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Reform of the 1998 Belfast/Good Friday Agreement: Introduction

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In political discourse in and about Northern Ireland, accusations that a particular policy, legal arrangement, or course of conduct is contrary to the 1998 Belfast/Good Friday Agreement are frequent. Such is the 1998 Agreement's 'iconic' status as the basis on which Northern Ireland's peace is built,[1] and the legitimacy it derives from the referenda held on either side of the border, that departure from its terms (or, occasionally, its 'spirit')[2] tends to be presented as the conclusive counterargument; the indefeasible objection. Assertions of incompatibility with the 1998 Agreement have been particularly prominent in the heated political debates around the withdrawal of the United Kingdom (UK) from the European Union (EU) and its impact on Northern Ireland,[3] although they are certainly not confined

1 See Colin Harvey, 'The 1998 Agreement' in Chris McCrudden (ed), *The Law and Practice of the Northern Ireland Protocol* (Oxford University Press 2021) 21, 30: 'almost everyone now anchors their argumentative strategy around its defence'.

2 'Emma De Souza ruling "out of spirit" with Good Friday Agreement – Varadkar' (*BBC News* 16 October 2019); European Commission, Speech by President von der Leyen at the European Parliament Plenary on the 25th anniversary of the Good Friday Agreement (29 March 2023): 'Sadly, the Brexit referendum raised new challenges for both the letter, the spirit and the promise of the Good Friday (Belfast) Agreement.' See also C R G Murray, 'Citizenship and identity in Northern Ireland' in McCrudden (ed) (n 1 above) 183, 184.

3 See, for example, Jonathan McCambridge, 'Sir Jeffrey Donaldson: post Brexit trade disruption breaches the Good Friday Agreement' (*NewsLetter* 14 January 2021); Liz Truss, 'Northern Ireland Protocol: Foreign Secretary's statement' (*Gov.uk* 17 May 2022). A further notable example was the UK Government's 2022 legal position on the Northern Ireland Protocol Bill, which identified the 'protection of the 1998 Belfast (Good Friday) Agreement' as one of the 'essential interests of the United Kingdom' on the basis of which the UK Government made the highly implausible argument that the wrongfulness of the breach of the UK's international obligations under the Withdrawal Agreement that appeared to be provided for in the Bill could be precluded through invocation of the customary international doctrine of necessity. See 'Northern Ireland Protocol Bill: UK Government legal position' (13 June 2022); and see Billy Melo Araujo, 'An analysis of the UK Government's defence of the Northern Ireland Protocol Bill under international law' (2022) 73(2) Northern Ireland Legal Quarterly

to this context.[4] The importance of protecting the peace settlement underpinned by the Agreement is difficult to overstate, although 25 years of relative peace in Northern Ireland have perhaps produced some complacency in certain quarters about these hard-won gains.[5] In recent months, overt attacks on the Agreement have tended to backfire on those making them,[6] and even those proposing changes that are arguably contrary to both its text and its purpose expend considerable effort purporting to demonstrate their consistency with the Agreement.[7] Nevertheless, while consensus as to the details of what the 1998 Agreement actually requires is often lacking – participants in these debates tend to characterise those parts of the 1998 agreement they find useful as somehow immutable, and those they dislike as rather more flexible – it is difficult to find political actors who would explicitly contest the need to ensure the Agreement is 'protected in all its parts'.[8]

The rhetoric of the immutability of the Agreement is nevertheless difficult to reconcile both with increasingly widespread calls for reform of the 1998 Agreement and with past practice, which since 1998 has

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[*n 3 continued*] 89–118, 104ff. Although the impact of Brexit will necessarily feature in any discussion of Northern Ireland's governance arrangements, this is not the focus of this special issue, having already been the subject of much detailed analysis elsewhere: see the special issue of this journal dedicated to the topic, introduced by C R G Murray, 'Northern Ireland's legal order after Brexit' (2022) 73(2) Northern Ireland Legal Quarterly 1–7. See also, for example, McCrudden (n 1); Oran Doyle, Aileen McHarg and Jo Murkens (eds), *The Brexit Challenge for Ireland and the United Kingdom: Constitutions under Pressure* (Cambridge University Press 2021).

4 Paul Ainsworth, 'NIO ministers directing civil servants in the north "not compatible with GFA"' *Irish News* (Belfast 4 April 2023); Jayne McCormack, 'Border poll: SDLP rejects any change to Irish unity referendum rules' (*BBC News* 24 October 2023).

5 See Andrew Madden, 'Nigel Farage: Reform UK would renegotiate Good Friday Agreement as part of immigration plan' *Belfast Telegraph* (Belfast 26 August 2025).

