

Response to Address by Catherine Day

Noel Dorr, MRIA

Royal Irish Academy 10 January 2018

A Uachtaráin,

President and Members of the Academy,

Ladies and Gentlemen,

We have just heard a most interesting presentation, by the one person most qualified to make it, in relation to what may well be the most important decision which will face this State in its international relations for the foreseeable future. Your applause suggests that you agree. I want to thank her warmly for her paper.

Understandably, here in Ireland, we are focused on Brexit, what form it will take, and what consequences it will have for us and for Northern Ireland. But, as she pointed out towards the end of her address, “for most of the other 26 Member States the top priority is ‘the future of the EU’ and Brexit comes a long way behind”.

Catherine Day has performed an invaluable service here this evening. She has been at the very heart of things in the Commission for ten years. The great merit and importance of her address has been to direct our attention beyond our understandable present focus on the Brexit negotiations. She has given us a clear and informed account of how the EU is likely to develop in the years after Brexit, and the issues which Ireland will face if, as both she and I hope we will, we choose to remain a member.

I have been asked to respond briefly to her address. This is difficult because her presentation was so rich and she has covered so extensive a range of issues and done it so well. I will try, however, to some points in what she said which I found of particular interest; and then, if time permits, I will offer some additional reflections of my own.

I start with her two metaphors: she sees the EU as a living organism which changes constantly in response to the way the world is changing; she also speaks of a journey to a destination not fully defined in advance. I think both are apt.

The 1990s after the fall of the Berlin Wall, and the early 2000s were a time of optimism – even hubris. But a series of events since then changed the shape and direction of travel of the EU.

One was enlargement - positive and necessary in many ways and, as she sees it a great success. But an EU of 28, now to be 27, with 24 different languages is bound to be different. I would add that even a five minute statement by each representative around the table will take nearly two and a half hours. She is, rightly, troubled by the disagreement over basic EU values now seen in Poland and Hungary but optimistic – perhaps a little too much so – that the populations of those countries remain fundamentally committed to those values.

A second important event was the failure of the Constitution Treaty. It was agreed by the European Council in 2004 but rejected in referenda in France and Netherlands – in part, she suggests, because it was seen as an elite project with a whiff of federalism. One consequence was to scare off politicians from further treaty changes; another to create a perception that the EU is undemocratic.

I would add a personal thought. Although it ought to have been welcomed as both a codifying and reforming treaty it assumed instead an almost 'existential' character because its provisions, like those of in any constitution, were written in what I would call the 'constitutional present tense'. This misled some people, here in Ireland at least, into thinking that these were wholly new competences being transferred from national to EU level, rather than a clearer formulation of what had been well established in previous treaties.

The third event she rightly emphasises was the financial and economic crisis of 2008. A scary business, she calls it. It had a huge impact and permanently changed the future direction of the EU. The euro area now became – and remains- the core.

I was particularly struck by her account of the Fiscal Compact Treaty which was agreed in December 2011 and signed in March 2012. The British Prime Minister would not agree to have it become an EU Treaty so it had to be enacted as a binding international treaty outside the EU framework by the other 27 Member States. This was a major turning point. She quotes the view expressed later by Ivan Rogers, the UK representative at the time that this event was 'a catalyst for decisions on both sides which led inexorably to Brexit'.

I don't know if she would agree but I think the conclusion she draws from this episode is central to her whole presentation. As she sees it, these events show clearly that the EU has moved beyond the common market and single market. Economic and Monetary Union has now become a core political project. Different ways of getting there can be accommodated but all Member States must accept that they are bound, sooner or later, towards a Banking Union, a Fiscal Union and a Political Union. It is possible to allow for different **speeds**, but the Union cannot permanently accommodate a Member State – like the UK - that is not fully signed up to the **direction** of travel.

I am too long retired to make a fully considered judgement on this point but, if she is right, as she may well be, then it is of the greatest importance that we be fully aware of this as we prepare ourselves for the EU in the years after Brexit.

The second part of her paper offers very perceptive views on how the EU may develop after Brexit.

