

## **The Future of the Irish Border.<sup>i</sup>**

*Brexit has placed the Irish border at the centre of European politics. Westminster urgently needs to wake up to its histories and complexities.*

Katy Hayward

We have discovered recently how little some politicians in Britain know about the island of Ireland. Their weighty pronouncements and momentous decisions about the future of the Irish border are unburdened by knowledge. They are free from the sense of responsibility or caution that even a cursory glance at Irish history and politics would surely encourage.

Marina Hyde has described British government ministers as moving from ‘post-truth’ to ‘post-shame’.<sup>ii</sup> It is an all too apt description when it comes to the Irish border issue. There is apparently no shame in seeking to exploit British ignorance about Northern Ireland. In fact, such ignorance is nurtured in order to secure implicit permission to play with the peace.

Amid all the hubris and the defiant rhetoric, we can find the familiar push-pull of British and Irish nationalism—something that we thought had been indefinitely suspended twenty years ago. This is a tug-of-war, and the Irish border is the rope.

The consequences of previous decisions made in England about Ireland remain all too evident in Northern Ireland and the border region. A friend in Co. Down (who, as it happens, is a former customs officer) likes to tell visitors to the area that it is not an *Irish* border but rather an *English* border: one that was inconsiderately left behind. Trying to find future arrangements for this border that accommodate both pragmatic and symbolic imperatives requires acute levels of perspicuity. It also requires an ability to look towards the long-term implications of the policies and decisions that may be stumbled upon in the heat of negotiations.

### **When all guylines have been cut**

The current disagreement about the future of the Irish border is not some minor parlour-game that is being played out in the corner of the so-called British Isles. This is a process of *European* interest. Ironically, Nigel Farage’s rally cry to ‘take back control’ of our borders demonstrated the deep commonalities between British and continental European politics. The drive to harden and monitor borders is present across Europe – the EU itself is in the middle of a major process of upscaling of its capacity to manage its external borders. It is doing so under pressure from member-states, who are strengthening their own border controls, building border fences, and voting for anti-immigration parties in a way that would have been inconceivable a decade ago.

All of this has consequences. There is nothing less than a perfect storm when it comes to what is happening on the Irish border, as it becomes an external border of the European Union.

Whatever your viewpoint on Brexit, the fact is that there are fundamental changes to both the United Kingdom and the European Union at the moment which are making the task of preparing for Brexit all the more difficult. This is exemplified in the conundrum of the Irish border.

It means that the factors shaping future of the Irish border are no longer to be predicted along the lines that we might have anticipated just a few years ago. These lines would have assumed close communication between British and Irish officials and trusting relationships between British and Irish politicians – both of which have traditionally been enabled by common EU membership.

Incredible as it may seem, after decades of careful nurturing, the assumption of a deep and close British-Irish partnership can no longer be sustained. The change in the intergovernmental relationship has transformed the conditions for managing the current flux and uncertainty regarding the post-Brexit Irish border. As one observer of Anglo-Irish relations commented to Tony Connelly:

The fear is that Dublin is relying on an old British system that has passed. There is no predictability. There has been a paradigm shift. This is the difficulty for Ireland.<sup>iii</sup>

Given the lack of political sensitivity and historical awareness about the Irish border and Northern Ireland's peace process among many commentators in Britain, there is a sense that trying to plot a way out of the uncertainty here is like attempting to hold up a tent in a storm, after the guylines have been cut.

One way out of this, however, is to look at what we can be sure of. This is what I will cover in this brief piece, starting with the present day and moving backwards. I will discuss the EU's draft Withdrawal Agreement, the 1998 Agreement, and the history of the Irish border. There are some clear pieces of information and lessons to be drawn from these, which can be used to at least plot the coordinates for a future re-stabilisation of British-Irish relations.

## **Exit and EU borders**

The UK government has never been clear that Brexit will inevitably—and necessarily—be a long, drawn out complicated process. There will be no free trade agreement to wave around on the 29 March. An orderly Brexit would proceed along a route with four critical phases: withdrawal; transition (whilst negotiations on the details of the future relationship continue); new treat(ies); then implementation of those new treaties.

It is worth taking the time to 'Brexit' carefully and over a long period of time, not only because of the complexity of the task but because of the constraints on the future relationship. This is particularly evident in the instance of the Irish border – not only as a state frontier, but also as the point at which the new UK-EU relationship will be made manifest.

