

Introduction

The Belfast or Good Friday Agreement represented a watershed in British Irish relations.

Building on more than a decade of intensive inter-governmental cooperation, it reconfigured relationships in Northern Ireland, between North and South and between Ireland and the UK in a dramatic way, through agreement on the management of sovereignty disputes and commitments to common international and democratic principles, such as human rights and equality, an end to all political violence and shared government.

In constitutional theory, reconciliation replaced conflict, dialogue and partnership replaced conflict and enmity and mutual accommodation replaced mutual antagonism.

Inter-governmental commitments

Inter-governmental commitments to the Belfast / Good Friday Agreement were critical to its emergence and sustainability.

The governments framed the Agreement, negotiated the conditions of talks and sponsored the negotiations that led to the final settlements. The Irish and British governments were central to the three core underpinning elements of the agreement in relation to peace itself: reconciliation, security and policing and dealing with the Past. When implementation of the Agreement proved difficult, the governments renegotiated aspects of its terms without referendum at St Andrews.

The Agreement was built on common commitments to Human Rights, to treating citizens of two countries equally within both, on opening borders and on freedom of movement. It also formally reframed relationships between Britain and Ireland in at least 6 dimensions:

- Citizenship
- Consent
- Irish Constitution
- Parity of Esteem
- North-South Ministerial Council and North-South Bodies
- British-Irish Council

Since 2007, devolution has been institutionally continuous and the level of violence has subsided measurably. At the same time events have demonstrated that many issues of reconciliation arising from historic relationships remain unresolved and/or fragile:

- 2010: Policing and Parades impasse
- 2012/13: Rioting following changes to the flying of the Union Flag on Belfast City Hall
- 2013/14: Parading issues in Ardoyne/Twadell leading to riots and serious stand-off
- 2013: Failure of Haass negotiations on the Past, Flags, and Parades
- 2014: Stormont House Agreement on Welfare Reform, the Past and Flags.
- 2015: Fresh Start Agreement on Paramilitarism and other issues
- 2016: Early Assembly elections on issues of trust and confidence and considerable difficulties in re-establishing an Executive.

In most of these mini-crises, the Northern Ireland parties have looked to the British and Irish governments and through them to wider support to mediate and intervene. The backstop stability of the Agreement edifice has been British and Irish co-operation with international support. The European PEACE programme has been the biggest single contributor to peace and reconciliation activity in Ireland.

The implications of leaving the EU for British-Irish relationships, and therefore for Northern Ireland, may have been secondary in the considerations of voters and political leaders in the UK outside Northern Ireland.

Relatively little contingency has been made for identifying the consequences for the internal relationships underpinning reconciliation and for the very complex and precise management of the political, social and economic consequences that will now be required.

The implications of the General Election of June 2017 are not yet clear. However, the possibility that the Assembly might be dissolved or suspended by the end of the month cannot be ruled out.

Furthermore, there has been considerable public discussion of the possibility of DUP participation in the British government at Westminster, at least on the basis of confidence and supply. The possibility that there could be a General Election in Ireland within months has also led to speculation that Sinn Fein might participate in an Irish government.

Should either or both of these scenarios materialise, the structures and assumptions underpinning the Agreement – of devolved partnership and intergovernmental co-operation – would in practice be replaced by international relations dominating Northern Ireland affairs.

Core Questions:

Does any party to the Belfast / Good Friday Agreement have any formal intention of abandoning or altering the GFA?

No.

It seems certain, that for the vast majority of voters, and the government, in the UK, the decision by the UK to leave the European Union was not taken with any intention of breaking or abandoning the Belfast / Good Friday Agreement.

In some ways this highlights a difference between the received view of the agreement in Great Britain as a largely successful pragmatic compromise specific to Northern Ireland and that on the island of Ireland, where it is understood as an exercise a dramatic and historic exercise in constitutional and political innovation between two states, achieved through very delicate compromises and balances. Even the Agreement's detractors on the island of Ireland, and there are many, acknowledge its significance.

For voters and government in the UK, any impact on Ireland has appeared to be unintended collateral, but not malicious. The potential impact of the 2017 General Election may be to alter this, however, in as far as commitment to the Agreement is seen as secondary to the needs of sovereign government in the UK.

The external impression created by the Agreement, that peace is stable, may also mean that there has been insufficient preparation for the delicacy and attention to detail required to renegotiate its fragile balances within a short time frame. More importantly, the assumption in the UK may be that the Agreement can be altered to bring it into line with the prior order issue of Brexit.

The assumption in many parts of Ireland is that Brexit must be designed in such a way as to protect the existing commitments of the Agreement. This mindset difference is, in and of itself a significant challenge.

What are the problems and challenges for the structures and assumptions on which the Good Friday / Belfast Agreement is built that emerge because of the UK's decision to leave the EU?

The Agreement was only possible because 'nothing was agreed until everything was agreed': i.e. the balance of the whole deal protected against trade-offs on individual items.

