

Introduction

Forty-four years ago in 1973, Andrew Schonfield described the UK's **entry to** the EEC as '*a journey to an unknown destination*'. The UK's **exit from** the EU is also such a journey. The EU referendum in 2016 coincided with the 400th anniversary of Shakespeare's death and, to paraphrase the Bard, where the tide of affairs is taking us, we fear we cannot tell. This session identifies some cardinal marks for navigation.

1973 signified a momentous shift not only in UK's foreign policy but also in its domestic policy. Lord Denning once likened the consequences of the Treaty of Accession on legislative sovereignty to '*an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back*'.

A constitutional moment

The EU Referendum result establishes another constitutional moment. The promised **Great Repeal Bill** proposes to do what Canute failed to do - turn back the tide.

This constitutional moment affects Northern Ireland more directly than any other part of the UK. It also affects the Republic of Ireland more directly than any other member state of the EU. To put that simply, Northern Ireland **and** the Republic of Ireland are on the Brexit front line. In particular, Northern Ireland is the only part of the UK with a land border with another EU state.

However, there is more to be said **politically**:

- Common British/Irish membership of the EU became part of the overall political fabric in which both governments have engaged with the problems of Northern Ireland.
- If the EU had been peripheral to the negotiation of the Good Friday/Belfast Agreement of 1998, it was the larger **context** which facilitated the outworking of that Agreement, especially in and around the border itself.
- In Northern Ireland's case, EU membership helped to **contextualise** being either British or Irish or both.
- For **unionists**, the Agreement took the border out of politics – north/southern was an obsession which suddenly fell off the radar. For **nationalists**, the Agreement helped to take the border out of the **island**, allowing them to feel more comfortable in Northern Ireland as part of the UK.

Brexit will change that **context**.

In short, and in a phrase of Tony Blair's, the referendum result has thrown the Northern Ireland political cards into the air once again. It has been a whole year and the cards are still up in the air. Where they will fall and how they may lie remains **uncertain**.

The result of the 2017 General Election has thrown a different set of political cards into the air. Labour's performance denied the Conservative Party a governing majority which brings the DUP into play. How long the current government will last is equally up in the air. Things may change.

Yet – on current manifesto commitments - **both** Conservative and Labour parties are committed to ending free movement. If the four freedoms are as inextricably linked as the EU argues then alternatives are limited. Remarkably, over 7 weeks both parties talked **very little** about Brexit.

- On one level, it is possible to argue that **nothing** has changed.
- At another, it is possible to argue that what Brexit means **must be** re-thought – if only because much remains un-thought out at the moment.

What do we know?

We are in Donald Rumsfeld territory of **knowns and unknowns**. What do we know?

We know the **process**. It will involve **three** elements:

- Negotiations on the terms of the UK's withdrawal.
- Negotiations on the terms of the UK's relationship with the EU post-Brexit.
- Negotiations on possible transitional arrangements.

What we also know some relevant positions of three major parties to the negotiations:

- The **EU** negotiating guidelines make priorities of the Irish border and protection of the Good Friday/Belfast Agreement in all its parts.
- The **UK** government has made similar statements.
- In their bilateral discussions with the UK, the **Irish** government has said the same.

In principle, these are **good intentions** on all sides. Yet there are obvious problems.

- On the sequencing of negotiations, for instance, the UK government argues that it doesn't make sense to settle the '**Irish Question**' - if that term is allowed - when trading relationships with the EU have not been addressed. The EU begs to differ.
- There is no guarantee that good intentions will deliver good results. To square the circle of the Irish question post-Brexit will require both brains and bravery. It is difficult but not impossible. Suggesting possible solutions for difficult questions and choices is partly what we are engaged in during this symposium.

Brexit means Brexit

In her **Lancaster House** speech, the Prime Minister outlined what she understood by '**Brexit means Brexit**': it involves the UK leaving Single Market and the Customs Union. Whether, after 8 June 2017, it means **the same** is open to doubt. Read carefully, however, even that speech was sufficiently vague to suggest a moveable feast on details.

The broad implications appeared to be:

- Bespoke access to the single market in goods;
- Minimising customs formalities and tariffs;
- And (to make that work) adhering to EU product standards.

The vagueness on Northern Ireland has been marked. The Brexit **White Paper** of February 2017 put it this way:

*‘We will work with the Irish Government and the Northern Ireland Executive to find a **practical** solution that recognises the **unique** economic, social and political context of the land border between Northern Ireland and Ireland. An explicit objective of the UK Government’s work on EU exit is to ensure that full account is taken for the **particular** circumstances of Northern Ireland.*

The three key words here are **practical/unique/particular**. They provide a lot of wriggle room in negotiating a deal to take account of Northern Ireland distinctive case. Vagueness/wriggle room may be a negative – but they can also provide for **creative solutions** to apparently contradictory objectives.

