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Bordering Northern Ireland: How the Northern Ireland Protocol Fails to Protect from Old Conflicts

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Introduction

In under thirty days, the United Kingdom ("UK") will leave the European Union ("EU"), as determined by the 2016 referendum on the nation's EU membership (widely referred to as "Brexit"). This unexpected result left politicians and policy experts on both sides scrambling to determine how Brexit will happen and to negotiate withdrawal terms. A critical debate soon developed regarding the border arrangement between Northern Ireland and the Irish Republic, the UK's only land border with the EU. As a former area of violent attacks and guerilla warfare, UK and Irish politicians worry any physical border on the island carries the risk of reversing the peace brought under the 1998 Good Friday (Belfast) Agreement by reigniting past antagonisms between Irish Nationalists and British Unionists.

In October 2019, Britain and the European Union reached a new Withdrawal Agreement that included the Protocol for Northern Ireland. In brief, Northern Ireland is to remain in the UK customs territory – guaranteeing its inclusion in future UK trade agreements – while following most EU customs rules on goods, allowing free flowing trade across the island, but requiring customs checks between Northern Ireland and Great Britain. This is not without contention, particularly from Ulster Unionists – those in Northern Ireland who identify strongly as British and oppose any barriers between the province and the rest of the UK. Such concerns indicate that the Protocol may reintroduce tensions to the region.

While previous work has explored the possible Brexit arrangements for the Irish border, literature examining the Northern Ireland Protocol has so far been minimal. Moreover, not all studies have focused on a given border arrangement's likelihood to maintain peace in Ireland. This paper seeks to remedy this knowledge gap. It begins with a background of the Good Friday Agreement ("GFA") and the Northern Ireland peace process. Following this, it offers an analysis

of the border arrangements available and their potential impact on peace. It concludes that the Northern Ireland Protocol does risk stability more than other potential arrangements, while acknowledging political realities: that Prime Minister Boris Johnson was unlikely to desire any other arrangement, as well as lack enough support in the UK Parliament for alternatives. Considering peace within the region is a key objective of both the EU and the UK, this paper will offer a re-evaluation on maintaining peace in Northern Ireland in consideration of recent developments.

Background

Since the 1920 partition of Ireland between a Nationalist South and Unionist North, there has been opposing forces for and against unifying the two regions. Within Northern Ireland, the Nationalist, Irish-identifying, Catholic minority faced discriminatory policies from the Unionist, British-aligned, Protestant majority who held a monopoly of power in the devolved legislature. Inspired by other social movements in the late 1960s, Nationalists launched a protest movement that was subsequently supressed, leading to the prolonged armed conflict known as the Troubles. Over 3,000 people were killed in the proceeding decades until ceasefires were reached in 1994 (Doyle and Connolly 2019, 81).

Four years later, the GFA was signed in April 1998 between the Irish Republic, the UK, and Northern Ireland's main parties, excluding the Democratic Unionist Party. Rather than acting as a settlement, the GFA was a consociational power-sharing agreement with provisions for a possible reunification of Ireland in the future (Doyle, cited in Doyle and Connolly 2019, 81). A set of cross-border institutions were created, a new Assembly was installed with guaranteed seats for all major parties, and British and Irish claims to sovereignty in the region were redefined constitutionally – with the Irish Republic dropping its claim to the territory and Britain accepting

a future united Ireland should it become the will of the majority in Northern Ireland (Doyle and Connolly 2019, 81-2).

Political sociologist Katy Hayward (2020, 275) notes the importance behind the GFA's respect for both the Irish Nationalist and British Unionist communities in Northern Ireland. In the context of this paper, this mattered given the symbolic nature of the Irish border as the primary region of conflict. To one side, the border was "the site of ethnic cleansing [of British-identifying citizens]" and a barrier to protect Northern Ireland, while for the other it was the remnant of "brutal partition", and an artificial division created by colonialism. The mutual recognition and power-sharing regime under the GFA therefore eased tensions and mistrust between communities.

