

Unionist Voice Policy Studies - Written Submission

Introduction: The background to our organisation is set out in the accompanying cover letter. In light of the five-page constraint on submissions, it is not repeated here.

This submission focuses on (i) the harmfulness of the political objective underpinning the committee's work; (ii) the subversion of Strand Three of the Belfast Agreement; (iii) the Irish Government's weaponisation of the Belfast Agreement and (iv) general comments on a referendum on a United Ireland.

The objectionable political objective of the committee: The committee works from a concept of "*the constitutional future of the Island of Ireland*". This presupposes there is some constitutional framework which encompasses both jurisdictions on the Island of Ireland already in existence, and purports to explore how this will develop in future. There is no such present constitutional framework. There last was in 1922 when Ireland as a whole formed part of the United Kingdom.

There are two sovereign territories, one under the control of the Irish State and the other forming part of the United Kingdom. While there are shared institutions (and have been since joint provision for railways and the Foyle Fisheries Commission) there is no constitutional 'umbrella', certainly not within UK domestic law or any international provision, which unites the two sovereign territories. Accordingly, in the absence of any such legitimate framework, the entire premise of the committee's work must therefore actually be adjudged to be based upon the desire or necessity to *create* such a framework.

It is apparent therefore that the committee has a pre-determined political objective and seeks the views, particularly from the unionist community, on a range of issues in order to give cover to the pursuit of the committee's broad shared objective to advance the cause of a United Ireland, and this the end of the United Kingdom. It is for this reason unionism/loyalism can provide no such cover.

In the context of this submission, it may seem *prima facie* inconsistent to effectively urge unionism/loyalism not to be lured into the carefully crafted parameters of the committee's work, whilst doing so in a submission to the committee. This submission, however, and any oral submissions which may be made, are made solely for the purpose of calling attention to the politically harmful nature of this objective, particularly in the context of the approach adopted by the Irish Government in relation to Brexit and the Belfast Agreement.

Breach of Strand Three of the Belfast Agreement: The third objective of the committee's work sets out a range of areas the committee wishes to discuss. This, in the context of a future all-Ireland constitutional arrangement, relates to various areas which it is envisaged would be harmonised.

Strand Three of the Belfast Agreement creates the British-Irish Council which is the agreed framework for the discussion of shared areas of co-operation. The agreed parameters of this were a key guarantee for the unionist/loyalist community.

The present work of the committee is designed to circumvent the agreed constraints on North-South co-operation, by using the committee as a surrogate to promote and pursue a more expansive and activist North-South agenda.

Irish Government weaponisation of the Belfast Agreement: It is accepted within the committee's own public consultation paper at '**2- context**' that this piece of work exists within the wider framework of the Belfast Agreement and Brexit. The Irish Government's contribution in relation to those fundamental issues therefore has a direct impact on the issues under consideration by the committee.

As leverage on the international plane, the Irish Government has sought to set itself up as the guardian of the Belfast Agreement "*in all its parts*". However, the method by which the Irish Government has deployed the 1998 Agreement is by holding up an interpretation of its provisions which is purely nationalist.

In circumstances whereby the 1998 Agreement was based on a series of ambiguous compromises, it was always going to the case that different parties to the Agreement would take differing views on what had been agreed. The Irish Government has adopted a purely nationalist interpretation of each provision, and this has caused many in the unionist/loyalist community to view the Belfast Agreement as a nationalist weapon to be deployed for the advancement of the United Ireland objective.

The deployment of the images of IRA bombs, presumably for political leverage, by then Irish Prime Minister Leo Varadkar during the Brexit negotiations has caused lasting and potentially irreparable damage to relationships between this Irish Government and the unionist/loyalist community.

In viewing the Belfast Agreement through the prism of nationalism's interpretation of this text, and in this context tying the 'protection of the Agreement' to the maintenance of 'peace', the message understood by the unionist community is that the price of the absence of republican terrorism is the continued progression of a 'process' which is designed to incrementally dismantle the Union.

This view has been solidified by the way the Irish Government presented the prospect of so much as CCTV camera on the border between two sovereign territories as a 'threat to peace and the Belfast Agreement', whilst championing the partitioning of the United Kingdom as a 'solution' to the supposed (and bogus) threat to the peace process.

There has yet to be a convincing answer as to why an Irish land border is a threat to peace, but yet an Irish Sea Border dividing the United Kingdom is not such a threat? Two possible explanations are, first, that the Irish Government does not care whether a sea border dividing the United Kingdom threatens peace; second, and relatedly, it may be that the Irish Government believe (in line with the nationalist interpretation of the Agreement) that the Belfast Agreement primarily or solely exists to incrementally- via a process of all-Ireland harmonisation- remove Northern Ireland from the United Kingdom and into a United Ireland. This leads to the conclusion that

a border in the Irish Sea is consistent with the Belfast Agreement, because the effect of the sea border is to place Northern Ireland into what amounts to an economic United Ireland, and in doing so loosens the union with Great Britain.

In contrast, that flawed belief (flowing from the nationalist interpretation of the Agreement) in turn causes the belief that any friction North-South is a threat to the Agreement and peace, because such friction is (on nationalism's case) inconsistent with the objective of the incremental development of all-Ireland harmonisation along the way to the pre-determined end point of a United Ireland.

The Irish Government will never admit to this thinking, because to do so would be to expose the well-founded suspicions of the unionist/loyalist community as to the weaponisation of the Belfast Agreement, and undermine Ireland on the international stage, that state as a partisan campaigners rather than, in its own self-portrayal as a fair guarantor of the Agreement.

In Strand One (5) (d) of the Belfast Agreement it is made clear that "*key decisions*" voted on by the Assembly are to be on a cross community basis. This then finds UK domestic law effect via section 42 of the Northern Ireland Act 1998 ('the 1998 Act').

