



Ray Bassett

Brexit and the Border
Where Ireland's True Interests Lie

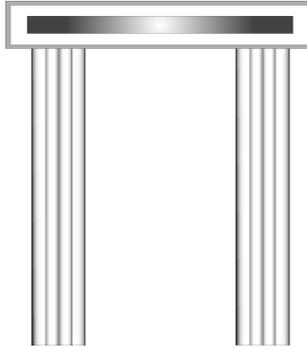
Commentaries:

David Collins

Liam Halligan

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He was involved in the Good Friday Agreement negotiations as part of the Irish Government Talks Team and participated throughout the discussions, including the final session at Castle Buildings in Stormont. Dr Bassett, who worked as a scientist (biochemist) before entering the diplomatic service, is a columnist on the *Sunday Business Post* and a regular contributor to TV and radio shows in both Dublin and Belfast.

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Between 2007 and 2013 he was Chief Economist at Prosperity Capital Management, which focuses on Russia, Central Asia and Eastern Europe.

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Preface

The Irish Border has come back to haunt Ireland's relations with the UK. But now this is happening at the behest of the EU, not because of the historically intertwined triangle of Dublin, Belfast and London. Ireland's political leaders have abandoned their country's true interests to play second fiddle to Brussels. In so doing they threaten the stability of the island and the Good Friday Agreement, its potent symbol, and they are in the process of endangering the country's economic future.

Ray Bassett, who in these pages urges the Irish government to change course, is a former Irish Ambassador to Canada and senior diplomat in the country's foreign service. He was involved in the Good Friday Agreement negotiations as part of the Irish Government Talks Team, participating also in its final session in Stormont.

Instead of the 'high risk strategy' of siding with the EU on options that are contrary to the democratic decision of British voters and dangerous to the stability of the island of Ireland, he urges the Irish government to lead from in front, by embracing the UK's technological solution to cross-border flows. It should also, he suggests, prepare to bring Ireland into EFTA and out of the EU. That would be best for a frictionless border, for peace on the whole island and in keeping with the spirit of the Good Friday Agreement.

Such a course would respect the deep intertwining - economic, cultural, linguistic and geographic - of the two islands. It would also be in Ireland's economic interests, with 50 per cent of Ireland's beef exports going to the UK, and 40-50 per cent of exports from Irish owned SMEs. Moreover, the UK is Ireland's trade portal for the rest of the world. Rationally, explains the author, Ireland 'should be the UK's strongest ally inside the EU, pressing for the best possible terms and a successful Brexit'.

For those familiar with recent Irish history, Dr Bassett's prescription is convincing. The onus is now on the Taoiseach to put Ireland before Brussels.

Sheila Lawlor

Director, Politeia, May 2018

I

Introduction

The Brexit referendum result in the UK was a huge shock to Ireland. It had made a disastrous decision during the Cameron re-negotiation with the EU, not to assist the UK to get any meaningful concessions, which might have made it easier for the Remain side to win. On that occasion, Dublin essentially chose Brussels over London.

This was done in the firm conviction that the Brexit vote would not be carried. The Irish public service, both politicians and officials, got it horribly wrong. This cohort, through constant meetings and connections with the EU, is considerably more pro Brussels than the general Irish population. A similar pattern could be seen in the British public service in the run up to the referendum, hence, the confusion in Dublin in the immediate aftermath of the result. In addition, the Nationalist community in Northern Ireland did not engage heavily in the referendum, the lowest turnout of any constituency in the United Kingdom was West Belfast, where less than 50% voted. The overall result was greeted with dismay and surprise in Nationalist circles in the North.

Brexit is very serious business for Ireland. There is no other EU member State which is economically, culturally, linguistically and geographically intertwined with the UK, as Ireland. There are over 500,000 Irish born citizens in GB, compared to just over 17,000 in Spain, the country in the EU with the second highest number of Irish born. It is estimated that there are under 10,000 Irish born living permanently in France. In many respects Ireland and the UK form a single labour market, a shared cultural space and a long history of interactions and migration between our two islands. Almost every home in the Republic has access to British TV stations and radio, which have large audiences there.

Economically, the UK is vital for Irish interests. With 50% of Ireland's beef exports going to the UK (250,000 tons), and the UK taking between 40-50% of exports from Irish owned SMEs. Much of these exports originate away from Ireland's affluent east coast, in places where alternative employment would be difficult to access. In addition, the UK is Ireland's trade portal for the rest of the world. While the growth of US multi national firms in the Republic has assisted in greatly lessening Ireland's traditional dependence on the UK market (now around 15% of the total), more than 80% by value and over 90% by volume of Irish exports, use the UK transport system to reach markets worldwide.

Hence, it is overwhelmingly in Ireland's interest that the UK and the EU agree to friction free arrangements across a wide range of areas. Rationally, Ireland should be the UK's strongest ally inside the EU, pressing for the best possible terms and a successful Brexit.

The question has to be asked as to why this is not the case. Ireland and its political leaders, Leo Varadkar, the Taoiseach, and Deputy Prime Minister Simon Coveney, have adopted an aggressive and at times unhelpful line which risks repeating the same mistake as was made in the Cameron renegotiation, with similar adverse consequences for Ireland. The answer lies partly in the historical legacy of the division of Ireland into two states, together with a large misplaced dose of Europhilia.

II

The Border Question - The Legacy

In February 1923, Winston Churchill wrote, describing the aftermath of World War 1 and the changes that the Great War had wrought on the international scene, in the following way;

The position of countries has been violently altered. The modes of thought of men, the whole outlook on affairs, the grouping of parties, all have encountered violent and tremendous change in the deluge of the world. But as the deluge subsides and the waters fall short we see the dreary steeples of Fermanagh and Tyrone emerging once again. The integrity of their quarrel is one of the few institutions that have been unaltered in the cataclysm which has swept the world.

