

1. William Robinson is an Associate of the European Law Institute, University of Durham. The opinions expressed are purely personal. This article is a revised version of a paper presented at an EC immigration law conference organised by JUSTICE & ILPA, 29/30 January 1993.
2. Article 8A of the Treaty establishing the EEC.
3. See Advocate General Van Gerven's proposal for the Horizontal direct effect of directives, Opinion of 26 January 1993, Case C-271/91, Marshall, at point 12.
4. Judgment of 4 October 1991, Case C-159/90, *Society for the Protection of Unborn Children Ireland v. Grogan e.a.* [1991] ECR I-4685: no economic link existed between the free distribution of the information in Ireland and the clinics in the United Kingdom to which it pertained, with which to bring the matter within Community law.
5. See J.Weiler, "Thou shalt not oppress a stranger: On the judicial protection of human rights of non-EC nationals - a critique" 3 EJIL (1992) 65. See the House of Lords Select Committee on the European Communities, 10th Report, Session 1992-1993, 'Community policy on Migration', at points 56 & 76.
6. See Judgment of 16 December 1992, Case C-237/91, Kus, not yet reported.
7. The Schengen Agreement of 14 June 1985 on the gradual abolition of controls, at common frontiers, as supplemented by the Convention of 19 June 1990: signed by 9 Member States (excluding UK, Ireland & Denmark), not yet in force (July 1993 is the revised goal).
8. The Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed 15 June 1990, now by all 12 Member States, not yet in force. Cm 1623.
9. Those areas contained in Article K.11)-(6).
10. See Article 219 of the Treaty of Rome and Article 171(2), to be inserted by the TEU.
11. See the reply of the Prime Minister, Mr.J.Major, to a question posed by Mr Denzil Davies MP, Hansard, 14 December 1992, p34.
12. Conclusions of the Presidency, Part B, see *Aqence Europe*, No 5878, 13 December 1992: 9.
13. See Commission position on the Interpretation of Article 8A of the EEC Treaty, *Aqence Europe*, No 1773, 12 May 1992.
14. Conclusions of the Presidency, Part A, point 17, see *Aqence Europe* No 5878, 13 December 1992:6.
15. Judgment of 9 July 1987, Joined Cases C-281, 283-285 & 287/85, *Germany etc. v Commission*, [1987] ECR 3203.
16. See Opinion of 16/12/92, Joined Cases C-181/91 & 248/91, *Parliament v. Council and Commission*, at point 16 et seq.
17. *supra*, note 4, at points 71 & 86.
18. See *The Independent*, 5/12/92.

