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The Irish border

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The Irish Border

Summary

This article presents an overview of the emergence, development and recent transformation of the Irish border. Conceptually, we make two main points. First, the prominence given to this state border in the context of the United Kingdom's withdrawal from the European Union can only be understood by positioning it historically as the product of the overlapping territorial logics of imperialism, nationalism and EU integration. Secondly, state borders are not simply attributes of political territoriality. What we might call 'bordering practices' themselves help to produce, challenge or transform socio-spatial territories. The origins, entrenchment and transformation of the Irish border can tell us much about the changing nature of nation-statehood over the century that followed the ending of the First World War.

After briefly introducing this conceptual framework, we outline the different historical stages in the emergence, development and transformation of the Irish border – from before partition, to the present-day effects of Brexit. We conclude by considering how the outcomes of the EU-UK negotiations over their future relationship may affect the three interrelated strands of relationships safeguarded by the Belfast/Good Friday agreement (1998). These run within and between the two islands of Ireland and Britain, and also between the two political traditions in Northern Ireland. Nationalists and unionists have come to define much of their ethos in relation to the symbolic meaning of the Irish border, the former want the border removed and the latter see the border as necessary to keep Northern Ireland as part of the United Kingdom. All these strands have been placed under pressure by the UK's withdrawal from the European Union.

Key words: 1998 Good Friday (Belfast) Agreement; Brexit; conflict; cross-border cooperation; EU integration; irredentism; nationalism; partition; territoriality; sovereignty

I. Borders and Territories

In order to understand the function of state borders, it is necessary to distinguish between territory as a formal category and as a contingent historical formation. As a formal category, it suggests a ‘strategy of boundary making that incorporates a range of political forms and organizations’ (Berezin, 2003: 5). As expressions of socio-political relations, state borders reflect the laws, institutions and administrative practices through which any place is governed. As an historical process, different territorial strategies are associated with different state formations. Coakley and O’Dowd (2005: 6) for instance, point out that the territorial strategies associated with imperialism and nationalism each involve ‘different forms and rationales of border creation’. Imperialism’s main territorial principle is ‘aggrandizement or annexation’, and its corresponding borders are often ‘flexible, pragmatic or ad hoc’. The main territorial principle of nationalism, on the other hand, is that each ‘national community’ has a right to its own territorial state ‘within clearly defined state border lines’ that match the territorial occupation of that community (Coakley and O’Dowd, 2007: 936). Berezin (2003: 6) describes a further historical formation – ‘the millennial state’ – characterized by the ‘unbundling of territoriality’ where ‘sovereignty is shared at multiple nodal points in an international system of power relations’. She sees that the structures of authority in this form of statehood work differently in spatial and temporal terms (e.g. in the digital realm and through pre-emptive regulation) and this effectively recalibrates the very concept of territory, particularly as it relates to sovereignty. In reality, however, the distinction between different politico-territorial principles is far from clear. The territorial strategies associated with different historical state formations often co-exist, intersect and sometimes conflict with each other. This is particularly significant in the case of the Irish border.

Stemming from the above discussion, an important development in border studies has been the move to understand the significance of borders as being far more than what occurs at the territorial entry/exit points of a state. In this regard, borders are understood not merely as external geographic lines but also in relation to practices. These reinforce difference between states but they may occur far from the boundary

line itself (Vukov and Sheller, 2013; Scott and van Houtum, 2009). Borders are, therefore, diffuse: they exist at multiple sites between states and are experienced through differential forms of treatment by various authorities *within* the jurisdiction of a state, depending on individuals' citizenship. The case of the Irish border distinctly demonstrates a series of theoretical and practical points. These include how borders are produced at the intersection of different practices of sovereignty and daily life. It also reflects the intricate relationship between borders and (ethno-national) conflict or, indeed, peace. And the Irish border also exemplifies the knotty complexity of integration and de-integration, as we have seen in the debate around how to manage the border through the UK's withdrawal from the EU.

II. The Irish border as a product of imperialism and nationalism

1. Pre-partition

The most direct colonisation of the northern-most province of Ireland by the British Crown (otherwise known as the Plantation of Ulster) occurred in the seventeenth century¹. In its early part, under James I of England, land previously held by local Gaelic lords in Ulster was confiscated and settled upon by Scottish (Presbyterian) and English (Episcopalian) colonists (Rankin, 2005). While 'planters' became thinly distributed in rural areas, they formed majorities in towns. The result was a complex mesh of communities, relationships between whom were often 'aggravated by sectarian animosity' (Rankin, 2005: 7). The century thus became a period of 'vast social engineering' during which Ireland's north-east developed into what Ferriter (2019: 1) describes as 'a bastion of Protestant settlement and British influence'. Full colonial control, however, was not achieved until after the 1690 Battle of the Boyne at which the Dutch Protestant King William of Orange triumphed over the forces of the English Catholic

¹ Colonisation was preceded by the 16th century Tudor conquest of Ireland and the existence of Scottish settlements in Antrim and Down (Rankin, 2005; Boal, 1980).

