

Northern Ireland Affairs Committee

Oral evidence: [Future of the Land Border with the Republic of Ireland](#), HC 700

Wednesday 16 November 2016

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Members present: Ian Paisley (Chair); Lady Hermon; Danny Kinahan; Jack Lopresti; Dr Alasdair McDonnell; Nigel Mills; Gavin Robinson.

Questions 1-43

Witnesses

Professor Michael Dougan, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool; Professor Peter Shirlow, Director of the Institute of Irish Studies, University of Liverpool; and Dr Stephanie Reynolds, Lecturer in Law, University of Liverpool

Examination of Witnesses

Witnesses: Professor Michael Dougan, Professor Peter Shirlow and Dr Stephanie Reynolds.

Q1 **Chair:** Professor Dougan, Professor Shirlow and Dr Reynolds, you are very welcome today. For the record, I am not Laurence Robertson. Laurence, our Chairman, is indisposed today and has asked me to chair this session. You are incredibly welcome and we look forward to the evidence that we are going to receive from you today. This is our first session on the future of the land border with the Republic of Ireland and the implications of Brexit. If you like, you are scene-setters for us.

There were some very helpful comments last night by the First Minister of Northern Ireland and the Taoiseach. They had a meeting and they seem to have set some very positive mood music about how they wish to proceed—it is the most positive mood music in recent weeks about getting down to business and just getting on with this. Perhaps you could help set the scene on a couple of issues. For example, maybe you could outline the different facets to the border between Northern Ireland and the Republic of Ireland that we should be considering as part of our inquiry; legality issues, customs issues, housing issues, whatever. Maybe there are points that you would like to raise on that. Let's start on that and then Members will come in as appropriate.

Professor Dougan: Thank you very much for having us here as witnesses at the inquiry. I think it might be helpful for me to start off with some observations about the idea of borders as legal and constitutional constructs. In many respects, there are lots of borders to consider when you view it as a legal issue. The most obvious ones are the visible borders—the physical entry into the territory. There is a border for goods. That is the customs union and checks at the frontier. There is a border for persons, entry requirements and checks at the frontier.

In fact, most of the borders are invisible. They are not just frontier borders; they are more invisible borders. They are about jurisdiction to regulate a territory and the problems that arise from the different ways that different jurisdictions regulate their own territories. For example, you have single market borders and the idea that it is difficult to move goods or services across borders because of the different ways that states regulate their territory—that might be in food, toys or financial services—and other borders relating to cross-border co-operation, on the environment, on security or anti-terrorism, for example. In some respects, there are as many borders as there are goods, services and forms of public co-operation.

In each case, as lawyers we always ask a similar set of questions. Once we know the nature of the border that we are talking about we ask, first of all, whose competence is it to regulate this border. Is it the EU's? Is it the member states'? Is it some mixture between the two? We will then



ask the question of what potential deals might the UK seek in relation to that particular border. We will then ask the question of what might be the implications of those deals for the rights and obligations of public authorities, individuals, companies and so on. From a legal point of view, we have a very structured approach to the hundreds of borders that one might consider in relation to Northern Ireland and the Republic.

Professor Shirlow: One of the reasons I am interested in this is the issue around confidence. It clearly relates to a piece of work we completed at the University of Liverpool, which was undertaken after the Westminster election of 2015. One of the things that is important to understand is the peace and stability that we have had in Northern Ireland clearly has been correlated with the border becoming generally invisible. Constitutionally, it is maintained by the principle of consent, but it has also become invisible in terms of militarisation and the very free movement of people between the two parts of the island. I am very interested in those sort of attitudinal issues. One of the things we need to measure is how Brexit and possible changes to the border may affect attitudes in Northern Ireland.

One of the things we do know is that, as the border became more invisible and as the agreement was put in place and the institutions of the agreement were put in place, the desire for Irish unification fell. If we look at the Life and Times surveys over that period, we see a quite significant fall, from around 23% in 2007 to 17% in 2015. There seems to be a process in which people have bought into the Belfast agreement; they have bought into the structures of the agreement and they have bought into the institutions of the agreement. Very much part of that, for one section of our society, is clearly strand 2, and I want to develop that slightly in a minute.

If you look at the most recent survey that has been conducted on attitudes, you see that there has actually been a growth in the number of people who desire a united Ireland. Amongst those who voted in the last election, around 18% who would have wished to stay in the UK have now stated that they wish to have a united Ireland. Clearly there is something within this that is creating a flux, so there is a need for confidence measures to be built. Although this Committee has noted that the power-sharing elements that comprise the core of the agreement would not be affected, of course we understand in Northern Ireland that a lot of that is based upon perception; it is not based upon the reality. It is expecting what will happen, as opposed to other things.

Just to give you an illustration of what we found in our survey, those who support cross-border bodies were three times higher than the shared respondents who stated they did not support cross-border bodies. Support was very closely linked to location to the border, so North Down, for example, had the lowest level of people who were interested in the border, and the highest level of people who were concerned about cross-border bodies was East Londonderry. This is not necessarily an



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orange/green issue; it is an issue that is very closely tied to education and your place within the labour market. The higher up the labour market and the higher educated you are, the more you support cross-border bodies.

Some 95% of those who supported power-sharing strongly supported cross-border bodies and 90% of those who supported the PSNI supported cross-border bodies. Some 80% of those who believe there is a lasting peace in Northern Ireland supported cross-border bodies, and this can continue. Then we consider faith in the institutions of the Belfast agreement, police, cross-border bodies, and attitudes about lasting peace.

For example, 68% of people who support Northern Ireland remaining in the UK, based upon majority consent, support cross-border bodies. Those who are against cross-border bodies are those who are generally opposed to the peace process. They are generally people who are opposed to the structures of the agreement. Therefore, what is really important is that we have confidence around cross-border bodies, that people know that cross-border bodies are going to be maintained and how they will be maintained. The issue is really more to do with funding from Europe.

One of the things you also have to realise, in terms of what has come out of the debate about Brexit, is what we call dissident republicans. Dissident republicans have used Brexit as a way to challenge what they see as the myth of the Belfast agreement, especially strand 2. What you have seen is that those groups are organising debates and they are organising events around critiquing the Belfast agreement, challenging the Belfast agreement and using Brexit as an example of what they see as the flaws of the Belfast agreement. That is something that needs to be looked at as well.

More symbolically important, of course, is the issue about being a passport holder. You have an Irish passport, you live in the UK and that is crucially important for people in terms of what will happen when they come into GB. That is important. In some of the work we are doing at the minute, there are concerns about ECHR. Although ECHR is not actually immediately wrapped up in these issues, there is a concern that that might be something that might be taken away in the future. That of course links to the issues of how we deal with the past, etc.

There is a flux that has taken place. There are questions that have been raised about the constitution of Northern Ireland. There is some evidence that this has increased desire for Irish unification, but what is really important to underline at this stage, most of all, is that the support for the Belfast agreement and its institutions is very closely tied to support for cross-border bodies and was also very closely tied to support for remaining within the European Union. One of the things that might be interesting for this Committee is how we start to look at how attitudes



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might be changed, which might create tensions constitutionally and how they might be resolved.

Q2 **Chair:** Before I ask Dr Reynolds, could you tell us the numbers that you surveyed?

Professor Shirlow: It was 1,800 people who were surveyed.

Q3 **Chair:** In what time period?

Professor Shirlow: It was six weeks after the Westminster election of 2015. The question about Europe ended up being very apt, because we did not at that time know that there was going to be an EU referendum.

Chair: Of course, cross-border bodies are not under any threat. They are part of the apparatus of Northern Ireland and I think they are funded by the Government.

Professor Shirlow: I understand that, but some of them are also funded by the European Union.

Chair: I am talking about the institutional ones set up under the Belfast agreement. They are funded by the Government.

Professor Shirlow: I understand that, Chairman.

Chair: None of them have been challenged or threatened.

Professor Shirlow: No, but there is a perception by some people.

Chair: Yes, I think perception is the issue. We need to get to reality.

Dr Reynolds: I would like to echo what Michael said about the difference between the physical border and this notion of an invisible border, and that division between competence, the effect on deals and the implications. It is important to be aware that the invisible border is much more complex than the physical border and it has innumerable facets to it. Competence, in terms of Ireland's competence, the UK's competence and the EU's competence, is not uniform within the physical border or within all of the different types of invisible border that would operate for people, goods or services.

There are a number of additional questions, in terms of the implications for that invisible border. There are certain EU rules that operate more broadly in the EU but that facilitate cross-border co-operation and will have to be considered. There are certain protection for frontier workers, for instance Regulation 492/2011 on equal access to social and tax advantages, social security co-ordination for pensions for work received across borders, equal treatment rights under primary law and under the citizens rights directive as well. The fluidity of movement is facilitated by EU citizenship, but also by many provisions of secondary EU law, and those things will have to be considered over the course of exit.



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Q4 **Lady Hermon:** Thank you very much indeed, Mr Paisley, as our acting Chairman this morning. It is very nice to have you here as our first witnesses in this very important inquiry. I have just noted down a few questions and then I will move over to my colleagues and then come back later, if that is all right. I will not just sit here and go through all of these questions. Professor Dougan, may I just ask you what is the best scenario that could be achieved by the British Government, in terms of border arrangements with the Republic of Ireland.

Professor Dougan: Could I ask which border?

Lady Hermon: The border between the Republic of Ireland and Northern Ireland, since that is our inquiry.

Professor Dougan: We do have to separate out different borders, because the type of deal that can be achievable in respect of the customs border, for example, would be different from the type of deal that could be achieved in respect of the common travel area border, for want of a better way of putting it, meaning the physical border of people entering and leaving the two states. The answer would be very different again if we are talking about, for example, the single market border, where I do not think the prospects of a favourable deal are that high. That would be different again from, say, the security border, the opportunities for co-operation between police services and anti-terrorism units across borders. The prospects for a deal differ depending on which border we are talking about.

