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# The future of Northern Ireland: the role of the Belfast/Good Friday Agreement Institutions

Conor J. Kelly and Etain Tannam

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- Belfast/Good Friday Agreement
- Peace Processes

## Abstract

Since the 2016 Brexit referendum a series of crises has gripped Northern Ireland's politics. This has had a destabilising effect across society, which has arguably been felt most acutely by political unionism. The Belfast/Good Friday Agreement of 1998 created a series of institutions to deal with political conflict in Northern Ireland, manage cross-border cooperation, and normalise relations between the UK and Ireland. However, many aspects of it have been sparingly and ineffectually deployed, most notably the second and third strands dealing with North/South and East/West relations respectively. In this article, the authors argue that regular use of the institutional arrangements created by the Agreement would help to deal with the challenges currently facing Northern Ireland and help address unionist anxieties over the Protocol. Use of the North-South Ministerial Council (NSMC), the British Irish Council (BIC) and the British-Irish Intergovernmental Conference (BIIGC) should be prioritised. The unresolved issues arising from Brexit require a recommitment to the intergovernmental logic at the heart of the 1998 Agreement, despite the obstacles.

## Introduction

A series of crises in recent years have destabilised Northern Irish politics. Brexit is of course the core source of instability. Since late 2019, unionism has been particularly affected, as the Ireland/Northern Ireland Protocol was negotiated and took effect. The Belfast/Good

Friday Agreement although ‘a ‘remarkable’ achievement<sup>1</sup> has been ‘tarnished in execution’<sup>2</sup> and not fully brought about the reconciliation and stability it sets out to achieve. Though cultural and political grievances between communities in these islands subsided in its aftermath, it has been regarded by many unionists as not adequately serving their aims. Since the peace process, a culture war<sup>3</sup> began to emerge between unionists who felt their Britishness was not being respected and republicans who felt unionists were reluctant to embrace parity of esteem.

This article provides an overview of the crises gripping Northern Ireland, with a particular focus on their effect on unionism. The article then focuses on weaknesses in the Agreement’s implementation of Strands Two and Three, arguing that most attention is paid to Strand One, but that the three strands are interdependent. In the conclusion, the authors argue that despite profound differences in perceptions around the Agreement and despite the shift by the British government under Boris Johnson to unilateral realpolitik, more institutionalised and regular intergovernmental cooperation is required and the challenge of achieving it should not obscure its necessity. The mechanisms in the Agreement that allow the Northern Irish Assembly and Executive to be involved in policy areas would allow voices to be better heard on issues including, but not limited to, the Protocol. A renewed commitment to Strands Two and Three would empower unionist voices and is a necessary condition for stability in Northern Ireland more generally.

## Political Crises and a Destabilised Unionism

At the heart of recent political instability in Northern Ireland has been the fall-out which ensued after the UK’s decision to leave the EU in 2016. This has affected all of Northern Ireland’s communities, with a majority of voters supporting Remain (56%), although the unionist electorate was more in favour of Leave (around 66%)<sup>4</sup>. Brexit greatly exacerbated underlying unionist tensions and insecurity by precipitating calls for a ‘border poll’ on Irish unification, principally by Sinn Féin, but also from a host of civic organisations and moderate nationalist leaders<sup>5</sup>. Though nationalism remains divided on the timing of when a poll should be held, the conversation on a hypothetical united Ireland lingers omnipresent over contemporary debate and is seen to contribute to a destabilisation of unionism.

The largest party in unionism, the Democratic Unionist Party (DUP), although uncertain at first, eventually backed Leave both at the 2016 referendum and over the course of the following years, including a period in which it was in a confidence and supply arrangement with the Conservative Party at Westminster. The Ulster Unionist Party (UUP) was more split

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<sup>1</sup> R. Montgomery, ‘The Good Friday Agreement and a United Ireland’, *Irish Studies in International Affairs*, Vol. 32, No. 2, Analysing and Researching Ireland, North and South, 2021, pp. 83–110.

<sup>2</sup> Ibid

<sup>3</sup> C. McCall, 2003, ‘Shifting thresholds, contested meanings: governance, cross-border co-operation and the Ulster Unionist identity’, *European Studies* 19 (2003), 81–103.

<sup>4</sup> J. Garry, ‘The EU referendum Vote in Northern Ireland: Implications for our understanding of citizens’ political views and behaviour’. *Northern Ireland Assembly*. Knowledge Exchange Seminar Series, Northern Ireland Assembly, 2016.

<sup>5</sup> Working Group on Unification Referendums on the Island of Ireland, ‘Final Report’, UCL Constitution Unit, Chapter 3, 2021, pp. 38–63

on the issue, and while the party leadership backed Remain, it gave license for its members to campaign for either side<sup>6</sup>. After the vote, both parties argued that the UK-wide mandate to leave must be respected, and Northern Ireland should depart on the same terms as the rest of the Union<sup>7</sup>.

