</th>
<th>Image</th>
<th>Infrastructure</th>
<th>Expertise</th>
<th>Exports and Enterprise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of Expenditure (in £)</td>
<td>100m</td>
<td>340m</td>
<td>50m</td>
<td>195m</td>
</tr>
<tr>
<td>Areas of Concern</td>
<td>community, reconciliation, environment, urban renewal</td>
<td>communications, public utilities, social facilities</td>
<td>management and labor, skills</td>
<td>private sector, industrial development, rural economy, tourism, education</td>
</tr>
</tbody>
</table>

Note that this plan does not deal at all with cross-border cooperation. The emphasis here is on developing the potential of Northern Ireland’s economy, as evidenced by the concentration of funds going to infrastructure. Northern Ireland’s regional fund receipts have less of an effect, however, than pure numbers might suggest. This is so because the British government has failed to adopt the principle of “additionality,” which states that any Community funds contributing to national development plans must be used as an additional source of revenue over and above money from the national governments themselves. Instead, London has replaced what it would have contributed to Northern Irish development with Community funds, thus nullifying any additional impact such revenue might have had. Furthermore, this refusal to implement additionality makes it especially difficult to assess what influence, if any, Community regional policy has on Northern Irish development.

The Republic of Ireland as a whole is considered a region for Community purposes. It has the second fastest-rising unemployment (behind Spain), a GDP which is seventy percent of the Community average and an economy highly dependent on agriculture. From 1978 to 1980 it received the highest per capita transfers from the European Community’s structural funds. It represents a special situation within the Community’s regional policy, since, like Portugal and Greece, the

48. Id.
49. Id.
50. Id. at 11.
51. Laffan, supra note 24, at 49.
entire country is treated as one region.\textsuperscript{52} The implications of this treatment for the implementation of regional policy are twofold. First, the central government is, in effect, the "regional authority" through which funds are managed. Therefore, the involvement by local authorities in addition to central government supervision, something which the Commission has repeatedly encouraged, is rendered meaningless in the Republic's case. Second, the Irish government, because it acts above and not with regional actors, is more concerned with national economic development than with internal regional disparities. Under this centralized management of funds, receipts are given a separate budget heading in the Public Capital Programme and are allocated on a sectoral, rather than regional, basis.

The two parts of the island, then, are primarily concerned with the national impact of the Community's regional policy—the Republic with national economic development as a form of regional development and Northern Ireland with its particular problems of traditional industry decline and its status as a region within the United Kingdom. A more pressing problem from an all-Ireland perspective, however, is the enlargement of the EC in the 1980s to include Greece, Spain and Portugal. Although, from an Irish perspective, one could view enlargement positively as the addition of new member states with similar concerns regarding economic divergence (and hence new allies at Brussels), it is more realistic to assume that the energy of these new members will be directed at accruing maximum benefits to themselves. Their accession, moreover, adds a Mediterranean dimension to the EC, increasing the competition for resources, shifting the focus of regional policy to the southern periphery of the EC and imposing additional budgetary constraints on an already tight Community budget.

The outlook for the impact of the EC on economic integration between the Republic and Northern Ireland is, at best, mixed. Cross-border cooperation existed well before membership in the EC; the possibility of it increasing as a result of membership is not evident. For example, Seamus Mallon of the Social Democratic Labour Party, one of the major nationalist parties in Northern Ireland, complained recently that in Newry (which happens to be, by the way, a border town) the only building to go up in the last two years was an expensive customs station. He called on those working on the cross-border cooperation to stop carrying out expensive, time-consuming "feasibility studies" and take some definite action on cross-border cooperation.\textsuperscript{53} Thus far, the only significant border collaboration that has occurred in Ireland is in the security arena.

\textsuperscript{52} See D. Coombes, \textit{supra} note 33, at 21.

which in no way can be said to promote integration of any kind.

There are other limits to economic integration between the North and South that are directly related to the EC. The most evident demonstration of this is the Republic’s decision to join the European Monetary System (EMS) in 1978, despite Britain’s explicit intention to stay out of it. While the optimistic view held that this breaking of ranks with the British constituted a clear assertion of the Republic’s independence, the fact remained that participation in EMS without the United Kingdom would result in exchange controls between the Republic and the North. The trend towards economic integration would thus be reversed as the economic division of Ireland was reinforced rather than eroded. Under such a scenario, the border would not simply go away.

