

2023 NJSBA Fall Conference

George Mitchell and the Belfast/Good Friday Agreement

25 years ago, the Belfast/Good Friday Agreement ended a 30 year bloody conflict in Northern Ireland known as the Troubles. As Chairman of the all-party peace talks, former U.S. Senate Majority Leader George Mitchell played an integral role in the negotiations that culminated in the peace agreement. This seminar analyzes the Northern Ireland peace process and is especially tailored for those interested in conflict resolution, transitional justice, and human rights.

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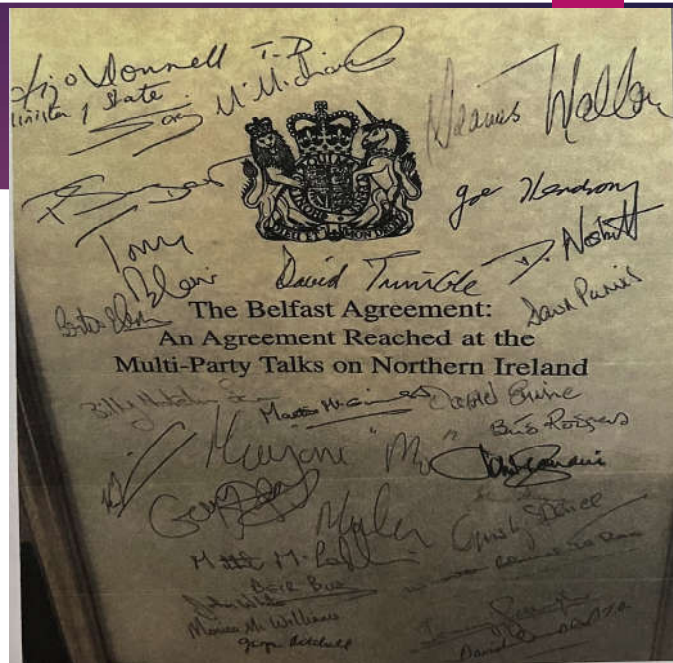
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**George Mitchell and the
Belfast/Good Friday Agreement
(April 10, 1998)**

EDWARD M. NEAFSEY

The Belfast Agreement:
An Agreement Reached at the
Multi-Party Talks on
Northern Ireland



Prior Peace Agreements

- ▶ Sunningdale Agreement (1973)
- ▶ Anglo-Irish (Hillsborough) Agreement (1985)

Terms of the Sunningdale Agreement

- ▶ Established a power-sharing Northern Ireland (NI) Executive made-up of ministers from Protestant and Catholic communities.
- ▶ Established a Council of Ireland made-up of members of the NI power-sharing Executive and the Republic of Ireland's government. The goal of the Council of Ireland was to foster North-South cooperation.
- ▶ Provided that Great Britain would accept Irish re-unification, if it was "achieved peacefully and with the 'consent' of a majority of the North."

Terms of the Sunningdale Agreement continued

- ▶ When the Belfast/Good Friday Agreement (GFA) was signed nearly 25 years later, deputy Social Democratic and Labor Party (SDLP) leader Seamus Mallon famously referred to the GFA as “Sunningdale for slow learners.” This was based on three features: recognition of the principle of consent, creation of a North-South Council, and creation of a power-sharing, cross-community government. During the quarter of a century between the two agreements, 2600 people were killed in the Troubles.

Terms of the Anglo-Irish (Hillsborough) Agreement

- ▶ Established a British-Irish intergovernmental conference headed by the NI Secretary of State and Irish Foreign Minister. The goal of the intergovernmental conference was to address security and human rights concerns, and to promote cross-border cooperation.
- ▶ Acknowledged that “a condition of genuine reconciliation and dialogue between unionists and nationalists is mutual recognition and acceptance of each other’s rights.”

Terms of the Anglo-Irish (Hillsborough) Agreement

- ▶ Provided that there would be no change in NI's political status without the "consent" of a majority of people.
- ▶ Reaffirmed a commitment to a society "in which all may live in peace, free from discrimination and intolerance, and with the opportunity for both communities to participate fully in the structures of government."

Peace Overtures

- ▶ NI Secretary of State Peter Brooke's speech indicating that Great Britain had no "selfish, strategic, or economic interest" in maintaining a presence in NI, and that it could accept a united Ireland based on the "consent" of the people. (1990)
- ▶ Sinn Fein member and Gerry Adams confidante Jim Gibney's speech at the annual Wolfe Tone commemoration reminding the British that republicans were willing to consider an unarmed struggle as a way to achieve Irish independence. (1992)

Peace Overtures

- ▶ Martin McGuinness' speech at a Sinn Fein Ard Fheis calling for “new and radical thinking” by republicans about the plight of unionists and, in particular, how to “guarantee and protect their interests” in order to resolve the conflict. (1993)
- ▶ Hume-Adams 4th Statement issued at the conclusion of their peace talks: “A just and lasting peace in Ireland will only be achieved if it is based on democratic principles.” The statement recognized the need to accommodate both traditions in order to provide for national reconciliation. It affirmed the “the right of the Irish people as a whole to national self-determination,” and acknowledged that the consent and allegiance of unionists are essential ingredients for a lasting peace. (1993)

Formal Steps toward Peace

- ▶ Downing Street Declaration (1993)
- ▶ IRA and Combined Loyalist Military Command (CLMC) Ceasefires (1994)
- ▶ Framework Documents (1995)
- ▶ Mitchell Principles (1996)

Downing Street Declaration

- ▶ British government agreed “that it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish.”
- ▶ Irish government agreed to revoke Articles II and III of the 1937 Irish Constitution, which claimed the six counties of NI were part of Ireland.
- ▶ Both governments agreed to permit political parties affiliated with paramilitary groups to participate in peace talks if they renounced violence.

IRA and Combined Loyalist Military Command (CLMC) Ceasefires

- ▶ IRA: “Recognizing the potential of the current situation and in order to enhance the democratic peace process and underline our definitive commitment to its success, the leadership of Ogliaigh na hEireann [IRA has] decided that as of midnight Wednesday, 31st August, there will be a complete cessation of military operations.”
- ▶ CLMC: “In the belief that the democratically expressed wishes of the greater number of people in Northern Ireland will be respected and upheld, the CLMC will universally cease all operational hostilities from 12 midnight on Thursday, 13 October 1994.”

Framework Documents

- ▶ Set forth guiding principles for peace talks: consent, self-determination, full respect for the rights and protection of both communities, and pursuit of an agreement by democratic and exclusively peaceful means without resort to violence or coercion.
- ▶ British and Irish governments agreed to implement “interlocking and mutually supportive institutions across three strands:” first, creation of new governmental structures in NI; second, creation of North-South institutions to reconcile the rights, identities and aspirations of the two major traditions; and third, creation of East-West structures to enhance cooperation between the British and Irish governments.

Mitchell Principles for Entry into Peace Talks

- ▶ Commitment to adhere to democratic and exclusively peaceful means of resolving political issues.
- ▶ Total disarmament of paramilitary organizations.
- ▶ Disarmament that is verifiable to the satisfaction of an independent commission.

Mitchell Principles for Entry into Peace Talks

- ▶ Renunciation of the use of force, or threatened use of force, to influence all-party negotiations.
- ▶ Commitment to abide by the terms of any agreement reached in all-party negotiations.
- ▶ Commitment to end punishment killings and beatings.

George Mitchell – Facilitative Mediation

- ▶ 1) Learning the History of Prior Failed Peace Agreements
- ▶ 2) Getting Parties to Compromise
- ▶ 3) Re-affirming the Mitchell Principles
- ▶ 4) Building Trust
- ▶ 5) Maintaining Optimism
- ▶ 6) Listening with Patience
- ▶ 7) Applying Pressure
- ▶ 8) Using an Interest-Based Approach
- ▶ 9) Setting a Deadline
- ▶ 10) Giving Credit to Others

George Mitchell's Facilitative Mediation Skills and Strategies: History

- ▶ Mitchell, a former U.S. Senate Majority Leader, served as Chair of the All-Party Peace Negotiations.
- ▶ On the first day of the talks, he told the parties that, if an agreement was reached, it would include what they believed should be in it. That is, it would reflect their words and ideas. He was not going to impose anything on them. Thus, if an agreement was reached, it was going to be achieved through the exercise of self-determination by the parties.

George Mitchell's Facilitative Mediation Skills and Strategies:

1. Learning the History of Prior Failed Agreements

- ▶ Mitchell prepared by studying the history of prior failed attempts at peacemaking in Northern Ireland, so he could avoid the mistakes of the past. He learned that not including paramilitary groups in previous peace talks was a mistake because they acted as “spoilers” to short-lived peace deals.
- ▶ Mitchell, wanted the paramilitary groups to be represented at the peace table so they had a stake in the process. In fact, he wanted participants in the peace process to reflect the community as broadly as possible.
- ▶ The British and Irish government agreed to hold an Election Forum, with the top ten vote-getting parties allowed to participate in the negotiations. Thus, smaller parties like the Progressive Unionist Party (Ulster Volunteer Force), Ulster Democratic Party (Ulster Defense Association), and Women's Coalition Party all had a seat at the table, because they placed in the top ten (7th, 8th and 9th respectively). The Women's Coalition Party drew support from both communities. Mitchell praised their influence on the talks.

George Mitchell's Facilitative Mediation Skills and Strategies:

2. Getting the Parties to Compromise

- ▶ Mitchell established a rule of “sufficient consensus,” which allowed parties to vote against part of a proposal while still voting for passage of the proposal as a whole.
- ▶ Mitchell moved the parties away from extreme positions and zero-sum thinking to a middle ground by ensuring that the final agreement included what each party considered important. Unionists wanted a local assembly, nationalists wanted a north-south council, and paramilitaries wanted early prisoner release. Mitchell ensured that each of these things was included in the final agreement.
- ▶ For a party to receive what it wanted, therefore, it had to accept that another party was going to receive what it wanted. Mitchell described parties as having to “swallow the parts they didn't like” to gain the parts they did.

George Mitchell's Facilitative Mediation Skills and Strategies:

3. Re-affirming the Mitchell Principles

- ▶ On two occasions, a paramilitary group represented at the talks engaged in violence. Both groups were expelled from the negotiations for a short time until they showed a re-commitment to non-violence. The Ulster Democratic Party was expelled for two weeks after the Ulster Freedom Fighters indiscriminately killed some Catholics in retaliation for the murder of Billy "King Rat" Wright in the Maze Prison by the Irish National Liberation Army, and Sinn Fein was expelled after the Direct Action Against Drugs group killed two people.

George Mitchell's Facilitative Mediation Skills and Strategies:

4. Building Trust

- ▶ In addition to hearing everyone out in full, Mitchell built trust by issuing even handed rulings on thousands of “points of order” raised by parties during negotiations. Over the course of many months, parties could see his fairness in decision-making, and the absence of a personal agenda. This made them more willing to accept what he suggested, especially when negotiations became intense.

George Mitchell's Facilitative Mediation Skills and Strategies:

5. Maintaining Optimism

- ▶ Mitchell considered optimism to be a key ingredient for success. He said, the belief that problems can be solved and that things can be better is necessary for creating an attitude of success.
- ▶ He would remind the parties that, whatever your differences, everyone wants the same thing for their children - a future with hope, opportunity, and peace.

George Mitchell's Facilitative Mediation Skills and Strategies:

6. Listening with Patience

* In his book, The Negotiator, Mitchell said “patience is a muscle.” During the NI negotiations, he set up a safe space called “morning time” during which parties could complain about what the other side was doing or saying in the press. This allowed parties to vent their frustration, anger and other negative emotions, so the issues relevant to achieving peace could be discussed “rationally” during the rest of the day. Mitchell was often the only one present to hear out the complaints. He listened to people in full. This set an example for others. (Although representatives of the Ulster Unionist Party and Sinn Fein did not speak to each other throughout the entire process. They communicated through Mitchell.)

* Mitchell believed that the more he listened the more he gained insight into the views and needs of the participants, which made him better able to find common ground.

George Mitchell's Facilitative Mediation Skills and Strategies:

7. Applying Pressure

- ▶ Mitchell reminded the parties that the negotiations cannot fail because the prospect of failure for Northern Ireland was too awful to consider, meaning explosions, car bombings, kneecappings, maiming and killings worse than before.
- ▶ He told them their fear of a return to “savage and widespread” violence should be greater than the fear of hurting their own political careers by entering an agreement.
- ▶ He said that everyone would be known more for what they did at the negotiating table than anything else they did during their career.

George Mitchell's Facilitative Mediation Skills and Strategies:

8. Using an Interest Based Approach

- ▶ Mitchell urged the parties to focus on Northern Ireland's future rather than their own self-interests. He noted that hope and opportunity are essential to political stability and peace in every society, and that the parties had the shared interest of putting Northern Ireland on a path to a peaceful, prosperous, and hopeful future.

George Mitchell's Facilitative Mediation Skills and Strategies:

9. Setting a Deadline

- ▶ With violence escalating after Billy Wright's murder, Mitchell decided it was time to take a risk by setting a "firm" deadline for a final agreement. He chose Thursday before Easter Weekend. Easter held religious significance for the parties, and it had practical significance. This deadline would allow a plebiscite on an agreement - if one was reached - and Assembly elections to be held before the Orange Order marching season in July.
- ▶ When negotiations went past the deadline, Mitchell would not allow any breaks. The parties worked through Thursday night and all-day Friday. At 4:30 PM, David Trimble told Mitchell that the Ulster Unionist Party was ready to sign the agreement. Mitchell immediately called a plenary session, so a vote could be taken "right away." The deal was approved, and at 5PM on Good Friday Mitchell announced to the world that "the two governments and five political parties of Northern Ireland have reached agreement."

George Mitchell's Facilitative Mediation Skills and Strategies:

10. Giving Credit to Others for the Achievement

- ▶ At the press conference, Mitchell extolled the work of others rather than himself. He praised “the leadership, commitment, and ...personal negotiating skill of Blair and Ahearn,” and he called Northern Ireland’s political leaders’ courageous “heroes” for rising to the occasion in the most difficult circumstances and delivering “an agreement that is fair and balanced and offers hope to the people of Northern Ireland.”
- ▶ Mitchell was proud that the agreement belonged to the parties, whom he noted had to live with it once the process was completed and he went home. He said that “every word in the agreement [was] spoken or written by a delegate from Northern Ireland.”
- ▶ In the announcement, Mitchell powerfully added, “the agreement proves democracy works and, in its wake, we can say to the men of violence, to those who disdain democracy, whose tolls are bombs and bullets: Your way is not the right way. You will never solve the problem of Northern Ireland by violence. You will only make it worse.”

Parties Reach a Peace Agreement”

- ▶ On the GFA’s 20th anniversary, he described the process as “700 days of failure” and “one day of success” that changed the course of Irish history.

Terms of the Belfast/Good Friday Agreement

- ▶ Established a North-South Ministerial Council responsible for cross-border cooperation, and a British-Irish Intergovernmental Conference and a British-Irish Council to strengthen relations between the two countries.
- ▶ Created a new NI Assembly and Executive, to handle devolved responsibilities and operate under a cross-community voting system.
- ▶ Irish government agreed to hold a plebiscite renouncing its constitutional claim to NI.

Terms of the Belfast/Good Friday Agreement

- ▶ British government agreed to replace the 1920 Government of Ireland Act and allow a majority of the people in NI to decide whether to remain in the United Kingdom or join the Republic of Ireland.
- ▶ Called for an Independent Commission on Policing to reform the Royal Ulster Constabulary (RUC) into a new police force that would be fair and impartial, accountable and human rights compliant, and able to attract members from and sustain the support of both communities.
- ▶ Called for the decommissioning of weapons and the release of qualified prisoners within two years.

Terms of the Belfast/Good Friday Agreement

- ▶ Allowed citizens of Northern Ireland to identify as British, Irish or both.
- ▶ Called for the enactment of a Bill of Rights.
- ▶ Political parties agreed “to strive in every practical way towards reconciliation,” and to redress the suffering of victims “as a necessary element of reconciliation.” The agreement, however, did not include a transitional justice mechanism for dealing with the legacy of the past.
- ▶ At the time the GFA was signed, the death toll for the Troubles was 3,588 people.

George Michell

Embedding Human Rights in the Agreement

- ▶ The parties affirmed the civil rights and the religious liberties of everyone in the community and committed to treating others with mutual respect and tolerance.
- ▶ Among the rights “the parties affirm in particular” are the right to seek constitutional change by peaceful and legitimate means, the right to equal opportunity in all social and economic activity, the right to freedom from sectarian harassment, and the right of women to full and equal political participation.
- ▶ A new “Northern Ireland Human Rights Commission” was established, and the British government agreed to completely incorporate the law of the European Convention on Human Rights into Northern Ireland law.

Implementation of the GFA (1998-99)

- ▶ The first all-island vote since 1918 was held six weeks after the GFA was signed. Turnout was 81 per cent. The agreement was endorsed by 94 per cent of the voters in the Republic of Ireland and 71 per cent of the voters in Northern Ireland. In NI, the agreement was supported by 97 per cent of the nationalist voters and 52 per cent of the unionist voters.
- ▶ In July, the new NI Parades Commission banned an Orange Order Parade down the Garvaghy Road in Drumcree, Co. Armagh. Sectarian violence flared throughout the province. Three Catholic brothers aged 8-10 were murdered when their home in Co. Antrim was set on fire.

Implementation of the GFA (1998-99)

- ▶ The Real IRA, a dissident republican group, set off a bomb on a crowded shopping street in the center of Omagh, Co. Tyrone, killing 29 and injuring 200.
- ▶ In 1999, the Patten Commission Report on Policing was released. It called for transformation of the RUC into a new police force named the Police Service of Northern Ireland (PSNI). It called for a Policing Board and a Police Ombudsman's Office to be established to oversee the Chief Constable and hold the PSNI accountable. All officers were made subject to a Code of Ethics that integrated the European Convention on Human Rights into police practice. It recommended the adoption of a 50-50 (Protestant-Catholic) recruitment policy. The UUP unanimously rejected the report, labeling it "a threat to security."

Long Road to Implementation of the GFA (1998-99)

- ▶ Voters in the Republic approved language that nullified Ireland's territorial claim to the six counties in NI and amended the Irish Constitution to read: "a united Ireland shall be brought about only by peaceful means with the consent of the majority of the people democratically expressed in both jurisdictions on the island."

Long Road to Implementation of the GFA (1998-99)

- ▶ Senator Mitchell returned to NI to resolve disagreements between the political parties over decommissioning that blocked the start of the NI Assembly. Sinn Fein agreed decommissioning would begin when the NI Executive met.
- ▶ The NI Assembly held its first meeting. An Executive was elected with UUP leader Trimble becoming First Minister and SDLP's Mallon becoming Deputy First Minister. Governmental authority devolved to the NI Assembly.

Long Road to Implementation of the GFA (2001-03)

- ▶ The British and Irish governments enter the 2001 Weston Park Agreement with NI political parties after the NI Assembly is suspended again. The governments agree to an SDLP proposal to have an international judge investigate murder cases where “collusion” was suspected to determine “whether there are grounds to hold public inquiries.” Former Canadian Supreme Court Justice Peter Cory was named to conduct the investigations. (One of the cases involved the 1989 murder of Solicitor Patrick Finucane.) At Weston Park, the British government committed to conducting a public inquiry into any case recommended by Chief Justice Cory for same. The British government also reaffirmed its intention to introduce Bill of Rights legislation.

Long Road to Implementation of the GFA (2001-03)

- ▶ The third Stevens Inquiry (Stevens III) into Solicitor Patrick Finucane's murder concluded that there was significant evidence of collusion between paramilitaries and government security forces in the murder. Lord Stevens said, "the unlawful involvement of agents in murder implies that the security forces sanction killers."
- ▶ Chief Justice Cory completed his investigation of Finucane's murder. He found "strong evidence that collusive acts were committed by the Army (FRU), the RUC (Special Branch) and the Security Service (MI5)." He recommended that an independent, public inquiry be held. The British government, however, reneged on its commitment in the Weston Park Agreement to hold one.

Long Road to Implementation of the GFA (2004-06)

- ▶ One agreement was reached at Leed's Castle. Two clergymen, one Protestant and one Catholic, were named to observe the IRA decommissioning process.
- ▶ In 2005, the IRA announced "the end" of its armed struggle and instructed Volunteers to dump their remaining arms. The clergymen observed the acts of final decommissioning, and the International Commission on Decommissioning reported that "the arms decommissioned represent the totality of the IRA arsenal."

Long Road to Implementation of the GFA (2007-11)

- ▶ In 2007, Bessbrook Army base in South Armagh closed. This ended the longest deployment of military forces in British history.
- ▶ In 2010, responsibility for policing and justice devolved to the NI Executive and Assembly. After 38 years, the British government's responsibility for the administration of the police, courts and prisons in NI ended. Alliance Party leader David Ford was selected to serve as Justice Minister.
- ▶ In the 2011 Assembly elections, the DUP and Sinn Fein retained the power they originally won in 2003 to run the NI government. For the first time since the 1970's, a NI Assembly completed a four-year term.

