

United Kingdom withdrawal from the European Union Withdrawal Acts / Protocol

Submission to:

Lord David Frost (UK Government)

Maroš Šefčovič (Vice President of the European Commission)

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Summary

- a. There has been much commentary regarding the UK's withdrawal from the EU. This withdrawal led to the Protocol, agreed by the UK and the EU. A wide spectrum of opinion from within the UK, Ireland and the EU support the Protocol.
- b. Supporters of the Protocol, from a political view, have expressed concerns about Nationalists in Northern Ireland (NI) since, if there was a 'hard-border' between Ireland and NI, this would injure their identity and would have an impact on overall peace and stability on the island of Ireland. Thus, the Belfast Agreement of 1998 needs protected.
- c. Unionism has a different view. The Irish Sea border impacts trade within the UK and breaches its territorial integrity. A NI High Court judgement concluded that, while the Protocol was in conflict with the 1800 Act of Union regarding trade, Parliament was sovereign and thus the Protocol was valid. This judgement was in the context of domestic law, thus raising the issue regarding any contribution by international law.
- d. The UK Government's latest position is that the Protocol is disrupting trade, with protests in NI. These protests may return in the autumn, if there is no resolution to the disagreement. The EU's position is there will be no renegotiation of the Protocol.
- e. Against this background, there is the view that international law is to be respected, with some strong comments when the UK Government, in response to the Protocol, breached international law in a limited way. Regarding the above concerns (b), two international legal documents are relevant: the Belfast Agreement and the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM).
- f. Analysing both documents, Nationalists identity is fully respected by way of the Belfast Agreement and supported, in more detail, by the FCNM. The question arises: what is the function of the Protocol? It is unique; yet is this description correct? There are countries in Europe with similar problems to NI and the FCNM provides the necessary support to protect the Belfast Agreement. The Protocol is not required.
- g. Indeed, cross-border culture/identity has existed since partition in 1921. There is no reason for it to weaken because the UK left the EU. Yet, the Protocol creates a trade border in the Irish Sea, dividing NI from the rest of the UK, so as not to injure Nationalists' identity. But, the Protocol has another significant 'unique' consequence.
- h. The protection of the Nationalist minority is manifested by the Protocol breaching a fundamental principle of international law. Namely, this protection is to be achieved within the limits of respect for the territorial integrity and sovereignty of States. This is in sharp contrast to the Judicial Review. This fundamental principle of territorial respect is advocated by all international human rights bodies.
- i. There is thus a conflict between two international laws. Given the universal acceptance of the principle of respect for territorial integrity, this clearly overrules another international agreement, namely the Protocol. The Protocol falsely claims to respect the UK's territorial integrity. The parties that support the Protocol claim to respect international law, thus a rethink is urgently needed and subsequently, in that new context, the necessary trading arrangements agreed.

A. Prologue

1. This submission (pages 2 to 17 and Annexes 18 to 26) relates to the issue of the United Kingdom (UK) leaving the European Union (EU). In this regard a Judicial Review was heard at the High Court in Belfast, with the judgement given on 30 June 2021. (See Section **C** below) The judgement's opening comment was: *"The context in which these proceedings arise is complex and contentious, both legally and politically."*¹ This submission aims to offer some clarity to this context in accordance with accepted international law.
2. The contents of this submission first provide some background comments regarding the withdrawal process (**B**) followed by a summary of the related Judicial Review (**C**). Consideration is then given to the reaction of the UK Government (**D**) and to the attitude to international law by those involved (**E**). This leads to a consideration of the contribution that relevant international law could make to resolve the issue (**F**). Consideration is then given to aspects of the Protocol (**G**) and, finally, what contribution could be made by the UK Government and the EU, together with some concluding comments (**G**).
3. A Protocol was agreed between the UK Government and the EU to deal with the Northern Ireland (NI) position. NI is part of the UK although geographically part of the island of Ireland and it therefore has a land border with a member country of the EU. As a result, some contend, since the Protocol places NI in a foreign single market for goods with related foreign customs code and laws, this impacts upon the territorial integrity of the UK. It will also result in a diversion of trade and seriously impact trade with the rest of the UK. Others take the view that the Protocol is necessary and acceptable.
4. However, the contention regarding the withdrawal of the UK from the EU is soluble. Progress is possible in achieving a stable society, if all participants respond by adapting to agreed international norms. Since the end of the Second World War an array of international agreements and conventions have been drawn up at both European and global level in order to establish guidelines and regulations on the rights and responsibilities of residents within States and on the responsibilities of States towards them.
5. 'Cherry picking' of fundamental international norms by any of the parties involved could lead to continued lack of progress, lack of commitment and loss of the trust required to make progress. An objective basis for decision making is needed. Decisions should be based on international law that follow widely agreed principles and practices. This should take discussion away from local arguments and provide a focus on what is needed to assist in moving towards a stable outcome to the UK's withdrawal.
6. Overall, and conscious of the contentious context of the issue in question, this submission is an earnest endeavour to be grounded firmly in accepted international conventions and statutes, taking as a maxim that interpretation is based on the plain meaning of the language. The aim is to be both objective and evidence based, using quotations extensively to reflect the attitudes of those involved and the documentation related to the issue that requires urgent consideration.

¹ Ref: COL11535, before Mr. Justice Colton in the High Court of Justice in Northern Ireland, Queen's Bench Division (Judicial Review), [1], 30 June 2021.

B. Background Comments

7. This section focuses on commentary regarding the process of agreeing the UK's withdrawal from the EU. A wide spectrum of opinion from within the UK, Ireland and the EU advocated that the Protocol must be implemented, so there is no 'hard border' within the island of Ireland, namely between NI and Ireland. Consequently, given that some border is required from a trading perspective, this led to a border in the Irish Sea between NI and Great Britain (GB). Some of the commentary is as follows.
8. Leo Varadkar (then Ireland's Prime Minister, named the Taoiseach) wrote:

To the nationalist people in Northern Ireland, I want to assure you that we have protected your interests throughout these negotiations. Your birth right as Irish citizens, and therefore as EU citizens, will be protected. There will be no hard border on our island. You will never again be left behind by an Irish Government. These rights will, of course, be available to everyone in Northern Ireland who chooses to exercise his or her right to be an Irish citizen, regardless of their political persuasion or religious beliefs. ²

9. Regarding the Belfast Agreement ³ of 1998, among key participants during the negotiations were two from the UK Government: Tony Blair, the UK Prime Minister from 1997 to 2007 and Jonathan Powell, Tony Blair's Chief of Staff, also from 1997 to 2007. Both could be viewed as influential and expressed clear views on the issue.