The EC can, however, contribute meaningfully to the elimination of the economic border in Ireland, as was shown in the Commission’s opposition to the “Buy Irish” campaign of January 1978. This campaign, in which the Republic promoted home sales of Irish goods through advertisements and “Guaranteed Irish” symbols, was found by the European Court of Justice to violate the Republic’s obligations under the Treaty of Rome. The court held that activities attributable to the government of a member state which encourage purchase of domestic products through a national advertising campaign and the administration of special procedures which discriminate against or exclude imports constitute measures having an effect equivalent to quantitative restrictions on imports.

In a related case, the Commission, strongly backed by Britain, successfully challenged the Dublin government’s “48-hour rule,” which was introduced in April 1987 to restrict duty and tax free allowances to travelers who have stayed more than 48 hours in another country and have evidence to that effect. The European Court of Justice found that the rule defied the Republic’s Community obligations. The Republic’s high value-added tax (VAT) and Northern Ireland’s relatively low one, have led

54. One observer has even gone so far as to say that “participation in EMS marked that final stage of the Irish independence struggle.” Salmon, supra note 6, at 212.


57. Id.


59. Id.
to "shopping sprees" in the North that have cost the South an estimated Ir £40 million a year.\(^6\)

The implications of these developments are obviously of economic importance for the South, but their political significance poses some interesting questions about Community membership and the prospects for political integration.

### III. THE POLITICAL CLIMATE BEFORE ENTRY

While much attention deservedly has been paid to the economic reason and consequences of Community membership for Ireland, the political reasons and consequences should not be ignored. At the same time, however, they should not be overemphasized. As a founding member of the Council of Europe, for example, the Republic has long had a European dimension to its political and economic outlook. In addition, its tradition of Catholicism and its historical antagonism towards Great Britain have given it a more continental orientation. Just as there were economic obstacles to joining the EC, however, there were political hindrances as well. Its fragile status as a young nation, during the early years of European integration, was often cited among reasons against joining. As a newly independent nation, the Republic was reluctant to subject herself to a new "domination of [its] affairs by outside force."\(^6\) Furthermore, the persistent territorial dispute with Britain led some political leaders to assert that "[p]artition nullifies the usefulness of our efforts [to join]."\(^6\)

The final establishment of the Republic's independence, with the declaration of the Republic in 1948, marked the beginning of the decline of partition as an immediately urgent issue.\(^6\) The goal of Irish unity was no longer regarded as attainable in the near future; as a result, the importance of day-to-day welfare began to take center stage.\(^6\) Increasingly, elections were won on the ability to implement economic policies which the electorate perceived necessary, not on one's ability to secure and protect Irish unity and independence, and even less on one's role in the War of Independence.\(^6\) This lasted throughout the difficult, protectionist fifties and did not end with the coming to power of a radically

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60. Dickson, supra note 36, at 1, col. 7. After negotiations with Community officials, the Dublin government agreed to amend its rule to 24 hours. Parkin, Dublin Amends 'Shopping Trips' Ban, Press. A. Newsfile, Dec. 18, 1990.

61. Salmon, supra note 6, at 191.

62. Id.


64. Id. at 67-89.

65. See Coakley, supra note 17, at 49.
different government in 1959, led by Sean Lemass. For Lemass found himself in a predicament that was becoming increasingly common internationally: a tension between securing domestic political legitimacy (traditionally based on the independence struggle) and the effectiveness of one’s country in an economically interdependent world (associated primarily with economic concerns).

Since Lemass’s time, the emphasis has been on the latter, as successive governments have sought to make the Irish public more receptive to the challenges of economic interdependence. This has been accomplished in part by diverting attention away from the politically divisive issues of partition and neutrality. Thus, “[M]embership of the EC was presented by the government as an economic, external affairs matter. In so far as it became a foreign policy issue, it did so on the initiative of the political opposition.”67 There was no talk of the importance of playing a role in the international political arena, as there had been, for example, in discussions of the Republic’s role in the United Nations. In fact, “even the issue of Partition was approached by a ‘depoliticized’ functionalism which attempted to disown the utility of the political symbols and assumptions of the past in favour of a new ‘rationality’ of economic growth and development.”68 The key issue surrounding membership was that the Republic’s had little choice in the matter. Although global tariff reductions and the development of a European common market posed problems for a small nation thus far accustomed primarily to protectionist economic policies, it was seen as inevitable that the Republic would have to join the movement toward European free trade. Meanwhile, as neutrality was seen as unthreatened (since European defense did not yet figure significantly into the picture), the participation of the Republic in the defense of Europe was viewed in government circles as inevitable, if and when it became necessary.69 The shift in attitude towards partition and neutrality before entry, in retrospect, was a clear sign of the times ahead.

