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Keywords

Northern Ireland, Terrorism, Human Rights Law, Murder

NORTHERN IRELAND: THE PARAMILITARIES, TERRORISM, AND SEPTEMBER 11TH

*Zachary E. McCabe**

[P]erhaps just once in a fairly bleak international situation, . . . when many Irish-Americans and people of 60 other countries were killed in the dreadful explosions in the USA, and there are 6.5 million people on the cusp of starvation in Afghanistan. Perhaps against that bleak scenario, against the deterioration of the situation in the Middle East, maybe hope and history is reigning in Ireland, and there's a little signal to everyone that there is a way to go forward if there's a political will to do so.¹

INTRODUCTION

On Good Friday, April 10, 1998, the Peace Process in Northern Ireland took a giant step forward. On that day, representatives of almost every political party in Northern Ireland came to a general agreement on how to proceed in the interest of peace. Officially called the Agreement Reached in the Multi-Party Negotiations, this agreement is known as "The Good Friday Agreement."² Despite the progress reached, important issues remain unresolved and violence continues to plague Northern Ireland, primarily at the hands of paramilitary organizations. The Peace Process has suffered major setbacks resulting in the disbanding of the power-sharing arrangement that was the cornerstone of the Good Friday Agreement.³

Three and one-half years later, on September 11, 2001, terrorists hijacked four American commercial airliners, plunging two into the World Trade Center towers in New York City, one into the Pentagon in Washington D.C., and the fourth in

* Juris Doctorate expected May 2003, University of Denver College of Law. The author thanks his parents and brother for their inspiration and support. This article is dedicated to those who work for peace and the victims of terrorism, in particular the members of the New York City Police Department who gave their lives on September 11, 2001.

1. *Adams: Hope and History in Ireland*, CNN.com (Oct. 24, 2001), at <http://www.cnn.com/2001/WORLD/europe/10/24/adams.cnn/index.html> (last visited April 8, 2003).

2. Agreement Reached in the Multi-Party Negotiations, Apr. 10, 1998, available at <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm> (last visited April 8, 2003) [hereinafter "The Good Friday Agreement"].

3. Warren Hoge, *Britain Reasserts Ulster Rule, Suspending Elected Assembly*, N.Y. TIMES, Oct. 15, 2002, at A3.

rural Pennsylvania. Near 3,000 people died in these attacks.⁴ Since the attacks, the United States began a global “war on terrorism.”⁵ Along with diplomatic and financial efforts, the United States began a military campaign in Afghanistan to find Osama Bin Laden, the leader of the terrorist organization al Qaeda, which the United States believed was responsible for the attacks. The United States also sought to punish those who harbored him. The global perspective on terrorism, and in particular the United States’ approach towards terrorism changed since September 11th. The United States asked for, and received, worldwide condemnation of the attacks and support for its war on terrorism. The United States likewise took a significantly more aggressive stance on terrorist attacks occurring on the soil of other countries.⁶

This article addresses the effects of September 11th on the Peace Process and the paramilitaries of Northern Ireland and comes to the conclusion that the impact, is relatively small. Part I describes the history of the conflict in Northern Ireland and briefly addresses the history of the Peace Process. Part II of this article identifies the major paramilitary organizations in Northern Ireland. Part III addresses the definition of terrorism while Part IV addresses whether the Northern Irish paramilitaries are terrorists. As points of comparison, part V discusses the effect of September 11th on other conflicts in the world. Part VI addresses the effect of September 11th on the Northern Irish paramilitaries and the Peace Process. Finally, some conclusions are reached concerning the Peace Process and consequences of the recent terrorist attacks on American soil.

PART I: THE HISTORY OF CONFLICT IN NORTHERN IRELAND

Any treatment of the “Troubles”⁷ in Northern Ireland is difficult to comprehend without first addressing the history of Ireland and Northern Ireland dating back to at least the twelfth century. However, for the purposes of this discussion, the author begins with the partition of Ireland in 1921.

A. PARTITION

After 750 years of English-Irish conflict on the island of Ireland and six years

4. Thomas J. Lueck, *City Compiles List of Dead And Missing From Sept. 11*, N.Y. TIMES, Aug. 20, 2002, at B1.

5. See, e.g., S.J. Res. 22, 107th Cong. (2001) (declaring that the United States is “entitled to respond [to the attacks] under international law” and referring to a “war” against terrorism); President George W. Bush, Address to a Joint Session of the Congress and the American People (Sept. 20, 2001)[hereinafter “Address on U.S. Response”] (“On September 11th, enemies of freedom committed an act of war against our country.”); Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

6. Reuters, *America's Allies Rally to Arafat's Defense*, N.Y. TIMES, Jan. 28, 2002, available at <http://www.nytimes.com> (last visited January 28, 2003).

7. The “Troubles” in Northern Ireland are “generally understood to refer to a murderous dispute which for the past quarter century only, has come to involve the English and the Irish in sectarian quarrel in the north-eastern part of Ireland commonly, but erroneously referred to as ‘Ulster.’” TIM PAT COOGAN, *THE TROUBLES: IRELAND'S ORDEAL 1966-1996 AND THE SEARCH FOR PEACE I* (1996).

after the 1916 Easter uprising,⁸ representatives of the British government and Irish Nationalist rebels signed the Government of Ireland Act of 1920, which provided for the partition of Ireland.⁹ The British Empire released the southern twenty-six counties of Ireland to become the Irish Free State.¹⁰ Six counties in the northernmost part of the island remained part of the British Empire.¹¹ The British government renamed this area "Northern Ireland" and installed a local subsidiary government.¹² The settlement reached in the Government of Ireland Act led to a civil war within the Irish Free State pitting those who accepted the settlement against those who saw the settlement as a betrayal of the Irish cause.¹³ Eventually settlement forces were victorious. However, even until 1998, the Irish Constitution included clauses claiming the area of Northern Ireland as its own.¹⁴

Not coinciding with any traditional boundaries, Northern Ireland was the largest area in which a majority of the people wished to remain part of the British Empire.¹⁵ This was, in fact, the purpose of partition.¹⁶ Northern Ireland was also drawn to have two Protestants for every Catholic while the Irish Free State remained predominately Catholic.¹⁷ Protestants tended to be Loyalist, desiring to remain in the British Empire, while Catholics tended to be Republicans, desiring a unified island under an Irish flag. The Irish Republican Army (IRA) emerged in 1918 and launched armed campaigns in Northern Ireland in the 1920s, 1940s and 1950s.¹⁸ In response to these campaigns, the Northern Irish government

8. See generally, ROBERT KEE, *THE GREEN FLAG: A HISTORY OF IRISH NATIONALISM* 548-572 (1972).

9. John Darby, *Conflict in Northern Ireland: A Background Essay*, in *FACETS OF THE CONFLICT IN NORTHERN IRELAND* (Seamus Dunn ed., 1995). Many mark the beginning of English-Irish conflict as 1170 when Henry the II sent settlers to Ireland. *Id.*

10. Mari Fitzduff & Liam O'Hagan, *The Northern Ireland Troubles: INCORE Background Paper*, available at <http://cain.ulst.ac.uk/othelem/incorepaper.htm> (last visited Mar. 5, 2003).

11. Darby, *supra* note 9, at 4.

12. *Id.*

13. *Id.*

14. IR. CONST., arts. II & III. As a condition of The Good Friday Agreement, the Irish Free State's claim to Northern Ireland was removed from its constitution. The Good Friday Agreement, *supra* note 2.

15. See generally Darby, *supra* note 9 (comparing a concise history of the origin of Northern Ireland's unique political and religious composition to other parts of Ireland).

16. See Dennis Kennedy, *Academic Viewpoint Dash for Agreement: Temporary Accommodation or Lasting Settlement?*, 22 *FORDHAM INT'L L. J.* 1440, 1442 (1999).

17. See John Hume, *Prospects for Peace in Northern Ireland*, 38 *ST. LOUIS U. L. J.* 967, 968 (1994).

18. Darby, *supra* note 9, at 4. As one author has stated:

The I.R.A. emerged in 1918 as a development from the Irish Volunteers (a paramilitary force founded in 1913 as a counter-weight to the Ulster Volunteer [sic] opponents of the Home Rule Bill) but with an ancestry traceable to the Fenian traditions of the previous century, as perpetuated by the Irish Republican Brotherhood (a secret paramilitary group, members of which provided much of the I.R.A.'s leadership).

