



Select Committee on the European Union

Corrected oral evidence: Brexit: UK-Irish relations—follow-up

Tuesday 30 January 2018

4 pm

Watch the meeting

Members present: Lord Jay of Ewelme (The Chairman); Baroness Armstrong of Hill Top; Baroness Brown of Cambridge; Earl of Kinnoull; Lord Selkirk of Douglas; Baroness Suttie; Lord Whitty; Baroness Wilcox.

Evidence Session No. 6

Heard in Public

Questions 43 - 51

Witnesses

I: Dr Mary C Murphy, Lecturer in Politics, Department of Government and Politics, University College Cork; Professor John Doyle, Director of the Institute for International Conflict Resolution and Reconstruction, Dublin City University; Professor Gavin Barrett, Jean Monnet Professor of European Constitutional and Economic Law, University College Dublin.

Examination of witnesses

Dr Mary C Murphy, Professor John Doyle and Professor Gavin Barrett.

Q43 The Chairman: Thank you very much for coming and being with us. We have had a busy day. The first thing the Lords EU Committee did after the referendum was write a report on the implications of Brexit for Ireland, because we have felt all along, I think, that it was an aspect of the referendum that had been neglected. Whether it still is is another matter. We wanted to come back to Dublin. We are going to Belfast tonight for talks tomorrow, and to Derry tomorrow night, and we are spending the following day going to the various hospitals and so on on the two sides of the border to get some first-hand indication of what this might mean. We have had a number of discussions today and we are very grateful to you all for coming and talking to us.

Can you start by telling us what you see as the attitudes here towards Brexit? We have heard from a number of people what their attitudes are, but it would be good to get a view, slightly standing back, of how you see attitudes to Brexit in Ireland.

Professor Gavin Barrett: I wanted to make sure that I was not confusing my own views with those of the population, so I had a quick look before I came in here at opinion poll results for Ireland.

The Chairman: Do we believe them? We are not too keen on opinion polls.

Professor Gavin Barrett: This is true; they can sometimes get things wrong, as we all know. I noted that a May 2017 Red C poll indicated that 88% of people in Ireland felt that Ireland should remain part of the EU, and 82% of them felt that the UK should have stayed in the EU. A December 2017 poll indicated over two-thirds support for the Government's line in the phase 1 negotiations.

My question would be whether these views have evolved. I think the Irish attitude has remained fairly constant in its conviction that Brexit is a bad idea. Given the economic damage that Brexit is likely to inflict, it is perhaps unsurprising that occasionally views had been raised suggesting what is called "Irexit", by the odd journalist or ex-diplomat, but I have to say that such voices are pretty minoritaire in this country.

As the negative economic effects of Brexit manifest themselves more clearly, perhaps that situation will change, but for the time being our position is as close to unanimous here as it could be. There is increased understanding of the economic risks. A lot of organisations, some of which I know you have met today, are organising conferences in relation to Brexit. All the political parties continue to be opposed to Brexit, including the otherwise rather Eurosceptic Sinn Féin. I think the mood here in this country is rather one of Irish people battenning down the hatches and not expecting too much positive to emerge from the process of Brexit. I do not know if my colleagues agree.

The Chairman: Nothing too much positive to emerge. Is anything positive emerging?

Professor John Doyle: No, I think it is pretty much doom and gloom.

The Chairman: I just wanted to get behind the false optimism of your colleague.

Professor John Doyle: The European Commission would be delighted that, in so far as public opinion has shifted, it has become more Europhile. Some opinion polls would show a slight but perceptible upward shift in the number of people with a positive view of the European Union. The percentage who think we should remain is about 88% to 94%, depending on the poll. Given that there are always contrary views in any society, it is hard to see that going much higher. If you ask the more open-ended question, "Do you have a positive, negative or neutral view of the European Union?" there is a decided upward increase; people have a more positive view of the European Union.

I am not sure that is anything the European Union has done in the past two years. It is caught up in people's perceptions that Brexit is a bad thing and that therefore the European Union must be a good thing, and it has shifted their more fundamental view, as expressed in polls, with all their limitations. I think that is genuine. There is no evidence from any source—political discourse, focus groups, marketing companies—that there is any significant body of Irish opinion that thinks this is anything other than a disaster for the British people and for the Irish people.

In Ireland, no matter what the difficulties there, there is no support whatever for following the UK out of the European Union. Rather, there has been a shift over the last six months or so. Six months ago, there was the hope that the UK would have second thoughts on this matter and therefore we would not have to deal with the consequences. Most people in the country probably now accept that it is going to happen and therefore we need to plan for the consequences, rather than hoping that it will not happen.

The Chairman: Is that the view in County Cork, too?

Dr Mary C Murphy: Yes, indeed. There are the opinion polls that my colleagues have mentioned, and there has been one even more recent poll in the last week or so—an *Irish Times* Ipsos MORI poll—which is quite interesting, because not only does it show the trends that Gavin and John have spoken about, but those who were polled were asked a very specific question about an Irish exit, in the context of a hard Brexit. In that context, 78% of those polled said that Ireland would be better off remaining in the European Union, even if there is a hard Brexit. That gives you a sense of how much resilience there is in Ireland and the depth of support that there is for the European project. The trends are interesting, because they cross demographics, geographical areas and political parties. There really is a wholesale cross-spectrum level of

support across the board for continued Irish membership of the European Union.

It is important to remember the context within which Ireland's relationship with the European Union has evolved and developed since 1973. We have had a very different experience of the EU than you have had in the UK. Our starting point for any sort of preference comes from that context. We do not have a strong Eurosceptic press or movement here. There has been a ready appreciation of the benefits that EU membership has brought, not just with the structural funds and the common agricultural policy but our very membership of the single European market. Traditionally, we have had a different type of relationship with the European Union than our friends in the UK have had. That continues to mark our experience of the EU and our very strong preference to remain. Talk of an Irexit is—

The Chairman: I am glad you brought that up at the beginning. To be honest, we hear it from time to time in the House of Commons and House of Lords, and it has always seemed to me to be completely and utterly unrealistic and shows a total misunderstanding of the way in which Irish opinion has evolved. From what you have said, you have rather confirmed that. It is quite useful to hear that when going back and talking to some of the people who are arguing that case in London.