IV. THE PROSPECTS FOR POLITICAL INTEGRATION

Proponents of Community membership on both sides of the border (the Social Democratic Labour Party in the North and both Fianna Fáil and Fine Gael in the Republic) are hopeful that economic integration will eventually translate into political integration and somehow satisfy

66. Id.
67. P. Sharp, supra note 63, at 79.
68. Id. at 79.
69. P. Keatinge, A SINGULAR STANCE: IRISH NEUTRALITY IN THE 1980s, at 24-29 (1984); see also Salmon, supra note 6, at 193.
aspirations towards Irish unification. Meanwhile, in certain nationalist
circles (but by no means all) on both sides of the border, "[t]he optimistic
view prevalent at the time of accession saw the prospects of greater
economic and political integration in the Community framework as
offering a new and more fruitful perspective for resolving the problems
created by partition." To a certain extent this optimism has been
rewarded. Patrick Keatinge looks upon the European Council as
"institutionalized multilateral summity . . . [which] leads in turn to more
bilateral summit meeting with ‘third parties’ which may provide opportuni-
ties for promoting the small state’s position." As an example, he
points to the March 1981 meeting between Prime Minister Charles
Haughey and German Chancellor Helmut Schmidt in which the latter
advocated treating the Northern Ireland question as an international
issue. That has yet to happen. Margaret Thatcher’s objection to the
appointment of a rapporteur of a report on the political, social and
economic situation in Ireland in March 1983 signaled that the British
government was not willing to tolerate any Community initiatives on
partition. In addition, the reunification of Germany has absorbed all the
energies of the German government, while nearly exclusively commanding
the political attention of the other member states.

In the South, meanwhile, the shift in attitude toward partition over
time has been tremendous, as the following example illustrates. In 1957,
the demand being placed on the Soviet Union to hold a plebiscite on the
reunification of Germany was cited by an Irish government official as the
one development in Europe that held significance for Irish partition, in
that it inspired hope that the “same principle would be applied to
Ireland.” In contrast, an official from the same party, Prime Minister

Indeed, this was one of the arguments used to promote accession and the primary reason
behind loyalist opposition to it. See generally Coakley, supra note 17, at 50-51. With the
end of Stormont in 1972 and the entry into the EC in 1973, Northern Irish loyalists were
fearful of a threat to the entire existence of “their” state. See Keatinge, supra note 69,
at 80.

71. Coombes, Ireland’s Membership of the European Community: Strange Paradox of
Mere Expedience?, in IRELAND AND THE EUROPEAN COMMUNITIES, supra note 11, at 19.

72. Keatinge, An Odd Couple? Obstacles and Opportunities in Inter-State Political
Cooperation Between the Republic of Ireland and the United Kingdom, in POLITICAL
COOPERATION IN DIVIDED SOCIETIES 323 (D. Rea ed. 1982).

73. Id.

74. O’Cleireacain; Northern Ireland and Irish Integration: The Role of the European

75. See Sharp, External Challenges and Domestic Policy Legitimacy: Ireland’s Foreign
Policy 1983-7, in 4 IRISH POLITICAL STUDIES, supra note 24, at 79; infra note 101 and
Haughey, recently stated on United States television that the present reunification of Germany could have serious implications for Northern Ireland.\textsuperscript{76} He, however, explicitly referred to the divisions between the people of Northern Ireland, not partition.\textsuperscript{77}

The signing of the SEA by the member states was seen by many as a strong antidote to the negative perceptions of the future of political cooperation. While titles I, II and IV of the act provide anew for economic and monetary cohesion and common social policies, title III deals with political cooperation, or the prospects for a European foreign policy.\textsuperscript{78} For example, it calls on members to “endeavour jointly to formulate and implement a European foreign policy”\textsuperscript{79} through consultation with other members,\textsuperscript{80} taking the positions of other members into account when formulating national positions\textsuperscript{81} and generally making national foreign policy with the goal of a common European foreign policy in mind.\textsuperscript{82}

Raymond Crotty brought a case before the Irish Supreme Court seeking an amendment to the constitution prior to Irish ratification (which would require a referendum) and in doing so posed the following controversial questions to the electorate.\textsuperscript{83} What is the future of the Republic’s constitutional claim to territorial control over the entire island, which is thought by many to be the basis for Irish sovereignty?\textsuperscript{84} What is the future of the Republic’s long-established position of military neutrality, in which it remains committed to refraining from joining in any military alliance with the United Kingdom as long as partition is in place?\textsuperscript{85} The provisions of title III of the SEA, being as they are part of an international treaty, were found to necessitate an amendment before ratification because they “set the High Contracting Parties [member states] accompanying text.


