The Belfast/Good Friday Agreement: Addressing “the totality of relationships”

For those not familiar with the Centre for Cross Border Studies, we are a small, independent research and information organisation based in Armagh and Dublin. Established in 1999, our mission is to empower citizens and build capacity and capability for cross-border cooperation. Our founders identified a need for an independent, non-governmental organisation that could both advocate and give practical support to the realisation of the commitments for cross-border cooperation in the 1998 Agreement. Since 2009 our work has been set in the wider context also of EU Cohesion Policy: “a broad vision, which encompasses not just the economic development of lagging regions and support for vulnerable social groups, but also environmental sustainability and respect for territorial and cultural features of different parts of the EU.” This policy context has framed and given impetus to the work of the Centre; and although Northern Ireland now faces a future outside of the EU, the Centre remains committed to the core values represented in
both the Agreement and EU Cohesion policy.

More recently still, the shifting constitutional ground within and between these islands has highlighted the need for greater attention to the relationships – not only at different levels of government and officialdom, but also between citizens within and between these islands.

I think it is also worth stressing here, that the Centre is non-partisan and takes no position on the constitutional question.

Over the last two years or so, nevertheless, we have been heavily embroiled in the debate about the implications of the (then) proposed UK exit from the European Union. CCBS has been engaged on an almost daily basis to ensure that the social, political and economic implications of ‘Brexit’ for the island of Ireland are understood by citizens and decision-makers. Despite the many uncertainties that face us as a result of the UK’s decision to exit the EU and other economic and political challenges confronting our small island, it is essential and urgent that we begin to chart a path forward. As we face the prospect of our island being divided by an
external EU border, we are likely to see greater divergence in public policies and priorities on either side of the border where until now the trend has been towards convergence.

It was significant, therefore that in his speech last week at Queen’s University, Taoiseach Leo Varadkar acknowledged the importance of North-South cooperation in normalising relationships on this island and in bringing real and practical benefits to all of our citizens. In doing so, he noted that North-South cooperation is a key part of the Good Friday Agreement and is embedded in the common framework of EU law and EU policies.

The Taoiseach also pointed out in that speech that after Brexit, the rights of citizens of the north enshrined in the Agreement to be British, Irish or both remain; “making this part of Ireland and this part of the UK, truly unique and one that will need unique solutions if we are to preserve and protect all that we've gained.” Recently, our Centre responded to appeals for “Flexible and imaginative solutions” and published our proposals for using the 1998 Belfast/Good
Friday Agreement as a framework for post-Brexit relations within and between these islands. I will come back to those proposals shortly.

We very much welcome the reaffirmation by the Taoiseach last week of the Irish Government’s commitments as co-guarantors of the Good Friday Agreement; and his statement that “We need the Executive, the Assembly, the North South Ministerial Council and the British Irish Council up and running and acting in the interests of our peoples.” Likewise, we welcomed the expression of commitment by the Taoiseach and the Scottish and Welsh First Ministers last month to the work of the British Irish Council (BIC), a key institution of the Good Friday Agreement.

Cross-border cooperation – North-South; with Scotland, England and Wales; as well as working to keep our connections with European countries – will be increasingly important to address the challenges resulting from economic, social and political uncertainty and instability in the months and years to come.
Securing the future of cooperation within, across and beyond these islands must be, in the first instance, a political priority at all levels of government in all jurisdictions. Our first concern is that the commitments to cross-border cooperation – North-South and East-West – embedded in the Belfast/Good Friday Agreement of 1998 remain a priority for both the UK and Irish Governments.

The 1998 Agreement led to the creation of a new set of political institutions within Northern Ireland, between North and South and between Great Britain and the island of Ireland. The Agreement was designed to foster institution-building and new political processes between an array of political parties, governments and the peoples of these islands. Who would have predicted that those institutions would be so fragile 19 years on, at a time when the reality of Brexit threatens to create greater divergence of public policy making and threatens the peace process itself?

A central tenet of the 1998 Agreement was to promote cross-border co-operation on an all-island and border region basis. Strand Two of the Agreement was and is a reflection of the
centrality of the border to the conflict and in turn to the peace process.