The culmination of the meandering Brexit withdrawal negotiations was the Ireland/Northern Ireland Protocol, which essentially leaves Northern Ireland in the EU's customs union and aspects of its single market as the rest of the United Kingdom departs<sup>8</sup>. Crucially, goods entering Northern Ireland from Great Britain are subject to customs declaration checks and EU standards apply. However, many unionist political and civic leaders argue that it undermines Northern Ireland's constitutional position within the UK<sup>9</sup>. Some unionist politicians (including two former First Ministers and other prominent politicians) applied for judicial review of the Protocol, which they alleged conflicts with the Act of Union 1800, as it breaks the intra-UK customs union, and the B/GFA, because it undermines the principle of consent. That application was dismissed<sup>10</sup>, but the verdict that the Act of Union had in part been implicitly repealed further created insecurity, despite the fact that it has been amended many times since 1800. The ongoing disruption caused to the flow of trade across the Irish Sea has given further cause for unionist ire.

The UK government has given credence to this opposition and has itself argued that the arrangements are not sustainable in their present form. They initially sought renegotiation of the Protocol but also took unilateral steps to delay implementation. The EU and the Irish government viewed this as a clear act of bad faith and threatened to respond with sanctions if the Protocol was not implemented as agreed. However, the EU has agreed to a series of extension periods on a rolling basis since the Protocol began to take effect in early 2020 and did not take further action when the UK indefinitely suspended implementation in September 2021. It was hoped that the end of rolling deadlines would facilitate finding a permanent solution to the impasse, but one is yet to materialise. In October 2021, both the UK and EU set out new proposals. More recently in June 2022, the UK government outlined a bill which would substantially and unilaterally change the Protocol<sup>11</sup>. This has been strongly condemned by both Dublin<sup>12</sup> and Brussels<sup>13</sup>. At the time of writing, there remains a wide gulf between them over the degree to which the Protocol should be reformed.

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<sup>6</sup> A. Ferguson, 'UUP to campaign against Brexit', *Irish Times*, 5 March 2016.

<sup>7</sup> See UUP 2019 Westminster Election Manifesto, pp. 7; DUP 2019 Westminster Election Manifesto, pp. 15.

<sup>8</sup> A. Stojanovic, 'Brexit deal: the Northern Ireland protocol', *Institute for Government*, 5 February 2020.

<sup>9</sup> D. Trimble, 'Tear up the Northern Ireland protocol to save the Belfast Agreement', *Irish Times*, 20 February 2021.

<sup>10</sup> J. Colton, 'Allister (James Hugh) et al's Application and in the matter of the Protocol NI Neutral Citation', No. [2021] NIQB 64. Delivered 30 June 2021.

<sup>11</sup> UK Government, 'Northern Ireland Protocol Bill: UK government legal position', gov.uk, 13 June 2022; <https://www.gov.uk/government/publications/northern-ireland-protocol-bill-uk-government-legal-position> (accessed 21 June 2022).

<sup>12</sup> BBC, 'Brexit: Plans to ditch parts of NI Protocol are economic vandalism - Irish PM', BBC.co.uk, 20 June 2022; <https://www.bbc.co.uk/news/uk-northern-ireland-61856581> (accessed 21 June 2022).

<sup>13</sup> J.p Ford Rojas, 'Brussels hands UK two-month court ultimatum after 'illegal' Northern Ireland Protocol move', news.sky.com, 15 June 2022; <https://news.sky.com/story/eu-begins-legal-action-after-illegal-move-by-uk-to-override-northern-ireland-protocol-12634288> (accessed 21 June 2022).

The position of the DUP and UUP has been that the British government should trigger Article 16 suspending the Protocol in the short term, and eventually replace it entirely, or fundamentally reform how it operates. This opposition is both practical, with respect to removing barriers to trade, and ideological, with respect to the strength of the Union. In early February 2022, DUP Agricultural Minister Edwin Poots ordered the Northern Irish Civil Service to halt Protocol checks on the grounds that the Executive had not agreed to them. Though the Northern Ireland Secretary of State Brandon Lewis argued Poots was correct in the assessment that he could exercise this power, it has been argued that the obligation to implement the Protocol ultimately lies with the central UK government. Poots' order to halt checks is now suspended and subject to a judicial review<sup>14</sup>. The next day, DUP First Minister Paul Givan resigned over the Protocol, prompting the deputy First Minister, Sinn Féin's Michelle O'Neill, to automatically lose her position as per the Agreement's power sharing rules.

Thus, Brexit and the Protocol have both caused and compounded a sense of crisis within unionism. The UK government's confrontational stance about implementing the protocol provides some respite for unionists, but only reassures fears in the short-term and on a single issue. Arguably, the more fundamental causes of anxiety can be traced back much further, as unionism emerged from the peace process deeply divided on whether to support the Agreement's accommodations. Since that time, a narrative has taken hold in some quarters that the Agreement's provisions went too far and constituted a sell-out to nationalism, and the Republican movement in particular.