These two Ulster counties, Tyrone and Fermanagh, had been forcibly incorporated into the new Northern Ireland State against the expressed wishes of the majority of their people. Local government administration had to be suspended at the time. The difficulty of drawing a border between the new Free State and Northern Ireland was proving hugely difficult, even at that time.

Many of those who found themselves north of the new border, including districts in Derry, South Armagh and South Down, were bitterly resentful at their exclusion from the new Irish State. Periodic outbreaks of violence, followed by periods of uneasy peace, characterised much of the history of Northern Ireland.

There has been much recrimination, over the years, about the historical role of the Dublin Government, which was perceived among Nationalists in the North, as having abandoned them to the new State of Northern Ireland, which was very hostile to their interests. It was only with the outbreak of the ‘Troubles’ in Northern Ireland, that the Irish Government, in reality, took an active and hands on approach to the interests of its own citizens in the North.

The Good Friday (Belfast) Agreement

After 30 years of violence and 3,500 deaths, countless injuries, both physical and psychological, as well as tens of thousands of people passing through the prison system, the Good Friday Agreement (GFA) brought unprecedented stability. It was overwhelmingly endorsed in referenda, in the North (71%) and the Republic (95%).

The beauty of the Agreement is that it allows for huge ambiguity in a conflict which was essentially about identity. Under the terms of the Agreement, Nationalists in Northern Ireland could mentally ignore the border; get their Irish passports in the local Royal Mail Post Office, play in any sport for an Irish team, engage in all Ireland cultural organisations, travel to work across the border daily, etc., and feel part of what has been described as ‘the Irish nation’. This was psychologically important and greatly ameliorated their sense of alienation from the Northern Ireland State.

Unionists in Northern Ireland saw the GFA from a different perspective. They welcomed the end to a violent campaign to remove their home from the United Kingdom and a recognition that constitutional change could only come through the consent of a majority. They greatly welcomed the stability that the GFA brought.

Because of demographic changes in Northern Ireland, most Nationalists believed that it was only a matter of time until their ‘side’ would achieve the majority position. In many regards, both communities in Northern Ireland were content to park the sovereignty issue for the time being. In the meantime, Northern Ireland would be governed in a way which gave ‘parity of esteem’ to both aspirations and identities. This would be bolstered by what is reputed to be the toughest anti-discrimination laws in Europe.

In any case, the lines of national identity have always been blurred in Ireland, with many of those who regard themselves as British, also having an Irish identity and most Irish people do not regard, the English, Welsh and Scots as foreigners. The blurring of citizenship and identity in the GFA which allows people in Northern Ireland to identify themselves as Irish, British or both, as well as the recognition of the close and special relationship between Britain and Ireland, in effect, reflected the reality of the complex situation.

Effect of Brexit on the Good Friday Agreement

It should be conceded that the departure of the UK from the EU has potential adverse implications for the continuation of the present beneficial arrangements at the border. However, these potential difficulties can be overcome, if all sides are determined to be practical and not let politics get in the way of possible solutions. The creation of a new EU/third country boundary between the Republic and Northern Ireland will bring with it a whole series of new challenges which will require some novel solutions.

While ambiguity is a corner stone of the GFA, the European Union's approach is in the opposite direction. Its published bottom line is that any arrangements, post Brexit, agreed on the island of Ireland must 'maintain the integrity of the Union's Legal Order'. This restriction, if pursued to its logical conclusion, greatly limits the possible range of solutions. The EU, which has now deemed itself as a guardian of the GFA, is not actually a party to the Agreement. In fact it has simply given itself this title. There is no mention of this role in the Agreement.

The question of a 'frictionless' border was avidly seized upon by Brussels, as a way of putting pressure on the British Government, especially on the issue of a financial settlement. With a British Government extremely anxious to reach an accommodation with the EU on the terms of the divorce settlement and transitional arrangements, the UK agreed to the following in the December Agreement

In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement.

EU negotiators have maintained that this means that in the absence of any other agreed solution, Northern Ireland would remain in the Customs Union and Single Market when the rest of the UK departs, described as the 'Backstop' option by the Irish Government. This would essentially pass over the economic management of the area to Brussels. The EU and Irish Government's interpretation of the meaning of alignment almost certainly represents some overreach in World Trade Organisation terms. The EU appears, for instance to claim that this means that NI would have to stay completely within the Single Market and Customs Union, with no divergence from EU regulations. The WTO interpret the term alignment differently and allow for divergence of regulations, as long as the outcome is broadly similar. The UK Government, possibly suffering from buyer's regret, probably forced to go further than it was comfortable with in order to move to phase 2 where hopefully the issue could be solved, now heavily disputes this interpretation.

III

The Border, The Status Quo and the ‘Theoretical’ Options

If we accept the bone fides of all sides in wanting to avoid a hard border on the island of Ireland, what are the various options, available to the negotiators, ones which also recognise that there are limits to what the UK can accept, including the absolute need for the UK to maintain its own internal single market as an integrated whole

Firstly, it has to be recognised that the Irish border, however invisible to the naked eye, does exist. There are differing excise, personal taxation and VAT rates between North and the South. However, despite the presence of low-level smuggling of oil products to the North and alcohol products to the Republic, neither Government has felt the necessity to have physical border checks. Any proposed new arrangement, post Brexit, needs to ensure that there is no undue hardening on that position.

It also has to be recognised that there are already differences between Northern Ireland and GB in areas such as animal and plant health. The clear veterinary view in the UK and Ireland is that it makes sense to have distinct animal health strategies on the island of Great Britain (GB) and on the island of Ireland. Again, it would be very undesirable politically greatly to increase the current divergence between Northern Ireland and the island of Britain, for the same reasons as a hard land border would be undesirable.

