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## Preface

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It would be Thursday, 2 December 1999 (over 600 days later), before the Belfast Agreement (or the Agreement) entered into force. On that day, power was devolved from London to Belfast. Devolution was suspended on 12 February 2000, due to the failure of the IRA to decommission; the institutions were restored on 30 May 2000, upon a promise to allow inspection of arms dumps.

### History, Politics and the Law

The achievement of the Belfast Agreement, reached at Stormont on Good Friday 1998, is historic. It is an important event in Irish and British history. Senator George Mitchell has already published his – at times revealing – memoir of the multi-party negotiations.<sup>1</sup> Thomas Hennessy has written an account of the 1996–98 talks based upon collected documents.<sup>2</sup> Others will no doubt follow. This book is not a contribution to that literature; it is not about the personalities and politics of the Northern Ireland problem.<sup>3</sup>

Issues of history are touched upon in passing in the substantive parts of the book, where necessary to delineate the law – international and municipal – of this particular constitutional solution. Part 1 is introductory, and includes four historical chapters.<sup>4</sup> Otherwise, the normal protocols of legal analysis in international law and in the common law – involving narrative and a respect for chronology – are followed throughout this work.

*The Belfast Agreement: a practical legal analysis* is what the title says. It is about the Belfast Agreement, also referred to as the Stormont Agreement or the Good Friday Agreement.<sup>5</sup> This is a relatively short text (30 pages), drawn up by two governments and agreed by most – but not all – of Northern Ireland's political parties. Legally, the Belfast Agreement is an international agreement, or treaty (the consequences of which have not been appreciated generally). The Agreement has been incorporated variously in United Kingdom law, and in Irish law, as part of its implementation by the two governments. The Northern Ireland Act (NIA) 1998 is the principal consequence of the Belfast Agreement. But it is not the only statute in United Kingdom law, to say nothing of Irish law. Even where the Belfast Agreement has not been incorporated in one way or another, it may be of domestic relevance given respective rules of interpretation in the two jurisdictions in Ireland. The

1 *Making Peace*, London 1999.

2 *The Northern Ireland Peace Process: ending the troubles?* Dublin 2000.

3 These are being left in the Prologue, except where, in Parts 2 to 4, they become legally significant.

4 The standard student textbook takes an unarticulated internal historical approach: Brigid Hadfield, *The Constitution of Northern Ireland*, Belfast 1989.

5 See Chapter 1.



Belfast Agreement has also spawned a number of subsidiary international agreements, which are of considerable legal significance.

The book is structured by the contents of the Belfast Agreement, some 11 sections (as they are called in that text). These are dealt with consecutively in Chapters 8 to 23 (the additional chapters being required to deal mainly with annexes to several sections), plus Chapter 24 on the British-Irish Agreement. The focus throughout is the text. If the Belfast Agreement is to succeed historically and politically, it will have to work legally. I aim to give it a fair wind by respecting the document as drafted (regardless of well or badly), and bringing to it only the norms of rational argument and commitment to the rule of law.

The subtitle of the book – a practical legal analysis – is important, and distinguishes it from other possible works on the Belfast Agreement. The book provides the material of legal argument and submission. Lawyers may be distinguished professionally in several ways. Perhaps the most important is academic lawyers versus practitioners (another professional gulf is between international and domestic lawyers). Often, there is little interaction. And, in United Kingdom and Irish law, jurists are not as highly valued as they are in continental civil law systems.<sup>6</sup> There, legal analysis interacts more often with history, philosophy and the social sciences. Teaching and scholarship in these islands have their own protocols; occasionally, the work of academic lawyers is used in the courts (or in giving legal advice, or in the vast array of non-contentious work – the legal iceberg below the sea).