To summarise a position we can explore in a lot more detail, if you like, on the customs border, the basic position is likely to be that there will be a customs border. It will involve physical checks at the frontier. It will involve all of the pre and post-frontier formalities and processes that go with a customs border, but it is not going to be an iron curtain. It is not going to be some sort of sealed border for goods between the two territories.

Q5 **Lady Hermon:** How do you come to that conclusion? What are you basing that on?

Professor Dougan: It is on the experience of the customs union. Would you like me to go into a little bit more detail on customs?

Lady Hermon: Yes, absolutely. That is what this inquiry is about; we want to hear the details. You are the expert. We are listening.

Professor Dougan: I will start off with a few comments about competence over the customs union, and Steph maybe then might add a few remarks about the nature of a customs border itself. There are two main challenges in terms of clarifying the basic competences of the customs border. I will just go to the relevant part of my notes. The first is that it is an exclusive EU competence, so the ability of an individual member state to negotiate with a third country does not exist,



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unilaterally or autonomously. It is the EU that negotiates and deals with the customs union and the customs border.

With regard to potential deals, there are two facets to the customs union that we need to bear in mind, and the first is the traditional idea of customs duties, tariffs and taxes. We all know the idea that, within the customs union, within the EU, there are no customs duties between member states. There is a single tariff that separates the customs union from the outside world.

Probably less obvious is that the customs border is also about—and in many respects this is more important—regulatory enforcement. The customs border is actually about checking health and safety regulations for goods passing between the territories. It is about environmental protection. It is about countering money-laundering and counterfeited goods. That, in some respects, is the main job of the customs authorities and one of the main purposes of the customs frontier that separates the EU from outside the EU. For those two reasons—the idea of tariffs but, just as importantly, the idea of border enforcement—there does have to be a frontier, it does have to involve checks and it does have to involve all of the pre and post-customs formalities that go with the Union Customs Code.

Q6 **Lady Hermon:** You said it would not be an iron curtain, so what do you envisage: individual checks along the border?

Dr Reynolds: Maybe I can just talk a bit about how the border operates in practice. The Union Customs Code recognises the additional modern challenges of policing an external border, in terms of regulatory compliance, fights against terrorism, drug trafficking and human trafficking. The Commission repeatedly emphasises the need for uniformity and unity at the border, and uses national authorities acting as one. They use this nickname “the guardian of the internal market”.

The Commission also understands—and this is written into the Union Customs Code—the need to balance this guardianship of the internal market with facilitating the free flow of trade. It uses a number of technical innovations to try to facilitate that. First, in terms of what happens at the border, it focuses on commercial traffic and freight. When Michael talked about there not being an iron curtain, it is because, generally speaking, there would not be a focus on people; it would be on commercial movement of freight, although there would be the requirement of random checks on passengers in relation to illicit luggage, drugs, firearms and that kind of thing.

Lady Hermon: There would be random checks.

Dr Reynolds: Random checks would be permitted under the customs code. The customs role would roughly be divided into three, so administering declarations by economic operators, control via risk management systems and physical inspections, so that can include



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examining goods, taking samples and that kind of thing, and then enforcement through investigations and prosecutions. Like I said, the Union Customs Code explicitly recognises this need to facilitate cross-border movement outwith the union.

What technical innovations are there then in place to speed up customs crossings? Other than random checks, customs controls are primarily based on an electronic risk management system within a common risk management framework, and higher-risk cargo would be identified ahead of the border, so there will be a focus on higher-risk cargo.

Since 2008 there has also been a focus on a paperless environment, so the Commission reports that 98% of declarations are now electronic, which also speeds up issues at the border. Inspections generally try to focus on non-intrusive methods, such as X-rays and things like that. The Commission is also working towards single windows, so one single administration operated by different national authorities, coming together under one single window and one-stop shops for economic operators as well.

Crucially, the most important innovation is something called authorised economic operator status. That allows traders to take responsibility for part of the security process for the security of the supply chain. That gives them simpler customs procedures to pass through at the border. In order to benefit from those customs procedures, though, and to go for that status, they have to meet strict requirements. These relate to customs compliance, record keeping, financial solvency, and safety and security safeguards.

Q7 Lady Hermon: Would these be the businesses in Northern Ireland, in the United Kingdom, that would have to pay for this system?

Dr Reynolds: Yes. Just in terms of figures, there were 11,867 applications between 2008 and 2011, and 8,000 were successful, so it is a broadly successful scheme. According to Commission information—although I do not have any further information on this—the Commission is working towards facilitating the regulatory barriers, the non-tariff-related barriers, simplifying procedures for checking things like product safety, environmental health and safety rules and things like that as well.

Q8 Chair: Do you accept that, if the scenario that you and Professor Dougan have outlined is the case, it would disproportionately affect the Republic of Ireland's trade more than Northern Ireland's trade?

Professor Dougan: Important questions like that are probably slightly outside the competence of constitutional lawyers, but it might be worth mentioning that I was at a conference in Dundalk organised by Fianna Fáil on the issue of the border on Saturday just past. The conference was primarily attended by industry representatives, small business associations and so on, from both sides of the border. One of the points



that was made by one of the agricultural representatives who was present is that, in the field of agriculture in particular, which is probably the big sector that is most likely to be affected by customs tariffs, but also custom checks between Northern Ireland and the Republic, actually the burden would primarily fall on Northern Irish farmers in the fields of dairy and beef. The supply chains for processing, in particular dairy products, flow north to south. That was one of the points that arose at this conference. I can convey it to the Committee, but I am really only conveying it to the Committee as an interesting nugget of information.

Chair: Other people might disagree, but none the less.

Q9 **Lady Hermon:** Thank you; that was very detailed, Dr Reynolds. It was very detailed, but that is what we need to hear. We need to hear the details of the implications. Physically, there is a lot of technology. There is a lot of technology available that is going to have to be paid for, yes? Professor Dougan, you seemed to give the impression that, while there was not going to be this iron curtain—that is your phrase that we are repeating, of course—what physically do you think we will see along the border? Is it just going to be technology and more computerisation, with people paying for it, and actually there will be very little change? Is that really what we are saying?

Professor Dougan: What we are suggesting is that there will probably be more change for commercial traffic. It may well be, for example, that instead of having the hundreds of formal border crossings that exist today, where lorries and trucks and goods can pass freely on a commercial basis, they become restricted, for purely practical purposes, to control costs and to make checks feasible. It might well be that they have to be restricted to a small number of crossing points.

Lady Hermon: Such as Newry.

Professor Dougan: There may be particular roads where commercial traffic has to come.

Lady Hermon: There will be nothing preventing them going elsewhere.

Professor Dougan: Private traffic should be relatively unaffected, apart from things like spot checks, where suddenly a customs officer might appear and spot-check a car, where they have a suspicion, for example that it might be carrying illegal drugs or firearms.

I do not know whether it would be worth mentioning that the EU does have co-operation agreements on customs matters, with a wide range of other territories. Some of them are primarily about the exchange of information, primarily so as to help with the risk management systems and so on that Steph mentioned. There are customs mutual assistance agreements with countries such as America, China, India and Japan.

In a way, the two main models for a closer form of customs co-operation between the EU and a third country are with Norway, within the context



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of the European Economic Area agreement, and with Turkey, which is part of a more general customs union involving the EU customs territory and the Turkish customs territory. They are the two main examples of a much closer form of customs co-operation between the EU and particularly the neighbouring states. They both differ in very significant ways, but again a common lesson to take out of them is that even if you reduce tariffs, even if you reduce formalities, even if you have regulatory convergence, there are still customs borders, there are still customs checks, and there is still an enormous amount of paperwork that goes pre and post the movement of goods between the territories. That is true in the case of Norway. It is even true in the context of Turkey, even though it is theoretically part of a customs union with the EU.

Q10 Lady Hermon: I must pass over to my colleagues soon and come back later on some different topics, because I want to come to Professor Shirlow, particularly in relation to his comments about dissident republicans and "needs to be looked at" as well. I am not quite sure about "needs to be looked at". That is all right; I will come back to that after my colleagues.

Just to recap, your introduction was that this is an EU competence. This being an EU competence, is it correct to say that, even though there is clearly a will by both the Northern Ireland Executive and the Irish Government to achieve as good a deal as possible and to keep a very good working relationship between Northern Ireland and the Republic of Ireland, being an EU competence, it is the responsibility of the 27 remaining states to agree what the relationship is on the border between Northern Ireland and the Republic of Ireland?

Professor Dougan: In relation to customs, probably what we are suggesting is that a lot of the situation of Northern Ireland will depend, first of all, on whatever deal is reached between the UK as a whole and the EU 27. For example, the UK might decide that it wants to remain within the customs union and might decide that it wants to have a comprehensive trade agreement that significantly reduces general tariffs on both sides. In any case, whatever the deal reached between the UK and the EU, Northern Ireland is obviously in quite a special position, because it is the only land border. The customs formalities and problems will still arise between the UK and all other member states. There is still freight of goods by sea and air, but Northern Ireland is obviously special because of the land border.

One of the ideas that will have to be fed into these negotiations very strongly is to really stress the importance of having a well managed, highly co-operative frontier between the Republic and Northern Ireland, but it has to be done within the context of the Union Customs Code. As Steph mentioned, there is an expectation that the external frontier of the customs union acts as one and they apply the same principles.

Q11 Dr McDonnell: Thank you for your information so far. You are very welcome; it is good to see you again. Thank you for your contribution on



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Saturday. It was outstanding and we need more of that in order to clarify some of the doubts, the “ifs” and the “buts”. Really I appreciate the extensive number of borders and border issues that you outlined there and why they are very important legally between Governments. They are not as significant for the man or woman on the street; the big issues for people at street level are customs, single market and movement of people.

