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CHAIR'S FOREWORD



Kathleen Funchion TD
Committee Chair
(SF)

On 23 June 2016, the United Kingdom voted to leave the European Union. The results have brought sharp focus to the implications for the Good Friday Agreement.

In 2016, as part of the work programme for the Joint Committee on the Implementation of the Good Friday Agreement, Senator Mark Daly put forward a proposal to compile a report to examine the position that Ireland should adopt as part of the EU and UK Brexit negotiations that would ensure that in the event of the peoples of the island voting in favour of the proposal under Annex A (2) of the Good Friday Agreement; in the final Brexit agreement that such a vote would allow the people of Northern Ireland to be admitted automatically to the EU inheriting all the benefits that EU Membership permits for its citizens and without the necessity of an application process.

The report would also examine what would need to be done to ensure a positive outcome should reunification be agreed under Annex (2) of the Good Friday Agreement.

The Committee agreed that Senator Mark Daly should act as Rapporteur on this issue and prepare a report on this subject for the Committee's consideration. At its meeting on 13 July 2017 the Joint Committee adopted Senator Daly's Report.

The Committee recognises that the matters examined were complex and sensitive. The rationale behind the report was to examine challenges and to seek to identify concerns and explore how they could be addressed.

In order to gain a complete understanding of these issues, Senator Daly undertook an extensive review of applicable reports, and engaged comprehensively with a wide range of politicians, academics and other stakeholders.

On behalf of the Committee, I wish to acknowledge the work done by Senator Daly in bringing this matter before the Committee and undertaking this study with such commitment.

Kathleen Function

Chair

3 August 2017

Introduction

“The EU needs to prepare for a united Ireland.”

Taoiseach Enda Kenny July 2016

Niall O'Connor the political journalist for the Irish
Independent

Reporting from the McGill

Summer School in July 2016

As a result of this statement by the Taoiseach it is also clear that Ireland needs to prepare for a united Ireland. The Joint Committee on the Implementation of the Good Friday Agreement in its work programme approved by Dáil Éireann appointed Senator Mark Daly as rapporteur to compile a report on the effect of Brexit on Ireland, what Ireland should seek to have in the final agreement between the EU and the UK, particularly in the event of the people of Northern Ireland voting for a united Ireland and what Ireland needs to do in order to peacefully achieve its constitutional obligation, as described by Attorney General Brady (2002-07), of a united Ireland, as outlined in Article 2 and 3 of the Irish Constitution

The report for the Joint Committee on the Implementation of the Good Friday Agreement has seven sections;

Section 1: Brexit and its Impact on Ireland

Section 2: Precedent of German Unification for Ireland

Section 3: Economic Modelling of Unification

Section 4: Brexit and the Future of Ireland; Uniting & its People in Peace & Prosperity

Section 5: The Good Friday Agreement

Section 6: Referendum as Provided for in the Good Friday Agreement

Section 7: Constitutional & Legal Changes Before & After a Referendum

All the recommendations for each of the seven sections are at the end of this introduction, as are all the seven summaries that relate to them. The report to the Joint Committee also serves as a reference document

and includes online copies of Acts and Agreements relating to Ireland and Britain from the Act of Union to the Good Friday Agreement

High Court Justice Richard Humphreys book 'Countdown to Unity' is quoted from extensively in Senators Daly's Report. Justice Humphrey's publication lays out the road map to the peaceful unity of Ireland and its people. It outlines the various options for the future of this island and the opportunities and the obstacles that are ahead to achieve the aim of a peaceful united Ireland which was approved by 94% of the citizens of this state in a referendum. Other than the New Ireland Forum of 1984, 33 years ago, the Library and Research Service of Leinster House were unable to find any report by any previous Government, Department or Oireachtas Committee on how the state would achieve its core belief of a united Ireland, an objective supported by 79 per cent of people in an opinion poll in 2016.