Professor John Doyle: There are one or two personalities—

The Chairman: One or two, or one?

Professor John Doyle: Maybe two. One or two literally rather than a figure of speech.

Professor Gavin Barrett: That is not to say, on the other hand, that it is not possible to get what you might call an anti-integrationist vote. Of course, we have had two referendums in Ireland that have gone against ratifying European treaties, and there is probably still some public resentment about the way in which the economic crisis was handled. I would not want to paint a picture of all sweetness and light.

One also has to bear in mind that the economic consequences of Brexit have not hit home. They will hit home, I would expect, in the food industry and in the farming industry, and they represent a lot of votes. I would be interested to see a couple of years down the line what public opinion is like.

The Chairman: Will that affect the view on whether Ireland should stay or leave? Why would it affect that?

Professor John Doyle: No, I do not think that it will affect that, but it might affect domestic politics in terms of how the Government are handling it. At the moment, the Government are riding a bit of a wave and they are representing a relatively consensual view. Towards the end of the negotiations, inevitably they will get to a point where they will have to choose A or B in lots of different areas, and somebody will not be

happy if they pick A over B. That might disrupt. At the moment it is hard to see any constituency, even opportunistically, see a political advantage in promoting a withdrawal from the European Union. It is so unpopular, why would an entrepreneur looking for votes go down that road when there seems nothing to be gained from it, even if they are only in it opportunistically?

Dr Mary C Murphy: The tenor of our relationship with the European Union might change over time once Britain departs. The future of Europe debate is beginning to crystallise within the European Union, and Ireland is beginning to grapple with some very challenging issues, particularly in relation to taxation and the future of the common foreign and security policy. It is conceivable that there will be a body of opinion within the Irish electorate, and within the political system more broadly, that may develop differing views on Ireland's future within the European Union, but I suspect that will not be to the point where it will motivate any strong movement in favour of an Irish exit.

Baroness Wilcox: The common agricultural policy will have to be looked at. It might have people thinking here, because a lot depends upon it. Without a shadow of a doubt, the European Union will take the opportunity to have a good look at itself to see how it can steady it down. Some of the countries that have come in have been so expensive for us to pay for. If we are not there, they will be looking for somebody else to pay for that, and there will be objections to very poor countries coming in because they will not want to take too much money away from other countries. The common agricultural policy really will have Ireland thinking; not about leaving the EU, but it will get more expensive.

Professor Gavin Barrett: Some of the benefits of the common agricultural policy may be lessened. Britain is certainly a very significant net contributor to the EU budget, and that, of course, will have an impact on the benefits that come from the common agricultural policy. No doubt you have heard that for many farmers the common agricultural policy is the difference between simply recovering their costs and making an income. I expect that even a reduced common agricultural policy would meet that particular criterion and it will incentivise continued membership of the European Union and support for that from the community.

Baroness Wilcox: I hope so.

Q44 **Baroness Suttie:** Could we turn to the joint report in December? What is your reaction to it, and what are the practical implications of that agreement?

Dr Mary C Murphy: The December joint report, certainly here, was greeted as a positive development, at least in the initial days following its publication. There has been greater ambiguity in the period since then as to what precisely is in the report, and certainly some talk of it constituting a fudge of sorts.

There are still an awful lot of holes and gaps and a certain lack of clarity in relation to the future of any potential border on the island of Ireland. So its legal status is also becoming quite important. The extent to which what is in this particular report can be translated into a legally binding document is preoccupying the Irish Government. Some of what is in the report shows a certain incompatibility, I would suggest, in relation to the ambition for the UK to remain outside the customs union and the single European market, and at the same time for there not to be a hard border on the island of Ireland. That incompatibility is quite challenging and problematic. There is a considerable amount of work to be done to iron out some of those particular difficulties.

Professor John Doyle: At face value, people saw that it was politically important but legally kicked down the road in the sense that ultimately there is nothing to stop any of the parties to the agreement walking away between now and 2019, other than the political ramifications of doing so. It is hard to tell at this distance what the public mood might be if the Commission, the Irish Government or the UK Government decided, "We can't quite hold up to exactly what we said in December 2017, so we are going to do this, which is close but not exactly what we said". There is a sense that in some ways the detail remains on the table, although the statement was helpful in drawing attention to the importance, certainly from Ireland's perspective, of the border remaining a place that does not have a physical infrastructure on it.

At face value, it is hard to think of a customs union that does not have some sort of physical checks on its borders. It is just a question of precedent in other custom unions. If the UK decides to leave the customs union as well as the single market, and retains a strong desire to control migration with physical checks as well as visa and social security changes, that will certainly create pressure.

There are provisions in the WTO agreement that allow for what are called "enclaves". This will probably be the largest enclave that the WTO thinks appropriate. With the political will around the peace process and a tiny private sector in Northern Ireland, even the most worried French or German trade unionist is not worried about the industrial capacity sitting in Northern Ireland. In some ways, there will be a political willingness to say that even if the Northern Ireland private sector grew by 40%, it would still be irrelevant, as would worries about the UK changing environmental standards or social programmes that would reduce the costs of labour in the UK compared to the European Union.

Even though at face value it might seem that there is some incompatibility between regulatory alignment and non-membership, given the relatively tiny size of Northern Ireland, it is not without hope that a form of words could be found that distinguishes between the sovereign recognition of state boundaries as expressed in the Good Friday agreement and the practical question of where in particular you might search a lorry. There is a lot of focus on that in the Irish trade groups and there might be some wriggle room in there to allow us to resolve that

issue. People would see it as having been pushed down the road rather than finished last December for sure. It is helpful, but it is not the end of the road.

