

Joint Committee on the Implementation of the Good Friday Agreement

Further Responses from Professor Colin Harvey and Mark Bassett BL

Hearing on 16th February 2021

A. Introduction

1. We would like to repeat our gratitude for the opportunity to address the Committee on Tuesday 16th February 2021. In particular, we thank the Chair for his assistance throughout and Committee members for their insightful questions and contributions. We believe this was a useful and constructive evidence session and would gladly accept any future invitation to appear again to assist the Committee in its ongoing work.
2. This is a follow-up response in order to address additional questions raised.

B. Questions

3. **How long could (or should) the Northern Ireland institutions continue after Irish reunification?**

The Good Friday Agreement contemplates a transfer of sovereignty from the United Kingdom to Ireland. It does not expressly address the form that a united Ireland would take. There are, however, provisions in the Agreement that are clearly forward facing, including the obligation of rigorous impartiality and guarantees on identity, citizenship and rights. In particular, we draw the attention of the Committee to the role of a rights and equality framework, and the need to ensure there is no diminution in guarantees as a consequence of reunification. People in Northern Ireland must enjoy at least an equivalent range of protections in a united Ireland.

We recognise the significance of shared institutions in the jurisdiction of Northern Ireland as one part of the Agreement. Those will remain in place in more or less their current form unless and until an alternative arrangement is agreed. This is therefore part of a larger conversation about the form a united Ireland will take. This is precisely why we continue to emphasise advance planning and preparation.

The question of the continuation of northern legislative, executive and judicial organs will also have to be addressed in a way that ensures consistency with Bunreacht na hÉireann or any new constitutional arrangements that emerge from the conversations noted above.

4. Why focus on securing referendums on Irish reunification when important work on reconciliation remains outstanding?

The work of reconciliation between the traditions, communities and peoples on this shared island is essential and must continue regardless of the constitutional position of Northern Ireland. In our view, reconciliation is not advanced by avoiding hard questions about the constitutional future or by making an often ill-defined and “thin” version of reconciliation an obstacle to holding the referendums contemplated in the Agreement. We underline again that these concurrent referendums are a central part of the compromise at the heart of the Agreement. This is not an either/or conversation and the vital work of reconciliation on our shared island will continue.

5. What is meant by “external impediment” in the Agreement?

In our view, and for these purposes, this refers primarily to the Westminster Parliament. We also acknowledge how significant it was for the EU in 2017 to confirm that a reunified Ireland would continue as a Member State, thus addressing a potential “external” obstacle to reunification.

The right to self-determination belongs to the people of this island without “external impediment”. The link to the Westminster Parliament was certainly the understanding of the-then Taoiseach Ahern when in April 1998 he said that the: *“British government are effectively out of the question, and neither the British parliament nor people have any legal right under this Agreement to impede the achievement of Irish unity if it had the consent of the people North and South ...”*¹

The centrality of the concept of parliamentary supremacy to the British constitutional tradition remains a concern. The British Government is under a “binding obligation” to take forward and support the outcome of concurrent referendums on this island. But what happens if the Westminster Parliament becomes an impediment? If this were to take place it would amount to an egregious breach of the Agreement. It would be comparable to the Irish state assuming jurisdiction and control of Northern Ireland without reference to the principle of consent.

6. Do the referendums have to be a binary question? What about alternatives to the status quo or Irish unity?

The Agreement contemplates two, and only two, outcomes. Re-partition, independence, accession to any other sovereign state and joint authority between London and Dublin do not feature in the Agreement.

Any such proposal would, in effect, require a back to the drawing board approach from the governments and the parties. We would therefore repeat that adherence to the Agreement should guide the approach throughout and this includes the question asked.

¹ Speaking at Arbour Hill on the 26th April 1998: available at <https://www.irishtimes.com/news/britain-has-been-ruled-out-of-the-equation-on-north-says-ahern-1.146434>.

7. What could the Committee do to assist in preparing for possible referendums?

We invite the Committee to write to the Irish Government and to the Secretary of State for Northern Ireland to ask for coherent answers to the questions posed in recent correspondence (forwarded to the Committee).

We also encourage the Committee to engage further with other northern experiences and voices, in all their diversity, and believe that this will help inform its reflections and work.