Professor Emeritus of Humboldt University in Berlin, Christain Tomuschat's submission to the report outlines the precedent in German unification for Northern Ireland's automatic inclusion in the EU without the need for an application or accession process in the event of a vote for reunification.

White House, National Security Council, Senior Policy Advisor on counter terrorism in President Obamas administration, Michael R. Ortiz has also written a paper for Senator Daly's report on the threat of future paramilitary violence attempting to subvert a referendum and reunification as provided for in the Good Friday Agreement. Michael Ortiz was the first U.S. diplomat focused on countering violent extremism and was appointed by Secretary of State John Kerry.

Congressman Brendan Boyle a member of the US House of Representatives Foreign Relations Committee has submitted a specially commissioned research paper from the United States Congressional Research Office which is included in this report. This analyses the true nature of the income and expenditure of Northern Ireland. A report by Dr. Kurt Hubner of the University of British Columbia shows a reunification scenario with a boost of 35.6billion euro over eight years to an all island economy. The report for the Joint Committee also includes elements of the UK House of Lords report on Brexit; UK- Irish Relations with a particular focus on the common travel area, including proposals to ensure the continued free movement of people across the border with

Northern Ireland. The economic challenges of Brexit and unification are outlined in various reports including some from the House of the Oireachtas Library and Research Service, a key one of these is the analysis of the United Nations Human Development Index, which measures health, education, and income. The UN report ranks Ireland as 8th in the world alongside Germany, Canada and the United States. In Northern Ireland's case the analysis places it 44th in the world alongside the likes of Hungary and Montenegro. As a result of Brexit, Northern Ireland is likely to drop below 50th joining the likes of Kazakhstan and Belarus.

This report includes submissions by various politicians, academics and experts from Ireland, England, Germany and the United States who have given generously of their time and their experience to assist Senator Daly in compiling it, the first by any committee of the Irish parliament on how to achieve a united Ireland.

To conclude we include an extract from 'Irish man of the 20th century' T K Whittaker's 'Note on North-South Border Policy' written on the 11 November 1968 the eve of 'The Troubles'. In it he foresaw the Good Friday Agreement, the long term nature of achieving a united Ireland, that it required the best of ourselves and a collective understanding.

“We were, therefore, left with only one choice, a policy of seeking unity in Ireland between Irishmen. Of its nature this is a long-term policy, requiring patience, understanding and forbearance and resolute resistance to emotionalism and opportunism. It is not the less patriotic for that”

Thanks to all those who made submissions and worked to assist in the production of this report including;

Congressman Brendan Boyle; Bertie Ahern – Taoiseach; Ray Bassett - Former Irish Ambassador to Canada 2010-2016; John Teahan, M.A. Economic and Politics Trinity College Dublin 2000; Brian Crowley MEP; Prof Dr. Markus Kotzur, LL.M.

(Univ.) Hamburg University; Anne Cadwallader and the Pat Finucane Centre; Michael Ortiz, Senior Policy Adviser on Counter Terrorism to the National Security Council under President Obama and First US Diplomat Focused on Countering Violent Extremism at the State Department; Kevin Meagher, Adviser to Secretary of State for Northern Ireland Shaun Woodward 2007-09; Professor Christian Tomuschat, Humboldt University Berlin, and Faculty of Law; Marcus Noland of the Peterson Institute for International Economics and Author of 'Avoiding the Apocalypse: the Future of the Two Koreas'; Prof Fr Sean D. McGraw - Notre Dame University; M. J. Jackson; Dr. Martin Mansergh; National Archives; Oireachtas Library and Research Service; Carly Frame; Billy Tranghese; Joe Cullen; Mark Nally; Shane Dempsey; Noel Dempsey; and for her long hours of work and tireless commitment to the project I wish to especially thank Grace Coyle.