Against that background and depending on the outcome of the overall EU/UK agreement on future trading arrangement, the following are, at least in theory, options.

1. The so-called ‘Backstop’
2. Britain to remain in the Customs Union (Brexit in Name Only BINO)
3. Ireland opts for an EFTA type arrangement with the EU
4. Technological solution.

IV

The EU Proposals and the Good Friday Agreement

The So-Called Backstop

The Backstop is so called because it is the supposed fall-back position on the Irish border in the event of all else failing. This, on the face of it, would appear to indicate that if the UK cannot come up with a solution to this issue to Ireland and to the EU's satisfaction, then there must be full alignment of policies in the two parts of Ireland. Essentially, this means that Northern Ireland would have to remain subject to the EU's regime - it would be annexed economically by Brussels. It would require a customs border in the Irish Sea between two parts of the UK. This would be against a background where Northern Ireland is fully integrated into the UK's single market and the island of Great Britain is by far its largest outside trading partner.

Whatever about the interpretations of the meaning of what was agreed in Brussels in December, it should be realised that the Backstop is undeliverable by Theresa May. This is not just because she needs the support of the DUP at Westminster. No British Prime Minister could agree to full internal custom barriers inside the UK. It was noteworthy that no major British political figure, pro or anti-Brexit has openly supported the Backstop option. If the text of a declaration is in collision with reality, then the chances are that reality will win out in the end. Therefore, expect the Backstop to be gradually watered down in each negotiation session.

After the December agreement in Brussels, the Irish Taoiseach Leo Varadkar, in a moment of self-congratulations claimed that the Backstop was now 'rock solid, bullet proof and cast iron'. He is now less ambitious, stating that 'a backstop' (undefined) would have to be included in any final agreement.

If Ireland and the EU, however, push the hard Backstop option to finality, then the British will have to go for no Deal. This will mean a hard border, not just North/South but for the vast bulk of our exports which access the world through the UK transport system. To quote the Irish-American tennis player, John McEnroe, when disputing a line call at Wimbledon, 'Are you serious?' For the Irish to push the UK into a position where it would have to walk away from a deal with the EU over the border would be simply insane, given the economic implications.

If it is being used as an incentive by the EU to get the British to take some unpalatable medicine elsewhere, then it is a fairly blunt weapon. I have stated previously that in any game of bluff, there has to be a reasonable possibility of having

one's bluff called. Anybody looking at the situation cannot help but conclude that Ireland would not bring the house down in a single-minded pursuit of a political goal, if this was to do huge damage to its own economy. Any hard border in the Irish Sea and North/South would hurt Ireland a lot more than it would Britain. As the main Irish business organisation IBEC stated

Ireland's geographic position, with the use of the UK as a land bridge to other EU states, and the reliance on UK suppliers and markets, in addition to the land border with Northern Ireland, means it is uniquely exposed to the cost, complexities and disruptions associated with applying and administering a customs border. The economic implications are potentially enormous.

In addition, I believe that the Backstop option, with the implication of a border in the Irish Sea, presents the same dangers to the Good Friday Agreement that a hard border on the island of Ireland represents. It would psychologically cut off Unionists from their fellow citizens in Britain. The Irish Government signed up to the concept of parity of esteem for both traditions in Northern Ireland, not just for Nationalists. The aggressive pushing of the hard Backstop option would appear to conflict with the spirit, if not the letter, of the Good Friday Agreement.

This option, in its most stark form, has no chance of being implemented.

BINO - Brexit in Name Only

Bino, Brexit in Name Only, (or alternatively Beano, Britain Exiting in Name Only), is very much the preferred solution of the European Union and indeed the Irish Government. They hoped that the UK would stay in the Customs Union and the Single Market. This would mean that Brexit was essentially symbolic in nature and without substance.

Much of the early negotiation tactics by Brussels was geared towards inducing the UK down this line. Of course, the EU and many Europhiles in the member States felt that the whole Brexit process could be reversed, and the UK would recant and come back to the EU fold. If that was not possible, then BINO was the next best thing. In fact, those British Remainers pursuing the BINO line, needlessly complicated the early Brexit discussions, as Brussels kept a weather eye on political developments in Westminster. There was little point in being generous to the UK, if a hard-line policy stance, strengthened the EU Commission's own allies in London.

However, from a British point of view, it would seem a pretty pointless exercise for the UK to absent itself from all the decision-making process in the EU but be still prepared to accept completely rules which the EU alone decided. It is also clear that the EU would expect the UK to abide by the four fundamental freedoms of the Treaty of Rome, freedom of movement for people, capital, goods and services. It would also keep the European Court of Justice (ECJ) heavily enmeshed in the UK legal system, again without a British member of the Court's judiciary.

The EU would of course welcome this option as a means of keeping control of the UK and restricting the UK's ability to plot an independent path and become a serious competitor to the EU.

This type of future relationship between the UK and the EU would be in direct opposition to the reasons why a majority of British voters opted for Brexit, including national immigration controls, return of sovereignty, etc. Indeed, one of the main attractions of Brexit, is that it will allow the UK to establish an independent international trade policy.

It is of course true that the Labour party has chosen this as its preferred policy option, but the suspicion must be that this is purely a tactical position, viewed primarily as something which is likely to attract support from diehard Remainers in the Conservative Parliamentary party and hopefully bring about a general election. In reality, it must be doubtful that any new Labour Government would wish to be shackled by restrictive EU regulations which would curb their freedom of action. The Opposition Leader, Jeremy Corbyn, and his chief lieutenant, John McDonnell, are hardly likely to welcome the EU Commission and ECJ vetting their radical economic plans, which could under the current EU rules, be outlawed.