See Clive Walker, *Political Violence and Democracy in Northern Ireland*, 551 *MOD. L. REV.* 605, 608, see also Ronald A. Christaldi, Comment, *The Shamrock and the Crown: A Historical Analysis of the Framework Document and Prospects for Peace in Ireland*, 5 *J. TRANSNAT'L L. & POL'Y* 123, 148 (Fall 1995) (citing the above quotation and adding that "The Irish Republican Army (IRA) is a militant sister organization of the Sinn Fein.").

established a police force and police reserve, both of which were almost entirely Protestant.¹⁹ The Northern Irish government manipulated election district boundaries to keep Unionists and Protestants in power and also introduced systematic economic discrimination against Catholics.²⁰

B. The Troubles

Over the past thirty years the conflict in Northern Ireland came to be called the "Troubles."²¹ The starting point of the "Troubles" was the civil rights campaign of Northern Irish Catholics in the late 1960s.²² This movement began with the formation of The Northern Ireland Civil Rights Association in 1967.²³ The Association's campaign, inspired by the American civil rights movement, sought an end to discrimination against Catholics in the allocation of jobs, rescission of permanent emergency legislation, and a stop to electoral abuses.²⁴ The Association utilized protests, marches, "sit-ins," and the media to advance its cause.²⁵ These tactics proved too much for the Northern Irish administration to handle and, in 1960, the British government sent military troops to restore order.²⁶ The return of the British military stimulated the revival of the Republican movement.²⁷ The Provisional IRA, descendant of the IRA of 1918, formed and waged war against the British army, utilizing mostly terrorist tactics.²⁸ Increasingly, the conflict moved beyond clashes between Catholics and Protestants and took the form of "violence between the Provisional IRA and the British Army, with occasionally bloody interventions by loyalist paramilitary groups."²⁹ Rather than religion, the conflict became one of identity, British or Irish.³⁰ In 1972, the violence reached a peak when 468 people died.³¹ Since then, the violence has gradually declined to an annual average below 100.³² This level of conflict continued through the 1990s.³³

19. Darby, *supra* note 9, at 4.

20. *Id.*

21. See COOGAN *supra* note 7.

22. Fitzduff & O'Hagan, *supra* note 10.

23. Darby, *supra* note 9, at 4.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* The term 'Provisional IRA' distinguishes the modern-day IRA from a splinter group known as the 'Official IRA,' which split from the Provisionals in 1969 and have since played an extremely limited role in Northern Ireland. Alexander C. Linn, *Reconciliation of the Penitent: Sectarian Violence, Prisoner Release, and Justice under the Good Friday Peace Accord*, 26 J. LEGIS. 163, 168 n.61 (2000).

29. Linn, *supra* note 28.

30. JOHN DARBY, SCORPIONS IN A BOTTLE: CONFLICTING CULTURES IN NORTHERN IRELAND 135 (1997) (citing Social Attitudes Survey, compiled by K. Trew (1996)).

31. Darby, *supra* note 9, at 4.

32. *Id.*

33. Darby, *supra* note 9, at 4.

C. The Peace Process and the Good Friday Agreement

The current Northern Ireland Peace Process originated in the 1985 Anglo-Irish Agreement between England and Ireland.³⁴ This agreement recognized that Northern Ireland's constitutional status within Great Britain could not change without the consent of a majority of its citizens.³⁵ In December of 1993, Ireland and England released the Downing Street Declaration, which recognized that "it is for the people of Ireland alone . . . to exercise their right for self determination."³⁶ After intense negotiations facilitated by former United States Senator, George Mitchell, the major political parties of Northern Ireland entered into The Agreement Reached in the Multi-Party Negotiations, also known as "The Good Friday Agreement."³⁷ Among the most significant participants was Sinn Fein, the political wing of the IRA,³⁸ and the Ulster Unionist Party (UUP), which represents the views of Unionists (those Northern Irish who wish to remain part of the British Empire). The parties to the Agreement admitted Sinn Fein after the IRA pledged and observed a "complete cessation of military activities" dating back to 1994.³⁹ At the time, the Ulster Defense Association (UDA), the largest paramilitary organization representing Unionist's views also observed a cease-fire. The Good Friday Agreement "recognizes the 'opportunity for a new beginning' and the need for 'reconciliation, tolerance and mutual trust.'"⁴⁰ The Agreement also recognized, among other things:

- Northern Ireland's constitutional status is dependant on the consent of the majority of its citizens;
- Northern Ireland's current position is as part of the United Kingdom;
- Should a majority of people in Northern Ireland wish to bring about a united Ireland, they can vote for it and both governments are obliged to legislate for it;
- The Irish Constitution is to be amended so that its territorial claim over Northern Ireland is redefined to take account of consent;
- A substantial range of human rights legislation will be introduced;
- A Northern Ireland Victim's Commission will be established;
- The parties "reaffirm their commitment to the total disarmament of all paramilitary organizations;"
- A "normalization" of security, "consistent with the level of threat," is

34. *Id.*

35. Roger Mac Ginty, *The Irish Peace Process – Background Briefing by Roger Mac Ginty*, 1998, available at <http://cain.ulst.ac.uk/events/peace/bac.htm> (last visited Oct. 29, 2002).

36. Joint Declaration on Peace, Dec. 15, 1993, available at <http://cain.ulst.ac.uk/events/peace/docs/dsd151293.htm> (last visited April 8, 2003).

37. The Good Friday Agreement, *supra* note 2.

38. Christaldi, *supra* note 18.

39. Irish Republican Army (IRA) Cease-fire Statement, Aug. 31, 1994, available at <http://cain.ulst.ac.uk/events/peace/docs/ira31894.htm> (last visited April 8, 2003).

40. See *id.* See also Mac Ginty, *supra* note 35.

to take place;

- A Commission on Policing for Northern Ireland is to be established. And there is to be a review of the criminal justice system;
- There will be an accelerated program of prisoner releases;
- A new British-Irish Agreement is to be signed to replace the 1985 Anglo-Irish Agreement.⁴¹

On May 22, 1998, the Good Friday Agreement was put to a vote before the people of Northern Ireland and Ireland in simultaneous referenda.⁴² The agreement won overwhelming endorsement.⁴³ On June 25, 1998, elections to the new Northern Ireland Assembly were held.⁴⁴ Whether the organizations impacted by the Good Friday Agreement would adhere to the principles and requirements within remained an outstanding question. Most important among the organizations whose cooperation was essential were those with the greatest ability to tear the Peace Process apart, the paramilitary organizations of Northern Ireland.

PART II: THE PARAMILITARY ORGANIZATIONS

The paramilitaries operating in Northern Ireland are typically armed, politically motivated organizations.⁴⁵ They can be divided into two camps: Republican, who wish Northern Ireland to join the Republic of Ireland,⁴⁶ and Loyalists, who wish Northern Ireland to remain part of Great Britain.⁴⁷ Though these categories are not exclusive, this division also exists along religious lines: Republicans tend to be Catholic and Loyalists tend to be Protestant. The main Republican paramilitaries are the Provisional IRA (Provisional IRA or IRA), the "Real" IRA (rIRA), the Continuity IRA (CIRA) and, the Irish National Liberation Army (INLA).⁴⁸ The main Loyalist paramilitaries are the Ulster Defense Association (UDA) the Ulster Volunteer Force (UVF), the Loyalist Volunteer Force (LVF), and the Red Hand Defenders (RHD).⁴⁹ The most significant paramilitaries are the IRA and the UDA and the conflict is typically described as one between the IRA and Northern Irish police forces, the British army, or the UDA. The most contentious and difficult issue involving the paramilitaries has been decommissioning, the disarmament of these armed groups. To facilitate decommissioning, the Irish and English governments created the Independent

41. This summary of The Good Friday Agreement's provisions is from Mac Ginty, *supra* note 35.

42. Agence France-Presse, *IRA Political Wing Says Decommissioning Arms "Dead-End Issue,"* May 25, 2001.

43. The votes in favor of The Good Friday Agreement were 71.12% in Northern Ireland and 94.39% in the Irish Republic. *Id.*

44. Martin Melaugh, *The Irish Peace Process – Brief Note on Decommissioning*, 2001, at <http://cain.ulst.ac.uk/events/peace/decommission.htm> (last visited Jan. 28, 2002).

45. See generally CAIN Web Service, at <http://cain.ulst.ac.uk/othelem/organ/azorgan/htm> (last visited Jun. 30, 2002).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

International Commission on Decommissioning in 1997.⁵⁰ The decommissioning effort has had mixed success.

A. *The Republicans*

i. The Provisional Irish Republican Army (IRA)

The main Republican paramilitary group involved in the Northern Ireland conflict is the Provisional IRA.⁵¹ Today's Provisional IRA traces its origins to the IRA of 1918.⁵² The Provisional IRA is specifically a result of a split within the IRA in 1969 resulting in the "Official IRA" and the "Provisionals."⁵³ Desiring to move toward a political rather than military solution to the conflict, the "Official" IRA declared a cease-fire in the summer of 1972.⁵⁴ Since then, the term "IRA" is used primarily to refer to the "Provisional IRA."⁵⁵ The political wing of the IRA is Sinn Fein; however, the leadership of the two organizations is separate and not always of one voice.⁵⁶ The IRA has engaged in violent attacks on the police service and British soldiers in Northern Ireland as well as on the civilian population in the Northern Ireland and England.⁵⁷ The IRA was responsible for the deaths of 1,755 people between July 1969 and December 1993.⁵⁸ As part of the Peace Process, the IRA has today observed its most recent cease-fire since July 20, 1997 and it currently supports the Good Friday Agreement.⁵⁹ On October 23, 2001, the IRA announced that it had begun a process of decommissioning to retire its arms.⁶⁰ IRA membership peaked at around 1,500 in the mid 1970s and today is estimated to be composed of approximately 500 members with a smaller number

50. Agreement between the Governments of Ireland and the Government of the United Kingdom establishing the Independent International Commission on Decommissioning [hereinafter Independent International Commission on Decommissioning Agreement], Aug. 26, 1997, CAIN Web Service, at <http://cain.ulst.ac.uk> (last visited April 8, 2003).