My simple question—you have covered some of this, but maybe to recover the ground or rework the ground—is about the issue facing the vast majority of people I have talked to, which is how you control customs without having a very obvious barrier. How do we control people and movement without having a very obvious barrier, in other words a hard border, of some sort? It is a question in the people case. How do we have a common travel area without some sort of checks and controls? At what point does the situation change? I talked to a lot of people on Saturday from both sides of the border, and the big fear is that you have a queue a kilometre long on the southern side and a mile long on the northern side to get through the barrier. Even if it is only for heavy commercial traffic, it is inevitable that private traffic will also be caught up in that.

I could go on. The single market border is perhaps a bit further back. For simple customs control, for somebody who decides to go south of the border from Newry, or vice versa for somebody from Dundalk coming to Newry, what sort of barriers are going to be there? This feeds back into something like 20,000 to 30,000 people a day moving across the border for work, some coming north from the south, some going south from the north. These people are travelling at 7.30 or 8.00 in the morning to get to work and, if they are anything like me or if they are anything like the rest of us, quite simply five or 10 minutes at that time in the morning is precious. They do not want to be stuck for half an hour on that border.

Sorry, that is probably a very long question, but it is the nub of where I see the public’s fears and anxieties. That is the question: the public fear is distress at 7.30 in the morning being stuck in a queue a mile long, trying to get to work.

Professor Dougan: We talked quite a bit about the customs border. Would it be useful to talk about the persons border at this stage?

Dr McDonnell: Yes, and the common travel area.

Professor Dougan: Here again we have two major issues, one on each side—one for the Republic and one for the UK—of a constitutional and legal nature. The question facing the Republic is what the balance of competence will be between Ireland and the EU, when it comes to border controls and third-country immigration policy. In particular, will the withdrawal of the UK from the EU change the existing balance of power between the Republic and the EU over the Republic’s border policy and,



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therefore, affect its ability to reach agreements with the UK? That is the crucial question for Ireland.

This has been made more problematic than it should be by a series of suggestions, which have come out from various commentators, first of all that somehow the withdrawal of the UK from the EU will automatically lead to protocol 20, which is the protocol attached to the EU treaties that gives legal recognition to the common travel area, and that the withdrawal of the UK from the EU means that protocol 20 will automatically lapse. It will somehow just disappear and the legal status of the common travel area under EU law will go with it.

The second suggestion is that if Ireland wants to have some sort of agreement such as the common travel area or any future agreement that might replace or build on the common travel area, it needs the participation and consent of the other EU member states or the EU institutions.

I find both suggestions, if they are correct of course, highly problematic for the future of the common travel area. I find both of them not particularly persuasive for a couple of reasons. First of all, I do not think UK withdrawal can have the effect of unilaterally changing, in a fundamental way, the rights and obligations of another member state, which are written into the EU treaties. You cannot simply use UK withdrawal as a way of rewriting Ireland's treaty rights and obligations. That just seems completely implausible to me.

Secondly, and more importantly, it is not just protocol 20 on the common travel area that governs Ireland's position in relation to border controls and immigration of third-country nationals. Protocols 19 and 21 give Ireland very specific rights to opt in and opt out of EU policies on borders and immigration as Ireland pleases. As things stand, Ireland has not opted into most of the rules on borders and immigration, and that does not change at all regardless of UK withdrawal.

When it comes to the constitutional question of whether Ireland, under EU law, can continue to maintain the common travel area, and whether it can continue to build relationships with the UK on a bilateral basis, the answer is a very clear yes. I do not think protocol 20 really matters so much and I do not think Ireland needs the consent or the participation of the other member states to do this. It has to respect any specific obligations imposed by EU law, for example the right of an EU national to enter Ireland's territory with a passport or an ID card. If Ireland has opted into any specific measures in the field of borders or immigration, it will have to respect those measures but, as a matter of competence, Ireland can reach bilateral deals with the UK, provided it respects its particular obligations.

On the UK side, the challenge is slightly different. Really, the answer to the UK situation is wrapped up with future UK immigration policy. It is worth bearing in mind the way the common travel area works. The



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common travel area is a bit like a mini-Schengen agreement between Ireland and the UK. It is different in many ways, but the idea is the same. If you are going to have free travel between two territories, you need to have a common approach to external border management and you need to have aligned policies on immigration of non-nationals within the territories. The common travel area is not perfect. There are differences between border controls and there are differences between immigration regimes, but they are sufficiently closely aligned between the Republic and the UK that, in practice, the common travel area can function perfectly well.

The question is: what will the future of UK immigration policy be for EU nationals and third-country nationals? How far will it create a serious rupture with Ireland's approach that makes the sustainment of the common travel area much more difficult? For example, if the UK does maintain more or less existing free movement rights for EU or EEA nationals, more or less as today, and it does not heavily restrict its immigration policy on non-EU nationals, then there is no reason at all why the common travel area should not continue as it does now. Whereas if the UK does adopt a much more restrictive regime, either on EU nationals or on non-EU nationals, that automatically puts pressure on the CTA.

Q12 Dr McDonnell: Those are the legal aspects of it. That is very clear and thank you for that, but I go back simply to the point that for non-EU nationals it is fairly clear-cut. If there is an illegal immigrant in the Irish Republic, that person is probably still an illegal immigrant in the UK and vice versa. If someone from, say, Romania arrives freely with a passport at Dublin airport and is entitled to admission, how is that going to be controlled? How is that person's entry to Northern Ireland going to be controlled? There may be laws. There may be paper. There may be regulations on paper, but in real life that person can drive, walk or take a bus across the border, and they can only be stopped if immigration officials board the bus or whatever, or if the Gardaí take on that responsibility.

That is the question a lot of people are asking. If that comes in, what obstruction does that create in turn for the movement of ordinary people? In other words, to catch that person or to prevent that person illegally entering the UK, some authority is going to have to sift through thousands of otherwise legitimate travellers. It is that obstruction to legitimate travellers that causes the most concern.

Professor Dougan: I do not want to feel like I am monopolising the time; I will defer to Steph in a second. It is very useful here to refer back to the Committee's previous report on Northern Ireland and the referendum. That report, from May 2016, identified three options for the future of the common travel area, assuming that there is a greater divergence of immigration policy between the Republic and the UK.



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The first option is that you have hard borders back for people on the land between the Republic and Northern Ireland. That would be just the same as if we were entering any other country: we need to show our passport to get in; we need to go through immigration control, just as if we were arriving at any other country that has passport controls. The report correctly said that that would be highly expensive and very impractical. It would have very serious economic and social repercussions, particularly for border communities, but for the entire economies and societies of Northern Ireland and the Republic, and it would have repercussions for political stability and the peace process. More or less everybody who has commented on this agrees that a persons border between the Republic and Northern Ireland is very undesirable.

The second option is that you move border controls to mainland UK. In other words, you leave the land border between the Republic and Northern Ireland open and you have passport controls for anyone from Ireland travelling to the mainland UK. You could do that fully. You could say, for the Republic or Northern Ireland, if you land by plane or by boat you have to show a passport, or you could say it would be Republic-only, but obviously that would be more symbolic than practical, because then you would just go up and round. Again, that might be more practical, and in many respects it is what happens today already. If you travel by plane, you need a passport. It is not such a big deal. Obviously that becomes politically more difficult symbolically for other people in Northern Ireland.

The final possibility, which is the thing you may be hinting at in the question, is that we keep the common travel area as it is, we accept that there are greater divergences on immigration policy between the Republic and the UK, and the UK itself relies more heavily on, for example, employment checks, social security checks, hospital checks, and possibly even an identification card system for the population as a whole. That is the best way to enforce your immigration policy, in many respects, but effectively it focuses on internal immigration enforcement rather than border immigration enforcement between the Republic and the UK. They are the three main options correctly identified in that report.

The only thing I would add is that Ireland would still have very concrete obligations to respect under EU law. For example, if Ireland was going to share data about the movement of EU nationals with the UK, it has to respect EU data protection regulations. Ireland cannot interfere with the right of EU nationals to enter the Irish territory simply with a passport or ID card. There can be no question of Ireland requiring visas of EU nationals to enter its territory, even if the UK were to do that. Ireland still has obligations. It would be up to the UK to make it work through internal enforcement.

Dr Reynolds: I just agree with what Michael said. There is a kind of consensus building, at least in the academic community, that a hard border is, first, undesirable and, secondly, not needed. If we look at



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illegal work and trafficking, there is a project going on at Lancaster University at the moment, in fact, on tackling illegal migration and also trafficking within communities, through employment and through labour inspections. You do not need a hard border to police those issues.

The confusion around EU involvement in any kind of bilateral agreement on people between the Republic and the UK comes down to this question of whether or not the UK could have some kind of immigration control at the Irish border and apply to EU citizens some kind of visa requirement to get into Ireland, which would not be permitted under primary union law. In relation to internal checks, they are obviously problematic in terms of contracting out immigration control, but they do address a number of the hard border issues.

You would differentiate between visitors and longer-term residents and workers. That would of course be dependent on the EU and the UK agreeing visa-free travel, agreeing that EU citizens can kind of visit as they please and only having immigration rules in relation to work, access to welfare or access to housing, in which case you could enforce those immigration rules internally, rather than at the border.

- Q13 **Jack Lopresti:** Dr Reynolds, do you not accept that, between the north of Ireland and the south of Ireland, existing co-operation, sharing of intelligence, working together with the police and security services, all that will remain when we are a free and independent nation again?

Dr Reynolds: Intelligence services can continue, but it depends on data protection.