Culture wars around the Irish language and perceptions that British identity was being eroded highlighted an absence of reconciliation in some quarters. Republican celebration of IRA violence has added to this anger. Perceptions that UK security forces were being unfairly brought to trial further exacerbated this, though there is deep concern in nationalism that the opposite is true. The perception of unionism as the losers of the political process has re-emerged against a backdrop of failing to maintain its majority status at the 2017 and 2019 Assembly and Westminster elections. The growing ambivalence (and at times hostility) towards the Agreement is worrying, given it was negotiated as a delicate balance offering permanent protections for both communities' identities and incentives for both to sign the Agreement<sup>15</sup>.

Polling and election results indicate that unionism's two largest parties have been losing voters in recent years to the liberal, constitutionally neutral Alliance Party, and the hard-line Traditional Unionist Voice, led by DUP defector Jim Allister. A poll in August 2021 showed the DUP in particular struggling to prevent their supporters from deserting the party<sup>16</sup>. The 3-way split in the unionist vote which did materialise in the recent Assembly election in May 2022 has meant that Sinn Féin have emerged as the largest party. This in itself has little direct impact (the First and deputy First Ministers of Northern Ireland hold equal power in the Executive) but the prospect was built by unionism before the election as a further boost

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<sup>14</sup> RTÉ, 'Belfast High Court orders NI agri-food checks must continue', RTÉ.ie, 4 February 2022; <https://www.rte.ie/news/brexit/2022/0204/1277794-brexit-northern-ireland/> (accessed 4 February 2022).

<sup>15</sup> B. O'Leary, *Treatise Volume 3: Confederalism and Consociationalism*, Oxford, OUP, 2019.

<sup>16</sup> Lucid Talk, LT NI 'Tracker' poll – Summer 2021, 1 September 2021; <https://www.lucidtalk.co.uk/single-post/lt-ni-tracker-poll-summer-2021> (accessed 1 October 2021).

to demands for a border poll<sup>17</sup>. The disconnect between the DUP and their working-class loyalist support base in Northern Irish towns and cities has widened as these insecurities about the future grow. In addition to cultural grievances, loyalism has long maintained that the economic spoils of the peace process have not reached their communities<sup>18</sup>. Indeed, socio-economic inequality and unemployment remain key issues in post-conflict Northern Ireland<sup>19</sup>. This reached a boiling point at Easter 2021, when loyalist youths rioted after an announcement that Sinn Féin figures would not be penalised for attending a large republican funeral which violated Covid-19 regulations.

Brexit has also had a profoundly negative impact on the British-Irish intergovernmental relationship. The decision to leave the EU, along with the acrimonious negotiation process, severely strained relations. Central to the peace process from the Anglo-Irish Agreement (1985) on was a partnership between the two governments. Fruitful negotiations often took the form of private dialogue led by civil servants and senior politicians in the Anglo-Irish Conference, an intergovernmental body. According to participants, the Conference spawned organic and informal meetings that laid the basis for the peace process, but it was the institutionalised forum that caused the fruitful informal dialogue<sup>20</sup>. By seemingly settling the major constitutional disputes which had dogged relations prior to 1998, it was hoped that subsequent interactions would be characterised by cooperation on post-conflict Northern Ireland and close working relations, including at the European level. The public nature of the Brexit fall-out pushed difficult discussions back into the media.

## The Belfast/Good Friday Agreement Institutions Since 1998

The turbulence in Northern Ireland was reflected by a recent opinion poll that showed that while 77% of citizens across both communities thought the B/GFA was the best way of governing Northern Ireland, 54% thought it should be reviewed<sup>21</sup>. Most focus has been on Strand One, that deals with the power-sharing arrangements, for example, UUP leader Doug Beattie has recently called for a reset to the 'factory settings' of the 1998 Agreement, because of the manner in which subsequent changes in operation have entrenched sectarian politics, often between the DUP and Sinn Féin<sup>22</sup>. However less attention has been paid to the other Strands: Strand Two provides for North-South cooperation through the North South Ministerial Council (NSMC) and Strand Three provides for British-Irish (East/West) cooperation between the two governments and also across these islands. It

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<sup>17</sup> B. Archer, 'DUP say Jim Allister's stance on Sinn Féin first minister will 'provide platform for border poll'', *Irish News*, 13 July 2021.

<sup>18</sup> G. Mulvenna, 'Labour Aristocracies, Triumphalism and Melancholy: Misconceptions of the Protestant Working-Class and Loyalist Community' in: T.P Burgess, G. Mulvenna (eds) *The Contested Identities of Ulster Protestants*. Palgrave Macmillan, London, 2015.

<sup>19</sup> P. Shirlow, M. D'Arcy, A. Grundle, J. Kearney, and B. Murtagh, 'The Ireland/Northern Ireland Protocol Responding to Tensions or Enacting Opportunity?', *Institute of Irish Studies, University of Liverpool*, 2021, pp. 48–49.