Relatedly, strategic studies professor Jonathan Stevenson (2017, 112-4) explains that common EU membership also served to transfer enough British and Irish sovereignty claims to the supranational level that Northern Ireland's cultural duality became more tolerable. Moreover, as members of the European Economic Community since the 1970s, the economic benefits of treating Ireland as a single unit were obvious to most Nationalists and Unionists alike, incentivizing the moderation of identity politics.

Brexit threatens to upend the progress brought about by these dynamics. Any new economic barriers threatens the region's prosperity, adding stress to divisions that persist today. The lack of mutual EU membership between the Irish Republic and the UK gives cause for competing claims of sovereignty to return. For these reasons, it is crucial to analyze the Protocol and other Brexit options to determine their effectiveness in keeping the peace.

Option 1: 'Soft' Brexit – UK remains in EU Customs Union

The option of the UK remaining in the EU customs union is often referred to as a 'soft' Brexit. Under the tenure of then Prime Minister Teresa May, this was the initial solution for the Irish border, commonly referred to as the 'backstop'. It was to serve as a temporary fix until a better arrangement presented itself. However, the 'backstop' floundered in the House of Commons as pro-Brexit Conservatives refused to limit Britain's ability to pursue trade deals with third parties and bind the country under the EU's common standards in areas such as agriculture, environment and competition.

If approved, a 'soft' Brexit would have alleviated Irish border concerns. The Irish border would remain open to trade without tariffs and customs checks (Curtis 2020). Movement of people would remain the same under the Common Travel Area – a regime in place since Irish independence which gives British and Irish citizens rights to enter, work, vote, and obtain health care in either country – facilitated by the fact Ireland is not a member state of the Schengen Area (Doyle and Connolly 2019, 85;Temple Lang 2017, 15). Were it politically feasible, a 'soft' withdrawal would erase the risks presented by either a reimposed Irish border or a special Northern Ireland arrangement, meaning a probable continuation of the peace process.

Option 2: 'Hard' Brexit – Physical border in Ireland

Many pro-Brexit campaigners desired stronger borders to prevent unwanted immigration from within the EU, particularly from Eastern Europe. They also wished to discard EU obligations that prevented the UK's unilateral negotiation of external trade agreements. Leaving the EU would therefore return greater border control to the national level for such purposes (McCall 2018, 297). However, diverging UK border policy away from that of the EU requires re-establishing border control at the Irish border. Known as a 'hard' Brexit, these measures would

require customs ports to ensure tariffs are applied and importing quality standards are met (Temple Lang 2017, 17).

The re-imposition of a physical Irish border would be the greatest threat to security in the region out of all options due to the border's symbolic nature of division and conflict. Some pro-Brexit Unionists, in efforts to retain alignment with the rest of the UK argue that the Irish border can be managed without physical infrastructure via technology such as drones, motion sensors and cameras. Yet, border technology experts note that such monitoring infrastructure is incapable of enforcement nor is it impervious to vandalism, necessitating human border patrols (Taylor; Broeders, cited in McCall 2018, 298). Dublin City University professors Eileen Connolly and John Doyle (2019, 90) highlight the game theory problem that border infrastructure poses: any visible border encourages militant Nationalists to present new custom posts and security installations as evidence that the peaceful process has failed in order to justify non-peaceful actions. In turn, Unionists may call for abandoning the GFA's collaborative reforms and cross-border initiatives. These attitudes would reinforce divisions, with any violence further solidifying positions, thereby worsening the situation.

Stevenson (2017, 122) argues a physical border is also difficult to implement, considering the number of bordering crossings that would require monitoring – around 250 according to the Irish government – many of which were opened during the previous two decades under the peace process. This is a vast number in comparison to the twenty crossings that existed during the Troubles. Indeed, the island is now home to Europe's densest cross-border road network (Leary, cited in McCall 2018, 297). Not only does this fact present a logistical challenge to any physical border, it is evidence to the social and economic integration that has occurred between the two Irelands and what is at stake if Ireland's interwoven networks are ruptured.

Option 3: Bordering Great Britain and Ireland (Irexit?)

To avoid a 'hard' border in Ireland, a seldom considered option is the development of a shared border regime around the Irish Republic and the UK. In their examination of Brexit in the context of borders, Queen's University Belfast professor Cathal McCall (2018, 301) points out that the existing Common Travel Area between the two countries means there is already a developed system of information sharing and security services. As Brexit may force greater security cooperation between the two nations, this could harden the border around both states, especially considering Ireland has previously followed the UK in obtaining certain EU exemptions in Justice and in Home Affairs.