Tony Blair

In addition, at the core of the agreement was the following deal: Northern Ireland would remain part of the UK for as long as a majority in the north wanted it, but in return the nationalist aspirations and identity of those who wanted a united Ireland would be recognised and given effect. The open border between north and south was key. Had that been in doubt, there would never have been a peace agreement. Simple as that. ⁴

Jonathan Powell

Brexit was always going to trample on someone's rights. If the United Kingdom was going to leave the Customs Union and the Single Market then there had to be a hard border somewhere. At first Boris Johnson proposed it should be between Northern Ireland and the Republic, which would have injured the identity of nationalists. ⁵

² Leo Varadkar TD, 8 December 2017. Quoted in an open letter comprising 1,000 signatories from a broad cross-section of civic nationalism urging the then Taoiseach to adhere to his commitment and for his government to ensure their rights as Irish citizens are protected; Irish News, 5 November 2018.

³ The document published in 1998 was called 'The Agreement', though subsequently called by many 'The Good Friday Agreement'. In law it is called 'the Belfast Agreement', thus this title will be used in this submission.

⁴ Tony Blair: 'The EU was crucial to securing peace in Ireland. This plan puts it in peril', The Guardian, 5 October 2019.

⁵ Jonathan Powell: 'Opinion', Belfast Telegraph, 21 October 2019.

10. Ursula von der Leyen, President of the European Commission, was speaking following a meeting with Ireland's Prime Minister, Micheal Martin. She said:

The Protocol is the solution to the impact of Brexit on Northern Ireland. It is the only solution to protect peace and stability on the island of Ireland and to protect the integrity of the single market. We are convinced that to achieve these objectives the Protocol needs to be implemented. ⁶

11. Maroš Šefčovič, Vice President of the European Commission, issued a statement regarding the Protocol, following the UK Government's publication of its Command Paper (par. 20). He stated:

Its aim is to protect the Good Friday (Belfast) Agreement in all its parts, maintain peace and stability in Northern Ireland, avoid a hard border on the island of Ireland, while preserving the integrity of the EU Single Market. In order for these objectives to be achieved, the Protocol must be implemented. ⁷

12. While the Nationalist / Republican position is reflected in paragraphs 8 to 11, Unionism's view is to reject the Protocol as indicated by the sentiments expressed as follows. For example; Ben Lowry (Acting Editor of the News Letter, a daily NI based paper reflecting Unionism's views) wrote, (3 July 2021) referring to relations between NI and Ireland (commonly called North-South relations), that:

North-South should not proceed as normal after the unforgivable trashing of East-West due to the repeated warnings of a revival of the long tradition of Irish republican terrorism if the UK so much as exercised its right to use surveillance cameras at its own frontier.

He further wrote (2 August 2021) that Unionism should *"reject the idea that the protocol is only a minor modification to the Act of Union..."*

13. In addition, Peter Robinson (politician and First Minister of NI from 2008 to 2016 and former leader of the Democratic Unionist Party, the DUP) wrote (2 July 2021) in the News Letter that: *"The answer [to the Protocol] will not be found in grace period extensions, nor indeed in easements and flexibilities. It can only be found in the return of unfettered trading between Northern Ireland and Great Britain - in both directions."*

14. Finally, from a broader international perspective, Cable News Network (CNN) stated, as part of a news item, the following:

The Northern Ireland Protocol, part of the deal which saw the UK leave the European Union, creates a customs border in the Irish Sea in order to avoid having one on the island of Ireland. The problem for unionists is that it keeps Northern Ireland in the same customs union as the Republic of Ireland (an EU member state) while adding checks on goods from the rest of the UK, of which Northern Ireland remains a part. They feel betrayed by

⁶ Ursula von der Leyen: 'News Letter', 16 July 2021.

⁷ Maroš Šefčovič: Section of statement issued, Brussels, 21 July 2021.

the agreement and the customs alignment to the Republic of Ireland, saying the Protocol puts them in a different standing to England, Wales and Scotland - the other three nations that make up the kingdom.⁸

C. Judicial Review

15. Prominent unionists, such as the then three leaders of Unionism - Arlene Foster, Steve Aiken and Jim Allister - as well as Lord David Trimble (Leader of the Ulster Unionist Party during the negotiations leading to the Belfast Agreement and a Nobel Laureate), lodged a Judicial Review against the Secretary of State for Northern Ireland in the matter of the Protocol relating to the UK's withdrawal from the EU. This Judicial Review represented an important challenge by Unionism and its judgement was considered significant by all concerned.
16. The judgement was delivered on 30 June 2021. It is 68 pages long and represents a considered legal analysis of the dynamics of withdrawal by the UK from the EU. An important element relates to whether or not the Withdrawal Agreement (including the Protocol) conflicts with the 1800 Act of Union, viewed by the applicants as a foundational piece of legislation relating to the formation of the UK. The following two paragraphs are a brief summary of this important element. Quotations from the judgement that support this summary are contained in **Annex 1**, pages 18 & 19.
17. The judgement considered that parliamentary sovereignty was fundamental to the UK's constitution and thus was a key consideration in the challenge before the court. In reference to the Act of Union, the judgement accepted that subjects of Great Britain and Ireland were all on the 'same footing' in respect of trade whether in 1800 or any future treaty with a foreign country. From this, it concluded that the Protocol was in conflict with the terms of the Act of Union. However, fundamentally, this conflict must be assessed in the context of parliamentary sovereignty.
18. Regarding parliamentary sovereignty, the judgement noted that primary legislation incorporated the Withdrawal Agreement into domestic law - this being the explicit will of Parliament. All aspects were considered by Parliament, including being aware of the applicants' view that the Protocol was contrary to NI's constitutional arrangement. Also, accepting the principle that general phrasing could not override the clear specific will of Parliament and that the Act of Union was written over 200 years ago in more general phrasing compared with the specific will of Parliament's Withdrawal Agreement, the latter should be given legal effect.
19. Put simply, Parliament is supreme regarding domestic law and any general constitutional statute, such as the 1800 Act of Union, can be repealed. The Withdrawal Agreement, including the Protocol, is now part of domestic law. However, in this context, while Parliament is supreme regarding domestic law, consideration is required to be given to any contribution by international law. In noting, that the judgement, at [68] 55, referred to a principle "*which is based on the proposition that international law and domestic law operate in independent spheres*", a key question: are universally accepted standards of international law applicable to the issue and can they help to

⁸ CNN: 'It's two steps forward, 10 steps back: Brexit, shifting demographics and familiar tensions stoke divisions in Northern Ireland', 11 July 2021.

resolve the conflict between the UK and the EU?. This issue is addressed in Sections E and F below.