6 Gareth Gordon, 'Farage criticised for Good Friday Agreement proposal' (*BBC News* 26 August 2025).

7 Conor Casey, Richard Ekins and Stephen Laws, The ECHR and the Belfast (Good Friday) Agreement (Policy Exchange 2025),

8 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Protocol on Ireland/Northern Ireland (signed 24 January 2020, entered into force 1 January 2021) preamble. Para 4, Decision 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework (24 March 2023), provides that the EU and UK 'will, consistent with the requirements of legal certainty, refer to the Protocol as amended as the "Windsor Framework", and that they may in the same way refer to the Protocol as amended in their domestic legislation'. See Harvey (n 1 above) 21, 30.

seen numerous adjustments to the arrangements established by the Agreement. This suggests that more nuance is required in thinking about how, and in what ways, the 1998 Agreement may be modified, the legal and political limits on its modification, and whether the answers to these questions are the same for all parts of the Agreement. It may be that certain fundamental principles of the Agreement – consent, rights and equality guarantees – are indeed virtually immutable, or at least very difficult to depart from, while other, more mundane aspects of the peace settlement can be modified to reflect changing circumstances.

In this way, the question of possible reform of the Northern Ireland institutions also maps onto two central questions of contemporary UK constitutional law and practice: first, to what extent do the devolution settlements – such as the terms of the Northern Ireland Act 1998 – impose legal, political, or practical restrictions on the potential for the powers and structures of the devolved institutions to evolve in a 'bottom-up' manner and to what extent, if at all, do those settlements place limits on the ability of the UK Government, and more controversially, the Westminster Parliament, to modify their terms.[9] Second, the question of reform implicates the dynamic nature of the UK devolution settlements and the continuing processes of their development and (re)negotiation,[10] with the answers to these questions offering insights into contemporary constitutional law and practice more broadly, in particular, ongoing debates about how constitutional settlements develop over time in light of changing circumstances.[11] While focusing on the specific legal order of Northern Ireland and the UK, the analysis here will thus resonate with other contexts where decentralised constitutional settlements are undergoing processes

9 See Vernon Bogdanor, 'Book review: The Evolution of a Constitution: Eight Key Moments in British Constitutional History' (2007) 123 Law Quarterly Review 480, 483; Michael Gordon, *Parliamentary Sovereignty in the UK Constitution: Process, Politics and Democracy* (Hart 2015) 116.

10 John McEldowney, 'Federalism' in Jeffrey Jowell and Colm O'Cinneide (eds), *The Changing Constitution* 9th edn (Oxford University Press 2019) 391, 402, observing that the devolution arrangements 'are predicated on political momentum that promotes change'.

11 See, for example, Xenophon Contiades and Alkmene Fotiadou, 'Comparative constitutional change: a new academic field' in Xenophon Contiades and Alkmene Fotiadou (eds), *Routledge Handbook of Comparative Constitutional Change* (Taylor & Francis 2020) 17. In the Irish context, see David Capper, Conor McCormick and Norma Dawson (eds), *Law and Constitutional Change* (Cambridge University Press 2025).

of continued development and (re)negotiation.[12] Finally, reform to the 1998 Agreement is potentially an important source of practice in relation to peace agreements. Such agreements must both set the terms for an immediate cessation of violence and create a framework for longer-term governance. Thus, when constructing peace agreements, '[t]he difficulty for drafters is to craft obligations that will pin down commitments that are enough to command compliance yet leave some room for the coherent holistic development also crucial to compliance'.[13] How this tension between compliance and the longer term goals of peace agreements, such as the coherent development of the peace settlement over time, is navigated in relation to the 1998 Agreement thus has a wider importance for peace agreements in other parts of the globe.[14]

Almost all the major Northern Ireland political parties have expressed a desire for at least some change to the institutions created by the Agreement at some point since 1998,[15] albeit with significant differences as to the specific reforms proposed and varying levels of enthusiasm.[16] A November 2023 report by the UK Parliament's Northern Ireland Affairs Committee (NIAC), as part of its inquiry into the 'effectiveness of the institutions of the Belfast/Good Friday Agreement', recommended that the UK Government commission a formal review of the institutions of the Agreement, with a view to making recommendations for reform, as well as recommending specific

12 See, for example, Michael Keating and Guy Laforest (eds), *Constitutional Politics and the Territorial Question in Canada and the United Kingdom: Federalism and Devolution Compared* (Springer 2018); Arthur Benz, 'Gradual constitutional change and federal dynamics – German federalism reform in historical perspective' (2016) 26(5) Regional and Federal Studies 707–728; Jiunn-Rong Yeh, 'Evolving central–local relations in a contested constitutional democracy: the case of Taiwan' in Andrew Harding and Mark Sidel (eds), *Central–local Relations in Asian Constitutional Systems* (Hart 2015) 37.