The Irish Government would greatly welcome the UK staying in the Customs Union, as it would undoubtedly alleviate the problems of a potentially hard border between the North and the Republic and also allow for continued unfettered free trade across the Irish Sea, something that economically is much more important to Ireland than the North/South border.

However, as the months pass by and the British Government continues to insist that it is not only going to give effect to the referendum result but believes that this will entail departing from the customs union, the advocates of this policy option, in Dublin and Brussels, are seeing less likelihood of its being adopted.

No Hard Border: Respecting the Good Friday Agreement

The Irish Government has placed huge importance on maintaining a ‘frictionless’ border on the island of Ireland. This is understandable, given the history of the border and also the need to preserve the stability engendered by the Good Friday Agreement. However, Dublin has completely placed the onus on the British Government to come up with a solution. It has taken the line—that it was the UK’s decision to leave the EU that caused the problem and hence has absented itself from making any suggestions. Its only contribution was to ask the British Government to stay in the Single Market and Customs Union, something that Prime Minister Theresa May and her Cabinet have ruled out as not reflecting the wishes of those who voted for Brexit.

The Irish Government even initially refused to enter direct talks with London on the matter, instead choosing to work only through the EU negotiators. They have belatedly gone back on that refusal as the possibility of forcing the UK to stay in the Customs Union has receded.

Ireland’s Opting for an EFTA type arrangement with the EU

However, one option which has not been seriously considered, to date, is that Ireland should itself agree to depart the EU Customs Union to preserve frictionless movement of goods and people with the UK. Since Ireland is the main beneficiary of the current arrangement, this is surprising. The Irish Government could ask the EU for a special arrangement, so it could stay in the EU but outside the EU Customs Union but maintaining, as far as possible a customs union with the UK. If this was not possible as it breaches the need to ‘maintain the integrity of the Union’s Legal Order’, then membership of the European Free Trade Area (EFTA), on the lines of Iceland, Norway and Liechtenstein could be considered as an option

If avoiding a hard border in Ireland is so important politically, then there is an onus on the Irish Government to examine all options for its avoidance. This option certainly has its attractions for all the parties concerned, Ireland, the UK and the EU.

There is no doubt, but that Ireland has benefitted economically and culturally from its membership of the EU. However, the attractiveness of full membership, once the UK departs, will have been reduced considerably.

The UK is still Ireland's most important trading partner. The Welsh port of Holyhead alone took 425,000 HGV vehicles on the Irish Sea route in 2016 and is now the second busiest Ferry port in the UK, second only to Dover. Other Welsh and English ports receive large volumes of Irish goods on their way to markets around the world.

While it would be possible to establish some streamlined customs arrangements with the UK, many of these goods will ultimately pass through the English Channel ports to EU countries and be subject again to custom procedures. It would be much better to have one set of customs to deal with, rather than two.

In addition, as Ireland has prospered economically, it has moved away from being a net recipient of EU funds. The Irish net contribution this year will be over €800m and rising, soon to top the €1bn mark, similar per capita to the UK's present contribution. This is even before the EU proposes measures to fill the gap in the budget left by the UK's departure. These measures are likely to adversely affect Ireland, as the EU will be seeking larger payments from the present net donors, as well as cuts to the Common Agricultural Policy (CAP), an area where Ireland gets most of its receipts from the EU.

In addition, the Irish have always mistakenly looked on the EU as an economic project. As the more grandiose political schemes of Europhiles like Macron, SPD in Germany, become more apparent, then Ireland will have less enthusiasm for Brussels. In addition, it should be admitted that much of the Euro enthusiasm in Ireland has been traditionally a form of Anglophobia. With the UK no longer there, the love affair with Brussels will increasingly cool, as Ireland is forced to give up even more of its sovereignty.

This will be particularly true when the EU seeks to curb Ireland's attractiveness to Foreign Direct Investment (FDI), because of its corporation tax rate of 12.5%. The move to a common consolidated corporation tax (CCCT) would move even the most Europhile Irish politician to reconsider the country's continued participation in the Euro project. If Ireland was outside the EU, then the ability of Brussels to dictate its tax rates would have been eliminated. The EFTA type arrangement would, of course, maintain full and free access to the Single Market.

An EFTA type arrangement would greatly suit Ireland in the fishing area. Ireland is allocated a slightly smaller percentage of the total fish caught in its own rich fishing grounds (around 30 per cent), than the UK is in its waters. Once the UK regains control of its maritime resources, other EU countries will be looking at enhanced

quotas off Ireland as compensation. In an EFTA type arrangement, Ireland could, like Norway, greatly revive its fishing communities and, in conjunction with the UK, end the huge over fishing which is going on at present around our islands. For Ireland, this is important because 90% of the country's exclusive economic zone is actually maritime, by far the highest in the EU.

For Ireland to opt for an EFTA style deal with the EU, would relieve the UK of the need to solve the thorny issue of the Irish border. It would also maintain the present mutually beneficial arrangements between the two islands. The downside for Ireland would be its exclusion from the decision-making process in Brussels. However, with a voting share of between 1-2% in the Council of Ministers, it is arguable whether Ireland, at present, has much of a say in EU law making.

In addition, there are attractions to the EU for agreeing Ireland's exit to an EFTA linkage. The usefulness of Ireland in the negotiations has now passed, with the UK agreeing to a generous financial settlement. To countries on the European mainland, Germany, France, Netherlands etc., it is doubtful whether the huge difficulties in finding a solution to the Irish border is worth the candle. As the EU showed in its notorious Bailout for Ireland, it was more than willing to dispense with Ireland's national interests when faced with wider EU considerations. Given the small size of the Irish economy, relative to the whole EU, it is extremely unlikely that the issue of the Irish border will be allowed scupper the wider deal.