Practitioners, in contrast, comprise solicitors, barristers and judges (and, from time to time in private but mainly public international law, legal scholars). They are the actors upon the legal stage, not the legal critics in the academy. Some write texts for busy colleagues; but publication is not a qualification valued for high judicial office in United Kingdom or Irish law. Their law is case – that is, client – driven. One's duty is to the client, and to the court – domestic or international. In the common law, adversarialism reigns. Justice – criminal but also civil – is for the court, having heard contending views. The good lawyer is the one who correctly predicts the outcome of a particular action in a designated court or courts.

To any question about the meaning of the Belfast Agreement, I answer: that is a matter for the courts (which courts is a significant problem). If it is to work as an international agreement, variously incorporated in United Kingdom and Irish law, domestic judges will incrementally interpret the text, and other cases, as specific problems are brought before them by practising lawyers. The meaning of the Belfast Agreement could, of course, be sought directly from the International Court of Justice at The Hague, article 36(2) of the statute providing for *inter alia* the interpretation of a treaty. But that would probably give rise to problems of jurisdiction (discussed in Chapter 2).

### Readership

This book has been written with four distinct professional groups in mind. First,

<sup>6</sup> An exception in the United Kingdom, and in criminal law, is Glanville Williams: see, for example, *R v Director of Public Prosecutions, ex parte Kebilene* [1999] 3 WLR 972, 987 per Lord Cooke of Thorndon.



solicitors, barristers and judges in Northern Ireland, and in the Republic of Ireland. They will be involved in cases concerning the new institutions of government, internal to the United Kingdom state but also linking it internationally. This professional group has been engaged already in cases in Dublin and Belfast on other aspects of the Agreement. The likelihood is that this process will develop, and that landmark judgments – of considerable significance to the political actors – will spring from ordinary private, and public, law disputes.

Second, practitioners and constitutional scholars in Great Britain interested generally in United Kingdom devolution and human rights law – as part of the constitutional reform project of the labour government elected in May 1997.

Third, diplomats, political leaders and experts engaged in trying to solve persisting ethnic and other crises, particularly through the drafting of international instruments. The Oslo Accords (of 1993 and 1994), between Israel and the Palestinians, are a proximate non-legal comparator of the Belfast Agreement.<sup>7</sup> (Where peace is promised, international investors are never far behind.) This book, however, is not a comparative academic work. International comparisons have not always been used constructively in Northern Ireland. And genuine comparisons require equal treatment of different countries, not an accumulation of apparent analogies from abroad to back up an established local position.

Fourth, and finally, academic lawyers in both parts of Ireland, Great Britain and internationally. The Belfast Agreement will, no doubt, appear on undergraduate syllabi and be the object of postgraduate studies and research. Given its extraordinary political profile at home and abroad, this will happen sooner rather than later. It will also be the subject of academic publications – probably journal articles rather than full-scale studies (with advocacy never far below the surface of disciplinary debate).

Two cautions need to be entered about a home-grown literature on the Belfast Agreement. First, in Northern Ireland, academic culture is not free of nationalist-unionist rivalries, and there is no dominant community of local scholars – given an absent centre – professing a liberal-democratic discourse with thorough integrity. Analysis is occasionally the academic contribution to the local inter-communal struggle; politics by other means. Second, and related, some legal academics, mainly in Northern Ireland, precisely because of their alienation from the institutions of the law (permitted by academic freedom), engage in ideologically driven theoretical discussion rather than practical legal analysis.

### Political and Academic Viewpoints

The Belfast Agreement is generating its own academic literature. One extremely useful scholarly work – including an important article by the then Irish attorney general, David Byrne SC, which will be referred to in subsequent chapters – appeared in the United States in April 1999, about the time of the first anniversary: book 4 of volume 22 of the *Fordham International Law Journal* (published by the

7 Israel-Palestinian Declaration of Principles, 13 September 1993, done at Washington, DC, and the Agreement on the Gaza Strip and the Jericho Area, 4 May 1994, done in Cairo. Oslo I and II are not, of course, treaties: <http://www.israel-mfa.gov.il>. See also, E. Cotran & C. Mallat, eds, *The Arab-Israeli Accords: legal perspectives*, The Hague 1996, based on a conference of mainly Arabs and Israelis in London in December 1994.