Senator Mark Daly- Rapporteur of the Report

Summary of Recommendations

Section 1 Recommendations

- The Irish government must negotiate for Northern Ireland to be designated with special status within the EU and for the whole island of Ireland to have a unique solution as part of the Brexit negotiation.
- If current EU funding programmes cannot be protected then the eligibility of Northern Ireland for receipt of EU Structural funds and other funding schemes and mechanisms must be clarified as a matter of urgency, to help underpin the peace process.
- The Report on the All-Ireland Economy: compiled in 2016 by Peadar Tóibín TD for the Joint Oireachtas Committee on Jobs, Enterprise and Innovation in the light of Brexit should be updated.
- Any passport controls between Ireland and the UK should be along the same basis as for people traveling between these islands from 1939 to 1952. There should not be a return to passport controls on the borders between the North and South of Ireland.
- Given the likely impact on certain categories, including women, in border counties and employment in these areas there is a need for impact analysis on these sectors of society
- Further research into the income and expenditure for Northern Ireland should be carried out

Section 2 Recommendations

- Welcome the declaration agreed to by the European Council on 29 April 2017 which provides for Northern Ireland automatically becoming part of the EU in the event of a future united Ireland.
- This declaration known in Brussels as 'The Kenny Text' is similar to that of Commission President Jacque Delors in January 1990 on the issue of German Unification 'East Germany is a special case'.

Section 3 Recommendations

- It is recognised that World Trade Organisation rules and a hard border would have a detrimental impact on Ireland North and South & Further impact assessment is required on the economic impact of reunification.
- The Committee urges that the matter of EU funding for Northern Ireland and the border region remains high on the agenda and an expeditious solution is found for successor programmes after 2020.

Section 4 Recommendations

- The establishment of a New Ireland Forum 2 is recommended to set a pathway to achieve the peaceful reunification of Ireland.
- Establish an international task force with experts in security so that plans to meet any risks may be devised and implemented.
- Fears and concerns of the Unionist community need to be examined, understood and addressed comprehensively by all stakeholders in advance of any referendum.
- The legacy issues in society outlined by Senator Frances Black and the inter- generational impact of the troubles in terms of mental health consequences and substance abuse needs to be addressed

Section 5 Recommendation

- Explore potential solutions to resolve disputes that may arise from the implementation of the Good Friday Agreement, as recommended by High Court Justice Kevin Humphreys.

Section 6 Recommendation

- Lessons from referendums need to be learned to ensure that the Irish government fulfils its constitutional obligations.

Section 7 Recommendation

- The Government needs to carry out an audit in relation to the legal and constitutional changes pre and post-unification.

Section 1 Summary

The terms of reference for the Report for the Joint Committee on the Implementation of the Good Friday Agreement included an analysis of the impact of Brexit on Northern Ireland and what Ireland should seek to have in the final agreement between the EU and the UK regarding Northern Ireland. It is clear from all the reports written on the issue of Brexit that its effect on Northern Ireland will be significant. In February 2016 research commissioned by the UK Department of Enterprise, Trade and Investment on the economic implications of a UK exit from the EU showed that Northern Ireland is more vulnerable to Brexit than Britain. The loss to Northern Ireland of EU membership and funding will be significant, and the subsequent effect on the economy and the potential to destabilise the Peace Process is a central concern.

That is why the key recommendation of the report is if current EU funding programmes cannot be protected then the eligibility of Northern Ireland for receipt of EU Structural funds and other funding schemes and mechanisms must be clarified as a matter of urgency, to help underpin the peace process. Ireland believes that in relation to Brexit Northern Ireland is a special case and its Peace Process is worthy of on-going support from the EU and Britain.

For this research paper we have included information on some of the EU programmes that HM Treasury would have to continue funding. Member of the European Parliament Brian Crowley provided information in relation to the EU Funding programmes 2014 - 2020.

This report looks at the difficulties of predicting the impact of Brexit. To highlight this challenge, we reproduce the divergence of estimates by various organisations who tried to predict the impact of the World Trade Organisation rules being imposed on the UK. The difficulty of predicting the impact of Brexit on Northern Ireland is further compounded by the lack of reliable data and accurate statistics for Northern Ireland. Such a 'data deficit' needs to be addressed in order for the Irish Government to produce a coherent long-term policy in relation to Northern Ireland.