<sup>20</sup> E. Tannam, 'Explaining the Good Friday Agreement: a learning process', *Government and Opposition*, vol. 36, Issue 4, October 2001, pp. 447–594.

<sup>21</sup> Northern Ireland Life and Times Survey, 2021; [https://www.ark.ac.uk/nilt/2020/Political\\_Attitudes/](https://www.ark.ac.uk/nilt/2020/Political_Attitudes/) (accessed 28 October 2021).

<sup>22</sup> F. McClements, 'UUP's Beattie calls for realignment of Assembly power structures', *Irish Times*, 9 October 2021.

comprises the British Irish Intergovernmental Conference (BIIGC) and the British Irish Council (BIC).

Under the Agreement, the totality of the relationship – all three strands – was central to peace and stability. The Agreement also stated that the three strands were interdependent:

‘It is accepted that all of the institutional and constitutional arrangements—an Assembly in Northern Ireland, a North/South Ministerial Council, implementation bodies, a British-Irish Council and a British-Irish Intergovernmental Conference and any amendments to British Acts of Parliament and the Constitution of Ireland—are interlocking and interdependent and that in particular the functioning of the Assembly and the North/South Council are so closely inter-related that the success of each depends on that of the other’<sup>23</sup>

The NSMC meets to discuss specific policy areas identified under the Agreement. The interdependence of the strands is evident in practice here. The NSMC can only meet when the Assembly is functioning, so the many collapses of the Assembly have meant the NSMC did not meet either. Therefore, since 1998, weaknesses in Strand One have flowed into Strand Two and vice versa. Though the NSMC was given a remit to deal with EU matters, most notably the Common Agricultural Policy (CAP) and managing EU special programmes funding, it played a minimal role after 2016, as the Brexit period coincided with the latest suspension of the Strand One institutions (2017-2019). Since the implementation of the Protocol began, several DUP ministers have boycotted the NSMC meetings, which has also had the effect of preventing meetings from taking place<sup>24</sup>. This has prompted a furious reaction from nationalist politicians and following a judicial review, the Belfast High Court found that the DUP was behaving unlawfully by not attending the NSMC<sup>25</sup>.

Strand Three institutions are the core part of East/West cooperation under the Agreement. The British-Irish Intergovernmental Council ‘will bring together the British and Irish governments to promote co-operation at all levels on all matters of mutual interest within the competence of both governments’<sup>26</sup>. Strand Three also provides for the British-Irish Council (BIC) comprising government representatives of Wales, Scotland, the Northern Ireland Executive, Ireland and the crown dependencies and its function is to discuss matters of mutual concern and to engage in policy learning and exchange. It was included as part of a package to satisfy unionists during the negotiations that a strong East/West dimension would balance the North/South dimension in Strand Two. Under the Agreement the BIC will ‘promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands’<sup>27</sup>. It is obliged to meet twice a year and at

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<sup>23</sup> Belfast/Good Friday Agreement, 1998, Declaration of Support.

<sup>24</sup> A. Madden, ‘Mallon urges UK and Irish government intervention over DUP north-south boycott’, *Belfast Telegraph*, 30 September 2021.

<sup>25</sup> R. Hewitt, ‘DUP believes Court Ruling on NSMC Boycott Is Further Proof Article 16 Should be Triggered’, *Belfast Telegraph*, 11 October 2021.

<sup>26</sup> Belfast/Good Friday Agreement, 1998, Strand Three, British-Irish Intergovernmental Conference, paragraph 10.

<sup>27</sup> Belfast/Good Friday Agreement, 1998, Declaration of Support.



sectoral level in between biannual meetings. However, it is purely consultative and has been called a talking shop with no real impact.

The Agreement attempts to reflect an equal level of concession by (and protection for the aspirations of) both unionism and nationalism. The emphasis on the interdependence of the strands and the centrality of British-Irish intergovernmental cooperation was influenced by former SDLP leader John Hume's analysis that the conflict stemmed from insecurity of both communities and was at its core an identity conflict<sup>28</sup>. The logic of the peace process and of the BIIGC was that the British government would act as the protector of unionist rights and identity and the Irish government the protector of the nationalist equivalents. The strategy is that by acting in good faith, both governments together could carve a joined-up framework that provides balanced outcomes and parity between the communities<sup>29</sup>. Thus, neither community would feel that the Agreement fails to represent their interests, and both would be happy with final bargains and compromises. Institutions are necessary according to this logic, because following the EU model, formal institutions and mandatory regular meetings ensure trust develops over time and a joint problem-solving approach evolves.