James II, confirming Protestant dominance in Ulster (and England) and ushering ‘a new round of [land and property] confiscations’ (Rankin 2005: 8). The sectarian strife of the seventeenth century lay the historical ground for the territorial fault lines mobilised in the twentieth century.

The Act of Union of 1801 between Britain and Ireland brought the entirety of the island under tighter British control, with one-hundred Irish MPs sitting at Westminster. Industries in the northern cities of Belfast and Derry/Londonderry were by then key to the ‘industrial powerhouse’ integrated closely to trade across the British empire. There were other distinctions between the northern and southern parts of the island. By 1861, nearly half of the population of Ulster was Protestant (growing to well over half by 1901), while outside that historic northern province, around nine out of every 10 people were Catholic. Rural poverty and discrimination against Catholics were two factors which contributed directly to the rise of Irish nationalism in the nineteenth century. The Great Famine (1845-49), with the loss of a million lives and the emigration of millions more forced by starvation, was at the very least a sign of the abject failure of government. Examples of neglect and brutishness by colonising landlords and politicians were all too plentiful. The momentum of movements for Catholic Emancipation and tenants’ rights subsequently increased from the mid-nineteenth century. In 1886, the nationalist all-island Irish Parliamentary Party used its voice in Westminster to demand a modest form of Irish self-government, or ‘Home Rule’, within the empire. Two Home Rule Bills, providing for an all-Ireland Parliament in Dublin, were introduced and failed in Parliament in 1886 and 1893. Yet, the ever-changing parliamentary balance of power meant that a third Home Rule Bill, introduced in April 1912, was to become the Home Rule Act of September 1914, despite vehement Irish unionist and British Conservative resistance. The onset of the First World War, however, prevented the Bill’s implementation.

The war in Europe gave an opportunity to a group of organisations seeking complete Irish independence, to organise the Easter Rising in Dublin in 1916. This was swiftly crushed by British armed forces facilitating a transformation of public opinion in southern Ireland and leading to a landslide victory of the radical Irish nationalist party of Sinn Féin at the general election in 1918. The party held a majority

everywhere in Ireland, except for Ulster where the majority was claimed by Ulster unionists – a Protestant political alliance spearheaded by the northern commercial and industrial middle classes. Although internally divided into populist and liberal wings, what became the official and later Ulster Unionist Party had an appeal that cut across class lines among Protestants and was firmly politically conservative (Reid, 2008; Bew et al, 2002). As Rankin (2005: 16) notes, this made it clear that ‘Sinn Féin could no more claim to represent all of Irish opinion than the unionists could for Ulster. Barring the exceptions of West Belfast and Derry city, the respective ideologies represented contiguous areas’. Nevertheless, Sinn Féin proceeded to declare an Irish Republic and the first republican parliament (or *Dáil*) met in January 1919. These events plunged the island into the Irish War of Independence that ensued between British crown forces and the guerillas of the Irish Republican Army.

During that time, the British Prime Minister Lloyd George delegated the drafting of legislation for Ireland that was based on an idea of partition which had been discussed in Cabinet since 1912. Whilst it was not the preferred option of either Ulster Unionists or Irish Nationalists, partition was considered as a compromise alternative to an unworkable union. Under these circumstances, Ulster Unionists lobbied to ensure that a future Northern Ireland would encompass six of the counties of Ulster (Antrim, Armagh, Down, Fermanagh, Derry and Tyrone). Being only thirty-three per cent Catholic, these ‘comprised the largest area where there was a ‘decisive Protestant majority in which unionist power could be guaranteed in perpetuity’² (Ferriter, 2019: 8). The resulting legislation – the Government of Ireland Act – was approved by the Westminster Parliament and received royal assent in December 1920. It provided for separate parliaments for southern Ireland and for the six counties of Ulster as well as for an all-island Council of Ireland which was to act as a link between them, keeping open the possibility for reunification (Anderson and O’Dowd, 2007). Elections for both parliaments took place in May 1921. In the south all 124 Sinn Féin candidates were returned unopposed. In Northern Ireland, 40 of the 52 seats were taken by

² Here, the author quotes Fanning, R. (2013) *Fatal Path: British Government and Irish Revolution 1910 – 1922*. London: Faber and Faber, p. 212.

unionists, with the remainder going to nationalists (Coleman, 2014). Two devolved parliaments were formed as a result: *Dáil Éireann* for the 26 counties in the south, and the parliament for Northern Ireland which later came to be known as Stormont after the location of its parliament buildings.

2. Partition and the boundary commission

With the War of Independence continuing and the majority of elected parliamentarians in the south boycotting the state opening of Parliament in June 1921, this new legislature was suspended and a new agreement - the Anglo-Irish Treaty of 1921 - was negotiated and signed by representatives of the British and the Irish states. The Treaty gave a dominion status to the 26 counties of Ireland, which meant a border on the island of Ireland. To ease this compromise, Article 12 of the Treaty promised a Boundary Commission that could adjust the border between the two Irish jurisdictions (Anderson and O'Dowd, 2007: 944). Although narrowly approved by the *Dáil*, the signing of the Treaty led to a split among southern nationalists. This developed into the Irish Civil War (1922 - 1923) which was won by the pro-Treaty side, resulting in the establishment of the Irish Free State.