Ireland is situated in the middle of anglophone North Atlantic countries, with the UK to the east and Canada to the west. It will be separated from the rest of the EU, not only by water but also by the UK. Geographically, historically and linguistically it will be an oddity in the EU. If a free trade area is established by the USA, Canada and the UK, it would be a much more natural fit for Ireland, than to be left as a small English-speaking State on the periphery of a centralising EU Superstate.

Better to take matters into our own hands and seek EFTA membership, for a period, to assess the country's future options, post Brexit.

Technological Solution

If all the other options are ruled out, we come to the technological solution by a process of elimination. The UK has ruled out continued membership of the Customs Union, Ireland will not consider the EFTA route, the EU demands that we must stick rigidly to its Legal Order and the Backstop is not really an option.

The Technological solution is essentially based on the British paper of last August. In addition, there are no simple off the shelf solutions available which can be copied from places like the US/Canadian border or Norway/Sweden. Having crossed the Canadian frontier many times, it is not a simple straightforward matter and trade and individuals can be held up for hours at times. Something similar would lead to chaos and possibly civil disorder in Ireland. It should be factored in that the greatest resistance to a hard border lies in the strongly Republican districts just North of the boundary line. It would be a nightmare trying to construct and maintain any new permanent structures. Nobody wants a fixed line of confrontation in the middle of the peaceful Irish countryside.

Therefore, the authorities will have to construct something unique. It will not be perfect and will not be to anybody's 100% satisfaction. As a seasoned negotiator, David Ervine of the Progressive Unionist Party (PUP) said during the GFA Talks, everybody should get what they need, not what they want, and there should be parity of pain and satisfaction all round.

The first step is to remove any question of using the border for immigration control. The UK has already indicated that it will focus its efforts, to limit immigration of EU nationals, at the employment level. There is already very good cooperation between the immigration authorities, including sharing information on visa applications, informal liaison officers regularly at Belfast and Dublin airports etc. This could continue and be enhanced.

These immigration arrangements should in theory continue as before. They can be maintained as long as the UK does not impose visa restrictions on any of the remaining 27 States. This is unlikely, especially in the short to medium term. The other proviso is that Ireland stays out of the Schengen arrangements and maintains its own mini Schengen with the UK, Isle of Mann and the Channel Islands. The commitment to the maintenance of the Common Travel Area should assist Ireland to successfully ward off pressure from Brussels on Schengen.

The next area to exempt is, as indicated by the August British paper, local traffic and agriculture. These make up to 80% of trade on the Irish border. They are characterised by high volume and frequency but low value transactions. However, exempting these will require a level of flexibility from the EU which is not evidenced to date.

Also, the UK has already indicated that in a limited number of areas, including energy, animal and plant health, transport etc., it makes perfect sense to align the regulatory requirements throughout the island of Ireland. This can be achieved, in part, through the mechanism of the North/South implementation bodies which have operated on an all island basis in several areas since 1999 and are based on the North/South Strand of the Good Friday Agreement.

The remaining element, which in reality means large firms with a defined number of employees or turnover, can be accommodated by a trusted trading arrangement. While any British Irish operation on the border would be *Sui Generis*, one model which would be worth looking at is the Australian one.

The main features of the Australian Trader Programme (ATT), which is rapidly growing, include:

- A single point of contact between the Australian Border Service and the Trusted Trader Business. Communications are normally electronic.
- A composite monthly return submitted by the Trusted Trader, rather than returns on every cargo.
- A single consolidated return for multi types of goods rather than a different declaration for different goods type
- Regular discussions between the companies and the Australian Border Service
- Use of a special Logo, clearly designating the goods as coming or going to a trusted Trading company
- Priority for these companies in any dealing with the Border Service

All trusted trader systems operate on a self-assessment and self-regulation basis. Responsible Companies will not wish to violate the law, and this would be backed up by a system of audits and on-site inspections, much as the present VAT system operates.

This type of arrangement could be modified over time, as experience is gained in where the snags will arise and where it works well. However, if operated with a coordinated mutual recognition programme by the two customs services, it may be sufficient to facilitate all parties desire to avoid a hard border.

There would, of course, still be a need to have some monitoring of vehicles crossing the border on the main routes but this could be achieved through technology, with the use of cameras. There are already cameras installed on the main Dublin/Belfast highway, just south of the border city of Newry. These are unobtrusive, and taken with the other arrangements, might be adequate enough to avoid any new installations.

There may also have to be some limited checks at ports connecting Ireland, both North and South, with Britain. These would constitute a similarly unobtrusive arrangement to ensure that areas which remained aligned on an all island basis, and where there was some divergence with Britain, were also monitored.

As with the present EU/Swiss model, a supervising committee, comprising representatives of the EU and the UK could meet regularly to monitor its operation and advise authorities on the need for any changes.

VI

Ireland's True Interests: Next Steps for the Irish Government

In the end, it is likely that a free trade agreement will be concluded between the UK and the EU, hopefully allowing for full tariff free trade in goods between the two entities. It is also likely that there will have to be a separate protocol on customs arrangements on the island of Ireland. The contents of the protocol will, of course, greatly depend on what is covered in the main agreement. However, the issue of the Irish border is key for any Irish Government. The spectre of past betrayals haunts the corridors of power in Dublin. Hence the declaration by the Taoiseach Leo Varadkar that he is determined that his Government 'will never again leave Northern nationalists and Northern Ireland behind.'

Therefore, the problems with the Irish border issue are that they are essentially political in nature. The relevant importance of North/South trade to the overall Irish and British economies is relatively small. However, with so much history and political capital invested in maintaining the Good Friday Agreement, the importance of solving this matter is out of proportion to the economic gains.