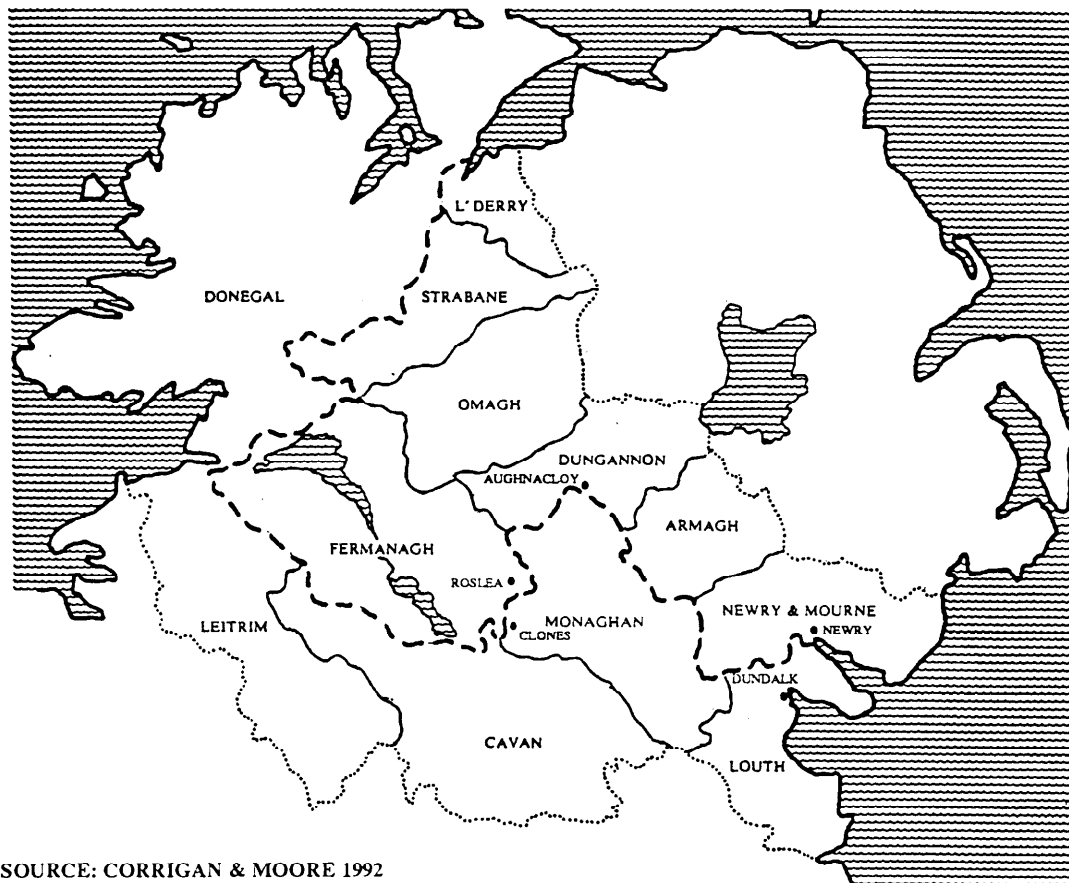
Dragon's Teeth on the Irish Border

James Corrigan and Liam O'Dowd¹

The border between Northern Ireland and the Republic of Ireland was first established in 1920 under the *Government of Ireland Act*, and followed the old county boundaries. It was confirmed by the Boundary Commission in 1926 and has remained intact ever since. The border region itself is characterised by small towns and a relatively dispersed rural population, dependent on agriculture, tourism and small industry. As a demarcator of British and Irish sovereignty, the border has become a major focus of the present "troubles" in Northern Ireland.² For Unionists, the border is a barrier before it is a zone of contact - to be defended as the national boundary of the UK against Republican attempts to undermine it. To Nationalists, the border represents the "artificial" division of Ireland and a zone of interchange. The border also divides a significant number of Catholics and Protestants.³ In the east the border divides predominantly Catholic and Nationalist populations. In some parts of the west and centre, it divides Protestants in the South from their co-religionists in the North, while in others it separates predominantly Protestant communities in the North from Catholics in the South.

The most enduring physical expression of the violent struggle over the border is the closure of cross-border roads and the location of permanent army checkpoints on those roads which remain

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SOURCE: CORRIGAN & MOORE 1992

open. The British army, and in a limited number of cases local Protestants, began closing these roads during the 1970s in response to an intensified IRA campaign. The roads have remained closed except for brief interludes when they are reopened by local communities - only to be swiftly closed by the British army. The effects of closing these roads seem to run counter to the thrust of other aspects of government policy - to improve infrastructure and communications and encourage North-South contact. It would also appear to contradict EC policy of removing the frontiers between member states.

The border between Northern Ireland and the Republic of Ireland is 343km long and has approximately 250 crossings between farm crossings and road crossings. Most of these roads are classified as "unapproved crossings" but those that are open are frequently used by locals. There are sixteen approved crossings on the border, most of which have a permanent army checkpoint, and are often closed at nighttime due to the danger of proxy bomb attacks. There are various estimates on the number of roads that are closed, especially as there is a regional variation - cross-border roads from Aughnacloy in Tyrone to Dundalk in Louth are open. The impact of the road closures are most severely felt in the Centre border region where:

*"In County Leitrim there are ten crossings, and the ten of them are blocked. In County Monaghan 41 of the 131 are blocked...there are no roads open along the stretch of border that runs from Roslea to Aughnacloy, with the result that traditionally close-knit communities and parishes straddling the north Monaghan -south Tyrone border have been cut off from one another."*⁴

In a debate on the issue at the Annual Conference of the (mainly Catholic) Social Democratic & Labour Party, Cllr. Tommy Gallagher of Fermanagh claimed that:

*“at least 5,000 people were affected by road closures in Fermanagh and as a result were suffering a serious loss of income, and that in the worst affected areas turnover in the local shops was down by 40%, or as much as £3,000 per week.”*⁵

For many people living on the border, the closing of the roads has radically altered their lifestyle. The towns of Clones in County Monaghan and Roslea in County Fermanagh are virtually surrounded by the border and have suffered particular economic and social disruption because of closed border roads. Both towns share a common hinterland and have a history of economic links. The closing of all roads between these towns has broken these links. Clones and Roslea are 6km from each other but the closing of the roads has created a detour of 29km. Clones has become *“a little island on its own cut off from all the rest”* according to one local resident, while the parish priest of Roslea claims that the closures *“split our parish and prevents about eight families from getting to church”* (Northern Standard 5/3/92). On a more individual level, the Fermanagh-Monaghan Community Association cites the case of a border resident, living in Northern Ireland, whose gateway to her land *“stands between two ‘Dragon’s Teeth’ barriers. The farm is in the Irish Republic yet she cannot get access to it either from the South or the North”*.⁶