Article 12 of the Anglo-Irish Treaty became fundamental to the confirmation of the border between the two new political entities on the island, upgrading it from its original status, as an internal division between devolved administrations, to an international boundary. The Irish border had not been negotiated in any specific geographical detail, nor was it a subject to any democratic process, such as a plebiscite. Its simple adherence to centuries-old county lines meant that it was arbitrary in social, cultural, economic or even everyday life terms. As a result, a number of towns and their hinterlands, individual villages and, on some occasions, individual farms and even houses were divided by the new border (Leary, 2016 and 2018).

The Boundary Commission, however, was not established until 1923 and only began work in 1924. The delay helped to harden the border as, in the interim, ‘the Free State imposed a customs barrier and the Northern Ireland administration initiated local government and electoral reforms’ that served to entrench its existence (Rankin, 2007: 929). The short-lived work of the Commission itself was confined to insignificant transfers of land in the immediate border area (O’Callaghan, 1999; Laffan, 1983). The alternative to the leaked and rejected Commission report was the Tripartite Boundary Agreement of December 1925. This discarded the Council of Ireland and rejected even the modest proposals of the Commission, leaving a legacy of a *de facto* arbitrary and erratic 310-mile (499 km) border line. As such, ‘a permanent residue of disaffection’ was left among nationalists, especially in Northern Ireland, exacerbated by the legacy of colonialism and sectarianism (Anderson and O’Dowd, 2007: 946). Furthermore, as O’Halloran (1987: xiii) notes, the Commission’s failure ‘left the southern governments with no effective means...of pursuing the claim for territorial unity’. Instead, it remained primarily a rhetorical tool, culminating in the 1937 Constitution (Bunreacht na hÉireann) which enshrined an irredentist claim to the whole territory of the island of Ireland.

3. Separation over time

By the time the borderline had been confirmed in 1925, the customs barrier established by the Irish Free State had been in place for more than two years. With the corresponding difference in prices between its sides, and the general rise of economic protectionism following the 1929 financial crisis, smuggling operations became endemic (Nash, Dennis and Graham, 2010). The Second World War produced a further smuggling outbreak. Efforts to tackle smuggling centred on the strengthening of customs controls. Since ‘the vast majority of cross-border roads ... [were] not ‘approved’ for carrying dutiable goods across’, many became ‘earmarked for closure’ (or were being obstructed) thus causing innumerable problems with access to goods, services and farm land (Leary, 2018: 280). This had the knock-on effect

on pushing communities either side of the border further apart (Hayward, 2017; McCall, 2011; Dooley, 2000). Entire towns which had enjoyed relative affluence before partition went into a decline following separation from their historic economic hinterlands (Dooley, 1994). With time, the severing of ‘ties of economic relationships and kinship [that] had run freely’ (Harris, 1986: 19-20) across county boundaries before their status changed to that of a state border, led to the entire border region suffering from the multiple disadvantages of peripherality, rurality, low population, higher unemployment and lower productivity rates (Magennis et al., 2017; Logue, 1999).

Yet, one unusual point about the border was that from its very inception crossing it was not subject to immigration control. A regime of free movement of people across the border was first established in 1922 under the name of Common Travel Area (CTA). This was gradually formalised and added to through a series of semi-formal arrangements and understandings between the British and Irish governments, with the cumulative effect that British and Irish citizens were to be *de facto* treated as ‘nationals’ in each other’s territories. For this reason, the CTA has been seen as a clear demonstration that ‘the sovereign space of relations between Ireland and the UK was far from the Westphalian ideal of neat congruence between territories, populations, and states’ and that both states were variously ‘involved in blurring the binary constraints of sovereignty’ (Cañas Bottos, 2015: 96).

At the highest political levels, however, the two jurisdictions on the island were constructed to be ideologically opposed. Although at first, and until the early 1930s, the two heads of governments had established a reasonably good relationship, North and South continued to grow further apart, with each having ‘their own mutually exclusive agenda and domestic economic problems’ (Kennedy, 2000: 42). When in 1932 a minority Fianna Fáil³ government, with Éamon de Valera⁴ as its head, took office, a ‘cold war’ atmosphere settled between the two parts of the island (Kennedy, 2000). Social and economic

³ An Irish Republican party founded in 1926 by former anti Treaty Sinn Féin members who has hitherto abstained from the [Dáil](#).

⁴ A former commandant of the 1916 Easter Rising and as the political leader of the [anti-1921 Treaty Sinn Féin](#) until 1926.

differences between the two jurisdictions were further reinforced with practices like gerrymandering and discrimination of Catholics in housing allocation and public service employment in Northern Ireland (Arthur and Jeffrey, 1996), whilst the influence of the Catholic Church in the social and political structures of the Irish state became further entrenched (D'Alton and Milne, 2019; Garvin, 2005).