In this context, unilateral action by one signatory inevitably has potential consequences for the overall ecological balance and sustainability of the whole deal. The challenges are at four levels:

- a. *Underlying political assumptions:* Unilateral action by one party in a formal partnership has inevitable disorientating and unequal consequences for other parties. When the unilateral party is a government signatory to a deal, those shocks are inevitably greater. It is clear that the sense of alarm about Brexit and the Agreement is not equally shared by those who opposed and supported Brexit.

Those who support Brexit appear to see many of these concerns as an illegitimate interference in a sovereign decision, with the potential for creating long term resentment. Those who hold their Irish citizenship as their primary identity or who valued the international partnership of the Agreement have exhibited shock, confusion, anger and grief. Above all, there is an underlying feeling of betrayal, that commitments made have been broken without a second thought, and indifferent to the consequences for peace and the sacrifices that were made to get us this far.

In a divided society, the most important aspect is that these very different

emotional reactions unbalance, polarise and divide with huge consequences.

- b. *Institutional:* The Belfast/Good Friday Agreement was, above all, a new compact on how Britishness and Irishness would relate in Northern Ireland, in Ireland and between these islands. The institution of physical borders, trade borders, cultural borders of any sort is an unanticipated development with many complex implications. Because the Irish border is now caught up in global economic and political questions, it may not be possible to make accommodations which are first and foremost designed to meet local requirements.

This in turn raises issues of the unique citizenship arrangements in Northern Ireland. The Agreement establishes the birthright of everyone born in Northern Ireland to be British, Irish or both as they may choose in perpetuity, and aside from all questions of constitutional change. Equal treatment and access to goods and services is guaranteed to both. The State must act with parity of esteem to both traditions and is committed to cultural rights.

Furthermore, Ireland is conceded a 'special interest' in Northern Ireland and has an established state presence in Northern Ireland. The President of Ireland makes informal unheralded visits to communities, institutions and events without obstruction. The consequence is that both Britain and Ireland, and through Ireland the EU will have an enduring and unique shared interest in the people and territory of Northern Ireland that makes it distinct, and only operable through co-operation and mutuality.

Under the Agreement: *"the functioning of the Assembly and the North/South Council are so closely inter-related that the success of each depends on that of the other."* Unsurprisingly the North-South ministerial Council was deigned to *"consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings."* Exactly what happens now is unclear. What is certain is that without functioning and agreed NSMC and cross-border bodies there is no constitutional basis for the Assembly to function.

At its most acute, North-South co-operation has been critical in justice, policing and security. The Patten Commission explicitly promoted co-operation with the Garda Siochana, the Fresh Start Agreement set up a Joint Task Force and there are regular cross-border actions against crime including terrorism and smuggling.

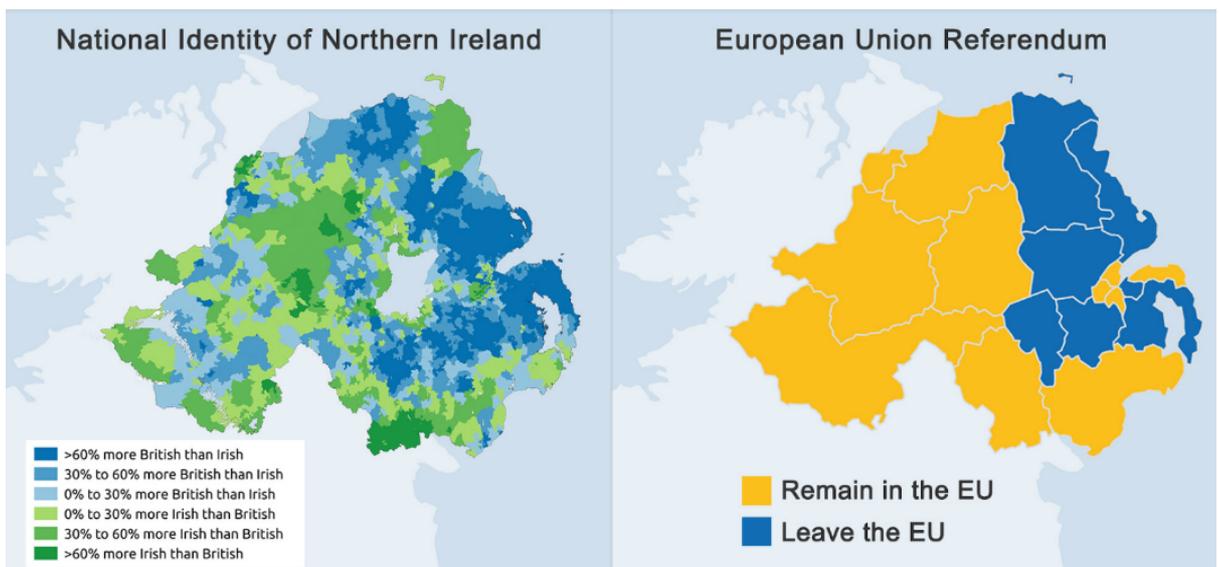
- c. *Principles:* The European Union is built on a number of core assumptions which might be held to be implicit in the Agreement and its development. In broad terms, these can be characterised as Human Rights, the Four Freedoms and Equality of Opportunity. Because they are implicit rather than explicit, the way in which they interact can be complex, but there can be little doubt that any fundamental derogation of any of them threatens the balance of a divided society.