51. CAIN, *supra* note 45.

52. Walker, *supra* note 18.

53. CAIN, *supra* note 45.

54. *Id.*

55. *Id.*

56. As Clive Walker and Russell L. Weaver stated:

Sinn Fein leadership cannot be assumed to have direct control over the IRA leadership or vice versa. Although the two groups clearly coordinate with and support each other, tension existing between the short-term political and military plans of the Republican movement often results in friction. Furthermore, history reflects fundamental splits between those who wished to advance the Republican cause by predominantly military means and those who chose predominantly political means.

Clive Walker & Russell L. Weaver, *A Peace Deal for Northern Ireland? The Downing Street Declaration of 1993*, 8 EMORY INT'L L. REV. 817, 838, quoted in Christaldi, *supra* note 18 at 148.

57. CAIN, *supra* note 45.

58. MALCOM SUTTON, BEAR IN MIND THESE DEAD . . . AN INDEX OF DEATHS FROM THE CONFLICT IN IRELAND 1969-1993 (1994).

59. CAIN, *supra* note 45.

60. Warren Hoge, *I.R.A. Relents; Is Dismantling Its Arms Cache*, N.Y. TIMES, Oct. 24, 2001, at A1.

of "active" members.⁶¹ It is estimated that the IRA's arsenal consists of several hundred firearms, including revolvers, assault rifles, and machine guns; a dozen anti-aircraft missiles and rocket launchers; flame throwers; several hundred detonators; and three tons of Semtex (a commercial explosive).⁶²

ii. The Real Irish Republican Army (rIRA)

The "Real" IRA (rIRA) was formed in November 1997 from dissident members of the Provisional IRA.⁶³ These former members of the IRA were opposed to the Peace Process and the political leadership of Sinn Féin.⁶⁴ The rIRA admitted responsibility for the Omagh bombing on August 15, 1998.⁶⁵ With 29 people killed and hundreds injured, this bombing was one of the deadliest single incidents during the present conflict.⁶⁶ On August 18, 1998, the rIRA announced a suspension of its activities; however, the organization may be responsible for subsequent attacks in Northern Ireland and in England.⁶⁷ Membership is currently estimated in the dozens.⁶⁸ The rIRA most likely has access to a few dozen rifles, machine guns, and pistols; a small amount of Semtex; and a small number of detonators.⁶⁹ Recently, imprisoned leaders of the rIRA announced that the paramilitary group has fallen apart and is "at an end."⁷⁰

iii. The Continuity Irish Republican Army (CIRA)

The Continuity IRA (CIRA) came to prominence in 1996 when it claimed responsibility for a number of attacks and attempted attacks in Northern Ireland.⁷¹ It is estimated that the CIRA is made up of people who were previously members of other Republican groups - particularly the IRA - dissatisfied with the IRA cease-fire and Peace Process.⁷² The CIRA has not declared a cease-fire and is opposed to the Good Friday Agreement.⁷³ The CIRA is thought to be responsible for car bomb explosions, attempted bombings of hotels and government buildings, hoax bombs, and an anti-tank rocket attack at the British Secret Intelligence Service (MI5) headquarters in London.⁷⁴ There are an estimated dozen members in the CIRA.⁷⁵ The CIRA most likely has access to a few dozen rifles, machine

61. CAIN, *supra* note 45.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *IRA Dissident Group Falls Apart*, CBSNEWS.com, Oct. 19, 2002, at <http://www.cbsnews.com/stories/2002/10/19/world/main527527.shtml> (last visited April 8, 2003).

71. CAIN, *supra* note 45.

72. *Id.*

73. *Id.*

74. CAIN, *supra* note 45.

75. *Id.*

guns, and pistols; a small amount of Semtex; and a few dozen detonators.⁷⁶

iv. The Irish National Liberation Army (INLA)

Established in 1975, the Irish National Liberation Army (INLA) is considered to be the military wing of the Irish Republican Socialist Party (IRSP).⁷⁷ The INLA advocates for the creation of a revolutionary socialist republic.⁷⁸ The INLA has killed approximately 125 people during the conflict of which 45 were members of security forces.⁷⁹ The INLA called a cease-fire on August 22, 1998.⁸⁰ The INLA consists of an estimated two-dozen active members with a network of supporters in Ireland and continental Europe.⁸¹ The INLA is thought to have a small stock of rifles, handguns, and grenades, as well as commercial explosive.⁸²

B. The Loyalists

i. The Ulster Defense Association (UDA)

The Ulster Defense Association is the largest Loyalist paramilitary group in Northern Ireland.⁸³ The UDA formed in September 1971 from a number of Loyalist vigilante groups.⁸⁴ Since 1973, the UDA has also used the cover name Ulster Freedom Fighters (UFF) to claim the responsibility for the killing of Catholics.⁸⁵ During the 1990's, the UFF killed Catholics and Republicans including moderate Republican politicians.⁸⁶ The UDA joined with other Loyalist paramilitary groups in calling a cease-fire on October 13, 1994.⁸⁷ Consequently, the Ulster Democratic Party (UDP), the political arm of the UDA, earned a place at the multi-party talks.⁸⁸ The UDA initially supported, with some reservations, the UDP in its support for the Good Friday Agreement; however, elements in the UDA and the UFF continued to carry out acts of violence.⁸⁹ On October 12, 2001, both organizations were "specified," meaning that the British government considered their cease-fires to be at an end.⁹⁰ The UDA has since dissolved the UDP and

76. *Id.*

77. *Id.*

78. *Id.*

79. SUTTON, *supra* note 58.

80. CAIN, *supra* note 45.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. CAIN, *supra* note 45.

90. *Loyalists Warn Against IRA Bias*, CNN.com, Oct. 13, 2001, at <http://www.cnn.com/2001/WORLD/europe/10/13/ireland.trimble> (last visited April 8, 2003).

returned to acts of violence.⁹¹ At its peak, the estimated membership of the UDA was 40,000; however, the current strength of the UDA is estimated around several hundred, with a few dozen being active in the Ulster Freedom Fighters (UFF).⁹² It is likely that the UDA has a few hundred rifles, Uzi machineguns, and handguns, as well as an amount of Powergel (a commercial plastic explosive).⁹³

ii. The Ulster Volunteer Force (UVF)

The Ulster Volunteer Force (UVF) is a Loyalist paramilitary group formed in 1966.⁹⁴ The UVF is responsible for scores of assassinations in Northern Ireland, mostly of innocent Catholics, which have taken place over a period of almost 30 years.⁹⁵ It is believed to be responsible for the greatest loss of life in a single day when it planted bombs in Dublin and Monaghan on May 17, 1974 killing 33 people.⁹⁶ The UVF had its highest membership in the early 1970's with approximately 1,500 members.⁹⁷ Today, it is estimated that the UVF has several hundred members and is believed to have access to AK-47 rifles, pistols, revolvers, and a small number of rocket launchers.⁹⁸

iii. The Loyalist Volunteer Force (LVF)

It is believed the Loyalist Volunteer Force (LVF) formed in 1996 from defected members of the UVF.⁹⁹ The LVF is responsible for a number of killings in January 1998.¹⁰⁰ During this time, it allowed the Ulster Freedom Fighters (UFF) to use the LVF name while the UFF was nominally adhering to a cease-fire.¹⁰¹ The LVF is estimated to have dozens of members.¹⁰² The LVF is believed to have a small number of rifles, machineguns, handguns, and a small amount of Powergel.¹⁰³ The LVF is one of two paramilitary organizations that has handed over some weapons for destruction to the Independent International Commission on Decommissioning.¹⁰⁴

91. Warren Hoge, *Ulster's Protestant Leader in Party Showdown Today*, N.Y. TIMES, Dec. 1, 2001, at A4.

92. CAIN, *supra* note 45.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. The other paramilitary to hand over weapons is the IRA. CAIN, *supra* note 45. The Independent International Commission on Decommissioning was established in 1997 by Ireland and Great Britain to further the decommissioning and peace processes. See Independent International Commission on Decommissioning Agreement, *supra* note 50.

iv. The Red Hand Defenders (RHD)

The name Red Hand Defenders was first used in 1998.¹⁰⁵ Initially, the group was believed by experts to be made up of dissident members of other Loyalist paramilitary groups opposed to the Good Friday Agreement; however, there is also speculation that the RHD is a cover-name used by members of other Loyalist paramilitaries under which these organizations could carry out attacks and nominally take credit for observing a ceasefire.¹⁰⁶ The RHD has taken credit for the killing of a Royal Ulster Constabulary (RUC) officer as well as numerous blast bomb attacks on Catholic families across Northern Ireland.¹⁰⁷

The paramilitary organizations of Northern Ireland have engaged in violence for over thirty years yet there is a general reluctance among many segments of Northern Irish society to label them as “terrorists.” In fact, the very term “paramilitary” carries with it the implication that these organizations are legitimate armed groups and not terrorists. To take an objective look at whether these groups are in fact terrorists it is necessary to first define terrorism.