However, such an arrangement is dubious for two reasons. First, a hard border around the British Isles means the Irish Republic operating a permanent border regime that restricts the movement of EU goods (and potentially citizens), going against key Single Market principles. Such action would put Ireland's membership into question. Second, and relatedly, Ireland does not stand to benefit from a shared border regime (and an inevitable exit from the EU) as the UK would no longer be obligated to treat it with the "status, respect and reciprocity" that mutual EU membership entailed – indeed, a new asymmetrical power dynamic could occur to Ireland's detriment (McCall 2018, 302).

Nonetheless, such an option warrants consideration in regard to the Northern Ireland peace process. McCall (2018, 304) claims that this option is perhaps the most cost-effective for the UK due to existing British-Irish travel and security cooperation. Reduced economic costs could make such an option less controversial in the UK. Moreover, such a border arrangement would effectively remove any UK-EU land barrier, increasing chances for the peace process to follow the pre-Brexit trend of reduced regional tensions. Such an arrangement would be

supported by most Unionists considering it places no internal UK barrier *and* maintains Northern Ireland's equal status in the UK. Undoubtably, however, this option would be controversial within the Irish Republic as debates on EU membership, obligations, and British-Irish power balances develop. Stability in Northern Ireland from a bordered British Isles may mean instability in the Republic.

Option 4: Northern Ireland Protocol – Customs border between Northern Ireland and Great Britain

A fourth option includes Northern Ireland in the UK customs territory – giving it access to future trade agreements – while aligning it with most EU rules on goods. The Northern Ireland Protocol virtually assures this arrangement for the foreseeable future. Similar to a 'soft' Brexit, its objective is to avoid a physical Irish border while addressing the challenges of separating Britain from the EU framework that facilitates the GFA. The difference between the two options is only Northern Ireland will continue to adhere to certain EU rules. (Hayward 2020, 276). This option gained much more support in the UK parliament over the previously negotiated 'backstop' (Curtis 2020).

While this option found support in the UK parliament, Northern Irish politicians oppose it for different reasons according to Unionist or Nationalist positions. Unionists, a portion of whom support Brexit, protest any treatment that adds a barrier between the province and the rest of the UK. The Democratic Unionist Party also claims such arrangements are not beneficial to Northern Ireland (Curtis 2020) – although this is disputed by professor and lawyer John Temple Lang (2017, 24) as Northern Ireland will virtually retain free trade access to Ireland and the rest of the EU, while also benefitting from new UK trade agreements. Yet, this bears the complication of

customs checks between Great Britain and Northern Ireland to apply tariffs between the UK and the EU in the absence of a comprehensive trade pact (Temple Lang 2017, 25).

Unionists are also anxious that as the UK diverges from EU policy over time, Northern Ireland will in turn share more in common with the EU than Britain, thus hardening the Irish Sea border, which would positively influence movements towards Irish reunification (Hayward 2020, 276). Others have observed that the Protocol's consent mechanism, which requires majority approval every four or eight years in the Northern Ireland Assembly, means a continuous debate on the merits of Brexit for the region, perpetuating uncertainty for businesses and long-term planning (Sargeant 2019). There is also the issue of holding votes on consent if the Assembly finds itself under political deadlock, as it did from June 2017 to January 2020. Indeed, due to the joint governance structure of the Assembly, Nationalists parties could intentionally impose a government shutdown to guarantee that consent is never revoked (Empey, cited in Sargeant 2019).

Evidently, the Protocol reduces the fears that a 'hard' Irish border raise. Yet it appears Northern Ireland's political future presents uncertainties and restlessness under the coming regime. Unlike the Irish 'backstop', the Protocol will remain permanent so long as the Assembly consents. As explained, this may influence political deadlock in Stormont, forcing Unionists or Nationalists to pursue other avenues to achieve their respective objectives. Despite its recognition of the GFA and the peace process, the Protocol likely will fail to entirely prevent political unrest in Northern Ireland. Consequently, the risk of backsliding into sectarian division cannot be denied. Although it avoids the considerable danger of a physical Irish border, an Irish Sea border nonetheless presents considerable hazards in comparison to other solutions.