Jack Lopresti: The police and the military have lots of co-operation and lots of working together. We do not need to be members of the EU to continue with that.

Professor Dougan: I do not know whether it is the right moment to go into these questions but, given that much of the effective police, security and anti-terrorism co-operation that is conducted between the UK and Ireland takes place through the framework of EU co-operation measures—Europol, Eurojust, the European arrest warrant and so on—of course co-operation can continue, but it will continue on a very different basis and with quite significant effects in the future, after withdrawal, unless the UK continues to participate very extensively in the EU-level measures.

- Q14 **Jack Lopresti:** That does not necessarily in any way mean that there will be a diminished relationship or diminished effectiveness. You accept the premise that our security co-operation could be strengthened and more efficient. All that does not rely on us being members of the EU, whatever the current institutions allow for.

Professor Dougan: I find it very difficult to see how it could continue to be as effective. It can continue, but it is very difficult to see how it could be as effective if the UK does not have full access to the databases on



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DNA, fingerprinting, vehicle recognition, criminals and illegal immigrants. If we do not have access to those databases, it is very difficult to see how co-operation can be as effective.

Q15 Chair: Why do you think we would not have access? Why do you think that access would be denied? In whose interests would that be?

Professor Dougan: It is not a matter of it being denied. At the minute, Ireland and the UK participate in a whole range of EU-level security co-operation arrangements. I have mentioned a few—Europol, Eurojust, European arrest warrant and so on. Remember that the UK had a block opt-out from many of these measures. Under the Lisbon Treaty, the UK opted out of many of these measures, but then this Parliament took the conscious decision to opt back in to many of them. This Parliament decided that on the basis that it was very clearly and strongly in the national interest of the UK to participate in these EU-level initiatives.

UK withdrawal means that we are out of those arrangements unless we make new agreements with the EU for forms of participation, but participation as a non-EU member state is different from participation as an EU member state. First of all, your political influence is obviously virtually zero over the EU systems. You are no longer influencing the development of their operation. You are seeking access to them, but you are not influencing their development. Secondly, the type of co-operation that third countries are permitted to have with the EU systems is much more limited in scope. It is more limited in its nature, its scope and the degree of co-operation involved.

For example, if we take the European arrest warrant, it is only for EU member states. The EU can enter into bilateral extradition treaties and mutual assistance treaties with third countries, but their nature varies from country to country. Norway has one of the closest deals; the Americans have a much less close deal. Even the Norwegian deal is not as good as the European arrest warrant itself—it is not as wide in its scope; it is subject to greater conditions; it is more cumbersome to implement. Absolutely you can continue co-operation, bilaterally and multilaterally with the EU, but you are losing a lot of the benefits that the EU security co-operation provides and—I will say it again—that this Parliament has affirmed.

Jack Lopresti: Let's not debate how effective EU security requirements are—that is for another day, perhaps.

Professor Shirlow: There are very strong concerns in the police and the Northern Ireland Policing Board about Europol, not just on gathering information but understanding the methods and how crime is changing and how crime is being undertaken. There is the European arrest warrant. There is the upgraded Schengen convention, the joint investigation team, co-operation between financial intelligence units, the money laundering regulations, the EU fourth anti-money laundering directive, protected persons services and the land border.



The issue that the Chair has identified is that we do not know some of this, but clearly the PSNI and the Northern Ireland Policing Board do have very strong concerns about their capacity, not just to work on cross-border activity, but to work across Europe, especially given that some of our dissident groups and some of our organised crime groups are working across European borders.

The one thing that could be an issue in terms of the land border, following article 50 being invoked, is border security. Is that going to be undertaken by the UK Border Agency, or is it going to be undertaken on the UK side of the border by the PSNI? That is a very significant concern, given not only the resources, but also the estate, given that we have closed many police stations in border areas. These are issues. The thing with that should yet again be about how we get some confidence into policing. I have these concerns, but in many ways those concerns have not been answered and await the negotiations.

- Q16 **Gavin Robinson:** Good morning. Professor Dougan, you are trying to be very balanced. The evidence you are giving is very useful, but so far we have had a negative conclusion that is predicated on the lack of a deal between the United Kingdom and the European Union. Going back to customs, which you touched upon earlier—and I will ask this in the most non-partisan way, if I can—do you believe that having the equalisation that we currently have with EU goods and services makes reaching an agreement easier? Our products are the same standard; our services meet the same European requirements. While some suggest that trade deals can take seven years—the Canadian trade deal took seven or nine years—because we are at a level playing field at the moment, reaching a resolution is much easier, because where we are is exactly where the European Union is.

Professor Dougan: It is something that we hear quite a lot in the news. We have the same rules already so, as long as we keep roughly in tandem, what is the big deal? That is probably to misunderstand the nature of the single market. Again, stop me if I start to wax lyrical about the legal concepts here. The single market is much more than just having similar rules. The single market is basically the idea that, if I make my goods in one country, I want to be able to sell them in any other country without further hindrance. If I provide my services in one country, I should be able to provide them in any other country without further hindrance. It is an ideal rather than a reality, but that is the ideal. We call it the principle of mutual recognition.

Mutual recognition depends on mutual trust. Every country has to feel, “We just let these foreign goods in and we do not do anything about it. We let these foreign service providers come here and do their stuff, and we do not do anything about it.” To create that system of mutual trust involves far more than just having similar rules. Yes, you do have to have harmonisation. You do have to make sure that your national legislation is constantly in alignment with that of the other member states



when it comes to the core public interest and safety issues. It also means that you have to have very well established administrative co-operative systems. The national authorities across virtually every sector of the economy work together through EU networks and institutions and agencies, so as to spot problems. They react to them quickly. They agree on harmonised approaches to supervision of financial services and so on.

It also depends on judicial enforcement. Everybody agrees that we have an independent court that will decide on the interpretation of the rules and their enforcement for every member state. Just as importantly, it applies far beyond trade, because the single market is based on the idea that we will not compete on the basis of environmental deregulation or workers' rights deregulation and so on.

When you put all of that together, having similar rules is just one bit of the internal market. If you step outside the institutions, the procedures, the processes, the frameworks, you are not in the single market anymore and just having similar rules does not necessarily do you very much good.

Q17 **Gavin Robinson:** That I guess was not the question. The question was whether it make doing a deal easier—the fact that we already have the same rules, the same recognition, the same harmonisation, the same understanding, conceptually and procedurally, implementing the requirements of the single market at this time. The question is: does being in that position make an inevitable deal easier than if we were not in that position?

Professor Dougan: The answer in a way is marginally so, because it still involves a lot of very difficult questions about how that deal will become operationalised. For example, what scope will this deal apply to? Will it cover all goods and services and, if so, will it involve, for example, subjecting the UK to the jurisdiction of European agencies, which are competent to supervise different parts of the economy?

Equally importantly, it involves asking questions about the mechanisms that the UK will adopt, so as to constantly change its national law in the future every time EU law changes and every time EU case law changes. How will the UK automatically, and within any real discretion, follow the EU lead? If it does not, then market access breaks down.

Very crucially for the UK, it involves what type of dispute settlement mechanism we would agree to. Most ordinary international free trade agreements involve arbitration. That is clearly not suitable for a single market style deal; you need a court. The UK has said, "We will not accept the jurisdiction of that type of court." Having common rules now may well make reaching a deal marginally easier, but there are much more important and much more difficult obstacles that have to be overcome before any UK deal can possibly be agreed. Even if we all



agree that we want it, there are much more difficult obstacles that have to be overcome.

Q18 **Gavin Robinson:** I think you are saying yes, but not to a significant degree. This again touches on the political. Do you think it is useful that, in advance of the referendum, there were massive concerns and insurmountable barriers highlighted, but actually there is political willingness on both sides of the border with the EU other member states, the 26, and in the Republic of Ireland and the UK there is a willingness at least to identify and reach a beneficial outcome for Northern Ireland? Do you think that is a useful place to be at the moment? The revenue commissioners in Dublin are now pursuing electronic customs controls. They are discussing how that might work. That is all a useful place to be. We are now getting some of the meat that has been lacking from the bones.

Professor Dougan: Absolutely, and we should all remember that, in many respects, the Republic is probably Northern Ireland's greatest advocate within these negotiations. It is worth bearing in mind as well the nature procedurally of what these agreements will involve. The common commercial policy, like the customs union, is an exclusive EU competence. In practice, anything more than a relatively garden variety trade agreement, anything that involves anything more ambitious than just cutting some tariffs for example, will be a mixed agreement under EU law. That will involve national ratification by all of the member states, not just a majority in the Council. As we saw with the Canadian trade deal, in some member states that involves ratification also by their sub-national Parliaments, Belgium being the main example. That is one procedural obstacle that has to be overcome. This will be a very cumbersome negotiation that requires unanimous agreement among all the parties.

The second thing, which again is easily overlooked, particularly in the media debate, is that there is a distinction between the withdrawal agreement and the future trade agreement. There is a distinction legally and institutionally, but there is also a distinction in time. They are sequential. One of the main issues that needs to be addressed is how we get from a withdrawal agreement, which is leaving the EU, to a future trade agreement, which may well take many, many years to achieve. What will be the transitional arrangements formulated? As well as the substantive issues about what type of relationship we want to have, there are also a whole series of procedural issues that need to be borne in mind, because they will influence the type of deal that feels possible. Even if there is enormous good will on all sides, which I hope there will be, there will still be a lot of factors that constrain the translation of that will into a practical agreement.

Gavin Robinson: I am glad you said the Irish Republic will be a useful advocate in the negotiations. When I said that in July I was slated for it.



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Professor Dougan: I get a real sense that Ireland, in many respects, will be Northern Ireland's greatest ally in these negotiations. I get that sense from many quarters.

Gavin Robinson: I agree.