77. Id.


80. Id. sec. 2(a).

81. Id. sec. 2(c).

82. Id.


84. Id.

85. Id.
on a path leading to eventual European union in foreign policy." The majority opinion of the court held that "to regard Title III as merely formalizing existing practices and procedures was to underestimate the nature of a treaty in international law as distinct from mere practice or procedure . . . Title III required changes which would erode national independence in the context of external relations."87

The outcome of the referendum was virtually predestined. As was the case with the referendum concerning membership in 1972, a "yes" vote was encouraged by a coalition of most of the major parties, namely Fine Gael, Fianna Fáil and the newly formed Progressive Democrats.88 The Labour Party was split on the issue, although its leader campaigned for a "yes" vote. The "no" vote, meanwhile, was supported by a variety of groups, many with different and sometimes contradicting motives and goals, which were very difficult to unite under any form of umbrella organization. For example, the Society for the Protection of the Unborn, concerned that the SEA would force the South to legalize abortion, found itself in alliance with the Sinn Féin and the Workers' Party.89

The government and other supporters of a "yes" vote claimed that the Republic would be kicked out of the EC if the SEA were rejected.90 Although this was untrue—the SEA was renegotiable and a simple amendment to it would have addressed most of the problems of Irish ratification—the public was sufficiently concerned about the economic consequences of a "no" vote and ambiguous enough about their feelings towards neutrality to vote "yes." In fact, the SEA vote, despite loudly voiced reservations about neutrality, was overwhelmingly in favor; however, people voted for the SEA not because they did not care about neutrality, but because they did care about the perceived economic interests of membership.91 Neutrality is still politically very popular; indeed, all the major parties went to great lengths to claim that the SEA did not threaten neutrality. The political leadership's ambivalence towards defense cooperation, then, continues to reflect the ambiguous public opinion towards it. As neutrality becomes more of an issue within the

86. Id.
87. Id.
88. See generally Salmon, supra note 6, at 202.
89. See generally Faolain, Ranelagh—A Good Place to Conclude, Ir. Times (Dublin), May 20, 1987, at 6, col. 1.
90. See generally Carroll, O'Malley and Crotty Clash on Issue of EEC Membership, Ir. Times (Dublin), May 6, 1987, at 9, col. 1, in which Desmond O'Malley, leader of the Progressive Democrats, stated that a "'no' vote will effectively put us out of the community"; see also Carroll, 'No' Vote Could Lead Ireland Out of EEC, Haughey Warns, Ir. Times (Dublin), May 13, 1987, at 4, col. 1.
91. P. SHARP, supra note 63, at 199-232.
European context in the 1980s—first with the London Conference and the Genschler-Colombo proposals of 1981, the Solemn Declaration of 1983 and now with the SEA—the governments of the Republic have sought to assuage domestic concern by de-emphasizing the country's historic military neutrality, while repeatedly reassuring the people that it was in no way threatened. By stressing that the Republic was not, and never had been, politically neutral, and that its political, economic and cultural interests lay in the West, leaders have hoped to convince the public that neutrality was not a right, but a privilege; one that an increasingly economically interdependent world may force them to do without.

V. CONCLUSION

Although they share the dubious distinction of being less-developed regions, the Republic and Northern Ireland share little else as members of the European Community. Writing in 1983, Seamus O'Cleireacain was very optimistic that the convergence of Dublin-Belfast economic interests, coinciding with the growing divergence of Dublin-London economic interests, would enhance the possibility of "common Irish positions" within the EC. Britain's continued stance towards the EMS and the Republic's implementation of the "48-hour rule" are just two among the more striking examples that this optimism is unlikely to be rewarded. Even though the Republic has been forced to abandon the rule, developments such as these are a significant warning that it will be extremely difficult to convince national governments of the economic and political worth of abandoning a large part of their power to implement national economic policy.