School of Law at Fordham University in New York). It will be cited throughout as *Fordham International Law Journal*. It was dedicated to Senator Mitchell, and to the Nobel laureates, David Trimble and John Hume. Reference was made to Northern Ireland's peace process.<sup>8</sup> Though the appended Belfast Agreement covers only 46 pages of the journal, 27 articles are spread over 724 pages – an indicator of the significance of this legal instrument (which had not then entered into force, and looked at the time of publication like it might never).

Though produced externally, it reproduced aspects of the internal intellectual culture of Northern Ireland. I discuss the *Fordham International Law Journal* here because it is an impressive beginning to debate about the Belfast Agreement.

A great deal of political advocacy is contained in this fat volume. Ulster unionism, essentially anti-terrorism, is represented with three articles.<sup>9</sup> One, by Ian Paisley, is fundamentally anti-Agreement. Ranked against them are five nationalists, though John Bruton TD would not be acceptable to republicans.<sup>10</sup> The article from the Women's Coalition is best characterized as anti-unionist if not pro-nationalist.<sup>11</sup>

Only one of the 11 political contributions (including Senator Mitchell's), that by the centrist Alliance Party, affirms coherently the norms of liberal democracy (as opposed to consociational democracy) which interrelate with individual legal rights and duties; the Alliance Party juxtaposes 'tribal dualism' – allegedly characteristic of the Belfast Agreement – to 'pluralism'.<sup>12</sup> Senator Mitchell's piece addresses Northern Ireland as an instance of peace making by a United States Democrat: 'the agreement does not, by itself, provide or guarantee a durable peace, political stability, or reconciliation'.<sup>13</sup> (And he was to be called back to conduct the Mitchell review of September to November 1999, which led eventually to devolution after approximately 18 months.)

The 16 academic viewpoints (as they were called by the editors) are predominantly pro-nationalist, and some pro-republican – though the latter may have been inspired by secular radicalism.<sup>14</sup> Singularly, Dennis Kennedy, of the Cadogan Group, who is neither an ethnic nor political unionist, critically discusses the Belfast Agreement from what he describes as a position of principle.<sup>15</sup> Many of the other academic contributors are enthusiastically pro-Agreement, some claiming they have directly and indirectly influenced the text put together by the two governments; 'The focus of those who wish to see society transformed as a result of

8 In the Middle East, Israel's peace process was launched effectively at the Madrid peace conference on 30 October 1991. In Northern Ireland, it was paradoxically Sinn Féin which raised the question (having always argued that the cause of violence is the British presence): *A Scenario for Peace* (May 1987); *Towards a Lasting Peace* (1992).

9 By David Trimble, Duncan Shipley-Dalton and Ian Paisley.

10 By John Hume, Gerry Adams, Bertie Ahern, John Bruton, David Byrne SC, then attorney general.

11 By Kate Fearon and Monica McWilliams (pp. 1258–9).

12 By Stephen Farry and Sean Neeson (p. 1242).

13 Page 1139.

14 I would not include Seamus Dunn and Jacqueline Nolan-Haley, Colin Harvey or John Morison in this generalization about nationalism, republicanism and radicalism.

15 'The analyst, or, for want of a better word, the intellectual, removed from the heat of negotiation, may be much more conscious of the contradictions involved, and of the bending, or setting aside, of truths and principles.' (p. 1462)



the Good Friday Agreement', ends one such contribution, 'will be to ensure that ... the major players in the peace process [who] picked up the human rights ball and ran with it ... [do] not drop[ped] it'.<sup>16</sup>

The interwoven themes of most of these early Fordham contributions on the Belfast Agreement (though they are rarely express) would appear to be: one, a constitutional weakening of Northern Ireland's position within the United Kingdom; two, a major all-Ireland institutional advance; and three, the centrality of unspecified human rights. The name 'Good Friday Agreement' (which came to be associated most closely with the Irish government<sup>17</sup>) is emblematic of such key principles. Nationalist Ireland is telling itself it has made a structural advance beyond the 1920–22 partition settlement.