Chair: I get a sense with a lot of this stuff that people do not know anyway, until it happens. There will be an eating of words at some point.

- Q19 **Gavin Robinson:** Professor Shirlow, you were correlating the lack of a border, the invisibility of a border, to confidence in and success of the peace process. What causal link is there for that? There has already been a strengthening of peace in Northern Ireland. There has been a reduction of infrastructure around the border.

Professor Shirlow: The Life and Times survey, over a significant period of time, and other surveys that I and others have been involved in asked questions in various guises. The question basically is about the constitutional future of Northern Ireland. Many of those surveys show that the desire for Irish unification has declined.

- Q20 **Gavin Robinson:** Is that because the institutions are successful?

Professor Shirlow: In some of the stuff about cross-border bodies that I looked at, you correlate the question about the border or about majority consent. There has been a growth in Northern Ireland, in those surveys that I have been involved in, in support for the principle of majority consent. That is allied then to, "I believe that there is a peace process. I support power sharing," and all of those positives that the peace process has created.

In terms of those correlations, which would be cross-tabulated-based correlations, what you find is that, as Northern Ireland has become more boring, in the sense that we are getting into the nitty-gritty of health, we are getting into the nitty-gritty of transport issues and we are getting into the nitty-gritty of the environment, the settlement or the rapprochement, whatever has taken place—the visit of the Queen and all those things—each of those positives, the boring and the more exciting, is positively linked to attitudes towards Northern Ireland's constitutional position. The Chair asked how many people were in the survey. In our case, ours was 1,800. The BBC one was 1,000. The first poll taken after Brexit showed the majority of people had not changed their attitude towards the constitutional question, but 18% had.

Gavin Robinson: That is a two-percentage-point difference in aspiration, not 18%.

Professor Shirlow: 18% said that their attitude towards the border had changed. One of the issues that is important is the way in which all of that has produced this argument of settlement. It is like Fintan O'Toole's argument in the *Irish Times*; we just did not need Brexit to create this division.



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One of the things that is important is some of the research that we are doing at present, which is not yet published. It is showing, for example, that in some parts of Northern Ireland, in some republican constituencies, there has been a very significant decline in the vote for Sinn Féin. That has not necessarily been replaced by a vote for dissidents or other groups like that, but clearly there is some disgruntlement in some communities about the way this is panning out. If you look at the dissidents, look at their websites, speak to whoever is researching dissidents, speak to students or others who are doing projects on dissident republicanism, Brexit has been a boost to them.

Now, I am not suggesting we are going back to 1968; I am not suggesting any of that. The settlement that we have achieved, not necessarily intentionally, which is that people have become more agreeable to Northern Ireland, has been the situation. Equality has been crucially important in all of that. I think the growth in third-level education has been important. All those things have been important.

If you look at the dissidents, Brexit has been a boost to them in terms of their organisational capacity. I am not talking about their military capacity, but the clubs that they form—the Connolly clubs, Republican Sinn Féin, etc—are starting to increasingly articulate their message around three things: they are anti-EU, so they enjoy the response to the European Union; they are obviously anti-British; they see that the majority of people in Northern Ireland having voted to stay in the EU as being an example of English voters determining your future.

Q21 **Chair:** Do you think they have really intellectualised it?

Professor Shirlow: No, it is not intellectualised, but it is a rallying point.

Chair: Irish republicans never really needed to intellectualise the troubles, and dissidents less so.

Professor Shirlow: The point is that what is happening is, because this settlement is taking place in Northern Irish society, there have been few totems for them to point out. One of the best things that happened in our society was support for the PSNI. If you look at the support for the PSNI, it is not an orange and green issue. They have had all of these things that have confronted them, in terms of the settlement, people's attitudes have changed, "Maybe I'm happy to stay in Northern Ireland. Maybe I'm not so desirous for Irish unification." Whether it is intellectualised, it most certainly is a totem. There are those three things they can argue with: they are anti-EU, they are anti-UK and Scottish independence. It is allowing them, as the IRA and Sinn Féin did, to go into political commentary and activity, as opposed to simply negative commentary and violence.

Q22 **Gavin Robinson:** The purpose of asking the question, of course—it is a useful to get a more wholesome reply—is there was this lazy causal link



between the invisibility of the border and the strength of the peace process. If there is the return—and we do not want it—of a hard border, then the peace process is in jeopardy. It was useful that you had the opportunity to expand upon that a little more, because we have to be very clear about messages. You do not want to fuel or encourage those who have nefarious intentions.

Professor Shirlow: In a piece of research we are starting at the moment, one of the anecdotes around it is that some people have said that their desire to stay in Northern Ireland has changed. Now, that is not quantifiable at this stage and that can be an initial reaction to this, but the fact that people in the Northern Ireland voted to stay in the UK has brought a tension into the question. For some people, it has created a tension in regard to the constitutional question. The settlement does not seem to be as real. It is not devolution; it is something outside.

Q23 **Gavin Robinson:** Chair, I just want one more. The answers to this will not be quick, but the question will be. Professor Dougan, you started off by asking, when considering borders, whose competence they are. What are the potential deals, how might they look and who is going to implement them? So far those have remained rhetorical questions, but I am sure you actually have the answers to those and I am sure you want to offer them to this inquiry. It would be most useful if you did so. Either through further questions or directly, if you could convert those from rhetorical proposition to considered thoughts, it would be useful for the inquiry.

Professor Dougan: Shall I offer a few quick thoughts and a few pointers?

Gavin Robinson: I will say no more about it, but that is the meat of this inquiry. Those are the great questions.

Professor Dougan: Very quickly then, on the customs union, the common message that seems to be coming, not just from myself and Steph, but from many of our colleagues who work in the field, is that if you are not in the EU there will be a customs border. It will have to be policed in some way. I do not mean by the police; I mean policed as a customs border. The objective is to minimise the amount of disruption, to co-operate as closely and constructively as possible, so as to keep trade flowing and to minimise the disruption to people's everyday lives. That is the objective, but it will be there. There will be a customs border.

On the border with persons, obviously the best outcome would be that the current arrangements remain in place. That will depend, ultimately, on UK immigration policy first and foremost, but the ideal would be for the current arrangements to remain in place and for any changes to UK immigration policy to be either so minimal that they do not upset the CTA or of such a nature that the UK simply absorbs the immigration problems internally and deals with them through employment, through public services and through enforcement internally.



On the single market, I am probably less optimistic for various reasons. There is never going to be a better deal than the single market. This is about minimising the degree of disruption that occurs between the currently highly integrated economies of the UK and the other 27 member states. Nobody ever thought that international trade got better by creating barriers to international trade, by leaving your current partners and the highly integrated arrangements that you have with them. This is about trying to find a deal that minimises disruption and damage. That is the best we can hope for.

The problem, constitutionally, is that a deal of that nature requires an enormous amount of effort to reach all of the arrangements that I mentioned before: decision-making bodies, dispute-resolution mechanisms, the scope of the agreement, the flanking policies on the environment, workers and so on. A huge amount of work needs to be done, even with all the goodwill in the world, to minimise disruption.

The political problem is that the UK is approaching these negotiations with a set of red lines, which means that the EU is not likely to be able to agree to a very ambitious deal. Even if we wanted one, the red lines that we have put down on issues such as free movement and on jurisdiction of the courts, for example, mean that it is not necessarily going to be a very ambitious deal. The simple fact of international trade is that the more ambitious you want to be, the more obligations you have to assume. If you are not prepared to assume obligations, you are not going to get an ambitious deal. It is an unavoidable fact of international trade.

Q24 Chair: Could I just put some salt on to leaven your bread? From 1972 to 1996, both the Republic of Ireland and the United Kingdom had been members of the EU, as it became, and we had the most woeful security and extradition arrangements between our member state and the Republic of Ireland and other member states, including Brussels itself, where terrorists could hide out. It was only post ceasefire—not post political agreements, but post ceasefire—when some countries allowed the politics to be put to the side of it and actually engaged in proper cross-jurisdictional relationships. The panacea that has been painted about pulling out of the EU is not something that that agreement shared. There has been a view that, actually, the EU actively helped, aided and abetted terrorists to flee justice in the United Kingdom jurisdiction. That has not been put into the equation and it should be. It should be remembered and it should be on the record.

Professor Dougan: The experience of the European arrest warrant—and again I am not making an empirical claim here; I am just saying what is generally held by the people who do work in the field, and I would not count myself as someone who works closely in the field of anti-terrorism policy—has effectively revolutionised extradition between the member states of the EU.

Chair: It has been in the latter years of our EU membership and it has been tested about three times.



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Professor Dougan: The main stimulus of course was the attacks in America of 9/11. That is quite separate from the issues I have been talking about with single markets. Security co-operation can be divided from trade, customs and persons, as we have been talking about, but in many respects the main critics of the European arrest warrant are the people who say that it has made extradition too easy. It has actually made it far too easy to transport people across member states and it has made security the main priority, rather than individual liberty, but that is probably the main area of critique of the European arrest warrant, rather than that it is not effective enough in security terms.

Q25 **Danny Kinahan:** I have three questions. I find it fascinating to hear such detail. The first one is on tariffs. What is going to lead to tariffs being put on goods? If tariffs are put on goods, how do we make the border work so it does not damage our own businesses and slow them up because they are waiting for payments? Would you comment on how you see all that working and what we have to do to avoid tariffs?

Professor Dougan: It is worth bearing in mind, first of all, that tariffs are partly regulated by WTO obligations. Under the WTO, members should in principle have a single tariff system that they apply to all WTO members, unless they either have a customs union such as the EU or they have preferential trade agreements, which provide for a generalised system of tariff reductions between the two countries.

