

WRITTEN EVIDENCE SUBMITTED BY DR. MARTIN MANSERGH, MRIA

(A former diplomat and special adviser to three Taoisigh, back-channel to the Republican Movement pre-1994 ceasefire, involved in drafting the consent and self-determination clauses in the Downing Street Declaration carried over into the Good Friday Agreement and the reformulation of Articles 2 and 3 of the Irish Constitution.

Subsequently, a Fianna Fáil parliamentarian, an elected Senator and TD, a member of the British-Irish Parliamentary Assembly, and a Minister of State. Also appointed a member of the Council of State during President Mary McAleese's second term. Vice-Chair of the Government's Expert Advisory Group on Centenary Commemorations.)

Summary

*** A border poll should only be held, when there appears to be a clear majority for constitutional change. Irish Government to be consulted.**

*** With Brexit going ahead, with special arrangements to maintain NI access to Ireland and the EU as well as the UK, and the institutions restored primarily to address pressing economic and social needs, this may encourage return to a more evolutionary approach.**

*** Preparations for a united Ireland that do not involve at least some unionist participation may simply be counterproductive and raise tensions not only among unionists but traditional republicans.**

*** Ideally, a border poll would follow detailed negotiations or would be a catalyst for them. A united Ireland could only be ratified north and south on the basis of an agreement incorporating detailed terms and conditions. Rights are best guaranteed multilaterally as well as bilaterally. Questions of identity need particular attention.**

The clear intent of the provisions for holding a border poll in the Good Friday Agreement is that it should only and must be held, if there is clear evidence that the NI electorate wish to join a united Ireland. Post-Brexit, this would carry with it a wish that the whole of Ireland would in future be a member of the European Union. For the Secretary of State to form his or her judgment, public opinion in Northern Ireland would need to be more than evenly divided 50% + 1. It is unlikely in today's circumstances that an SoS would use discretion to call a poll otherwise, at the behest of any party wanting to use it mainly for propaganda purposes, either to bolster or undermine the Union. Given the close relationship between the two Governments, such a decision would be unlikely to be made without taking into account the views of the Irish Government, given the implications for having to hold a poll in the Republic for a united Ireland to come into being.

Demand for a border poll from particular political quarters has mainly been spurred by the Brexit poll, where there was a majority for Remain in Northern Ireland, but there is little hard evidence for any definite shift in the balance of opinion towards a united Ireland, even if there is more discussion on the topic. Some of the uncertainty has now lifted. Brexit is definitely proceeding, but NI uniquely will retain free access to the EU internal market as well as to the rest of the UK. In addition, the Executive has been restored. If elections in 2019 carried a message, it was a desire that internal power-sharing government be resumed along with institutions like the North-South Ministerial Council to focus on economic and social rather than constitutional issues. On the assumption that the institutions and the Brexit terms for Northern Ireland broadly speaking work satisfactorily, constitutional agitation may abate somewhat.

There have been many calls for preparations to be made for a united Ireland, or at any rate for an exploration of the issues. The danger, however, is that such exercises might be seen as confrontational, and as designed to push unionists against their will psychologically towards a united Ireland. Most of the parties in the Republic prefer a more consensual evolutionary approach. There is a danger otherwise of encouraging resistance to plans for compromise, not alone from unionists, but internally from traditional republicans. There is no basis for the governments to act or take decisions, as if a vote for a united Ireland were imminent. If and when significant numbers from a unionist background are willing to start a conversation about a united Ireland in whatever format, then this should obviously be encouraged. There is of course nothing to prevent independent institutions from exploring the many implications of constitutional change.

German unity happened relatively suddenly, and, while there were provisions in the Federal Constitution for the event of unity, a good deal of improvisation was required. Ideally, a border poll would follow detailed negotiations on the basis of a united Ireland, with a concurrent poll in the Republic. Such negotiations could be initiated by majorities in the Dáil and the Northern Ireland Assembly. Alternatively, it would be a catalyst for them. There could be parallel civil society discussions. No irrevocable decision should be taken, before detailed terms and conditions are put before the people north and south for their approval concurrently in referendums. Even if for constitutional reasons the question north and south might be partially different as it was in 1998, the effect, endorsement of an agreement, would be the same.

A united Ireland would have to continue the Republic's status of a sovereign independent state taking its place among the nations, in the

EU, the UN and other international bodies that require the observance of certain legal norms. It would be for negotiation what bilateral and multilateral political and economic ties there would be between the UK and Ireland and any other independent State in these islands consistent with already agreed practice (such as the Common Travel Area) and the obligations of Ireland's EU membership. While it is not to be excluded that the electorate in the Republic might judge the costs of unity, not just financial, but in terms of tradition, ethos and identity too high, not to mention fears about the possible importation of instability, to refuse the desire of a majority in Northern Ireland to join a united Ireland could also have serious implications for stability in the entire island. The principle of consent as it stands requires no weighted majority. Introducing one would smack of altering the goalposts.

The question of maintaining devolved government in Northern Ireland on existing lines would be a matter for negotiation, but the possibility was clearly envisaged in the New Ireland Forum and the Framework Document. If agreed, guaranteeing a degree of northern control, a form of entrenchment characteristic of federal constitutions would be required. Protections and symbolic expressions of identity will be very important, and likely one of the more difficult areas to negotiate, which will require not only concessions to unionists, but concessions from nationalists. A united Ireland will not just be the present Republic writ large. There will need to be a more generous acknowledgement of the positive traditions and achievements of Northern Ireland in its 100 years of existence as a distinct part of the UK, and not just an insistence on its failings.