It is disappointing therefore that while there has been considerable attention paid to the lack of implementation of elements of Strand 1 of the Agreement, there has been less focus on the North-South cross-border institutions established under Strand 2 of the Agreement. These have not always met the expectations of many who supported the Agreement 19 years ago.

I think everyone here is well aware of the issues besetting the Strand 1 institutions – the NI Executive and Assembly, so I won’t discuss them at any length here.

Indeed, I would suggest that while during the years of the Conflict, much discussion focussed on the definition of the conflict as one of competing sovereignties vs a community-relations or ethnic conflict, in the past two decades many people including those in Republican or nationalist communities, have a very limited awareness of the 3-stranded architecture of the 1998 Agreement – reflecting the multi-faceted character of the conflict and the peace process
that brought it about. Indeed, I think we are now much more likely to see references to the “Northern Ireland peace process” than to the “Irish peace process”.

So, it is important to remind ourselves of the centrality of the border to the conflict and the dangers that could materialise as a result of Brexit-related uncertainties about the nature of the border. Also, as migration and citizenship issues emerge in the context of any economic stagnation or decline, social cohesion in the border region and other disadvantaged areas could likewise be threatened.

Much of the public debate since the June 2016 Referendum has focused on the physical border – whether it will be ‘hard’ or ‘soft’ – that is, changes to the visibility of the border and whether or not there will be checkpoints or other forms of controls on the movements of goods and people.

While we agree that there is a strong consensus among most people and their political representatives that there should be “no return to the border of the past” – at one time the most militarised border in Europe – we would certainly share concerns about any outcome of the negotiations that would
result in the land border becoming a barrier to free movement of people, commerce and trade.

Cross-border cooperation tackles a range of problems that are a direct legacy of the conflict, including the breakdown in cross-border relationships; isolation of border communities and overall social and economic decline. The border region in particular suffers from poor economic performance; planning and infrastructure gaps; distortion of labour markets and lack of mobility.

It is essential that the ‘soft infrastructure’ that has been established under the Agreement to support cross-border cooperation – the statutory cross-border bodies and links at Departmental level – be supported in the first instance by the Irish and British Governments as guarantors of the Agreement and by the NI Executive and Assembly.

It is deeply concerning that at such a critical juncture in respect of the forthcoming Brexit negotiations, not only do we lack of a coherent voice representing the interests of people living in this part of the island as the Brexit
negotiations proceed, but the hiatus at Strand 1 level, also means that the Strand 2 institutions are likewise frozen.

Most of you here are probably aware of the North South Ministerial Council, comprised of ministers from the NI Executive and the Government of Ireland. While not wanting in any way to discount the efforts of the NSMC Joint Secretariat or the value of the cooperation that has taken place under the auspices of the NSMC, the Centre for Cross Border Studies has for some time been concerned at the financial and political constraints that have been exerted on the cross-border implementation bodies over the years. Without an Executive in the North, there can be no North South Ministerial Council meetings. Without a Northern Ireland Assembly, there can be no North South Inter-Parliamentary Assembly. While the six cross-border implementation bodies established under the Agreement remain in place, without the oversight of the NSMC and without the northern executive striking a budget, their work is severely constrained. Similarly, while there is no doubt some continuing cooperation between departments, especially those working on agreed areas of cross-border
cooperation, there are already signs that cross-border cooperation is dropping off the agenda.

In any case, the political logjam most discernible in the Strand 1 institutions has also been reflected in Strands 2 and 3. There needs to be renewed political commitment from our elected representatives on both sides of the border to developing cooperation across all three strands for the mutual benefits of both jurisdictions.

Importantly, there has been little visible progress since the 2006 St Andrews Agreement provided for a review of the case for additional cross-border bodies and areas of cooperation.