In a way, there are three main choices facing the UK on tariffs and future relations with the EU. They are that we remain part of the customs union. That would be a very significant set of obligations, but it would mean that we do not have any tariffs internally and we apply the common customs tariff externally. Alternatively, we have a fairly comprehensive trade agreement, which provides for mutual tariff reductions between the two parties. We do not apply the common customs tariff. We still have our own tariff system for the rest of the world, but we do have a preferential system with the EU. The third option is that we do not have any preferential system; we are not part of the customs union. We have our single tariff system that we apply to everybody, including the EU. The EU has their single tariff system that they apply to everybody, including us. They are the three options really.

In terms of the practicalities of how it operates, a lot of it comes back to what Steph discussed before. The EU wants these things to be done primarily through authorised economic operators and through electronic declarations, but it is inevitable that there have to be customs formalities and customs controls. It is about minimising that disruption.

Q26 **Danny Kinahan:** Moving around, we have discussed a lot of the difficulties as we negotiate, but we never look at the timeline. If we look at the timeline over the next few years, if you have article 50 happening early next year, assuming that goes through, how do you see the timeline to getting agreements working? We were told in the previous inquiry that to get all our trade deals might be 10 or 15 years. Do you



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see it as being as slow as that or do you see that we can have fudges or we wait until negotiations happen? Do you see it running over five years or 10 years? I know it is really difficult to second-guess.

Professor Dougan: It is difficult and it is not difficult, in the sense that we can set out what the possibilities are. Politics will decide which of those possibilities materialises, but we know what the possibilities are. The first thing I would say is to reiterate that the withdrawal agreement under article 50 is not the same as the future agreement. Whether it is on trade, security or any of the other issues, they are separate things. They are closely inter-related, in the sense that the type of future agreement that we envisage with the EU will influence the type of withdrawal agreement that we want to have with the EU.

If we want to have no particular close relationship with the EU into the future, we can use the withdrawal agreement to sort out budget commitments, to sort out staffing and offices, move the European Medicines Agency back somewhere else, and it can be done relatively quickly and that is it. The process is finished and we can be out within less than two years, if we really wanted to.

If we want to have any sort of functioning relationship with the EU into the future, which is more than simply two countries or two entities that do not have that much to do with each other in the international relations sphere, then we need to do something more ambitious. That will affect the nature of the withdrawal agreement, but primarily when it comes to things like transitional provisions. If we do want to have strong access to the single market, we need to find a way to minimise the degree to which national legislations fall out of line and that could take many years. The more ambitious the agreement, the longer it will take.

It is worth pointing out that CETA, which took quite a long time to negotiate, took even longer to come into force, with all the ratifications and so on. It is a stack of paperwork thousands upon thousands of pages high. Every single line of that paperwork is argued over, negotiated about and fought over, even if the big politics are decided. Remember that we will be doing this with very limited diplomatic capacity of our own, with almost no independent trade experience of our own, against one of the largest and most experienced trade negotiating organisations the world has ever seen. I do not think we should see this as a short-term project that will be tidied up.

Q27 **Danny Kinahan:** Does that mean, if it is taking ages to tie it all up, that the border therefore becomes tighter at the beginning, until we have all the negotiations in place, or does it just drift?

Dr Reynolds: Even though the withdrawal agreement would be separate from the future agreement on trade or whatever, there will have to be some kind of consideration of the inter-relationship between those two agreements. It seems extremely likely now that, if we went for a Norwegian model, for instance, and that was going to be our future trade



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deal, then we would not need to have any kind of transitional arrangements on the free movement of people. The free movement of people would operate broadly the same, and so you would not have to have any rules in your withdrawal agreement about the protection of rights for EU citizens. It really would not have much impact on the Northern Irish/Republic of Ireland border.

If you decide to go for a harder form of Brexit, then the symbiotic relationship between the withdrawal agreement and any future trade deal becomes much more complex. That is when you might need a more detailed and ambitious consideration of that transitional period to avoid problems at the border, during that time.

Professor Dougan: It is worth pointing out that, although we talk about two years as being the timescale, in fact, under article 50, the date of withdrawal is the date of entry into force of the withdrawal agreement, first and foremost. It is only by default, if there is no withdrawal agreement, that it becomes two years unless it is unanimously extended. If we want to be patient, if we want to reach a good deal and it is going to take longer than we anticipated, there is plenty of flexibility within article 50 to achieve that. That is why I think a lot of this is about political goodwill and political accommodation. The constitutional arrangements can help facilitate that. It is almost inevitable that there will be a gap between withdrawal and a future agreement, and the main priority should be transition provisions to smooth that gap, but that all depends on what type of future agreement we really want to have.

Chair: It is very much a movable feast. I see coming through in the wires that Angela Merkel has contradicted Jean-Claude Juncker today, for the first time, and indicated that Britain can retain the sovereignty of its borders at the same time as having access to the single market. We are in a movable feast and the politics of that will be very interesting in the days to come.

Q28 **Danny Kinahan:** With article 50 being triggered, are there any grounds of when European law, if the Irish Government or someone decided to challenge something, can hold up article 50? Is there anything that can be referred to the European court that might stop us being able to move forward?

Dr Reynolds: It depends on the nature of the agreement. If it were a mixed agreement that involves EU competence, but also shared competence between the member states and the EU, then you would need agreement of the member states and you could have the challenge through the Court of Justice as well.

Danny Kinahan: As we are now, as we sit, someone cannot refer the article 50 as it is going to the Supreme Court. There is no one who can then delay it further.



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Professor Dougan: The only issue that might arise with the article 50 litigation—I think we are talking about the High Court/Supreme Court challenge that is going on at the minute—that could possibly of relevance to the ECJ is the interpretation of article 50, in terms of the revocability of a notice to withdraw. That is an interpretation of EU law. The Court of Justice is entitled to make those interpretations of EU law—that is its job—but it does presuppose a whole series of factors in the meantime. The Supreme Court has to make a reference. If the Supreme Court does not make a reference nobody can do anything about it. I must admit, for myself, I am not convinced that the revocability of the article 50 notice is that decisive to the outcome of this litigation.

Chair: This is actually a sub judice matter. We as a Committee have to be very careful about pursuing that.

Professor Dougan: My apologies.

Chair: I understand your inquisition of it, but I am being told it is sub judice.

Q29 **Nigel Mills:** We will move swiftly on from that discussion. How long did the EU-Ukraine agreement take to get done? It struck me as being really quite quick.

Professor Dougan: I have no idea how long it took to negotiate. Just out of interest, at the time of the Dutch referendum on the EU-Ukraine agreement, I decided just to open the text and have a quick look and then I realised it was about 2,500 pages long, so I did not look very much at it. In a way, the lesson of the Ukraine agreement answers Danny's other question, which will not be sub judice, which is the question of potential political obstacles to a withdrawal agreement.

There is a bit of a debate going on at the minute in the context of EU law about whether the article 50 agreement can be agreed by the majority of member states in Council, as set out under article 50 in the European Parliament—that is what article 50 says—or whether the article 50 agreement could also be a mixed agreement and would also require unanimous ratification by all of the member states, which could include referenda in the Netherlands or sub-national Parliaments in Belgium. If that is the case, that is highly problematic for the UK, mostly because of Spain. Would you like me to go into a bit of detail on that?

Nigel Mills: Yes.

Professor Dougan: It is quite an important point, I suppose. One view is that article 50 is intended to be a fixed procedure. It is intended not to allow any single member state to veto a withdrawal agreement for a leaving state. The fact that Spain does not like not having joint sovereignty over Gibraltar, for example, is of no consequence, because no member state can veto the article 50 agreement.



The second view is that the article 50 agreement is just an international agreement like any other and it cannot affect the competences of the member states, as sovereign entities under international law, which includes their ability to ratify agreements that touch upon their national competence. In other words, there is nothing special about the article 50 agreement and, if it does touch upon national competence issues—for example the free movement of persons, which is partly a national competence—it would require ratification by all the member states individually, as well as agreement by the EU, and that would allow, for example, Spain to say, “We’ll veto this if we don’t get joint sovereignty over Gibraltar,” for example.

The third interpretation is a mixture of the two. The article 50 agreement cannot be a mixed agreement, it cannot be vetoed, but nor can it touch upon national competences. In other words, no state can veto this agreement, but the agreement itself therefore cannot touch upon issues such as the free movement of persons that would involve national competence. If that third interpretation is correct, the withdrawal agreement will be a very narrow agreement indeed, because a lot of these issues naturally touch upon national competence. They are very rarely about exclusive EU competence alone.

At the minute, we have a bit of uncertainty within the discipline about what an article 50 agreement might involve, about how it might be negotiated but, just as importantly, about who is entitled to agree to it or veto it. Particularly when it comes to the situation of relations with Spain and Gibraltar, that could end up being a very important issue indeed. That would be ripe for the European Court of Justice to clarify.

Q30 Nigel Mills: The reason I asked about the EU-Ukraine agreement is it was actually pretty wide-ranging. It is not a simple, little, uncontroversial thing, in some ways, but it was done in a matter of months, not years, was it not? The political will was there. Ukraine had a change and we wanted to help them. We got a pretty wide-ranging agreement done pretty quickly.

Professor Dougan: A lot of the provisions, though—I admit that I have not read it in any detail but I have flicked through it—are of a nature that say, “We want to help Ukraine in its economic development; we will co-operate in the future in the following areas.” There are not that many hard obligations in a lot of the parts of that agreement. Most of it is about establishing frameworks for future dialogue and co-operation. As I say, I have not read it in detail.

Nigel Mills: There are lots of tariff reductions both ways, to be fair.

Professor Dougan: Those tariff reductions will not have been agreed in a timely amount of time; they will have been negotiated quite hard over a protracted period of time.