Three Strands

1. A democratically elected, devolved, power-sharing Executive and Assembly that operates on a cross-community basis and makes decisions based upon parallel consent of a majority of Assembly members from each community.
2. A North-South Ministerial Council (NSMC) whose goal is to foster cooperation on the island between the governments of Northern Ireland and the Republic.
3. The British-Irish Intergovernmental Conference (BIIGC) whose goal is to formalize cooperation between Great Britain and Ireland on ensuring protection of the GFA and each communities' interests in a fair manner. A British-Irish Council to improve collaboration between Ireland, the UK and devolved governments in the areas of transport, the environment and energy.

* Under the GFA, the three strands are “so closely inter-related that the success of each depends on that of the other.”

Status of the Three Strands

- ▶ Since the election in May 2022, when Sinn Fein was the top vote-getter, the Assembly has not been operating because the Democratic Unionist Party (DUP) has refused to vote to elect an Assembly Speaker due to its objection to the Northern Ireland Protocol and parts of the Windsor Framework. Nor has an Executive been formed.
- ▶ The DUP has boycotted meetings of the NSMC in protest of the protocol.
- ▶ The impact of the BIIGC has been minimal. It has not met on a regular basis since its creation, and once went over a decade without holding a meeting. Now that Great Britain is no longer a member of the EU, where government ministers could regularly interact, groups are calling for holding twice-yearly formal BIIGC summits.

Northern Ireland Protocol and Windsor Framework

- ▶ The Northern Ireland Protocol was part of the 2019 International Treaty governing Great Britain's exit from the European Union (EU). The treaty was negotiated by then British Prime Minister Boris Johnson and passed by the British Parliament.
- ▶ Under the protocol, goods shipped across the Irish Sea to Northern Ireland are subject to checks and control at NI ports. The protocol's purpose is to protect the peace forged by the GFA by keeping the NI in the EU single market for trade purposes, thereby eliminating the need to place custom checks along the border of NI and the Republic.

Northern Ireland Protocol and Windsor Framework

- ▶ The Windsor Framework reduces the paperwork required on the movement of goods from the UK to NI by setting up green lanes at NI ports for goods staying in NI and red lanes for goods travelling to the Republic.
- ▶ The aim of the protocol is to ensure there is no hard border between NI and the Republic. Police agencies fear checkpoints along the border can become potential targets for dissident republican and loyalist paramilitary groups.

Legacy of the Past

- ▶ 100 more people were killed in Troubles-related deaths after the GFA was signed. In total, nearly 2100 civilians died during the conflict. Additionally, more than 500 members of the Army died; more than 500 members of other security forces died; and more than 550 members of paramilitary groups died. According to the book Lost Lives, republican paramilitary groups were responsible for nearly 60 per cent of the deaths; loyalist paramilitary groups were responsible for 30 percent; and security forces were responsible for 10 per cent. In addition to the more than 3700 deaths, it was estimated that 50,000 people suffered physical injury during the conflict.

Reconciliation

- ▶ In 2009, the Consultative Group on the Past proposed the creation of an independent Legacy Commission and a Reconciliation Forum.
- ▶ In 2013, Former U.S. Envoy to Northern Ireland, Dr. Richard Haass, unsuccessfully attempted to mediate issues related to flags, parades, and the legacy of the past. He recommended establishing a new Parades Commission, a truth recovery process for victims, and a new investigative body to examine the thousands of unsolved murder cases.

Reconciliation

- ▶ The 2014 Stormont House Agreement called for the creation of new institutions to promote reconciliation, uphold the rule of law, promote human rights, acknowledge the suffering of victims, facilitate the pursuit of justice, and address NI's past in a balanced, proportionate, fair and equitable way. The new institutions included a Historical Investigations Unit (“an independent body to take forward and conduct investigations into outstanding Troubles-related deaths”), an independent Commission on Information Retrieval (“to enable victims and survivors to seek and privately receive information about the deaths of their next of kin”), an Implementation and Reconciliation Group (“to oversee themes, archives and information recovery”), and an Oral History Archive (“to provide a central place ...to share experiences and narratives related to the Troubles.”).

Reconciliation

- ▶ The House of Commons Defense Committee proposed a statute of limitations to end “vexatious claims” against veterans and military personnel in 2019. As part of the 2020 “New Decade New Approach Agreement” on Northern Ireland, the British government restated its support for the Stormont House Agreement.
- ▶ The **NI Troubles (Legacy and Reconciliation) Bill** became law in 2023. It established a new “investigations and information recovery process” to provide “answers to families.” The **Independent Commission for Reconciliation and Information Recovery (ICRIR)** will assume responsibility for conducting “reviews” of and writing reports about Troubles-related killings. The ICRIR will be empowered to grant immunity from prosecution to an applicant who provides an “account” of conduct relevant to a Troubles-related matter, that is “true to the best of [the applicant’s] knowledge and belief.” This conditional immunity is better described as an amnesty from prosecution for criminal conduct.

Reconciliation

- ▶ In May 2024, when the ICRIR takes-over all investigative responsibility for Troubles-related matters, the PSNI Legacy Investigations Branch will stop investigating more than 1,000 Troubles-related murder cases, dozens of Coroner's Inquests into Troubles-related suspicious deaths will end, and Ombudsman investigations of complaints about police misconduct during the Troubles will close. The law also retroactively shuts down civil actions filed after May 1, 2022, that seek to address human rights violations surrounding a loved one's death. The ICRIR can refer matters it believes warrant criminal prosecution to the NI Public Prosecution Service.
- ▶ The law was opposed by all of NI's political parties, the Irish government, UN, Council of Europe, many human rights groups and, most significantly, victims' families.

Reconciliation

- ▶ Prof. Duncan Morrow (Ulster University, NI):
 - ▶ Develop a shared vision of society,
 - ▶ Acknowledge and deal with the past,
 - ▶ Build positive relationships,
 - ▶ Foster significant cultural and attitudinal change, and
 - ▶ Promote substantial social, economic, and political change. (Summit on the 25th Anniversary of the Belfast/Good Friday Agreement, Wash. D.C., March 21, 2023).

- ▶ Irish Tanaiste Michael Martin fears the new ICRIR approach will “damage the process of reconciliation . . . and ensure legacy remains a source of contention, suspicion and mistrust, with little truth, no apologies and hurt layered upon hurt.” (Editorial, “A Complex Moment,” Irish Echo (Sept. 6, 2023), p. 11).

Principle of Consent

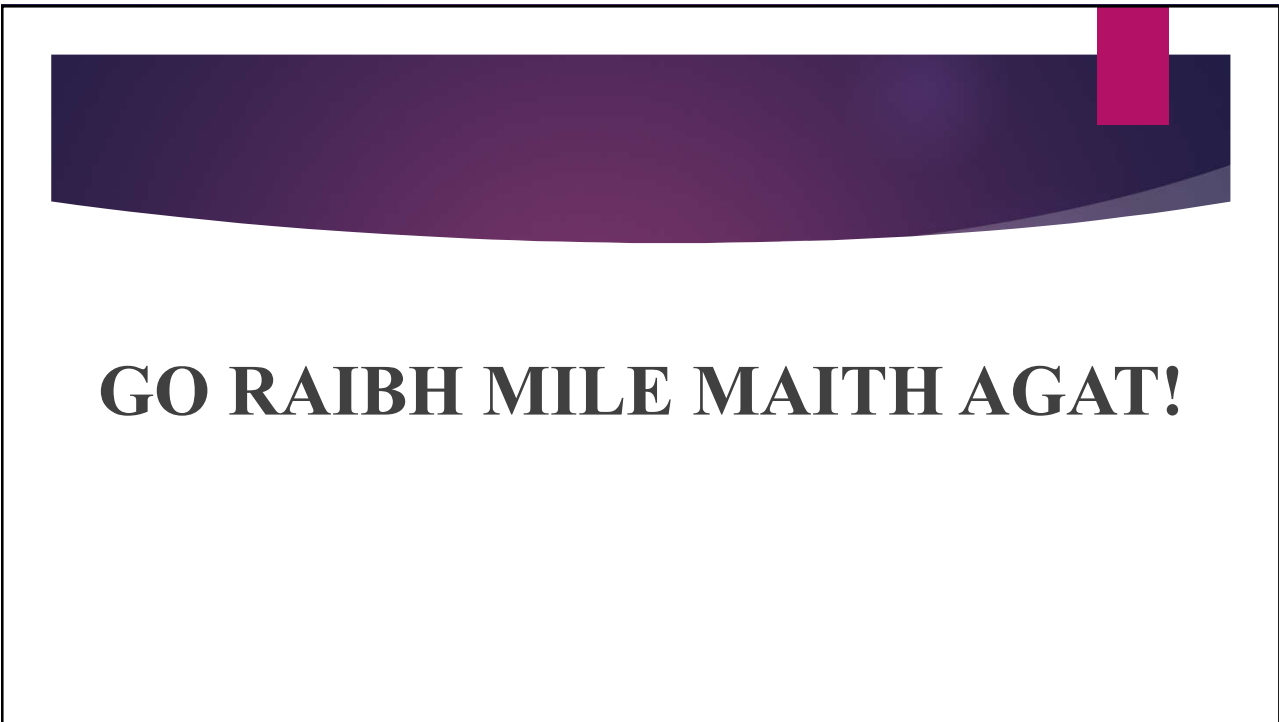
- ▶ Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland... **Article 1 - the two Governments:**
 - ▶ (1) recognize the legitimacy of whatever choice is freely exercised by a majority of the people in NI with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland.

Principle of Consent

- ▶ (2) recognize that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

Principle of Consent

- ▶ A unity referendum shall be held when it appears likely to the Northern Ireland Secretary of State that “a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form a part of a united Ireland.”



GO RAIBH MILE MAITH AGAT!

George Mitchell and the Belfast/Good Friday Peace Agreement

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By Edward M. Neafsey

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He holds dual American and Irish citizenships. In 2022, the NJ Legislature's bipartisan Resolution (AJR 63) designating March as Irish American Heritage Month was signed into law. The Resolution recognized notable Irish Americans from NJ, including Neafsey for his human rights activism.

I. Introduction

The official title of the peace deal ending the Northern Ireland Troubles is the Belfast Agreement.¹ That is how the unionist Protestant community refers to it. The nationalist Catholic community, however, calls it the Good Friday Agreement (hereinafter the GFA) in recognition of the day the deal was reached in 1998. Noting the bitter divisiveness between the two communities that had to

¹ During the 30-year period known as “the Troubles,” violence was a part of daily life in Northern Ireland. Both the unionist and the nationalist communities suffered terribly during the conflict. Unionists favored political union with Great Britain and professed loyalty to the British Crown. Nationalists favored peaceful, democratic change to Northern Ireland’s constitutional status. (Irish republicans believed the use of physical force was necessary to drive the British out of Northern Ireland, so there could be a united Ireland.) Nearly 3,600 people were killed during the Troubles, and approximately 40 thousand others were maimed and injured. David McKittrick, Seamus Kelters, Brian Feeney, Chris Thornton and David McVea, Lost Lives, Mainstream Publishing Company (2007), p. 1431. The Troubles appeared to be a religious war on the surface, as religion played a role in sustaining the communal divide. Aaron Edwards and Cillian McGrattan, The Northern Ireland Conflict, Oneworld Publications (2010), p. 131. Political power, economic opportunity, and identity issues - of which religion was a part - were at the Troubles’ core. Id. People held a strong sense of identity with their own community and its traditions, and the two communities developed alternative narratives about the Troubles. Anyone outside of one’s group was viewed as the “other” and blamed for societal ills.

Great Britain and the Irish Republican Army (IRA) were engaged in a mutually hurting stalemate for many years, and neither side had a clear path to victory. “[A]ttempts at conflict resolution will only succeed where both sides have come to realize they cannot win. If either side believes victory is possible . . . then the cycle of blood will go on.” Jonathan Powell, Great Hatred, Little Room, Bodley Head (2008), p. 321. War weariness made the conflict ripe for resolution. According to IRA-man Tommy McKearney, “the exhaustion of the Northern Irish population” with war motivated parties to make compromises they previously refused to undertake. Tommy McKearney, The Provisional IRA from Insurrection to Parliament, Pluto Press (2011), p. 184. In an interview, Gerry Adams told Maureen Dowd: “We have to break the cycle, so we’re not handcuffed to the past. The old thing in Irish Republican resistance was: ‘Well we did our best and the other generation will carry it on.’ But we don’t want another generation to carry it on. We want this done and dusted. No other kid should have to go to prison, have to kill anyone, be put in an early grave.” Maureen Dowd “A Past Is Not Past,” NY Times Sunday Review (June 1, 2014), p. 11.

be overcome to achieve peace, British Prime Minister Tony Blair's Chief of Staff - Jonathan Powell - wryly commented, "[t]hey couldn't even agree on its title."²

So, how did the promise of peace get enemies to lay down weapons and move beyond a three-decade hate-filled war of mayhem, murder, and retribution? How were centuries of enmity between the unionist and nationalist communities in Northern Ireland overcome?³ How were political leaders enticed to set aside differences and a long history of communal resentment, distrust, and hatred for the other and forge an agreement? How was success achieved in 1998 after the failed peace agreements in 1973 and 1985? How was a dirty war - involving emergency laws, mass arrests and internment, special courts, hunger strikes, deceit, and collusion - ended, so Northern Ireland could have an opportunity to experience peace and prosperity?

² Powell, Supra note 1, p. 108.

³ One period of conflict that still resonates today goes back to the 1640's. The "Ulster Plantation" occurred in the 17th century, when "confiscated Catholic lands" were given to "large numbers" of imported "Scottish and English settlers to 'civilize' the place and provide a strong Protestant garrison." Powell, Supra note 1, p. 37. Catholics rebelled in 1641 to regain the property. Seumas McManus, The Story of the Irish Race, Devin-Adair Company (1966), p. 408-9. The English described it as "a pitiless onslaught by the native Irish on the settlers and their possessions." Thomas Bartlett, Ireland, a History, Cambridge University Press (2010), p. 115. "Protestant-Catholic relations in Ireland have never wholly recovered" from this period. Id. In Protestant lore it is called "the great Popish massacre." McManus, Ibid., p. 411. Retribution occurred eight years later, when Oliver Cromwell's army massacred the garrisons and civilians in Drogheda and Wexford as "punishment for the atrocities of 1641." Bartlett, Ibid., p. 127. Today, banners with images of the 1641 massacre of Protestant planters at Portadown bridge in County Armagh are carried in Orange Order marches in Northern Ireland. Frances Mulraney, "Oliver Cromwell's War Crimes, the Massacre of Drogheda in 1649," www.irishcentral.com/roots/oliver-cromwells-massacre-of-drogheda-1649 (March 30, 2022). The Protestant siege mentality against "Catholic aggression" that began in 1641 still exists. Id.

The answers to these questions lie in the agreement's carefully crafted provisions addressing Northern Ireland's future in terms of peaceful and democratic change, human rights, policing, and Ireland's relationship with the United Kingdom and Northern Ireland. One additional, significant answer lies in George Mitchell's brilliant leadership and guiding hand throughout the peace process. Mitchell's facilitative mediation style and human rights focus was indispensable to achieving the peace agreement.

Key participants in the process, like Gerry Adams and David Trimble, gave Mitchell major credit for the agreement. Adams - who headed the republican Sinn Fein Party - said, "[t]here can be no doubt without [Mitchell's] patience and stamina the outcome could have been very much different."⁴ Trimble - who led the Unionist Ulster Party (UUP) - said, "I don't think anybody else could have done what he did. It was a remarkable political balancing act."⁵ Adams and Trimble were on opposite sides of the table, but they saw Mitchell's consequential role the same way.

Undoubtedly, others played important roles during the process. British Prime Minister Tony Blair and Irish Taoiseach (Prime Minister) Bertie Ahearn also helped persuade Northern Ireland's political leaders to sign-up for peace. But

⁴ Deaglan de Breadun, "US Senator George Mitchell and the Good Friday Agreement," Irish Central News (April 4, 2020); <https://www.irishcentral.com/roots/irishamerica/good-friday-agreement-george-mitchell>. Sinn Fein is an Irish republican political party and the political wing of the IRA. The Social Democratic Labor Party is an Irish nationalist political party, who has adhered to a non-violent philosophy throughout its history.

⁵ *Id.* The Ulster Unionist Party is a moderate unionist political party that helped negotiate the GFA. The Democratic Unionist Party is a hardline unionist political party. They boycotted the peace talks after Sinn Fein's admission in 1997, and they rejected the GFA.

Mitchell's daily presence throughout the peace process - doggedly working through issues and bringing the parties together - had a huge impact on its outcome.

Of course, peace negotiations between warring parties that end decade long conflicts don't just happen. There is a history that leads parties to the peace table. In the case of the Northern Ireland Troubles, that history included prior failed attempts at peace. Also, there are framework documents that set out what is to be discussed, and principles set forth to guide negotiations. Crucial decisions must be made on who is invited to participate in peace talks, and who is chosen to lead the discussions. All of this takes place before the negotiations.

Negotiations, if they achieve success at all, can take months or years. In the case of Northern Ireland, it took 18 months for the parties to reach agreement. Then the hard part, implementing the terms of the agreement and fostering reconciliation, begins.

In the 25 years since the Good Friday (GFA) was signed, implementation of many of its terms has proven to be difficult. Some of the new institutions created by the GFA have performed in a sub-par manner; and some of the hoped for aspirational societal changes - like reconciliation - have not been realized. Nevertheless, the GFA has withstood challenges and, importantly, the peace has held.

A quarter-century on is a good time to consider what preceded the negotiations, Mitchell's role in the historic process, the agreement's key provisions, issues related to implementation, and unfinished business. These matters will be reviewed herein.

II. Sunningdale (1973) and Hillsborough (1985) Peace Agreements

The Sunningdale Peace Agreement resulted in the cessation of violence in Northern Ireland for the first five months of 1974. Although the peace was short-lived, some of its provisions became part of the GFA 25 years later. For example, Sunningdale created a power-sharing executive in Northern Ireland where nationalists were given a participatory role in government, and unionists were given “considerable devolution of powers.”⁶ The GFA established a Northern Ireland Assembly.⁷ Sunningdale established an “Irish dimension” for the administration of Northern Ireland.⁸ The GFA created a North-South Ministerial Council to strengthen cross-border cooperation on the island of Ireland.⁹ Significantly, Sunningdale recognized the principle of consent with regard to Northern Ireland’s status in the United Kingdom or as part of a re-unified Ireland.¹⁰ The GFA provided that Great Britain and Ireland would accept Irish reunification, if it was “achieved peacefully and with the ‘consent’ of a majority” of people North and South.¹¹

Why did Sunningdale fail? One reason was opposition from paramilitary groups. The IRA wanted Northern Ireland to be governed by direct rule from

⁶ William Beattie Smith, The British State and the Northern Ireland Crisis 1969-73, United States Institute of Peace Press (2011), p. 269.

⁷ Northern Ireland (NI) Peace Agreement, Strand 1.

⁸ Smith, Supra note 6, p. 269.

⁹ NI Peace Agreement, Strand 2.

¹⁰ That is, based on the consent of a majority expressed in a plebiscite. Smith, Supra note 6, p. 271.

¹¹ NI Peace Agreement, Constitutional Issues.

London rather than Sunningdale's power-sharing Assembly. That would make it easier to place full blame on the British for nationalist woes in Northern Ireland. In response to Sunningdale, the IRA "stepped up its activities" in setting off bombs and killing soldiers and police.¹²

Unionist political parties forcefully rejected Sunningdale. They spurned any type of power-sharing with the nationalist community. After all, they had exclusive control of the Northern Ireland government for five decades and did not want that to change.¹³ Additionally, the principle of consent stoked unionist fears of a united Ireland. So, unionist political parties "repudiated the deal" and "determined at all costs to block its implementation."¹⁴ The Ulster Worker's Council (UWC) conducted a general strike that brought Northern Ireland to a standstill.¹⁵ Loyalist paramilitaries lent support to the strike by setting-up roadblocks throughout the province, and targeting Catholics for sectarian murders.¹⁶

¹² Mike Chinoy, Are You with Me, Lilliput Press (2020), p. 116.

¹³ Northern Ireland's first Prime Minister, James Craig, boasted in the House of Commons that Northern Ireland had "a Protestant Parliament and a Protestant State." Northern Ireland Hansard (House of Commons), The Stormont Papers, Vol. 16, Col. 1091; <https://web.archive.org/web/201603190258>.

¹⁴ Chinoy, Supra note 12, p. 116.

¹⁵ Christine Kinealy, War and Peace, Reaktion Books Ltd. (2010), p. 126.

