Brexit and Beyond

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Introduction

Nowhere are the complexities of Brexit more apparent than in the challenge they pose to Ireland, North and South, and particularly in the issue of the border between the Republic and Northern Ireland, the UK’s only land border with a neighbouring state. The European Council guidelines identify the ‘unique circumstances on the island of Ireland’ as one of the three main issues to be dealt with in the first stage of the Brexit negotiations which are focused on the actual withdrawal (or ‘divorce’), along with citizens’ rights and the UK’s financial obligations (European Council 2017a). Only once sufficient progress has been made on each of these – a determination to be made by the European Council based on a recommendation by the EU’s chief negotiator, Michel Barnier – can discussion of the post-Brexit UK–EU relationship, including the nature of their new trading relationship, begin.

Brexit has, though, begun against a backdrop of increasing tension in Northern Irish politics, partly but not only as a consequence of the fallout from the referendum result which saw a 55.8 per cent vote in favour of Remain. Following the referendum, the first minister and deputy first minister wrote to the prime minister in August 2016 calling, in essence, for the status quo in terms of freedom of movement of people, goods and services to be maintained (Doherty et al. 2017). However, the subsequent collapse of the Northern Ireland Executive in January 2017 brought 10 years of power-sharing to an end and led to
elections to the Northern Ireland Assembly in March (less than a year after the previous elections). While the two main parties dominated once more – the pro-Remain Sinn Fein won 27 seats, only one fewer than the pro-Leave Democratic Unionist Party – the results mean that for the first time Unionist parties no longer have an outright majority, while overall 70 per cent of Northern Irish voters backed ‘parties opposed to Brexit’ (Murphy 2017).

Since then, negotiations between Sinn Fein and the DUP have made little progress. Moreover, the results of the UK general election in June 2017 have caused further complexity, with the DUP agreeing to support a minority Conservative government through a ‘confidence and supply’ arrangement. This has led some, including former Conservative Prime Minister Sir John Major, one of the architects of the 1993 Downing Street Declaration, to question the capacity of the UK government to act as an honest broker in Northern Irish politics, an important element of the Good Friday Agreement (Syal & Walker 2017). The key point, though, is that as long as power-sharing remains in abeyance, Northern Ireland lacks an independent voice representing both communities in the discussions that will determine how Brexit will impact them.

This chapter explores the political ramifications of Brexit for the two parts of Ireland in greater detail. It begins by examining the role played by the EU both in supporting efforts at peace in Northern Ireland but also in facilitating the remarkable improvement in the Anglo-Irish intergovernmental relationship in recent years. It then considers the challenge Brexit poses to Northern Ireland’s political settlement, as well as to Ireland and Anglo-Irish relations in the context of the border. In doing so, it seeks to highlight the inherent tension between the UK government’s broader stated aims regarding the return of sovereignty and desire for control of borders on the one hand, and its declared commitments and legal obligations to sustain Northern Ireland’s political settlement on the other. While these tensions are not easily resolved, failure to do so is likely to place even greater pressure on devolution and the broader peace process.

1. The EU and Northern Ireland

In the almost two decades since the Good Friday Agreement was signed (HM Government 1998), Northern Irish politics have transformed, as has ‘Northern Ireland’ as a political issue both in the UK and internationally. Although currently suspended, the devolved administration
in Belfast, the Northern Ireland Executive, has seen Unionist and Nationalist politicians working together as equals despite ongoing and sometimes significant tensions. Meanwhile, North–South engagement between Belfast and Dublin has become normalised to an extent barely imaginable only a few decades previously. Finally, Anglo-Irish relations have never been closer, as symbolised by the state visits of Queen Elizabeth II to Ireland in 2011 (the first by a British monarch in a century) and the Irish President Michael D. Higgins to the UK in 2014 (the first ever by an Irish head of state). The House of Lords European Union Committee described this relationship as having been ‘turbocharged in recent years by an unprecedented degree of friendship as the Northern Ireland peace process has advanced’ (House of Lords 2016, 3), while the UK government considers that it ‘has never been better or more settled than today’ (HM Government 2017d, 21). Much of this has been down to the many years of hard work and commitment of politicians, officials and activists from all sides.