One objective is to maintain the **Common Travel Area (CTA)** comprising the UK and the Republic of Ireland (also Channel Islands and Isle of Man). None of the Northern Ireland parties dissent.

- The February **White Paper** stated: *‘we aim to have as seamless and frictionless a border as possible between Northern Ireland and Ireland, so that we can continue to see the **trade and everyday movements** we have seen up to now’.*
- The Irish Government is keen to secure the CTA *‘in the context of a new relationship between the EU and the UK, and in bilateral discussions with the British Government’.*
- The Commission’s negotiating directives and the European Council confirmed the CTA’s compliance with EU law.
- Both UK and Irish Governments have also set out their desire to protect this reciprocal treatment of each other’s **nationals** once the UK has left the EU.
- Both the UK and the Republic of Ireland are outside the **Schengen** zone.

Issues of national migration and security are involved with free movement of people (one of the recent London terrorists had lived in Dublin).

British and Irish immigration enforcement officials meet regularly to discuss common issues arising from the CTA and cooperation works well.

The House of Lords European Union Committee Report (December 2016) concluded that the UK and Irish governments would need to make the case for maintaining the reciprocal rights enjoyed by British and Irish citizens.

However, the freedoms apply to **people** but not to **goods** (if the UK is outside the Customs Union). That distinction was made clear in evidence by EU officials to the Northern Ireland Select Committee on Brexit last year and by Michel Barnier on his recent visit to Ireland.

Devolved powers

Another issue is the role of devolved institutions.

On **funding**, the UK government has committed that all European structural and investment agreements in the UK signed before this year's Autumn Statement will be fully funded, even after Brexit. It has also committed to agricultural support.

The Conservative manifesto commits the government to a **United Kingdom Shared Prosperity Fund**, designed to reduce inequalities across the four nations.

Brexit will also mean the **return of powers** from the EU. There was a double statement on this in the Conservative manifesto.

- 'We expect that the outcome will be a **significant increase** in the decision-making power of each devolved administration';
- But 'we must also ensure that as we leave the EU **no new** barriers to living and doing business within our own union are created'.

This suggests a negotiated balance between those competences devolved, retained and shared. This new relationship has implications for what is now the term of art for Northern Ireland's future relationship with the EU: a **'bespoke deal'**.

Bespoke deal

The Conservative government commits to working closely '*with the devolved administrations to deliver an approach that works for the **whole** of the United Kingdom and reflects the needs and **individual circumstances** of Scotland, Wales and Northern Ireland*'. Note again the balance it assumes will be struck.

There are, of course, legitimate political differences between the parties about what that balance could mean and where the emphasis should be between the **'whole'** and **'individual circumstances'**.

- On the one hand, prioritising individual circumstances alone suggests a **special status** which would mean Northern Ireland remaining in both the EU Single Market and Customs Union **irrespective** of UK's negotiated position.
- On the other hand, prioritising the whole suggests a **limited modification** of the UK's deal with the EU.

Somewhere **in between** has always seemed to be the likely outcome for Northern Ireland – for a range of political reasons concerning not only the UK (Scotland being one) but also because the EU is an organisation of **states**.

The UK and Irish governments have expressed the wish to see a **common voice** emerging from politicians in Northern Ireland. Whether the parties in Northern Ireland can find common ground

is debatable – but again, not impossible. To articulate that common voice (if achievable) the Executive and Assembly need to be functioning.

One year ago the Constitution Unit in London published a Northern Ireland paper which argued: *'if Northern Ireland knew what it wanted, it might, have some impact on the overall structure of the deal. And if there was flexibility, it would be well placed to gain special treatment'*.

It concluded that it **'needs to do this for itself'**.

That challenge is still open – as is the possibility.

The focus of today is to consider:

- What does Northern Ireland want?
- How does it have some impact on the deal?
- Can its representatives be flexible?

Questions for round table discussions:

1. What are the issues and mechanisms for ensuring NI special interests are recognised in Brexit negotiations?
2. What are the issues and mechanisms ensuring common UK/RoI or (E/W) interests are recognised in Brexit negotiations?
3. What are the issues and mechanisms ensuring common NI/RoI or (N/S) interests are recognised in Brexit negotiations?