¹⁶ Id. Loyalist paramilitary groups were unionists who were willing to take up arms to defend the union. Dieter Reinisch, Learning Behind Bars, University of Toronto Press (2022), p. 19-20. In addition to the general strike, no warning car bombs were set off by the loyalist paramilitary Ulster Volunteer Force and Ulster Defense Association; they killed 33 people in Dublin and Monaghan. Kinealy, Supra note 15, p. 129. It was the "worst single day's death toll" during the Troubles. Id.

A second reason for the demise of Sunningdale was the British government's failure to intervene in ending the strike.¹⁷ In response to the strike, the British government capitulated to the UWC and paramilitaries by abolishing the nascent power-sharing Assembly. This ended the strike. Direct rule from London returned, so did an upswing in violence.¹⁸

During the 25 years between the collapse of Sunningdale and the GFA, more than 2700 people were killed.¹⁹ The nationalist Social Democratic Labor Party (SDLP) deputy leader Seamus Mallon famously called the GFA "Sunningdale for slow learners," because of the similarity of terms in both agreements.²⁰

The 1985 Hillsborough Peace Agreement (Anglo-Irish Agreement) was signed by British Prime Minister Margaret Thatcher and Irish Taoiseach Garret Fitzgerald.²¹ Once again, the principle of consent was treated as the foundation

¹⁷ The British Army did not want to get involved in taking action against "the majority Protestant population" for fear of fighting "a war on two fronts," and the British government did not want to be involved in "strikebreaking." Ken Bloomfield, Stormont in Crisis, Blackstaff Press Limited (1994), p. 216.

¹⁸ Kinealy, Supra note 15, p.128.

¹⁹ McKittrick, Kelters, Feeney, Thornton and McVea, Supra note 1, p. 454-1431.

²⁰ Mallon noted that what the IRA achieved in the GFA was the same thing they had rejected 25 years earlier in Sunningdale. Seamus Mallon, A Shared Homeplace, The Lilliput Press (2019), p. 190. He also noted that the IRA failed to achieve any of its "war aims" during the years between the agreements. Id.

²¹ U.S. President Ronald Reagan encouraged Prime Minister Thatcher to enter the agreement with a promise of U.S. investment in Northern Ireland. Tim Pat Coogan, Ireland in the 20th Century, Palgrave MacMillan (2006), p. 415. A \$250 million U.S. investment was made. Id.

The hunger strikes in the early 1980's changed how the British viewed the IRA and the chances of victory. The hunger strikes forced the British, who had characterized the IRA as criminals, to admit they were wrong. "They can't be criminals; criminals don't die on hunger strike." Allen Feldman, Formations of Violence, University of Chicago Press

for resolving the conflict.²² The agreement also included an “Irish dimension” by establishing an intergovernmental conference in Belfast, staffed by the British and Irish civil servants, to discuss issues like policing, security, and counterterrorism.²³ Additionally, the agreement acknowledged that “a condition of genuine reconciliation and dialogue between unionists and nationalist is mutual recognition of each other’s rights.”²⁴

Unionists despised the idea of giving Irish civil servants an advisory role in ensuring that the rights of the nationalist minority in Northern Ireland were respected.²⁵ They campaigned against the agreement under a slogan “Ulster Says No, and loyalist violence increased sharply.”²⁶ Unlike after the Sunningdale Agreement, however, Thatcher did not back down.²⁷

(1991), p. 258. In the hunger strikes, the IRA lost the battle but won the war. The strikes ended Thatcher’s refusal to negotiate. The hunger strikers’ unbreakable courage of conviction and willingness to sacrifice their lives by depriving themselves of food and starving to death led British officials to search for a non-military solution to the conflict. Colonel Richard Iron, “Britain’s Longest War,” in Danial Marston and Carter Malkasian, Counter insurgency in Modern Warfare, Osprey Publishing (2008), p. 162,164.

²² Chinoy, Supra note 12, p. 204.

²³ Id.

²⁴ Tom Hadden and Kevin Boyle, The Anglo-Irish Agreement, Sweet and Maxwell Ltd. (1989), p. 16.

²⁵ Chinoy, Supra note 12, p. 205.

²⁶ Chinoy, Supra note 12, 205. Reverend Ian Paisley, leader of the DUP, called the agreement “the process of rolling Irish unification,” and he led the “Ulster Says No” campaign against it. Coogan, Supra note 21, p. 605.

²⁷ Coogan, Supra note 21, p. 604-05. When unionist protests turned into riots, Thatcher ordered the RUC to respond. Ibid., p.604.

Sinn Fein was also threatened by the Hillsborough Agreement. They feared it strengthened their nationalist political rival, the SDLP, and undercut republican arguments that “British ‘colonial occupation’ of Northern Ireland” was the root cause of every problem.²⁸

As Sinn Fein’s desire to achieve its objectives via the political path grew, support for IRA tactics softened. Ultimately, for Sinn Fein to gain and sustain political supremacy in Northern Ireland, the IRA would have to stand down. For any peace process to succeed, those who choose constitutional politics must divorce themselves from those who remain committed to an armed struggle. This was true for peace in Northern Ireland, but it happened in an excruciatingly slow manner.

Over the course of the next eight years, there were hints of peace in the language used by the British government and Sinn Fein to describe the conflict. The most significant breakthrough came after five years of dialogue between John Hume and Gerry Adams on how peace could be achieved. In 1993, the Hume-Adams peace talks culminated in the issuance of a statement recognizing that national self-determination requires consent and the allegiance of both traditions.²⁹

²⁸ Taoiseach Garret Fitzgerald admitted “that the hunger strikes led directly to the Anglo-Irish Agreement of 1985” (Hillsborough Agreement), to bolster the SDLP over Sinn Fein. Anthony McIntyre, Good Friday - the Death of Republicanism, Ausubo Press (2008), p. 165.

²⁹ “Everyone has a solemn duty to change the political climate away from conflict and towards a process of national reconciliation, which sees the peaceful accommodation of the differences between the people of Britain and Ireland and the Irish people themselves. . . We both recognize that such a new agreement is only achievable and viable if it can earn and enjoy the allegiance of the different traditions on this island, by accommodating diversity and providing national reconciliation.” John Hume/Gerry Adams Statement (April 23, 1993); www.sinnfein.ie/hume/adams/statements.

III. Formal Steps to Develop a Peace Process and the Selection of George Mitchell as Chair of the All- Party Peace Talks

In 1994, George Mitchell, former U.S. Senate Majority Leader, was appointed by President Clinton to serve as special envoy to Northern Ireland for economic initiatives.³⁰ The appointment came after Clinton overruled the U.S. State Department and granted a visa to Adams, and after the IRA and loyalist paramilitary groups declared ceasefires.³¹

After the ceasefires, the British and Irish governments published “Framework Documents” for peace talks to “assist . . . negotiations involving Northern Ireland parties,” and agreed to work with the parties “to achieve a comprehensive accommodation, the implementation of which would include interlocking and mutually supportive institutions across three strands.”³² The three strands

³⁰ Coogan, *Supra* note 21, p. 673. “This was largely the brainchild of John Hume,” who sought U.S. investment in Northern Ireland for many years because it “had suffered economically through partition.” *Id.* Hume was one of the architects of the peace process, and helped form the non-violent, nationalist Social Democratic and Labor Party (SDLP). He and David Trimble won the 1998 Nobel Peace Prize for ending the conflict in Northern Ireland. Kinealy, *Supra* note 15, p. 288.

³¹ Adams called President Clinton’s grant of the visa “pivotal” and said the IRA ceasefire would not have happened then without it. (Mark Simpson, “Gerry Adams: New York in 1994 Visit ‘Pivotal to Peace,’” *BBC News Northern Ireland* (Feb. 1, 2019); <https://www.bbc.com/news/uk-northern-ireland-47072146>. Massachusetts Senator Ted Kennedy’s “influence on Clinton proved decisive” for issuance of the visa. Coogan, *Supra* note 21, p. 667.

³² Coogan, *Supra* note 21, p. 675. By using framework agreements as part of a conflict resolution strategy, parties can build a structured process around key principles, develop an interim agenda that offers a sense of momentum and success, and “provide an overarching framework for solution.” Terrance P. Hopmann, “Bargaining and Problem Solving: Two Perspectives on International Negotiation,” in *Turbulent Peace: The*

involved political structures within Northern Ireland, North-South institutions, and East-West structures.³³ Each strand was an essential part of the whole throughout the negotiations.

To jump start the peace process, the governments announced the creation of an international commission, who “would advise on a suitable method for ‘full and verifiable decommissioning’” of weapons.³⁴ President Bill Clinton persuaded Mitchell to chair this commission. Its mission was to propose how paramilitary weapons decommissioning would be accomplished.³⁵ The British government nominated John de Chastelain, retired Chief of the Canadian Defense Forces, to the decommissioning body, and the Irish government nominated Harri Holkeri, former Prime Minister of Finland.³⁶ In January 1996, the decommissioning group issued its Report.³⁷

The Report set forth “the Mitchell Principles,” six principles to guide the peace negotiations. Participants in the peace talks had to commit themselves to principles of democracy and non-violence. The Mitchell Principles required parties: “to affirm their total and absolute commitment to using democratic and exclusively peaceful means of resolving political issues; to the total disarmament

Challenge of Managing International Conflict, (ed. Chester Crocker, Fen Osler Hampson, and Pamela Aall, U.S. Institute of Peace Press, (2001), p. 458.

³³ John Hume, *A New Ireland*, Roberts Rinehart Publishers (1996), p. 194.

³⁴ Coogan, Supra note 21, p. 678.

³⁵ Id.

³⁶ Coogan, Supra note 21, p. 679. Mitchell impressed everyone with his “diligence, intelligence, patience and fairness.” Id.

³⁷ Id.

of all paramilitary organizations; to agree that such disarmament must be verifiable to the satisfaction of an independent commission; to renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force to influence the course or the outcome of all-party negotiations; to agree to abide by the terms of any agreement reached . . . and to urge that ‘punishment’ killings and beatings stop and to take effective steps to prevent such actions.”³⁸ Any party who failed to commit or adhere to the Mitchell Principles was excluded from the talks.

Weapons decommissioning was one of the Mitchell Principles. Decommissioning was not a pre-condition for participation in the negotiations. The Report made clear that decommissioning could take place during the negotiations, although parties had to commit to decommissioning before they could attend the talks.³⁹ The decommissioning issue bedeviled the peace process before and after the agreement was reached.

Returning home after the Report’s release, Mitchell believed that his work in Northern Ireland was “finished.”⁴⁰ After all, the guiding principles and ground rules for the talks had been established. His work, however, was not completed.

³⁸ George Mitchell, Making Peace, University of California Press (2000), p. 35-36. The Mitchell Principles grew out of the Framework Documents.

³⁹ Mitchell, Supra note 38, p. 35.

³⁹ Id. Mitchell felt that “[i]n the real world of Northern Ireland, prior decommissioning simply was not a practical solution.” Id. The IRA was not going to give up its weapons before peace talks started. The parallel decommissioning recommendation was a way to “unlock” the decommissioning issue.

⁴⁰ Mitchell, Supra note 38, p. 40.

British Prime Minister John Major, who relied on the Ulster Unionist Party (UUP) for a majority in Parliament, supported the peace process only as far as it had UUP support. While Major accepted that Northern Ireland's political parties could be invited to the talks if they committed to the Mitchell Principles, he did not accept the Report's provision on "parallel decommissioning" - decommissioning taking place during the negotiations - because it was opposed by the UUP.⁴¹ Major adopted the UUP's position that weapons decommissioning was a precondition for entry into the talks.⁴² He stated: "the decommissioning of arms is perfectly clear. If people are prepared to enter into the democratic process, then they don't need arms."⁴³ Major's position stalled the peace process, and it led the IRA to end its ceasefire.⁴⁴ To address the thorny decommissioning issue, an Independent Commission on Decommissioning (ICD) - headed by Canadian General de Chastelain - was established to ensure that paramilitary weapons were destroyed; and Mitchell was appointed Chairman of the all-party talks.⁴⁵

The major political parties invited to join the negotiations were the UUP, the hardline Democratic Ulster Party (DUP), the SDLP, and the Alliance Party.⁴⁶

⁴¹ Coogan, Supra note 21, p. 680.

⁴² Penn Rhoden, Peacerunner, Ben Bella Books. Inc. (2016), p. 161.

⁴³ Rhoden, Supra note 42, p. 162.

⁴⁴ The IRA broke its ceasefire in 1996 when it detonated a fertilizer bomb at London's Canary Wharf, killing two. Coogan, Supra note 21, p. 680-81.

⁴⁵ Coogan, Supra note 21, p. 681. "The ICD bought us time and space." Tony Blair, A Journey, Alfred A. Knopf (2010), p. 165.

⁴⁶ On the unionist side, Trimble led the UUP and Reverend Paisley headed the DUP. On the nationalist side, John Hume and Seamus Mallon headed the SDLP. The republican Sinn

Sinn Fein was not at the table when the peace talks began in October 1996.⁴⁷ That changed the following year, when the Labor Party won a landslide victory and Tony Blair was elected British Prime Minister.⁴⁸ Blair said he would permit Sinn Fein to participate in peace talks if the IRA renewed its ceasefire, which it did.⁴⁹ Sinn Fein joined the negotiations in 1997.

IV. Peace Negotiations

A. George Mitchell's Facilitative Mediation Style

As chair of the peace talks, Mitchell used an interest-based, facilitative mediation style, and assisted the parties in finding solutions to resolve the conflict. Instead of remaining fixed on their political positions, he persuaded them to focus on societal needs and interests. The shift occurred without Mitchell ordering them what to do.⁵⁰

Fein Party was led by Gerry Adams and Martin McGuinness. The Alliance Party fell in neither the nationalist nor unionist camp. It was headed by Lord David Alderdice.

⁴⁷ Northern Ireland Secretary of State Mo Mowlam monitored the IRA's renewed ceasefire for six weeks before Sinn Fein was permitted to join the peace talks. Blair, Supra note 45, p. 165.

⁴⁸ Coogan, Supra note 21, p. 681.

⁴⁹ Mitchell, Supra note 38, p. 111.

⁵⁰ Roger Fisher, William Ury and Bruce Patton, Getting to Yes, Penguin Books (Second Edition), (1991), p. 40. A mediator gets parties to focus on their interests by exploring the "underlying needs, desires, concerns and fears" that motivate their positions. Id. A focus on interests makes it "possible to develop a solution." Ibid., p. 41. Basic human needs like security and peace are powerful interests. Ibid., at p. 48. Mitchell reminded the parties of this throughout the process.

To get the parties to look beyond their own self-interests, Mitchell had them concentrate on shared interests, like putting Northern Ireland on a path to a peaceful, prosperous and hopeful future. He stressed that “unionists and nationalists have more in common than they have differences,” and that knowledge of history “is a good thing but being chained to the past is not.”⁵¹ He urged the parties to approach the negotiations with this broad perspective.

On the first day of formal negotiations, he told the parties, if an agreement is reached, it will include what they believed should be in it; that is, the agreement would reflect the parties’ own words and ideas.⁵² He was letting them know any resolution would be achieved through the exercise of their own self-determination.⁵³ Mitchell lived up to this commitment throughout the process.

Mitchell’s goal was to help the participants achieve a peace deal that would be durable and long-lasting. He was able to accomplish this by getting the parties to listen, understand the issues, focus on their interests and needs, problem-solve, and come-up with creative solutions.⁵⁴

1. What Mitchell Learned by Studying Prior Failed Agreements

⁵¹ Mitchell, *Supra* note 38, p. 186.

⁵² Rhoden, *Supra* note 42, p. 213.

⁵³ “Self-determination is the right of the parties in a mediation to make their own voluntary and non-coerced decisions regarding the possible resolution of any issue in dispute.” OBA Mediation Code of Conduct, Canadian Ministry of the Attorney General; <http://www.attorneygeneral.jus.gov.on.ca/html/manmed/codeecncdt.htm>.

⁵⁴ Carole J. Browne, “Facilitative Mediation: The Classic Approach Retains Its Appeal,” (Dec. 2220), p. 5; <https://www.mediate.com/articles/browne.cfm>).

As part of his thorough preparation to chair the negotiations, Mitchell studied the history of prior failed attempts at peacemaking in Northern Ireland, so he could avoid the mistakes of the past. He learned that representatives of paramilitary organizations had not been included in negotiations that led to the Sunningdale Agreement and the Hillsborough Agreement. He noted that those agreements managed the conflict for a short-term, but failed to resolve it, and that, after each settlement, IRA and loyalist paramilitary groups acted as “spoilers” to pitch Northern Ireland back into full scale violence.⁵⁵

Mitchell learned lessons from this history. He believed that paramilitary groups needed to be represented in the peace talks to keep them from spoiling the peace as they had before. In his view, as official participants in the process, paramilitary groups would have a stake in bringing an end to the conflict, in contributing to finding a path to long-term peace, and in not destabilizing any agreement. Beyond paramilitary groups, Mitchell believed community involvement in the peace process needed to be broad. He wanted as many political parties as possible, including smaller ones, to participate in the negotiations.

The British and Irish governments agreed to hold an Election Forum with the top-ten vote-getting parties permitted to participate in the peace talks.⁵⁶ The top-ten parties in the Election Forum meant those who received just 1 or 2

⁵⁵ Spoilers are individuals or groups who “may attempt to scuttle the process.” Amy Smith and David Smock, Managing a Mediation Process, U.S. Institute of Peace Press (2008), p. 12.

⁵⁶ YouTube, George Mitchell, Harvard Program on Negotiation (April 29, 2016).

percent of the vote won a seat at the negotiating table.⁵⁷ This included the Progressive Unionist Party (PUP) who were aligned with the paramilitary Ulster Volunteer Force (UVF), the Ulster Democratic Party (UDP) who were aligned with the paramilitary Ulster Defense Association (UDA), and the Women’s Coalition Party who were guided by the principles of “inclusion, human rights and equality.”⁵⁸ Scoring within the top ten (7th, 8th, and 9th respectively) in the Election Forum, they all received an invitation to the peace talks.⁵⁹

2. Getting the Parties to Compromise

Mitchell knew that to reach an agreement he had to get the parties to make big compromises.⁶⁰ This meant moving them from extreme and entrenched political positions toward a middle ground. One way to do this, he felt, was to ensure that a final agreement included things important to individual parties. For example, unionists wanted to exercise governmental power through a local Assembly in Northern Ireland.⁶¹ Nationalists sought a north-south council so that

⁵⁷ In the end, 8 political parties participated in the talks. The DUP and United Kingdom Ulster Party walked out of the negotiations because of Sinn Fein’s involvement. Mitchell, Supra note 38, p. 50.

⁵⁸ Monica Williams, Stand Up, Speak Out, Blackstaff Press (2021), p. 137.

⁵⁹ Mitchell felt the Women’s Coalition Party made important contributions to the negotiations and had a large influence on the outcome of the talks because they drew support from both unionist and nationalist communities. Mitchell, Supra note 38, p. 44.

⁶⁰ Northern Ireland politics was zero-sum. “Anything that we take as a win, they take as a loss.” Simon Carswell, “Loyalists on Brexit: A One-Way Route to an Economic United Ireland.” Irish Times (Jan. 30, 2020); <https://www.irishtimes.com/news/politics/loyalist-om-brex-it-a-one-way-route-to-an-united-iorleand>.”

⁶¹ Mitchell, Supra note 38, p. 175.

the Irish government would have a say in Northern Ireland affairs. Paramilitaries wanted early prisoner release. Mitchell made what each side desired interdependent, so you couldn't have one without the others. He wanted "everyone to see themselves as having gained something in the hope that it would enable them to swallow the parts [of the agreement] they didn't like."⁶² In other words, instead of zero-sum positioning on each issue, parties would have to accept what they considered bad things to receive the good things. Nothing was agreed until everything was agreed. Mitchell wanted to make it hard for parties to say no at the end of the negotiations.⁶³ It took him 18 months to get everyone to that point.

3. Re-Affirming the Mitchell Principles during Negotiations

Mitchell was unyielding with acts of violence. He believed that "[r]esponding to acts of violence by bringing those involved to justice is essential to keeping peace in Ireland."⁶⁴ During negotiations, this principle faced a stern test. When violence occurred, the political party representing the group responsible for the violence was thrown out of the negotiations until a re-commitment to non-violence was shown.

⁶² Ciaran Barnes, "Most Good Friday Signatories Have Moved On," Irish Echo (April 15, 2008), p. 2. The goal was to get the parties to compromise.

⁶³ Mitchell included things in the final agreement that he personally found distasteful. The early release of paramilitary prisoners who committed terrible crimes - i.e., "murders and assassins" - was "a tough moral decision" for him, but he "believed there would be no agreement without a process to deal with paramilitaries." George Mitchell, Speech at United States Institute of Peace (March 13, 2017).

⁶⁴ Id.