Q31 Nigel Mills: The previous Ukrainian Government had broken off



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discussions, so there had not been much happening at that point. I am just saying that if the political will says we want to do something on both sides, there is precedent for things being done really quite quickly.

Dr Reynolds: It is worth noting that a lot of the commitments within the Ukraine Association Agreement to liberalise the market in services and establishment are only commitments at this stage and will not become something more solid until Ukraine agrees to take on the EU acquis. That is for all EU legislation in relation to services and establishment. Then you have the issues around why people voted for exit. If people voted for exit to have more control over UK legislation and the application of law in the UK, adoption of the EU acquis to get a quick agreement is not going to be what people want politically.

Professor Dougan: In that regard, the model of the Ukraine Association Agreement is not an exact model, because there is no imminent prospect or even foreseeable prospect of Ukrainian accession to the EU, but there was a whole series of association agreements with eastern European countries that provided a very direct model for what the EU wanted to achieve with Ukraine. Again, to stress what we have both said, much of this is about aspirations for future co-operation. There are very few really hard obligations in the more sensitive areas like services, employment and so on.

Q32 **Nigel Mills:** We could debate the Ukraine position, but the point of the question was, if people want to do something quickly, things have been done quickly in the past, even in really quite difficult circumstances. There were big security issues with Ukraine. There were big corruption issues. There were big stability issues. If they can do a deal quickly, those issues do not apply to UK-EU relations. Perhaps we should move on slightly. Which EU external border do you think is most comparable to how you think the Northern Ireland and Republic of Ireland one will turn out?

Professor Dougan: I am just going to flick through to my notes about Norway, if I can find them. I am not going to try to pretend that I know all of the land borders of the EU, but the one that we have looked at in a little bit more detail is the border with Norway. The border between Norway and Sweden has been held up as a good example of what might happen. I do apologise; I am being a little bit slow in finding my notes.

Q33 **Chair:** The Norway-Sweden border is held up by whom as a good example?

Dr Reynolds: Michael said that this does not fall within our area of expertise, but I do think there are some practical similarities and some important differences between the Norwegian and Swedish border. There was a project operating at the EU level called the Nordregio project, which looked at cross-border co-operation across different types of EU internal and external regions. The Sweden-Norway border was held up



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as the most successful example of cross-border regions with an external border out of the EU.¹

In terms of the comparisons we can make to Northern Ireland and the Republic, there were some similarities and differences we need to take into account. First, both Norway and Sweden are members of Schengen, so that makes free movement of people easier. They both have access to the internal market, so Norway accepts the EU acquis, in terms of regulatory rules, mutual trust and things like that. The comparisons you can make between the two borders would again depend on the UK deal and what kind of relationship we have with the EU. To some extent, the inverse could be true. The Republic is not a member of Schengen, the UK is not a member of Schengen and so there might be some opportunity for comparison there.

One of the aspects of the success of the border was also the economic parity between the two states, the fact that there were no significant linguistic barriers between the states and also—I do not know if Pete wanted to pick up on this—the symbiotic nature of industries between Sweden and Norway. In this area of Norway and Sweden, the Swedish mining industry relies heavily on the Norwegian ports, and so the free movement of people between them helps with that.

There are some major differences, though, and I think geography is the major difference. Even though it is a vast border between Norway and Sweden—I think it is 1,600 kilometres—it is very sparsely populated, so a population of about 70,000 across something that is the size of Denmark and the majority of that is mountainous. Actually, the restrictions in terms of customs, restricting them to a road, is partly down to geography and the same issues just do not apply in the Northern Ireland-Republic situation, but there are some similarities and some things that you can draw from it.

Professor Dougan: I have found my notes. There are another couple of things to throw in that affect the regulatory context of the Norwegian-EU relationship, which then feeds into the Norwegian land border with Sweden. First of all, under the European Economic Area agreement, customs duties and charges have an equivalent effect. They are largely abolished between Norway and the member states of the EU, so tariffs on goods are actually very few and far between, but it is not complete.

First of all, it does not apply to all sectors, so many agricultural goods are excluded, many fisheries products are excluded and they still are subject to customs duties. Secondly, it only applies to goods originating within the states, so goods that are not of origin to Norway or the EU member

¹ Dr Reynolds subsequently asked for the following clarification: *It should be made clear that this project only looked at one section of the Norway/Sweden border – not the full 1653 km. The project looked at one of the northern most points and identified it as one of the most exceptional examples of cross-border cooperation. More information on the project can be found at the following address: <http://www.nordregio.se/en/Metameny/Nordregio-News/2015/Cross-border-co-operation/The-Swedish-Norwegian-cross-border-region/>*



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states are not exempt from the ordinary customs systems of the two territories. Norway does not participate in the customs union, so it still has its own customs systems as well. Even though the regulatory problems of customs enforcement are much reduced, there are still tariff issues that need to be dealt with and they are dealt with on the two sides.

It is also worth pointing out that the European Economic Area agreement has a set of protocols that deal with quite detailed customs co-operation between Norway and the other member states. For example, it talks about how many hours a day the road crossings have to be open and the location of road crossings, so there are quite a lot of detailed obligations on the two sides to co-ordinate their land crossings. Also, there is a bilateral convention between Norway and Sweden, which dates back to 1959, which provides for very close customs co-operation between the two countries. Off the top of my head, it even involves the common border area, where the two customs forces can cross the border and exercise their powers without needing permission from the other.

I agree entirely with Steph; there are very useful lessons to be drawn from Norway and Sweden of how a well managed, fully co-operative border can operate, but there are also some differences, in terms of how the regulatory system might operate between, for example, Northern Ireland and the Republic.

Q34 **Nigel Mills:** You have not looked at the Swiss-French border, the Swiss-Italian border or whatever else to see how it all works there.

Professor Dougan: I am afraid not.

Nigel Mills: You have not looked at borders in the Balkans or somewhere.

Dr Reynolds: The Swiss have very extensive rules, in a similar way to the Norwegians, with rules on opening times at the frontier and minimising delays, so it is possible to reach these kinds of agreements. It is just that we would kind of be starting again and reaching these agreements again.

Professor Dougan: For what it is worth—this is thinking back anecdotally to research that other people have done—insofar as it is useful to convey other people's research to you, one of the phenomena that happened at the time of EU enlargement when the eastern European countries joined the EU and suddenly they became the external border of the customs union is that the preparations for that had not necessarily been carried out as fully as they might have been. Suddenly, border communities in particular found a very serious degree of disruption to their daily life and their economic activity, because suddenly customs posts appeared; suddenly passport checks were imposed. I know that that had a very disruptive effect in certain eastern European regions, but I am conveying other people's research here, rather than my own.



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Q35 Nigel Mills: Have you looked at how Rotterdam will work, because presumably a lot of goods coming in and going out will go into Rotterdam? Somehow they will have to transit them through without them clearing customs or something. Have you looked at how we are going to manage that?

Professor Dougan: No, I am afraid it is not really the type of work we do.

Nigel Mills: It is quite important for exporting and importing actually.

Professor Dougan: In terms of suggestions for the Committee, it is not that the UK, Northern Ireland or the Republic of Ireland is going to be inventing a border policy. The EU, as Steph has mentioned, has a single approach to border enforcement. It varies depending on the degree of mutual co-operation that the EU agrees with a given third country, but in principle it is a single approach to border enforcement. There will be an enormous amount of experience to be gathered from people who work on the front line—in Sweden, in Poland, in Romania, for example—and it might be worth looking at some of the more operational experience of people who work on the frontline.

Chair: Thank you, Nigel. We have a couple of minutes left. I know Lady Hermon had another question.

Q36 Lady Hermon: Another question, did you say, Chairman? Yes, one or two. Thank you very much, Chairman, for allowing me to come back a second time. Might I just direct the first question to Professor Dougan? I am reading the transcript of a very interesting lecture that you gave about the EU referendum. In your opening comments, you explained that you had in fact participated in the EU referendum debate as an independent academic expert. The interesting bit is after that—not that that was not interesting itself—when you said, “I have acted as an adviser to the Cabinet Office.” Do you still act in that capacity?

Professor Dougan: No, that was just for a very particular project: the balance of competences review that was conducted by the coalition Government. I cannot remember the exact years, but I think it was around 2011 to 2012. That was the review that was conducted by the Government. Almost every Department in Whitehall held an enormous amount of public consultations. They produced draft reports, which tried to describe, without making any political judgments about what was valuable or useful for the future of their own, but was simply to gather evidence and describe how stakeholders, academics, industry and the public at large viewed and understood the relationship between the EU and the UK, and the benefits that it brought to them or the disadvantages that it brought to them.

One of the things that the Cabinet Office did for the purposes of that review was to ask academics like myself to come along, read the draft reports and critically comment on them, whether they felt they were



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robust or credible. I would attend some of the meetings at the Cabinet Office, where the drafters of the reports were challenged, so the challenge sessions, to try to improve the quality of the reports. My advisory role to the Cabinet Office was as one of these external academic challengers, who would read draft reports, attend meetings and challenge the civil servants. It was a completely unpaid position obviously, but it was for quite a defined period of time for a defined project.

Q37 Lady Hermon: Is that work about the balance of responsibilities and capabilities within the EU going to feed in, and should it, to our negotiations and thinking going on within Government at the present time?

Professor Dougan: There are two points to make about that. First of all, the purpose of this balance of competences review, when it was carried out, was to try to present a very strong and comprehensive evidence base that captured the nature of the relationship between the EU and the UK. The Government at the time had suggested that, once the review was completed—and it was an enormous exercise; the reports take up half a library shelf—they would produce a summary for the public that captured the key ideas that came out of the review.

That summary was never produced and many of the people who were involved in the review read it or appreciated its rigour and its credibility and so on were very frustrated that it played no real role in the referendum debate and the referendum campaign, because that would have been its natural primary purpose. That moment has passed.