Congressman Brendan Boyle commissioned research from the United States House of Representatives Congressional Research Service specifically for this report for the Committee on the Implementation of the Good Friday Agreement. Congressman

Boyle's report outlines the data deficit for Northern Ireland, in particular the difficulty in accurately determining the actual income and the fiscal deficit in Northern Ireland. This report also commissioned research on the rationalisation of the large public sector in Northern Ireland and the findings of the Oireachtas Library and Research are included in the online appendix of this section. The Report on the All-Ireland Economy (Joint Oireachtas Committee on Jobs, Enterprise and Innovation compiled by Deputy Peadar Toibin TD) is reproduced in the online appendix of this section. We recommend that in light of Brexit a second report should be commissioned on the All Island Economy. We are conscious of the recent hearings and report by the Committee on Jobs, Enterprise and Innovation on Brexit. We have reproduced some sections of reports from the Nevin Economic Research Institute (NERI) and Oxford Economics which, despite the data deficit, have attempted to analyse and highlight the potential impact of Brexit on Northern Ireland.

One key concern of the Irish Government and the Irish people is the return of the border. It is feared that a 'Hard Brexit' will mean a 'Hard Border'. Again, the lack of accurate data is highlighted by the difficulty of determining how many people cross the border every day for work and study. Former Taoiseach Bertie Ahern has made a submission to the Committee on the return of the border between the North and the South.

Former Irish Ambassador to Canada Ray Bassett's submission on 'Irexit' is included. The solution to the problem of creating a border on the old partition lines between North and South is for the border to be in the Irish Sea between the island of Ireland and Britain as was the case from 1939 to 1952. This was highlighted in the House of Lords: European Union Committee report entitled 'Brexit: UK-Irish relations' which we quote and analyse. This report is available in full in the online appendix to this section. The issue around the common travel area is also examined.

The report looks at a neglected topic in the Brexit discussion, that being the effects on women. For this report we commissioned a research paper from the Library and Research Service of the House of the Oireachtas to give an overview of the responses to Brexit of the British and Irish Governments and the legislature in each jurisdiction. The Library and Research Service of the Oireachtas were also commissioned to provide an updated report on The Good Friday Agreement, the Peace Process and the Institutions; the report provides a background on a range of issues which feature a specific cross-border dimension. The theme of the paper was 'the Impact of Brexit on Cross border activities'.

In compiling this section of the report we reproduced the findings of the Library & Research Service of the Houses of the Oireachtas.

The briefing paper provided information on a range of topics;

Policing and Justice
Business and Trade
Labour Market and Skills Tourism
Health
Finance and Funding
Agriculture
Energy and Environment
Education

The paper looked at the impact which Brexit may have on these and other issues across Ireland. The range of impact on Ireland, both North and South, cannot properly be assessed until such time as the terms of the withdrawal agreement from the EU are known. Therefore it should be noted that the list of issues discussed here is not exhaustive.

Section 2 Summary

Taoiseach Enda Kenny, speaking in Brussels on 2 March 2017 said:

“the Good Friday Agreement contains the opportunity to put in these negotiations language that has already been agreed in internationally binding agreement, that at some future time were that position to arise, that if the people by consent were to form a united Ireland that that could be a seamless transfer as happened in the case of East Germany and West Germany when the Berlin Wall came down.”

At the McGill Summer School in July 2016 the Taoiseach stated in relation to the upcoming Brexit negotiations that “the EU needs to prepare for a united Ireland”.

The Taoiseach also said at that time "The discussion and negotiations that take place over the next period should take into account the possibility, however far out it might be, that the clause in the Good Friday Agreement might be triggered."