Two crises arose. One occurred about a year into the talks when Billy “King Rat” Wright, leader of the paramilitary Loyalist Volunteer Force (LVF), was shot to death by members of the Irish National Liberation Army (INLA), while he was serving a sentence in the Maze Prison.⁶⁵ Wright’s murder threatened to collapse the talks.⁶⁶ In a “daring initiative,” Northern Ireland Secretary of State Mo Mowlam entered the prison, engaged loyalist prisoners in debate and successfully convinced them to remain committed to the ceasefire and peace process.⁶⁷

The UDP was expelled from the all-party negotiations due to retaliatory killings by the UDA in the wake of Wright’s murder.⁶⁸ The UDP gained reentry into the talks, after a two-week period without UDA participation in any acts of violence. In the second crisis, Sinn Fein was expelled from the talks when the Direct Action Against Drugs organization (affiliated with the IRA) killed two people.⁶⁹ They too gained re-entry to the talks after a period of no IRA violence.⁷⁰

⁶⁵ The INLA was an extreme republican paramilitary group. They were not part of the peace talks. The loyalist splinter group, LVF, opposed the peace process.

⁶⁶ Loyalist prisoners threatened to withdraw support for the peace process because of Wright’s murder. Coogan, Supra note 21, p. 682.

⁶⁷ Id. As former UN Human Rights Commissioner Mary Robinson said, “. . . the process of debate is almost as important as the eventual product. Creating space for dialogue, learning to address divisive issues across the whole community, seeking to disagree in a respectful manner: all of these are important gains in and of themselves.” Mary Robinson, “Making Right Relationships an Everyday Practice,” Lecture at the Human Rights Consortium (May 18, 2002), p. 10.

⁶⁸ Mitchell, Supra note 38, p. 133-37.

⁶⁹ Mitchell, Supra note 38, p. 139-42. The IRA denied involvement in the two killings, but Royal Ulster Constabulary (RUC) Chief Constable Ronnie Flanagan linked the murders to Direct Action Against Drugs. Id.

⁷⁰ Both the UDP and IRA had to demonstrate “a complete, unequivocal and unqualified” ceasefire for two weeks “through word and deed” in order to rejoin the talks. Mitchell, Supra note 38, p. 138.

Mitchell used the crises to accomplish two things. First, he re-affirmed the critical importance of adhering to the Mitchell Principles. Second, he underscored how serious the commitment to non-violence was for him and the process.

4. Building Trust

Mitchell knew, “the most difficult obstacle to overcome was lack of trust.”⁷¹ He worked hard to gain the parties’ trust and did so by showing that he had no personal agenda. He exhibited fairness in decision-making. Participants valued the even-handed rulings he made on the thousands of “points of order” the parties raised during negotiations.⁷² Their trust in him made them more willing to accept what he suggested.

5. Maintaining Optimism

As mediator, Mitchell considered optimism to be a key ingredient for success. He said, “[t]he belief that problems can be solved and that things can be better, is necessary for creating an attitude of success.”⁷³ For a year and a half, he exhibited optimism, great patience and an extraordinary ability to listen every day. Until the final day of negotiations, it was uncertain if a deal would be reached. On the GFA’s 20th anniversary, Mitchell described the talks as “700 days of failure” and “one day of success” that “changed the course of history.”⁷⁴

⁷¹ George Mitchell Transcript: Building Peace in Northern Ireland, United States Institute of Peace, <http://www.buildingpeace.org/print/1461>.

⁷² George Mitchell, YouTube, Harvard Program on Negotiation (April 29, 2016).

⁷³ George Mitchell, “In Pursuit of Peace,” American Legion Magazine (March 2003), p. 16.

⁷⁴ “Good Friday Agreement Was ‘Work of Genius,’” BBC News NI (4/10/2018); <http://www.bbc.com/news/uk-northern-ireland-43660970>.

6. Listening with Patience

Mitchell listened to everyone patiently. He heard people out in full. This set an example for how participants should listen to each other, although the UUP refused to meet with Sinn Fein. These parties engaged each other at the negotiating table through Mitchell.⁷⁵

Mitchell set up a creative safe space for parties to air grievances in what he called “morning time,” during which parties could complain to him about what the other side was doing or saying to the press.⁷⁶ This procedure, he said, allowed parties to get things off their chests so the rest of the day could be spent on issues relevant to peacemaking.⁷⁷ An effective way to deal with “people’s anger, frustration and other negative emotions is to help them release those feelings.”⁷⁸ Mitchell used the morning time process for parties to “let of steam,” so they could “talk rationally” about the issues later in the day.⁷⁹

Mitchell also established a rule of “sufficient consensus,” that allowed parties to vote against part of a proposal while still voting for passage of the whole proposal.⁸⁰ This helped move discussions forward without having them side-tracked, and it limited points of impasse.

⁷⁵ Mitchell, Supra note 38, p. 137.

⁷⁶ YouTube, George Mitchell, Harvard Program on Negotiation (April 29, 2016).

⁷⁷ Mitchell was often the only one present during morning time to listen to a party’s complaints about others. Id.

⁷⁸ Fisher, Ury, and Patton, Supra note 50, p. 31.

⁷⁹ Id.

⁸⁰ “Negotiating the Good Friday Agreement,” Harvard Program on Negotiation, Conflict Resolution Daily (June 30, 2008).

7. Applying Pressure

When it was time for difficult decisions, Mitchell chided the parties by repeating to them what they had said to him; that is, these peace talks “can’t fail because the prospect of failure for Northern Ireland [is] too awful to consider.”⁸¹ There was genuine worry that, if the talks failed, Northern Ireland would return to horrors - car bombings, knee-capping, maiming and killing - worse than before.

Mitchell also told the political representatives that the fear of a return to violence in Northern Ireland should be a greater fear for them than the fear of damaging their political careers.⁸² This reminder was important in changing the participant’s cost/benefit analysis, by broadening the perspective of what was really at stake. It lessened the focus on political considerations and increased the focus on Northern Ireland’s future.

8. Interest-Based

Instead of pushing a one-sided agenda, Mitchell recognized the needs and interests of all parties. He understood that “hope and opportunity” were “essential to political stability and peace in every society,” and that this was a common interest of the parties.⁸³ He kept the parties focused on this shared interest, and he convinced them to provide the opportunity for growth and

⁸¹ Barnes, Supra note 62.

⁸² YouTube, George Mitchell, Harvard Program on Negotiation (April 29, 2016).

⁸³ Id. Whatever their differences, Mitchell noted, people want the same thing for themselves and their children - the possibility of a future with hope and opportunity. Without both of those things, “peace is in peril everywhere.” George Mitchell Transcript: Building Peace in Northern Ireland, United States Institute of Peace, <http://www.buildingpeace.org/print/1461>.

prosperity and a brighter future for Northern Ireland. In Mitchell's words, the agreement was a "principled compromise" by the parties.⁸⁴

9. Setting a Deadline and Bringing Negotiations to a Conclusion

Mitchell set the Thursday preceding Easter weekend as the deadline for completing the work on the three strands and reaching a final agreement.⁸⁵ The purpose of setting a deadline was to increase pressure on the parties to reach a settlement.

A week prior to the deadline, a "Draft Paper for Discussion" on strands 1 and 3 three was ready for distribution to the parties.⁸⁶ Mitchell withheld its release, however, because draft language on strand 2 had not been fully negotiated, and each strand was an integral part of the whole document. He believed releasing an incomplete draft would set things back.⁸⁷ The parties did not receive the full draft on all three strands until four days before the deadline. When it was released, the document caused an intense flurry of last-minute discussions.⁸⁸

⁸⁴ Mitchell called "principled compromise" the challenge of political leadership. George Mitchell, comments at "20 Years of Peace Conference," New York City (Feb. 22, 2018).

⁸⁵ Mitchell, Supra note 38 at p. 120. Easter carried religious significance for the parties, and the deadline also had practical significance. Mitchell believed the deadline would allow an agreement to be placed before the voters in a May referendum, and Assembly elections to be held in June. Ibid., p. 143-44.

⁸⁶ Powell, Supra note 1, p. 90. Strand 2 was drafted by the two governments. Id.

⁸⁷ Mitchell, Supra note 38, p. 162.

⁸⁸ Mitchell, Supra note 38, p. 165-171.

Mitchell knew that unionists were not going to accept the draft language on strand 2 regarding north-south institutions.⁸⁹ At the same time, Sinn Fein was objecting to any “backsliding from the Framework Documents.”⁹⁰ At this crucial moment with time rapidly running out, Taoiseach Ahearn said the Irish government was willing to renegotiate the language on strand 2.⁹¹

Ahearn and Blair modified the strand 2 language in what Mitchell described as “a high wire act.”⁹² They had “to get the unionists on board, without losing the nationalists,” and they did so after 58 hours of negotiations over a three-day period.⁹³ Their effort was aided by Sinn Fein’s interest in moving-up the timeframe for prisoner release.⁹⁴

Adams told Blair that “released prisoners are the best ambassadors for the peace process.”⁹⁵ In response, Blair gave him verbal assurance that, if Sinn Fein signed the agreement and if “circumstances allowed,” prisoner releases could be moved forward to one year after the date an agreement is signed.⁹⁶ The modified

⁸⁹ Mitchell, Supra note 38, p. 166.

⁹⁰ Mitchell, Supra note 38, p. p. 167.

⁹¹ Mitchell, Supra note 19, p. 171. Mitchell praised Ahearn for his courage in accepting this challenge. He called it “a big decision by a big man.” Id. After his mother’s funeral, Ahearn immediately went to work on it.

⁹² Id.

⁹³ Mitchell, Supra note 38, p.172.

⁹⁴ Adams wanted the agreement’s two-year deadline for release from custody accelerated. NI Peace Agreement, Policing and Justice, Prisoners.

⁹⁵ Powell, Supra note 1, p. 101.

⁹⁶ Id.

language on strand 2 and the verbal assurance on prisoner release were enough to keep the discussions with the parties moving forward.

At the eleventh hour, Trimble attempted to change the terms on whether decommissioning was a prerequisite to entering the proposed Northern Ireland Assembly. It wasn't. The document called for decommissioning of weapons to take place over a two-year period.⁹⁷ Trimble demanded that the agreement reflect the unionist position of "no guns, no government," and that Sinn Fein be excluded from the new Northern Ireland Assembly until IRA weapons were decommissioned.⁹⁸

Blair told Trimble that it was too late to change the document's language.⁹⁹ But Blair gave Trimble a letter that said "decommissioning should begin straight away" and, if "the exclusion mechanism in the Belfast Agreement proved inadequate, he [Blair] would bring forward legislation to change it" after the first six months of the Assembly.¹⁰⁰ In essence, this meant that, if the agreement failed to effectively promote non-violence, the rules on decommissioning could be changed "to give them more teeth."¹⁰¹ Blair's letter satisfied Trimble.

DUP leader Reverend Ian Paisley unsuccessfully attempted to block a final deal. At a press conference on Thursday - the date of the deadline - he "called

⁹⁷ NI Peace Agreement, Decommissioning.

⁹⁸ Frank Millar, David Trimble - the Price of Peace, The Liffey Press (2004), p. 75.

⁹⁹ Mitchell, Supra note 38, p. 179.

¹⁰⁰ Millar, Supra note 98, p. 70.

¹⁰¹ Colin Gleeson, "Inside Story of How the Belfast Agreement Was Struck," Irish Times (April 10, 2018); <https://www.irishtimes.com/news/politics/the-inside-story-of-how-the-belfast-agreement-was-struck-1.3455962>.

Trimble a traitor and denounced the talks.”¹⁰² Despite the new strand 2 language, Blair’s promise to Adams, and Blair’s letter to Trimble, the talks were still in grave danger of collapsing. Party leaders continued trying to extract concessions before asking their party members to vote on a final agreement. As a result, discussions passed the deadline going through the night and the next day.

Mitchell agreed to extend the deadline, but he refused to allow any breaks in the discussions. This was something he learned from his experience in the U.S. Senate. He said: “We’re here until we finish. We’ll either get an agreement or we’ll fail to get an agreement. Then we’ll all go out together and explain to the press and waiting world how we succeeded or why we failed.”¹⁰³ The parties knew Mitchell meant what he said.

President Clinton made middle of the night calls (US time) to Blair, Ahern, Mitchell, Hume, Adams, and Trimble, urging them to go the extra mile in shared decision-making.¹⁰⁴ The talks continued throughout the day.¹⁰⁵

At 4 PM on Good Friday, Trimble informed Mitchell that the UUP were ready to sign the deal. Mitchell responded by saying, “Look, I want to vote right

¹⁰² Mitchell, Supra note 38, p. 177. The DUP position persuaded some members of the UUP to hold out against the deal.

¹⁰³ Rhoden, Supra note 42, p. 217.

¹⁰⁴ Mitchell, Supra note 38, p. 178.

¹⁰⁵ To break the impasse during the final hectic hours of negotiations, Mitchell reminded everyone that they would be known more for what they did at the negotiating table than for anything else they did throughout their career. YouTube, George Mitchell, Harvard Program on Negotiation (April 29, 2016).

away.”¹⁰⁶ Although the parties had not slept in two days, Mitchell convened a plenary session at 4:30 PM, where the deal was approved. At 5 PM on April 10, 1998, Mitchell announced “that the two Governments, and the political parties of Northern Ireland have reached agreement.”¹⁰⁷

10. Giving Credit to Others for the Achievement

At the press conference announcing the agreement, Mitchell extolled the work of others rather than himself. He praised “the leadership, commitment and . . . personal negotiating skill of Blair and Ahearn,” and he credited Northern Ireland’s political leaders for delivering “an agreement that’s fair and balanced and offers hope to the people of Northern Ireland.”¹⁰⁸ Party leaders, he said, were courageous heroes for rising to the occasion in the most difficult circumstances.¹⁰⁹

Mitchell was proud that the agreement belonged to the parties, who he noted had to live with it once the process was completed while he went home.¹¹⁰

¹⁰⁶ Mitchell explained that he “learned as Majority Leader of the U.S. Senate when you’ve got the votes, you vote. If you delay, something bad might happen.” George Mitchell Transcript: Building Peace in Northern Ireland, United States Institute of Peace, <http://www.buildingpeace.org/print/1461>.

¹⁰⁷ Mitchell, *Supra* note 38, p. 180-81.

¹⁰⁸ Mitchell, *Supra* note 38, p. 182. Mitchell understood that “the [peace] process belonged to others.” Colum McCann, “Remembering the Easter Miracle,” NY Times Sunday Review Section (March 31, 2013), p. 6.

¹⁰⁹ YouTube, George Mitchell, Harvard Program on Negotiation (April 29, 2016).

¹¹⁰ *Id.*

He noted that “every word in the agreement [was] spoken or written by a delegate from Northern Ireland.”¹¹¹

In the announcement, Mitchell powerfully added, “the agreement proves democracy works and, in its wake, we can say to the men of violence, to those who disdain democracy, whose tolls are bombs and bullets: Your way is not the right way. You will never solve the problem of Northern Ireland by violence. You will only make it worse.”¹¹²

Mitchell asked one of the architects of the peace process, John Hume, to say a few words at the signing. Hume’s gracious comment was filled with hope for the future. He said: “This process is not about victory or defeat for nationalism or unionism, Today, we can take a collective breath and blow away the cobwebs of the past.”¹¹³

News of the peace deal was heralded by jubilation on the streets of Northern Ireland. The guns were silenced. An Irish Times editorial published the next day lauded the agreement. After noting that earlier agreements - Sunningdale and Hillsborough - “were unable to withstand the destructive forces of our tribal polarities,” the editorial praised all of the leaders who took political risks to compromise - “in trust and in a true willingness to respect diversity” - on an agreement that “can deliver lasting peace, security and a greater degree of

¹¹¹ Rhoden, Supra note 42, p. 213.

¹¹² Mitchell, Supra note 38, p. 183. Mitchell recognized that the agreement, while historic, did not guarantee peace; “it merely made it possible.” George Mitchell, “Insights from 20 Years of Peace Conference on Northern Ireland,” Irish Central News (Feb. 23, 2018); <https://www.irishcentral.com/news/thenorth/insights-from-20-years-of-peace-conference>.

¹¹³ “John Hume Profile,” Ireland of the Welcomes (January/February 2011), p. 26.

prosperity” for everyone.¹¹⁴ Of course, sustaining the peace would depend upon political leaders fulfilling their responsibilities to implement the agreement’s terms.¹¹⁵

B. Mitchell’s Human Rights Approach

The GFA charted a path for constitutional change in Northern Ireland, and gave its citizens hope for a peaceful and prosperous future. It “enshrined guarantees of human rights that would have been unthinkable” without it and safeguarded “equality of opportunity.”¹¹⁶ In this regard, former Irish President and UN High Commissioner for Human Rights, Mary Robinson, said the GFA “is conspicuous by the centrality it gives to equality and human rights concerns.”¹¹⁷

In the “human rights” section of the agreement, the parties affirmed their commitment to the mutual respect, civil rights, and religious liberties of everyone in the community.¹¹⁸ The British government agreed to completely incorporate the law of the European Convention on Human Rights into Northern Ireland

¹¹⁴ “‘The Way Forward Is in Compromise’ - The Belfast Agreement at 21,” Irish Times Editorial, first published (April 11, 1998), p. 1; republished (April 10, 2019); <https://www.irishtimes.com/news/politics/the-way-forward-is-in-compromise-the-belfast-agreement-at-20>.

¹¹⁵ Mitchell considered the referendum on the agreement in May to be a vote by the people for a future with hope and opportunity rather than random, senseless death. Mitchell, *Supra* note 38, p. 187-88.

¹¹⁶ Chinoy, *Supra* note 12, p. 325.

¹¹⁷ Committee on the Administration of Justice (CAJ) Newsletter (April 2012).

¹¹⁸ NI Peace Agreement, Human Rights. Parties particularly affirmed the “right to seek constitutional change by peaceful and legitimate means, the right to equal opportunity in all social and economic activity, the right to freedom from sectarian harassment, and the right of women to full and equal political participation.” *Id.*

law.¹¹⁹ The agreement also called for “a new Northern Ireland Human Rights Commission” to be established.¹²⁰

Throughout the negotiations, Mitchell knew his subject matter, the parties involved, and the objectives.¹²¹ One objective was to make human rights a priority in developing the terms of the agreement. This can be seen in provisions related to the principle of consent, local self-government, and policing reform.

V. Terms of the Agreement

Mitchell’s fair and balanced problem-solving is apparent throughout the agreement. The GFA begins with a Declaration of Support and commitment “to partnership, equality and mutual respect,” to resolving differences by “exclusively democratic and peaceful means,” and to working “in good faith” to ensure the agreement’s success.¹²² This should be viewed as a formula for successful implementation of the agreement’s terms. Nevertheless, implementation of some key provisions has proven to be arduous. After reviewing the agreement’s major provisions, problems associated with implementing some of its terms will be discussed.

A. Principle of Consent

Under its principle of consent, the GFA reaffirmed the right of the people of Northern Ireland to determine their own future, and recognized the possibility

¹¹⁹ NI Peace Agreement, United Kingdom Legislation.

¹²⁰ NI Peace Agreement, New Institutions.

¹²¹ “Negotiating the Good Friday Agreement,” Harvard Program on Negotiation, Conflict Resolution Daily (June 30, 2008).

¹²² NI Peace Agreement, Declaration of Support.

that a united Ireland could be brought about by a majority vote.¹²³ The agreement's vision for new constitutional arrangements in Ireland and the UK was based on consent and self-determination. The Irish government renounced its constitutional claim to Northern Ireland. Ireland's constitution was amended when voters approved language stating "that a united Ireland shall be brought about only by peaceful means with the consent of the majority of the people democratically expressed in both jurisdictions on the island."¹²⁴ This language extinguished Ireland's claim that its "national territory" included the north.¹²⁵

Similarly, the UK agreed to repeal the 1920 Government of Ireland Act and allow a majority of the people in Northern Ireland to decide whether to remain part of the UK or rejoin the Republic.¹²⁶ This happened with passage of the 1998 Northern Ireland Act. The changes to each nation's laws meant that the principle of consent became enshrined as the peaceful and democratic path for determining the island's future.

Under the principle of consent, the GFA calls for a unity referendum to be held when "it appears likely to the Northern Ireland Secretary of State that "a majority of those voting would express a wish that Northern Ireland should cease

¹²³ McKittrick and McVea, Making Sense of the Troubles, New Amsterdam Books (2002), p. 226.

¹²⁴ NI Peace Agreement, Constitutional Issues, Annex B; May 1998 Referendum.

¹²⁵ Kinealy, Supra note 15, p. 284.

¹²⁶ NI Peace Agreement, Constitutional Issues, Annex A.

to be part of the United Kingdom and form a part of a united Ireland.”¹²⁷ A voting majority means 50% plus one. When that exact point will be reached is unclear.