Whereas Northern Ireland was founded and developed in accordance with a dominant unionist ideology, the Irish Constitution of 1937 reflected what was by then a well-entrenched nationalist discourse. Article 2 defined the national territory as consisting 'of the whole island of Ireland, its islands and the territorial seas', and Article 3 anticipated the 'reintegration' of the two parts, causing deep consternation and distrust among unionists. Notwithstanding some low-key instances of cross-border cooperation,⁵ the impact of this irredentist constitution was, ironically, to deepen division between north and south, especially at a political level. Ideological polarisation was further cemented in 1948 when the Republic of Ireland Act severed its remaining formal political ties with the British Commonwealth. For its part, 'the Ireland Act passed in Westminster the following year reaffirmed the position of Northern Ireland within the United Kingdom' (Hayward, 2006: 266).

Partition also drove a further edge between communities within Northern Ireland. Although at the time of partition the Protestant-Catholic ratio there as a whole was around 2:1, in both border counties of Fermanagh and Tyrone Catholics constituted over half of the population. Yet they 'found themselves faced with a unionist government which had in the interim altered the electoral system and rearranged local government electoral boundaries to ensure that the Protestant minorities in both counties controlled the county councils and most of the municipal authorities as well' (Patterson, 2010: 340). Protestants in these counties felt, at the same time, ill at ease with their minority status. Their sense of being 'under siege' was to be confirmed and reinforced by a succession of IRA border campaigns throughout the 1920s

⁵ Such as the stand-by cross-border electricity line, developed during the Second World War; the joint construction of the Erne hydroelectric generating station (1948 - 1957); and the joint purchase and running of the Great Northern Railway (1950 - 1957).

targeting customs posts, and in the 1950s targeting British soldiers and other (part-time) members of the security services, recruited from among local Protestants. IRA attacks often availed of the porous nature of the border arising from the practical difficulties with policing and controlling movement across it. As such, Cañas Bottos (2015: 96) points out that paramilitary campaigns represented a clear challenge to the conception of the state 'as the holder of a monopoly on the legitimate use of violence'. Indeed, a challenge to the practical possibility, if not the idea itself, of exclusive control over the state's territory.

4. Securitisation and border controls

With the onset of the Troubles after 1969, violence erupted on a wider basis. The state's response to the 'legitimate demands for an end to discrimination and gerrymandering' were 'complicated by the underlying ethno-national conflict over the very right of the state to exist' (Patterson, 2010: 342). 'The Troubles' are often seen as having emerged through a combination of the brutal suppression of the civil rights movement and the spiraling sequence of events that included rioting at urban Catholic-Protestant interfaces, the beginning of the Provisional IRA's terrorist warfare, loyalist paramilitary retaliation, and the arrival of British troops in Northern Ireland (Ferriter, 2019: 73). Although most of the literature relating to the period has focused on the 'urban epicentres of violence' (Patterson 2013), in both symbolic and practical terms much of the conflict centred on the border region itself, particularly on areas such as south Armagh, east Tyrone and Derry/ Londonderry (Gregory et al., 2013; Sutton, 2001).

In the unfolding theatre of violence, the border itself became an instrument of warfare. Patterson (2013: 494) asserts that a substantial number of IRA volunteers and operational units were located along the border counties of the Republic, launching attacks into Northern Ireland and then retreating back across the border, operating training camps and funding their activities 'by the proceeds of cross-border smuggling'. Part of the British state's response to such paramilitary incursions included the setting up of army checkpoints, the positioning of multiple military bases and watchtowers along the border itself, and

the physical blocking, ‘cratering’ or ‘spiking’ of many of the 270-plus border crossings and roads (Mulroe, 2017). This form of border management caused great inconvenience to daily life in the region, provoking anger at the demonstration of British state power. In response, nationalist border communities themselves would refill road craters or remove the spikes. A process of repetitive closing and reopening of roads ensued until the British army moved to close roads on a more permanent basis (Buttazzoni, 2016). Violence at, and the securitisation of, the border, affected border communities socially as well as economically. There was religious segregation in some villages on both sides of the border, but in other cases communities of different political and religious persuasion were deeply interconnected. These connections were dramatically severed by the re-emergence of conflict with the Troubles (Nash, Reid and Graham, 2013; Donnan, 2005). Extensive segregation of schools, sports and social infrastructure in border towns made interaction and socialisation between Protestants and Catholics all the more rare (Adams, 1995; Larsen, 1982).

III. The Irish border in attempts to build peace

1. Intergovernmental agreements

The search for peace ‘was hindered from the start by the fundamentally opposing perceptions of the border held at the highest levels’ (Hayward, 2006: 267). Nonetheless, aided in part by shared membership of the European Economic Community from 1973, an understanding between the British and Irish governments steadily emerged. This centred on the principle that a workable solution for Northern Ireland needed to include an ‘Irish dimension’ to any political agreement. The 1973 Sunningdale Agreement established a power-sharing executive in Northern Ireland and provided for an all-island Council of Ireland. However, it was weakened by its reliance on the moderates within both nationalism and unionism

who were unable to sustain such a major change against growing popular ‘unionist opposition, nationalist suspicion and insufficient movement from the two governments’ (Hayward, 2006).

It was not until 1985 that, in the face of unrelenting violence, another high-level intergovernmental initiative was attempted. The Anglo-Irish Agreement was an attempt to deliver on greater security cooperation and bring a reduction to violence by reinforcing formal structures for a role for the Irish government through a new body – the Anglo-Irish Intergovernmental Conference – which was to act as a substitute for devolution until internal agreement could be found (O’Leary and McGarry, 1993).