- Germany and France will determine the future direction and speed of integration. They both agree on EMU though not yet on the detail or the pace of progress.
- Ideas being discussed include a European Monetary Fund to assist Member States in difficulties; new budgetary instruments to support structural reforms; a European Minister for Finance; and greater discipline and tighter coordination in national economic and financial policies.
- The EU is feeling its way slowly towards a clearer policy agenda with sharper priorities – a 'programme for government' agreed between the Council and the Parliament.
- There is likely to be closer collaboration between the Presidents of the various institutions – particularly the Commission, the European Council, the Commission, the Parliament and the European Central Bank.
- There is need for a stronger social dimension – present treaty powers in that area are weak
- The most difficult issue will be the migration crisis. The EU needs an agreed migration approach for economic as well as humanitarian reasons but it also needs strong external borders to decide who can be admitted and a deportation for those who cannot be allowed to stay.

The third and final section of her paper, addressed to us here in Ireland is particularly important. She rightly comments that we seem to have been quite happy in recent years to coast along with

occasional bursts of activity when there is something we don't like or when we have to vote again on a treaty. We will need greatly to improve the public understanding of the EU and the level of political and public debate. We will also need to devote time and effort to developing policy positions and to gaining support for them among other Member States. We will want to have our voice heard – and to work out more clearly 'what we want to give voice to'. And of course we have to work out how we can thrive in the EU without losing our close relationship with our nearest neighbour.

Additional personal reflections

In the remaining time available to me perhaps I can offer some personal reflections which largely echo what our speaker has already said.

It is, I think, an interesting coincidence that, in the Spring of 2019, just as the UK is about to leave the EU, we in Ireland will be commemorating the centenary of the Declaration of Independence by the First Dáil. That was the formal act by an elected Irish Parliament asserting our independence from the United Kingdom: it ratified, and gave full democratic legitimacy to, the Republic proclaimed on Easter Monday 1916.

There were difficulties and turbulence at times – as well as much that was positive - in Anglo-Irish relations over those hundred years since 1919 – particularly in relation to Northern Ireland. But now, in this century, we have reached calmer waters. Against the background of our common membership of the European Union, where our interests drew closer - and our Ministers and Heads of Government got to know each other well at regular meetings - we have been able to balance our commitment to Irish independence with an equal commitment to maintain and develop the close, friendly and mutually beneficial, relationship which ought always to exist between the Governments and peoples of these islands. This is epitomised by the warmth shown during reciprocal of Head of State visits in this past decade. In Northern Ireland, for so long an irritant and a cause of contention in the relationship, we now have – if not a full settlement, at least an agreement which has brought peace for twenty years.

Now it appears that the withdrawal of the UK will face us with a choice. How stark a choice we do not yet know: that will depend on the terms on which they withdraw and the kind of new relationship which they negotiate from outside with the EU.

An argument can be made, and has been made to a limited extent by some, including a former colleague of mine, that our relationship with the UK is ultimately of even greater importance than our relationship with the EU; and that, for that reason, our interests would be better served by joining the UK in withdrawing and then seeking a good agreement with the EU.

It is interesting that, nevertheless, since the British referendum, there has been a general assumption here - on the part of both the political parties and the public – that Ireland's interests and its values will be best served by remaining an EU Member State. I share that assumption. It is clear that our speaker does too. But at a national level I would like it to be something more than just an assumption – it ought to be a conscious choice, debated as necessary, and based on a good measure of understanding by the public of what we are doing and why. And we ought to be fully aware that this fundamental choice will have consequences in other choices which we must be prepared to face.

A *second* point I would like to touch on is also relevant to our decision to remain a member state. That is the question of the democratic legitimacy of the EU. It is sometimes argued - not least by ardent Brexiteers and sometimes even in referendum debates here - that membership means

‘control by unelected bureaucrats in Brussels’. One can respond by pointing first, to the role of the democratically elected European Parliament as ‘co-legislator’ with the Council, which itself comprises elected Ministers from Member States, and then to the role of the Commission, and indeed the Court, as guardians of the treaties which protect the interests of small as well as large States. But one is then told that there can be no real democracy because there is no European ‘demos’ – to use the Greek word for ‘a community of people’, or as we say in Irish ‘pobal’.