D. UK's Latest Reaction to the Present Situation

20. The UK Government published a Command Paper (CP 502) ⁹ in July 2021 entitled: 'Northern Ireland Protocol: the way forward'. It includes some significant comments/suggestions. For example, in the introduction by Lord David Frost and Brandon Lewis, they state that the Protocol *"is leading to disruption to supply chains, increased costs, and reduced choice for consumers, and unnecessary boundaries that risk causing wholesale diversion of trade or economic damage in Northern Ireland."* (Page 9)

21. It expresses concerns that: *"There is now a 50/50 split in opinion in Northern Ireland on the Protocol, which is not a sustainable basis on which to proceed. This has been against a backdrop of growing protest, including instances of disorder in Northern Ireland and multiple changes in the leadership of Northern Ireland's largest unionist political party."* (par. 24)

22. Against this background, the UK Government has made several suggestions. These include: *"We also stand ready to bring in new legislation to deter anyone in Northern Ireland looking to export to Ireland goods which do not meet EU standards or to evade these enforcement processes."* (par. 43) It also states:

Accordingly, we believe we and the EU should agree a 'standstill' on existing arrangements, including the operation of grace periods in force, and a freeze on existing legal actions and processes, to ensure there is room to negotiate without further cliff edges, and to provide a genuine signal of good intent to find ways forward. (par. 77)

23. The UK Government also concluded *"that for the time being it is not appropriate to exercise its rights under Article 16"* (par 34). The EU has also made a positive move by freezing legal actions against the UK. The initial reaction by the EU from Maroš Šefčovič (Vice President of the European Commission) was as follows:

We will continue to engage with the UK, also on the suggestions made today. We are ready to continue to seek creative solutions, within the framework of the Protocol, in the interest of all communities in Northern Ireland. However, we will not agree to a renegotiation of the Protocol.¹⁰

24. Overall, it is difficult to predict the outcome over the coming months. Will the UK Government remain committed to the contents of the Command paper? Will it trigger Article 16? ¹¹ Will the instances of disorder re-occur? Regarding renewed disorder, Jamie Bryson (a prominent loyalist activist in NI) published a response to the UK

⁹ See: <https://www.gov.uk/government/publications/northern-ireland-protocol-next-steps>

¹⁰ Maroš Šefčovič: op.cit, Brussels, 21 July 2021.

¹¹ Article 16 refers to such aspects: "If the application of this protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures."

Government's command paper.¹² He stated, regarding the possibility of continued instability, that there could be a short breathing space "*predicated upon the reality that if the Government do not move at the promised speed, then underlying societal instability will once again become overt...only this time with a greater intensity than before.*"^[34] A potentially ominous statement regarding the coming period.

E. Attitude to International Law

(i) UK and International Law

25. In 1995 the UK Government stated that it will "*discuss and seek agreement with the relevant political parties in Northern Ireland as to what rights should be so specified and how they might best be further protected, having regard to each Government's overall responsibilities including its international obligations.*"¹³ Subsequently, when it considered the issue of rights during the negotiations leading to the Belfast Agreement, it stated "*there may be some existing models*" or that "*the provisions of certain international instruments on human rights might contain elements*"¹⁴ relevant to NI.

26. However, as stated in the Belfast Agreement, the UK Government agreed "*to legislate as necessary to ensure the United Kingdom's international obligations are met in respect of Northern Ireland.*"¹⁵ This last mentioned quotation represented a subtle change by the UK Government in its attitude to international law with respect to NI from merely "*having regard*" to international obligations or "*there may be some existing models*" compared with "*legislate as necessary to ensure.*"

(ii) Ireland and International Law

27. After the creation of NI in 1921, the Irish Parliament opposed its existence, such as support for anti-partition candidates in NI elections. More formally, the Irish Constitution initially contained a legal claim to the territory of NI as articulated by Articles 2 and 3 of the Irish Constitution; namely a "*de jure claim to the territory of Northern Ireland.*"¹⁶ This claim was an underlying problem preventing development of normal politics within NI and between the two parts of Ireland.

28. The then Irish Government's Foreign Minister (February 2006) stated: "*We should not forget that the North/South dimension was a key priority for this Government in the negotiations on the Good Friday Agreement, given that in endorsing the Agreement, we were also removing Articles 2 and 3 from our Constitution.*"¹⁷ Thus, the legitimacy of NI as part of the UK was supported by legislation passed in the Irish Parliament providing the opportunity for a new beginning in North/South relationships.

¹² Unionist Voice Policy Studies: 'Analysis of UK Government Command Paper', 21 July 2021.

¹³ A Framework for Agreement: 22 February 1995, 'Protection of Rights' par. 50.

¹⁴ UK Government's tabled document at the multi-party negotiations, 6th February 1998.

¹⁵ The Belfast Agreement: 'Democratic Institutions in Northern Ireland', par. 33 (b).

¹⁶ Council of Europe: 'Report submitted by Ireland pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities', Article 2, page 30: 13 November 2001.

¹⁷ Dermot Ahern TD: Statement to the Seanad (the upper house of the Oireachtas, the Irish legislature), 2 February 2006.

29. The Irish Times (December 4, 1999) reported: *"The removal of the 62-year-old territorial claim to Northern Ireland and its replacement by a commitment to the consent principle gave effect to the most dramatic change in the definition of Irish nationalism since the foundation of the State."* The Irish Government, in its submission to the Council of Europe ¹⁸ under the heading 'The Status of International law in the Irish legal framework', referred to *"the principle of international law as our rule of conduct in our relations with other states."*

(iii) The Protocol and International Law

30. From the EU perspective there has been the constant theme that the UK must abide by international law and thus must implement the Protocol. For example: Maroš Šefčovič, Vice President of the European Commission stated: *"Respecting international legal obligations is of paramount importance."* ¹⁹

31. The Secretary of State for NI, Brandon Lewis (UK Government Cabinet Minister), was asked in the House of Commons: would the proposed legislation regarding the NI Protocol breach international law? His answer was: *"yes, this does break international law in a very specific and limited way."* ²⁰ There were immediate and numerous responses as illustrated by references 21 to 26 below.