The North South Inter-Parliamentary Assembly, the joint parliamentary forum comprising equal numbers from both the NI Assembly and the Oireachtas met for the first time only in October 2012. The Assembly has the potential to become a significant platform for continued engagement between legislators on the island, both in the context of the Brexit negotiations and post-Brexit.
The glaring institutional omission is the failure to convene the North South Consultative Forum, promised in the 1998 Agreement and included also as a commitment in the 2006 St Andrews Agreement. The Forum was envisioned as an independent consultative forum appointed by the Government of Ireland and the Northern Ireland Executive "comprising the social partners and other members with expertise in social, cultural, economic and other issues" and being representative of civil society. Its creation, however, was delayed as a result of the failure of the Northern Ireland Executive to reconstitute the Civic Forum for Northern Ireland, which last met in 2002. The NI Civic Forum comprised 60 members plus a chairman drawn from 10 sectors of civic society. The Stormont House Agreement of December 2014 provided instead for the establishment of a Civic Advisory Panel. At the end of June 2016, First Minister Arlene Foster reported to the NI Assembly that the Executive Office was still considering the identification and appointment of a panel of just six members, who would be tasked to consider specific strategic issues relevant to the Programme for Government and other subjects as agreed by
the Executive. It is difficult to see how this much reduced in both size and independence Civic Advisory Panel – when, if ever, it is constituted by the Executive – can constitute a pillar of the independent cross-border consultative forum that was provided for under the terms of the 1998 Agreement.

The All-Island Civic Dialogue exercise that was undertaken over the last several months under the auspices of the Taoiseach is a model of how engagement with citizens from across society can be engaged. While I am sure there are some here who would differ, I think that the Irish Government’s efforts have been very valuable in providing a platform for input by a wide range of non-governmental interest groups on both sides of the border into the Government’s planning for Brexit. The Centre is happy to support the recommendation by some participants at the recent plenary session in Dublin that the Civic Dialogue format should be built upon to fulfil the objective of the Agreement for an independent all-island consultative forum.
So, let us move on to consider the East-West (Strand 3) Institutions.

The British-Irish Intergovernmental Conference: replaced the Anglo-Irish Conference which was established under the Anglo-Irish Agreement of 1985. The Conference was to bring together the British and Irish Governments “to promote bilateral co-operation at all levels on all matters of mutual interest within the competence of both Governments.” Under the Agreement it was agreed that there will be regular and frequent meetings of the Conference concerned with non-devolved Northern Ireland matters, and these meetings would also deal with all-island and cross-border co-operation on non-devolved issues. Although the Joint Secretariat continues to function, the Conference ceased to meet at political level after the restoration of the power-sharing government in Stormont in 2007. In a 2014 paper, John Coakley commented that this was “an inbuilt self-enfeebling mechanism written into its original design” and that its broader function as a forum for British-Irish consultation on a wider range of issues was undermined by the emergence of
other channels of communication between the two governments.

The British-Irish Council (BIC) is comprised of representatives of the British and Irish Governments, devolved institutions in Northern Ireland, Scotland and Wales, together with representatives of the Isle of Man and the Channel Islands. The Council is intended to meet twice a year at summit level and in specific sectoral formats on a “regular basis”.

The formal purpose of the Council as outlined in Strand 3 of the 1998 Agreement is "to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands... The Council “will exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant Administrations,” with arrangements to be made for practical cooperation on agreed policies. Its current work programme prioritises twelve specific work sectors; in these work sectors Ministers, civil servants and, when relevant,
invited stakeholders, are collaborating across a diverse range of social, economic and environmental topics.

As Taoiseach Varadkar has pointed out the British-Irish Council needs to be up and running up and acting in the interests of our peoples. But of course, the missing element at present is the devolved institutions in Northern Ireland.

The 1998 Agreement provided for development of the role of the already-existing British-Irish Interparliamentary Body (now the British-Irish Parliamentary Assembly). The Assembly’s mission is to promote cooperation between political representatives in Britain and Ireland. Members engage in a wide range of non-legislative parliamentary activities through bi-annual plenary meetings and ongoing Committee work, covering Sovereign Matters; European Affairs; Economic; Environmental and Social issues.

However, as John Coakley commented in his 2014 article,

“For all the complexity of this new architecture, though, the intensity of cooperation should not be exaggerated. All three of the major bodies (the
Intergovernmental Conference, the Assembly and the Council) had their stated origin in the Northern Ireland problem, but the institution most centrally concerned with this, the Conference, has played a minor role since the restoration of devolved government in Stormont in 2007 and the transfer of policing and justice functions in 2010. The two other bodies, the Assembly and the Council, are important forums for building up mutual familiarity between representatives of their component jurisdictions, for the exchange of information and for the sharing of perspectives on cross-jurisdictional problems, but their functions are purely advisory, not executive.“

The impending Brexit represents both an impetus and an opportunity for the Strand 2 and Strand 3 institutions. The structures that have been established to facilitate North-South and East-West cooperation among political representatives and public officials can only have enhanced relevance in the context of the UK withdrawal – and likewise should help to inform and hopefully shape – the outcome of
the negotiations that will determine just what Brexit does mean.