13 Christine Bell, 'Peace agreements: their nature and legal status' (2006) 100(2) American Journal of International Law 373–412, 399.

14 For example, in the context of Bosnia and Herzegovina, see Lejla Balić and Maja Sahadžić, 'Electoral reform initiatives in Bosnia and Herzegovina' in Hamza Preljević et al (eds), *Shifting Paradigms: Three Decades after the Signing of the Dayton Peace Agreement* (Springer 2025) 203.

15 See Freya McClements 'UUP's Beattie calls for realignment of Assembly power structures: party leader tells conference mandatory coalition "no longer delivers good government"' *Irish Times* (Belfast 9 October 2021)' House of Lords Constitution Committee, Corrected Oral Evidence: Future Governance of the UK (15 September 2021), evidence of Sir Jeffrey Donaldson, Q128; Ben Hatton, 'Sunak says east–west council proposed by DUP has "considerable merit"' *The Independent* (London 19 October 2023).

16 See Conor J Kelly, Alan Renwick and Alan Whysall, *Reform of Stormont: Options for Discussion*' (UCL Constitution Unit March 2025) 16–17.

changes to the Strand One institutions.[17] There also appears to be broad support for discussion of possible reform to the Assembly and Executive among the general public.[18] The reforms which have been proposed to date could be criticised as being merely cosmetic (renaming the First Minster and Deputy First Minister as Joint First Ministers) or procedural tweaks (removal of the requirement for Members of the Legislative Assembly (MLAs) to designate as Unionist, Nationalist, or 'other'), with little impact on real-world problems facing Northern Ireland. However, this would misunderstand the symbolic importance of such changes and overlook the potential for many of the proposed reforms to address concerns about the functioning of the Assembly and Executive, and improve the day-to-day governance of Northern Ireland.[19] The repeated and prolonged periods in which Northern Ireland has lacked a functioning devolved administration has had an obvious impact on those institutions' ability to address issues affecting Northern Ireland. In its report, the NIAC highlighted health service delivery, as well as 'a lack of focus on climate change, little attention given to long-term investment in Northern Ireland's infrastructure and a failure of policy delivery in education'.[20] For example, several actors have proposed reforming the current system by which the First and Deputy First Ministers are appointed, to prevent one party being able to block formation of an Executive (or collapse an existing one). Reforms have also been proposed to the Petition of Concern, a mechanism allowing 30 MLAs from at least two parties to require that a vote on a particular issue be taken on a cross-community basis, to 'prevent the petition being used as a blocking mechanism' and 'enable more effective governance by allowing measures that have large support in the Assembly to pass'.[21] While those providing evidence to the NIAC's inquiry, and the Committee's report, acknowledged that political will as well as structural weaknesses of the institutions play a role in determining how effective the institutions are,[22] the report concludes that '[t]he Strand One institutions have failed to address a number of critical policy issues in Northern Ireland. There is broad

17 House of Commons NIAC, 'The effectiveness of the institutions of the Belfast/Good Friday Agreement: First Report of Session 2023–24' (NIAC Report) (29 November 2023).

18 The Institute of Irish Studies, University of Liverpool and the Irish News, 4th Attitudinal Survey (July 2022).

19 See Kelly et al (n 16 above) 14.

20 NIAC Report (n 17 above) 26.

21 Kelly et al (n 16 above) 52.

22 NIAC Report (n 17 above) 32.

consensus that a deficit of governance has — and continues to have — a detrimental impact on policy development and outcomes.'[23]

In this context, in April 2024 the University of Liverpool Law School hosted a workshop, bringing together academics and practitioners from the UK, Ireland and beyond, to discuss 'Legal Aspects of Reform to the 1998 Belfast/Good Friday Agreement'. With widespread, although certainly not universal, support for the view that in principle there are aspects of the 1998 Agreement that are in need of reform, the contributors to the workshop, whose papers are published in this issue, turned their attention to the questions that logically follow: identifying what specific modifications, if any, should be made to the Agreement and the institutions and arrangements it established; and, second, clarifying the process(es) by which any such changes might be brought about. A number of articles highlight that, while change to the 1998 Agreement is possible, there are legal and political restraints on how that can occur. Thus, while constitutional debate about the UK's devolution settlements acknowledges that they have been and continue to be subject to change, each of those settlements may have its own conditions and processes by which change can occur. In particular, the legal and political nature of the Agreement means that proposals for sweeping unilateral departures from the 1998 Agreement by any single political actor face serious obstacles. By identifying the concrete issues around which future discussions of reform may crystallise and, in particular, highlighting the complex questions raised by the modification of the legal and political framework created by the 1998 Agreement, the articles in this special issue thus seek to stimulate and inform productive legal, political, and policy discussion moving forward. The special issue begins with an introductory comment by Alan Whysall, setting out the current state of the political and policy debates around reform.