Therefore the precedent set out in the reunification of West and East Germany will need to be included as part of the final Brexit agreement between the European Union and the United Kingdom. In the event of the people of Ireland voting in favour of a reunified Ireland as provided for in the Good Friday Agreement the Government needs to ensure that Northern Ireland will be entitled to automatically become part of the EU without the necessity for an application or accession process. This declaration by the EU now will be important to avoid any doubt of EU status for the people of Northern Ireland. Such doubt on EU membership was one of the factors that led to the loss of the Scottish Independence Referendum.

Some of the other elements that should be included in the final agreement between the EU and UK are included in this report. These include the treatment of trade, where the example of the trading relationship between East and West Germany up until reunification where the European Economic Community trade rules were not applied needs to be followed. Such equal treatment of trade between the North and the South of Ireland on a similar basis would assist the people of Northern Ireland and ensure the stability of the economy of the whole island and thus the stability of the Peace Process. Professor Markus Kotzur of Hamburg University's submission to the Joint Committee on the Implementation of the Good Friday Agreement is included in full in this section. The Oireachtas Library and Research Service have provided information on EU Agreements with their overseas territories and countries which has been included in the online appendix of this section.

Section 3 Summary

The research paper entitled 'Brexit- a view from the Chambers in December 2016' by the German-Irish Chamber of Industry and Commerce looked at the various analysis done on the impact of Brexit on Ireland. This paper had a specific overview of the impact on Northern Ireland and is available in full in the online appendix to this section.

The German-Irish Chamber of Industry and Commerce has a unique view on the impact of Brexit on Ireland in light of the German reunification experience and view that "The Irish peace process is lauded internationally as an exemplar to other regions where there is conflict, however, Brexit could undermine the work of reconciliation and destabilise the region."¹

The German-Irish Chamber of Industry and Commerce also commented that

"Brexit and the challenges it poses cannot be allowed to undermine cross-border cooperation, economic reconstruction and growing rapprochement after centuries of division on the island of Ireland. In 1990, Ireland's European presidency was central to agreeing a common EU approach to the issue of German unification after the historic divisions caused by the Cold War. In 2010, on the twentieth anniversary of the landmark Dublin Summit, Germany's then foreign minister Guido Westerwelle said that his country would "never forget" how Irish diplomacy helped fast-track the way for the territory of then East Germany to join the European Union as part of a unified Germany. A key question for decision-makers in the EU today is can agreement be reached in a similar spirit of diplomatic pragmatism to ensure that the unique circumstances of the island of Ireland."²

It is widely recognised that the effect of Brexit on the island of Ireland will be profound and will require 'diplomatic pragmatism' by key EU decision makers as outlined by the German-Irish Chamber of Industry and Commerce. The effect of Brexit will also be long term, and one of the potential long term solutions would be the fulfilment of the Constitutional obligation of a reunified Ireland.

¹ Ralf Lissek, Dr. Brian Murphy & Dr. Volker Treier, 'Brexit-a view from the Chambers in December 2016' (2016) German- Irish Chamber of Industry and Commerce, <http://www.german-irish.ie/uploads/media/German_Irish_Brexit_Report_01.pdf> accessed 8 February 2017,

² Ralf Lissek, Dr. Brian Murphy & Dr. Volker Treier, 'Brexit-a view from the Chambers in December 2016' (2016) German- Irish Chamber of Industry and Commerce, <http://www.german-irish.ie/uploads/media/German_Irish_Brexit_Report_01.pdf> accessed 8 February 2017, p.24.

The economic analyses of a unified Ireland as an option are few on the ground. There was economic analysis of a united Ireland based on the economic modelling of German unification carried out in 2015 entitled 'Modelling Irish Unification'. This report is available in full in the online appendix to this section. However, it could now be considered to be out of date due to Brexit. In the analysis, one of the modelling scenarios in the report estimates a boost in the all island GDP of €35.6 billion over eight years with the North benefitting significantly.

Section 4 Summary

In light of Brexit and the challenges it poses for all sides in Ireland, the words of Attorney General Rory Brady (2002-2007) in the foreword to now High Court Justice Richard Humphreys' book 'Countdown to Unity' have never been more relevant.