32. From a NI perspective, Michelle O'Neill (Deputy First Minister in the NI Assembly and Sinn Fein leader in NI) stated: *"In terms of the British Government's approach, it's astoundingly arrogant their attempt to try and set aside an international agreement at the expense of our interests here."* ²¹ And Stephen Farry (Deputy Leader of NI's Alliance party) stated: *"Regarding breaching International law, it's completely outrageous: an extraordinary state of affairs."* ²²

33. From the Irish Government's perspective the Taoiseach, Micheal Martin, stated:

I will be speaking later this afternoon with the British Prime Minister to register our very strong concerns about this latest development, and in particular the unilateral nature of it and the fact that it fundamentally is seeking to deviate from what is an agreed international treaty. ²³

His government colleague and former Taoiseach, Leo Varadkar, stated:

As far as the Irish Government is concerned, the Withdrawal Agreement - including the Protocol on Ireland and Northern Ireland is an international agreement. International treaties have to be honoured and they trump any domestic legislation that any country may pass. ²⁴

¹⁸ Council of Europe: Ibid: page 7, 13 November 2001.

¹⁹ Maroš Šefčovič: op.cit, Brussels, 21 July 2021.

²⁰ Brandon Lewis MP: House of Commons, Hansard, Volume 679, 7 September 2020.

²¹ Michelle O'Neill MLA: NI's Ulster Television's News programme: 'UTV Live', 8 September 2020.

²² Stephen Farry MP: BBC's 'Sunday Politics', 13 September 2020.

²³ Micheal Martin TD: News Letter, 9 September 2020.

²⁴ Leo Varadkar TD: Ulster Television's News programme, 'UTV Live', 8 September 2020.

34. From a UK perspective, Sir John Major (UK Prime Minister 1990 to 1997) stated: *“For generations, Britain’s word - solemnly given - has been accepted by friend and foe. Our signature on any treaty or agreement has been sacrosanct.”*²⁵ Lord Peter Hain (Former Secretary of State for NI from 2005 to 2007) stated, regarding the UK Government breaking international law, that it was *“certainly what you’d expect of a rogue state and what you’d expect of a banana republic.”*²⁶

F. Consideration of Relevant International Law

35. Generally, the primary concerns expressed about the need for the Protocol are: the protection of the Belfast Agreement including specifically the Nationalist identity in NI; efficient trading; and the integrity of the EU’s single market. Most recently, against the background of an advertisement by the UK Government for new civil servant posts to administer the Protocol, the ‘Northern Ireland Office’ (UK Government Department related to NI) issued a statement, including: *“Accordingly, it is important we employ talented people to ensure it delivers on its core objectives - minimising disruption to everyday lives and safeguarding the (Belfast) Good Friday Agreement.”*²⁷

36. Consider the Belfast Agreement / identity issues. Two international legal documents are relevant. First (not unexpectedly) the Belfast Agreement, approved by referendum of the peoples of the island of Ireland (North and South) on 22 May 1998, stated in the opening section that there should be *“the protection and vindication of the human rights of all.”*²⁸

37. Senator George Mitchell (former USA politician and Chairman of the multi-party negotiations that led to the Belfast Agreement) stated: *“Division over identity in Northern Ireland does remain a threat to the stability of the institutions and addressing those issues must be a clear commitment by all of the political parties and all the leaders in Northern Ireland.”*²⁹ And the Belfast Telegraph stated *“if this is to be a shared space then respective identities must be respected.”*³⁰ A key question: given this concern, what rights require consideration regarding ‘identity’ in order to provide the basis for a democratic, stable and peaceful society?

38. In the Belfast Agreement’s ‘Declaration of Support’, the participants stated: *“We acknowledge the substantial differences between our continuing, and equally legitimate, political aspirations.”* [par. 5] Further, under the heading of ‘Constitutional Issues’ the participants endorsed *“the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union”* [par. 1 (iii)]; *“just and equal treatment for the identity, ethos and aspirations of both communities”* [par. 1 (v)]; and *“recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose”* [par. 1 (vi)].

²⁵ Sir John Major: News Letter, 10 September 2020.

²⁶ Lord Peter Hain: News Letter, 10 September 2020.

²⁷ News Letter: ‘Government hiring ‘permanent’ high-paid civil servants to handle Northern Ireland Protocol’, 13 August 2021.

²⁸ The Belfast Agreement: ‘The Agreement, Declaration of Support’; par. 2.

²⁹ Senator George Mitchell: quotation of him speaking at a Conference (University of Ulster) on 14 May 2019 to consider the Report, ‘Sectarianism in Northern Ireland: A Review’; Belfast Telegraph, 15 May 2019.

³⁰ Belfast Telegraph: Editorial Viewpoint; 2 August 2019.

39. Also, under the heading of 'Rights, Safeguards and Equality of Opportunity' the parties reaffirmed their commitment to *"the right to pursue democratically national and political aspirations; [and] the right to seek constitutional change by peaceful and legitimate means."* [par. 1] A Bill of Rights was to be considered (still under consideration by the NI Assembly) with rights *"drawing as appropriate on international instruments and experience...to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem"* [par. 4].
40. Aspirations are important and both communities' aspirations are equally legitimate. However they are legally different. NI as an integral part of the UK is the legal position according to international law, including the Belfast Agreement, whereas the status of the aspiration for a united Ireland is that of a legitimate right to wish for a change in NI's legal position.
41. What is the impact of the above? The Belfast Agreement's outworking has addressed those with an aspiration for the political unification of the island of Ireland, by confirming freedom to advocate constitutional change, with procedures stated as to when to trigger a referendum. Both the identity of residents and the status of NI are to be recognised with equal treatment for all regarding identity. However, further clarification is needed regarding the interpretation of the words: 'identity', 'ethos' and 'parity of esteem' (par. 39). Consider the second international legal document, the 'Framework Convention for the Protection of National Minorities' (FCNM).
42. By way of background to the FCNM: a series of Consultancy Studies relating to the political situation in NI and sponsored by the Irish Government was published in 1996 by the Forum for Peace and Reconciliation. This was against the political background of elections in NI in June 1996 to the 'Northern Ireland Forum for Political Dialogue' from whose membership came party negotiation teams to 'The Talks' that led to the Belfast Agreement. Asbjorn Eide, a contributor to these Consultancy Studies, was described by the Dublin Forum as:

a leading international authority in the field of human rights...Director of the Norwegian Institute of Human Rights...long-serving member of the United Nations Sub Commission on the Prevention of Discrimination and Protection of Minorities, an expert body serving the UN Commission on Human Rights.³¹