That the proposals made by the NIAC and some political parties are explicitly framed as proposals for 'reform' reflects both the ambition of the changes suggested and that modifications are now being contemplated to fundamental aspects of the 1998 Agreement: consociational features such as cross-community voting requirements; designations; and mandatory coalition. In the first article in this issue, Daniel Holder, Caroline Arnold and Delana Sobhani provide a detailed analysis of the functioning of the safeguards provided for in the 1998 Agreement and considers what concrete reforms might be effective to address the deficiencies he identifies. He reflects on how certain safeguards – European Convention on Human Rights incorporation and the Bill of Rights, the Petition of Concern, and the section 75 equality duty – have been implemented, misapplied, modified and added to over

23 Ibid 75.

the ensuing 27 years. Holder argues that in practice the rights-based safeguards foreseen in the Agreement have been replaced by sectional political vetoes and considers whether reform reverting back to the original framework of the 1998 Agreement could provide a remedy. Tying the reform debate into broader discussions of consociationalism, in his contribution, Patrick Graham is also alert to the shortcomings of some features of the 1998 Agreement, including the principle of cross-community consent, which he describes as 'the fulcrum of the current Northern Irish constitutional settlement'. Yet Graham challenges calls for change, arguing that the principle of cross-community consent has the capacity to enhance Northern Ireland's governance, by promoting broad support for public policy choices and giving the electorate, not the courts, the primary say on contested issues.

As yet, little attention has been paid to the *processes* by which reforms of this scale could and should be agreed upon and implemented. Even those reforms which are most frequently proposed and enjoy relatively broad support – such as changing the titles of the first ministers – would, to some extent, depart from the text of the 1998 Agreement. The NIAC simply recommended that the 'formal, independently led review' into the operation of the institutions should 'make recommendations on how the institutions could be reformed with a defined roadmap for the achievement of those reforms'.[24] Yet, the question of *how* any proposed reforms would be brought about is not straightforward. As the Committee's report also correctly observes, '[s]everal key provisions [of the Agreement] are codified in both domestic and international law and it has overwhelming democratic legitimacy'. Any process by which future reforms are enacted will thus need to address all three of these pillars on which the 1998 Agreement rests: how reforms are to be implemented effectively through domestic legislation; what changes, if any, are required to the often-overlooked bilateral treaty that underpins the Agreement on the international plane; and how to ensure that the reformed Agreement will enjoy the same democratic and political legitimacy as its predecessor.

Although the language of reform may be novel, there are – contrary to the narrative of immutability – multiple examples of modifications being made, since 1998, to the arrangements established by the Agreement. Even if the review conference foreseen in the multi-

24 Ibid 74.

party agreement never fully materialised,[25] subsequent agreements, such as the 2006 St Andrews Agreement and 2014 Stormont House Agreement, have made adjustments, in particular to the functioning of the Northern Ireland political institutions established under Strand One. These precedents demonstrate that departure from the terms of the Agreement reached in 1998 is possible.[26] They also provide guidance, and potentially establish political and legal constraints, as to the manner in which modification of the Agreement can be achieved. Thus, in the third article in this issue, David Torrance examines the constitutional requirements for reform of the 1998 Agreement, from the perspective of UK domestic law and constitutional practice. Drawing on and contributing to wider discussions of constitutional practice in the identification of constitutional conventions, Torrance argues for the existence of a constitutional convention which requires agreement between the Northern Ireland political parties; agreement between the UK and Irish Governments; and agreement between the main political parties at Westminster as prerequisites for change to the 1998 Agreement.