Significantly, and to reassure northern unionists, Article 1 of the Agreement contained the two governments’ affirmation ‘that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland’ (Arthur and Jeffrey, 1996: 17). Nevertheless, the 1985 Agreement met with ‘very bitter and sustained opposition’ from unionists (Arthur and Jeffrey, 1996: 17-18). Their objections focused particularly on the Intergovernmental Conference as a ‘formalised mechanism ...to cooperate in respect of Northern Irish issues’ (O’Kane, 2007: 73). Ultimately, the Agreement did not succeed in strengthening security cooperation or in reducing violence but its significance in establishing ‘a mechanism for formalized interaction’ between the two states was a positive long-term contribution to the eventual development of the peace process (O’Kane, 2007: 94).

The dawn of the next decade saw further shifts in the thinking of both governments. In November 1990, the Secretary of State for Northern Ireland Peter Brooke famously declared in his Whitbread speech that Britain had no ‘selfish strategic or economic interest’ in Northern Ireland (Bew et al., 1997). A year later he indicated that the government would be prepared to be ‘flexible and imaginative’ if the IRA’s campaign ceased. This was followed in 1993 by the Downing Street Declaration, jointly issued by the British and Irish prime ministers Major and Reynolds. ‘The Declaration’s key novelty was a decision by the British government to support the concept of an ‘agreed Ireland’ – concretely, ‘a network of cross-

border institutions' which could only become a united Ireland 'by the freely given consent of a majority in the north' (Bew et al, 1997: 207). With this, the road was paved for the IRA's announcement, in August of 1994, of 'a complete cessation of military activities' and a reciprocal announcement, in October of that year, by The Combined Loyalist Military Command. The election of new governments in both Britain and Ireland in 1997 helped advance the 'fledgling peace process' (O'Kane, 2007).

2. The 1998 Good Friday (Belfast) Agreement

Taking care to reassure unionists that a political settlement was not 'a slippery slope to a united Ireland'⁶, Tony Blair's new UK Labour government initiated peace talks. All Northern Ireland main parties participated in these, bar the Democratic Unionist Party (DUP)⁷ who opted out in protest at the inclusion of Sinn Féin. When, on 10 April (Good Friday) 1998 an agreement was eventually concluded (with the two governments becoming its co-guarantors), it represented a historic and carefully-worded compromise, which, as events since would demonstrate, allowed for a considerable degree of interpretative ambiguity. Recurrent crises after the Agreement (over such issues as weapons decommissioning, policing reform, the flying of flags, and dealing with the past) was testimony to this. Interestingly enough, the challenges of power-sharing and trust were primarily internal to Northern Ireland rather than British-Irish or north-south.

⁶ Tony Blair, Speech at the Royal Ulster Agricultural Show, 16 May 1997, quoted by O'Kane (2007: 150).

⁷ Founded in 1971 by the Reverend Ian Paisley, with historically strong ties to The Free Presbyterian Church of Ulster which he also founded, the party was strongly opposed to power-sharing as a means of resolving conflict in Northern Ireland.

The Agreement recognised ‘the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both’ and the accompanying right to hold both British and Irish citizenship (GFA, 1998: 4). This was aided in part by the common EU citizenship of British and Irish citizens. Common EU citizenship had allowed for a decoupling between the concept of ‘nationality’ and that of citizenship (Meehan, 1997). Nevertheless, the ‘border question’ as a binary choice between the UK and Ireland was far from resolved. The Agreement affirmed that no change to the status of Northern Ireland could occur without a majority referendum vote in the region itself, but this would be with regard to its status *either* as part of ‘the Union with Great Britain *or* a sovereign united Ireland’ (GFA 1998: 3, emphasis added). In this way, notwithstanding an ‘ever-closer’ British-Irish relationship in the EU, the future of the Irish border remained a ‘live’ issue for politics within Northern Ireland. This was reflected in the vibrancy of the hardline unionist and nationalist parties, which came to outstrip the moderate parties by the time of the 2007 Westminster election.

The consociational power-sharing arrangements put in place by the 1998 Agreement have been lauded for successfully assisting transition from violent conflict (McCulloch, 2014; McGarry and O’Leary, 2009). Yet, they have also been critiqued for their inability to transform (rather than simply manage) conflict and to be truly inclusive of non-dominant groups and identities (Byrne and McCulloch, 2012; Taylor, 2001). This is because it ‘assumes that the primary political, social and cultural identities within Northern Ireland centre on conflicting interpretations of the border’s legitimacy’ (Hayward, 2017). This trend was in part incentivised by the way in which Strand I of the Agreement created and formalised mechanisms for power-sharing between the two main political communities within Northern Ireland. The [now 90 member] Legislative Assembly at Stormont is elected under the Single Transferable Vote system of proportional representation. Within the Assembly, mandatory member designations as ‘nationalist’, ‘unionist’ or ‘other’ are used to determine whether there is cross-community support for important votes in the Assembly. In such votes, more weight is given to nationalist and unionist MLAs than those who are

non-aligned. Although this doesn't directly relate to the border or border matters, such mechanisms are one reason why people may devalue political identities that are not about that historical divide.