PART III: TERRORISM

The definition of terrorism is elusive. Perhaps purposefully, the Good Friday Agreement only makes one reference to “terrorists.”¹⁰⁸ The term “terrorism” has its origins in the French government’s “reign of terror” during the French Revolution.¹⁰⁹ The majority of the definitions of terrorism have common themes including the use of violent acts and fear as a means of directly intimidating, coercing, or overthrowing a government, coordinated by a tightly controlled leadership structure.¹¹⁰ “At its core, terrorism has three effects: An immediate effect of killing or injuring those who are deemed a prohibited target; an intermediate effect of intimidating the larger population therefore influencing their political behavior; and an aggregate effect of undermining overall public order.”¹¹¹ “[D]espite 15 U.N. conventions and two draft conventions dealing with various

105. CAIN, *supra* note 45.

106. *Id.*

107. *Id.*

108. That reference is included in the following clause: “The participants also believe that those structures and arrangements must be capable of maintaining law and order including responding effectively to crime and to any terrorist threat and to public order problems.” The Good Friday Agreement, *supra* note 2, at ¶2.

109. Emanuel Gross, *Legal Aspects of Tackling Terrorism: The Balance Between the Right of a Nation to Defend Itself and the Protection of Human Rights*, 6 UCLA J. INT’L L. & FOREIGN AFF. 89, 97 (Spring/Summer 2001), citing David B. Kopel & Joseph Olson, *Preventing a Reign of Terror: Civil Liberties Implications of Terrorism Legislation*, 21 OKLA. CITY U. L. REV. 247, 251 (1996).

110. OPPENHEIM’S INTERNATIONAL LAW, Vol. 1, 401 (9th ed. 1992). See also Gross, *supra* note 109.

111. Seth Merl, Note, *Internet Communication Standards for the 21st Century: International Terrorism Must Force the U.S. to Adopt “Carnivore” and the New Electronic Surveillance Standards*, 27 BROOK. J. INT’L L. 245, 249 (2001), citing W. Michael Reisman, *International Legal Responses to Terrorism*, 22 HOUS. J. INT’L L. 3, 10, 60 (1999).

aspects of terrorism—including hijacking, bombing, piracy, assassination, hostage-taking, and biological, chemical and nuclear warfare—the international community has yet to settle on a single definition of ‘terrorists’ or ‘terrorism.’”¹¹² One reason for the lack of consensus on the definition of terrorism is that “[o]ver the years . . . Western powers have often tried to limit the definition of ‘terrorism’ in international conventions to individual or small- group conduct, while other nations and human rights organizations pushed to include state-sponsored violence perpetrated by police, military or other paramilitary groups.”¹¹³ Despite the lack of agreement on a definition, terrorism is condemned by the international community and is a criminal offense in most states.¹¹⁴

In terms of the domestic law of nations, the United Kingdom, Northern Ireland’s ultimate sovereign, defines “terrorism” as “the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.”¹¹⁵ In response to the September 11th attacks, the United States enacted The U.S.A. PATRIOT ACT,¹¹⁶ which defines “international terrorism” as:

activities that (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, . . . (B) appear to be intended— (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.¹¹⁷

In any discussion of terrorism, several concepts in international law intimately related to terrorism must also be addressed. They include national liberation movements (NLMs), self-determination, and self-defense.

A. National Liberation Movements (NLMs)

One complication in coming to a consensus on a definition of terrorism is the tension between developing and developed states regarding the actions of National

112. William C. Smith, *Legal Arsenal, International Law can be an Important Element in the United States' Campaign against Terrorism*, 87 DEC A.B.A. 43, 44 (Dec. 2001), quoting M. Cherif Bassiouni, co-director of the International Criminal Justice and Weapons Control Center at DePaul University in Chicago.

113. *Id.*

114. G.A. Res. 54/110, *Measures to Eliminate International Terrorism* (2 Feb. 2000), U.N. Doc. A/Res/54/110; G.A. Res. 40/61, 40 U.N. G.A.O.R. Supp. (No. 53), 1985, at 301, U.N. Doc. A/40/53; *European Parliament Resolution on Acts of Terrorism in the European Community*, (16 Nov 1977); *Organization of American States Resolution on Acts of Terrorism* (30 Jun. 1970), reported in O. ELAGAB (ED.), INTERNATIONAL LAW DOCUMENTS RELATING TO TERRORISM.

115. Prevention of Terrorism (Temp. Provisions) Act, § 20 (1989) (Eng.), in LEXIS Statutes and Statutory Instruments of England and Wales database; Section 14(1) of the English Prevention of Terrorism (Temporary Provision) Act, 1984, and Section 20(1) of the English Prevention of Terrorism (Temporary Provision) Act, 1989.

116. The U.S.A. PATRIOT Act of 2001, Pub. L. No. 107-56 (2001).

117. *Id.*

Liberation Movements (NLMs).¹¹⁸ Though seldom defined, NLM's are, "groups fighting for their own 'national liberation.'" ¹¹⁹ Developing states generally believe that the definition of terrorism should exclude the "acts of national liberation movements."¹²⁰ In particular, "[m]odern Arab states, . . . have been careful to distinguish outlaw terrorists from 'legitimate' national liberation movements – an implicit reference to Palestinian conflicts with Israel over the creation of some independent state."¹²¹ On the other hand, developed and Western states generally argue "legitimacy of the cause [can]not legitimize the use of certain forms of violence."¹²² Their argument is generally that, "certain acts are so brutal that States are prohibited from engaging in them even during wartime; so too, these States [assert], there should be limits to the violence engaged in by groups and individuals."¹²³ The United Nations has recognized NLMs as active participants in certain areas. For example, the U.N. Security Council permitted the Palestine Liberation Organization (PLO) to participate in debates.¹²⁴ In fact, "the possibility of observer status in the UN and related organs for NLMs appears to have been affirmatively settled in international practice."¹²⁵

B. Self-determination

Self-determination is also seldom defined. International law generally requires states to refrain from threat or use of force against another state.¹²⁶ On the other hand, international law does not forbid rebellion and there is growing acceptance of self-determination as a legal right.¹²⁷ International law also "does not cover as such the self-determination situation where a people resorts to force against the colonial power," leaving such issues to the domestic law of the colonial state as a purely internal matter.¹²⁸ In the 1970s, the General Assembly of the United Nations began adopting resolutions, "reaffirming the legitimacy of the struggle of people for liberation from colonial domination and alien subjugation, 'by all available means including armed struggle.'" ¹²⁹ As in NLMs, there is a split

118. See JOSEPH J. LAMBERT, *TERRORISM AND HOSTAGES IN INTERNATIONAL LAW—A COMMENTARY ON THE HOSTAGES CONVENTION 1979* 37 (1990) (describing debate within the United Nation's 1972 Ad Hoc committee on International Terrorism). See also Report of the Ad Hoc Committee on International Terrorism [hereinafter International Terrorism Report], UN GAOR, 28th Sess., Supp. 28, para. 3, U.N. Doc A/9028 (1973).

119. See LAMBERT, *supra* note 118.

120. See *id.* See also International Terrorism Report, *supra* note 118, at ¶¶22, 37 & 45.

121. Smith, *supra* note 112.

122. See LAMBERT, *supra* note 118. See also International Terrorism Report, *supra* note 119, at ¶23.

123. See LAMBERT, *supra* note 118.

124. See MALCOM N. SHAW, *INTERNATIONAL LAW* 174 (4th ed. 1997). See also 1972 UNYB 70; 1978 UNYB 297.

125. SHAW, *supra* note 124.

126. *Id.*; see e.g. U.N. CHARTER, art. 2(4).

127. SHAW, *supra* note 124, at 795-96.

128. *Id.*, at 795.

129. SHAW, *supra* note 124, at 795; see e.g. resolutions 3070(XXVII), 3103(XXVIII), 3246(XXIX), 3328(XXIV), 3481(XXX), 31/91, 31/92, 32/42 and 32/154. While resolutions of the United Nations

of opinion between developing and developed states regarding when force is acceptable as a means of self-determination.¹³⁰ Developing states typically take the view that "the use of force by peoples entitled to self-determination [is] legitimate as self-defense against the very existence of colonialism itself."¹³¹ Developed states, on the other hand, typically take the position that the use of force by peoples entitled to self-determination is legitimate "as a response to force utilized to suppress the right of self-determination."¹³² Using either definition, one could argue that the situation in Northern Ireland allows Republicans the right to use force. For example a Republicans would portray their paramilitary's actions as a legitimate fight against a colonial power. Alternatively they might also argue that under the developing state's view, the British government is suppressing the right of the Irish people to self-determination. Despite the growing acceptance of the right of self-determination "[the] implication is clear: the right to self-determination, which continues to be an important part of the United Nations policy, cannot justify acts of terror."¹³³

C. Self-Defense.

The concept of self-defense in international law is primarily a problem of state-to-state relations that does not directly apply to the paramilitaries within Northern Ireland except in considering force used by Britain in response to paramilitary attacks; however, any treatment of terrorism and the response to terrorism without a discussion of self-defense is incomplete. The traditional definition of the right of self-defense in customary international law is that force may only be exercised where there exists "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation."¹³⁴ Additionally, the action taken in pursuance of self-defense must not be unreasonable or excessive.¹³⁵ "Indeed, the concepts of necessity and

General Assembly are not binding on even Member states of the United nations, [w]hen they are considered with general norms of international law, then acceptance by a majority vote constitutes evidence of the opinions of governments in the widest forum for the expression of such opinions. . . In general each individual resolution must be assessed in the light of all the circumstances and also by reference to other evidence of the opinions of states on the point in issue.

IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 14 (5th ed. 1998). See also *The Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14, 99-100 (*opinio juris* may, through with all due caution, be deduced from, *inter alia*, the attitude of States towards certain General Assembly resolutions.). *Opino juris* is the attitudinal requirement that a state believe an activity is legally obligatory for it to become part of customary international law. SHAW, *supra* note 125, at 66-67.

130. SHAW, *supra* note 124, at 796.

131. *Id.*

132. *Id.*

133. Rosalyn Higgins, *The General International Law of Terrorism in TERRORISM AND INTERNATIONAL LAW* 18 (R. Higgins & M. Flory, eds. 1997).

134. R.Y. Jennings, "The Caroline and McLeod Cases," 32 ASIL 82 (1938); MALCOM N. SHAW, *supra* note 124 at 787.

135. SHAW, *supra* note 124, at 787.

proportionality are at the heart of self-defence [sp] in international law.”¹³⁶

Perhaps the lack of clarity in defining terrorism results from the ambiguities in determining what is a legitimate objective. Whether an organization is a terrorist organization or legitimate, yet unconventional, army depends on one’s point of view or biases; however, any definition has several themes in common: (1) The use of force or threat thereof, (2) against innocents or non-combatants, (3) to coerce or intimidate, (4) persons or a government, (5) to action or inaction.

Having attempted to define terrorism, this article will now address the question of whether the paramilitaries of Northern Ireland are terrorists.

PART IV: ARE THE PARAMILITARIES TERRORISTS?

The very term “paramilitary” carries with it the implication that these organizations are legitimate armed groups and not terrorists. The “paramilitary” label is generally accepted within Northern Irish society. Some argue that the Northern Irish paramilitaries are not terrorists and are more akin to freedom fighters struggling for national liberation. Gerry Adams, the leader of Sinn Fein, in particular, has refused to label as terrorist those people “who fought when they considered they had no other choice.”¹³⁷ Again, how one defines an armed group depends on what bias he brings to his analysis. Adams, for example, might call certain Loyalist paramilitaries “terrorists,” while at the same time a Loyalist would firmly believe that the IRA is composed entirely of terrorists.

As a point of discussion, U.S. courts have had difficulty coming to grips with terrorism and Northern Ireland, particularly prior to September 11th. For example in *Quinn v. Robinson*,¹³⁸ a case concerning an extradition request from Great Britain for a member of the IRA wanted for conspiring to cause explosions in London and the murder of a police constable, the Ninth Circuit Court of Appeals held that the United States would be obligated to give safe harbor or passage to anyone who participates in any acts, however heinous, if the acts: were done for purely political purposes; occurred within the territorial limits of the civil war or uprising; were committed by persons who reside there (or, as in this case, had some significant tie to the territory); and, had been used before, “by revolutionaries to bring about change in the composition or structure of the government in their own country.”¹³⁹ This decision is cited as supporting the position that any atrocity qualifies as a political act if it is done for “purely political purposes.”¹⁴⁰

136. See *id.* See also *Nicar. v. U.S.*, *supra* note 130, at 94 & 103; *The Legality of the Threat or Use of Nuclear Weapons*, 1996 I.C.J. ¶41.

137. See *A Draft Chronology of the Conflict – 2001*, CAIN Web Service, at <http://cain.ulst.ac.uk/othelem/chron/ch01.htm> (last visited Jan. 19, 2002).

138. *Quinn v. Robinson*, 783 F.2d 776, 806 (9th Cir.), *cert. denied*, 479 U.S. 882, 107 S.Ct. 271, 93 L.Ed.2d 247 (1986). *But see* *Matter of Extradition of Atta*, 706 F.Supp. 1032 (E.D.N.Y. 1989)(declining to follow the rationale of *Quinn v. Robinson*).

139. *Matter of Extradition of Atta*, 706 F.Supp. 1032, *quoting* *Quinn*, 783 F.2d at 806.

140. *Quinn*, 783 F.2d at 806. The court’s rationale is set forth in Judge Reinhardt’s opinion as follows:

It is understandable that Americans are offended by the tactics used by many of those

A. National Liberation Movements (NLMs)

It is the opinion of the Nationalist community that Republican paramilitaries are legitimate armed groups fighting for the complete liberation of the Irish nation. Thus, they would argue, they fall squarely within the definition of a National Liberation Movement. Indeed, the Republican paramilitaries hold in common many attributes characteristic of other National Liberation Movements.¹⁴¹ On the other hand, Loyalists supporters might point out that the Republican paramilitaries engage in acts of brutality unacceptable in any society regardless of the political goal. They would label the Republican paramilitaries as outlaw groups with goals beyond the scope of the consensus of Northern Irish.

B. Self-Determination

Self-determination is also a highly relevant issue in Northern Ireland. The Republicans and Nationalists of Northern Ireland form a distinct group based on their political views. In addition, for the most part, they form a distinct religious group as the majority of Northern Irish Republicans are Catholics and most Loyalists are Protestants. Finally, Ireland was once a colony and Northern Ireland is considered by some to still be the last colony of the British Empire. In response, Loyalists would again argue that the Republican paramilitaries' means are outside the accepted norms of international law.

C. Self-Defense

Great Britain's response to paramilitary attacks has both been accepted and criticized. In general, the world community accepted Britain's decision to deploy troops to Northern Ireland during the height of the Troubles. Alternatively, the government of Northern Ireland and Great Britain often were criticized for the actions of the Royal Ulster Constabulary (RUC). In fact, reform of the RUC has for many years been an important issue to Republicans and is a major component of the Good Friday Agreement.¹⁴²

seeking to change their governments. Often these tactics are employed by persons who do not share our cultural and social values or mores. Sometimes they are employed by those whose views of the nature, importance, or relevance of individual human life differ radically from ours. Nevertheless, it is not our place to impose our notions of civilized strife on people who are seeking to overthrow the regimes in control of their countries in contexts and circumstances that we have not experienced, and with which we can identify only with the greatest difficulty. It is the fact that insurgents are seeking to change their governments that makes the political offense exception applicable, not their reasons for wishing to do so or the nature of the acts by which they hope to accomplish that goal.

Id. at 804-05 (internal citation omitted).

141. The Palestine Liberation Organization (PLO) of the 1980's, the prototypical example of a National Liberation Movement, portrayed itself as a legitimate army fighting an occupying force, as has the IRA.

142. The Good Friday Agreement, *supra* note 2.

D. Moving Outside the Definition of Terrorists

Also important in addressing the paramilitaries as terrorists is to consider recent developments in the Peace Process that arguably take some paramilitaries outside the definition of terrorism. Factors that might take some paramilitaries outside the definition of terrorists include cease-fires and decommissioning. As an organization decommissions its weapons, it loses its very ability to engage in violence. Similarly, an organization that consistently observes a cease-fire reduces the fear it creates among target communities. Both the IRA and LVF have made efforts to decommission their weapons.¹⁴³ As these groups and others voluntarily surrender their ability to engage in violence, they may move themselves outside the definition of terrorists.

Some paramilitary organizations chose to take a moderate approach, demonstrating that they may not be terrorists. Some Republican organizations have reduced their advocacy of violence to regain territory and are focusing instead on securing civil and human rights for Republicans and Catholics. For example, John Hume, leader of the moderate Social Democratic Labor Party (SDLP), believes that the British have no interest in maintaining a presence in Northern Ireland nor can benefit from their attendance in the area.¹⁴⁴ On the other hand, Gerry Adams' has argued in the past that Great Britain only serves its own selfish interests by continuing to occupy Northern Ireland, thus attenuating their right and need to be in the region.¹⁴⁵ Over time Adams came to agree with Hume. Adams' acceptance of Hume's view marked a turning point in the Peace Process and led to the Downing Street Declaration of 1993, in which the British government declared it had, "no selfish, strategic or economic interest in Northern Ireland."¹⁴⁶ Thus, it can be argued that the violent overthrow of the government is no longer the central focus of major factions in the Republican movement, specifically the IRA. With the removal of this integral component of the loose definition of terrorism, namely advocating the overthrow of a government, Republican paramilitaries, particularly the IRA, might have moved outside the definition of terrorists. Additionally, some organizations have won over public and world opinion by taking a more moderate stance. For example, the IRA's decision to call a ceasefire and ultimately to decommission, has garnered it much support in the world community.