Yet, as the NIAC's report acknowledges, the 1998 Agreement is also a creature of public international law. The 1998 Belfast/Good Friday Agreement is comprised of both the political agreement reached between the UK Government, Irish Government and representatives of political parties in Northern Ireland, and the British–Irish Agreement, a bilateral international treaty concluded by the UK and the Republic of Ireland. This treaty was also signed on 10 April 1998, entered into force on 2 December 1999, and was registered with the United Nations (UN) Secretariat on 11 July 2000.[27] Concluding an international treaty as part of the 1998 Agreement underscored the seriousness with which the political commitments were undertaken by the Governments of the UK and the Republic of Ireland. As the following articles in this issue demonstrate, it is also central to the question of *how* reform of the 1998 Agreement can be achieved. In his article, Ciarán Burke begins by situating the 1998 Agreement within the broader context of international law, in particular the fundamental international law obligation to settle disputes peacefully, found in Articles 2(3) and 33 UN Charter. Burke analyses how changes in the international legal landscape since 1998 – new developments in transitional justice and

25 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (with annexes) (adopted 10 April 1998, entered into force 2 December 1999) 2114 UNTS 473, annex 1 'Agreement reached in the multi-party negotiations: validation, implementation and review, para 8.

26 Harvey (n 1 above) 22–23.

27 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (n 25 above).

reconciliation studies; the impact of Brexit on the UK–Ireland(–EU) relationship; and the UK's apparent disregard for its international obligations in recent years – may impact any future reform process. The special issue thus builds on existing literature analysing the legal nature of peace agreements generally,[28] contributing new analyses of the modification of such agreements and providing a concrete context in which the practical consequences of different approaches can be evaluated. In a book review for this issue, Sinead Coakley considers a recent addition to this body of literature, as she reviews Alexandra Harrington's monograph, *The Future of Peace: Incorporation of Intergenerational Equity and Justice in Peace Treaties and Reconciliation Agreements* (Edward Elgar 2023).

Two articles in the issue take a detailed look at the complex questions of treaty law raised by the 1998 Agreement, which as yet have not been analysed in depth in academic literature. In her contribution, Maria Xiouri examines how the British–Irish Agreement can be amended in light of recent practice and scholarship relating to non-binding agreements. In the following article, taking a different approach from Xiouri, I seek to explain the sometimes incoherent-seeming subsequent practice of the parties to the British–Irish Agreement, and in particular the modifications that have been made to the institutions created under all three strands, through an analysis based on the concept of evolutionary treaty obligations, familiar to international lawyers in other treaty contexts. I argue that practice since 1998 establishes that changes to the Strand Two institutions require modification of the international obligations created by the British–Irish Agreement and its subsequent implementing treaties. However, within the limits set by the object and purpose of the Agreement as a whole, certain changes to the Strand One institutions may be made without any need for treaty amendment. The analyses by Burke, Xiouri, and myself all conclude that, while the existence of binding international obligations in the British–Irish Agreement certainly does not prevent reform

28 See, for example, Mark Retter, Andrea Varga and Marc Weller (eds), *International Law and Peace Settlements* (Cambridge University Press 2021); Asli Ozcelik, 'Entrenching peace in law: do peace agreements possess international legal status?' (2020) 21(2) Melbourne Journal of International Law 1–40; Laura Betancur Restrepo, 'The legal status of the Colombian Peace Agreement' (2016) 110 AJIL Unbound 188–192; Alexia Solomou, 'Comparing the impact of the interpretation of peace agreements by international courts and tribunals on legal accountability and legal certainty in post-conflict societies' (2014) 27(2) Leiden Journal of International Law 495–517; Scott P Sheeran, 'International law, peace agreements and self-determination: the case of the Sudan' (2011) 60(2) International and Comparative Law Quarterly 423–458; Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford University Press 2008); Steven R Ratner, 'The Cambodia Settlement Agreements' (1993) 87(1) American Journal of International Law 1–41.

of the 1998 institutions, it may impose requirements as to the legal processes by which different kinds of changes are accomplished. In this way, the articles contribute to broader understandings of how the UK constitution is shaped and constituted by international legal instruments, as well as domestic law and practice.

The final two articles in the issue address some unfinished business of the 1998 Agreement and the legal reforms and initiatives that could help address it. Genevieve Lennon and Clive Walker analyse remaining challenges around security normalisation in Northern Ireland. Despite the 1998 Agreement's commitment to 'normal security arrangements', use of non-jury trials and stop and search powers persists. Drawing on illuminating new empirical evidence, the authors evaluate the reform options and make proposals for possible paths forward. To conclude the issue, Colin Murray analyses a fascinating and overlooked body of constitutional practice, and considers whether recent moves by devolved administrations in Scotland and Wales to incorporate international treaties into devolved legal frameworks could provide a model for Northern Ireland to advance rights protections. Given political obstacles to full implementation of rights guarantees foreseen in the 1998 Agreement, such as the Northern Ireland Bill of Rights, initiatives such as the incorporation of the UN Convention on the Rights of the Child provide an alternative means to enshrine human rights standards in domestic law.