Recently there has been a concerted campaign to reopen many of these cross-border roads. The campaign, based on “days of action”, is led by a number of cross-border community associations and supported by the Irish National Congress.⁷ The “days of action” have resulted in the reopening of some cross-border roads, but they are soon reclosed by the British security forces. As one RUC officer commented *“it’s a tit-for-tat job, they open them and we close them again”* (Leitrim Observer 6/5/92). In a submission to the Northern Ireland Human Rights Assembly,⁸ the Fermanagh-Monaghan Community Association has highlighted the fact that the blocking of roads by the infamous “Dragon’s Teeth” or cratering by the army has created *“a Berlin type wall on our doorsteps”*. The ensuing “lunar landscape” is a relic of the Northern Ireland conflict.

There is a basic Nationalist-Unionist division on the issue. Unionists have advocated and supported the British army’s policy of keeping these roads closed. As a political and security problem, some unionists have called for the complete sealing of the border in the fight against the IRA. Nationalists on the other hand favour the reopening of the border due to its negative economic and social effects on the local communities. The Irish government and the SDLP have advocated the reopening of certain key routes *“in conjunction with adequate security measures being put in place to guarantee the protection of life and property”* (David Andrews T.D. in Anglo-Celt 16/2/92). Some Nationalist politicians have refused to attend border road “action days” because of Sinn Fein involvement. The involvement of Sinn Fein in the campaign to reopen the roads has also alienated the support of some Protestants who would like to see some roads reopened. Sinn Fein has urged the reopening of all cross-border roads. A former activist on the reopening campaign has claimed that:

*“the tension has increased significantly and many local people have condemned what they describe as a ‘sinister’ element which has entered the campaign since the IRA fired shots at the British army after a road was reopened by local people.”*⁹

Divisions within the Unionist community are more recent. Ken Maginnis, the Unionist M.P. for Fermanagh-South Tyrone is a strong proponent of increased security on the border and regards increased border security as “*crucial for the overall security in the whole of the province*”. He has stated that the RUC Chief Constable “*is now convinced that only when the border is effectively sealed will the flow of arms and explosives to the IRA, throughout Northern Ireland dry up*” (Impartial reporter 23/1/92). This conviction is held by the leadership of both Unionist parties but opposed by certain Unionists on the border. Cllr. Raymond Ferguson, Unionist leader on Fermanagh District Council, disputes the assumption that violence in Belfast is caused by weapons crossing the border and states that:

*“We would be against any further closing of roads. We want the present roads kept open as more road closures would affect the economics of this area. We have a tourist industry to maintain here and we also do quite a bit of cross-border trade.”*¹⁰

The struggle over the roads is an important indicator that territorial boundaries retain their significance for nation states and for ethnic-national groups within the EC. Both governments accord primacy to security when pressed by local groups. In practice, however, the latter recognise that the border region is also a zone of socio-economic inter-change. The development of European economic integration promises to extend further the socio-economic contact which has always existed in the border region. The different positions of unionists and nationalist and the internal divides within both communities reflect how the border continues to be challenged, re-negotiated and fortified. The “road closure” issue provides a sharp illustration of what can occur when moves towards European integration come face to face with deep-rooted ethnic-national conflict.

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2. The paper is based on research being conducted by the authors as part of the Economic and Social Research Council (ESRC) project entitled “Negotiating the British-Irish Border: Transfrontier Cooperation on the European Periphery”. Grant Number R000 23 3053.
3. 10% of the Irish Republic’s total population and 22% of its Protestant population live in its border region while 25% of N. Ireland’s total population and 42% of its catholic population live in its border region.
4. Jimmy Leonard T.D. (Speech in Irish Parliament, the Dail) from Northern Standard 20/2/92.
5. Cllr. Tommy Gallagher from Fermanagh Herald 30/11/91.
6. Fermanagh-Monaghan Community Association, (1991) *Freedom of movement - Submission to Northern Ireland Human Rights Assembly*.
7. The Irish National Congress seeks an end to partition and supports the claim that Ireland has rightful jurisdiction over Northern Ireland as stated in Articles 2 and 3 of the Irish Constitution. (Article 2 states that the national territory is the whole of Ireland, its islands and the territorial seas; Article 3 asserts the right of the Irish Parliament and Government to exercise jurisdiction over the North, but says that until they do so in reality, their actual jurisdiction is confined to the 26 counties). The Chairman of the Irish National Congress is the artist, Robert Ballagh.
8. A Convention on Human Rights in Northern Ireland which was held in London during April 1992.
9. Cited from an interview with James Corrigan.
10. Cllr. Raymond Ferguson from Impartial Reporter 16/1/92.