This emotive issue has been used as a weapon by those wanting to thwart the result of the Brexit referendum. This is a very uncomfortable position for Ireland. Whatever the outcome of the Brexit process, Irish and British people will have to live alongside each other. Our history has been characterised on occasions by poor and short-term decision making. This is a time when Ireland should be, by all logic, working hard to ensure a beneficial outcome which preserves the excellent relations between the two countries. Ireland needs to be the foremost advocate for comprehensive free trading arrangements between the EU and the UK. Unfortunately, the border issue has gotten in the way. We need to solve this matter as soon as possible and by a method which does not seek to scupper the referendum result. The history of ignoring and reversing referenda results in the EU is shameful. We certainly do not need another example.

In addition, Ireland must keep its options open. Until recently it was almost taboo, for anybody in Ireland to seriously question the country's slavish devotion to the EU, yet there are very few in Government circles who have a deep understanding of what the 'Project' is all about. I think we can confidently predict, as elsewhere in the EU, there will be growing disenchantment with Brussels and the desire of Europhiles for a United States of Europe. The whole sustainability of the European Union, as presently constituted, is in serious long-term doubt. Ireland needs to be on the right side of these historical developments.

In many respects, the UK has been at the forefront of developments in the EU, including reform of the CAP (accepted by all now), the Single Market, Budgetary control, scepticism of the euro etc. The disenchantment with the Brussels model is also spreading to other countries. Recent elections in the Netherlands, Germany, Austria, Hungary and Italy have all shown increasing support for a different type of arrangement in Europe. The sole exception was the particular circumstances in France, where the choice was between Macron and the National Front's Marine Le Pen. Therefore, Ireland would be very short sighted to tether its future to a ship which is showing distinct difficulty in staying afloat.

Ireland needs to look after its own self-interest and realise that its deep connections with its neighbour, the United Kingdom, are more valuable than temporary plaudits from Brussels for being 'the best boy in the classroom'.

There is no need for the Irish border question to either derail the EU/UK Brexit discussions or determine the overall agreement. The Border question has been used by elements within the Remain camp to try and block the UK's departure from the EU. It is certainly not in the long-term interest of Ireland to be used in this cynical manner.

While there is no comparable international example that can be readily used to solve the issue, goodwill and common sense should allow for a workable solution. It could be based on major exemptions for small companies and purely local trade, as well as agricultural and food products. The remaining trade could be monitored and operated on a trusted trader system. Under these arrangements, there would be no need for actual physical infrastructure on the border. The danger is that politics, not practicalities, will get in the way.

Next steps – checklist for Irish Government

The Irish Government is currently engaged on a high-risk strategy which could backfire badly. It is doggedly insisting that UK either stay in the Customs Union or alternatively agree to detach Northern Ireland economically from the rest of the UK. At this point in time, it is difficult to see the UK agreeing to either course and appears not to accept the democratic mandate of the British people.

Therefore, it is time the Irish Government changed course.

- The Irish Government should announce that it does not want to see Ireland and the Irish border used as a weapon to thwart Brexit. It wants to maintain the good relations which have developed in recent years.
- It should immediately signal to Brussels and London that it is willing to engage in meaningful discussions on practical measures to ensure no undue hardening of the present land border with Northern Ireland. This will require the designing of a new arrangement.
- The first action for the Irish Government should be to have detailed and direct discussion with London at a political level on the matter.
- The most likely option is one that will be based on technology. The Irish Government should also agree to mediate with local groups, on either side of the border to ensure that such a solution is not rejected out of hand by them.
- It should also assure Unionists in Northern Ireland that it strongly opposes any proposal to erect any undue barriers between Northern Ireland and GB. It should formally reject the Backstop option as a measure of goodwill.
- The Irish Government should also signal that it strongly opposes any EU barrier to free trade between the remaining EU member States and the UK. It should point out that this is a matter of vital national interest to the Irish State.
- Ireland should also express its doubts about the long term viability of its own relationship with the EU, should there be a hard Brexit.

The Legal Framework: Ireland's Options

A Commentary – David Collins*

Ray Bassett's thoughtful and informative paper raises a number of interesting recommendations for the Republic of Ireland after Brexit worthy of serious attention.

Ireland's economy is of course inextricably linked to the United Kingdom, far more so than any other European Union Member State, and in that sense it has the most to lose from a weakened relationship between the UK and the EU. Even worse, as Bassett sensibly observes, would be for Ireland and the UK to sacrifice their even closer mutual ties to serve the interests of the EU's economic hegemony over the region. Unnecessary barriers to trade in goods erected at the behest of the EU at the border with Northern Ireland or worse, an entirely new set of trade barriers imposed between Great Britain and Northern Ireland, effectively splitting the UK in two, would be harmful economically, politically and socially. The futility of these non-options is even more pronounced when considering that failure to achieve a Free Trade Agreement (FTA) between the UK and the EU for any reason, whether because of the Irish border, citizenship rights or continuing jurisdiction of the ECJ, is hardly a disastrous outcome. The UK can continue to engage in prosperous trade with Ireland and the rest of the EU, along with the rest of the world, under its membership of the World Trade Organization (WTO). While sub-optimal with respect to having a comprehensive FTA with the EU, the no-deal WTO scenario is not to be feared and the UK government has wisely been preparing its position at the WTO in the months since the Brexit referendum.

But there are other options for Ireland regarding its relationship with the UK and the EU which have been carefully set out by Bassett and deserve close consideration. Rightly dismissing the repugnant 'Backstop' notion in which Northern Ireland effectively splits from Great Britain to maintain regulatory alignment with the EU so as to preserve the 'frictionless' border, and Brexit-In-Name-Only in which the UK stays in the EU's customs union and single market, Bassett argues that Ireland has two best options. Both of which could yield optimistic outcomes for people in Ireland with limited challenges.