It still has a value today, and not just an historical record. Its main value is that it provides a very useful reference point that captures, in an accessible way, the range of relationships between the UK and the EU, the nature of those relationships and the key issues that need to be addressed. For almost anybody who is interested in any aspect of the forthcoming negotiations, what they might involve, what the key problems might be and what the challenges might be, reading the relevant report from the balance of competence review will give you a very useful oversight into the main issues. Although the review itself was very unfairly neglected for the primary purpose that it could have been used, it definitely has a secondary value now.

Q38 Lady Hermon: Thank you very much indeed for that. Professor Shirlow, in response to questions from my colleague, Mr Robinson, had the opportunity to talk about dissident republicans and about the peace process. Likewise, Professor Dougan, can I just quote to you something that appeared in your transcript? This is your comment about the EU referendum. I just think, since this is a particular inquiry that we are looking at, it is very relevant that you are given the opportunity today to put on the record what you think now. You said, in connection with Northern Ireland, "Since the lack, the effect of absence of the border in practice between Northern Ireland and Southern Ireland is a key part of the peace process in that part of the country." Would you like to



comment post Brexit on whether you think it will have any impact at all on the peace process?

Professor Dougan: It is capable of doing, for the reasons that Peter has described. My perspective on this, which is a perspective of a constitutional lawyer—my main connection with Northern Ireland is that I was born there, I grew up there, my family is there and I go there very regularly—is that there are a couple of issues. The main issue is about the ability to move freely around the island. The ability, if you want to, to treat the territory almost as a single unit has been, in my view, quite important in securing nationalist support for the peace process.

Anything that destabilises the peace process is a very obvious evil that should be avoided at all costs. A hard border that would see the reintroduction of persons checks, for example, that would see significant disruption around the border, and that would create serious economic and social problems for border communities has the potential, for the reasons that Peter talked about from the more academic perspective, in my view, to undermine support for the peace process and to destabilise Northern Ireland politically to some degree.

I will use one quick example. If you take the issue of immigration policy in the UK in the future, we would all hope that the UK is not going to change the treatment of Irish nationals. Whatever else it does with EU nationals, we hope that it does not change the treatment of Irish nationals under UK immigration law, as it stands at the minute, which is effectively to treat Irish nationals as virtually assimilated to UK nationals. If the future UK immigration policy were to change and Irish nationals were to be lumped together with ordinary EU nationals and subject to a much more restrictive immigration regime, that poses real problems for Northern Ireland, because the Good Friday agreement says that you can self-identify as British, as Irish, as a dual citizen, and that would be respected, come what may.

If you have a differential immigration regime for residency, for employment, for social security, for health, where Irish nationals are treated differently from UK nationals, you are basically forcing a significant section of the population of Northern Ireland to change their self-identification. It is very difficult to see how those differences could be enforced unless you do.

Q39 **Chair:** Professor, you do realise that hypotheticals like that, which frankly are for the birds, really create a situation where you were scaremongering then, and it could be perceived that you are scaremongering now. That is where we really have to be cautious.

Dr McDonnell: I think that is outrageous, Chair. I think that is outrageous.

Chair: It is not outrageous.

Dr McDonnell: I want to hear what he has to say.



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Chair: I am quite happy. Everyone is being given a chance to hear what they have to say.

Dr McDonnell: That is an outrageous statement.

Chair: It can be perceived, and I think I phrased it very calmly.

Dr McDonnell: It is a very serious issue for many of us.

Chair: I will ask you to be calm as well.

Dr McDonnell: I will ask you be calm as well.

Q40 **Chair:** I am incredibly calm. There is a perception that all of this can be seen as scaremongering. What we have to do as politicians, and indeed what the academic community has to do, is to present these arguments in a reasoned way and not in a scaremongering way. Do you agree that that can be an issue when these things are put up? Frankly the idea that free movement within Ireland and Northern Ireland is going to change is not.

Professor Dougan: I think I had put the issues in a reasoned and evidence-based way, because that is my job. I think that it is the job of an academic commentator, when they set out what the possibilities are, to acknowledge the uncertainty. To be fair, several months ago, who would have thought that we would have voted to leave the EU? Hypotheticals can come true. It is the job of people like me to analyse the evidence, to set out the possibilities, to weigh the advantages and disadvantages, and to communicate that to political actors, so that you can make the choices that you need to make.

Chair: The danger is moving from hypotheticals to scaremongering.

Professor Dougan: I am sorry, but it is not scaremongering. I am doing my job properly by setting out what the evidence is, what the possibilities are and inviting the political actors responsible to make their political choices about it. I would not be doing my job properly if I did not provide you with that evidence and information. That is not scaremongering; I think that is doing my job.

Q41 **Gavin Robinson:** Professor Dougan, we do not need to delve into hypotheticals. On a weekly basis, Irish immigration officials erect checkpoints on the border, stop buses, board buses and check ID; they look for people they feel might have breached immigration rules. The checkpoints create traffic disruption. Not once has somebody suggested that those current checkpoints are injurious to the peace process, and not once has anyone suggested that those checkpoints have forced somebody to change their self-identity. Rather than deal with hypotheticals, would you accept that that intrusive action around the border is accepted as part of the immigration norm? While you may be able to prophesise that some similar structures in the future would cause a change in self-determination, it never has—it never has.



Professor Dougan: What I would say is to refer you back to Peter's evidence, which suggested a correlation between the openness of the border and, at least in the nationalist community, support for the peace process.

Gavin Robinson: With no causal link.

Professor Dougan: I am not suggesting anything else. In some respects, the main issues for Northern Ireland—and our evidence has really tried to suggest this—are not about the visible borders. We have said that several times. It is not about the visible borders; it is about the other potential impacts. For example, this Committee's report from May 2016 said very clearly that Northern Ireland, as an agricultural sector, is more heavily dependent on EU funding than other parts of the UK. That is a key issue for the economic prosperity of Northern Ireland. Similarly, Northern Ireland is in many respects more dependent on public sector employment than many other parts of the UK. If the economy takes a hit, public sector employment might take a hit as well.

The key point here is that anything that destabilises the stability and the prosperity of Northern Ireland is undesirable, because economic and social destabilisation produces political impacts. That is not scaremongering; that is a very obvious proposition.

Q42 **Gavin Robinson:** I never used the phrase, Professor Dougan, but you do accept that, rather than hypothesise the outcome, when we have the experience, we can draw on the evidence that is already there. The infrastructure around immigration has not been injurious to the peace process. Would you accept that?

Professor Dougan: Our job is to hypothesise. That is what we do as constitutional lawyers.

Gavin Robinson: In doing that, you should draw upon fact and draw upon evidence and draw upon the examples that we know today.

Professor Dougan: I can give you the constitutional context and you can relate that to the facts that you are aware of. I cannot comment on empirical statements that I am not aware of myself. I am providing you with the tools to do that.

Gavin Robinson: You have done that all morning.

Professor Dougan: I am providing you with the tools to do that.

Professor Shirlow: Can I just make one very quickly point here? The whole thing about irrationality in our political system in Northern Ireland I think sometimes is a bit over-egged. Neither one of us is saying this is injurious to the peace process; what we are saying is there was a settlement, which may be altered by the onset of Brexit. The point is that what we know about our society is that there are people in it who are sectarian entrepreneurs or conflict entrepreneurs.



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If we look at the evidence that we have at the moment, if we look at Sinn Féin, the Connolly clubs, etc., they are clearly using this as an opportunity to rally. They are small groups, and they are very unpopular groups, but there is also other evidence in some areas that people are moving to these groups. All that was really being said, out of all of this, was that there is a section of our society that is rubbing its hands at Brexit for its own ends, and they are entrepreneurs who will try to use that propaganda to influence young minds.

Chair: I am mindful that you have been on your feet—well not your feet; only Alasdair has been on his feet—for almost two hours, but I want to draw it quite quickly to an end. Lady Hermon, you have the final question.

Q43 **Lady Hermon:** Thank you. That is very kind of you, Chairman. I did hear the word “quickly”. This is a very important inquiry. The evidence we have received has been extremely useful and very interesting indeed this morning. I was particularly struck, Professor Dougan, by your categorical reply about the common travel area. I just want to quote two lines from a book that was published earlier this year, 2016, by David Kauders, “Understanding Brexit Options”. This is page 59 and these are his words, not mine: “The EU law that permits both countries,” meaning the Republic of Ireland and the UK, “to operate a common travel area, protocol 20 of the Treaty on the Functioning of the European Union,” which you refer to, “will no longer apply, as the UK will no longer be a party to it. It is inconceivable that the EU will allow a member state, Ireland, to create a hole in the EU border”—I repeat, to create a hole in the EU border—“by permitting a new arrangement with a non-EU country outside the customs union, since this would create a route to bypass customs controls.” In light of that, could you just clarify or reflect on your very, very clear evidence to us earlier and the conflicting opinion of Mr Kauders.

Professor Dougan: I have no idea who Mr Kauders is. I have not read his book. Based purely on what you said, there are a series of confusions and misassumptions in that statement. For example, the quotation clearly mixes up the persons border, which is the common travel area, with the customs border, which is entirely separate and completely distinct. The CTA is not a new arrangement; it is a very old arrangement. Ireland does not participate in the EU border policies relating to the external frontier, so how Ireland’s current non-participation can create a hole when it does not actually participate and is not likely to in the future—I would just take issue with almost every statement that you read out from that quotation. Sorry.

Lady Hermon: Please do not apologise. You are the academic. I quoted it to you because I wanted your response. You were so clear earlier and I thought, “Well, this is documented here. I need to put it to you,” and you replied. I am very appreciative.

Chair: On that note of agreement, thank you very much for your



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evidence. You have had a long sit there and we do appreciate it.