43. Asbjorn Eide commented as follows:

In November 1994 the Council of Europe adopted the Framework Convention on Minorities. The Convention is significant for two reasons. It is the first multilateral 'hard law'³² instrument devoted in its entirety to the protection of minorities, and it contains much more detailed provisions on such protection than any other international instrument...building as it does

³¹ Asbjorn Eide: 'A Review and Analysis of Constructive Approaches to Group Accommodation and Minority Protection in Divided or Multicultural Societies'; Forum for Peace and Reconciliation, Consultancy Studies Number Three, July 1996, page 133.

³² 'Hard law' can be defined as States ratifying the FCNM agreeing to an accountable process demonstrating their compliance.

on the United Nations Minority Declaration and on the Copenhagen Document of the CSCE (now OSCE).³³

44. The Council of Europe describes the FCNM as follows:

One of the most comprehensive treaties designed to protect the rights of persons belonging to national minorities. Parties to the Convention undertake to promote the full and effective equality of persons belonging to minorities in all areas of economic, social, political and cultural life together with the conditions that will allow them to express, preserve and develop their culture and identity.³⁴

45. The FCNM was drawn up by the Council of Europe, following a meeting of member States in Vienna in October 1993 where it was agreed national minorities needed protected, including where a minority shares an ethnic, cultural, linguistic or religious identity with a neighbouring state. This reflects the concerns regarding the Nationalist identity in NI. The FCNM was ratified by the UK Government on 15 January 1998.

46. The FCNM does not define a 'national minority'. Each Member State is left to decide which groups are to be covered by the FCNM. Individuals are free to decide whether or not they wish to be treated as belonging to a national minority. The UK Government has used the following definition based on the Race Relations Act (1976): "*a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origins.*"³⁵ The UK Government includes Cornish, Irish, Scots and Welsh in this definition. Overall, the FCNM specifies the principles which States undertake to respect. However, because each State may have different issues to be resolved, a measure of discretion is left to each State in the implementation of the principles.

47. Among the Articles contained in the FCNM are "*adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority*" [4]; "*maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage*" [5]; "*every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing*" [10]; "*create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.*" [15]; and "*not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers...in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.*" [17]

48. In exercising these rights a provision concerning the interpretation and application of the FCNM states:

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to

³³ Asbjorn Eide: Ibid, page 69.

³⁴ <https://www.coe.int/en/web/minorities/fcnm-leaflet>

³⁵ UK Government: 'Report submitted by the UK pursuant to Article 25'; 26 July 1999, part 1, par. 2.

the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States. [21]

49. Mindful of the above narrative (pars. **38 to 48**) regarding the Belfast Agreement, with an associated recommended Bill of Rights, and the FCNM, the following can be stated with justifiable confidence. A reasonable person, conscious of the facts and concerns expressed, would conclude that they are addressed generally in the Belfast Agreement and complemented by more detail in the FCNM.
50. The FCNM describes the central elements of one's 'Identity', namely: culture, language, education and religion,³⁶ as well as the cross border dimension. These are represented by up to thirty rights (**Annex 2**, pages 20 to 22). 'Ethos' could be described as the characteristics of a community and manifested by its attitudes and aspirations. 'Parity of Esteem' refers to equal respect for the identity, ethos and aspirations of both communities. Overall, the Irish Identity is fully accommodated and comprehensively representative of acceptable international standards and law. The relevant and important elements of the Belfast Agreement are protected in detail by way of the FCNM. Given this detail, wherein lies the function of the Protocol? An answer is provided at par. **54**.

G. Consideration of the Protocol

(i) Unique

51. The word 'unique' appears 4 times in the Protocol (**Annex 3**, pages 23 & 24), 3 times at the very beginning and the other in Article 1, relating to 'Objectives'. Clearly the authors of the Protocol viewed the uniqueness of NI as important when drafting the document. The Protocol states that it represents "*a unique solution*" (page 23). That is true. However, is this uniqueness justified?
52. The word 'unique' is not new to the discussion regarding peace in NI. A former UK Prime Minister described Northern Ireland as "*unique*".³⁷ Additionally, the UK Government stated: "*A key feature for discussion in the talks is the extent which there is a need to develop specific additional rights protections to deal with the unique problems of the divided community in Northern Ireland.*"³⁸
53. Consider the assertion (pars. **9 to 11**) that protecting the Belfast Agreement / identity is a necessary and key element of the (unique) Protocol. This is not fact. The Council of Europe's rationale for the FCNM is clear: "*Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent*"³⁹ combined with its monitoring process, is testimony to this protection not being unique. And, the FCNM's related 'Facts Sheet' states: "*Virtually all European states have some population*

³⁶ Council of Europe: 'Framework Convention for the Protection of National Minorities', Articles 5 and 6, Strasbourg, February 1995.

³⁷ John Major: 'A Framework for Accountable Government in Northern Ireland', Foreword, February 1995.

³⁸ Northern Ireland Office: 'Rights and Safeguards: Paper by the British Government', February 1998, par. 4.

³⁹ Council of Europe: *Ibid*, page 1.