First, Bassett suggests that Ireland could consider also leaving the EU but retain close ties to the region through membership of the European Free Trade Association (EFTA) or through an arrangement which resembles it. An EFTA-style agreement with the EU, along the lines of that which is currently in place between the EU and Norway, Liechtenstein and Iceland or that between the EU and Switzerland would allow Ireland to leave the customs union but remain in the single market. Under such conditions, Ireland would be able to set up its own external trade policy by which Ireland and the UK would be able to align their customs procedures and trade regulations, eliminating any difficulties in relation to the goods crossing the border with Northern Ireland.

Bassett shows that Ireland stands to gain from leaving the EU, not only by recovering its annual payments to Brussels and its fishing rights, but also by pursuing a tax regime which is attractive to foreign investment but which stands to be curtailed by EU rules going forward. Moreover, given its small size and limited voice in EU law-making, Ireland has always been a rule-taker under the EU regime, unable to structure an economic policy which suits its domestic interests. An EFTA-style arrangement would function as an FTA and as such could fit within GATT rules on preferential trade arrangements (Article XXIV), provided it covers substantially all trade, which it would.

Secondly, Bassett explores the technological solution for avoiding the problem of the 'hard border' between the Republic and Northern Ireland with Ireland retaining its membership in the EU and in that sense keeping its status-quo. Under the arrangements proposed by the UK Ireland will be able to continue to enjoy a prosperous trading relationship with the rest of the UK even when the latter departs from the EU's customs union in line with the political will of the British people and its government which has committed to such a course all along. This can be achieved through maintaining an open border for people with no passport checkpoints, which is entirely realistic as long as Ireland stays outside of the Schengen area and agrees on visa-free travel with the UK. It also contemplates exempting local traffic and agriculture, and retaining some regulatory alignment with the EU on matters such as animal and plant health. Practical solutions including composite monthly returns on VAT rather than border checks, self-regulation, audits and occasional vehicle inspections means that the border with Northern Ireland will be, for the most part, as frictionless as it is today, with the Swiss-EU border as well as the Australian Trade Programme cited as helpful examples. Encouraging studies into the use of smart technology such as bar code scanning, which Bassett does not examine but others have drawn attention to, could also help to smooth this process. These strategies are entirely compatible with WTO rules under the GATT as they do not discriminate against goods originating from outside the EU/Ireland. In fact they fulfil the UK's obligations under Article VIII of the GATT (regarding customs formalities) and the Trade Facilitation Agreement.

From a UK perspective, either of these options is preferable to Brexit-In-Name-Only or the cutting off Northern Ireland from Great Britain 'Backstop.' For the Irish people, which option is preferable depends on the extent to which Ireland wishes to retain linkages to the EU. Bassett makes a case that Ireland would thrive on its own, but if it chooses to remain within the EU, this should not prevent Ireland from maintain a healthy trading relationship with the UK - its closest trading ally.

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Family Ties – The Economic and Political Reality

A Commentary – Liam Halligan*

The Republic of Ireland Act came into force in 1949. When Ireland ‘went into Europe’ in 1973 – at the same time as the UK and Denmark – the country, formally speaking, was not yet twenty-five years old. This marked the moment when the Irish people, after the long struggle for independence, were finally fully able to represent themselves diplomatically on the world stage.

Brussels-backed motorways and other structural fund spending have since been important in terms of cementing the Republic’s relationship with the European Union. But the escape from British dominance has made the EU central to the identity of modern Ireland. Despite that, as Ray Bassett highlights in this lucid and timely pamphlet, the UK remains hugely important to the Republic – both economically and culturally.

The result of the UK’s EU referendum is the latest twist in the deep and complex history of the relationship between these two intertwined nations. The good news is that Brexit is happening at a time when such relations – between Ireland and the UK, and between the six counties of Northern Ireland and the twenty-six that form the Irish Republic – are perhaps more stable than they have ever been.

In her Lancaster House speech of January 2017, Prime Minister Theresa May said ‘an important priority’ during Britain’s Brexit negotiations with the EU was the safeguarding of joint UK–Irish interests. ‘The family ties and bonds of affection that unite our two countries mean that there will always be a special relationship between us’, said May – words unthinkable from a Conservative leader until relatively recently.

The multi-faceted impact of Brexit on Ireland, though, clearly includes sensitive issues relating to North-South border. As Bassett says, ‘goodwill and common sense should allow for a workable solution’. A combination of e-border technology, exemptions for small, local cross-border flows of goods, and a more extensive ‘trusted trader’ scheme, would allow the UK to leave the EU’s protectionist customs union, delivering on the Brexit vote, while avoiding the need to erect infrastructure on the Irish land border that might spark renewed sectarian violence. Such proposals were detailed in a UK government paper of August 2017. They were summarily rejected by Brussels.

Pointing to the relatively low value of North-South trade, Bassett highlights that ‘problems with the Irish border issue are ... essentially political in nature’. With so much history and political capital invested in maintaining the 1998 Good Friday

Agreement, which Bassett helped deliver of course, ‘the importance of solving this matter is out of proportion to the economic gains’. Unfortunately, as he says, ‘this emotive issue has been used as a weapon by those wanting to thwart the result of the Brexit referendum’ – not least by the EU’s Chief Negotiator Michel Barnier.

But the Irish government, too, is pursuing ‘a high-risk strategy which could backfire badly’. Dublin, as Bassett observes, is ‘doggedly insisting that UK either stay in the Customs Union or alternatively agree to detach Northern Ireland economically from the rest of the UK’. Taoiseach Leo Varadkar should remember, instead, that ‘economically, the UK is vital for Irish interests’ and Ireland’s ‘deep connections with its neighbour, the UK, are more valuable than temporary plaudits from Brussels for being the best boy in the classroom’.