The security umbrella of the BIIGC, where both governments are guardians of the Agreement, increases intergovernmental cooperation and allows both communities to cooperate. Although all institutions are interdependent, the BIIGC is a bedrock for all other strands to function well partly because unlike the other two, Strand Three can continue to operate and provide leadership even if the Stormont institutions are not meeting. However, it rarely met after 2006 or during the Brexit years. Indeed, it was not convened from 2007 to 2018, despite the challenges of Brexit. Once Article 50 was triggered, the Irish government was wary of engagement with the UK government in case the UK government used meetings to divide Ireland from the EU<sup>30</sup>. However, before the Brexit referendum was called and before Article 50 was triggered, the BIIGC would have been an obvious forum to discuss implications for Northern Ireland and relations across these islands.

In sum, the logic of the Agreement is that British-Irish guardianship through the BIIGC, regularised all-island cooperation via the NSMC and substantive use of the East/West BIC would lead to an increased sense of security for both communities and build reconciliation and stability. The recent crises stemming from Brexit have revealed fundamental weaknesses which have not been addressed since 1998. Frequent suspension of the institutions at Stormont has prevented the NSMC from becoming a normal feature of politics on the island, and unionist hostility towards that institution endures. In Strand Three too, the ad hoc crisis management of both governments has clearly not provided the security necessary for stability. In fact, 'many recent political agreements have simply

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<sup>28</sup> E. Tannam, *Shared Island: the legacy of John Hume*, IACES Blog, 5 August 2020; <https://www.iaces.ie/post/shared-island-the-legacy-of-john-hume> (accessed 1 October 2021).

<sup>29</sup> E. Tannam, 'The British-Irish Relationship and the Centrality of the British-Irish Intergovernmental Conference' *Irish Studies in International Affairs*, Vol. 32, No. 2, Analysing and Researching Ireland, North and South, 2021, pp. 341–367.

<sup>30</sup> R. Montgomery, 'Can British-Irish Cooperation Be Revived? A Response to 'The British-Irish Relationship and the Centrality of the British-Irish Intergovernmental Conference' by Etain Tannam', *Irish Studies in International Affairs* Vol. 32, No. 2, Analysing and Researching Ireland, North and South, 2021, pp. 371–374.

addressed the surface issues and failed to attend to fundamentals – and perhaps in consequence failed in short order<sup>31</sup>. Regular formalised strategic planning by both governments, where their role as protectors of each community was clear, would have contributed to more stable outcomes.

## Strands Two and Three: Reasons for Weakness

One of the primary reasons Strand Two has not reached its full potential is ongoing opposition from unionist elected officials to its remit. North/South cooperation has always been sensitive for unionists. In the 1960s what was then called cross-border cooperation was hindered by vehement protests from hardline unionists like DUP founder Ian Paisley<sup>32</sup>. For them, co-operation was a means to achieve unification through the back door. That perception remained during the Agreement's negotiations. The original list of 145 policy areas to be covered by the NSMC was whittled down because of unionist objections<sup>33</sup>. It was agreed that 6 areas would fall under the NSMC, and 6 other areas would be looser 'areas of cooperation'.

Observers have noted since 1998 that the degree of cooperation in a given policy area depended on whether a unionist or nationalist Minister was in charge. For example, transport cooperation was limited by a DUP Minister for Transport<sup>34</sup>. Another example is in tourism, where cooperation was limited by competition between developing Northern Ireland tourism or tourism on the island. Although the logic was that adopting a joint strategy would maximise visitors to both parts, in practice there was a tendency in unionism to be cautious (for example, opposition to any claims that signature sights such as the Giant's Causeway would be labelled as 'Irish')<sup>35</sup>.

Although a less significant factor, the Irish government and nationalist parties have not been as assertive in their support of the NSMC as might be expected. Irish governments have been conscious of unionist wariness and have focused more deeply on supporting Strand 1. While both the SDLP and Sinn Féin support North/South cooperation, Sinn Féin has also appeared in the past to place less emphasis on the Seán Lemass strategy of developing North/South cooperation to achieve reconciliation *before* unification, the approach later supported by Hume. Brexit and the pandemic are likely to have altered that approach, given calls for an all-island approach to the pandemic and also for policy planning for unification. However, Sinn Féin remains critical of the 'Shared Island' strategy launched by the Irish government in 2020 to develop reconciliation and North/South practical cooperation. Instead, they have insisted that more active preparations for unity should be taking shape,

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<sup>31</sup> A. Whysall, 'Renewing and reviving the Belfast/Good Friday Agreement', *Constitution Unit Blog*, 3 September 2021; <https://constitution-unit.com/2021/09/03/renewing-and-reviving-the-belfast-good-friday-agreement/> (accessed 1 October 2021).

<sup>32</sup> E. Tannam, *Cross-Border Co-operation in Ireland and Northern Ireland*, Basingstoke: Palgrave, 1999.

<sup>33</sup> J. Coakley, 'Ethnic Conflict and Its Resolution', Institute for British-Irish Studies, UCD, Working Paper, No. 9, 2001.

<sup>34</sup> E. Tannam *British-Irish Relations in the 21<sup>st</sup> Century*, forthcoming Oxford, OUP.