*belonging to national minorities.”*⁴⁰ Also, Asbjorn Eide commented: *“Experience shows that there are almost no ethnically homogeneous States.”*⁴¹

54. Each of the 39 European countries⁴² subject to the FCNM has its own particular characteristics, but all are subject to the same FCNM template. The Council of Europe’s latest published opinion on Hungary⁴³ refers to such aspects as: self-government, culture, broadcast television, street signage, schooling / education and cross-border co-operation. And, the issues in Bosnia and Herzegovina⁴⁴, though not a member of the EU, are also being addressed within the FCNM’s template. The FCNM is the necessary support to preserve and protect the essential elements of the Belfast Agreement, not the Protocol.
55. What threatens to make NI’s political situation worse is thinking that NI is uniquely complicated to the extent that it can only be addressed by pursuing untried, dangerously innovative and complex measures without precedent elsewhere, and which could likely result in continued instability. Given the UK’s position (pars. **25** & **52**) and pressure during the negotiations for the UK to ratify the FCNM, the following view was expressed: *“What is unique about Northern Ireland is not the problem but the solution advocated by government.”*⁴⁵
56. Maybe the appearance of uniqueness is because NI is separated by water from the rest of the UK and has a land border with the EU. Yet, for example: Hawaii in the middle of the Pacific Ocean is an integral State of the USA and consider Alaska’s location; Sicily is part of Italy and Tasmania is part of Australia. The island of Borneo comprises three countries, Brunei, Indonesia and Malaysia. Other EU countries have a border with a non-member of the EU. NI’s geo-political situation is not unique and, while there are particular circumstances that need to be addressed, it should not be considered as needing a unique solution.
57. Consider the content of a recently published article that stated:

Here, sport reflects wider society, where most organisations governed on an all-Ireland basis before partition, remained so afterwards, highlighting that the political partition of Ireland was not matched by a social and cultural one on the island, by and large.⁴⁶

If the word ‘unique’ is to be used to describe the island of Ireland it would be in relation to these aspects of culture just quoted and, importantly, it is not a problem requiring a ‘unique’ solution. All island cultural links prevailed after partition as well as when the UK and Ireland were members of the EU (unlike other territories after division, such as Korea and Yugoslavia). There is no doubt that these cross-border cultural links will continue, now that the UK has left the EU. It is ironic that this uniqueness undermines

⁴⁰ <https://www.coe.int/en/web/minorities/fcnm-factsheet>

⁴¹ Asbjorn Eide: op. cit., pages 33 and 35.

⁴² <https://www.coe.int/en/web/minorities/country-specific-monitoring>

⁴³ Advisory Committee on the FCNM: ‘Fifth Opinion on Hungary’; Strasbourg, 12 October 2020.

⁴⁴ Advisory Committee on the FCNM: ‘Fourth Opinion on Bosnia and Herzegovina’, Strasbourg, 3 October 2018.

⁴⁵ Dermot Nesbitt: ‘Solutions must be based on reality’, News Letter, 8 January 1998.

⁴⁶ Cormac Moore: ‘Why did Ireland’s sporting bodies not split in 1921?’, Belfast Telegraph, 23 July 2021.

the Protocol's perception of uniqueness (**Annex 3**, Article 1 / 3, page 24). With goodwill on both sides, other non-cultural cross-border dimensions can also be sustained.

(ii) International Law

58. In paragraph **33** Leo Varadkar was quoted as referring to international treaties having to be honoured and that *“they trump any domestic legislation that any country may pass.”* This statement is a reflection of the views expressed in pars. **30** to **34**. I agree, international law must be respected and it trumps (overrules) domestic law. However, what if two separate parts of international law conflict with each other; which part trumps the other? Consider one element of the FCNM. The Preamble states in its penultimate paragraph that signatories to the Convention are:

Resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states.⁴⁷

This quotation sets out *“the main aim of the framework convention [and] it also stresses that this effective protection should be ensured within the rule of law, respecting the territorial integrity and national sovereignty of States.”*⁴⁸ The UK and Ireland have both ratified this principle and so should be committed to its implementation (See commitments given, pars. **26** & **29**). In this context ‘integrity’ means the state of being whole and undivided.

59. In the above context, the word ‘respect’ is important. Generally, if you respect other people, you show respect for their wishes, rights, or customs and you avoid doing anything they would dislike or regard as wrong. From a legal perspective, in the Oxford Electronic Dictionary, respect means that one agrees to recognise and abide by the legal position. Respect for the legal position is not simply abiding by the law, which one must do. To ‘recognise’ involves acknowledging the existence, validity or legality of the position and acting accordingly.

60. The above FCNM quotation is in sharp contrast with the Judicial Review which makes clear that the Protocol conflicts (is incompatible) with all UK residents being on the same footing as regards trade (**Annex 1, A**, [47], [48] & [62], page 18).

61. And, in support of the FCNM, the ‘The Pact on Stability in Europe’ (**Annex 4, A**, par. 1 & 7, page 25) was *“in response to the European Union’s call”* to adopt the Pact. It listed the numerous international bodies that refer to *“sovereign equality, respect of the rights inherent in sovereignty...territorial integrity of States and respect for internationally recognised frontiers...”*

62. Thus, the unique nature of the Protocol's disrespect for territorial integrity is a dramatic contradiction of all that is central to international organisations and it should also be

⁴⁷ Council of Europe FCNM: op.cit., page 1.

⁴⁸ FCNM: ‘Explanatory Report - ETS 157 - Protection of National Minorities’, February 1995, page 1.

central to the EU. Since two parts of international law conflict with each other, respecting territorial integrity versus the Protocol, on the basis of evidence, territorial integrity trumps the international agreement regarding the Protocol. Yet, unashamedly the Protocol wrongly claims it respects *“the territorial integrity of the United Kingdom.”* (**Annex 3**, Article 1 / 2, page 24).

63. This Stability Pact was subsequent to the demise of the USSR in 1989 when several States, formally within the USSR, wished to join the EU (**Annex 4, B**, page 26). In addition to the EU being conscious of the imperative nature of respecting territorial integrity, so is the Council of Europe being mindful of the FCNM advocating particular rights to minorities, especially if they share a land border with a neighbouring State where they have an associated identity. Hence the importance of respect for the sovereignty of a State.
64. Given that the French constitution guarantees equality of all citizens before the law without distinction as to origin, race or religion, there is a clear rationale why France neither signed nor ratified the FCNM. There has been, on occasions, an underlying concern that in granting specific rights to a national minority this may be *“translated either into demands for independence for the particular territory in which they live, a merger with a neighbouring State, or autonomy for the area in which they live”*⁴⁹... *unless all parties agree to a voluntary territorial change.”*⁵⁰ It is clear that territorial integrity is a fundamental principle when solving identity problems.
65. Also, while recognising that the Stability Pact (**Article 4, A**, par. 8, page 25) refers to *“the development of free movement of persons, ideas, goods and services”*, the context is different to the UK’s withdrawal from the EU. The Pact relates to potential new EU members (**Annex 4, B**, page 26), all of which are now in the EU, and consequently a wish *“to reduce economic and social inequalities”*. However, none of this involves contravening respect for the territorial integrity.
66. The European Commission stated (pars. **10 & 11**) that the Protocol is the only solution to protect the integrity of the single market. The EU’s market integrity does not trump a country’s territorial integrity, as demanded by international law. Regrettably, the European Commission - and others - articulates, in the context of the Protocol, an unfortunate hard line ‘Europe says No’ attitude to the fundamental standards of international law. The Protocol is not the only solution to protect the single market.