Professor Gavin Barrett: I would describe myself as having been pleasantly surprised by the degree of support for the Irish position in the negotiations, and pleasantly surprised that the UK Government were willing to sign up to Article 49.

I am perhaps concerned by the Article 50 commitment. Echoing what my colleagues have said, the subsequent analysis of it in Britain was extremely interesting. David Davis's assertion later on that what was agreed was meant to apply to the UK as a whole did not, to me, represent the understanding of those involved in the negotiations, if I can put it that way. There is something of a feeling that the wider the agreement's geographical scope, the less substance it is likely to have, because the UK Government probably would not accept a soft Brexit for the sake of Ireland.

There is also the issue of what alignment actually means.

The Chairman: Indeed, we have been asking that ourselves.

Professor Gavin Barrett: There is quite a divergence, which you have probably encountered today between the Irish understanding of what that means and what it is understood to mean in the United Kingdom. The Irish view—and that of the Commission, in fairness—is that the rules of the customs union and the single European market are engaged like that, whereas the United Kingdom Government's view, which I believe you heard yesterday, if I am not mistaken, from David Davis, was that alignment refers to only a limited number of areas and it is limited to outcomes. That would not be the Irish understanding of it. My understanding is that the Commissioner listening to the various elements of the acquis in a comprehensive exercise indicated that it is intended to put that into the agreement. I guess we will have to wait and see what that ultimately comes to mean.

Baroness Brown of Cambridge: Can you think of any areas that might be able to be outside? I know it might be a question that we should be asking the UK.

Professor Gavin Barrett: The Irish position is that the difference between "no regulatory divergence" and "regulatory alignment" was not significant. Effectively, anything in the customs union and the single market was taken in by the agreement and was meant to be covered by it. In other words, very little would fall outside. Anything of commercial significance, in other words, would fit within it.

The Earl of Kinnoull: Shall I just read it out? "In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South co-operation, the all-island economy and the

protection of the 1998 agreement". Those words imply that it is not everything and is only in respect of those limited areas.

Professor Gavin Barrett: I think the words "all-island economy" are taken to refer to the single market and to the customs union. That is certainly how it was explained by the Government here in the wake of it being agreed.

Professor John Doyle: Both Irish officials and European officials believe that it is any regulation that impacts on goods entering the customs union from an area that will be outside the customs union, which is pretty much everything.

The Earl of Kinnoull: So trading in swaps, which is not done here, is outside, is it?

Professor John Doyle: The starting point will be that almost nothing is outside that agreement, because almost anything could impact on the functioning of the single market if the UK decides to leave the customs union as well. That is certainly the current understanding in Ireland, and it is my understanding of the current understanding.

Professor Gavin Barrett: It is also important to emphasise that it says, "now or in the future", so it is not confined to existing trade relationships.

Q45 **Baroness Suttie:** Given the rather obvious lack of legal certainty, do you think the definition of Brexit will have to be resolved in the next phase, phase 2—

Professor Gavin Barrett: Yes.

Baroness Suttie: —or do you think that will be seen as re-visiting something that is already agreed?

Professor Gavin Barrett: I think that legal certainty will be sought. Obviously an agreement will have to be reached, probably by the end of the year, in relation to this.

In terms of what is envisaged, obviously we are talking about the Article 50 agreement and probably a political declaration in relation to the future relationship of the United Kingdom with the European Union. Before that, in March, we are looking at an agreement of sufficient progress being made before things proceed in that regard. I think that sufficient progress from an Irish perspective will be tied to seeing sufficient progress in relation to commitments on this that can be tied down. I do not know if that answers your question.

Baroness Suttie: It is my observation from today that there are slightly different interpretations of this agreement, which was decided in December. If that is to be seen as an area that has been decided so that we can move on, I have to say that we are not yet at that stage.

Professor Gavin Barrett: The December agreement represented sufficient progress in relation to these issues, but there is an element of

sticking plaster here. I sometimes describe it as an impossible trilemma in that commitments have been made in three different directions. There is a commitment to Ireland in relation to there being no hard border, a commitment to the Democratic Unionist Party in relation to the trading relationship between Northern Ireland and the British mainland, and commitments that are not found in the joint report but that date from an earlier stage of Theresa May's interpretation of what Brexit meant, at the Conservative Party conference and then in the Lancaster House speech, that Britain would leave the customs union and the single market.

It may be possible to reconcile those three commitments technically, but not substantively. There are issues that need to be decided there, and they will need to be decided over the course of the negotiations.

Lord Whitty: Presumably the phrasing here will have to be translated into the withdrawal treaty in some form, so it has to be tighter than it is now.

Professor Gavin Barrett: Exactly, yes.

The Chairman: Which will be very difficult to reach agreement on, precisely because it is fudged because you are appealing to three different audiences.

Professor Gavin Barrett: It will have to give somewhere. I cannot predict at this stage where it is going to give. As I said, to me it is an impossible trilemma; you cannot keep substantively all three commitments.

Baroness Suttie: And yet the timetable for a draft withdrawal treaty is relatively tight, we understand: next month.

Professor Gavin Barrett: It is extraordinarily tight, yes.

Dr Mary C Murphy: There is also an important process issue here. We talk about a joint report, which was obviously agreed between two parties, the European authorities and the British Government. Northern Ireland's input into that report—substantively, a lot of it is connected to Northern Ireland's future—was filtered through the Democratic Unionist Party in a rather ad hoc, last-minute manner.