Member-states at the EU's external frontier have to apply the necessary border controls rigorously, despite the inconvenience and disruption caused. And the EU is also used to having complicated land borders. That said, there is hope that it is possible to compose unique arrangements for the Irish border after Brexit. Such hope arises from the guidelines put forward by the EU Council at the start of the UK withdrawal process. These were approved by all 27 member-states.

The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement *in all its parts*, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance.

In view of the unique circumstances on the island of Ireland, *flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order.*<sup>iv</sup> (emphasis added)

The allusion to ‘unique circumstances’ points to the history, the conflict and the peace process on the island of Ireland, as well as its geographical and economic particularities.

The UK, too, as made clear in the Joint UK-EU Report on the state of negotiations at the end of 2017 is fully committed to the same outcome: No threat to the peace process, no diminution of the 1998 Agreement, and no checks or controls or physical infrastructure at the border.<sup>v</sup>

The big challenge, of course, has been translating this into action. This is a political problem, not merely a technical difficulty.

### **The Withdrawal Agreement**

The Protocol on Ireland/Northern Ireland in the draft Withdrawal Agreement was the EU’s first attempt at putting these commitments into legal text. The Withdrawal Agreement is, we are led to believe, currently (October 2018) 90% agreed. There is still much, however, in its Protocol on Ireland/Northern Ireland (including the notorious ‘backstop’ arrangement) that has not been agreed, even in principle. The current proposal would see Northern Ireland stay within the EU’s customs territory and single market for goods, if the future negotiations on the wider UK-EU relationship are unable to meet the aforementioned commitments of the Joint Report. Whilst the UK government condemns this scenario as threatening the constitutional integrity of the UK, the EU sees it as a demonstration of flexibility: it offers many of the benefits of EU membership to Northern Ireland, without it formally being in the EU.

What is the likely outcome? Even without being sure of the detail of the Protocol in the final Withdrawal Agreement, it is possible to predict some things about the post-Brexit border. It will be harder. The UK and EU will be on different trajectories. As long as Northern Ireland is not in the EU, it will feel the consequences of that divergence.

What will this mean in practice? We can expect variation in the way that the border is experienced for different types of movement. The Irish border will be harder for some things (e.g. movement of services) but soft for others (e.g. for the island’s single electricity market). Similarly, we can expect that the border will be felt as more ‘dispersed’. Border controls are more likely to be imposed away from the line of the border itself. The location of these controls, the form they take and the disruption they will cause will depend on the quality and the detail of the final UK-EU deal.

The question of whether the ‘backstop’ will come into play in full or whether it will be only partially utilised is one that will be tested against the standards broadly set out in the Joint Report of December 2017. Central to this will be the functioning and operation of the 1998 Agreement.

### **The 1998 Agreement**

The Agreement is relevant regarding the future Irish border for several reasons. First, although it has been subject to severe criticism, there is no alternative to the 1998 Agreement, as it currently stands, as a model for managing the conflict in Northern Ireland. It will persist after Brexit and it has means of helping to navigate the fallout from it.

The constitutional amendments, institutions and principles of the Agreement embody the assumption that the contested nature of the Irish border is at the heart of the conflict and is reflected in clear distinctions between British/Unionist and Irish/Nationalist.

This is quite deliberate: the multiparty Agreement was framed in this way so that it could be underpinned by a solid relationship between the British and Irish governments. If the two governments agree on an approach to the border, then the assumption was that this would enable progress within Northern Ireland between communities that look either to London or to Dublin for guidance.

As partners in the EU, the British and Irish governments could manage the border in a way that emphasised practical benefit and common interest, without prejudice to the legitimacy of both Unionism and Irish Nationalism. Institutions for devolution, north-south cooperation, and east-west collaboration sought to reframe the border as a point for cooperation, not conflict.

This doesn't remove the border as an issue; in fact, it gives it a newly important symbolic status. This can be seen in one of the central trade-offs of the agreement: Unionist acceptance of the possibility of a border poll, in exchange for Nationalist acceptance of the principle of majority consent in Northern Ireland for any change in the status of Northern Ireland.