A study of the origins of nationalism which was published more than thirty years ago by a political scientist with Irish connections defines a nation as what it calls ‘an imagined political community’. The word ‘imagined’ here does not mean ‘imaginary’, in the way we normally use that term. It refers to the sense of relationship and community that has existed over a long time among a particular population and indeed, could be thought of as the basis for a ‘demos’. It is real, long-standing and natural to those who are part of it. They assume they have a common history in the sense of a shared narrative about the past; and also a sense of continuity which they project forward into the future and which underpins their right to self-determination as a state. It is epitomised by an unselfconscious use of ‘we’, the first person plural, in talking about ‘our ancestors’ and ‘our children’s children’.

I think we could apply the concept to the European Union – but only in a very particular way. We would now have to use the word ‘imagined’ to imply, not an easy and unselfconscious assumption of a shared past, but rather a conscious and explicit attempt to imagine, and then create, a shared future which will ensure that the awful events of its recent past are never repeated. Its fundamental purpose is to link together states and peoples who have fought each other for centuries and whose internecine wars escalated to world level twice in the 20th century; and to build between them a new kind of polity, a new kind of community – not a state but a Union of States and of Peoples - based on democracy, human rights, cooperation and the rule of law. It was this narrative, and this purpose, which animated the first generation of EEC leaders. I think we should not entirely lose sight of it today.

My *third* point is to agree with her characterisation of the European Union as a living and evolving organism. It is usual to trace its origins back to the vision of Jean Monnet, Maurice Schuman and others in the early 1950s. But Schuman himself was clear in saying in 1950 that ‘Europe will not be made all at once, nor according to a single general plan’. In fact the EU of today is not just the creation of these early leaders – nor is it even shaped in accordance with their vision of what it might become. It is the work of several generations of leaders of varied outlook who came to government in European member states over nearly seventy years. Whenever one approach did not prove acceptable, they allowed time to pass and then took another direction. What has emerged is an organic growth shaped according to what was possible and acceptable politically – first in six, then nine, then ten, then fifteen and now twenty-eight European states. It derives its energy from a continuing tension between the national interests which member states continue to pursue within the framework of the Union and the more generous ideal which the very concept of such a Union represents.

A related point is that, over the forty-five years of our membership, Ireland, through its Ministers and civil servants working at national level and in the European institutions, has played a full part – possibly even a disproportionate part - in shaping the EU as we have it today.

So far as I know there have been no more than five, or perhaps six, holders of the very influential post of Secretary General of the Commission over sixty-one years. Two of them have been Irish – none more distinguished than our speaker this evening.

During our first Presidency in March 1975 Ireland organised and ran the first European Council; and Garret Fitzgerald signed the Lomé Convention – the first such agreement on development cooperation between the EEC and forty-six developing countries. In 1990 Presidency, the Taoiseach, Charles Haughey was instrumental in securing the approval of the European Council for German re-unification, notwithstanding the serious reservations of President Mitterand and Prime Minister Thatcher. During our 1996 Presidency Ireland produced the first draft of what became the Amsterdam Treaty. It included a first formulation of the values of the Union, which now, with subsequent additions, has become Article 2 of the Treaty on European Union. It also, indeed, included the first formulation of the provision allowing action against a Member State which breaches those values which is now Article 7. During our 2004 Presidency, the Taoiseach, Bertie Ahern, in a round of visits to virtually all capitals, completed the negotiation of the Constitutional Treaty which was subsequently rejected in referenda by France and Netherlands.

There is much more I could say on this point. I simply want to show that we cannot speak of the EU as ‘they’ or ‘them’. It is, in large part, also ‘us’.

Finally I there is her quite sharp comment towards the end of her address that

‘all in all, we (in Ireland) have been quite happy to coast along in the EU in recent years, with occasional bursts of activity when there is something we really don’t like or when we have to think – and vote twice – on new Treaties’

I agree fully with her on this. She is right to say that in the EU after Brexit, we will need to clarify for ourselves where we stand on a series of issues: EMU and its implications; what kind of social dimension we want the EU to have; what we want as an EU migration policy; and how far we are willing to pay for EU policies now that we are a net contributor.