Strand II of the Agreement created a series of institutions for north-south cooperation on the island of Ireland in a wide range of policy areas. In particular, it established the North-South Ministerial Council (NSMC), which offers the mechanism for cross-border policy alignment in Ireland on areas such as agriculture/rural development, education, the natural environment, healthcare, tourism and transportation. Under the auspices of the NSMC, six all-island Implementation Bodies are charged with ensuring a cross-border approach to matters of shared interest (such as EU programmes, trade and inland waterways). These demonstrate the integral role played by cross-border political cooperation in the governance of Northern Ireland, particularly since powers with legislative authority have been transferred to them from the Northern Ireland and Irish governments. The NSMC is supported by a joint secretariat and staffed by personnel from the Irish Civil Service and Northern Ireland Civil Service. It is not only intended to exchange information, develop consultation, cooperation and action within the island of Ireland but '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' (GFA, 1998). What is more, the Agreement further allows for 'Arrangements to be made to ensure that the views of the NSMC are taken into account and represented appropriately at relevant EU meetings' (Strand Two, paragraph 17). This is significant in light of the Brexit process and the agreed governance mechanisms under the 2019 EU Withdrawal Agreement (discussed below) as it suggests a possibility for continuing representation of matters of cross-border significance at EU level even after Brexit.

Finally, Strand III established institutions to facilitate closer cooperation between regions and nations across Ireland, the United Kingdom and the Crown Dependencies (Clifford and Morphet, 2015; Tannam,

2011). There are two such main institutions. The British-Irish Council (BIC) is comprised of representatives of the UK Government, Irish Government, Northern Ireland Executive, Scottish Government, Welsh Government, Isle of Man Government, and the states of Jersey and Guernsey. Its purpose is to exchange information, discuss, consult and use best endeavours to reach agreement on matters of mutual interest. Another body, the British-Irish Intergovernmental Conference (BIIGC), ensures a strong channel of communication between the two governments and is limited to considering non-devolved matters, such as security and the implementation of existing agreements. The BIIGC effectively formalises the scope for coordination with the Irish Government on areas of bilateral cooperation and on reserved and excepted matters.⁸

There is no doubt that the Agreement's multi-level arrangements constitute some of the most advanced forms of cross-border cooperation in Europe. When, as the peace process became embedded, security checks at the Irish border ceased and military installations were gradually removed, the legacy of social and political conflict, centering on the border's legitimacy, was given the chance of transformation. The Agreement is centred on a careful compromise: to accept the validity of both Irish nationalism and British unionism, each of which have opposing views about the legitimacy of the Irish border, but to weaken the violent potential of these competing ideologies by reducing the actual significance of the Irish border in day-to-day terms. The open and invisible Irish border thus emerged as a consequence of two things: the multilevel 1998 Agreement which formalised an extensive and advanced form of cross-border cooperation, and the legal, economic and social integration across the island of Ireland enabled by common UK and Irish membership of the EU.

IV. Brexit: Competing territorial logics?

⁸ Reserved matters can also be legislated on by the Stormont Assembly but only with the consent of the Secretary of State for Northern Ireland. Excepted matters, on the other hand, are subjects reserved to Westminster and can only be transferred under primary legislation.

1. The EU context for transforming border relations

Already in the mid-1960s, it was possible to observe a softening of intergovernmental relationships as seen in the Anglo-Irish Free Trade Agreement of 1965. There was also a tentative strengthening of non-contentious aspects of north-south co-operation in areas such as electricity and tourism (Kennedy, 2000). Such developments reflected an appreciation of the economic interdependence between Britain and Ireland, the necessity for some practical cooperation in the sharing of a land border, and the shared hope for membership of the European Economic Community (EEC), to which both states acceded in 1973. The introduction of EEC rules on customs declarations in 1987 had immediate effect on the ease with which goods could be transported between north and south. Later, the creation of the Single Market (with its official entry into operation on 1 January 1993) erased many frictions in cross-border trade and economic development, and customs posts on the border were made redundant (Kowalsky, 2010). Thus, in a very practical way, the EU context successfully enabled change in cross-border economic relationships in Ireland and between the UK and Ireland.

Common EU membership more broadly created the context, structures and language of peacebuilding in Ireland as new relationships unfolded at both intergovernmental and regional level. This happened in practical ways through the building of trust and cooperation as fellow member-states, regular meetings, and shared approaches to certain policy areas (Gormley-Heenan & Birrell, 2015; McCall, 2014; Murphy, 2014; Hayward, 2009). Important too was the fact that cross border cooperation was given legitimacy and financial support through various EU integration programmes. These included the Special Support Programme for Peace and Reconciliation, structural and development funds allocated to Northern Ireland as a result of its Objective One status, and the increased EU contribution to the International Fund for

Ireland introduced after the announcement of the IRA and Loyalist ceasefires in 1994 (Buchanan, 2014; Hayward, 2006;). But, as Murphy (2014: 63-4) notes, ‘all financial and economic programmes and the governance structures they spawn’ on the island of Ireland could not be seen to undermine the dominance of the central state. It was important to maintain the careful balance between ensuring that EU membership brought practical benefit to the border region whilst avoiding it being seen as a challenge to national sovereignty. For such reasons, the influence of the EU may best be understood as having been mediated through local and national actors on the island of Ireland (Hayward, 2007).