However, the influence of the EU both directly and indirectly has also been vital in facilitating a sea change in relations. Indeed, the UK government acknowledges the EU’s ‘unwavering support for the peace process’ in its recent position paper on Northern Ireland (HM Government 2017d). The EU’s engagement with Northern Ireland can be seen both technically/financially and politically – or as ‘context and agency’ (Hayward 2017a). In technical terms, EU membership has been expressed primarily through the access the UK and Ireland have to a number of EU programmes and the funding they disburse. The most obvious example of this is the Common Agricultural Policy (CAP). EU subsidies provided through the CAP currently represent 87 per cent of income for Northern Irish farmers compared with 53 per cent for the UK overall (Burke 2017). In 2014, the then Department of Agriculture and Rural Development for Northern Ireland noted that Northern Irish farmers received almost £300m in annual subsidies which they considered ‘essential support … sustaining farming communities’ (HM Government 2014a, 40).

Funding and support has also been provided through the EU’s regional policy, designed to help the EU’s most economically disadvantaged regions through the pursuit of a range of Union-wide cohesion objectives (European Commission 2017a). Northern Ireland has thus benefited from the EU’s INTERREG programme, as well as the dedicated PEACE programme, launched in 1995 ‘as a direct result of the EU’s desire to make a positive response’ to the peace process (SEUPB, 2017). This has supported projects in Northern Ireland and the border counties of Ireland focused primarily on improving economic and social stability.
and increasing cohesion between communities affected by the conflict (European Parliament 2017b). In 2014, the UK government’s Review of the Balance of Competences reported that more than 100,000 people had gained qualifications through PEACE II funding, and more than 800,000 people on both sides of the border had participated ‘in cross-border activities and reconciliation projects’ (HM Government 2014b, 52). The PEACE III (2007–13) and PEACE IV (2014–20) programmes, meanwhile, have contributed, or are scheduled to contribute, €225 million and €229 million respectively, with objectives including community reconciliation, economic development and education (Special EU Programmes Body 2017).

Underlining this financial commitment, in 2007 the Barroso Commission established a special Northern Ireland Task Force ‘to examine how Northern Ireland could benefit more from EU policies’, particularly in terms of encouraging and sustaining economic growth (European Commission 2016). The creation of the NITF is the first time the Commission has created ‘a close partnership specifically with one region’ in this way (European Commission 2014, 10). These mechanisms have been intended to support the peace process and help drive reconciliation and collaboration. What has made them particularly important is the perception of the EU as being ‘neutral’ in a way the UK or Irish government cannot be (Bell 2016). In essence, the EU is uniquely positioned to offer a friendly, outside and ‘apolitical’ hand.

This neutrality has been especially important at the political level. Here the EU’s core contribution has been to help depoliticise a range of complex issues including justice and policing, identity, equality and human rights by enabling cooperation between national governments and local communities in the context of broader EU membership. Thus, while the difficult negotiations that have brought about and sustained the peace process over more than 20 years have focused on, and been driven primarily by Belfast, London and Dublin, the institutional framework and normative environment provided by the EU – described by former Táinseach Enda Kenny as the EU’s ‘intangible role’ – has been crucial in creating the space for the different sides to move forward (Flanagan 2015, 4).

This indirect facilitation can be discerned in a number of ways. For example, we have seen a dramatic change in the dynamic of relations between London and Dublin which really began their upward trajectory with the 1985 Anglo-Irish Agreement (Tannam 2017). One senior Irish diplomat attributes this in part to the two countries having joined the then EEC at the same time (1973), and since then having spent so long ‘sitting around the table together’. Thus, Irish governments have
recognised they have ‘more in common with the UK than they thought’, a view reciprocated in London. For another former Irish Taoiseach, John Bruton, the two countries being part of the EU has seen the transformation of a ‘bilateral unequal relationship’ into ‘an equal membership of something bigger than either of them’ (House of Lords 2016, 42). If the close intergovernmental cooperation that has developed since 1985 has been ‘a fundamental cause of the peace process’ (Tannam 2017), for Bruton it is their common EU membership that ‘made all the progress that followed possible’ (House of Lords 2016, 42).

The EU’s institutional contribution, meanwhile, can be seen in the 1998 Good Friday Agreement. Thus, while it is a bilateral treaty, the ‘status of the UK and Ireland as EU Member States is woven throughout’ (Douglas-Scott 2015, 4), for example in how sensitive issues related to human rights and identity are both framed and addressed. The political settlement established in 1998 is finely tuned, carefully balancing a range of issues of concern to the communities involved. The EU’s contribution is to provide what is essentially outside adjudication and a common system of protection based on European law and the principle of equality, something that can be accepted by all parties within the context of EU membership.