In her important paper our distinguished speaker has, understandably, concentrated on future internal developments in the EU. There is however another aspect which I venture to suggest she would have also addressed had time permitted and which I would like to add to the list I have just mentioned. This is the role of the EU in the world. A more closely integrated Europe cannot but exert a kind of gravitational force within the international system. It already feels, and will continue to feel, that it has responsibilities in areas such as climate change, development, and also, perhaps, a concern - going well beyond the immediate issue of migration - about its relations with regions close to it, such as North Africa and the Middle East – its so-called ‘near abroad’. I think we need to be aware of this too in thinking about the EU after Brexit.

One aspect of this where we will need to clear our minds, and have a calmer debate could be future developments in the field of security. We have the so-called ‘triple lock’ and we have Article 29.4.9 in our Constitution which prevents the State from taking part in a common European Defence. That ought to reassure those of us who, like myself, would not like to see Ireland become part of a military alliance, that we need not always run scared of proposals which would help our Defence Forces in their international peacekeeping role or indeed strengthen our naval presence in the quite vast areas of sea around our coast for which we now carry some international responsibilities.

A final thought – as the EU evolves further, possibly through new treaty changes, we may have to face future referenda. A thought which some of you, considering our past experience, may quail at. But consider this. We can say that our sequence of referenda since 1972, notwithstanding occasional grumpiness on the part of the electorate, has – at the formal level at least anchored our continuing

membership of the EU in the popular will in a way which has not been the case in any other Member State.

If we are to have further referenda it is important that the public be well informed on the choices they are asked to make. It will not be enough to have a flurry of activity, and a Commission set up, in the weeks before the vote. It will be important, on a continuing basis, through Dáil and Seanad debates and otherwise, to build better public understanding of the kind of issues we have been talking about this evening.

I could, perhaps, suggest some further possibilities.

- The idea of a standing Referendum Commission, or an Oireachtas Committee with a similar remit, might be worth considering.
- From some personal experience in relation to the Amsterdam and Nice Treaties, I feel strongly that it will be essential, in any referendum here on future treaty change to provide a clear and authoritative explanation of what is involved. If you look back on any of these reform treaties you will see that, for good legal reasons, most of their provisions read something like this *'In Article 37.2 the word "the" shall be replaced by the word "and"'* This clearly makes no sense to the voter and that leaves the way open for all kinds of misrepresentation. I have argued in the past, and would like again to suggest, that we should argue at EU level for a requirement that any new EU treaty, like a Bill in the Oireachtas, should always be accompanied by an explanatory memorandum in readable form. It is important however that the memorandum be widely accepted as **authoritative**. So it should be drafted by the EU Council Secretariat and, ideally, approved by the European Council leaders when they approve the Treaty itself.
- Another – perhaps more far-out – possibility might be to have the Treaty accompanied by an advisory opinion from the European Court as to whether it involves any new transfer of competences from national level to the EU. Alternatively it might be possible here in Ireland to consider a procedure which would allow our own Supreme Court to be asked for an advisory opinion as to whether ratification of the new treaty would make it necessary to amend the Constitution.
- At a practical level, and particularly important, is a point well-made by our distinguished speaker. This is that if the EU as we all wish, is to have wide popular acceptance, then our political leaders – not just here but across the EU – must give it full credit for what is achieved. They must not continue, as she says 'to take credit for decisions taken in Brussels which [they] think will be popular and to blame "Brussels" for everything else.'

I have already spoken at too great length. So I will finish by again thanking our distinguished speaker on your behalf and on my own. Drawing on her unrivalled experience over ten years at the heart of events in Brussels and indeed her varied experience in other posts in the Commission over a much longer period, she has delivered a thoughtful – and, I believe, a very important – address to us here this evening. I thank her warmly for it – and I thank the Academy for having arranged for her to do so.