"It is now for the political world to address when and how it will embrace those challenges and induce that change"³

"Unity may have been redefined by the new Articles 2 & 3 of the Constitution but it has remained as a constitutional imperative (obligation). The guarantee that violence will not be used to effect constitutional change is merely one commitment. In parallel to that and of equal importance is the duty to give effect to the firm will of the Irish Nation 'to unite all the people who share the territory of the Island of Ireland'"⁴

'Countdown to Unity' identifies how the objective of Unity might be put in place through legal and constitutional measures. This report will highlight briefly those legal, legislative and constitutional measures that can be taken to strengthen the case for unity as outlined by Humphreys.

Up until the Brexit vote on 23 June 2016 the concept of a United Ireland as outlined in Articles 2 and 3 of the Constitution for many would seem a distant aspiration. Brexit means that the best future for the citizens of Northern Ireland could well be remaining in the European Union in a reunified Ireland. This option must be explored and examined.

The challenge now is to lay out how to achieve the constitutional obligation of a united Ireland.

As John Bradley in his paper 'Toward an All Island Economy' presented at Queens University Belfast in 2014 pointed out, "the extreme importance of strategic economic planningpolicy errors or policy neglect seldom goes unpunished".⁵ As this is a truism of economic planning it is also critically important when it comes to the issue of planning for unification. The UN human development index ranks the Republic of Ireland as 8th in the world and ranks Northern Ireland at 44th.

³ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.Xiii.

⁴ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X

⁵ John Bradley, 'Towards an All-Island Economy', (2016) < http://www.irish-association.org/papers/john_bradley.asp> accessed 2 February 2017.

However, aside from the New Ireland Forum, the Oireachtas Library and Research service in Leinster House could not find any current or historic reports produced by a parliamentary committee on how the state should achieve its main aim of a united Ireland.

As is pointed out in 'Countdown to Unity' published in 2009, seven years prior to the Brexit vote, Justice Humphreys stated there were a number of reasons why a debate and a policy are appropriate at this time.

In this section we look at High Court Justice Humphreys' reasons why, other than Brexit, the issue of unification should be looked at.

Firstly, the radically different context for the discussion on unity which exists now compared to any time over the last nine decades since partition. Secondly, the case for unity is now actively being made, with support for a United Ireland by 79 per cent in the South, along with, as Humphreys, states "increasing over all vote for the two nationalist parties in Northern Ireland",⁶ demonstrated by the Assembly results of 3 March 2017. Finally, as Justice Humphreys states himself:

"but in the end perhaps most compelling, reason for an examination of the implications of unity is the fact that the constitution itself, in article 3, inserted pursuant to the Good Friday Agreement, refers to unity as the 'firm will of the Irish Nation'".⁷

Specially commissioned research carried out by the Oireachtas Library and Research Service for this report outlines the positions of all the main political parties on the Island, North and South, on the issue of unification. It is republished within this section in full. Professor Sean D. McGraw of Notre Dame University in his submission for the Joint Committees Report outlines his research of Irish Parliamentarians attitudes towards a united Ireland.

Attorney General Brady states in the Foreword to High Court Justice Humphreys' book 'Countdown to Unity' that "While consent is a fundamental characteristic of change, Dr Humphreys makes it plain that it cannot be an excuse for political inertia"⁸. High Court Justice Humphreys discusses the issue of political status-quoism due to the concern that loyalist paramilitaries could be provoked and attempt to subvert the pursuit of the aim of the Irish people to peacefully achieve a united Ireland as provided for in

⁶ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.2.

⁷ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X.