The paradox of the Belfast Agreement is that the above three themes are accepted substantively by anti-Agreement unionists (29 of the 58 designated unionists elected to the Northern Ireland assembly on 25 June 1998). What Sinn Féin affirms, Ian Paisley accepts; indeed, it is sufficient proof. Anti-Agreement unionism (seemingly a growing constituency) is, therefore, represented ironically in these academic viewpoints, though not one author hails from anywhere near that political position.

Missing entirely from the academic viewpoints in this New York journal is the intellectual case for pro-Agreement unionism, a constituency which is barely recognized by most of the pro-nationalist and pro-republican contributors. Without that political position, led by David Trimble, there would have been no Belfast Agreement, nor devolution – nor the possibility of 'a new society' proclaimed by one of the Fordham contributors.<sup>18</sup> This has been confirmed most authoritatively by Senator Mitchell: the first chapter of his memoir opens with David Trimble telling him he was prepared to accept the Agreement, and his penultimate chapter poses the question: 'Why did Trimble take that fateful step?'<sup>19</sup>

This Preface is not the place to do justice to such a range of academic contributions, unbalanced though it be. No doubt the arguments will spill out into Northern Ireland politics. In terms of law, two points need to be made. One, the negotiation of the Agreement, which has a relevance for the interpretation of a treaty, and its implementation, was both more complicated and at times more prosaic than some of the Fordham contributors suggest.<sup>20</sup> Two, domestic and – where relevant – international courts are unlikely to have cause to view the Belfast Agreement in the radical light of such commentators writing in early 1999. The jurisprudence of the Belfast Agreement will evolve incrementally, perhaps dramatically given a particular legal problem, on the basis of the common law traditions in Northern Ireland and in the Republic of Ireland.

16 Paul Mageean and Martin O'Brien (p. 1538). See also, Christopher McCrudden, attributing a central role to the Committee on the Administration of Justice (p. 1742).

17 Compare the taoiseach introducing the second stage of the Nineteenth Amendment of the Constitution Bill 1999 (Dáil Éireann, *Official Report*, 21 April 1998) with the second stage of the British-Irish Agreement Bill 1999 (Dáil Éireann, *Official Report*, 9 March 1999).

18 Kieran McEvoy, p. 1575.

19 *Making Peace*, London 1999, pp. 3-5 & 180-1.

20 For example, Kevin McNamara MP had no more privileged insight than the Belfast authors who quote him (Paul Mageean and Martin O'Brien, p. 1538, referring to an article in the *Irish Times*, 29 October 1998).



## Approach and Structure

The Belfast Agreement, as noted, is legally a treaty, the parties being the two states. There are distinct rules of interpretation in international law (discussed in Chapter 2). Interpretation is less literal and more purposive; perforce, it requires a contextualizing of each section of the Agreement in terms of this and previous attempts to find a solution – particularly on the Anglo-Irish plane – to the Northern Ireland problem.

The legal precedent for the Belfast Agreement is the 1985 Anglo-Irish Agreement (though the Northern Ireland Constitution Act (NICA) 1973 was replaced by the NIA 1998 – a major change in domestic law). That earlier international agreement gave the Irish government a right of consultation in the affairs of Northern Ireland. And Tom Hadden and Kevin Boyle's *The Anglo-Irish Agreement: commentary, text and official review*, Dublin and London 1989 was an inspiration for this book. After Part 1 (Introduction), each section forms a chapter, with the paragraphs (in bold) considered sequentially. The paragraphs of the Agreement are annotated using the statutory model, but modifying it for a treaty. (Annotations are printed in a smaller font.) When the text turns from legal and quasi-legal drafting in parts 2 and 3 to a more discursive style in part 4, annotation is replaced by legal commentary. This work, in comparison with Hadden and Boyle's pioneering effort, has had to be all-encompassing in scale, given the structure of the 1996–98 multi-party negotiations, and the resultant agreement of Friday, 10 April 1998. It is a work of reference, rather than legal criticism, to be used on the basis of the Tables of Cases, Statutes and Other Domestic Legislation, and Treaties and Other Documents, plus the Index; specific points will be looked up, though the chapters in Part 1 (Introduction) – especially Chapters 3 and 4, and 5 and 6 – may be read as free-standing essays on the domestic, constitutional law of the two states parties. Elsewhere, the aim is to provide the most immediately practical information, so lawyers can argue a point about the meaning of a word or phrase in a paragraph or section.