One of the clearest expressions of this can be seen in how, prior to the 2016 referendum, the border had largely ceased to be ‘an issue of contention’ (Bell 2016). Thus, whilst the Good Friday Agreement enshrines Northern Ireland’s status as part of the UK until such time as its population decides otherwise, the border itself has softened to the extent that it essentially no longer matters in terms of communication, mobility and trade. Crucially, it has enabled ‘Nationalists in Northern Ireland to develop a sense of common identity with fellow EU citizens’ in Ireland whilst also addressing Unionist concerns (House of Lords 2016, 43). This ‘de-emphasising of state sovereignty’ has come about as a result of Europeanisation and the peace process (McCall 2015, 158), with the EU acting as an important ‘enabling factor’ for peace. Not for nothing, therefore, did Charles Flanagan, Ireland’s former foreign minister, suggest that it is in Northern Ireland that ‘the EU’s positive influence has been most keenly felt’ (2015, 4).

2. Northern Ireland’s ‘hard border’ conundrum

Northern Ireland is, of course, not alone in facing challenges from the UK’s departure from the EU – all parts of the country will be affected to some extent. However, its unique position and circumstances – not least the current lack of a functioning Northern Ireland Executive to give it a
voice – mean there are very specific concerns about the consequences for its economy and political situation, both of which are closely interlinked. While all sides have made clear their commitment to ensuring that the interests of Northern Ireland are properly considered in the negotiations, the region remains ‘particularly vulnerable to the potential negative effects of Brexit’ (House of Lords 2016, 13) while the Irish government has warned of ‘profound implications’ for the whole island (Irish Government 2017, 6). For its part, the UK government emphasises that political stability ‘is dependent on the continued operation of the Good Friday Agreement’s institutions and constitutional framework, effective management of the security environment, and economic prosperity’ (HM Government 2017d, 3). The importance of and linkages between each of these are clearly reflected in the issue of the border.

The problem in this regard is clear. Under EU law, the establishment of a hard border would be consistent with the UK government’s commitment to withdraw from both the EU’s Single Market and Customs Union (and in the event of a ‘no deal’ scenario, would likely be inevitable). However, this is an outcome that all are seeking to avoid. The UK government has called for ‘flexible and imaginative solutions’ to the border issue in the context of broader discussions about future UK–EU customs arrangements (HM Government 2017c, 2–3). For its part, and using identical wording, the EU had also previously made such a call ‘with the aim of avoiding a hard border, whilst respecting the integrity of the Union legal order’ (European Council 2017), and the Irish government has made clear its rejection of any ‘visible, “hard” border on the island of Ireland’ (Irish Government 2017, 7). The challenge, though, is how to turn these shared aspirations into reality.

As always, the devil lies in the detail, and particularly in how to manage the issues of freedom of movement for people and goods that will have such economic and political significance. Of the two, the movement of individuals is more straightforward. Neither the UK nor Ireland is a member of the Schengen area, with free movement of people across the islands governed instead by rules agreed under the Common Travel Area (CTA) (encompassing the UK, Ireland, Isle of Man and Channel Islands). Alongside these, a range of reciprocal arrangements guarantee rights to residency, voting, health, social welfare and work. The CTA pre-dates by many years both countries’ membership of the EU, is recognised in the EU treaties, and is acknowledged in the European Commission’s negotiating guidelines as being in conformity with EU law (HM Government 2017d). The UK government’s proposal is therefore to continue with the current CTA arrangements, which is relatively uncontroversial.
More difficult, however, are the proposals regarding the movement of goods. Here, the UK is seeking ‘as seamless and frictionless a border as possible’ (HM Government 2017d, 14), and one involving no form of physical infrastructure. However, it is difficult to see how this will work if the UK is ultimately outside the Customs Union and Single Market. While there is a range of potential options in terms of the UK’s future relationship with the EU, these show that the desire to maintain an ‘invisible’ border is incompatible with the pursuit of an independent international trade policy (e.g. Hayward 2017b) or the avoidance of a costly additional regulatory burden, unless the UK government is willing to countenance some form of special arrangement for Northern Ireland. Doherty et al. (2017) have suggested, for example, that Northern Ireland could join the European Economic Area in its own right. While Simon Coveney, the Irish foreign minister, has suggested that a ‘unique political solution’ will be required (Cooper & Marks 2017), a development along those lines currently seems unlikely.