B. Strand 1, the Northern Ireland Assembly

The GFA established new institutions to deliver what had been promised on the three strands underpinning the peace discussions. It established a democratically elected Assembly to provide self-government (strand 1), a North-South Council to work cooperatively for the mutual benefit of Northern Ireland and the Republic (strand 2), and a British-Irish Council and Council of Isles to strengthen links between Great Britain and Ireland (strand 3).¹²⁸

The newly created “108-member [Northern Ireland] Assembly operated on a cross-community basis.”¹²⁹ This meant decisions were taken either on the basis of parallel consent (a majority of unionists and nationalists present voting) or on the basis of a “weighted majority” (60% present and voting including at least 40%

¹²⁷ NI Peace Agreement, Constitutional Issues, Annex A, Schedule 1. Before any poll, there is a need for preparatory work on defining the constitutional form of unification and, significantly, building trust between the two communities. The larger the margin of victory for unity, the greater mandate. Two factors that may influence a vote in favor of unity are demographics - the 2021 Census in Northern Ireland showed that Catholics outnumbered Protestants for the first time - and opposition to Brexit - in 2016, 56% of Northern Irish voters voted to remain in the European Union. “A United Ireland - Is Some Revelation at Hand,” *The Economist Magazine* (Feb. 21, 2020), p. 17-18.

¹²⁸ Powell, *Supra* note 1, p. 63-64. On strand 2, there was a North-South Council responsible for cross border cooperation in areas like language, health, agriculture, inland waterways, tourism and trade; on strand 3 there was a new Council of Isles and a British-Irish Council to “promote harmonious and mutually beneficial development of the totality of relations among the peoples” of the UK, Ireland, and devolved administrations in Scotland, Wales, Jersey, Guernsey and Isle of Man. Mark Simpson and Jayne McCormack, “British Irish Council: Taoiseach Hopes New PM Will Rebuild Relations,” *BBC News NI* (July 8, 2022).

¹²⁹ NI Peace Agreement, Strand 1.

of each community).¹³⁰ The Assembly was given “full legislative and executive authority” over devolved matters, and it was “the prime source of authority in respect of all devolved responsibilities.”¹³¹ Under the agreement, the British Northern Ireland Secretary of State remained responsible for non-devolved matters, and the “Westminster Parliament” retained its power “to legislate as necessary to ensure the UK’s international obligations [were] met in respect of Northern Ireland.”¹³²

The Assembly’s “executive authority” is discharged through the First and Deputy First Minister, and up to ten Ministers with departmental responsibilities.¹³³ The First Minister is selected from the party that receives the highest number of votes in Assembly elections, and the Deputy First Minister is selected from the second highest vote getting party.¹³⁴ Ministries are allocated based on the number of seats a party has in the Assembly.¹³⁵

C. Decommissioning, Prisoner Release, a Bill of Rights, and Identity

¹³⁰ Id.

¹³¹ Id.

¹³² Id. The UK’s exit agreement (Brexit) with the European Union - including the Northern Ireland Protocol - were negotiated exclusively by the UK without any Northern Ireland government involvement.

¹³³ Id.

¹³⁴ Id. Originally, the first and deputy first minister positions were designated for the top vote getting party in each community. That was changed in the 2006 St. Andrew’s Agreement to the top two vote getting parties.

¹³⁵ Id. The proportional distribution of Ministries followed the European Union’s d’Hondt method of allocating leadership positions. Silvia Kotanidis, “Understanding the d’Hondt Method,” European Parliamentary Research Service. Its purpose is to prevent “domination of parliamentary political life by only one or two large political groups,” and ensure “smaller parties have a say on the political agenda. Id.

The GFA called for the total decommissioning of weapons within two years, and the release of qualified prisoners.¹³⁶ Mitchell believed there would not have been a peace deal without the early release of prisoners.¹³⁷ The agreement called for the enactment of a Bill of Rights.¹³⁸ It also recognized the birthright of citizens of Northern Ireland to identify as British, Irish or both.¹³⁹

D. Police Reform

Police reform received significant attention from Mitchell. For nationalists, “[p]olicing went to the heart of [its] agenda for radical change and reform in Northern Ireland;” while “for unionists, policing was the touchstone for everything valued and believed.”¹⁴⁰ Thus, policing was a lightning rod issue for both communities.

“To the unionist population, the Royal Ulster Constabulary (RUC) had been and remained the defenders of law and order against decades of republican violence.”¹⁴¹ Unionists appreciated the sacrifices RUC members made and the

¹³⁶ NI Peace Agreement, Policing and Justice, Prisoners. The term qualified meant prisoners from paramilitary organizations who maintained “a complete and unequivocal ceasefire.” *Id.*

¹³⁷ George Mitchell, Speech at U.S. Institute of Peace (March 13, 2017). Mitchell noted that we couldn’t ask a widow or surviving family member of a Troubles victim to forbear their grief, but we could and did ask them to understand that the violence could not be stopped without early prisoner release. *Id.*

¹³⁸ NI Peace Agreement, Democratic Institutions, Legislation. Despite government promises at various times since 1998, a Bill of Rights has not been enacted.

¹³⁹ NI Peace Agreement, Constitutional Issues.

¹⁴⁰ Millar, *Supra* note 98, p. 86.

¹⁴¹ F.J.M. Madden, *Understand Irish History*, McGraw-Hill Companies, Inc. (2010), p. 293.

blood they shed.¹⁴² “Nationalists, however, saw the RUC as a biased organization that supported and gave aid to the discrimination they suffered.¹⁴³ These diametrically opposing views meant nothing was more essential to ensuring peace in Northern Ireland than how this sensitive issue was handled.

Reform was imperative. Understanding this, the GFA stated that “policing is a central issue to any society,” and that “the agreement provides the opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole.”¹⁴⁴ The agreement called for the RUC to be reformed by an Independent Commission, in accordance with “principles on policing as set out in the Agreement.”¹⁴⁵ The GFA stated the police service must be “professional, effective, efficient, fair and impartial, free from partisan political control, accountable under the law for its actions and to the community it serves, representative of the society it polices,

¹⁴² More than 500 members of the RUC were killed during the Troubles. McKittrick, Kelters, Feeney, Thornton and McVea, Supra note 1, p. 1555.

¹⁴³ Madden, Supra note 141, p. 293. In Seamus Mallon’s view, “what we had (RUC) was largely a unionist police force for a unionist people.” Mallon, Supra note 20, p. 128. Nationalists remembered that the RUC took the unionist side during the civil rights movement, conducted lengthy incommunicado interrogations of nationalist suspects, and engaged in collusion with members of loyalist paramilitary groups who murdered Catholic civilians. “When security forces operate outside the law, [it] gives protesters and insurgents the opportunity to undermine respect for the regime’s authority. The cost to the state may be higher if the authorities also fail to prosecute members of the security forces who break the law.” Smith, Supra note 6, p. 9.

¹⁴⁴ NI Peace Agreement, Policing and Justice.

¹⁴⁵ Id.

and operate within a coherent and co-operative criminal justice system which complies with human rights norms.”¹⁴⁶

Article 7 of the Universal Declaration of Human Rights (UDHR) states that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.”¹⁴⁷ At its core, the GFA sought reforms that would ensure the police adhered to this bedrock rule of law principle by treating everyone equally under the law.¹⁴⁸

To accomplish this in Northern Ireland meant transforming the police culture, making police ethics a priority in police practices, and restructuring the department. This could only be accomplished by disbanding the RUC and creating a new police service. The agreement’s terms of reference for the “Independent Commission on Policing for Northern Ireland (the Patten Commission)” included making findings and bringing proposals in the areas of “composition, recruitment, training, culture, ethos and symbols” so that the new police service could “enjoy

¹⁴⁶ Id.

¹⁴⁷ “It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” Preamble, Universal Declaration of Human Rights, United Nations General Assembly Resolution 217 A (III) of 10 (December 1948). The UDHR is a normative document of human rights, not a legally binding one. Raymond M. Brown, “The Civil Rights Movement’s Early Embrace of Human Rights,” *New Jersey Lawyer* (Feb. 2014), p. 63.

¹⁴⁸ When State institutions are incapable of providing that protection, or in fact deny a person their right to receive it, change is required to both end government abuses and to ensure the abuses do not reoccur. Brian Gormally, Director, CAJ Just News (March 2020), p. 7. The State has a “negative obligation” to avoid human rights abuses and a “positive obligation to protect the human rights of all.” Ibid., p. 6.

widespread support from, and [be] seen as an integral part of the community as a whole.”¹⁴⁹

E. Reconciliation

The Troubles death toll was 3,588 at the time the GFA was signed.¹⁵⁰ On reconciliation, the GFA “recognized that victims have a right to remember as well as to contribute to a changed society:” and said “[t]he achievement of a peaceful and just society would be the true memorial to the victims of violence.”¹⁵¹ The agreement, however, did not specify how that could be accomplished, nor did it recommend any type of transitional justice or truth recovery mechanism for dealing with the legacy of the past. Years later, Mitchell acknowledged this omission was a major flaw in the agreement.

VI. Immediate Challenges - the Summer of 1998

Mitchell hoped two things could happen before Orange Order parade season began in July - an island-wide vote on the agreement and Assembly elections. Historically, Orange Order parades have raised emotions and inflamed

¹⁴⁹ NI Peace Agreement, Policing and Justice, Annex A. The Patten Commission was given 15 months to conduct its review and issue a final report; this work was done in conjunction with a “review of the criminal justice system.” NI Peace Agreement, Policing and Justice. The Commission completed its work on time.

¹⁵⁰ McKittrick, Kelters, Feeney, Thornton and McVea, Supra note 1, p. 1431.

¹⁵¹ NI Peace Agreement, Reconciliation and Victims of Violence.

passions in Northern Ireland. 1998 was no different.¹⁵² Still, the island-wide vote and Assembly elections took place before July like Mitchell wanted.

In May, the GFA went before voters north and south.¹⁵³ It was the “first all-island vote in eighty years.”¹⁵⁴ The GFA passed overwhelmingly in the referendum, despite vociferous opposition by the DUP and some UUP members.¹⁵⁵ 94 per cent of the voters in the 26 county Republic and 71 per cent

¹⁵² When the Northern Ireland Parades Commission banned the July 12th Orange Order march down the Garvaghy Road in Drumcree, County Armagh, unionist anger exploded in response to the decision. Whether the Orange Order could march “down over a hundred yards of Garvaghy Road, a highly Republican neighborhood,” was up to the Parades Commission. Blair, *Supra* note 45, p. 161. Blair called “[t]he whole thing a nightmare,” because “[b]anning it caused tens of thousands of Unionists to take to the streets,” and “[a]llowing it caused riots in Republican areas.” *Ibid.*, p. 161-62. Despite the ban, tens of thousands of Orange Order marchers gathered in a scene described as resembling “a medieval siege . . . complete with battering rams and the modern equivalent of boiling oil.” Powell, *Supra* note 1, p. 128. Sectarian violence flared throughout the province. It ended only after three Catholic boys, ages 8 - 10, were murdered in a fire in their home in Ballymoney, Co. Antrim. Dean Godson, *Himself Alone*, Harper Perennial (2004), p. 384. After visiting the Quinn family, Trimble said, “[n]o road is worth these lives.” *Id.*

¹⁵³ The referendum amended Article 2 and 3 of the Irish Constitution by removing Ireland’s claim to the territory of Northern Ireland. Kinealy, *Supra* note 15, p. 284.

¹⁵⁴ Mitchell, *Supra* note 38, p. 188. It’s the day “the political agreement became the ‘people’s agreement.’” Simon Coveney, comments at the “20 Years of Peace Conference,” New York City (Feb. 22, 2018).

¹⁵⁵ Paisley campaigned against the agreement, calling it “treacherous;” while Trimble campaigned for a “yes” vote, saying it “provided the opportunity of a lifetime to create a new and representative government.” Kinealy, *Supra* note 15, p. 284. Trimble and Hume appeared on stage at a Belfast “Concert for Yes” with Bono who raised their hands with his in an iconic photographic moment of “unity for peace.” The photo ran on the front pages of NI’s newspapers, and it is credited with helping push the unionist vote in favor of the GFA above 50%. The photo “became the defining image of the Good Friday Agreement.” “When Bono Met Trimble and Hume,” BBC News NI (April 1, 2023); <https://www.bbc.com/news/av/uk-northern-ireland>.

of voters in the six counties of Northern Ireland voted for peace.¹⁵⁶ The message was unmistakable. The people wanted the peace Mitchell had delivered.

In June, elections were held for the new Northern Ireland Assembly. Trimble's UUP won 28 seats, Hume's SDLP won 24, the DUP won 20, Sinn Fein won 18, and 18 went to other parties.¹⁵⁷ When the new Assembly convened in July, it elected the Executive's leaders on a cross-community basis.¹⁵⁸ Since the UUP won the most votes and the SDLP won the second most votes, the UUP's Trimble became First Minister and the SDLP's Seamus Mallon became Deputy First Minister.¹⁵⁹ Cabinet Ministers, however, were not appointed. This meant the Assembly was unable to function, which led to Mitchell's return to Northern Ireland.

August brought a deadly crisis. The Real IRA (RIRA), a group of dissident republicans who rejected the GFA, detonated a bomb on a crowded shopping street in the center of Omagh, Co. Tyrone, killing 29 people and injuring 200.¹⁶⁰ The death toll at Omagh was the worst single day tragedy in the north.¹⁶¹ Despite the devastating atrocity, the peace held.

¹⁵⁶ Mitchell, Supra note 38, p. 188.

¹⁵⁷ Kinealy, Supra note 15, p. 284.

¹⁵⁸ Powell, Supra note 1, p. 118.

¹⁵⁹ NI Peace Agreement, Strand 1. Mallon took the position instead of Hume, who was a member of the European Parliament.

¹⁶⁰ Coogan, Supra note 21, p. 687. The RIRA was a dissident group of former IRA members headed by Michael McKevitt and Bernadette Sands, the sister of hunger striker Bobby Sands. They still believed the armed campaign was necessary to drive-out the British. Id.

¹⁶¹ Kinealy, Supra note 15, p. 286. No one has ever been convicted of the bombing, although 4 men were found liable for the bombing in civil court. Michael Gallagher, a

VII. Implementation Problems

The island-wide plebiscite in May demonstrated to political leaders that the people wanted peace. This meant they could not disavow the agreement. They could, however, slow-walk its implementation by placing obstacles in its path, which is what they did.

The Northern Ireland Assembly has been suspended throughout most of its history, and political support for policing reforms was absent for many years after the agreement. Additionally, full weapons decommissioning took longer than the two-year timeframe set forth in the GFA.¹⁶² In this section, the Northern Ireland

father of one of the victims, said the fact that no one has been charged with murder for Omagh, “is quite horrendous.” Freya McClements, “Omagh Bombing: ‘I believe people in privileged positions have protected those responsible,’” Irish Times (Aug. 12, 2023); <https://www.irishtimes.com/ireland/2023/08/12/omagh-bombing>. He noted that those killed were “victims of the Good Friday Agreement,” and that the “truth” was “the 32nd victim of Omagh.” *Id.* In 2021, a Belfast High Court Judge called on the Irish and Northern Ireland governments to conduct an “Article 2 (right to life) ECHR” (European Court of Human Rights) investigation into whether the bombing could have been prevented had the governments taken “a much more aggressive approach towards the suspected terrorist(s).” Anthony Neeson, “Call for New Omagh Bombing Probe,” Irish Echo (August 3, 2021), p. 4. Great Britain responded by announcing it would hold an independent statutory inquiry into whether the police could have disrupted the Real IRA attack and prevented the bombing by acting on intelligence in its possession. Ali Gordon and Matt Fox, “Omagh Bombing: UK Government Announces Independent Statutory Inquiry,” BBC News NI (Feb. 2, 2023); <https://www.bbc.com/news/uk-northern-ireland-64495873>. Ireland has not yet committed to conducting its own independent inquiry.

¹⁶² Under the GFA, all participants reaffirmed “their commitment to the total disarmament of all paramilitary organizations . . . to continue to work constructively and in good faith with the Independent Commission, and to use any influence they may have, to achieve decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement.” NI Peace Agreement, Decommissioning. Mitchell got the idea of sequencing weapons decommissioning from what was done in other conflict negotiations. In this case, decommissioning was to take place alongside getting the agreement’s new institutions - like the Assembly - up and running. He took a broad approach to defining the issue, which allowed him to come-up with a creative solution. Leonard L. Riskin,

Assembly's dysfunction will be reviewed, and implementation of policing reforms will be considered.

A. Northern Ireland Assembly

By 1999, Cabinet Ministers still had not been appointed due to arguments over decommissioning. Hence, government authority still had not devolved to the Assembly. This situation forced Mitchell's return to Northern Ireland to hold another round of intense negotiations.¹⁶³

Mitchell was able to win Sinn Fein's assent for IRA weapons decommissioning to start once the Northern Ireland Executive met. This persuaded Trimble and the UUP to form a government that would include Sinn

"Understanding Mediators' Orientations, Strategies and Techniques: A Grid for the Perplexed," *Harvard Negotiation Law Review*, Vol 1:7 (Spring 1996), p. 32-35. Blair acknowledged there was "creative ambiguity" around the decommissioning language. But, he said, it served everyone well for a time. "The terrorism stopped. The bombs stopped." Blair, *Supra* note 45, p. 190.

Implementation of the agreement's decommissioning terms was elusive. The IRA did not earnestly begin weapons decommissioning until two months after 9/11. Adams contended 9/11 had no impact on the IRA; Powell, however, believed 9/11 made IRA terrorism "obsolete," effected American financial support, and pressured the IRA "to choose the exclusively political route." Powell, *Supra* note 1, p. 202, 310. In 2005, Adams publicly appealed for the IRA "to fully embrace and accept" peace by eschewing the military path and violence; he argued the armed struggle had been necessary in the past, but now a genuine alternative existed - the peaceful, political path being pursued by Sinn Fein - to a united Ireland. Madden, *Supra* note 141, p. 316. A few months later, the IRA announced "the end" of the armed struggle and instructed Volunteers to dump their remaining arms. *Id.* Soon thereafter, independent observers, Reverend Harold Good and Father Alec Reid, observed the IRA decommissioning process; and the ICD's head, General de Chastelain, reported that "the arms decommissioned represent the totality of the IRA arsenal." Powell, *Supra* note 1, p. 273.

¹⁶³ Madden, *Supra* note 141, p. 298.

Fein.¹⁶⁴ The Executive was formed, when Cabinet Ministers were finally appointed.¹⁶⁵ 19 months after the GFA was signed, legislative authority devolved to the Northern Ireland government for the first time.¹⁶⁶ This period of devolution, however, had a very short life. After 10 weeks, the first of many Assembly suspensions over stalled weapons decommissioning occurred, and direct rule from London was restored.¹⁶⁷

Unfortunately, the Assembly's history over the past 25 years has been a sad one. Since devolution began in Northern Ireland, the Assembly has been suspended for over "35% of its lifespan."¹⁶⁸ Lack of progress on decommissioning led to three suspensions in the Assembly's initial three years.¹⁶⁹ A fourth suspension from 2003-07 was in part due to lack of progress on policing issues.¹⁷⁰ Later, a three-year suspension was due to a scandal involving monies spent on a Renewable Heating Incentive Scheme and a demand for stand-alone Irish language legislation.¹⁷¹

¹⁶⁴ McKittrick and McVea, Supra note 123, p. 226.

¹⁶⁴ Id.

¹⁶⁵ Two Sinn Fein Ministers - McGuinness and Barbara de Brun - were appointed to lead the two highest spending departments – Education and Health. Coogan, Supra note 21, p. 690.

¹⁶⁶ Kinealy, Supra note 15, p. 291-92.

¹⁶⁷ Kinealy, Supra note 15, p. 292.

¹⁶⁸ Eimear Flanagan, "Stormont without the Leadership for Third of Its Lifespan," BBC News NI ((June 24, 2022); <https://www.bbc.com/news/uk-northern-ireland>).

¹⁶⁹ Id.

¹⁷⁰ Kinealy, Supra note 15, p. 310-11.

¹⁷¹ Flanagan, "Stormont without Leadership for Third of Its Lifespan," Supra note 168. The suspension ended when an agreement was reached on legislation appointing "both an

In 2022, the Assembly collapsed again because of the DUP's objection to the Northern Ireland Protocol, which had been agreed to by the UK as part of its withdrawal agreement - Brexit - from the European Union (EU).¹⁷² This reason gave the DUP political cover for refusing to enter government. Sinn Fein had garnered the most votes in the most recent Assembly elections, the DUP came in second and the Alliance Party was a strong third.¹⁷³ The election results meant that, for the first time, Sinn Fein was entitled to the First Minister position. The DUP was entitled to the Deputy First Minister position, but they did not want it a

Irish language commissioner and an Ulster-Scot language commissioner." "Stormont Deal: Arlene Foster and Michelle O'Neill New Top NI Ministers," BBC Northern Ireland News (Jan. 11, 2020); <https://www.bbc.com/news/uk-northern-ireland-51077397>.)