If there is a possibility of Northern Ireland collectively reaching a position on how it sees its future in any future European Union-UK relationship, that is a potential means of overcoming some of the very serious issues that the UK Government are facing. I appreciate it is challenging, but if there is a means of allowing Northern Ireland to contribute more effectively by facilitating a joint position agreed between the two communities and the political parties in Northern Ireland, that becomes a means for the UK Government to facilitate, and for the European Union equally, to facilitate an agreement that is more accommodating and more acceptable. It would also be a position that is not imposed on Northern Ireland. Process issues are important considerations, too, in trying to reach some sort of settlement or agreement.

Q46 Lord Selkirk of Douglas: May I ask about the United Kingdom Government's 2017 position paper on Northern Ireland and Ireland? In particular, do the proposals on the movement of goods provide a coherent way forward to solving the issues arising from Brexit for the UK-Irish border? What is your view on that?

May I also mention the whole issue of technology-based solutions which the paper envisaged would make it easier to comply with customs procedures, accompanied by waivers from security and safety declarations, a cross-border trade exemption benefiting primarily smaller local traders, streamlined processes for other trusted traders, and the tracking of imports to the UK?

How politically and logistically feasible are those proposals? We are aware of the opposition to technology-based solutions, because we have already heard about it from quite a lot of sources.

Professor John Doyle: I know of no credible computer scientist who thinks this is technologically possible. On your visit to Northern Ireland, if you are looking at healthcare and cross-border ambulance services and such, you will note that the borders form 499 kilometres and there are about 320 crossing points, which is more crossing points than there are between Finland and Bulgaria, on the EU's eastern border. Even if the EU and the UK were willing to jointly fund the multimillion euro research project and infrastructure it would take to build the Dublin-Belfast road, are they going to do it on a back road between two villages on the Cavan and Fermanagh border? It seems extraordinarily unlikely to be feasible. I just do not see how that could overcome expressed concerns about open borders for people, goods and diesel smuggling, none of which will be declared in advance.

At the height of the conflict, 33,000 members of the Armed Forces were deployed in Northern Ireland. If you talk to veterans, I do not think you will find a single officer who thought the border was sealed for one hour during that period. All the evidence is that it was not. There is no possibility of 33,000 customs officers being deployed along the border—not even 3,000, I suspect. Without being facetious, this is simply a pipe dream. There is no solution that could meet the UK's Government, the EU Commission or the Irish Government's desires for efficient control of goods, services and people using customs. It is also inevitable that any array, if it was invented and deployed, would be fairly rapidly destroyed, leading to security apparatus following very quickly after the installation of cameras.

Dr Mary C Murphy: This question also underlines a certain amount of misunderstanding of the problem. Even if there was a logistical solution of sorts, this is fundamentally a political problem. This is about issues of identity and the peace process. This is about the coming together, or at least the possibility of the two parts of the island living their lives according to the terms of the Belfast agreement. Any sort of border, logistical or otherwise, is still a border.

We must bear in mind that it is not that long ago when the issue of the border sparked division that led to conflict. Any return to that kind of arrangement, whatever way you choose to frame it or however it is designed, is still a return to a period when there were very serious tensions between two communities, with fatal outcomes. It reflects a certain misunderstanding of the problem. The problem is first and foremost a political problem.

Professor John Doyle: The groups that are currently relatively irrelevant in the politics of Northern Ireland today are those that opposed the peace process and would have sought to use armed force to undermine it. You do not need to be a military mastermind to blow up a customs post or a camera array in the middle of the night, and suddenly they appear to have a relevance that they do not have today. They would certainly throw in the face of those who went down the road of the peace process that they sold out their community, et cetera. The symbolic damage that even minor security apparatus along the border and its potential to undermine what is still a relatively sensitive peace process can hardly be overstated.

Professor Gavin Barrett: On the technical point, the best run customs frontier in the world seems to be that between Norway and Sweden, and even there delays and physical inspections have not been done away with. There are far more unauthorised crossings, as my colleagues have already referred to. One also has to bear in mind that you are talking not just about customs inspections but phytosanitary inspections, veterinary inspections, environmental health and food safety. There is a lot more to this than just customs. There are things like customs import procedures. The level of difficulty that is capable of being created by this is quite considerable. Technical solutions can help with the practicalities, but they are not going to do away with the need for physical inspections.

Apart from looking at the broader question, there is the political question as well. Obviously, if there is agreement to staying in the customs union or internal market, or to Northern Ireland staying in it, or in an equivalent relationship, the issue does not arise. If that is not the case, you are left with several questions. The first is what frontier arrangements the UK Government is prepared to tolerate. Obviously, that is reflected in the August 2017 paper. There is no enthusiasm for a hard border. It is more a question of whether that paper deals with the reality of what is needed. This also has to take account of what the European Union and the Irish Government are going to demand in relation to it. The European Union requires a common external customs frontier in this regard. That is part of what a customs union is. That reality has to be acknowledged. The European Union will require its customs frontier to be properly policed, and I do not think that is capable of being done by simply technological means.

There is also the political aspect of what the Irish Government want here. As came through in the phase 1 negotiations, they are politically adamantly opposed to the notion of a hard border. I suppose we have to

see how hard that opposition is going to be when the negotiations come up. It proved to be quite strong in the phase 1 negotiations and to be supported by the other member states. Whether that same level of support will emerge in the phase 2 negotiations or not, I do not know, but that is a political issue that also has to be borne in mind, apart from the technical questions.

Q47 The Earl of Kinnoull: Continuing what you have just been saying, I go back to paragraph 49 of the joint report, where we learned of the UK's intention to "develop specific solutions to address the unique circumstances of the island of Ireland". Could you give us any guidance—I am thinking not so much of the technical stuff but other guidance—as to where you think the inspiration for such specific solutions might be found?

Professor Gavin Barrett: My answer to this will be quite simple. In terms of ensuring that there is no hard border with Northern Ireland, frankly, I have no solutions. Regulatory alignment would be necessary. I do not know what they meant, quite frankly. I think the damage can be mitigated. If it is not possible, for example, to stay in the single European market and the customs union, could you stay in one of them? I know that has been put forward by one of the political parties in the United Kingdom.