<sup>35</sup> E. Tannam *British-Irish Relations in the 21<sup>st</sup> Century*, forthcoming Oxford, OUP.

led by the Irish government. Unionist objections to North/South cooperation therefore cannot be seen in isolation from the wider political climate.

There are also various reasons why Strand Three has not fulfilled its potential. Like the NSMC, unionists were always suspicious of the BIIGC as implying an erosion of UK sovereignty and an unwelcome Irish interference. In fact, one of the reasons for the DUP's opposition to the Agreement was the BIIGC's role. Secondly, as the BIIGC's role was over non-devolved areas, once policing and justice issues became devolved in the late 2000s, the BIIGC was viewed by both governments as being less necessary. Thus, when Brexit created strains in British-Irish relations there was no habit of below the radar regular BIIGC meetings and resurrecting it amidst increasing unionist fury became difficult. In addition, the UK government was reluctant to convene the BIIGC and indeed in 2020 and 2021 it either behaved unilaterally, (for example proposing a new approach to legacy without consulting the Irish government) or threatened to do so, (for example on the Withdrawal Agreement) thus breaking from the 1990s approach of cooperation with Dublin. It appears that the present UK government has a different conception of the importance of formal intergovernmentalism from that of its Irish counterparts.

Another reason for BIIGC weakness is that although it is the most significant part of Strand Three, with nine paragraphs devoted to its operation, a mandatory schedule (for example a meeting at least every six months) is not included<sup>36</sup>. The logic that in times of crisis institutions are obliged to meet (as in the EU model) was undermined by the absence of a mandatory schedule. Because that logic was forgotten, Brexit tensions made the BIIGC even less likely to meet, even though the crisis made it all the more essential to do so. There is a catch 22 situation that arguably political will is required in the first place to convene the BIIGC. Unionist distrust in it, stemming from opposition to its ancestor the 1985 Anglo-Irish Conference, has limited its use to some degree<sup>37</sup>. In addition, there appears to be less importance attached by the UK government to building consensus and trust. Had a mandatory schedule been in place that operated from 1998, the issue of political will would have been less salient. Indeed, institutions can *create* political will in times of crisis. In practice Irish officials are now faced with the dilemma, in post-Brexit years, about whether to invest resources in lobbying the UK government intensively to convene the BIIGC regularly, or whether to create new institutions to deal with the implications of Brexit. A key consideration is a fear that by creating new institutions outside the BIIGC, the Agreement itself would be unpicked gradually by its opponents.

Finally, in addition to the NSMC and BIIGC, it should be noted that the BIC has not blossomed and remains a talking shop. This is unfortunate, as it was included in the Agreement as a means of balancing unionist concerns over Strand Two. Its dynamic potential relies on concerted leadership from the parties and both governments. Although the Taoiseach always attends the plenary, since Gordon Brown, no UK Prime Minister has ever attended. Again, there is a gulf between the two states on the importance of this institution. The Irish government is investing in relations with Scotland, Wales and the North

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<sup>36</sup> B. O'Leary, *Treatise Volume 3: Consociation and Confederation*, Oxford: OUP, 2019, pp. 311.

<sup>37</sup> R. Montgomery, 'Can British-Irish Cooperation Be Revived? A Response to 'The British-Irish Relationship and the Centrality of the British-Irish Intergovernmental Conference' by Etain Tannam', *Irish Studies in International Affairs* Vol. 32, No. 2, Analysing and Researching Ireland, North and South, 2021, pp. 371–374

of England, with consular offices in each<sup>38</sup>, so it is possible that these linkages will re-energise the BIC.

## Recommitting to the Three Strands Approach

The decision in the 2020 Irish government's 'Shared Island' mission is to concentrate on the B/GFA's existing institutions and includes a commitment to use Strand Two and Three institutions robustly<sup>39</sup>. Whether this commitment to engage with the Agreement's institutions will be sustained, and whether it will be matched by unionism and the UK government, remains to be seen. There was a lukewarm response from unionists and the DUP boycott of the NSMC did not bode well. However, in September 2021 the new UUP leader Doug Beattie called for the creation of an additional cross-border body to manage issues caused by the Protocol, particularly disruption caused to the movement of trade across the Irish Sea<sup>40</sup>. He displayed a commitment to finding all-island solutions by proposing cooperation with Dublin.