Option 5: Irish Reunification

A conceivable response to the challenges that Brexit poses for Northern Ireland is forming a united Ireland. As a solution, it requires no consent from British parliament nor negotiations with the EU. The Northern Ireland Protocol affirms that the GFA will be protected in its entirety, regardless of Brexit's outcome. Additionally, the Irish government previously achieved guarantees from the EU Council and UK government that Brexit will not undermine Irish reunification under the GFA and that the region would become part of the EU once unified (Hayward and Murphy 2018, 287).

Reunification in Ireland would alleviate similar concerns as the UK remaining in the EU customs union by avoiding an Irish border. EU membership also guarantees rights to Unionists (Protestant or otherwise) who would become a minority. Yet, there are two concerns with the reunification process. First, as witnessed during Brexit, referendums are divisive both before and after campaigns are finished. Debates on reunification may raise insular sentiments, exacerbating existing tensions (Stevenson 2017, 121).

Second, any referendum and process of reunification risks alienating Protestant Unionists who would become a minority in a united Ireland, regardless of EU protections. As Stevenson (2017, 117) observes, young Protestants have seen less job prospects in recent years – with 24% unemployed compared to 17% of their Catholic counterparts in 2014. Protestant youth are also more likely to be dissatisfied with their politicians than Catholics (57.1% to 42.9%). It is yet to be determined how Brexit developments and the pandemic have shifted these figures. Nonetheless, general dissatisfaction among youth and working-class Protestants in Northern Ireland during the Troubles was linked to Unionists paramilitary actions (Stevenson 2017, 118).

The prospect of a united Ireland could aggravate disenfranchisement and tensions if a Protestant population facing economic inequality has to simultaneously contend with becoming a minority.

Furthermore, early 2020 polling in Northern Ireland on support for a reunification vote is ambiguous. While a LucidTalk poll showed a close percentage between those who would remain in the UK (46.8%) versus those who support unification (45.4%) (McGovern 2020), a Liverpool University survey found just 29% support for a united Ireland, with 59% against (Reuters 2020). Remaining voters surveyed in both polls were unsure how they would vote. In any case, Financial journalist Paul Gosling highlights that Ireland will benefit from avoiding the divisive, insular nature of the Brexit referendum by having a clear proposal on reunification well in advance of a vote (as cited in McGovern 2020).

One external factor that will increase the odds of a reunification plebiscite is a second referendum on Scottish independence. Like Northern Ireland, the majority of Scotland voted to remain in the EU. The first Scottish independence referendum in 2014 saw Irish Nationalists call for their own referendum on Irish reunification. While voting to remain in the EU is not tantamount to voting for independence from the UK, a successful Scottish independence campaign would doubtlessly influence the desire of Irish Nationalists to follow suit. Stevenson argues such a scenario threatens to raise cyclical violence if either Unionists or Nationalists turn to belligerence and incite retaliatory action (2017, 116-7).

Conclusion

Brexit has burdened Northern Ireland with a challenge that lacks a perfect resolution. Despite measures to protect the provisions of the GFA, the accommodating framework of mutual EU membership that normalized and depoliticized cross-border cooperation has been removed. More importantly, Irish Nationalists may bear a particular burden as the population experiences a

reduction in their perception of equality and protection as Irish citizens in Northern Ireland through common EU citizenship (Hayward and Murphy 2018, 285-6).

This paper should serve as a word of caution as Britain leaves the European Union. The Northern Ireland Protocol is not without its challenges and the UK is responsible to citizens in Norther Ireland to preserve and build upon the region's progress. Although other solutions explored here could further minimize the harms of Brexit, such as remaining in the customs union, political realities cannot be ignored. For now, certain options are impossible or, at the very least, improbable.

While this analysis may appear "too little, too late", it should be remembered that the Protocol requires Northern Ireland's approval on a four- or eight-year basis. If consent is one day revoked, it cannot be denied that alternative arrangements, like the ones explored above, may require consideration once more.

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