Politics and history are involved in any analysis of the Belfast Agreement, but one's interest is only in the legal point being established. There may, of course, be no legal point, if the Belfast Agreement – a historic compromise between unionism and nationalism – is characterized exclusively (as is becoming the tendency) in terms of the advance of one political tradition – according to the logic of zero sum – at the expense of another.<sup>21</sup> In this case, it is of diminishing constitutional use; the Agreement becomes simply a new occasion for the old quarrel to be continued by tribal leaders using legal rhetoric and academic proxies. The Belfast Agreement is not transitional to a united Ireland (as is claimed increasingly by Sinn Féin). On the other hand, it does seek to make Northern Ireland attractive to the nationalist minority, for the foreseeable (and indefinite) future. In the latter context, the Belfast Agreement is a constitutional foundation<sup>22</sup> to the operation of locally specified democratic government. If it is not that, and nationalist Ireland seems unwilling to accept such a compromise, it is nothing legally useful.

21 See the organization, Friends of Ireland: Friends of the Good Friday Agreement, co-founded by Kevin McNamara MP, a former shadow secretary of state for Northern Ireland.

22 On 21 March 2000, the secretary of state said in Dublin: 'The Agreement gave us a framework for a new constitution and it laid the basis for a new Northern Ireland ...': Northern Ireland Information Service: <http://www.nio.gov.uk>.



The Belfast Agreement is a partitionist settlement: better, and less controversially, it is located firmly within the 1920–22 constitutional arrangements, whereby a new state was legally created in 26 of Ireland's 32 counties (see Chapter 5). It is entirely fanciful – and an instance of nationalist appropriation of the Agreement – to try and infer that it provides for joint sovereignty or authority in Northern Ireland. That process began, not in April 1998, but in September 1999 (following the publication of the Patten report on policing), and will be considered in Chapter 21. It broke into the political world after the suspension of the institutions by the United Kingdom government on Saturday 12 February 2000, with some extraordinary legal claims being made publicly and retrospectively from Dublin.<sup>23</sup>

The international law approach taken here is, I submit contrary to United Kingdom municipal lawyers, the most appropriate for the Belfast Agreement. Even when attention turns to the NIA 1998, by which some – not all – of the Agreement was incorporated into United Kingdom law, statutory interpretation does not supercede the treaty text. (The Republic of Ireland of course, as a separate sovereign state, has its own laws.) Specific paragraphs are incorporated directly in United Kingdom law. Parliamentary counsel was instructed substantially by the Belfast Agreement, mediated by the NIO, as is clear from the Notes on Clauses (which are not usually considered by the courts). In the case of statutory ambiguity, it is possible (indeed necessary), in United Kingdom law, to look at the international agreement for legal meaning. The Belfast Agreement, and subsidiary international agreements, deal with, as well as Strand One, Strands Two and Three of the multi-party negotiations, the Strands Two and Three institutions being international in legal character.

The structure of the book, as noted, is determined by the Belfast Agreement. It is in five parts.

