

Joint Committee on the Implementation of the Good Friday Agreement

Opening statement by Professor Colin Harvey and Mark Bassett BL

21st January 2021

1. Thank you for the invitation to provide evidence to the Committee. We appreciate the opportunity to address you on this core constitutional component of the Good Friday Agreement (GFA).
2. Our report - *The EU and Irish Unity: Planning and Preparing for Constitutional Change in Ireland* - was published in October 2019, and should now be read in the light of other work we have undertaken and events since then.
3. Our aim is to focus on the main themes in our report, with particular reference to the intensifying debate about the constitutional future of this island. As the Committee will be aware, this discussion is becoming much more focused and there are a proliferating number of projects and initiatives.
4. We welcome these developments and would encourage others to join in. We are pleased to see the widespread acceptance now of the need for responsible preparation, and what appears to be convergence around a possible time frame.
5. The GFA contemplates Irish reunification following concurrent referendums in both jurisdictions on the island. The process is underpinned by international law and the promise of self-determination is a central feature of the constitutional arrangements of Ireland (article 3.1 of Bunreacht na hÉireann) and the United Kingdom (Northern Ireland Act 1998, section 1 and schedule 1). Following Brexit, reunification is further recognised as a matter of international law in the ‘without prejudice’ provision of the Protocol on Ireland/Northern Ireland (article 1.1).
6. We have outlined elsewhere our preferred approach, and would draw the attention of the Committee to the work of Ireland’s Future and the Constitutional Conversations Group, in particular. We have offered a view on what we believe a good faith interpretation of the letter and spirit of the GFA requires. We remain concerned by attempts to erode and undermine key elements of the agreed process. We also recognise areas where more work is required to promote clarity and certainty, and continue to insist that the necessary preparations must be completed in advance of the referendums taking place. In our view the people of this island are likely to be offered a choice about their constitutional future in the decade ahead. It is essential that when that time comes everyone is clear about the consequences.
7. Brexit has dramatically altered the nature of this constitutional conversation. For Northern Ireland the principal route back to the European Union (EU) is through Irish unity, rather than the forlorn hope of UK accession under article 49 TEU. The mechanics of Irish

reunification, from an EU perspective, are also tolerably clear. The position of the European Council, announced in April 2017, is that reunification will essentially follow the German precedent of 1990. The German and Irish contexts are plainly distinctive, but what this means is that the transfer of sovereignty from the UK to Ireland, envisaged by the GFA, will be an example of cession rather than the creation of a ‘new state’ in international law. The borders of the Irish State will change but its EU membership will continue without requiring Treaty amendment or ratification by any EU institution. A reunified Ireland may or may not have a ‘new constitution’ but it will not be a ‘new state’.

8. In our report we identify and explain the likely consequences and legal processes that will arise. There are responsibilities on both governments and EU institutions to prepare. Challenges are identified but none are insurmountable, and the managed transition to new arrangements is feasible and achievable. Our report examines, among other things, the GFA framework, the state of the unity debate, the mechanics of reunification in an EU context, consideration of how British citizens will be accommodated, and the consequences of the current rules on economic and monetary union for continued Irish membership of the eurozone. The report includes a number of suggestions and recommendations addressed to EU institutions in particular.
9. As we hope is clear, we believe that proper preparation is essential, and that should not be confined to the British-Irish context. The EU will have an interest and a role in this process of constitutional change within one of its member states.
10. Thank you again for the opportunity to address the Committee today. We would urge members to consider how this Committee can assist and reflect on the further work that might be undertaken by the Oireachtas. While there is often an intense focus on the role of both governments, we believe that legislatures must also consider how they can contribute.