Article 18 of the Protocol expressly confers upon the Assembly the key function of deciding upon whether the Protocol will continue or not. Is it difficult to envisage a more consequential decision than that of the Protocol. Notwithstanding this, Article 18 requires that the Protocol consent vote be on a majority basis, thus requiring the disapplication of the cross-community safeguards.

It is notable when it had been suggested that the Protocol consent mechanism would require cross community consent for the Protocol to come into operation, the Irish Government rejected any such suggestion as providing a unionist veto. And yet, when Article 18 is constructed in a manner to deprive unionism of access to cross community safeguards, and effectively hand nationalism a veto due to the pro Irish/EU stance of Alliance. It seems a nationalist veto is not merely acceptable but required, whilst what is described as a unionist veto must be rejected.

The justification for the Article 18 destruction of Strand One (5) (d) of the Belfast Agreement is a dishonestly constructed argument that it was only ever intended to apply to devolved matters. It is patently obvious that nowhere within Strand One (5) (d) or section 42 of the 1998 Act is the provision of this safeguard restricted to only matters which are devolved or within the legislative competence of the Assembly.

In recent months the Irish Government has also sought to confuse the unionist/loyalist argument on consent. There are two types of consent in the Belfast Agreement:

(i) *constitutional consent*, which relates to section 1 (1) of the 1998 Act. This requires any change to the constitutional status of Northern Ireland to receive the consent of a majority of people in the jurisdiction;

(ii) *Governance consent*, which enshrines cross community safeguards (Strand One (5) (d) of the Belfast Agreement and section 42 of the 1998 Act) on matters to be voted on by the Assembly.

It is the unionist/loyalist position, supported by unionism's leader at the time of the Belfast Agreement David Trimble, that both elements of consent are breached by the Protocol. As has already been set out above, cross community governance consent has been disapplied on the Article 18 Protocol consent vote.

In relation to constitutional consent- which is not a cross community vote- it is our position that this has been breached. The constitutional consent as understood by unionism protected the substance rather than merely the symbolism of Northern Ireland's constitutional status within the United Kingdom for so long as a majority of persons wished it to be so. Put simply, *you cannot change everything but the last thing* in relation to Northern Ireland's place in the Union, the last thing being merely the final formal hand-over of sovereignty.

The Protocol has "*subjugated*" the legislative constitutional basis of the United Kingdom (the Act of Union) in relation to Northern Ireland. This plainly amounts to a change in constitutional status. The failure of the Irish Government to recognise this demonstrates a clear unwillingness to uphold the Agreement in a balanced manner.

In addition, the Irish Government has suggested that if consent is required for the Protocol, so too should consent have been required for Brexit. They have also suggested that if consent was required for the Protocol, consent should be required for its removal.

These positions are fundamentally dishonest. In the first instance governance cross community consent could have no application to Brexit, it was a UK wide referendum. Any suggestion it should have been applicable is arrant nonsense which fundamentally misunderstands Strand One (5) (d) and section 42 of the 1998 Act.

In relation to constitutional consent for Brexit, this suggestion is equally vacuous. The principle of consent directs itself to Northern Ireland's constitutional status within the United Kingdom, not the United Kingdom's external relations. It is an *internal* rather than *external* provision. It is for that reason that the Protocol- which causes *internal* constitutional change- should require consent, whilst Brexit which related to external international relationships of the United Kingdom *as a whole* did not require consent.

The Irish Government's approach to the Agreement has undermined support for that Agreement within the unionist/loyalist community.

General comments on a referendum on a United Ireland: In the Belfast Agreement under 'constitutional issues' it outlines the principle of consent requires that for any change to take place *vis-à-vis* Northern Ireland's constitutional status "a majority of the people of Northern Ireland" must vote for such a change (along with a separate vote in the Republic of Ireland). It does not say *the* majority, therefore plainly such a majority may legitimately be required to be a weighted or super majority. Nowhere in the

Belfast Agreement or the Northern Ireland Act 1998 is ‘majority’ defined as being 50% + 1.

Moreover, a vote held pursuant section 1 of the 1998 Act is not self-executing. It is clear from section 1 (2) of the 1998 Act that the matter is entrusted to the judgment of the Parliament of the United Kingdom; all that Her Majesty’s Government must do is to put forward proposals that have been agreed with the Irish Government. It is, of course, open to Parliament to reject these. It is trite, but may also be necessary, to point out that the Belfast Agreement itself does not have direct effect in domestic law; it is a matter of international law only so far as reflected in the British-Irish Agreement.

The dismantling of the Union between Great Britain and Northern Ireland would moreover be a constitutional change impacting all the peoples of, and throughout, the Union. All such persons should be entitled therefore to a vote on whether Parliament should accede to such a change. It would be entirely constitutionally permissible for Parliament to give effect to the wishes of the citizens of the United Kingdom as a whole, if so expressed, and refuse to legislate to surrender sovereignty over Northern Ireland.

Put simply, the Belfast Agreement as a matter of domestic law does not provide the straightforward pathway the Irish Government and Irish Nationalism thinks that it does.

Conclusion: The work of this committee, and various other endeavours of the Irish Government (arms-length or otherwise) is designed to (i) advance the objective of a United Ireland, whilst seeking to conceal this under the benign invitation to discuss what the future would look like. However, the parameters of discussion are not in fact discussing the future openly and dispassionately, but rather discussing what the assumed United Ireland of the future should look like and; (ii) subvert the agreed parameters of North-South cooperation set out in Strand Three of the Belfast Agreement, but using the work of this committee (and other projects) to develop and advance a policy framework which improperly expands the areas of all-Ireland harmonisation.

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