¹⁷² The Brexit agreement between the UK and EU is an international treaty. It was negotiated by former British Prime Minister Boris Johnson and passed by the British Parliament.

¹⁷³ Mark Landler, "In Historic Shift, Sinn Fein is Set to Take over in Northern Ireland," NY Times (May 7, 2022), p. A1. In the April 2022 election, Sinn Fein won 27 seats to the DUP's 24. The Alliance Party had its best showing ever, winning 17 seats. "Sinn Fein Celebrates an Historic Election Win in Northern Ireland," Associated Press (May 7, 2022).

government headed by Sinn Fein.¹⁷⁴ So, an Executive has not been set-up, and the Assembly has not been operating.¹⁷⁵

In February 2023, the UK and EU signed the “Windsor Framework,” modifying the Protocol and smoothing the flow of goods between the UK and Northern Ireland.¹⁷⁶ The DUP stated it would take its time to review

¹⁷⁴ Freya McClements, “NI Assembly Unable to Function after DUP Blocks Vote for Speaker,” Irish Times (May 20, 2022); <https://www.irishtimes.com/news/politics/ni-assembly-unable-to-function-after-dup-blocks-vote-for-speaker>. A Speaker can only be elected with cross-community support from a majority of unionists and nationalists, which “is not possible without the DUP.” Jayne McCormack, “Northern Ireland Assembly to Be Recalled in Speaker Election Bid,” BBC News NI (July 21, 2022); <https://www.bbc.com/news/uk-northern-ireland>. Without a Speaker, no Assembly business can be conducted, “including the nomination of new first and deputy first ministers.” “SDLP Leader Plans to Form Official Opposition at Stormont,” Irish Times (July 25, 2022). The DUP position on the Protocol was expressed by party leader Jeffrey Donaldson “If we get new arrangements that restore our position within the United Kingdom then Northern Ireland can move forward on devolved matters.” David Young, “Protocol Bill Will Restore North’s Place within UK, Says Donaldson,” BreakingNews.ie. (June 17, 2022).

¹⁷⁵ Seanin Graham, “DUP Will Watch Protocol Bill ‘Like Hawks’ amid Growing Wariness of Johnson, Says Leading Academic,” Irish Times (June 16, 2022); <https://www.irishtimes.com/politics/2022/06/16/dup-will-watch-protocol-bill-like-hawks-amid-growing-wariness-of-boris-johnson-says-leading-academic>. The Assembly has not been officially suspended because legislation has extended the grace period to form a government to January 2024. Jayne McCormack, “Stormont: Assembly Election Delayed by Up to a Year,” BBC News NI (Feb. 9, 2023); <https://www.bbc.com/news/uk-northern-ireland-64574751>. It has been left to civil servants to run the Northern Ireland government, while in this limbo status.

¹⁷⁶ John Campbell, “Brexit: What Does the Windsor Framework Mean for Business,” BBC News NI (Feb. 28, 2023); <https://www.bbc.com/news/uk-northern-ireland-64793597>. At the Framework’s heart is the idea of green lanes at Northern Ireland ports for goods staying in Northern Ireland (minimal paperwork), and red lanes (custom checks) for goods traveling to the Republic. Id.

the Framework and reach a “collective decision” on what additional reforms under the Framework are necessary to protect Northern Ireland’s position in the UK internal market.¹⁷⁷ While that internal party debate continues, the DUP has yet to allow a government to be formed.¹⁷⁸

When the Assembly is suspended, direct rule from London is imposed. Nevertheless, the stop-and-start manner of local governing is precarious for Northern Ireland’s future. This suspension process has been weaponized by both sides, and polarized politics has become deeply entrenched in the system. Instead of focusing on a shared future, the Assembly has become “a venue for [a] culture war over the past,” and the political system has become “a mechanism to contain bitterness, rather than a platform for transformation.”¹⁷⁹

¹⁷⁷ Matt Fox and Jane McCormack, “Brexit: DUP Will Come to a ‘Collective Decision’ on Windsor Framework,” BBC News NI (Feb. 28, 2023); <https://www.bbc.com/news/uk-northern-ireland-64794091>. Donaldson said the DUP wants “clarity” on legislation around the “Stormont brake” mechanism in the Windsor Framework, which would give members of the Assembly from two parties “the power to raise concerns with the UK government over aspects of EU law that would still apply in Northern Ireland,” and the DUP wants to see proposed amendments to the 1998 Northern Ireland Act on Northern Ireland’s constitutional status within the UK. Freya McClements and Mark Paul, Irish Times (March 5, 2023), “DUP Calls for ‘Less Oversell and More Reality’ from British Government on Windsor Framework;” <https://www.irishtimes.com/world/uk/2023/03/05/british-government-in-talks-with-dup-over-windsor-frameworks-stormont-brake>.

¹⁷⁸ At the time this paper was written, the debate has been going on for 8 months. If, and when, the DUP will enter the Stormont Assembly with Sinn Fein is presently unknown. With the Assembly (Strand 1) suspended and North-South Executive bodies not functioning (Strand 2), the role of the British-Irish Intergovernmental Conference (Strand 3) has increased significance in ensuring cooperation between London and Dublin as overseers of governance in Northern Ireland. Anthony Neeson, “An Election of Great Consequence,” Irish Echo ((May 31, 2023), p. 2.

¹⁷⁹ Duncan Morrow, “The Long Good Friday,” Corrymeela Magazine, Vol. 18, No. 1 (2018), p. 16. Issues are treated in a zero-sum manner. “You suggest this. We oppose. You like

The conflict continues but in a different arena. It has moved from the streets to Stormont, where things remain stuck in the past. Politics has lost its focus on improving the “common good, as hardline parties play to their bases, and changes necessary to move society forward are stymied.”¹⁸⁰ The damage caused by political divisiveness, as well as the delay in addressing the legacy of the Troubles, diminishes prospects for future progress.

B. Policing

The Patten Commission Report (Report of the Independent Commission on Policing for Northern Ireland) was released in September 1999. The Report was entitled “A New Beginning: Policing in Northern Ireland.” In accordance with the terms of reference in the GFA, the Report called for the radical transformation of the RUC into a new police service named the Police Service of Northern Ireland (PSNI).¹⁸¹ The PSNI was established, and the RUC disbanded.

The Report also called for new police accountability measures. A Policing Board and a Police Ombudsman’s Office to oversee the Chief Constable and police

this. We don’t. . . If one looked happy, the other looked for a reason to be sad.” Blair, Supra note 45, p. 172.

¹⁸⁰ Monica Williams, “What Part of the Agreement Is Hard to Understand,” *Corrymeela Magazine*, Vol. 18, No. 1 (2018), p.14. Under the d’Hondt system of Assembly voting, parties must “designate as either Nationalist or Unionist,” and a certain percentage of votes from each side is required to pass legislation. (The Alliance Party does not “designate” itself with either community.) The system feeds into identity politics as parties play to their base. McKearney, Supra note 1, p. 211.

¹⁸¹ Patten Report, para 17.6, p. 99. In addition to the name change, a new badge and uniform was recommended. Id.

force were created.¹⁸² Additionally, a District Policing Partnership Board (DPPB) was set-up for each District Council, so police could be advised of local community concerns and work on them in partnership with the community.¹⁸³

The Report highlighted the importance of transparent police work and proposed a Police Code of Ethics that integrated “the European Convention on Human Rights into police practice.”¹⁸⁴ Significantly, instruction on human rights law was made a top priority.¹⁸⁵ The Report also called for changes in police training and recruitment.¹⁸⁶ These measures were instituted.

¹⁸² Patten Report, para. 6.2, p. 28; para. 6.42, page 37-38. “The statutory function of the Northern Ireland Policing Board should be to hold the Chief Constable and the police service publicly to account.” *Ibid.*, par. 6.3, p. 28. “We cannot emphasize too strongly the importance of the office of Police Ombudsman in the future policing arrangements proposed in this report. The institution is critical to the question of police accountability to the law, to public trust in police and to the protection of human rights.” *Ibid.*, par. 6.42, p. 37-38. Among other responsibilities, the Ombudsman’s Office investigates complaints about police conduct in how Troubles-legacy matters were investigated and handled.

In 2022, the Northern Ireland Police Ombudsman’s Office issued two significant reports on collusion between members of the RUC and loyalist paramilitaries. In Operation Greenwich, the Ombudsman found “collusive behavior” between the RUC and loyalist paramilitary killers in the murder of 19 people between 1989-93. (NI Police Ombudsman’s Office, Jan. 14, 2022). In Operation Achilles, the Ombudsman found “intelligence failures” and “collusive behavior” between the RUC and UDA paramilitary killers in 11 murders between 1990-98. (NI Police Ombudsman’s Office, Feb. 8, 2022). These damning reports demonstrate the falsity of any historical narrative that suggests paramilitary murders involving collusion with government agents did not occur during the Troubles.

¹⁸³ Patten Report, para 6.26, p.34. The views expressed by DPPBs “should be taken fully into account . . . in the formulation of policing plans and strategies.” *Ibid.*, par. 6.30, p. 35.

¹⁸⁴ Patten Report, para. 4.8, p.20.

¹⁸⁵ Patten Report, para. 4.1, p.18; para. 4.7-4.10, p. 20.

¹⁸⁶ Patten Report, para. 16.4, p. 91-92; para. 16.21, p. 95.

Importantly, the Report said the police force must become representative of the society it polices. In order “to be fully effective,” the Report said the PSNI must include “appropriately large numbers of nationalists, including republicans.”¹⁸⁷ At the time, the ratio of Protestants to Catholics on the police force was 92% to 8%.¹⁸⁸ The Report recommended a 50-50 recruitment policy “at least for ten years” with “an equal number of Protestants and Catholics drawn from the pool of qualified candidates.”¹⁸⁹ The PSNI, however, never reached that level of balance. The present ratio is approximately three Protestant officers for every Catholic officer on the force.¹⁹⁰

¹⁸⁷ Patten Report, para. 15.10, p. 88.

¹⁸⁸ Enda McClafferty, “Nationalist Confidence in PSNI ‘at Rock Bottom’ - Sinn Fein,” BBC News (February 21, 2019); <https://www.bbc.com/news/uk-northern-ireland>.

¹⁸⁹ Patten Report, para. 15.10, p. 88. “The policy of balancing one Catholic for every non-Catholic recruit” ended in 2011. Julian O’Neill, “PSNI Recruitment Campaign: Attracting Catholics still an Issue for Police,” BBC News NI (Feb. 2, 2020); <https://www.bbc.com/news-northern-ireland-51326781>. Part of the reason why Catholics have been deterred from joining the PSNI is because of “the threat of dissident republican violence and a lack of political leadership.” “Catholic Police Recruits ‘Deterred by Dissident Republican Threat,’” BBC News NI (Nov. 4, 2021); <https://www.bbc.com/news/uk-northern-ireland-foyle-west>. This fault line in the Catholic community became abundantly clear in August 2023, when a PSNI data breach resulted in personal information about all serving officers and civilian staff falling into the hands of dissidents. Many Catholic police officers had kept their PSNI employment secret. Now they would have to move or leave the job. Denis Bradley, “In Northern Ireland Everyone Still Knows Where Your Live,” Irish Times (Aug. 19, 2023); <https://www.irishtimes.com/opinion.2023/08/19/in-northern-ireland-everyone-still-knows-where-you-live>.

¹⁹⁰ Gerry Murray, “Why Catholic PSNI Officers May Feel the Need to Carry Weapons to Mass,” Irish Times (Sept. 11, 2023); <https://www.irishtimes.com/opinion/2023/09/11/here-is-why-catholic-officers-may-feel-the-need-to-carry-weapons-to-mass>.

The effect of instituting the recommendations on accountable, human rights based, and community focused policing was transformative.¹⁹¹

Nevertheless, while many police reforms swiftly went into effect, devolution of the administration of justice to the Northern Ireland Assembly took many years.

Sinn Fein refused to support the PSNI until 2007, when they took their seats on the Policing Board and became involved with DPPBs.¹⁹² When that happened, Adams said, “[t]his shows that the war is over. And if the war is over, we have to build peace.”¹⁹³ In 2010, responsibility for policing and justice finally devolved to the Northern Ireland Assembly. After 38 years, the administration of Northern Ireland’s police, courts and prisons from London ended, and the justice system became a local responsibility, with accountability to the people of Northern Ireland.¹⁹⁴ Alliance Party leader David Ford was selected to serve as the Northern

¹⁹¹ Trimble was seen as having failed to vigorously defend the RUC, and his power began to wane after the Report’s release.

¹⁹² “Sinn Fein Attending Policing Board for First Time;” www.ireland.com/newspaper/breaking/2007/0531. The move positioned Sinn Fein for an increase in its polling numbers in the 2007 Assembly elections.

¹⁹³ William Graham, “Sinn Fein Will Work with Police,” Los Angeles Times (Jan. 29, 2007); <https://www.latimes.com/archives/la-xpm-2007-jan-29-fg-noireland29-story.html>.

Blair called Sinn Fein’s support for policing “a historic decision,” and Ahearn said it was “profoundly in the interests of everybody.” “Northern Ireland Parties Must Get on with It;” www.rte.ie/news/2007/0129.

¹⁹⁴ All parties, except the UUP, voted for devolution of the administration of justice. Anthony Neeson, “North Vote Embraces Police, Justice Powers,” Irish Echo (March 10, 2010), p. 2. Deputy First Minister McGuinness called it “a huge step forward.”

When the RIRA gunned down two soldiers in 2009, McGuinness stood with First Minister Peter Robinson and PSNI Constable Hugh Order to condemn the killings. He said the killers, “have betrayed the political desires, hopes and aspirations of all the people who live on the island.” Ed Curran, “After 37 Years, Martin McGuinness at Last Reaches Point of No Return,” Belfast Telegraph (March 16, 2009), <http://www.belfast>

Ireland Justice Minister.¹⁹⁵ Although It had taken nearly a decade, this marked a milestone accomplishment for the GFA.

VIII. Unfinished Business - Dealing with the Legacy of the Past

At the time the peace agreement was signed, thousands of murders were unsolved. This left deep and lasting individual and societal wounds. Yet, the GFA failed to propose a transitional justice or truth recovery mechanism or recommend a specific way to foster reconciliation between the two communities. The problematic ramifications of this failure will be discussed in this section.

The GFA called on Northern Ireland’s political leaders to “strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements,” and to redress the suffering of victims “as a necessary element of reconciliation.”¹⁹⁶ But this general statement of policy

telegraph.co/opinion. In 2013, McGuinness gave a speech at the Warrington Peace Center in Great Britain. Two decades earlier, an IRA bomb killed two young boys in the town. The father of one of the boys, Colin Parry, invited McGuinness to speak. He spoke about the importance of “truth recovery, and acknowledgment” in fostering reconciliation, and he expressed “sorrow and sympathy for the hurt and loss” caused by the conflict.” Martin McGuinness, “Annual Peace Lecture,” The Tim Parry and Johnathan Ball Peace Center, Warrington, England (Sept. 18, 2013). Significantly, he also said: “I was once in the IRA. I am now a peace builder. I don’t expect anyone to take me at my word, I expect them to take me by my deeds.” Id.

¹⁹⁵ Editorial, “A Big Step,” Irish Echo (April 14, 2010), p. 15. The Alliance Party bills itself as neither unionist nor nationalist. It is designated as “other” in the Assembly. Seen as a fair arbiter on issues involving criminal justice, the Justice Ministry in the devolved Stormont government has usually gone to the Alliance Party. Alliance Party leader Naomi Long was the most recent Justice Minister before the Assembly collapsed.

¹⁹⁶ NI Peace Agreement, Declaration of Support. The GFA also declared: “We must never forget those who have died or been injured, and their families. But we can best honor them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.” Id.

failed to advise the parties on ways to build trust between both traditions, promote societal healing, or handle the transitional justice issues that follow every conflict.¹⁹⁷

Dealing with the legacy of the past as a transitional justice mechanism is an important element of ending any conflict. A truth recovery process about what happened can foster societal reconciliation, break down barriers of mistrust and prejudice between former enemies, and support healing for victims and survivors.¹⁹⁸ It is also important to provide victims and survivors a public forum to talk about their loss. A failure to do so sends them a message that the lives of their deceased loved ones do not matter. This is not a message of reconciliation.

On the GFA's 20th anniversary, Mitchell acknowledged the agreement's shortcomings on this critical issue. He noted that the agreement had offered peace and stability for Northern Ireland but not reconciliation.¹⁹⁹ By neglecting to

¹⁹⁷ The four pillars of transitional justice are "truth, justice, reparation and non-recurrence." Pablo de Greiff, UN Special Rapporteur, CAJ Newsletter (February/March 2016), p. 4. These matters were the focus of the short-lived Forum of Peace and Reconciliation in the 1993 Downing Street Declaration. Hume, Supra note 33, p. 190.

¹⁹⁸ John Hume said, "[t]he first necessary step in the healing process is creation of total equality of treatment of all citizens in Northern Ireland. On the basis of that equality . . . comes the process of reconciliation." The "challenge," he said, is to put in place institutions for the reconciliation process to take place. Hume, Supra note 33, p. 50. The GFA did not propose any institutions for that.

Truth recovery as part of a reconciliation process can take many forms. The South Africa Truth and Reconciliation Commission - where victims were given a voice and allowed to tell their stories, and perpetrators publicly testified about the crimes they committed - is perhaps the most famous one. Victims, who learn the truth about what happened to loved ones, can be healed; and society can heal too when that truth is made public. Jennifer Llewellyn and David Philpott, Restorative Justice, Reconciliation, and Peacebuilding, Oxford University Press (2014), p. 156.

¹⁹⁹ Mitchell was aware that the "lingering resentment" of those who lost loved ones continued after the peace because the GFA did not address how to deal with the past.

spell out a mechanism for dealing with the past, the issue has been overtaken by political squabbles and gone unaddressed. The rhetoric about delivering truth and accountability never ends, but nothing concrete happens. As a result, thousands of victims' families have been left waiting decades for answers to questions about the death of their loved ones.²⁰⁰ In the quarter-century since the agreement was signed, government attempts to foster societal reconciliation have been fraught

George Mitchell, comments at "20 Years of Peace Conference," New York City (Feb. 22, 2018). He was also aware this undercut efforts to foster "reconciliation." *Id.* But, he said, the reconciliation issue was pushed off for another day because there was not agreement on how to handle it at that time.

²⁰⁰ If any of us lost a loved one under these circumstances, among other things, we would want to know whether the person died alone or with others? Did they suffer before dying? Were any final words spoken? How did it happen? Why? Who was responsible? Will those responsible be held accountable? And we would deserve answers to each of these questions.

with failure.²⁰¹ The latest British proposal for dealing with the legacy of the Troubles calls for the creation of an Independent Commission for Reconciliation and Information Recovery (ICRIR).²⁰² The ICRIR will be empowered to offer immunity to those who provide it an account that is “true to the best of [the

²⁰¹ In 2009, the Consultative Group on the Past proposed the creation of an Independent Legacy and Reconciliation Forum to deal with the legacy of the past through a process of reconciliation, justice, and information recovery. (“Report of the Consultative Group on the Past” (Jan. 23, 2009). p. 16.) The recommendations were rejected. In 2014, the Stormont House Agreement (SHA) called for the creation of new institutions to promote reconciliation, uphold the rule of law, promote human rights, acknowledge the suffering of victims, facilitate the pursuit of justice, and address Northern Ireland’s past in a balanced, proportionate, fair and equitable way. (Stormont House Agreement, Ireland-United Kingdom, (Dec. 23, 2014)). The SHA was debated for 8 years, but never implemented.

The SHA has been replaced by the Northern Ireland Troubles (Legacy and Reconciliation) Act (2023) which is aimed at ending “vexatious claims” against veterans and military personnel. The Conservative government embraced the bogus argument that military veterans were being subjected to vexatious prosecutions. To end these cases, the government abandoned the Stormont House Agreement and replaced it with the Northern Ireland Troubles (Legacy and Reconciliation) Act. Prime Minister Theresa May claimed security forces were responsible for 10% of Troubles deaths yet accounted for 30% of the legacy workload, and terrorists accounted for 90% of the killings but were treated more favorably. Gareth Gordon, “Theresa May on the Attack over Troubles’ Soldiers Cases, BBC News Northern Ireland (Feb. 22, 2017). The numbers, she said, indicated an unfairness in the process. Her assertion was rebutted by the Northern Ireland Victims’ Commissioner, who noted there is no evidence to support May’s position. Stephen Walker, “Victims’ Commissioner Says PM’s Facts Incorrect,” BBC News Northern Ireland (May 11, 2018). At the time, the Public Prosecution Service (PPS) had made 26 decisions on Troubles-legacy cases: 13 involved republican paramilitaries, 8 involved loyalist paramilitaries and 5 were related to security forces. “New Office to Improve Support for Military Veterans,” BBC News Northern Ireland (July 29, 2019).