While the reassurances from the EU, the UK Government and Irish Governments that the Belfast/GFA is in no way threatened by Brexit are very welcome, it is likewise essential that the institutions established under its auspices are enhanced and renewed.

As the post-election conversations and negotiations around the future of the Executive and the NI Assembly proceed, we would urge that the two governments, with officials and elected representatives from all of the jurisdictions involved, review the remits and operation of the Strand 2 and Strand 3 institutions.

Before moving on from the 1998 Agreement institutions, I want to refer back to the Common Chapter. The Common Chapter (in the National Development Plan for Ireland and the Structural Funds Plan for Northern Ireland) put in place a framework for increased co-operation between both economies and across all sectors over the Structural Funds programming period 2000-2006. It identified that for the
island of Ireland, cross-border co-operation has three key dimensions:

- co-operation along the Border Corridor and between Northern Ireland and the Border Counties of Ireland;
- co-operation North-South within the island of Ireland; and
- co-operation East-West between the island of Ireland and Great Britain, Europe and internationally.

Subsequent to the suspension of the NI Executive and Assembly, and with them the meetings of the North South Ministerial Council, between 2002 and 2006 however, the Common Chapter was allowed to disappear from public policy documents North and South. While it may be argued that a functioning NSMC makes the Common Chapter redundant, the omission of the policy imperative for cooperation contained in the Common Chapter has been a significant loss. More than ever, we now require a coherent public policy framework, and accompanying budget lines, to support cross-border cooperation – at all levels of government and among non-governmental actors.
I made reference earlier to proposals by the Centre for Cross Border Studies for “flexible and imaginative solutions” to the barriers that will arise if there is a ‘hard’ border restricting commerce, trade or the free movement of people – including EU citizens who are not Irish or British passport holders. These proposals are set out in detail in a briefing paper that can be downloaded from our website. In summary, we are suggesting that the 1998 Belfast/Good Friday Agreement should not be viewed simply as a problem to be overcome during the negotiations over the UK’s exit from the EU, but also as a potential “flexible and imaginative” solution to the maintenance of post-Brexit relations. The framework provided for by the 1998 Belfast/Good Friday Agreement must be a minimum conclusion to the negotiations.

Protecting the integrity of the Agreement means not only ensuring the continuing free movement of Irish and UK citizens between their jurisdictions, but also the free movement of goods and services.

Accommodations will have to taking into account the Irish Government’s continuing responsibilities as a co-guarantor
of the 1998 Belfast/GFA and the potential economic consequences faced by the [Republic of] Ireland.

An outcome that ensured cross-border trade on the island of Ireland, but not between the Republic of Ireland and Great Britain, would not significantly reduce the disturbance to the Irish economy and would require Ireland receiving greater support from the EU.

We are suggesting two alternative models.

In Model 1, because Ireland is an EU Member State and therefore in the EU/EEA area and is simultaneously within another area as a co-guarantor of the 1998 Belfast/Good Friday Agreement and its membership of the institutions under Strands II and III of that Agreement.

- goods, services and people flow freely between the Republic of Ireland and the United Kingdom.
Goods and services from the United Kingdom would not travel further than the Republic of Ireland, and

Goods and services from the United Kingdom have to adhere to all relevant EU regulations and standards

the UK must continue to largely mirror EU tariffs with third countries

Strands II and III institutions would gain greater prominence as coordinating bodies and spaces for significant dialogue

Ireland, as a Member State and within the jurisdiction of the EU Court of would continue to ensure the integrity of the Single Market and to uphold the values of the EU.

In Model 2, the Irish state occupies three areas: as an EU Member State and as a co-guarantor of the 1998 Belfast/GFA and its membership of the Strands II and III institutions
Goods from Northern Ireland would have access to the EU/EEA area, but without establishing any disruption to the flow of goods between Northern Ireland and the rest of the United Kingdom or undermining its constitutional position.

Goods, services and people flow freely between the Republic of Ireland and the United Kingdom.