H. Concluding Comments

67. The Protocol represents a clear violation of a fundamental principle of international law, hence the need for an urgent and considered response by the UK Government and, in particular, the EU. This submission believes that the Protocol breaches an essential aspect of the FCNM by acting outside the limits for ensuring the effective protection of national minorities (par. **58**). Uncertainty about stability and non-violence in the coming period (Section **D**) necessitates this urgent consideration.

⁴⁹ Asbjorn Eide: op. cit., pages 33 and 35.

⁵⁰ Asbjorn Eide: op. cit., page 70.

68. The UK Government is committed (par. 26) to ensuring that its “*international obligations are met in respect of Northern Ireland*”, while the Irish Government refers (par. 29) to “*the principle of international law*” as its rule of conduct with other states. Both Governments need to reflect and recognise the reality of what is required if progress is to be made.
69. The EU is recognised as a leading international body, comprising 27 States. Thus, one expects its words and actions to reflect universally accepted international standards as well as the responsibilities that come with this status. Additionally, 23 of the EU States have ratified the FCNM and so the EU, as a corporate body, should recognise what is required, compared with what is at present contained in the Protocol.
70. Based on an objective analysis of the evidence contained in this submission, there can be no justifiable rationale for the EU holding firmly to the contents of the present Protocol. On every point considered supporting the Protocol none passes objective scrutiny, for example, the statement that it respects the UK’s territorial integrity.
71. Additional to cross-border cultural aspects (par. 57) the only other truly unique aspect of this issue is that the UK is the first country to leave the EU. This puts it in a position of trading with the EU, and that is not a unique position. This will require adjustment in trading arrangements that is beyond the scope of this submission. However, and importantly, any trading adjustments required do not - and should not - extend to disrespecting a fundamental principle of international law.
72. While the Belfast Agreement provided, for example, the structures for governance for NI, the continued implementation of the FCNM reflects the key aspects of the Belfast Agreement in their entirety as regards identity issues. Therefore, there is no impact at all on the outworking of the highly important elements of the Belfast Agreement resulting from the UK leaving the EU. Any claim to the contrary is totally invalid. Consequently, even if it did not breach international law, there is no logical justification for the Protocol to refer to the Belfast Agreement, especially identity / culture issues including the cross-border dimension.
73. Advocates of the Protocol articulate respect for international law. However, given the wide range of international law, some of its fundamental principles as demonstrated by the wide range of support from international organisations (pars. 61 to 65) should take precedence. In that event, all parties involved in this contentious issue should come together and find a common way forward that they all can agree.
74. Note: in the Belfast Agreement no reference is made to any aspect of trade. The structures for governance in NI are: the 90-member (initially 108) NI Assembly with legislative and executive authority; North / South Ministerial Council; British-Irish Council and British-Irish Intergovernmental Conference. Regarding cross-border cooperation, the North/South Ministerial Council is an important aspect of the Belfast Agreement. Specifically, regarding EU matters: “*The Council to meet...in an appropriate format to consider institutional or cross-border matters (including in relation to the EU) and to resolve disagreement.*”⁵¹ This would have been an appropriate vehicle by which consideration of withdrawal procedures could - and

⁵¹ The Belfast Agreement: ‘Strand Two, North/South Ministerial Council, par 3 (iii), page 11, 10 April 1998.

should - have been considered. This is a clear example of the lack of democratic input regarding the issue in question. The Council could still play a major part in addressing the issue.

75. If there had been an EU / non EU 'hard border' within the island of Ireland in 1998, there would have been nothing to preclude negotiations being initiated and continuing until agreement was secured. To not find an agreement would have been an abrogation of responsibility by the politicians involved. There is nothing in either the Belfast Agreement or - regarding identity - the more detailed FCNM related to issues of trade between NI and Ireland. Identity is related to equality within the State and also cross-border cultural matters. Creating a 'hard-border' because of withdrawal from the EU, would not undermine any relevant aspect of either the Belfast Agreement or the FCNM. A 'soft-border' would naturally make trading easier within the island of Ireland but whether hard or soft, it is irrelevant to the issues of concern as exemplified by the comments in pars. 8 to 11.
76. Tony Blair and Jonathan Powell's comments (par. 9) regarding the Protocol are simply a charade. To say that, without the soft border in the island of Ireland associated with UK & Ireland's membership of the EU, there would have been no deal in 1998 is to ignore the norms contained in international law. Their comments fall into the trap of believing NI is unique.
77. Overall, the Belfast Agreement is a stand-alone international agreement and its central reconciliation elements will be sustained into the future, notwithstanding the UK's withdrawal from the EU. Unlike many comments contained in this submission, withdrawal from the EU does not impact the intent of the Belfast Agreement as a contribution to peace and stability. Fundamental principles of international law must be upheld and should not in any way impact on NI's stability and peaceful environment.

Dermot Nesbitt⁵²

⁵² I was a member of the Ulster Unionist Party's negotiating team, under the leadership of Lord David Trimble, that agreed the Belfast Agreement on 10 April 1998.

Annex 1

In reference to Pars. 17 & 18 of the submission, some salient aspects of the Judicial Review (Ref: COL11535) are as follows:

At [36] *“The Supreme Court has reaffirmed that parliamentary sovereignty is a fundamental principle of the UK constitution...As this judgement proceeds it will be seen that the importance of Parliamentary sovereignty is key to the consideration of the challenges in these proceedings.”*

At [47] Article V1 of the Act of Union (Ireland) Act 1800 is quoted: *“...his Majesty’s subjects of Great Britain and Ireland shall...be entitled to the same privileges and be on the same footing”* and that all future treaties with any foreign power, the *“subjects of Ireland shall have the same privileges and be on the same footing as”* subjects of Great Britain.

At [48] it is noted therefore that *“subjects of Great Britain and Ireland shall be ‘on the same footing’ in respect of trade [and] in any future treaty ‘with any foreign power’ that equal footing shall be preserved”*.