The first part is an introduction, discussing concepts and legal materials used later in the analysis of the Agreement. This is to avoid cluttering annotations on successive paragraphs (Parts 2 and 3 and the discussion in Part 4) with necessary background information. Chapter 1 delineates the Belfast Agreement, deriving the idea of a text with a political and a legal face (an image yet to be advanced by any legal commentators). Chapter 2 is a necessary synopsis of relevant public international law topics. This is to counteract the normal bias of United Kingdom and Irish municipal lawyers, and the simplified and distorted reputation international law has acquired in Northern Ireland as a result of the troubles. This is not centrally a contribution to public international law scholarship. Chapters 3 to 6 (as noted) establish the two states parties to the Agreement: the United Kingdom, which dates from 1800, and the Irish state, legally created in 1922.<sup>24</sup> There is a great deal more scholarly study of the former than the latter, so I have had to compensate in the spirit of the principle of sovereign equality (this does not mean I endorse the ideological joint sovereignty or authority interpretation).

<sup>23</sup> *Irish Times*, 14 February 2000.

<sup>24</sup> This presentation is necessary, because the relationship between the two states has not been clarified adequately for present purposes; for example, while historians discuss the putative national revolution of 1916–23, virtually no attention is paid the Irish legal revolution of 1937. 'Probably more than any other discipline, history is an essential component of the study of law.' (Paul Sieghart, *The International Law of Human Rights*, Oxford 1983, p. 3)



Chapter 7 considers the names of the two states in three systems of law, and derives a working nomenclature for the rest of the book based on the principle of mutual respect.

Parts 2 to 4 follow the 11 sections of the Agreement, using the text distributed in Northern Ireland (and presented to parliament in April 1998). These 16 chapters contain annotations and discussion of the text of the Belfast Agreement. It is not just the Final Agreement (see Chapter 2) which is annotated. The unpublished Mitchell Draft Paper (see Chapter 2) is also legally analysed. The evolution of the Belfast Agreement between 6 and 10 April 1998 is shown by: deletions in square brackets; and additions in italics. The annotations (as noted, based on the statutory model modified for a treaty) are structured as follows: a historical introduction, where necessary, referring to the precise topic; the title of the section (in bold), followed by a short discussion with numbered paragraphs; each paragraph of the section (in bold), followed by comprehensive annotation in unnumbered paragraphs, the relevant words under discussion being rendered initially in quotation marks.

Part 2 is headed Constitution. It deals with the Declaration of Support (Chapter 8), and Constitutional Issues (Chapter 9) plus Annexes A and B (Chapters 10 and 11). This part involves a consideration of international law and municipal law. It is concerned essentially with constitutional theory, not working institutions. I argue – contrary to the first theme of the Fordham academic viewpoints (see above) – that the Part is characterized predominantly by the end of the Irish territorial claim to Northern Ireland.

Part 3 turns to Institutions. The provisions considered in Chapters 12 to 17 are constitutional, but they concern the working of the government of Northern Ireland. Chapters 12 and 13 deal with Strand One, the institutions whereby power is devolved from London to Belfast. Contrary to the second theme of the Fordham academic viewpoints, I submit that this is the most important dimension. The Belfast Agreement, as I have stated, is located legally within the historic partitioning of Ireland. Chapters 14 and 15 deal with Strand Two, north-south relations. These are balanced, unlike in the 1973 Sunningdale agreement, by Strand Three – east-west relations (Chapters 16 and 17).

Part 4 is a collection of discrete issues. I label it 'Rights, etc.' after the Rights Safeguards and Equality of Opportunity section (Chapter 18). This is not to endorse the third theme of the Fordham academic viewpoints, namely that the whole of the Belfast Agreement was influenced inordinately by the human rights community in Northern Ireland. I submit that the Human Rights Act 1998 – which was passing through parliament at the time of the Belfast Agreement (and is not mainly attributable to that community) – was, and will be, much more significant. Further, it was article 13 (ex article 6a) of the European Community treaty, inserted by the treaty of Amsterdam of 2 October 1997, which largely inspired the anti-discrimination and equality of opportunity provisions.

I suggest further that Chapters 19 to 22 contain a better unity for this part, best entitled 'from terrorism to democracy'. Chapters 19 ('Decommissioning') and 22 ('Prisoners') are about the progressive ending of terrorism. Chapters 20 and 21 ('Security' and 'Policing and Justice') are about the return to democracy. If the



Belfast Agreement approximates to a peace agreement (which is arguable), its cornerstone is the ending of paramilitary violence; without that, it cannot succeed as a constitutional arrangement.