The Irish government retracted its claim over the six counties, recognised the legitimacy of Unionist aspirations and also the principle of majority consent. This was not a one-way concession: the British government recognised the legitimacy of Irish Nationalist aspirations and the principle of self-determination on the island of Ireland, and agreed to enact this if certain conditions were met.

Note the language from the Northern Ireland Act (1998), which gave effect to the intergovernmental agreement arising from the conclusion of the multi-party talks in Northern Ireland in April 1998:

(1) It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.

(2) *But if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty's Government in the United Kingdom and the Government of Ireland.* (Northern Ireland Act, 1998, Part 1, section 1)

The anticipated referendum on the constitutional status of Northern Ireland is essentially a stark either/or choice between the UK and Ireland. Despite having introduced multilevel institutionalism and power-sharing, in an effort to move democratic representation in Northern Ireland beyond zero-sum calculations, the border poll allowed for in the 1998

Agreement proffers a scenario in which the will of a majority will be imposed on a staunchly reluctant (or resistant) minority.

The possibility of a border poll therefore casts a shadow over most electoral politics in the region. It means that the efforts to create a new form of consociational, power-sharing politics are made against a background in which it is clear that a shift in a majority – a loss for Unionism or a gain for Nationalism – can completely transform the constitutional status of Northern Ireland

When one adds Brexit to this mix, the consequences of a border poll become all the greater. There has been a lot of flurried speculation recently about Brexit hastening a border poll and making Irish unity more likely. A crude reading would see this as solving an irritating problem for Brexiteers.

However, much speculation about a post-Brexit border poll overlooks the realities of public views about the constitutional status of Northern Ireland. If we compare the Northern Ireland Life and Times Surveys from 2016 and 2017, we see that there has been a drop in support for devolution within the UK as the preferred long-term future for Northern Ireland (from 54% in 2016 to 47% in 2017).<sup>vi</sup> This support has not, however, been directed so much towards a united Ireland (which grew by a statistically insignificant 1% between 2016 and 2017) but rather into the category of those who say they simply ‘Don’t Know’ (+3%).

In the same survey, it is notable that when people were asked how they would vote if there were a border poll held tomorrow, whereas 55% said they’d support Northern Ireland remaining in the UK, 22% said they’d vote for Irish unity – the same figure who said that either they didn’t know or wouldn’t vote. It is misguided, therefore, to assume that a Catholic background means a vote for Irish unity. Perhaps the most significant group are those who currently ‘Don’t Know’ and who would wait to see what unfurls.

This tallies with other polls on Brexit in Northern Ireland, which show that people expect their views on the future of Northern Ireland to be shaped by the type of Brexit that is finally revealed, i.e. the ‘harder’ the Brexit, the greater the support for Irish unity (see Garry et al., 2018).<sup>vii</sup>

The 1998 Agreement is not just about ‘transcending’ the border. It brought political differences about the border to the heart of the constitutional arrangements in Northern Ireland. The uncertainty about the future for Northern Ireland is compounded by the existence of provision for a border poll. As long as such a poll would be expected to put a binary either (UK)/or (Ireland) question before the people, it is inevitable that Unionists will continue to be wary of compromise or allowing any loosening of ties with Great Britain.

### **Lessons from the Past**

It is with such sensitivities in mind that we now look to the past century of Irish history for lessons as to how to approach the Irish border as a manifestation of a new British-Irish relationship.

The Government of Ireland Act 1920 was the first to draw the Irish border. It was viewed as a temporary measure with the intention of securing a Protestant majority as a means of stability for the northern statelet. It anticipated devolved government in both the ‘northern’

and 'southern' parts of Ireland, together with an interparliamentary Council of Ireland to coordinate on areas of common interest. The Northern Ireland Parliament came into being in 1921 but there was no such settlement in the south, until the conclusion of the Irish war of independence with the Anglo-Irish Treaty of 1921. This saw the continued partition of the island, but gave the southern government dominion (not devolved) status in the form of the Irish Free State. Responsibility was left with a Boundary Commission to determine the future delineation of the Irish border.

### *The Boundary Commission*

The first lesson from this period relates to the conduct and remit of the Boundary Commission. It is fair to say that the Boundary Commission was intended as a reassurance to those unhappy with the arrangements in 1921, showing that the matter was in no way 'settled' but would instead be reviewed on the basis of evidence. In practice, it was three years before the Commission became operational, and its activity was criticised from all sides.