In terms of reducing the economic damage of Brexit, there is the possibility of Northern Ireland and the border counties remaining as a special economic zone. I know that has been suggested by the opposition party here, but whether that will be acceptable to the other 26 member states I do not know. It might be for the United Kingdom and Ireland, but I am not sure that it would be elsewhere.

In terms of reducing the economic damage of Brexit, there would need to be continued funding for Northern Ireland at quite a high level from both Europe and the United Kingdom and, very importantly, continued funding of the agriculture sectors from the United Kingdom specifically in Northern Ireland, and at European level, so as to reduce the damaging effects of the cuts to the common agricultural policy. There needs to be continued co-operation in the justice and home affairs area. All these things will mitigate the situation, but they are not solutions to the problems that are faced.

The Earl of Kinnoull: Just before your colleagues answer the same question, one of the things that we were considering to a very low extent earlier on was the local border traffic regulation 2006. This is a European Union regulation that applies only to Schengen countries, but it deals with a lot of the eastern border of the EU, where there is a lot of necessity to go across countries. For example, we were considering Finland and Russia where a large chunk of Finland was taken away by Russia, so there is requirement for a border there. Is there any crumb in that, if you even knew what the regulation dealt with?

Professor Gavin Barrett: I have tended not to look too closely at the Schengen regulations, because the common travel area is a significant regime and is more likely to gain agreement between the United Kingdom and Ireland, facilitated by the European Union. I would expect that aspect of things to be sorted out.

Funnily enough, the problems will not be so much in the area of personal border controls but in the economic area and, more specifically, by the relationship to the customs union in relation to the European market. I do not see the kind of issues that are dealt with by the Schengen agreement as giving rise to serious problems. Of course, they are issues that will need to be sorted out, but there is a willingness on the parts of the United Kingdom, Ireland and the European Union to see that aspect of things. That is very striking in the negotiations. I do not foresee those as causing problems, and I think they will get sorted out. My main concern about the border controls relates to the single market aspect, in other words, free movement of goods issues.

Professor John Doyle: I would be a little more optimistic than Gavin; not lot, but a little. At face value, the easiest solution would be for the UK to choose to remain within the customs union. That is an easier sell politically than the single market. That is unlikely, but you are far better judges of that than we are on this side of the table. I assume that is unlikely, even if it is the easier solution this side of the table.

Therefore, you are then looking around for precedent, and there are not too many. The eastern border is not a precedent, because the queues are even longer than at the Canadian border in most cases. I suspect that Norway has implemented more EU directives than any member state of the European Union, and probably implemented them more fairly and thoroughly. It has free movement of people, which obviously is a significant issue in the UK debate, and it still has infrastructure at the border. It is not cumbersome but none the less still there.

In even less promising circumstances than the Irish-UK agreement, you would have thought, is the island of Cyprus. It is not that different from Northern Ireland in scale, although it is vastly different from the UK as a whole. It has been possible to reach an agreement as part of the accession agreement for goods produced in Northern Cyprus and the Turkish Republic to enter the European Union as EU goods, even though, in de facto terms, the Turkish Republic is not part of the European Union.

The Greek Cypriots and Greece as the member state have acceded to this recommendation. It is the chamber of commerce on the Northern Cypriot side that holds the documentation, so the Greek Cypriots do not have to accept any documentation, due to issues about who provides the documentation. It was an issue with huge sensitivities, a much more physically sealed border and appalling intergovernmental relations between the Greek Cypriots, Greece and Turkey. None the less, given that nobody was really threatened by the scale of commercial activity going on in Northern Cyprus, a pragmatic deal was struck which people could live with the symbolism of.

It will require an unpicking of sovereignty and physical checks, but it is not beyond the gifts of our diplomats to come up with something on that space. It will be very challenging, but not so challenging that it is impossible. It will certainly require some movement from where people have publically declared themselves to be today, but perhaps not so far that they could not live with that in the context of reaching a deal on everything else on the table.

Professor Gavin Barrett: I want to come back on one point and emphasise what Professor Doyle has said. It is not just a question of mitigating the difficulty with the border. We have had situations in Europe before where European integration has led to the introduction of borders where there have been none before. For instance, the accession of Slovenia to the European Union led to the introduction of border controls with the other former Yugoslav states, so it is not as if this has not happened in Europe before.

The problem is the specific political context in Ireland whereby the introduction of any border controls is problematic, the problem being exactly for the reason that John identified, which is that you create a target. Border controls have to be protected by police and soldiers, and a very small number of people with weapons can create difficulties in a very unstable political situation. I recognise that it is possible to mitigate the difficulties, but the particular problem with the Northern Ireland frontier is that any border controls at all are a problem.

Dr Mary C Murphy: I might be slightly more optimistic. When we talk about the unique circumstances here, we are in effect referencing Northern Ireland in that context and how we manage that particular aspect of the Brexit process. In the absence of devolved institutions for over a year now, it is very difficult to pinpoint any sort of Northern Ireland shared position. Having said that, I think there are some important contextual starting points for understanding how Northern Ireland might be able to achieve some sort of creativity in playing into or contributing to this process. There is wholesale understanding among parties in Northern Ireland that the UK is leaving the European Union. There is a resignation on the part of some parties and an acceptance on the part of others that the UK is leaving. All the political parties have a shared position on this issue.

We saw some common perspectives across nationalism and unionism during the period before the suspension of the institutions, particularly in the form of the joint letter written by the First Minister and the Deputy First Minister. There was an agreement in that letter on the outcome that the Brexit process should produce. There was no agreement on the process of how that outcome was to be achieved. Nevertheless, there is agreement on an outcome that is acceptable to all.