2. UK-EU negotiations to avoid a hard Irish border

On 23 June 2016, the UK voted to leave the European Union. Most of the political parties in Northern Ireland had campaigned for Remain in the referendum, including the Ulster Unionist Party. Only after the referendum did the overlap between unionist/Leave and nationalist/Remain positions really come to the fore, in part through analysis of public opinion and voting patterns (Garry, 2016). Nonetheless, the two largest parties managed to find enough common ground between them to present a two-page letter to Prime Minister May outlining their priorities for Northern Ireland through the process of the UK’s withdrawal from the EU. The letter from First Minister Arlene Foster (DUP) and deputy First Minister Martin McGuinness (Sinn Féin) may be seen as, quite simply, a request for the softest of possible EU exits, complemented by unique arrangements for Northern Ireland. In particular, the letter states:

First, and most obviously, this region is unique in that it is the only part of the UK which has a land border with an EU member-state. There have been difficult issues relating to the border throughout our history and the peace process. We therefore appreciated your stated determination that the border will not become an impediment to the movement of people, goods and services. It

must not become a catalyst for illegal activity or compromise in any way the arrangements relating to criminal justice and tackling organized crime. It is equally important that the border does not create an incentive for those who would wish to undermine the peace process and/or the political settlement. The border has particular significance for the agri-food sector and for animal health. (The Executive Office, 2016)

The strange combination of the symbolic sensitivities and the practical complexities around the Irish border is embodied in this statement, which was significant in being a very rare joint statement between the two ministers. In effect, no party wanted to see the full force of Brexit come to pass in the region.

Significantly, the very first guidelines the EU Council produced for the withdrawal negotiations acknowledged the importance of the 1998 Agreement and stated that protecting the peace was of ‘paramount importance’ (European Council, 2017: para. 11):

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.

This could not be a unilateral course of action, however. In the wake of Prime Minister May’s declaration that the UK would be leaving the customs union and single market (UK Government, 2017), the decision by the EU and UK to make the avoidance of a hard border on the island of Ireland one of the three negotiating priorities was an ambitious one. Implicit in this commitment was a recognition that the EU would have to breach two of its stated absolute objectives: not to determine anything about the future UK-EU relationship prior to withdrawal and not to do anything to undermine the integrity of the single market. The justification for this breach was the ‘unique circumstances’ of Northern Ireland (European Commission, 2017a: 7).

An outstanding question, however, was the degree to which the EU formed an essential context for cross-border cooperation and movement on the island of Ireland. A so-called ‘mapping exercise’ was conducted by the UK and EU, with strong involvement of civil servants from Ireland and Northern Ireland, to present evidence for the nature of integration across the Irish border. It found around 150 cases of formal and informal cooperation occurring between Northern Ireland and Ireland. Some of these pre-dated the 1998 Agreement. It highlighted that there were varying levels of legal and policy links between North-South cooperation and EU policy and legal frameworks (UK Government, 2018). Above all else, it showed that the impact of the UK’s withdrawal from the EU on the Irish border would not just be in the realms of the movement of goods, but could have significant ramifications for everyday life in the region. As some pointed out, such ramifications extended to the rights enjoyed by British, Irish and other EU citizens in the UK (McCrudden, 2017). It also related to the operation of the Common Travel Area which conditions the movement, residence and work of British and Irish citizens in each other’s states, yet which was primarily legally codified through common EU legislation (de Mars et al., 2018).

3. Different ‘solutions’ for avoiding a hard Irish border

The Joint Report of 8 December 2017 was a pivotal moment in the Brexit negotiations (European Commission, 2017b). This contained two paragraphs about the commitments to avoid a hard border, protect north/south cooperation and uphold the 1998 Agreement in all its parts. The Report saw these aims as being achieved through one of three scenarios: (i) the future UK-EU relationship (which could not yet be determined), (ii) specific solutions for Northern Ireland, or (iii) full alignment of the UK to the EU’s rules on the single market and customs union. Growing frustrated with the lack of progress, the EU issued a draft withdrawal agreement in March 2018 containing a Protocol on Ireland/Northern Ireland that proposed specific solutions for meeting the common commitments. This was forcefully rejected by Prime Minister May, with the full support of the DUP, whose votes she needed for a majority in the Parliament.

She posited the proposal as being akin to the break-up of the UK. The Prime Minister's reaction reflected a refusal to contemplate a choice between a hard Irish land border with the Republic of Ireland (anathema to nationalists) and a hard Irish Sea border with Great Britain (anathema to unionists). The difficulty was, however, that a hard Brexit had to mean a hard border somewhere.