²⁰² Northern Ireland Troubles (Legacy and Reconciliation) Act.

applicant's] knowledge and belief²⁰³ In real terms, the grant of immunity amounts to an amnesty. Anyone convicted of a paramilitary offense, however, is not eligible for immunity.²⁰⁴

²⁰³ Id. Many are skeptical that conditional immunity will lead to truth and information recovery. The standard for immunity is very low. There is no requirement that new information beyond that already on the public record must be provided to receive it. Therefore, it is difficult to see how statements made to the ICIR by immunized witnesses can be called information recovery. Worse, some feel the immunity/amnesty provision constitutes “impunity” by allowing individuals to get away with murder. As SDLP leader and Member of Parliament Colum Eastwood put it during the Bills’ final debate in the House of Commons: “[t]he Bill is an affront to human rights and Article 2 [European Convention on Human Rights]. Every single expert I have spoken to agrees with me on that, and every single victim agrees with me on that as well . . . It is an attempt by the Government and dark forces within the security apparatus of the Government to close-down access to truth and Justice. We all understand that justice will be hard to get for many families, but most of those families have not even had any truth. The process of investigation gets them truth. I can take Members to loads of families today who never once even me a police officer, even though a loved one was murdered. Does anyone here believe the IRA are going to come forward and tell us who bombed a particular pub or shot a particular person? It is utter nonsense. This is an attempt to close-down access to the truth and it is an affront to democracy. Immunity? It is impunity, giving people a license to murder.” MP Colum Eastwood, Hansard, UK Parliament House of Commons, excerpt from debate on Lords’ amendments to the Northern Ireland Troubles (Legacy and Reconciliation) Bill (Sept. 6, 2023).

²⁰⁴ Northern Ireland Troubles (Legacy and Reconciliation) Act. This provision will exclude tens of thousands of paramilitary offenders. State security officers and members of the British Army, however, are expected to take advantage of the immunity provision. Indeed, former Secretary of State for Northern Ireland Brandon Lewis said, the Bill “delivers on the Conservative Party’s manifesto commitment to the veterans of our armed forces and the RUC . . . to end the cycle of (vexatious) investigations that has plagued too many of them for too long.” Brandon Lewis, Northern Ireland Troubles (Legacy and Reconciliation) Bill, Second Reading Opening Speech; Gov. UK. The statement about vexatious investigations of soldiers has been debunked as a “false narrative” about “witch hunts” against British Army veterans.” Jack Power, “Troubles Amnesty Legislation ‘Irredeemable’” – NI Academics,” Irish Times (July 7, 2022)). <https://www.irishtimes.com/politics/oireachtas/2022/07/07/troubles-amnesty-legislation-irredeemable-ni-academics>. The statement also suggests that British Conservative Party leaders are using “victims/survivors of the violence . . . to score political points” instead of addressing social healing. Williams, *Supra* note 179, p. 14.

The Act retroactively shuts down any Troubles-related civil action filed after May 17, 2022.²⁰⁵ Thus, victims’ families will not have access to civil court for relief from human rights violations surrounding the death of a loved one. Additionally, dozens of Inquests involving Troubles-related suspicious deaths will end on May 1, 2024.²⁰⁶ Nearly 4 dozen Inquests were pending when the Bill became law. The vast majority will not be completed on time. Those matters will fall within the purview of the ICRIR.²⁰⁷ Also, the responsibility for more than 1,000 cases in the PSNI backlog of Troubles-murder investigations will be transferred to the ICRIR on that date, ending all police investigations of Troubles-murders.²⁰⁸ Finally, Ombudsman investigations of Troubles-legacy cases not completed by May 1, 2024, will close at that time, even if the matter involves newly discovered evidence.²⁰⁹ In short, the rule of law will be upended as victims’ families are denied existing legal remedies, access to the courts, and forced to rely on a new,

²⁰⁵ Northern Ireland Troubles (Legacy and Reconciliation) Act. A civil action taken in the 1975 Miami Showband Massacre case against the UK Ministry of Defense and the PSNI was settled in 2021 for nearly 1.5 million pounds. Lisa O’Carroll, “UK Government Accused of ‘Lies’ after 1.5 Million Pound Payout,” The Guardian (Dec. 14, 2021); <https://amp.theguardian.com/uk-news.2021/dec/14>. The case alleged collusion between members of the Ulster Defense Regiment and loyalist paramilitaries in the murder of 3 band members in 1976.

²⁰⁶ Northern Ireland Troubles (Legacy and Reconciliation) Act.

²⁰⁷ 50 years after the Ballymurphy massacre in which 10 innocent civilians were killed by members of the British Army Paratroop Regiment, an Inquest headed by Lady Chief Justice Siobhan Keegan determined the victims were “entirely innocent;” and found that 9 of the killings by soldiers were “unjustified.” Justice Keegan, “Coroner’s Verdict in the Matter of a Series of Deaths That Occurred in August 1971 at Ballymurphy, West Belfast,” (May 11, 2021). Many other victims’ families, like the Ballymurphy families, have been waiting decades to get the information and answers to their questions that a public Inquest can provide. As of May 1, 2024, they will be denied that right.

²⁰⁸ Northern Ireland Troubles (Legacy and Reconciliation) Act. An amendment to the Bill confirmed that the ICRIR can conduct criminal investigations and refer matters to the PPS, where it judges that to be appropriate. “Government Tables Amendments to NI Troubles Legacy Legislation,” Northern Ireland Office (Jan. 17, 2023).

²⁰⁹ Northern Ireland Troubles (Legacy and Reconciliation) Act.

dubious process for getting information and learning the truth about a loved one's murder.

The Act was unilaterally drafted by the British government, without input from victims' groups. There has been a united front of opposition to it, including the five major political parties in Northern Ireland, the Irish government, United Nations, Council of Europe, members of the U.S. Congress, many human rights groups, and, most importantly, victims' families.

The Act cleared both Houses of Parliament and received Royal Assent in September 2023. Many victims' families have filed challenges to the law on human rights grounds in the Belfast High Court.²¹⁰ During the Bills' final debate in the House of Lords, former Northern Ireland Police Ombudsman Baroness Nuala O'Loan succinctly stated the multiple problems with the law. "The conditional immunity scheme, despite the Government's amendments and others tabled by noble Lords, remains in breach of the Government's obligation under the Good Friday Agreement to provide people with access to the courts and remedies for breaches of the convention (European Convention on Human Rights). That fact is profoundly important. Victims' groups such as the Truth and Justice Movement regard this Bill as destroying their democratic and human right to truth and justice. Nobody, not even the Government, thinks that this Bill will provide truth and justice, let alone reconciliation. The Secretary of State has repeatedly acknowledged the problems with the Bill, most recently stating: 'This Government

²¹⁰ In testimony before the Oireachtas Committee in the Irish Parliament, Kieran McEvoy, Professor of Law at Queen's University, and Daniel Holder, CAJ Director, pointed out that the legislation breaches the GFA, contravenes binding international law, and proposes amnesty "broader in scope than that introduced by General Pinochet in Chile." Power, "Troubles Amnesty Legislation 'Irredeemable,'" Powers, *Supra* note 204.

believes that the conditional immunity provisions will be key to helping generate the greatest volume of information, in the quickest possible time.’ There is no evidence to demonstrate that immunity will have this effect and it is well known that former paramilitaries involved in murder really have no incentive to tell all . . . The conditional immunity scheme which the Minister is again promoting, and which we are debating, would result in impunity for serious human rights violations and the unilateral shutting down of avenues of justice for victims.”²¹¹

Both communities suffered terribly during the Troubles. As former Irish Tanaiste (Deputy Prime Minister) Simon Coveney said, “the pain and trauma of what happened [in Northern Ireland] is not owned but shared.”²¹² To foster

²¹¹ Baroness Nuala O’Loan, Hansard - UK Parliament House of Lords excerpt from debate on the Northern Ireland Troubles (Legacy and Reconciliation) Bill (Sept. 5, 2023). The Irish government is actively considering filing an interstate case challenging the law before the European Court of Human Rights (ECHR). Helana Nolan, Consul General of Ireland in New York, Ancient Order of Hibernians Webinar on “Northern Ireland Legacy Justice,” (Sept. 16, 2023). At the time this paper was written, the Irish government was waiting to receive legal advice from the Attorney General on the merits of such an undertaking. The Irish government filed the first interstate case in the ECHR against the United Kingdom in relation to the British government’s use of the “five techniques” (i.e., enhanced-interrogation methods) against the “Hooded Men” in the aftermath of internment in 1971. Ireland v the United Kingdom (Irish State Case I), 23. Eur. Ct. H.R. (1978).

²¹² Simon Coveney, “A Cautious 20th Celebration,” Irish Echo (April 17, 2018), p. 2. McGuinness delivered an address at the Warrington Peace Center in Warrington, Great Britain in 2013, twenty years after an IRA bombing killed two young Warrington boys, a three-year-old and a twelve-year-old. McGuinness used the occasion to speak about meeting Queen Elizabeth, whom he referred to as a victim. He said, “Yes, she is the head of the British State, but she is a human being and one who had been bereaved at the hands of the IRA, yet she still was clearly a supporter of the peace process.” Speech, “Martin McGuinness Addresses Victims of IRA Bomb,” The Journal.ie News (Sept. 18, 2013); <https://www.thejournal.ie/martin-mcguinness-ira-1090000-Sep2013>. The IRA assassinated Lord Louis Mountbatten, the uncle of the Queen’s husband Prince Phillip, in Co. Sligo in 1979.

healing and deliver on the shared future envisioned by the GFA, the contentious legacy of the past must be addressed.

At a U.S. Congressional hearing on Troubles victims, Dr. Anna Bryson called the Northern Ireland Troubles (Legacy and Reconciliation) Bill a “cynical” way to protect members of the state security forces and the British Army from legal accountability for their conduct under the guise of providing answers to families.²¹³ Sadly, the Bill will not deliver answers to families. It will not recover the truth about what happened. Nor will it foster reconciliation. It will in fact set reconciliation efforts back.

For Blair, conflict was “not simply a disagreement characterized by violence.” Conflict, he said, “has a history and it creates a culture, with traditions, ritual, and doctrine. It has a mind and soul as well as a body. It is enduring, and it

²¹³ Dr. Anna Bryson, Senior Lecturer at the Senator George Mitchell Institute for Global Peace, Security and Justice, Queen’s University Belfast; “Public Briefing on Truth and Accountability for Victims of the Troubles in Northern Ireland,” House Foreign Affairs Subcommittee: Europe, Energy, the Environment and Cyber (July 15, 2022). She said that one area where the Bill runs afoul of human rights protections has to do with the state’s obligation to investigate state-involved killings. Dr. Anna Bryson, “It May Be Time for a Less Diplomatic Approach with UK over Legacy Bill,” Irish Times (June 8, 2022); <https://www.irishtimes.com/opinion/2022/06/08/it-may-be-time-for-a-less-diplomatic-approach-with-uk-over-legacy-bill>. Article 2 of the European Convention on Human Rights imposes on states a duty to protect the right to life by conducting effective, efficient, independent, and transparent investigations of state-involved killings. (See Finucane v United Kingdom, European Court of Human Rights, Application no. 29178/95 (July 1, 2003). The 1989 assassination of Solicitor Patrick Finucane has yet to receive a public inquiry into the circumstances - including collusion - surrounding his death.) The failure to fulfill the human rights obligation to investigate state-involved killings raises concerns about “impunity.” See United Nations Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity” (2005).

is deep.”²¹⁴ Conflict has a strong impact on how one’s identity is formed and how people relate to each other.

Mitchell concurred with Blair’s assessment. He said: “What is most difficult to change in conflict societies is what is in the hearts and minds of people. That is what’s hard, that’s what takes a long time to change, and that change is not completed in Northern Ireland.”²¹⁵ While the absence of violence can be measured, there is no metric to gauge what is in a person’s heart.

Building trust, repairing relationships, and healing victims and society can only occur when justice and peace meet. Truth, acknowledgement, and accountability are required for that meeting to take place. These are the building blocks of a truth recovery process that can provide a strong foundation upon which people can reconcile and live in peace with each other. That is, a society in which attitudes about the “other” are put to rest in the interest of a shared community, where the unique value and dignity of each person is recognized, and where everyone is treated equally and with respect. This is the reconciled society the GFA envisioned for Northern Ireland.

Victims’ families long to know the truth about what happened to loved ones, receive acknowledgement for their loss, and see wrongdoers held

²¹⁴ Blair, *Supra* note 45, p. 191.

²¹⁵ George Mitchell, “Brexit Warning from US Senator Who Brokered Northern Ireland Peace,” Irish Times (March 4, 2018); <https://www.irishtimes.com/news/world/uk/brexit-warning-from-us-senator-who-brokered-northern-ireland-peace-1.3414426>.

accountable.²¹⁶ That is why, a generation after the Troubles ended, truth recovery is still gravely needed. In addition to the suffering of surviving families, there are societal wounds caused by divisive identity issues that undercut efforts to build mutual respect, tolerance, and parity of esteem for the other, and undermine the rule of law.

Without a genuine truth recovery process that develops a shared understanding of the causes and consequences of the conflict, communal reconciliation will not grow, victims and survivors will be hindered from moving forward as their wounds fester and their suffering continues, and society will remain stuck in the past.²¹⁷ Continuing to ignore the legacy of the Troubles, imperils Northern Ireland's future.²¹⁸ Dealing with it forthrightly should not be delayed any longer.²¹⁹ The ICRIR process is not the answer.

²¹⁶ This is also an important way of "preventing [the] repetition of crimes and contributing to the healing of victims and society." Louise Mallinder and Kieran McEvoy, "Amnesties, Punishment and the Calibration of Mercy in Transition," Journal of Law and Society (2012), p. 410.

²¹⁷ Archbishop Desmond Tutu, Nobel Peace Prize winner and Chair of the South Africa Truth and Reconciliation Commission described legacy issues in the following way: "The past far from disappearing or lying down and being quiet, has an embarrassing and persistent way of returning and haunting unless it has in fact been dealt with adequately. Unless we look the beast in the eye, we find it has an uncanny way of returning to hold us hostage." Desmond Tutu, No Future without Forgiveness, Doubleday (1999), p. 28.

²¹⁸ Delay makes getting answers more difficult, if not impossible. Memories fade. Witnesses become confused, or forgetful. They cannot be located, or they die.

²¹⁹ Sectarianism has decreased since the GFA, but it has not been eliminated. Sectarianism has a variety of definitions. CAJ calls it the belief that a ground such as religion, political opinion, language, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. "Dealing with the Past:

IX. CONCLUSION

Mitchell believed that the agreement, while not guaranteeing durable peace, would endure because of the ideals it made possible: use of exclusively democratic, peaceful means to resolve differences; acceptance of the need for mutual respect and tolerance; acknowledgment that the future of Northern Ireland should be decided by its people; and explicit repudiation of the use or threatened use of violence for any political purpose.²²⁰ These GFA principles made peace possible and provided a roadmap for sustained peace.²²¹

Investigating Troubles-Related Deaths,” Submission by CAJ to the Multi-party Group Chaired by Richard Haass (2013). An example of blatant sectarianism occurred during the annual July 11 commemoration of the Battle of the Boyne in 2022. Images of female politicians were burned in effigy in bonfires celebrating the event. “Condemnation of Hanging Effigies of Female Politicians on Bonfire,” BBC News NI (July 13, 2022); <https://www.bbc.com/news/uk-northern-ireland>. The effigies were of Sinn Fein deputy leader Michelle O’Neill and Alliance Party leader Naomi Long. Long described the acts as “pure unadulterated sectarian bigotry.” Id.

²²⁰ George Mitchell, Speech at U.S. Institute of Peace (March 13, 2017).

²²¹ The post-GFA era has been more conflict management than conflict resolution. “Peace walls” are a coda for this statement. Peace walls were built to prevent attacks on residents living at interface areas. They divide nationalist and unionist communities and have made Belfast the most residentially segregated city in Europe. Peter Geoghegan, “Stormont Needs to Take a Leaf out of Scotland’s Book to Eradicate Sectarianism,” Irish Times (Nov. 16, 2011). They are in the process of slowly coming down. Mark Simpson, “Peace Wall Demolished in Belfast,” BBC News Northern Ireland (Jan. 30, 2020). In Belfast, about 60 peace walls remain. Julian O’Neill. “I Would Love to See That Wall Coming Down,” BBC News NI (Jan 29, 2023); <https://www.bbc.com/news/uk-northern-ireland-64431132>.

The GFA's most profound legacy, beyond a quarter-century of peace, may be that it provides a peaceful and democratic path for constitutional change in Northern Ireland, including a united Ireland. That is, "the right to self-determination" will be exercised only "on the basis of consent given North and South" by a majority.²²²

Blair's memoir on his political life noted that "progress in conflict resolution" requires "a framework of principle."²²³ For Blair, "the first principle" in the Northern Ireland peace agreement was "consent."²²⁴ He said, "the heart of the matter" in resolving the conflict was not the problematic decommissioning issue; rather, the key to peace was "consent."²²⁵ Blair felt each of the agreement's other provisions flowed from this principle, and that consent provided the framework for the settlement.²²⁶ The principle of consent meant nationalists and republicans had to accept that Northern Ireland would remain part of the United Kingdom until a majority voted for unification; in return for remaining within the United Kingdom until a majority voted to leave, unionists

²²² NI Peace Agreement, Constitutional Issues.

²²³ Blair, Supra note 45, p. 182.

²²⁴ Id. "Total and absolute commitment" to using "democratic and exclusively peaceful means of resolving political differences" - the first of the Mitchell Principles - is about consent. It is the alternative to conflict for those seeking a united Ireland. Blair believed agreement on the principle of consent shattered both the rationale for the IRA and for unionism's opposition to a power-sharing government. Blair, Supra note 45, p. 183.

²²⁵ Blair, Supra note 45, p. 182.

²²⁶ Id. Consent had been an indispensable part of the Sunningdale and Hillsborough Agreements, as well as the Hume-Adams peace talks. In those talks, Adams adopted Michael Collins "stepping-stone" strategy for Irish unification. Collins said: "The attainment of the final steps of freedom" will come "by evolution rather than force." Michael Collins, The Path to Freedom, Roberts Rinehart Publishers (1996), p. 82.

and loyalists had to accept equality of treatment for the minority community and share power with them in government.²²⁷ Consent gave Northern Ireland a way to ensure a peaceful and democratic future.

Blair sees conflict resolution as “a journey, a process, not an event.”²²⁸ When the agreement was signed, Blair knew “it wasn’t the end, it was the beginning.”²²⁹ In his view, “peace has to mature, put down its own roots to displace the roots of conflict, and allow over time a different set of attitudes to take shape and make their impact.”²³⁰ The roots of peace need watering and nurturing so they can take hold and grow Northern Ireland into a healed society, with long-term stability and a shared future. This requires addressing the existing hurt, prejudice, and distrust. It means breaking down walls of separation, and rebuilding relationships in its place.

These matters continue to be a work in progress. At times of challenge, however, the reference point for resolution has always been the principles set forth in the GFA. Thus, it is fair to say that Mitchell’s principle-based approach to peace-making has withstood the test of time.

In his 1888 poem, “The Lake Isle of Innisfree,” W.B. Yeats wrote “I will arise and go, and go to Innisfree . . . And I shall have some peace there, for peace comes dropping slow.” He was talking about the beauty and stillness of a peaceful

²²⁷ Blair, Supra note 45, p. 183.

²²⁸ Blair, Supra note 45, p. 192.

²²⁹ Blair, Supra note 45, p. 179.

²³⁰ Blair, Supra note 45, p. 192.

setting. His words also make me think about one similarity between war and peace. They both require fierce dedication and commitment, and involve a long, hard slog.

George Mitchell's role in the Belfast/Good Friday Peace Agreement

BY EDWARD M. NEAFSEY, OPINION CONTRIBUTOR - 04/07/23 2:00 PM ET



FILE – From right, British Prime Minister Tony Blair, U.S. Sen. George Mitchell, and Irish Prime Minister Bertie Ahern, pose together after they signed the Good Friday Agreement for peace in Northern Ireland, on April 10, 1998. It has been 25 years since the striking of the Good Friday Agreement, the landmark peace accord that...

The Northern Ireland Troubles ended on Good Friday 25 years ago. How did the promise of peace get enemies to lay down weapons and move beyond a three-decade hate-filled war of mayhem, murder and retribution? How were centuries of enmity between the unionist and nationalist communities overcome? How did political leaders agree to set aside a history of communal resentment and distrust?

The answers to these questions lie in the Belfast/Good Friday Agreement's carefully crafted provisions addressing peaceful and democratic change, human rights, policing

matters, and Ireland's relationship with the United Kingdom and Northern Ireland. An additional, significant answer lies in George Mitchell's brilliant leadership and guiding hand throughout the 18-month peace process.