The European Union has a strong record of producing tailored positions in relation to accommodating Northern Ireland interests, during the period of the conflict and even after that. That has included financial assistance and pragmatic assistance. We must also remember the EU referendum

result in Northern Ireland, which of course differed from the rest of the United Kingdom. If you put all those things together, there is some sense in which Northern Ireland is distinct, but there is also a sense that Northern Ireland may be capable perhaps of producing a shared perspective on Brexit which crosses the party divide. If we can find some means or technique of allowing the political parties to reach some sort of settlement or accommodation between themselves, the inherent power of that position is very compelling, not just for the UK and Ireland but for the European Union itself, which has supported Northern Ireland on a whole array of issues down through the years.

It is also important to note that in Northern Ireland Brexit has mobilised civil society, perhaps in ways we have not seen before. I accept 100% that it is very difficult to capture that, but let us bear in mind that Northern Ireland is capable of that kind of creativity. This year will mark the 20th anniversary of the Belfast agreement. There have been moments in Northern Ireland's recent political history when it has been capable of reaching compromise and accommodation, which has produced very important outcomes. Brexit may be another important moment in Northern Ireland's post-conflict journey and it may be a moment when it can once again capture some of that sentiment.

Q48 **Baroness Wilcox:** My question follows straight on from that. You spoke so beautifully there that you may be able to go straight into this one. What is your reaction to the commitment in paragraph 50 of the joint report that the links between Northern Ireland and the rest of the UK will not be undermined by Brexit?

Dr Mary C Murphy: This is quite interesting; I have it in front of me. That is a very important and very welcome reassurance for unionism in particular, and that must be accepted. I am no legal expert on this, but I think the wording is quite interesting in Article 50, because it says that, "The United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom unless, consistent with the 1998 agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland".

On the basis of my reading—and I defer to my colleagues on this—that would suggest that if the Northern Ireland Executive and Assembly can reach a point where they are open to distinctive arrangements, that could be accommodated. But, again, I defer to my colleagues, who may not share that interpretation.

Professor John Doyle: I have not heard any nationalist voices who have difficulty with this phrase. I think people saw it as a reassurance for unionists. I did not see any public discourse reacting to it in a negative way. I think there was a general acceptance that people had no difficulty with this phraseology. It would give the UK Government some flexibility, if the Executive and the Assembly could function again, perhaps to go beyond what they have publically declared if they were asked to do so by a constituent part of the United Kingdom in a formal request. It might still

cause difficulties, but at least it would give some flexibility to go somewhere it might not otherwise go.

That is not without its challenges, given that the two major parties took different views. If the Executive was re-formed in the morning, which would be good for all sorts of reasons, it might not take us much further on this particular issue because of the almost totally opposite views at two ends of opinion in Northern Ireland. However, it would create some pressure to do so, given that even the most fervent supporters of Brexit know that a clear majority in Northern Ireland voted to remain.

We are probably already at a stage, with the latest figures, that a majority of the population of Northern Ireland hold an EU passport. Very many of them also hold another passport, but a clear majority at this stage hold an EU passport, and that number is increasing week by week. By the end of 2019, a significant majority of the population of Northern Ireland will continue to be citizens of the European Union the following morning, which is unlikely to be true for any other geographically defined area of the United Kingdom. It creates its own dynamic, separate from the institutions of government, and may create a bit of political space, particularly in this context. The last figures I saw had the public sector in Northern Ireland running something close to 78% of the economy. The Swedish Social Democrats never came close to even dreaming of such figures.

The negative side to that is that the private sector, except agriculture, is almost non-existent. Northern Ireland, in its own right, does not represent an economic threat to any EU interests. The scale is sufficiently small that an arrangement that allowed both an open border and for Northern Ireland to fully express its continued membership of the United Kingdom could at one level have French trade unionists with their arms in the air protesting, but in practice it is highly unlikely to do so if it is wrapped up in a broader message.

That is why, although challenging, the positions are not incompatible, and I think they can be resolved in the final agreement.

Professor Gavin Barrett: I would be more pessimistic about it. My reaction to Article 50 was one of confusion and concern. A customs union is made up of two elements: the abolition of customs controls inside the customs union and a common frontier outside the customs union. There has to be a frontier somewhere. I do not know how you can promise simultaneously that the frontier will not be on the Northern Irish border and will not also be down the middle of the Irish Sea. It has to go somewhere. That is my concern in relation to it. It comes back to the point I made about there being an impossible trilemma.

It is possible technically to reconcile some of these commitments with one another. The Article 50 commitment refers to "unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market". Dr Bartels from the University of Cambridge, who you might remember spoke to you some time ago, is not the only one I have

heard suggest that the guarantee could be made one way, so you would have a blue channel for Northern Irish exports to Britain and customs controls for exports from the British mainland to Northern Ireland. That might be one way of doing it.

On the other hand, unionists would have grave difficulty with a solution like that, even if it is reconcilable with Article 50, and I do not just mean Northern Ireland unionists. Economic operators would also have substantive difficulty, because there is more commerce between Northern Ireland and the British mainland than there is between the Republic and Northern Ireland. The commitment to leave the customs union and the single European market might nominally be met by creating new such arrangements—by which I mean a specific EU-UK customs area, and an EU-UK single market: in other words the substance of the present arrangements but under a new title—but I am talking about the political commitment. Those who support leaving the customs union and the single market would not be happy with that.

We have already discussed the confusion and difficulty in relation to the Article 49 full-alignment commitment, but the Irish Government want Northern Ireland and the United Kingdom as a whole to remain within the customs union and the single market or to enter substantively similar arrangements. Again, there is a substantive difficulty there.

I am afraid my reaction is that it is a sticking plaster over an issue that will need to be resolved in phase 2 of the negotiations.

Q49 **Baroness Brown of Cambridge:** Can we move on the issues concerning the Good Friday agreement? Are you confident that sufficient progress has been made on issues such as citizens' rights, freedom of movement for British and Irish citizens in the common travel area and continued access to cross-border EU funding? Are they all well enough protected after Brexit? If not, what more needs to be done?