The second version of the Protocol that came through in the Withdrawal Agreement, tentatively agreed by both sides in November 2018, dealt with Northern Ireland in accordance with a version of the third scenario in the Joint Report. In order to avoid customs controls on the Irish land or sea border, this so called 'backstop' was to entail the whole of the UK in a single customs territory with the EU. This was to apply temporarily – unless and until the UK-EU relationship made it unnecessary or until 'alternative arrangements' could be found. Northern Ireland was also to *de facto* be in the EU's single market for goods. In order to avoid any barriers to trade *within* the UK, the UK government (in its 9 January 2019 white paper) committed to following the same rules that Northern Ireland would have to follow. In effect, the 'backstop' would have made a 'hard Brexit' impossible, and the lack of a means of 'unilateral exit' from these arrangements was perceived not in terms of a commitment to the UK union but as a sell-out to the EU. May's deal was defeated a humiliating three times in the House of Commons, by an unholy alliance of strongly pro-Leave and pro-Remain MPs.

The focus on the Irish border as *the* stumbling block in the withdrawal negotiations intensified. A considerable amount of effort was invested in trying to find the 'alternative arrangements' by which the UK could have a 'hard Brexit' (leaving the EU's single market and customs union) whilst avoiding a hard border. In particular, claims were made about 'technological solutions' that would enable the border to be a point of UK/EU controls but without any physical infrastructure (Prosperity UK, 2019). The difficulty at the root of all such 'fixes' is the fact that border management of this sort depends on data. The more unobtrusive the means of checking border crossings would be, the more data on who and what was crossing the border would be required (for example, number plates, GPS tracking, biometric information) (Hayward, 2018a). For some in the border region, this was all too reminiscent of the type of surveillance

that was prevalent around certain points of the border during the Troubles (Hayward, 2018b). As well as practical difficulties, the challenges of managing the post-Brexit Irish border could not escape from the legacy of conflict in the region. Widespread uncertainty about the possible consequences of Brexit exacerbated fears that cross-border and intercommunal differences would inevitably grow (Cochrane, 2020; Murphy, 2018).

As it was, Prime Minister May's successor, Boris Johnson, was willing to make a compromise deal with the EU to avoid the immediate difficulty of managing a hard border on the island of Ireland. The Protocol on Ireland/Northern Ireland in the Withdrawal Agreement negotiated in October 2019 was different from the previous version in that it presented specific solutions for Northern Ireland (as in scenario two of the Joint Report of 2017) (House of Lords, 2020). It was *de facto* to remain in the EU's customs union and single market for goods. As a consequence, there would be no need for checks and controls at the Irish land border. Instead, the UK/EU border for goods moved to the Irish Sea. What is more, the Political Declaration on the future relationship envisaged a hard Brexit for the UK, which would mean in practice, a 'harder' Irish Sea 'border'. Unionists responded angrily to the 'betrayal' that this treatment of Northern Ireland differently to the rest of the UK represented for them. Nonetheless, they were forced to trust that the British Government – which loudly trumpeted its pro-Union principles – would not allow a situation to arise in which the UK would become increasingly fragmented. But the reality of the situation was that the future conditions of the sea border between Northern Ireland and Great Britain, and the land border between Northern Ireland and Ireland were now, post-Brexit, to be determined by the nature of the UK-EU relationship.

4. What is the future of the Irish border?

Looking ahead, at least in the short to medium term, Northern Ireland can expect to have harder borders all around. The Irish border will be a harder border for the movement of people (i.e. non-British and non-

Irish citizens), services and capital. The movement of goods across the Irish Sea will also become more burdensome. Although this is not necessarily a matter of constitutional significance, making sure that the economic consequences of Northern Ireland's unique position post-Brexit move in a positive rather than negative direction will require yet more flexibility. Fundamental to all this is the fact that the relationship between the Republic of Ireland and Great Britain has changed – with enormous ramifications for Northern Ireland. The extent to which the European Union itself showed solidarity with a small but committed member-state was a testament that Ireland's influence in the EU is disproportionate to its size. The fact that this influenced was almost exclusively enacted under the auspices of protecting the interests of a region of a 'third country', i.e. the UK, is significant in and of itself. Whatever it means for British-Irish relations, it is quite evident that the challenge of avoiding a hard Irish border has forced new leaps in conceptualising governance and territoriality in both the UK and the EU.

The challenges and limitations of sovereignty have been evident throughout the history of the Irish border. These have come from different quarters and manifested at different levels: at the levels of the daily lives of border communities (e.g. smuggling), paramilitary campaigns (e.g. IRA border campaigns), British and Irish intergovernmental negotiations (culminating in the 1998 Agreement), and even informal arrangements (e.g. the operation of the Common Travel Area). It took Brexit to expose the breadth and depth of cross-border cooperation that has grown as a result of the peace process as well as from common EU membership and the attendant common regulatory frameworks and rules. All of these ongoing and historical negotiations and changing practices of the border have also increasingly begun to reflect the 'unbundling of territoriality' characteristic of the global transformations of statehood and sovereignty. It is perhaps appropriate that the UK's withdrawal from the EU came to centre upon finding an ambiguous compromise over Northern Ireland. A region which can be understood as embodying the best and the worst of the historical relationship between Britain and Ireland, Northern Ireland is now pivoted on a compromise of governance, jurisdiction and enforcement. The post-Brexit Irish border will surely come to test, if not prove, quite how flexible our concepts of territory and sovereignty can be.

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