The Protocol does allow for the 'specialised committee' on implementation to 'examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies'<sup>41</sup>. If this channel was utilised, unionists would have a direct link into implementation, including addressing the practical implications they oppose (or simply a less contentious route to opposing the Protocol entirely). Mark Durkan, a former leader of the SDLP and one of the Agreement's negotiators, has also said there is a potential convergence of interest between unionists and nationalists 'in agreeing some substantive adjustment in Strand Two, which the EU might be able to rely on as vouchable assurance and oversight on relevant single market precepts and/or due compliance'<sup>42</sup>. Durkan continues that 'this points to a channel of representation for the views of Northern Ireland ministers which can help to answer the charge against the Protocol that nobody from here can have any say in future EU decisions that affect us'.<sup>43</sup>

However, for Strand Two to fulfil its potential, more widespread commitment would be required than the steps outlined above. Unionism has at times stressed the need for a 'shared island's' (plural) focus, with more emphasis on the Agreement's East/West dimension to balance the use of Strand Two. It would be beneficial to all actors if it were possible to develop the use of Strands Two and Three in tandem. In Strand Three, there is

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<sup>38</sup> See for example, Department of Foreign Affairs, 2021, 'Minister Coveney Opens Ireland's New Consulate General In Wales'; <https://www.gov.ie/en/press-release/8e72d-minister-coveney-opens-irelands-new-consulate-general-in-wales-and-chairs-first-ireland-wales-forum/> (accessed 28 October 2021).

<sup>39</sup> Department of the Taoiseach, 'Programme for Government Our Shared Future', October 29 2020; <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/> (accessed 1 October 2021).

<sup>40</sup> J. Manley, 'Doug Beattie backs creation of cross-border protocol body', *Irish News*, 7 September 2021.

<sup>41</sup> Protocol on Ireland and Northern Ireland, Article 14, EU-UK Withdrawal Agreement, published by the European Commission; [https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement\\_en](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement_en) (accessed 4 February 2022).

<sup>42</sup> M Durkan, 2020, 'Escaping the ruts: a renewal review of the Good Friday Agreement', *Fortnight Magazine*, Issue 483, <https://fortnightmagazine.org/articles/escaping-the-ruts-a-renewal-review-of-the-good-friday-agreement/>

<sup>43</sup> Ibid

indeed potential for both governments to frame policy issues in a cooperative way and to create a secure environment for unionists, whereby the BIIGC rather than perceived solely as promoting nationalism, is viewed as a protection of a unionist identity too. Under the Agreement: 'relevant executive members of the Northern Ireland Administration will be involved in meetings of the Conference, and in the reviews...to discuss non-devolved Northern Ireland matters'<sup>44</sup>. The Agreement stipulates that its remit is 'all-island and cross-border cooperation on non-devolved issues' and to keep under review international treaties and institutions and machinery established under it. In this way, Executive members could have direct access to higher level meetings discussing EU issues that affect them<sup>45</sup>.

UK and Irish governmental commitment to establishing a regular schedule of BIIGC meetings as a normal feature of the political calendar would further strengthen its impact. The BIIGC is also a forum for dealing with the wider British-Irish relationship, beyond Northern Ireland issues, and could help address the generally poor post-Brexit relations between the two governments. The EU forum was a venue where officials regularly met formally and informally for several decades. The loss of this avenue to discussing matters of mutual interest points to the need for *existing* channels like the BIIGC to be utilised, alongside any new channels which are created. There will be many new common challenges facing both governments, for example cybersecurity and climate change. This can create incentives for the British government to support the BIIGC, engage with the Irish government, and help both governments advance their mutual interests.

Just as the BIIGC provides opportunities for unionists, the BIC also offers opportunities and was created partly to satisfy their aims of a two islands framework. For example, it provides for members to develop separate bilateral or multilateral arrangements<sup>46</sup>. The BIC could also allow the Northern Ireland Executive to communicate concerns about the Protocol to the Irish government and, as an EU member state, the Irish government could act as a useful ally. Thus, the BIC could be used to find compromise on key issues caused by the Protocol's implementation<sup>47</sup>. Such creative use would provide the BIC with more teeth.

Clearly, like the Agreement itself, these institutions have not been perceived by some unionists to work for them. Regardless of whether these perceptions are well-founded or not, or whether a minority of unionists hold these views, the institutions and perceptions of their fairness matter for stability and democracy<sup>48</sup>. The new post-Brexit context changes the cost-benefit analysis faced by all of Northern Ireland's communities. Those who were less

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<sup>44</sup> Belfast/Good Friday Agreement, 1998, Strand Three, British-Irish Intergovernmental Conference, paragraph 7.

<sup>45</sup> R. Montgomery above cautions against having Executive members at BIIGC meetings as it could hinder frank discussion between the governments; 'Can British-Irish Cooperation Be Revived? A Response to 'The British-Irish Relationship and the Centrality of the British-Irish Intergovernmental Conference' by Etain Tannam', *Irish Studies in International Affairs* Vol. 32, No. 2, Analysing and Researching Ireland, North and South, pp. 371–374, 2021.

<sup>46</sup> Belfast/Good Friday Agreement, 1998, Strand Three, British-Irish Council, paragraph 10.

<sup>47</sup> B. O'Leary, *Treatise Volume 3: Consociation and Confederation*, Oxford: OUP, 2019, pp. 311, pp. 213.