Despite these arguments, most neutral observers would characterize all of the paramilitaries of Northern Ireland as terrorist organizations. Regardless of their present character, the past acts of these organizations and their utilization of violence to coerce their opposition firmly places them within any accepted definition of terrorism. Every paramilitary organization in Northern Ireland has:

143. CAIN, *supra* note 45.

144. Kathleen P. Lundy, *Lasting Peace in Northern Ireland: An Economic Resolution to a Political and Religious Conflict*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 699, 706 (2001); *see also* David Trimble, *The Belfast Agreement*, 22 FORDHAM INT'L L.J. 1145, 1150 (1999).

145. Lundy, *supra* note 144, at 706.

146. Joint Declaration on Peace, Dec. 15, 1993, *available at* <http://cain.ulst.ac.uk/events/peace/docs/dsd151293.htm> (last visited April 8, 2003); *see also* Lundy, *supra* note 144, at 706.

(1) used force or and violence or the threat thereof, (2) against innocents or non-combatants, (3) to coerce or intimidate, (4) persons or a government, (5) to action or inaction. Furthermore, their ends are political and all advocate the overthrow of a government (Republican groups seeking the abdication of British Rule, and Loyalists groups seeking to coerce the existing power structure to resist Republican efforts). Finally, it is symptomatic of Northern Irish paramilitary organization to be under the command of a tightly controlled leadership structure.¹⁴⁷ Fear has been and still is their greatest weapon and despite moves forward, each paramilitary still either threatens to or actually possesses the ability to engage in violence.

PART V: CASE COMPARISONS OF THE IMPACT OF SEPTEMBER 11TH

Since September 11, 2001, the world's approach to terrorism has changed significantly. Of course, Northern Ireland is not the only area of the world to suffer conflict and terror. As points of comparison, Spain, Sri Lanka, and Israel/Palestine and their experience with terrorism is addressed.¹⁴⁸

A. Spain

Spain has suffered a significant level of terrorism over the past fifteen years, primarily at the hands of Basque separatists. Spread between southern France and northern Spain, the Basque people are distinct people who speak a language unlike any other in Europe.¹⁴⁹ Since the death of Generalissimo Franco in 1975, the Spanish government embarked on a policy of devolution to return more power to the Catalan and Basque regions.¹⁵⁰ While such increased autonomy was secured via peaceful avenues, there are still violent factions that use terrorist techniques in the pursuit of complete secession from Spain.¹⁵¹ Since 1968, the Euskadi Ta Askatasuna (ETA), Basque for "Basque Homeland and Freedom," has waged a relentless campaign of violence.¹⁵² The ETA's targets include politicians, police, judges, and soldiers and is responsible for more than 800 deaths since 1968.¹⁵³

147. However the some paramilitary organizations, particularly the IRA, have recently resorted to a decentralized "cell" structure to counter the impact of informers. THE CROWNED HARP, available at <http://cain.ulst.ac.uk/issues/police/docs/ellison/ellison00bx.htm> (last visited April 8, 2003).

148. Seth Merl, Note, *Internet Communication Standards for the 21st Century: International Terrorism Must Force the U.S. to Adopt "Carnivore" and the New Electronic Surveillance Standards*, 27 BROOK. J. INT'L. L. 245, 249 (2001); SUZANNE ROBITAILLE ONTIVEROS, GLOBAL TERRORISM (Pamela R. Byrne & Suzanne R. Ontiveros eds., 1986).

149. Michael J. Kelly, *Political Downsizing: The Re-Emergence of Self-Determination, and the Movement Toward Smaller, Ethnically Homogenous States*, 47 DRAKE L. REV. 209, 231 (1999).

150. *Id.*

151. Kelley, *supra* note 149, at 231.

152. Paul Sussman, *ETA: Feared Separatist Group*, CNN.com, at <http://www.cnn.com/SPECIALS/2001/basque/stories/background.html> (last visited Mar. 22, 2002).

153. *Id.* See *Politician Killed in Spanish Bar*, CNN.com, Mar. 21, 2002, at <http://www.cnn.com/2002/WORLD/eurpot/03/21/spain.shooting/index.html> (last visited March 22,

Comparisons have been drawn between the situation in Spain and Northern Ireland and in particular the IRA and the ETA.¹⁵⁴ In fact, the two groups are reputed to be closely linked.¹⁵⁵ In 1998 Gerry Adams, the Sinn Fein party leader, visited the region to advocate for peace talks in the region.¹⁵⁶ In September of that year, the ETA, like the IRA in 1994, declared a ceasefire; however, unlike the IRA ceasefire, the ETA ceasefire lasted only 14 months.

Since September 11th, Spain, the European Union, and the United States have all moved against the ETA as a terrorist organization. In late December 2001, the European Union (EU), whose rotating presidency Spain took over on January 1, 2002, specifically identified the ETA as an organization all EU members could agree on as being a terrorist organization.¹⁵⁷ In February 2002, the United States moved to freeze the assets of twenty-one persons with ties to the ETA.¹⁵⁸ In March 2002, the ETA was blamed for the killing of a Socialist party politician.¹⁵⁹ Thus, the events of September 11th aided Spain, and the Western world, in portraying the ETA as a terrorist organization and oppose its movement. What few advances toward peace that occurred prior to September 11th might be hindered if not destroyed altogether. Today, the ETA is again being blamed for violent and lethal attacks.¹⁶⁰

Although the ETA and the IRA are linked and the Irish were involved in attempting to secure peace in Spain, the two conflicts are nevertheless worlds apart. Unlike the IRA, the ETA has not made any concessions and continues to engage in violent behavior. The government of Spain, while making some concessions to the Basques in terms of self-government and autonomy, refused to maintain any political dialogue with the ETA's political representatives during the ETA's 1998 ceasefire.¹⁶¹ The current Spanish government continues to take a hard-line stance against the ETA.¹⁶² In contrast, Great Britain, and in particular Prime Minister Tony Blair, regard dialogue as the only viable avenue toward peace.¹⁶³ Finally, while the Basque region's political demographics remains stable, the number of Catholics in Ireland is increasing exponentially compared to that of Protestants.¹⁶⁴

2002); U.S. State Department, *Patterns of Global Terrorism: 1998, Background Information on Terrorist Groups*, available at <http://www.state.gov/www/global/terrorism/1998Report/appb.html> (last visited Mar. 22, 2002).

154. Alison Daniels, *Similar Conflicts, Different Paths*, CNN.com, at <http://www.cnn.com/SPECIALS/2001/basque/stories/eta.ira.html> (last visited Mar. 25, 2003).

155. Sussman, *supra* note 152; U.S. State Department, *supra* note 153.

156. Daniels, *supra* note 154.

157. *Id.* *EU Agrees Common List of Terrorists*, THE IRISH TIMES, Dec. 28, 2001.

158. *U.S. Cracks down on Basque Separatists*, CNN.com, Feb. 26, 2002, at <http://www.cnn.com/2002/US/02/26/treasury.eta/index.html>.

159. *Id.*

160. *Id.*

161. Daniels, *supra* note 154.

162. *Id.*

163. *Id.*

164. *Id.*

B. Sri Lanka

The island of Sri Lanka also has a long history of ethnic strife and violence. The Sinhalese ethnic group make up twenty-four percent of the population of Sri Lanka.¹⁶⁵ The Tamils are an ethnic minority, making up twelve percent of the population and are concentrated in the northern portion of the island nation.¹⁶⁶ Which group was first to inhabit the island is disputed.¹⁶⁷ When Sri Lanka was a British colony, a disproportionate number of top jobs in the British Civil Service were given to Tamils.¹⁶⁸ When granted independence from Britain in 1948, the Sinhalese majority gained power and introduced progressive yet discriminatory practices to redress the imbalance.¹⁶⁹ Frustrated by these policies, the Tamils grew discontent and, since 1956, communal tension and violence between the Tamils and the Sinhalese increased.¹⁷⁰ By the mid-1970s, Tamils were calling for a separate northern state.¹⁷¹ It was during this time that the Liberation Tigers of Tamil Eelam (LTTE) was formed.¹⁷² In 1983, the LTTE killed thirteen Sri Lankan soldiers sparking the killing of hundreds of Tamils in the Sri Lankan Capital of Colombo and a 100,000 more Tamils fled to India.¹⁷³ In 1987, India sent peacekeeping forces to Sri Lanka; however, in 1990, after getting bogged down in fighting in the north, the Indian peacekeeping forces left.¹⁷⁴ The LTTE was held responsible for the 1991 assassination of Indian Prime Rajiv Gandhi.¹⁷⁵ Since then, there have been intermittent attempts to work out a peaceful agreement, but all have failed.¹⁷⁶ The ensuing war claimed the lives of an incredible 65,000 Tamils and Sinhalese during the last 20 years alone.¹⁷⁷

The LTTE is a formidable fighting force who use guerrilla tactics as well as suicide bombings against the Sri Lankan armed forces and political officials.¹⁷⁸ With a fighting force of 10,000, the LTTE has also used artillery, surface-to-air missiles and rocket launchers, as well as vicious attacks on civilians.¹⁷⁹

There have been several developments in the Sri Lankan/Tamil conflict since

165. *Sri Lanka: The Ethnic Divide*, BBC News, May 16, 2000 at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_514000/514577.stm (last visited April 8, 2003).