Professor John Doyle: There are two layers here. There is the summary assurance in the language that has been used between the two Governments and the European Commission to date. Inevitably, it is wrapped up with the practicalities for the border arrangements. In its political sense, a visa-free travel arrangement, which requires people to queue for three hours to cross the border, would not be regarded as free movement of people, even though it might meet the legal definition of being visa free. In some ways, that vague commitment is wrapped up with whatever arrangements you put in place for border checks and trade. That is the short term.

In terms of the human rights community, I do not hear the May 2019 worry so much from academics and civil society activists, but some of the discourse around Brexit has also raised questions about leaving the European Convention on Human Rights. That, I think, would be seen as a fundamental attack on the Good Friday agreement, given the integrated nature and how that has been expressed. There is almost a phase 2

worry coming into those areas that is more about the convention than the Court of Justice issues.

Professor Gavin Barrett: On continued access to cross-border EU funding, my understanding is that there is a commitment by the Commission to recommend that funding be provided in the next multiannual financial framework, and the UK for its part has committed to continuing to co-fund, from what I understand. Of course, what the MFF negotiations actually lead to is a different matter, because they have to be agreed by all the member states. We have to remember that it is in the context of reduced funding, and I do not know what is going to happen in relation to that issue.

In relation to the common travel area, the need for continuance of that has, I think, been understood by all concerned. I understand that detailed discussions are now going on with the UK outside the European Union as to how various areas might be brought forward. Detailed discussions are needed in relation to areas such as health, social welfare and education. I understand that there are also ongoing discussions between the Department of Justice and the Home Office regarding controlling immigration of third-country nationals and systems for identifying criminals and terrorists. The replacing of the European arrest warrant is also under discussion as a bilateral Irish-UK matter. That is the common travel area.

I would echo what my colleague has had to say in relation to citizens' rights. How well fundamental rights generally will be protected post Brexit remains to be seen. Obviously, the European Charter of Fundamental Rights is not going to be there, and we will have to wait and see, in the light of what Theresa May had to say the other day, about the European Convention on Human Rights and how it will be protected. Human rights will increasingly be handled at the UK-Northern Ireland level rather than at a European level, if I have caught the drift correctly there.

Finally, all I would say about the provisions of the Good Friday agreement is that under that agreement, in common with the internal market, although the political border has remained there is an economically united Ireland at this stage and the nationalist minority in Northern Ireland has been able to take part in the political dispensation. I am very concerned at what we will be left with. Effectively, we have direct rule without the Assembly, so that element has gone. I am also concerned that the exit from the single market and the customs union will lead to the ending of the economic union that we have in the island of Ireland, and the effects of that would concern me very greatly.

Q50 Lord Whitty: You have mostly answered my question, which is about the situation in the north, but can I press you on the Dublin perspective on what is going on in the north? Is there any view from down here that that situation could change in the light of marginal changes in the Sinn Féin leadership or other measures? Do you see any prospect of that situation changing? What would be the reaction if we formally move to direct rule,

which is possible within a matter of weeks?

The Chairman: Baroness Armstrong will ask her question as well, and then we can wrap up the questions.

Q51 **Baroness Armstrong of Hill Top:** Obviously, an important part of the Good Friday agreement is north-south and east-west relationships, and they are under strain at the moment, for all the reasons you have been talking about. How do you see the future?

Dr Mary C Murphy: It is highly regrettable that the institutions have been suspended for so long. It has handicapped Northern Ireland very seriously in that their voices have effectively been silenced. There has been little substantive Northern Irish contribution to the work of the JMC or any of the north-south institutions, or the British Irish Council. That is hugely problematic.

How do you take Northern Ireland concerns into account during the ongoing Brexit negotiations without reinstating the institutions? I wonder if there is some capacity for there to be some sort of Brexit strand to those negotiations wherein the political parties might have the opportunity to meet with each other and discuss Brexit in some way, shape or form. They may not be very substantial negotiations. Nevertheless, they would at least be an outlet, and there might be a means via which the Secretary of State for Northern Ireland could filter the Northern Ireland position into the broader UK position. That is one possibility.

It is also very important that the perspectives of civil society in Northern Ireland are captured, particularly during this vacuum, because when people feel voiceless and feel that they cannot contribute, that creates a very troubling scenario in somewhere like Northern Ireland. It is important that that is not allowed to spiral or develop into something much more sinister.

On the question of the institutions north-south and east-west, I was a speaker at the Killarney economic forum earlier this month. Arlene Foster was also a speaker at the event. She talked about Brexit being an opportunity to reimagine the British Irish Council in particular. I thought that was very interesting, because she was suggesting that Brexit is a moment which might facilitate the deepening of British-Irish relations in ways that we may not have considered just yet. I certainly think that is worth exploring in much more depth, particularly because unionism is very much in favour of it. I think unionism feels more threatened by all the possibilities which Brexit opens up compared with their nationalist colleagues.

For the Republic of Ireland there is now a sense in which we are looking at a post-Brexit era when relationships between these two islands, between the British and Irish Governments, will become more challenging because we simply will not have the forums within which we can meet and communicate. The Irish Government are attuned to plugging that gap. I suppose there would be a very sincere and earnest hope that that

would be matched by a similar sentiment on the part of the British Government. The institutions created by the Belfast agreement are important tools within which those relationships can be protected.

Professor John Doyle: One interesting thing in setting up the power-sharing agreement was that in the 1997-98 negotiations Sinn Féin, as some of you will know, did not want a Northern Ireland Assembly or Executive. They only wanted north-south co-operation, because they thought that using the Irish Government as their interlocutor would give them a little more leverage than being a minority within an Executive. The unionists naturally did not want a north-south dimension. The agreement locks them together. Even legally, there is the question of the status of the institutions now one element of it has been formally and legally dismantled and in practice is not going to meet anyway.