Goods and services from the United Kingdom have to adhere to all relevant EU regulations and standards.

The UK must continue to largely mirror EU tariffs with third countries.

An additional mechanism would have to be put in place in order to distinguish NI goods from goods originating from elsewhere in the UK.

Both models:
require UK (and devolved UK administrations) adherence to relevant EU regulations and standards

facilitate the movement of people, goods and services within and between the island of Ireland and Great Britain; avoiding the creation of new or hardening of existing borders between any part of these islands.

Model 1 maintains current flows of goods and services between the UK and the Republic of Ireland, but no goods or services from the UK enter further into the EU

Model 2 maintains current flows of goods and services between the UK and the Republic of Ireland and also allows for the flow of goods and services from Northern Ireland into the Republic of Ireland and the rest of the EU

Finally, I want to call attention to another important institution. The Council of Europe promotes human rights through a number of international conventions and campaigns on issues such as child protection; but also through monitoring bodies such as the European Committee
of Social Rights and the Committee of Experts of the European Charter for Regional or Minority Languages.

The Council of Europe helps its 47 member states fight corruption and terrorism and undertake necessary judicial reforms. It promotes the rule of law and common standards and policies on crime, prisons, data protection, money laundering and cybercrime. It supports legal cooperation through the European Committee on Legal Cooperation and the Committee of Legal Advisors. Over 5,000 youth leaders are trained each year at the Council of Europe's European Youth Centres and over 15,000 young people also benefit from projects supported by the European Youth Foundation with a view to promoting understanding, tolerance and solidarity. The Congress of Local and Regional Authorities develops cooperation projects and supports local authority associations in collaboration with their European networks on the basis of provisions of the European Charter of Local Self Government.

If as has been promised by leading UK Government ministers, leaving the EU does not mean turning our back on Europe,
then our continued membership of the Council of Europe should be seen as fundamental to ensuring that we retain many positive ‘European values’ and close relationships with our European neighbours in the context of Brexit.

The Conservative Party’s Manifesto for the recent general election made clear that it was not the intention to bring the European Union’s Charter of Fundamental Rights into UK law as part of the “Great Repeal Bill”. The Manifesto also states “We will not repeal or replace the Human Rights Act while the process of Brexit is underway but we will consider our human rights legal framework when the process of leaving the EU concludes.” “We will remain signatories to the European Convention on Human Rights for the duration of the next parliament.”

Many experts and other concerned citizens have pointed out that the UK Government’s proposal to withdraw from the European Convention on Human Rights (ECHR) would be a breach of the 1998 Agreement, which includes a commitment to the “complete incorporation into Northern Ireland law” of the ECHR, “with direct access to the courts,
and remedies for breach of the Convention....” The Agreement also states that the two communities in Northern Ireland would be protected by safeguards that include “the European Convention on Human Rights and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe”. The Agreement offers additional rights *supplementary to* those in the ECHR, “to reflect the particular circumstances of Northern Ireland,” that *taken together with the ECHR* would constitute a Bill of Rights for Northern Ireland. Eighteen years on, the promised Bill of Rights not been legislated. The UK Government’s intention to withdraw from the ECHR would further compound this breach of the Agreement.

However, a second vitally important concern is that *ratification of the Convention is a prerequisite for joining the Council of Europe.* [http://www.coe.int/en/web/human-rights-convention/] Should the UK remove itself as a signatory of the Convention, and the authority of the Court of Human Rights – to which the Prime Minister has shown more hostility than she has to the Court of Justice – then it surely places into question whether the UK can continue as a
member state of the Council of Europe. Even if withdrawal from the ECHR does not result in automatic exclusion from the Council, it will inevitably change the sense and practice of solidarity we share with our European neighbours.

Some of the most important lessons from more than two decades of participation in partnerships across the border and across the seas have been the importance of sharing experiences and learning about others’ national cultures, organisational cultures and perspectives on the world. But it has also taught us that cross-border and cross-cultural relationships need to be nurtured and supported. Cooperation across borders can be difficult. It requires investment of human and financial capital. It requires institutional support and facilitative public policies. And experience has taught us the immense benefits that come from making that effort. It will be perhaps one of our greatest challenges to ensure that we build and maintain those relationships in the months and years to come.