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Timeline: Sri Lanka*, BBC News, Mar. 18, 2002, at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1879000/1879947.stm (last visited April 8, 2003).

175. *Sri Lanka: The Ethnic Divide*, *supra* note 165.

176. *Id.*

177. Anna Horsburgh Porter, *In the Tamil Tiger Heartland*, BBC News, Jan. 16, 2002, at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1764000/1764749.stm. (last visited April 8, 2003)

178. *Tamil Tigers: A Fearsome Force*, BBC News Online, May 2, 2000, at http://news.bbc.co.uk/2/hi/south_asia/526407.stm (last visited April 8, 2003).

179. *Id.*

September 11th. In December 2001, a pro-peace government was elected in Sri Lanka that increased hopes of ending the war.¹⁸⁰ In addition, in December 2001, as well as in January and February 2002, the LTTE declared and extended unilateral ceasefires.¹⁸¹ The government of Sri Lanka matched these truces.¹⁸² In early 2002, in an effort to shed the terrorist label, the LTTE allowed journalists to inspect their training camps to demonstrate their transition from a terrorist guerrilla group to a conventional army.¹⁸³ In February 2002, the Sri Lankan Prime Minister negotiated conditions for a permanent cease-fire.¹⁸⁴ The LTTE has agreed to sign a memorandum of understanding with the Sri Lankan government over the cease-fire, but LTTE negotiators refused to participate in negotiations until a Sri Lanka lifted a ban on the LTTE.¹⁸⁵ On September 4, 2002 that ban was lifted and peace talks began.¹⁸⁶

These moves toward peace were a result of, or at least affected by, the events of September 11th and in particular, the “war on terrorism.” The LTTE’s willingness to open its camps to journalists was an attempt to avoid the repercussions of being labeled a “terrorist” such as military attacks much like those waged against al Qaeda in Afghanistan. The Sri Lankan government also made bold moves toward peace by not only matching cease-fires, but also by easing economic embargoes on rebel-held areas as well as agreeing to negotiate.¹⁸⁷ The Sri Lankan government could easily have stepped up its campaign against the LTTE and used the war on terrorism as political cover; however, it chose not to take that path. Of course, there are numerous factors that may have aided in the current move toward peace, but they cannot all be addressed adequately in this article. Yet it seems September 11th has had a substantial effect on this conflict.

In comparison to the Peace Process of Northern Ireland, the peace initiatives in Sri Lanka/Tamil are incredibly recent. In the 1980’s and 1990’s, many began to realize that the conflict in Northern Ireland was futile. Likewise in Sri Lanka/Tamil, many scholars and political officials are today reaching similar conclusions regarding their conflict. Just as Great Britain and the IRA laid the foundations for peace, the Sri Lankan government and the LTTE have laid similar foundations in the aftermath of September 11th.

180. Scott McDonald, *Sri Lanka, Tamil Tigers Extend Truce*, Jan. 20, 2002, at <http://www.reliefweb.int> (last visited January 20, 2002).

181. *Tamil Tigers Declare Month Long Cease-fire: Goodwill Measure to Facilitate Peace*, Press Release, Dec. 19, 2001; *LTTE Extends Unilateral Cease-Fire*, Press Release, Jan. 20, 2002.

182. McDonald, *supra* note 180. This was in sharp contrast to the previous People’s Alliance government, which launched an offensive just hours after the LTTE announced a similar cease-fire in December 2000. *Id.*

183. Frances Harrison, *Up Close With the Tamil Tigers*, BBC News, Jan. 29, 2002, available at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1789000/1789503.stm.

184. Priyath Liyanage, *Analysis: Sri Lanka’s Fragile Cease-fire*, BBC News, Feb. 21, 2002 at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1834000/1834788.stm.

185. *Id.*

186. *Sri Lanka Lifts Ban on Tamil Rebels*, N.Y. TIMES, Sept. 4, 2002, available at <http://www.nytimes.com> (last visited Sept. 5, 2002); Amy Waldman, *Talks Open on Sri Lanka to End 19-Year War*, N.Y. TIMES, Sept. 16, 2002, available at <http://www.nytimes.com>.

187. McDonald, *supra* note 180.

C. Israel/Palestine

The Israeli/Palestinian conflict is a result of promises made, primarily by the British government in the closing years of World War I as well as the inter-war period, to both Arabs and Jews that Palestine would eventually become their homeland.¹⁸⁸ When these promises were implemented, the United Nations tried to resolve the competing interests by creating separate Jewish and Palestinian homelands within a "partitioned Palestine."¹⁸⁹ War quickly followed after this solution proved unworkable.¹⁹⁰ During this time, Israeli forces occupied most of Palestine.¹⁹¹ Egypt, protecting its Arab brethren, occupied the Gaza Strip.¹⁹² In 1967, another war ensued in which Israel gained more territory.¹⁹³ Though great advances were made in the late 1990's, those efforts were reversed after September 11th.

Since September 11th, the conflict in Israel/Palestine has deteriorated to incredible depths.¹⁹⁴ At the time of this writing, Palestinian suicide bombers attack on an almost daily basis and the Israeli army makes repeated forays and retreats into Palestinian areas.¹⁹⁵ Suicide attacks have increased in both their frequency and their death tolls.¹⁹⁶ For the first time, non-religious Palestinians and Arabs are participating in suicide attacks. The shift from solely religious zealots carrying out suicide bombings to the addition of secular bombers may be indicative of the utter hopelessness felt among the Palestinian people. This addition also reflects the Palestinian response to the increased militaristic views and policies of the Israeli government. The Israeli government has likewise increased its attacks on Palestinians since September 11th by carrying out military operations and assassinating Palestinian leaders as well as occupying territory within the Palestinian Authority. In response to the increased levels of violence, peace initiatives have been proffered by both the Crown Prince of Saudi Arabia and the United States.¹⁹⁷

Before September 11th, the Bush administration attempted to stay out of the Israeli/Palestinian conflict; however, the current level violence has forced the United States to become involved again.¹⁹⁸ Although the events that caused the current increase in violence may have occurred prior to September 11th, it had a

188. Michael J. Kelly, *Political Downsizing: The Re-Emergence of Self-Determination, and the Movement Toward Smaller, Ethnically Homogenous States*, 47 *DRAKE L. REV.* 209, 268 (1999).

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. James Bennet, *Israelis Besiege a Defiant Arafat in His Office*, *N.Y. TIMES*, Mar. 30, 2002, at A1.

195. *Id.*

196. *Id.*

197. *Arab Ministers Agree on Formula for Supporting Palestinians*, *N. Y. TIMES*, Mar. 25, 2002, at A1.

198. Joel Brinkley & Todd S. Purdum, *Palestinian Goal of Statehood vs. Israeli Aim for Cease-Fire*, *N. Y. TIMES*, Mar. 31, 2002, at A1.

negative effect on the conflict.¹⁹⁹ The apparent involvement of Muslim fundamentalists in the September 11th attack may have fueled Israeli, and to a certain extent other Western nations', fear of Palestinian attacks. The Western response to the attacks may also provide the Israeli government political cover to intensify its military campaigns against Palestinians. In any case, the effect of September 11th on the Israeli/Palestinian conflict deserves a separate, more detailed treatment than this article can provide.

There are similarities between the conflict in Israel/Palestine and Northern Ireland. Republican paramilitaries have identified with the Palestinian struggle. For many years, Yasser Arafat was a popular image on murals in Republican areas of Belfast. The recent development of secular Palestinians and Arabs engaging in suicide attacks parallels the shift in Northern Irish Republican thought from one of Catholic vs. Protestant to one of Irish vs. British. The primary difference between the Northern Ireland and Israeli conflicts is the length of time each has consumed. The roots of Ireland's conflict are 800 years old. Furthermore, the Irish conflict has seen incredible advances not the least of which is the creation of the Irish Free State. The current Israeli/Palestinian conflict has its origins in the mid-20th Century and the only significant change in position of the parties has been the result of massive armed conflict.

With these examples of post September 11th impact on conflicts in mind, this article now addresses the impact of September 11th on the Peace Process in Northern Ireland and the paramilitaries in particular.

PART VI: THE IMPACT OF SEPTEMBER 11TH ON THE PEACE PROCESS AND THE PARAMILITARIES OF NORTHERN IRELAND

A. United States Foreign Policy

Official United States foreign policy has "substantially changed in the aftermath of the attacks."²⁰⁰ The so-called "Bush Doctrine" holds those states harboring terrorists equally responsible for the terrorist's actions and places an affirmative duty on states to assist the United States in policing terrorism.²⁰¹ In this atmosphere, the American government may lose tolerance for the means, and perhaps even the ends, of paramilitaries still active in Northern Ireland. In the past, the United States, particularly the Clinton administration, was involved intimately in the Peace Process. Yet, its distance from the conflict allowed it to act, for the most part, as an unbiased, neutral observer. September 11th may change the nature and scope of American involvement in the Peace Process. In a recent development that highlights the issues surrounding the American war on

199. *Id.*

200. Note, *Responding to Terrorism: Crime, Punishment and War*, 115 HARV. L. REV. 1217, 1226 (Feb. 2002).

201. *Id.* citing Address to the Nation Announcing Strikes Against Al Qaida Training Camps and Taliban Military Installations in Afghanistan, 37 Weekly Comp. Pres. Doc. 1432, 1432 (Oct. 7, 2001).

terrorism and its impact on the paramilitaries in Northern Ireland, three suspected IRA members were arrested in Columbia for allegedly training left-wing FARC rebels.²⁰² While the U.S. State Department has stated that IRA involvement in Columbia, if true, would "raise troubling questions," the United States has not taken more concrete actions against the IRA in response to this situation.²⁰³ This situation is all the more complex given the United States' military campaign against the ruling party in Afghanistan for harboring al Qaeda members. This raises the question of whether the United States' response would change if, instead of the IRA, al Qaeda was training rebels in Columbia.