<sup>48</sup> C. Sugden, Trinity Long Room Hub, 'Behind the Headlines: The Future of Northern Ireland' a live discussion hosted by the Trinity Long Room Hub, 2021.

keen to engage with the Agreement's institutions may well alter, if those institutions can be seen to provide influence and protection. This is especially true if there is a possibility of Irish unification, but remains true in all scenarios. Boycotts of the Strand Two institutions or encouraging unilateral UK government action may pay short-term dividends with respects to the Protocol's implementation. However, it fails to address the challenges facing unionism in the post-Brexit period. The electoral changes in Northern Ireland also point to an incentive for unionism to find protections in the Agreement's safeguards.

It also matters that no party should hold a veto over compromise and cooperation. A carrot and stick strategy<sup>49</sup> of providing opportunities to influence the Protocol's implementation through dialogue across Strands Two and Three would incentivise constructive unionist engagement, help achieve deeper reconciliation on the island, and revive the damaged British-Irish government relationship. The 'stick' is that by not engaging, unionist influence is depleted. Reliance solely on the UK government to serve unionist interests has already proved to be a precarious strategy in the past five years when the BIIGC rarely met. Indeed, the alternative to a renewed commitment to the totality of the Agreement is protracted instability in Northern Ireland's politics which in turn further destabilises unionism.

## Conclusion

The central dilemma that political will is necessary in the first place to develop the B/GFA institutions is difficult to resolve. However, this article has shown that the intergovernmental logic points to the need for a formal schedule of meetings, so that in times of crisis communication continues and the habit of cooperation endures. It also demonstrated that this logic was forgotten as the years passed after the Agreement's signing. It is not that the Agreement was misconceived, but that it was never properly implemented. Brexit shows that its robust implementation is now more important than ever.

The crises which have gripped Northern Ireland are being most acutely felt by political unionists, who feel the Agreement has been used to advance nationalists interests at their expense since 1998. The deep grievances over the Protocol and the manner in which it was negotiated are the latest and most prominent manifestation of this sentiment. The UK government's recent confrontations with the EU address unionism's sense of abandonment to an extent, but that approach is unlikely to address all their concerns. A negotiated outcome with the EU on the implementation of the Protocol remains more likely than a desertion of its core principles. Moreover, a unilateral act that satisfies the minority who seek abolition of the Protocol in turn denies the rights of the majority who support it. Unionist concerns were perhaps dismissed too readily and there was inadequate input into the policy process, but to treat nationalists' and the 'neithers' concerns about abolishing the Protocol with disdain will not lead to a stable outcome. What's more, given the demographic and electoral challenges faced by the Union, further instability on other issues could develop in the coming years.

The desire for functioning institutions should be separated from the unification debate. While the Agreement's regular use can be viewed as a desirable (or necessary) precursor to

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<sup>49</sup> B. O'Leary, *Treatise Volume 3: Consociation and Confederation*, Oxford, OUP, 2019.

unification, it is equally true the Agreement provides a framework for stability within the current constitutional arrangement. Linking the Agreement to a unification agenda only lessens the chance of its creative development and unionist engagement. Unionists are no longer a majority in Northern Ireland and their changed status requires a shift in conceptions and strategy not just for themselves, but for Irish and British policy-makers and all citizens. In particular, forums are needed for ‘consistent engagement’<sup>50</sup> not just once-off engagement, or flag ship events<sup>51</sup> such as the Queen’s visit, or the Irish commemoration of the Battle of the Somme. The end of joint EU membership reinforces the need for cooperation elsewhere. The NSMC, the BIIGC, and the BIC are forums to do that.

Given the centrality of intergovernmental institutions to the logic of the peace process, undermining any of the three strands of the 1998 settlement provides no viable route to stability. Either side cherry picking the Agreement, so as to defend policy behaviour, quickly makes it a political football rather than a source of stability. We have argued that the whole Agreement needs robust execution. Both Strand Two and Three of the Agreement do provide those pathways for unionism and indeed for all Northern Irish parties to have direct input on the Protocol and on future issues of concern. Although the crises of recent years appear to diminish the likelihood of robust implementation taking place, the Agreement remains the bedrock of peace and more positive relations across these islands and serves the interests of both governments in meeting future policy challenges. The deep geographical, historical, and family ties across these islands are reflected in the three strands. A commitment to energise the Agreement’s Strand Two and Three institutions and a pragmatic engagement strategy from unionist leaders, has the potential to deliver significant political returns for unionists and nationalists and for the totality of relations.

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<sup>50</sup> H. O’Neill ‘Reconciliation and Mutual Trust-the Crucially Unfinished Elements of the Good Friday Agreement’, Cambridge University, Centre for Geopolitics, October 11 2021.

<sup>51</sup> J. Todd, ‘The vulnerability of a (quasi-)constitutional settlement: Northern Ireland after 1998 and the British-Irish relationship’ (2014) Working Paper 112, Institute for British-Irish Studies, University College Dublin, 1–28: 20.