Technically, the ECHR is an instrument of the Council of Europe not the EU.

Nonetheless, any threat to unilaterally alter the UK's relationship with the Convention and the Court would have significant potential ramifications for the GFA, where it is a core element in the construction of the institutions. The four freedoms are not explicitly addressed in the GFA.

However, it could be argued that their spirit – freedom of movement, for labour, capital goods and services have been the central practical outworking of the Agreement in Ireland. Any change to these freedoms will alter the lived experience of post-Agreement Ireland in a fundamental way, challenging the agreement less at the level of its technical formulation than at the level of lived experience.

- d. *Social and Economic:* The Agreement has had a profound effect on the social and economic life of Ireland, North and South. Any unintended consequences of Brexit will therefore impact not only on the relationships of sovereign states but on the quality of life of communities and families and on the economic future of the island. While economic and business relationships, including cross-border enterprises, thriving trade and extensive infrastructure have taken most of the attention, the social implications for cross-border commuters, cross-border families and communities re-joined since the Agreement through programmes such as PEACE and Interreg are should not be overlooked.
- e. In addition, any hard land border between the UK and the EU will be placed precisely where the costs of these changes will be greatest and where resistance is most deep-rooted and determined. The geography of the Brexit referendum in Northern Ireland matters, posing the question of how any border could be imposed, who would impose it, how tariffs are to be collected and monitored and how immigration is to be controlled.



Are these problems a threat to the fundamental stability of the process of reconciliation and/or the structures established since 1998?

Potentially, unless they are faced, acknowledged and workable solutions identified.

The search for solutions to these problems is urgent, but it is likely to be time consuming and politically contentious. Furthermore, there is no agreed Northern Ireland position on these matters and, insofar as they touch on issues of identity and constitution, there is unlikely to be one.

The fact that the EU has established that these issues are prior to any discussion of trade must be correct but the potential for this to cause growing frustration in the UK and among those supportive of Brexit in Northern Ireland should not be underestimated. Furthermore, any prospect that the UK would 'crash out' of the EU is potentially disastrous for Ireland in the context where these issues are not addressed and there is growing recrimination.

Areas for potential action:

1. The two most serious threats to peace in every divided society and therefore in Northern Ireland are: Fundamental political uncertainty and significant unilateral action in the face of partnership. Brexit raises both of these issues in an unexpectedly vivid form. It is therefore incumbent on all parties to move past – 'Keep calm and carry on', to 'Let us now make plans to address these issues before they become unmanageable.' Failure to do this will leave both uncertainty and mutual recrimination in place.
2. By raising the question of 'Ireland' as a prior order issue, the EU should make clear that its first priority in relation to Ireland is sustaining and growing reconciliation. This could potentially then become a shared goal of negotiations rather than simply a question of protecting interests.
3. If reconciliation is the goal, and the protection of reconciliation in Northern Ireland requires flexibility and unique arrangements, then both sides should be encouraged to signal that these will be explored.
4. The substance of the negotiations should be:
 - To identify the potential incompatibilities between the existing treaties and Agreements and Brexit.
 - To establish an agenda for resolving these issues which includes the negotiators, the governments and the political parties in NI.
5. There is no consensus in Northern Ireland about Brexit. Any attempt to force one in advance is likely to result in Lowest Common Denominator minimalist agreements leaving all of the contentious issues unaddressed. Northern Ireland must be present in its plurality in the negotiations. The alternative is that any deal will have to be imposed with considerable consequences.

6. The existing frameworks of the Agreement –N-S Bodies/B-I council and the intergovernmental conference should be focussed on problem solving around this issue. There is also an urgent need for renewed civic voice for solution finding in this issue.
7. The key issues for agreement must include:
 - The nature of the border and its management
 - The future competences of the 3 strands within the Agreement
 - Citizenship, Rights and Equality
 - Trade and Economic Relationships
 - Support for Reconciliation- including three areas - Dealing with the Past, Fresh Start and Shared Future.

Questions for round table discussions:

1. Do you see the changes resulting from Brexit as containing risks to stability in Northern Ireland – and where do you see those risks as most urgent?
2. Identify three steps to be taken to ensure that any risks do not materialise, and identify in each case who needs to take them?
3. What opportunities does leaving the EU create for Northern Ireland which should now be maximised, and what action would be required to ensure their success?