'Validation, Implementation and Review' (Chapter 23 in Part 4) is about the legal face of the Belfast Agreement. It is the end of the text of the international agreement (less Annex 2), as is clear from the version presented to parliament in 1999.<sup>25</sup> However, I have created a Part 5 for the short load-bearing British-Irish Agreement of four articles, since this was annexed originally to the Multi-Party Agreement (Parts 2 to 4). This is discussed separately in Chapter 24.

### Legal Materials

The materials used in the 24 chapters may be described as primary legal sources. I have concentrated upon statute and case law in several domestic jurisdictions, and international instruments and the practice of states (see further Chapter 2). Academic monographs and journal articles have been used where relevant, but I have not sought to join issue centrally in academic debate with this secondary literature. That will come.

The questions discussed are those which arise from each section of the Belfast Agreement. It is not possible – as a legal practitioner – to anticipate all likely areas of contention, and even litigation. Who would have predicted the resignation of the Deputy First Minister (designate) on 15 July 1999? And the refusal of the Northern Ireland assembly to accept his resignation on 29 November 1999? The first event was not fully informed legally;<sup>26</sup> and the second continues to strain the notion of the rule of law (see Chapter 12). The question of suspension of the institutions was possible (at least from July 1999), but who would have credited an argument – now of mythical proportions – that the United Kingdom government acted illegally on 12 February 2000?<sup>27</sup> The procession of possible legal issues and cases in however many jurisdictions is never predictable. Many problems lie latent in the text, awaiting judicial resolution in United Kingdom and Irish law, and maybe even in international law. I do, however, consider all aspects of the Agreement which have been raised already in the courts or in controversy, between 10 April 1998 and 2 December 1999 (and beyond) – when the Belfast Agreement, though often invoked, was perceived incorrectly as some sort of multilateral domestic agreement (akin to a contract) rather than a treaty in escrow, with a legal effect derived from its conditions precedent.

All legal practitioners are, or should be, committed to the rule of law. 'There have been important developments over the past twenty years', David Byrne SC, the Irish attorney general, said in August 1998, 'where democratic principles, consent, and the establishment of the rule of law have been the tools of legal and political change and not terrorism and violence. During this period, the lawyer has become a more effective champion of freedom and justice than the terrorist or urban

25 This is discussed in Chapter 1.

26 *Irish Times* 29 July 1999.

27 See my article rebutting this thesis, *Irish Times*, 10 March 2000. However, subediting removed the reference to the taoiseach's article in the same paper on 14 February 2000 (where it was argued that the Irish government was prohibited by the constitution from helping suspend the north-south implementation bodies).



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guerrilla.'<sup>28</sup> This point was confirmed by Chris Patten in his report on policing in Northern Ireland on 9 September 1999: 'No one who believes in an open society and the rule of law can be neutral as between democracy and violence, the protection of human rights and their abuse, the recognition of the dignity of every individual and its denial.'<sup>29</sup> This is the spirit in which this book has been written, and is presented to practising lawyers and others.

It aims to state the law as of 1 August 2000, the Northern Ireland assembly, and executive, having exercised power from 2 December 1999 (less the period of suspension, 12 February 2000 to 30 May 2000).

Austen Morgan,  
3 Temple Gardens,  
Temple,  
London EC4Y 9AU  
020 7353 0832  
[austenmorgan1@compuserve.com](mailto:austenmorgan1@compuserve.com)

*Note:* These are the rules on the use of the *fada* accent in Irish followed in this book. I use it. When I am citing or quoting a United Kingdom source, I follow the practice of no Irish accents in English. In the case of an Irish source (in Irish or English), I use the accent if it was used originally.

28 *Fordham International Law Journal*, p. 1206.

29 *A New Beginning: policing in Northern Ireland: the report of the independent commission on policing for Northern Ireland*, paragraph 1.7.