Really quickly after the institutions were set up, it became incredibly popular among the base of every political party, but most notably Sinn Féin, because it had been most sceptical about having institutions at all. It enjoyed being in government and liked having access to power. There was a common sense that both unionist and nationalist communities had control of key devolved areas locally, providing a pipeline for a council decision in Westminster. It was really popular among a really broad swathe of the general public, who were not that engaged with politics but had a common sense that decisions were being made a bit closer to where they impacted. Certainly among the business community and civil society, having access to the decision-makers, the Civil Service and Ministers was hugely popular. There is a real sense of a lack of that at the moment.

The other political dynamic is that an interesting thing with the unionist community is that, with the exceptions of individual voices, organised business lobbying overwhelmingly and organised civil society were pro remain, even where those organisations had their roots and their members drawn from the unionist community. There was a slight tension there between political unionism, with a big P, and the organised civil society, non-party elements that would have traditionally kept out of some of those big political debates or would have been quietly supportive of positions taken by the political party. That creates a certain nervousness and uncertainty about their political future.

My sense of the negotiations is that there is more hope than optimism for a successful outcome. There is leverage whereby the Democratic Unionist Party has access to the House decision-making through their confidence-and-supply arrangements at Westminster and therefore has the benefit of devolving those decisions away from where it has immediate access to where, in order to make a decision, they must legally reach agreement equitably with Sinn Féin in order to pass a decision.

Baroness Suttie: We had to spend £1 billion.

Professor John Doyle: It is not all one way. Clearly, there will be a financial cost and pressure. Traditionally in Ireland, unionism was seen as

a metropolitan-focused political philosophy and nationalism was seen as the inward-focused political philosophy. Some Ulster unionists are uncomfortable with this flipping whereby the nationalists become European-focused and the Ulster unionists in some ways are perceived, and in some cases are, a bit more inward-looking; 20% of DUP voters also voted to remain—I suspect more farmers than liberals, but who knows, because we cannot unpick that.

That creates uncertainty, so it is not absolutely certain that the Democratic Unionist Party would see its interests in allowing the power-sharing to collapse, but it is not inevitably incentivised to re-create power-sharing either. That makes it more challenging, because then the north-south bodies do not meet. The nationalist community did not get a united Ireland out of the Good Friday agreement, but it got very visible things in power sharing, north-south bodies, an open border, stronger human rights legislation—things that were tangible and could be perceived, even if they had politically hoped for more. Very many of those things are in danger of being dismantled over the next 18 months.

Professor Gavin Barrett: I do not have a very helpful response to Lord Whitty's question, except to concur with my colleagues that the system desperately needs the input and legitimacy that is provided by the presence of democratically elected representatives from both communities. Barring that, I can imagine that the civil servants will do their best, as they always do, to take the interests of everyone into account, but, of course, that is a poor substitute. Arlene Foster went to the Killarney conference to which Dr Murphy referred and tried to be more conciliatory in her approach. The fact that Sinn Féin has a new leadership may lead to that, but there are pointers in the other direction as well.

As regards Baroness Armstrong's question on east-west relations being under strain, there was certainly a feeling during the phase 1 negotiations that the Irish and United Kingdom sides did not perhaps understand each other's positions as fully as they might have.

As regards the position during the Brexit negotiations, while obviously the Commission has taken the lead and the task force leads those negotiations, which has to be respected, more transparency between the United Kingdom and Ireland is desirable. Politicians have to play their role as well in how they present issues.

After the negotiations and into the future, the absence of United Kingdom representatives at all levels in the EU structures will deprive Ireland and the UK of one of its most frequent sources of bilateral discussions, because at every Council meeting you had Irish and United Kingdom representatives meeting. That will go, and how it will be replaced I do not know. If there is a need for new bilateral arrangements, we need seriously to consider whether we need a strengthened British Irish Council, as has already been suggested, and whether new processes need to be put in place involving civil servants.

Simon Coveney probably told you that he was going to be making a speech on Wednesday in Chatham House when he will address some of these issues. I understand that there may also be an article by him in the *Guardian* tomorrow that addresses these issues. Perhaps we will see very shortly some attempt to address those issues.

Professor John Doyle: Probably until 1979, maybe into the early 1980s, the mere meeting of two senior civil servants or Ministers was enough to make a front-page story, so rarely did they occur, even if nothing of any consequence was discussed. Probably not 24 hours passed without a senior Irish and British decision-maker or civil servant meeting about something. If we simply default back to the 1969 regularity of meetings, it will be a disaster of all sorts that nobody intended. It needs somebody to set a process in place to replace those cheap, quick, frequent meetings that could occur on sides of meetings that people had to attend anyway. They will have to be replaced by planned interactions that will be time precious and that, inevitably, will not happen as frequently.

The Chairman: I attended some 20 European Councils. In more than half of them, the most important thing was the meeting between the Taoiseach and the Prime Minister. It was completely below the radar screen. No one knew it was happening, but it was the thing which the Prime Minister of the day regarded as the most important factor of the European Councils. One hopes that things have moved on to such an extent that that does not become a problem, but I am not so sure.

Professor John Doyle: Some of the evidence of the autumn is that, in the absence of regular meetings, miscommunication can start again very quickly.

The Chairman: Exactly. Thank you very much indeed. We are extremely grateful to you. It has been a very good session. You have kept us all absolutely on our toes and awake after a long day.

Professor John Doyle: From our side there is a genuine appreciation that you have taken the trouble to travel. Brexit is a huge issue for Ireland as well as the UK and we are just glad that you have taken the opportunity to come as a group and to hear our voices.

Lord Whitty: We are off to Belfast tonight to see how they are doing up there.

Professor John Doyle: They will not be filled with optimism, but enjoy it none the less.

The Chairman: Thank you.