⁸ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.X.

the Good Friday Agreement. Senator Daly as rapporteur of this report requested White House, National Security Council, Senior Policy Advisor on counter terrorism in President Obama's administration, and the first US diplomat focused on countering violent extremism policy at the State Department Michael R. Ortiz to give a submission on how the threat of future loyalist paramilitary violence attempting to subvert a referendum and unification could be addressed. Anne Cadwallader of the Pat Finucane Center and author of 'Lethal Allies: British Collusion in Ireland' outlines the collusion of the past between the British Security forces and loyalist paramilitaries, and she makes recommendations on how such collusion could be prevented in the future as Ireland pursues unification.

Kevin Meagher, an advisor to the Secretary of State for Northern Ireland Shaun Woodward 2007-09, outlines in a submission to the Committee his view on the position that the British Government should adopt towards the future of Northern Ireland.

Expert in German unification, Professor Christian Tomuschat from Berlin University, made a submission to the Committee report. The United Nations report on the on-going progress in Cyprus reunification is also published in full. Professor Marcus Noland, former Senior Economist at the Council of Economic Advisers in the Executive Office of the President of the United States, is also a specialist on the issue of Korean unification and outlines some of the lessons for Ireland.

High Court Justice Humphreys in his book 'Countdown to Unity' states that "there is no one single pathway to unity – rather there are alternative, but perhaps related roadmaps to reunification"⁹

In this section the options by Justice Humphreys are outlined. These include Unitary State, Federal/Confederal, United Ireland with continuation of Northern Assembly under the Good Friday Agreement, Joint Authority, Joint Sovereignty, Independent Northern Ireland, Repartition, and Repatriation.

'Irish Man of the 20th Century' T K Whittaker stated in November 1968 in a 'Note on North-South Border Policy' the long-term nature of achieving a United Ireland:

⁹ Richard Humphreys, Countdown to Unity: Debating Irish Reunification (Irish Academic Press, Dublin 2009) p.205.

‘We were, therefore, left with only one choice, a policy of seeking unity in Ireland between Irishmen. Of its nature this is a long-term policy, requiring patience, understanding and forbearance and resolute resistance to emotionalism and opportunism. It is not the less patriotic for that’

T K Whittaker

‘Note on North-South Border Policy’

T. K. Whittaker ‘s transcript memorandum titled “A note on North South Border Policy” November 1968 is in the online appendix in full

5.0 Summary

In this section of the Report for the Joint Committee on the Implementation of the Good Friday Agreement we outline the infrastructure of the Good Friday Agreement. The agreement is included in full in the online appendix of this section.

Strand I: The Assembly and Executive with in Northern Ireland

Strand II: The North South Ministerial Council

Strand III: The British Irish Council

The report looks at some of the provisions of the Agreement that have still to be implemented, such as the Bill of Rights, Civic Forum, North South Consultative Forum and the Irish Language Act. We highlight that even with Ireland's membership since 2011 of the International Court of Justice, as Northern Ireland is not covered by the ICJ there are limited avenues to address breaches of the Good Friday Agreement by the British Government or any signatory. This flaw in the Agreement needs to be addressed.

High Court Justice Humphrey's book 'Countdown to Unity' looked at developing and expanding the architecture and infrastructure of the Good Friday Agreement and his analysis is included here. Justice Humphreys looks at the idea of an East-West Parliamentary Body and the Constitutionality or otherwise of it. The concept and again the constitutionality of a judicial branch of government resolving disputes of North-South and East-West Parliamentary Bodies is explored. Justice Humphreys also analyses the opportunity of a North-South Implementation Body, and the possible gains from East-West Administrative Bodies. An All Island Civic Forum to assist the North South structure is also explored. Finally, in this section High Court Justice Humphreys looks at the continuation of the infrastructure of the Good Friday Agreement "into the long term" and after a referendum for a united Ireland.

Section 6 Summary

High Court Justice Humphreys in his book 'Countdown to Unity' explains how the 'constitutional imperative', as outlined by Attorney General Brady (2002-2007), of Articles 2 and 3 of the Constitution can be achieved by the referendum provided for in Annex A Schedule 1 of the constitutional issues of the Good Friday Agreement.