The prospects for political integration, as a result of some sort of spillover from economic integration, are even less likely. First, there must be some sort of political consensus behind such a development before it is likely to occur. This is clearly absent in the Irish case. Second, the Irish border is one of the most politically volatile borders in Western Europe. The efforts to downplay the political significance of the border in the 1960s in order to create a more favorable environment for investment in Ireland did not succeed in diminishing opposition to partition. Similarly, the economic benefits to be accrued from an economically borderless Ireland in no way suggest that the political import of the Irish border is likely to fade. Finally, the signing of the Anglo-Irish Agreement at Hillsborough in 1985 has led to a strengthening of

92. Id. at 199-232; see also Hogan, Senator Says SEA Posters May Contradict Court, Ir. Times (Dublin), May 20, 1987, at 6, col. 1; 'Misleading' Claims on Neutrality, Ir. Times (Dublin), May 20, 1987, at 6, col. 1.

93. O'Cleireacain, supra note 74, at 108-09.
cross-border security cooperation, and hence a clear reinforcement of the political aspect of the border.

Faith in the EC to "resolve" the problem of partition without actually removing partition is clearly overoptimistic. Despite high expectations, Community membership has had very little impact upon North-South relations, and even less of one on partition particularly. This is so because, as an issue, partition has for the most part been omitted from the Community agenda and has instead been addressed as it has always unsuccessfully been—the bilateral contest. The logic behind believing that the "problems created by partition" could be resolved merely by placing them in a European context is difficult to understand. Political integration, far from being enhanced by membership, rather has been rendered irrelevant.

The greatest obstacle to Irish integration resulting from Community membership lies in the many paradoxes of the Republic's accession and activities at the European level, which obscure the issue of Irish membership and prevent other issues from being addressed in a coherent manner. The following examples will suffice to clarify this observation. A Community milk surplus, amounting to almost one-quarter of the total production by the end of 1983, prompted the Commission to impose a super-levy on surplus production. The Republic, with its strong agricultural sector, opposed the measure. Negotiations followed which resulted in a grant to the Republic of a long derogation from the proposal. Two arguments were used to plead its case. First, it complained that the "quota" system being proposed acted against the free market principles of the EC. This argument downplayed national concerns by stressing the importance of the logic of market integration. The second argument insisted that the Republic, with its small proportion of Community production and high proportion of dairy industry in its own economy, was a special case. By showing that its predicament was a result of their dependent and colonial relationship with Britain, the Republic managed to be quite convincing. This argument, meanwhile, highlighted national concerns without downplaying them, and was likely intended for a domestic audience.

One author has surmised that "so long as Irish governments can demonstrate that substantial and unambiguous economic benefits flowed from membership of the EC, then the latter's price in terms of the

94. Sharp, supra note 75, at 90.
95. Id.
96. Id. at 91.
97. Id.
98. Id.
challenges it poses to established notions of Irish independence can be managed." On an economic level, this statement can be extended to include established notions of Irish sovereignty in regards to economic policymaking. The threats that membership poses in terms of governmental authority to impose measures aimed at economic development, at avoiding policies which may undermine the economic well-being of Ireland, have forced the Dublin governments to straddle the line between unequivocally defending the Republic's immediate economic interests and fulfilling its obligations as a member of the EC. The public has continued to straddle the line as well. In 1979, Eurobarometer #11, one of a series of Community public opinion polls, revealed that while most of the Irish (72%) voted for members of European Parliament based on the candidates' European ideas rather than their party affiliation, of those, 62% felt that Irish MEPs should always give Irish interests higher priority than Community interest. Nevertheless, during its presidency of the Community's Council in 1975 and 1979, "the Irish position shrewdly put less emphasis on defending those Community policies inclined to benefit Ireland materially . . . than on encouraging the Community's general development."101

Table 3 shows how the change in emphasis in official Irish nationalism has enabled the republican-based political legitimacy of Irish government to survive the move towards European union.

Table 3:

Transformation of Irish Nationalist Ideas in the 20th Century

<table>
<thead>
<tr>
<th>Isolationist Tendencies</th>
<th>Integrationist Tendencies</th>
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<tbody>
<tr>
<td>Preoccupation with partition—</td>
<td>The EC as a new alliance which would bring North and South closer together</td>
</tr>
<tr>
<td>Economic protectionism and</td>
<td>Membership would make it easier to break out of the political and economic dependence on Britain</td>
</tr>
<tr>
<td>maximization of autonomy—</td>
<td></td>
</tr>
</tbody>
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Nationalism and integration have been able to coexist because the Irish people have allowed them to coexist; but the question remains: How long will the EC allow them to coexist?

99. Id.
100. Coakley, supra note 17, at 61.