Economically, the Republic of Ireland does indeed remain closely related to Britain, with the UK accounting for around €1bn of Irish trade each week and one in ten jobs across the country. Ireland has diversified since joining the EU, but not in a manner that is commonly understood. Back in the mid-1970s, around half of all Irish trade was with the UK, a share that has since fallen to around 15 per cent. But much of that diversification away from Britain has headed across the Atlantic, with the US now accounting for a quarter of Irish trade. Add in the rest of the world and, after Brexit, almost two thirds of Irish goods and services exports will be destined for non-EU markets.

While reliance on direct UK trade has lessened, some employment-heavy sectors do remain highly dependent. Around 55 per cent of Irish exports of timber and construction materials are sold in Britain, along with 50 per cent of beef exports, almost half of clean technology and electronics exports and 42 per cent of all food and drink. In purely practical terms, around four-fifths of the Republic’s exports use the UK as a ‘land bridge’, passing through western British ports and travelling by road across the UK, before leaving southern and eastern British ports, headed for the EU and global markets.

Ireland clearly has every interest – far more than any other EU member – in London and Brussels striking a comprehensive free-trade agreement, maintaining ‘frictionless’ trade flows. Yet the chances of that happening would be significantly enhanced if, as Bassett says, Dublin ‘announced that it does not want to see Ireland and the Irish border used

as a weapon to thwart Brexit’ while ‘signalling it is willing to engage in meaningful discussions on practical measures to ensure no undue hardening of the present land border with Northern Ireland’.

Since 1973, Ireland has been, for the most part, an enthusiastic EU member, joining the single currency, while serving as an important example of small country success for new Eastern European member states. Despite the efforts of an overwhelmingly pro-EU political and media establishment, though, there have been signs of public discontent. The electorate rejected the Nice and Lisbon Treaties in 2001 and 2007 respectively, before being urged, on both occasions, to vote again.

Then a bailout was forced upon Ireland at a time when the country, while weak, was not technically bankrupt, in a bid to calm financial markets and prevent a break-up of the broader Eurozone. The Irish state ended up burdened with huge debts as a result – on which it is still paying the EU’s punitive rates of interest, with Brussels refusing all attempts by Dublin to pay-off or refinance these loans.

Since that bailout, Ireland has staged an impressive economic recovery, largely due to its strong trading links with the US and UK, which have both grown much faster than the Eurozone since 2010. While the Republic is unlikely to follow the UK out of the EU anytime soon, Bassett wisely points to potential flashpoints that mean the country ‘must keep its options open’.

Now a net EU contributor, Ireland’s membership bill is, Bassett reports, ‘over €800m this year and soon to top the €1bn mark – similar in per capita terms to the UK’s present contribution’. After Britain has left, as a relatively wealthy nation, Ireland’s required payments will rise further still. The EU’s repeated challenges of Ireland’s sovereign decision to charge low corporation tax rates to help win foreign direct investment – a strategy central to the recent recovery – are also set to become more intense. And, Bassett predicts, ‘as the more grandiose political schemes of Europhiles like Macron and SPD in Germany, become more apparent, Ireland will have less enthusiasm for Brussels’.

Public pressure on ‘official Ireland’ to shift its slavishly pro-EU mindset would certainly rise if the UK concludes a post-Brexit trade agreement with the United States. The Republic would then be geographically in the middle of a UK–US free-trade agreement which it would be forbidden to join due to EU membership. A trade bloc tailor-made for Ireland, economically and culturally, would be off limits – an absurdity that would be exposed for all to see. That’s one reason Bassett suggests the Republic could eventually

take the Swiss route and become part of the European Free Trade Association, maintaining much of its institutional closeness to the EU, but free to sign its own trade deals – yet another strategic suggestion that makes economic sense.

A distinguished former diplomatic, who cares deeply about his country, Bassett has been widely criticized by the Irish establishment for daring to air uncomfortable truths about Dublin's response to the UK's Brexit vote. This has caused him personal distress. Yet he has continued regardless, speaking out against 'rising Anglophobia' in Ireland and imploring politicians on both sides of the Irish Sea, as he does in this essay, to get beyond 'the poor and short-term decision making' that has 'characterized our history'.

For that, he deserves deep gratitude and respect – not just in the Irish Republic, but among the citizens of its nearest neighbour too.

*Liam Halligan is an economist and economics commentator for *The Sunday Telegraph*.

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The EU's attempts to play politics with the Irish border by imposing its preferred options for a soft border threaten to damage the stability of the island and the long term interests of Ireland. But, as Dr Ray Bassett explains in *Brexit and the Border*, Ireland's interests would be far better served by cooperating with the UK and accepting its sensible proposal for a technological solution to cross-border traffic.

The author, a former Irish ambassador to Canada, was also part of the Irish Government Talks Team for the Good Friday Agreement. He explains that the EU is playing a dangerous game. Its 'backstop' solution of keeping Northern Ireland under the EU's economic arrangements after Brexit would threaten the stability of the island, while the demand that the UK remain in a Customs Union with the EU is contrary to the UK's declared policy and unlikely to lead to continued good relations between Dublin and London.

Far better would be for Ireland's leaders to change course, and so serve Ireland's interests. Instead of acting as EU agents, Ireland's rulers should signal their intention to cooperate with the UK. They should denounce the 'backstop' agreement; recognise that the technological solution to cross border goods traffic proposed by the UK is both sensible and workable; and start talks with London on the practical arrangements to make the soft border a reality. They should also recognise the reality of Anglo-Irish economic ties and prepare to bring Ireland out of the EU to join EFTA.

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