Attorney General Brady (2002-07) goes on to explain the elements of the Good Friday Agreement and of accepting the Realpolitik of a divided island.

"A fundamental principal of the Good Friday Agreement is that it is a settlement based on the exercise of the right to self-determination by the people of the island of Ireland. The requirement that the right was to be exercised, concurrently, on both parts of the island by way of a separate referendum in each jurisdiction was recognition of the realpolitik of a divided island. The reconciliation of the tension between the right to self-determination and the reality of political life on the island of Ireland is to be found in the policy of consent."

10

In this section we look at Justice Humphreys' detailed analysis of the issue of consent, of 'dual consent', and the important difference between 'a' majority and 'the' majority as referred to over the decades by various British Governments. The challenges of a referendum being concurrent in the North and South, and how that could and should be interpreted, is considered in great detail by Justice Humphreys. The options open to the Irish Government in the event that the Secretary of State for Northern Ireland refuses to hold a referendum or hold a 'testing the water' referendum are explored by Justice Humphreys. The triggering of a referendum and its likelihood of being subject to a challenge by way of a referendum petition by unionists is also discussed. The issues surrounding voter fraud in a referendum are outlined. In the

¹⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.xi.

event of the referendum being passed the necessity of its ratification by the Irish and British Governments is explained.

Finally, the research of the Library and Research Service of Leinster House and British House of Commons on the referendums in Quebec and Scotland, where support for separation from a larger political state could not be attained, and possible lessons for a referendum here are outlined briefly and the papers are available in full in the online appendix at the end of this section.

Section 7 Summary

High Court Justice Humphreys states:

“It is a matter of political judgement as to whether and to what extent to hold off all legal or constitutional change until after the achievement of the reunification of the island of Ireland.”¹¹

In this section of the report we highlight the analysis of High Court Justice Humphreys work in ‘Countdown to Unity’ on the constitutional, legal and other changes that could or should take place before or after unification. The ratification and the implementation process of the referendum result is outlined. The issue of the continuation of the Northern Assembly after a referendum under the Good Friday Agreement is analysed, as are some of the flaws of the Good Friday Agreement as seen by Justice Humphreys. Development of the institutional architecture of the Good Friday Agreement after a referendum is examined, as is North-South and East-West infrastructure. Three different options are outlined by Justice Humphreys as to how to deal with the issue of pre-existing Northern Ireland legislation in a post- referendum Ireland.

The replacement of pre-existing legislation with Britain, including the Act of Union, by a new comprehensive treaty is outlined by Justice Humphreys. Also outlined are the legal changes with the EU and the consequences for international treaties signed by Ireland and the UK.

The challenge of uniting people as explained by John Hume is chartered by Justice Humphreys with the necessity of confidence measure by the Irish side. These include broadening the constitutional definition of citizenship to include the British identity on the island, giving rights to vote and to run for elected office to citizens who choose a British identity as provided for in the Good Friday Agreement, and the need to remove the legal sectarianism of the British state, among which would be the Coronation Oath Act. Justice Humphreys’ findings of unionists’ views of representation for Northern Ireland politicians in the current Dáil Éireann are outlined. The merits of ‘Gesture Politics’ on issues such as the Irish Language, the National Flag and Anthem is considered not necessarily to be a bad thing, Humphreys argues, if the gesture can be shown to have achieved something. Dr Martin Manseragh has described an

¹¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.180.

approach whereby the traditions of both communities are accommodated as such: “we need not lessen our loyalties as we broaden our sympathies”.

In the online appendix to this section, we have included:

Union of Ireland Act 1800

Government of Ireland Act, 1920

Treaty of 1921

The Republic of Ireland Act, 1948

The Sunningdale Agreement 1973

New Ireland Forum Report 1984

Anglo-Irish Agreement 1985

Downing Street Declaration 1993

The Good Friday Agreement 1998

An Coiste um Fhorfheidhmiú
Chomhaontú Aoine an Chéasta

Committee on the Implementation
of the Good Friday Agreement