Thus, the risk remains that a hard border will be the ultimate outcome. This would result in immediate and significant economic consequences. The economies of Northern Ireland and the Republic are ‘deeply interdependent’ (House of Lords 2016, 17), with Northern Ireland exporting £2.7 billion of goods to Ireland in 2015, representing 36 per cent of its total goods exports (HM Government 2017d). Indeed, in some sectors it is feasible to talk of an ‘all-island market and … and all-island economy’ (Doherty et al. 2017, 2), two examples being the Single Energy Market and the aforementioned agricultural sector (House of Lords 2016). Estimates by Ireland’s Economic and Social Research Institute are of a potential 20 per cent overall reduction in bilateral trade as a consequence of Brexit, with small companies bearing the brunt of this (Economic and Social Research Institute 2015). Such a contraction in economic activity could be expected to have a major impact on Northern Ireland’s economy, which has already suffered significantly and, according to Oxfam, ‘disproportionately’ from austerity (BBC News 2014). Indeed, given the British government’s current economic policy direction, it is unlikely that HM Treasury would be either willing or able to make up the consequent financial shortfalls, for example in funding to agriculture. It has, though, raised the possibility of the UK continuing post-Brexit to participate in the funding of specific initiatives such as the PEACE programmes discussed above (HM Government 2017d). For its part, the Irish government believes Brexit poses ‘very significant and serious challenges to its economy’
(Irish Government 2017, 9) and is seeking support from the EU to manage and mitigate the risks to trade with the UK, its largest bilateral trading partner.

The political ramifications of such a development are even less appealing. Northern Ireland’s fragile and fractious political settlement, Anglo-Irish intergovernmental relations, and the UK’s longer-term post-Brexit relationship with the EU would all be at risk in the event a hard border is reconstituted. The dismantling of physical barriers between North and South was an important element in securing nationalist support for the political process (Gilmore 2015) and has been both ‘a symbol of and a dividend from the success of the peace process’, transforming the daily lives of people in Northern Ireland and in Ireland’s border counties (Irish Government 2017, 20). The practicalities of re-bordering would be hugely complex. Dozens of farms and rural communities sit astride the border and some of the suburbs of Derry/Londonderry now extend across it (Bell 2016). It is hard to see, therefore, how the establishment of a new frontier could avoid their division. It would also entail the building of a physical infrastructure including customs checkpoints, a border security regime, etc. (McCall 2017). In a region still highly sensitive to political symbolism, there would be significant negative associations with such developments. Indeed, McCall warns that Nationalists and Republicans are both likely to interpret this as ‘an abrogation’ of the 1998 agreement (McCall 2015, 158). Regardless of the fact that such re-bordering would simply be fulfilling the legal and technical responsibilities for managing a frontier between the EU and a non-Member State, it would mark a stark reversal in a political process that has gone a long way to detoxify complex questions surrounding British and Irish sovereignty and identity.⁴

Conclusions

This chapter has sought to provide a brief examination of the potential impact of Brexit on Northern Ireland, and the huge difficulty involved in balancing the Province’s unique political and economic circumstances with the UK government’s commitment to withdraw the UK from the EU. While the issue of the border is only one aspect of the story, it is nevertheless reflective of the wider problems that need to be considered, particularly: how to sustain Northern Ireland’s political settlement and the peace process; how to protect the Anglo-Irish relationship; and, ultimately, what kind of post-Brexit relationship the UK wishes to establish with the EU. It is in the context of Northern
Ireland more than anywhere else that the interlinkages and tensions between UK domestic politics and its Brexit aspirations are thrown into sharpest relief. There remains the risk that Northern Ireland will be used for leverage in the negotiations, with the ‘moral imperative’ of safeguarding the peace process presented as necessitating a special arrangement for the UK in its future trading relationship with the EU. However, it is hard to imagine that the EU27 will collectively sanction any agreement that weakens the integrity of the legal and regulatory structures upon which the EU is constructed and through which it trades with the wider world. This could potentially leave both Northern Ireland and the Republic paying a significant price for the UK government's pledge that ‘Brexit means Brexit’. As the Irish Taoiseach, Leo Varadkar, declared in August 2017, this is indeed ‘the challenge in our generation’.