B. The American Public

With a few notable exceptions,²⁰⁴ the home soil of the United States was free of terrorism prior to September 11th. The magnitude and live coverage of the September 11th attack made Americans tragically aware that they too are not immune to acts of terrorism.²⁰⁵ As it may affect the government of the United States, September 11th may also affect the perceptions and behavior of the American public toward the Peace Process. The attacks of September 11th "dramatically altered American attitudes and strategies toward terrorism."²⁰⁶ Today, the American people and government might have greater sympathy for victims of paramilitary attacks and less tolerance for the perpetrators. The Republican movement has enjoyed a great deal of support among Irish-Americans.²⁰⁷ Realizing first-hand the results of terrorism, the support of the Republican movement among the Irish-American community might dry up. Again, this is particularly plausible considering Great Britain's overwhelming support of the United States' anti-terrorism initiatives and military actions.

C. Perception of Paramilitaries as Terrorists

The perception that Northern Irish paramilitaries are terrorists might grow more acute post September 11th, as pressure to condemn all terrorism, particularly among Western states, increases. Great Britain's foremost and unwavering support

202. *Adams to Unveil Cuba Memorial*, CNN.com, Dec. 17, 2001, at <http://www.cnn.com/2001/WORLD/americas/12/17/adams.cuba/index.html> (last visited April 8, 2003).

203. Philip T. Reeker, Deputy Spokesperson, United States State Department, Daily Press Briefing for August 16, 2001, *transcript available at* <http://www.state.gov/r/pa/prs/dpb/2001/4559.htm> (last visited April 8, 2003).

204. See e.g. *U.S. v. Salameh*, 152 F.3d 88, 108 (2d. Cir. 1998) (describing the February 28, 1993 World Trade Center Bombing); *U.S. v. McVeigh*, 940 F.Supp. 1541 (D.Colo. 1996) (describing the April 19, 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, killing 168 people, injuring hundreds more and capturing the attention of the entire nation).

205. William C. Smith, *Legal Arsenal, International Law can be and Important Element in the United States' Campaign against Terrorism*, 87 DEC A.B.A. 43 (Dec. 2001), quoting James R. Silkenat, past chair of the ABA Section of International Law and Practice ("[F]or the United States, any sense of 'separateness' from the world's troubles ended very quickly that day.").

206. *Responding to Terrorism: Crime, Punishment and War*, *supra* note 200, at 1217.

207. *Adams to Unveil Cuba Memorial*, *supra* note 202 (noting Sinn Fein's considerable financial support from Irish-Americans).

of the war on terrorism may serve to encourage the public to label the Republican paramilitaries as terrorists because they advocate the complete withdrawal of Great Britain from Northern Ireland and continue to use violence. For example, the European Union' created an acceptable list of terrorists.²⁰⁸ That list included the IRA and the Ulster Defense Association.²⁰⁹

D. Action by the Paramilitaries

Paramilitaries, realizing that their support may disappear should they continue to use violence, may adjust their own objectives and means to conform to the reduced tolerance of violence. The September 11th attacks may persuade paramilitary organizations to refrain from armed conflict to avoid international condemnation similar to actions of the LTTE in Sri Lanka. The constraints of international opinion may effectively make it impossible for the IRA and LVF to ever return to a campaign of violence. Indeed, international awareness of terrorism may have led the Sinn Fein and IRA leaderships to decommission. However, Gerry Adams has denied that post-September 11th pressures had any impact on the IRA's decision to disarm, stating that the long-term goal of the IRA has been peace and have withstood British opposition for 25 years.²¹⁰

E. No Effect

Alternatively, the attacks and repercussions of the September 11th attacks may have little, if any, impact on the Peace Process or the paramilitaries of Northern Ireland. To keep the discussion in perspective it is important to note the long history of, as well as the extreme positions taken by, combatants in Northern Ireland. Since September 11th, both Republican and Loyalist paramilitaries have continued to engage in violence.²¹¹ On a weekly, if not daily basis, Loyalist and Republican paramilitaries carry out punishment attacks on their *own* members.²¹² Loyalist paramilitary organizations carried out numerous pipe bomb attacks.²¹³ The Red Hand Defenders issued death threats against all Catholic teachers and other staff working in north Belfast schools as well as Catholic postal workers.²¹⁴ Protestants mounted fierce protests and acted violently against children and parents at the Holy Cross primary school in Belfast.²¹⁵ Finally, as noted above, suspected

208. *EU Agrees Common List of Terrorists*, *supra* note 157.

209. *Id.* (The IRA and LVF were not included on that list, most likely because of those organizations' decisions to decommission weapons).

210. *Adams: Hope and History in Ireland*, *supra* note 1.

211. *A Draft Chronology of the Conflict - 2001*, *supra* note 137.

212. Punishment attacks are attacks on an organization's own members, typically consisting of beatings or gun-shots to the extremities. They are a method that ensures a paramilitary's power and control over certain areas. They also lessen the chances of someone informing to the police on paramilitary activities and ensures that their illegal business interests continue unhindered. Punishment attacks are also an effective method of dealing with paramilitaries' political opponents. *Id.*

213. *Id.*

214. *Id.*

215. Warren Hoge, *Ulster Protestants to End Demonstration Against Schoolchildren*, N.Y. TIMES,

IRA members, one of which is also the Sinn Fein representative to Cuba, were arrested in Columbia because they were allegedly training left-wing FARC rebels.²¹⁶

Perhaps paramilitary groups do not see themselves as terrorists and thus international condemnation of terrorists would have no effect on how they view themselves.²¹⁷ The current worldwide condemnation of terrorism would be irrelevant. As self-recognized NLMs with the inherent right to use force in the pursuit of self-determination, the Republican paramilitaries may see their use of force as legitimate and outside the post-September 11th debate. The Loyalist Paramilitaries may view their actions as a means of legitimate self-defense against Republican attacks.

There also may be a desensitization effect among Northern Ireland's combatants. Northern Irish on both sides of the conflict have witnessed thousands of friends and family die. The Northern Irish have lived under fear and threat of violence for decades. Accustomed and desensitized to violence, the tragedy of September 11th may not have as great an impact in Northern Ireland as it does in the United States or elsewhere.

Most recently, there have been major setbacks in the Peace Process. After realizing that Sinn Fein members of the Northern Irish Assembly may have been spying on behalf of the IRA, that the IRA has been training rebels in Columbia, and that the IRA has no intention of disbanding, Irish Protestants within the Northern Ireland Assembly resigned their positions, requiring Great Britain to reimpose direct rule.²¹⁸ It is debatable whether this is an effect of September 11th. It is more likely that this is evidence that the Troubles, begun prior to September 11th, continue today.

CONCLUSION

While the impact of the September 11th attacks on the paramilitary organizations of Northern Ireland and the Peace Process in general is still developing, it is probable that September 11th will indeed influence the Northern Ireland conflict in several significant ways. In terms of the big picture, the United States' approach will change. The United States no longer has the luxury of remaining a detached observer. Instead, if it wants to avoid charges of hypocrisy, the U.S. will most likely be less sympathetic to those organizations still engaging in violence and more reluctant to include them in future peace endeavors. The Good Friday negotiations were a success because paramilitary groups were included in the discussions. Therefore, any decision to excluding violent organizations would have a negative effect on the Peace Process. In terms of the day-to-day effect of September 11th on the paramilitaries in Northern Ireland, the impact is little. Violence continues. Perhaps this is not surprising considering the

Nov. 25, 2001, at A1.

216. CNN.com, *supra* note 204.

217. See *A Draft Chronology of the Conflict - 2001*, *supra* note 138.

218. Hoge, *supra* note 3.

long history of violence in Northern Ireland. One of the few positive outcomes of the September 11th attacks is a hope for increased worldwide vigilance in stamping out terror. Unfortunately, this level of vigilance has not yet had any impact on Northern Ireland.

The Peace Process and, in particular, the Good Friday Agreement have set in motion an irresistible force for peace that cannot be stopped despite recent violence, setbacks in Northern Ireland, frequent deaths and fighting in the name of freedom, and the failure of peace initiatives throughout the world. Perhaps "hope and history is reigning in Ireland."²¹⁹ One day, those who work for peace may point to Northern Ireland as an example of how to obtain it.

219. Adams: *Hope and History in Ireland*, *supra* note 1.