Mitchell's skillful mediation was integral to achieving peace. Key participants in the process, like Gerry Adams and David Trimble, gave Mitchell substantial credit for the agreement.

Adams, who headed the nationalist Sinn Fein Party, said — "Senator Mitchell's role was indispensable to the success of the negotiation process and to securing the Good Friday Agreement. There can be no doubt that without his patience and stamina the outcome could have been very much different."

Trimble, who led the Ulster Unionist Party, said of Mitchell — "He was extremely capable and fair: a very genuine person who gave everything he had to making the process work. He acquitted himself very well and did the American people proud. I don't think anybody else could have done what he did. It was a remarkable political balancing act."

While Adams and Trimble were on opposite sides of the table, they saw Mitchell's consequential role the same way. As chair of the peace talks, Mitchell provided crucial assistance to the parties in finding solutions to resolve the conflict.

Mitchell convinced the British and Irish governments to give small political parties a seat at the peace table. Thus, parties representing paramilitary groups and the Women's Coalition Party had a role in the process and a stake in its outcome.

Mitchell moved the parties beyond zero-sum positions. He got them to focus on shared interests and societal needs, such as giving the people of Northern Ireland hope for a peaceful and prosperous future.

Mitchell set up a morning time procedure where parties could complain about what the other side was doing or saying to the press. He listened and heard the parties out in full. The procedure allowed parties to let off steam, so they could rationally discuss important issues later in the day.

Mitchell worked hard to gain the parties' trust, so they would value his judgment. Their trust in him made them more willing to accept his recommendations.

Mitchell applied pressure when necessary. He set a deadline for reaching a final agreement. He repeated the parties' own words in warning them that the talks cannot fail because the prospect of failure was too awful to consider. He cautioned them that they should fear a return to violence more than any potential political damage caused by agreeing to a settlement.

When discussions went beyond the deadline, Mitchell permitted an extension but refused to allow a break. He told the parties we're here until we finish. When they said they had reached an agreement, he told them that he wanted to vote right away. He had learned to do these things as U.S. Senate majority leader. In taking an immediate vote, he felt when you have the votes you vote, because something bad might happen if you delay.

Announcing the agreement, Mitchell extolled the work of others. He called Northern Ireland's political leaders' courageous heroes. He confronted the paramilitaries in stating — "The agreement proves democracy works, and in its wake we can say to the men of violence, to those who disdain democracy, whose tools are bombs and bullets: Your way is not the right way. You will never solve the problem of Northern Ireland by violence. You will only make it worse." These words convey a message that should resonate throughout our nation today.

One decision can help get Biden's climate goals back on track
State courts are no place for climate lawsuits

The peace agreement was not a perfect document. It failed to recommend a transitional justice mechanism for dealing with the legacy of the past. More than 3,700 people were killed and nearly 50,000 were injured during the Troubles.

While the agreement remains a work in progress, 25 years of peace means it has withstood the test of time. John Hume, an architect of the peace process, and Trimble were awarded Nobel Peace Prizes for the historic agreement. Peace would not have been achieved, however, without Mitchell's major contribution.

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TAGS GEORGE MITCHELL GERRY ADAMS GOOD FRIDAY AGREEMENT

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<https://thehill.com/opinion/congress-blog/3939376-george-mitchells-role-in-the-belfast-good-friday-peace-agreement/>

**Timeline of the Process which lead to The Good Friday Agreement (GFA),
or Belfast Agreement (Irish: Comhaontú Aoine an Chéasta or Comhaontú Bhéal Feirste;
Ulster-Scots: Guid Friday Greeance or Bilfawst Greeance)¹**

1921 - Ireland is partitioned, with the southern 26 counties becoming the independent Irish Free State, later the Irish Republic, and the northern six remaining under British rule. The new Northern Ireland parliament, at Stormont outside Belfast, is dominated by pro-British Protestant "unionists", who will control it for the next 50 years.

1968 - A civil rights campaign by Catholics protesting against discrimination gathers momentum. Sectarian rioting erupts in Belfast, Londonderry and elsewhere.

August, 1969 - As civil unrest worsens, British troops are deployed for the first time.

March 30, 1972 - With violence intensifying, the unionist government at Stormont refuses to hand over responsibility for law and order to the central government. Stormont is suspended and direct rule from London imposed.

Dec. 9, 1973 - After a year of talks and elections for a new Northern Ireland assembly in June, the Sunningdale Agreement is announced establishing a powersharing government in Belfast. Unionists object to elements of the deal meant to foster co-operation with the Irish Republic.

May 1974 - Powersharing collapses amid hardening unionist opposition, violence and a general strike and direct rule resumes.

March 1, 1981 - Bobby Sands, the leader of the Irish Republican Army (IRA) in the Maze Prison, refuses food, beginning a new hunger strike by republican prisoners demanding "political" status. Ten will starve themselves to death before the strike is called off in October.

April 11, 1981 - Sands is elected as an MP to the British parliament in a by-election in Fermanagh and South Tyrone. He dies on May 5.

Nov. 15, 1985 - Britain and Ireland sign the Anglo-Irish Agreement, the most significant development in relations since partition. Both agree there will be no change in Northern Ireland's status without the consent of the majority of its citizens, while the Irish government is given a consultative role in the province's administration for the first time.

Jan. 11, 1988 - John Hume, leader of the moderate nationalist Social Democratic and Labour Party, then the leading party among Catholic voters, begins a series of talks with Gerry Adams, leader of the IRA's political ally Sinn Féin.

¹ Sources: Reuters and Ulster University CAIN archive

Aug. 31, 1994 - The IRA declares a "complete cessation of military activities".

Oct. 13, 1994 - The Combined Loyalist Military Command, speaking on behalf of the main loyalist groups the Ulster Defence Association (UDA) and Ulster Volunteer Force (UVF), also announces a ceasefire.

Nov. 30, 1995 - U.S. President Bill Clinton visits Northern Ireland.

Feb. 9, 1996 - The IRA ends its ceasefire with a bomb attack at South Quay in London's Docklands, killing two people.

May 30, 1996 - Elections held for a Northern Ireland forum ahead of all-party talks. Sinn Fein attracts 15.5%, its biggest share of the vote, though the British government has said the party will be excluded from talks unless the IRA ceasefire is restored.

May 1, 1997 - Tony Blair is elected British Prime Minister in a landslide victory for his left-of-centre Labour Party.

July 20, 1997 - The IRA renews its ceasefire.

Sept 9, 1997 - Sinn Fein enters multi-party talks at Stormont.

Oct 13, 1997 - Blair meets Sinn Fein's Gerry Adams and Martin McGuinness for the first time.

Jan. 9, 1998 - Britain's Northern Ireland Secretary Mo Mowlam visits the Maze Prison to meet UDA prisoners in an attempt to change their recent decision to end their support for the peace process. She succeeds.

March 26, 1998 - Talks chairman George Mitchell, a U.S. senator from Maine, sets an April 9 deadline to reach a deal.

April 10, 1998 - After negotiations continue through the night, the Good Friday Agreement, also known as the Belfast Agreement, is signed.



THE BELFAST AGREEMENT

George Mitchell

Trócaire

British

Agreement reached
in the Multi-Party negotiations

David Ervine

Mark Durkan

Tony Blair

Bertie Ahern

David

Seamus Mallon

Trócaire

10 April 1998

David Andrews

What were the Troubles in Northern Ireland Which Prompted the Need for the Good Friday Agreement?²

The Troubles is the term used to describe sectarian violence that took place in Northern Ireland, which led to more than 3,500 deaths and even more casualties. Horrific terrorist attacks were carried out by members of paramilitary organizations, as were acts of brutality by police and army officers.

Conflict between Republicans (supporters of a united Ireland, who were from largely Catholic communities) and Unionists (Protestants who were loyal to the United Kingdom) had existed for centuries. But it was the 1921 partition of Ireland -- which created Northern Ireland -- that some see as a major turning point.

The new UK province contained six of Ireland's 32 counties. By design, Northern Ireland was home to a majority of Unionists. This created huge anger among Northern Irish Republicans, who felt they were now a minority in their own country.

The exact catalyst for the Troubles is a matter of opinion. Ulster University lists the death of Francis McCloskey, a 67-year-old Republican Catholic, a day after being hit by a police baton in a protest, as the first death in the Troubles, though even the circumstances of his death are disputed. He died on July 14, 1969.

From this date, the list of violent incidents escalates. Some attacks were carried out by Unionist paramilitary groups. Some were carried out by police or army officers on protesters, like the infamous "Bloody Sunday" killings in 1972, in which 14 people were shot during a civil rights protest. Some were bombings carried out by Republican paramilitary groups, including the Provisional Irish Republican Army (IRA).

The IRA is probably the best known paramilitary group of the Troubles because of the scale of its attacks, two of which struck at the heart of the British establishment.

In 1979, an IRA volunteer assassinated Lord Louis Mountbatten, a member of the royal family who mentored the now King Charles. In 1984, the group bombed a hotel in which then-British Prime Minister Margaret Thatcher was staying, killing members of her governing Conservative Party.

Former IRA members justify their previous extreme actions by claiming there was no alternative. "War is a terrible thing. It is how you get out of it and make peace that is important. There was

² Sources: CNN, assets.publishing.service.gov.uk/, <https://www.ireland.ie/en/25-years-of-the-good-friday-agreement/about-the-good-friday-agreement/>, [peacemaker.un.org/uk-ireland-good-friday98](https://www.peacemaker.un.org/uk-ireland-good-friday98); and, <https://www.theguardian.com/world/2023/apr/07/how-did-the-good-friday-agreement-come-about-and-why-is-it-so-significant>

an alternative to conflict, that was democracy, but it did not exist," Martina Anderson, a former IRA volunteer, reported to CNN.

Anderson was sentenced to life in prison in 1986, convicted of conspiring to cause explosions. She was released, along with many others, under the terms of the GFA and went on to become an elected politician for Sinn Fein, once closely associated with the IRA and now the largest political party in Northern Ireland.

The Troubles created in total 1,971 political prisoners: 1,874 were Republican, while 107 were Unionist, according to Ulster University.

Nineteen-eighty-six was also the year that saw one of the most significant political breakthroughs in the Northern Irish peace process. In September of that year, Gerry Adams, president of Sinn Fein when the party still had ties to the IRA, and John Hume, leader of the more mainstream Republican party, the Social Democratic and Labour Party (SDLP) met in secret.

The two were bitter political rivals, but their first meeting of many paved the way to IRA ceasefires that created space in the 1990s for negotiations that would lead to the GFA.

How did the Good Friday Agreement get done?

The late 1980s and 1990s saw increased willingness from all sides to end the violence and find some sort of negotiated peace. Numerous IRA ceasefires were put in place, only to be broken when it was decided by the IRA that the British government was negotiating in bad faith. But progress continued.

The major turning point came in 1997, when new leaders with the energy and mandate to push through a peace deal were elected in both Ireland and the UK. Bertie Ahern was the new leader of a minority coalition in Ireland, while the Labour Party's Tony Blair had secured a majority of 179 seats in the UK parliament. Along with the boost of US President Bill Clinton's support, the conditions for reaching an agreement were now in place.

"There was a real sense of, if we don't do it now, the moment could slip away," says Paul Bew, who advised the Unionist leader of the time, David Trimble of the Ulster Unionist Party, during the GFA negotiations. "Everyone was focused on immediate peace and stability, not long-term politics. That meant the deal wasn't perfect, but it did bring stability," Bew adds.

The main sticking points now were how to placate the parties on the extreme fringes of the debate. Sinn Fein, which was in contact with the IRA during negotiations, had pushed for two major things: kicking the IRA's decommissioning of weapons into the long grass, something that could be a gradual rather than immediate process. The party also wanted Republicans they viewed as prisoners of war to be released.

The Democratic Unionist Party ended up not supporting the deal over the disarmament issue -- which resulted in Sinn Fein getting a lot of what it wanted in the final deal.

However, because the deal was widely backed among both politicians and the public in Northern Ireland and the Republic of Ireland, the DUP's support was ultimately not required. On April 10, 1998, after months of negotiations where no outcome was certain, it was announced that a deal had been done.

Alastair Campbell, a close adviser to Blair at the time, remembers the final few hours of negotiations as "magical."

"For days the sense of history was building. Either something very good or very bad was going to happen. Then everything started coming together. I think tiredness and a lack of food was a factor. But mostly it was the group of people who wanted to get it done."

Bew also points to tiredness as a major factor in how negotiations ended. "In the final few hours, I saw one man walk into a wall. He looked at the wall like it had punched him."

What is in the Good Friday Agreement?

The agreement acknowledges that in Northern Ireland, there is a majority of people who want to remain part of the UK; however, a substantial minority supports a united Ireland. It also acknowledges that on the island of Ireland as a whole, there is a majority that wants to unite Ireland. The agreement recognises all of these opinions as valid.

The political solution proposed in the agreement is that Northern Ireland has a devolved government that must comprise both Unionists and Republicans on a power-sharing basis.

It acknowledges that Northern Ireland is part of the UK, but also gives citizens the flexibility of being able to identify fully as Irish or British.

A crucial part of the deal focuses exclusively on North-South relations. While the deal doesn't mention anything specific about an open border, it clearly encourages a situation where as little friction as possible exists on the land border between Northern Ireland and the Republic of Ireland. This would later become incredibly complicated because of Brexit, the UK's departure from the European Union.

The agreement has sections on the decommissioning of weapons and broader security concerns. The language used in the agreement is often described as "constructive ambiguity" that allowed the issue to be drawn out, in order to keep Sinn Fein happy and ensure the IRA abided by the ceasefire. The Unionist side also agreed to the release of a large number of Republicans from prison.

How is the agreement holding up and has Brexit had a negative impact?

That depends on who you ask. Most who were involved in the talks and lived through the Troubles will tell you that despite current problems -- most notably the devolved Northern Ireland assembly, often referred to as Stormont, not sitting since last year because the DUP will not enter power-sharing -- the situation is still vastly better than it was during the Troubles.

Norman Baxter, a retired senior police officer in Northern Ireland, points to the decline of paramilitary groups as a key area of success.

"Attacks still happen, but they really have been reduced to small groups of effectively organized crime gangs. They don't have anything like the weapons or reach that the IRA did. Nor do they have a coherent ideology. They might still be active, but the idea they could carry out anything on the scale of the worst days is just unimaginable now," he says.

On the Republican side, Anderson, the former IRA volunteer-turned Sinn Fein politician, says: "We were born into a state that didn't want us and we had no civil rights, no equality, no human rights, no democratic and peaceful path to self-determination. We have now."

However, the political situation has dramatically changed since 1998 in ways that the peace deal couldn't have predicted.

The then fringe groups, the DUP and Sinn Fein, are now the largest parties from the two communities. Their distaste for one another is no longer deadly, but it's very real.

Brexit has undeniably complicated and aggravated the animosity. Something that seriously helped the GFA stand up was the fact that both countries were in the EU's regulatory sphere. This might sound trivial, but it meant there was no need to check people or goods traveling between the two, reducing the potential for hostility.

The need to avoid any hard border between the two has been one of the thorniest areas of negotiation between the EU and the UK. Both sides ultimately decided and agreed that no hard border could exist. That has left the DUP furious and feeling sold out by the UK government, on the grounds that the result has been an effective border in the North Sea, between Northern Ireland and Great Britain. Meanwhile, many on the Republican and Sinn Fein side feel that they have had their EU membership ripped from them against their will.

As Anderson puts it: "We relied on the EU for our rights within Northern Ireland. We voted to remain."

But Brexit is far from the only things souring relations between Unionist and Republican communities.

"The biggest risk to the agreement at the moment is not likely to come in any big bang, dramatic form but more as a drip-drip erosion," says Katy Hayward, an expert in Brexit and Northern Ireland at Queen's University Belfast.

"The stasis of government not sitting and the vacuum it creates in political leadership are not cost- or consequence-free. This is particularly true in Northern Ireland, where the democratic institutions were established as the alternative to the use of violence for political means."

Why does America care so much?

Aside from the fact that President Bill Clinton chaired the negotiations, the GFA has enjoyed largely bipartisan support in the US for decades. Irish identity is still strong in the US and Irish diplomats have a reputation for using international affection for Ireland to punch well above their weight.

President Joe Biden, who identifies as an Irish American, has repeatedly said that there is no alternative to the GFA and that Brexit must not be allowed to undermine peace.

What does the future hold?

Things are not perfect in Northern Ireland and it is not clear what future awaits the citizens of the province. A generation has now grown up with the agreement in place. The danger those on all sides of the argument perceive is that people forget that peace is not inevitable. Of course, things are better than they were during the Troubles. But Northern Irish politics have undeniably changed.

It was never a sure thing that the GFA would be agreed, and it was never certain that it would stick in place. Vague wordings on decommissioning weapons and deliberately ambiguous interpretations are possible when there is good faith on both sides. But it is simply a fact that there is less good will in Northern Irish and British politics than there was in 1998.

MAJOR NORTHERN IRELAND POLITICAL PARTIES (1998) and THEIR LEADERS

Ulster Unionist Party (UUP) headed by David Trimble

- the largest unionist party in Northern Ireland (NI) from NI's formation in 1921 to 2003 when it was overtaken by the Democratic Unionist Party; governed Northern Ireland throughout 20th century.

Democratic Unionist Party (DUP) headed by Reverend Ian Paisley

- walked out of peace negotiations when Sinn Fein was permitted to enter the all-party peace talks; opposed the Belfast/Good Friday Agreement.

Alliance Party headed by David Alderdice

- a non-sectarian political party that is neither unionist nor nationalist; designates as "other" in the Northern Ireland Assembly.

Social Democratic Labor Party (SDLP) headed by John Hume and Seamus Mallon

- an Irish nationalist party committed to non-violence and bringing about change to NI's constitutional status by democratic means; in the 1970's, it became the first nationalist party to occupy a government position in NI.

Sinn Fein ("Ourselves Alone") headed by Gerry Adams and Martin McGuinness

- an Irish republican party and the political wing of the Irish Republican Army; since May 2022, the largest party in the Northern Ireland Assembly.

SOME OTHER INDIVIDUALS WHO WILL BE MENTIONED

Former U.S. Senate Majority Leader George Mitchell, who served as President Bill Clinton's Economic Envoy to NI, chaired the International Body of Decommissioning, and chaired the all-party peace talks.

British Prime Ministers (PM) John Major (Conservative Party) and Tony Blair (Labor Party).

PM Blair's Chief of Staff Jonathan Powell.

Irish Taoisigh (Prime Ministers) Albert Reynolds and Bertie Ahearn (both Fianna Fail Party).

International Body of Decommissioning members Canadian General John de Chastelain and former Finnish PM Harri Holkeri.

Alliance Party leader and NI Minister for Justice David Ford.

Women's Coalition Party member Monica Williams.

Solicitor Patrick Finucane, who represented IRA members charged in Diplock Courts and who was shot to death in front of his wife and children by members of the loyalist paramilitary Ulster Defense Association in 1989 in a case involving collusion.

Michael McKevitt led the Real IRA dissident group at the time of the 1998 Omagh bombing that killed 29 and injured 200.

MAIN PARAMILITARY GROUPS

Irish Republican Army (IRA)

- justified the use of armed, physical force as a necessary means to achieve a united Ireland; responsible for over 1750 deaths during the Troubles.

Ulster Volunteer Force (UVF)

- loyalist group aimed at combatting Irish republicanism and maintaining Northern Ireland's link with the United Kingdom (UK); responsible for the first sectarian murders committed during the Troubles and proscribed as a terrorist organization by the UK because of its armed campaign.

Ulster Defense Association (UDA)

- loyalist paramilitary group aimed at combatting Irish republicanism and defending Ulster Protestants; perpetrated an armed campaign of violence against Catholics, including the commission of murders with the "collusive" assistance of the Royal Irish Constabulary (NI's police force).

BREXIT TREATY

- Northern Ireland Protocol - goods shipped from the UK to NI are subject to checks and controls at NI ports.

- Windsor Framework - reduces paperwork by setting-up green lanes at NI ports for goods staying in NI and red lanes for goods travelling on to the Republic.

INDEPENDENT COMMISSION for RECONCILIATION and INFORMATION RECOVERY (ICRIR)

- The ICRIR was established by the Northern Ireland Troubles (Legacy and Reconciliation) Act, which was passed in September 2023. The law was opposed by all five of NI's major political parties.
- The current methods of criminal and civil investigations and inquests into Troubles-related killings will end and be replaced by the ICRIR process, which is empowered to conduct investigative inquiries and offer immunity/amnesty for testimony.
- NI Secretary of State Chris Heaton-Harris claims its purpose is to “deliver greater information, accountability, and acknowledgement to victims and families, moving away from established mechanisms that have left far too many empty-handed.”