By the time it came, the leaking of the Commission's Report revealed that its findings would please no one and thus the alternative found was the Tripartite Boundary Agreement of December 1925 – five years after Northern Ireland had been living under the uncertainty produced by the Government of Ireland Act. This Agreement discarded the Council of Ireland and rejected even the modest proposals of the Commission, thus leaving what was roundly agreed to be a poor and inadequate temporary fix in place for an indefinite length of time.

In terms of lessons for the present day, it is worth noting that the Boundary Commission was proposed as a means of getting agreement during a difficult negotiation, allowing a certain degree of ambiguity even in terms of its remit and purpose. Both the British and Irish expected different – even contradictory – things from its operation. In practice, the scale of the task (and the political sensitivity) had been hugely underestimated. The Commission itself was small and under-resourced, operating under considerable political pressure as well as public speculation.

### *The Customs Border*

It is notable that a hangover from the Tripartite Boundary Agreement fed into another event that hit the Irish border – the dispute over the payment of land annuities. This dispute between the Irish and British governments escalated into an Anglo-Irish trade war in 1932, which saw increased inconvenience, disruption and complexity at the Irish border, as well as at the ports. The most direct and negative effects of this trade war were felt in the region on either side of the Irish border – an area which had already suffering the effects of peripherality and underdevelopment. What this tells us is that the Irish border and its vicinity often feels the blunt edge of tension in the British-Irish relationship. It is also the area that takes the longest to recover from such differences.

### *The Common Travel Area*

Even during the trade war, the Common Travel Area persisted. It shows that the movement of people between these islands is handled separately from the matter of customs. The Common Travel Area was suspended during the Second World War (or the Emergency, as it was known in neutral Ireland) and not put back in place until 1952. This shows that the

borders between Britain and Ireland can be moved and adjusted according to what is seen to be the most pressing political needs of the day from the respective governments. This was evident on the other side too.

In the late 1990s the decision was made to have immigration checks on all passengers, including those coming in from UK flights. In the 1940s, the British viewed entry of people from Ireland without checks to be an unnecessary risk and considered it easier to impose checks at British entry ports rather than the Irish land border. Similarly, fifty and sixty years later, the Irish authorities introduced checks on airline passengers coming from Britain as a means of managing immigration. They also introduced checks near the Irish border, mainly in the form of police spot-checks on passengers taking public transport from Northern Ireland into the Republic of Ireland. This underlines the differences in immigration regimes between the two. It also shows that the requirements of the Common Travel Area are interpreted differently by the UK and Ireland, according to contemporary political priorities.

### *Security*

Finally, it is worth remembering how it was that the state and customs border became hardened into a securitised border during the 1970s. In his 2017 study *Bombs, Bullets and the Border*, Patrick Mulroe locates this process in the early 1970s. The introduction of internment (imprisonment without trial) as a means of attempting to manage republican violence in Northern Ireland had resulted in the movement of more refugees south of the border from Nationalist communities. There was also an upsurge in violence on the border, which was seen as a target for paramilitary violence because it symbolised and contained material manifestations of British state rule and policing. Unionists in the border region in particular urged action from the state authorities, believing violence to be increasing as a result of incursion into Northern Ireland from republicans based in the south. In response, the British army would ‘crater’ or ‘spike’ roads, including minor roads that were seen as attractive routes for those with nefarious intentions. Locals would then refill the craters or remove the spikes, angry at the inconvenience caused to their daily lives by these road blocks, as well as at the demonstration of British state power. This process of closing and reopening roads would happen dozens of times in places, until the British army then moved to close roads on a more permanent basis.

Mulroe’s research shows how – far from removing the terrorist threat – such road closures led to an increase in violent incidences at the border. Before internment, there were on average four border ‘incidents’ a month. This rose to sixteen a month after internment and thirty-three per month after ‘cratering’. We see in this process the way in which the border is a micro-level manifestation of wider tensions, even tensions between the two governments. We also see the exploitation of the powerful symbolism of the border by those on both sides. The harm done to the border region – economically, socially, politically, culturally – by actions that were intended to be temporary is still only now being overcome.

### **Looking ahead**

What do the lessons from the Withdrawal Agreement, the 1998 Agreement and almost a century of history around the Irish border tell us that is relevant for today?

First, we must be wary of ambiguity regarding all agreements relating to the border. It is not enough merely to get ‘over the line’. Even measures that have the best of intentions and seeking to give both sides something to ‘sell’ from the final deal can actually prove more

problematic in the long-run. There is going to be scope for ambiguity regarding the final operating arrangements in the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement, but there should not be ambiguity concerning the remit, purpose, resourcing or accountability of the mechanisms created to implement and oversee the final arrangements.

Secondly, we can expect a mix of 'soft' and 'hard' borders around Northern Ireland after Brexit. Where there will be continuity in relatively free movement for some things on the island (e.g. animal products) this is likely to be matched by greater friction between Britain and Ireland. At the same time, the movement of other things (e.g. services) will be easier between Britain and Northern Ireland than between Ireland and Northern Ireland. Not all of this will take the form of border controls, but 'pushed out' border controls away from ports and entry points could mean that bordering processes will become a more common feature in everyday life and business. What is deemed to be a 'temporary' but necessary measure may well prove to last indefinitely.

We should also expect both governments to be capable of using the Irish border to cause irritation to the other. There is a symbiotic relationship between relations at the border and between the UK and Ireland at the highest levels. When this relationship is a good one, people at the border reap the benefits; when there are tensions, it may be anticipated that these will be felt at the border too. This is a place of enormous political sensitivity and economic vulnerability.

Even if the Irish border is moved, pushed out or removed, the decisions made today on this matter will have enormous consequences for daily life as well as for politics in Northern Ireland. This impact will not be confined to the periphery of the UK and Europe. The Irish border is a thread of deep connection between Britain and Ireland, and what happens to it in the Brexit process will have ramifications beyond this region and beyond this generation.

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### Further Reading

K. Hayward (2018), *Brexit at the Border. Voices of Local Communities in the Central Border Region of Ireland / Northern Ireland* (Centre for International Borders Research, Belfast).

Online at:

[https://pure.qub.ac.uk/portal/files/154043415/BrexitAtTheBorder\\_Final\\_for\\_online.pdf](https://pure.qub.ac.uk/portal/files/154043415/BrexitAtTheBorder_Final_for_online.pdf).

P. O'Leary (2016), *Unapproved Routes: Histories of the Irish Border, 1922-1972* (Oxford University Press, Oxford)

P. Mulroe (2017), *Bombs, Bullets and the Border. Policing Ireland's Frontier: Irish Security Policy 1969-1978* (Irish Academic Press, Dublin)

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<sup>i</sup> This lecture was delivered as a keynote address to the biannual Conference of Irish Historians in Britain and to members of the public at the Tyneside Irish Centre, 8 September 2018. The author wishes to express her appreciation to both the Conference and the Centre for facilitating the lecture and discussion.

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<sup>ii</sup> M. Hyde, 'Boris Johnson has now moved from post-truth to post-shame', *The Guardian*, 6<sup>th</sup> April 2018. Online at: <https://www.theguardian.com/commentisfree/2018/apr/06/boris-johnson-post-truth-post-shame-novichok>

<sup>iii</sup> T. Connelly, 'Brexit: the Slow Death of Chequers, or a Cliff Hanger Deal?' *RTE News*, 9<sup>th</sup> September 2018. Online at: <https://www.rte.ie/news/analysis-and-comment/2018/0908/992329-brexit-chequers-may/>

<sup>iv</sup> European Council (2018) 'European Council (Art. 50) guidelines for Brexit negotiations', online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/>

<sup>v</sup> European Commission and HM Government (2017), 'Joint Report from the Negotiators of the European Union and the United Kingdom Government, 8 December 2017'. Online at: [https://ec.europa.eu/commission/sites/beta-political/files/joint\\_report.pdf](https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf).

<sup>vi</sup> ARK (2017) *Northern Ireland Life and Times Survey 2017*. Online at: [http://www.ark.ac.uk/nilt/2017/Political\\_Attitudes/](http://www.ark.ac.uk/nilt/2017/Political_Attitudes/)

<sup>vii</sup> J. Garry et al (2018), *Northern Ireland and the UK's Exit from the EU: What do people think?* (UK in a Changing Europe). Online at: <http://ukandeu.ac.uk/wp-content/uploads/2018/05/Northern-Ireland-and-the-UK%E2%80%99s-Exit-from-the-EU.pdf>.