At [50] *“In assessing the merits of these propositions a starting point must be whether in fact the Protocol conflicts with the provisions of Article V1.”*

At [62] *“Although the final outworkings of the Protocol in relation to trade between GB and Northern Ireland are unclear and the subject matter of ongoing discussions it cannot be said that the two jurisdictions are on ‘equal footing’ in relation to trade. Compliance with certain EU standards; the bureaucracy and associated costs of complying with customs documentation and checks; the payment of tariffs for goods ‘at risk’ and the unfettered access enjoyed by Northern Ireland businesses to the EU internal market conflict with the ‘equal footing’ described in Article V1.”*

At [71] *“The Withdrawal Agreement (including the Protocol) has therefore been approved and incorporated into domestic law pursuant to the explicit will of Parliament by way of primary legislation.”*

At [109] *“Returning to the judgement of Laws LJ in **Thoburn** it will be noted that he recognised that a constitutional statute can be repealed by specific language if it has the same effect as express repeal. The principle is that general or broad terms will yield to terms which are more specific.”*

This led to the statement at [110] *“The more general words of the Act of Union 1800 written 200 plus years ago in an entirely different economic and political era could not override the clear specific will of Parliament, as expressed through the Withdrawal Agreement and Protocol, in the context of the modern constitutional arrangements for Northern Ireland.”*

Further at [111] it is stated: “...that every provision and clause of the Withdrawal Acts, the Protocol and associated documents were fully considered by Parliament [and] The views supported by the applicants that the Protocol was contrary to the constitutional arrangements for Northern Ireland were known by the legislature...The Acts have been approved and implemented pursuant to the express will of parliament and any tension with Article V1 of the Act of Union should be resolved in favour of the Agreement Acts of 2018 and 2020.”

The Judicial Review concluded [114] “The court therefore concludes that the Withdrawal Acts and, in particular, section 7A of the 2018 Act override Article V1 of the Act of Union and insofar as there is any conflict between them section 7A is the preferred and given legal effect. Judicial review on this ground is refused.”

Note:

Section 7A referred above includes such aspects as “The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be (a) recognised and available in domestic law, and (b) enforced, allowed and followed accordingly.”

Annex 2

Framework Convention for the Protection of National Minorities

Relevant Rights that reflect the principles in the Framework Convention

1. Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. (Art. 4)
2. Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. (Art. 4)
3. Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. (Art. 5)
4. Without prejudice to measures taken in pursuance of their general integration policy, Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation. (Art. 5)
5. Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. (Art.6)
6. Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity. (Art. 6)
7. Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion. (Art. 7)
8. Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations. (Art. 8)
9. Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. (Art.9)
10. Parties shall ensure, within the framework of their legal systems that persons belonging to a national minority are not discriminated against in their access to the media. (Art. 9)

11. Rights contained in pars. 9 & 10 above shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises. (Art. 9)
12. Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. (Art.9)
13. In the legal framework of sound radio and television broadcasting, Parties shall ensure, as far as possible...that persons belonging to national minorities are granted the possibility of creating and using their own media. (Art. 9)
14. In the Framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism. (Art. 9)
15. Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. (Art. 10)
16. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. (Art. 10)
17. Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter. (Art. 10)
18. Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system. (Art. 11)
19. Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public. (Art. 11)
20. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications. (Art. 11)
21. Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. (Art. 12)

22. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities. (Art 12)
23. Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities. (Art. 12)
24. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments: exercise of this right shall not entail any financial obligation for the parties. (Art. 13)
25. Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language. (Art. 14)
26. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language. (Art. 14)
27. Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. (Art. 15)
28. Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage. (Art. 17)
29. Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels. (Art. 17)
30. Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned and where relevant, Parties shall take measures to encourage transfrontier co-operation. (Art. 18)

Annex 3

Protocol on Ireland / Northern Ireland

Note: the bold/underlining of 'unique' is only in regard to this submission

Preamble

HAVING REGARD to the historic ties and enduring nature of the bilateral relationship between Ireland and the United Kingdom,

RECALLING that the United Kingdom's withdrawal from the Union presents a significant and **unique** challenge to the island of Ireland, and reaffirming that the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there,

RECOGNISING that it is necessary to address the **unique** circumstances on the island of Ireland through a **unique** solution in order to ensure the orderly withdrawal of the United Kingdom from the Union,

Summary extracts of some other parts of the preamble

AFFIRMING that...the Belfast Agreement...should be protected in all its parts,

RECOGNISING that cooperation between Northern Ireland and Ireland is a central part of the 1998 Agreement and is essential for achieving reconciliation and the normalisation of relationships on the island of Ireland

NOTING that Union law has provided a supporting framework for the provisions on Rights, safeguards and Equality of Opportunity of the 1998 Agreement,

RCOGNISING that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have exercise to rights...who choose to assert their right to Irish citizenship,

RECALLING the commitment of the United Kingdom to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls,

RECALLING that the Union and the United Kingdom relies to a significant extent on a common Union legal and policy framework,

NOTING therefore...withdrawal from the Union gives rise to substantial challenges to the maintenance and development of North-South cooperation,

ACKNOWLEDGING the need for this Protocol to be implemented so as to maintain the necessary conditions for continued North-South cooperation,

DETERMINED that the application of this Protocol should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland,

UNDERLINING their firm commitment to no customs and regulatory checks or controls and related physical infrastructure at the border between Ireland and Northern Ireland,

HAVING REGARD to the importance of maintaining the integral place of Northern Ireland in the United Kingdom's internal market.

The following is the complete Article 1 of the Protocol, setting out its objectives

Article 1 Objectives

1. The Protocol is without prejudice to the provisions of the 1998 Agreement in respect of the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.
2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.
3. This Protocol sets out arrangements necessary to address the **unique** circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions.”

Annex 4

A

The Pact on Stability in Europe

Paris, 20-21 March 1995

(Selected paragraphs)

1.

We, Ministers for Foreign Affairs and Representatives of States and International Organisations participating in the Paris Conference on Stability in Europe, met in Paris on 20 and 21 March 1995, in response to the European Union's call, to adopt the Pact on Stability in Europe.

6.

In this spirit, work has focused on the intensification by participating States of good-neighbourly relations in all their aspects, including those related to the rights of persons belonging to national minorities.

7.

This intensification requires sustained efforts. It must be based on effective implementation of the existing principles and commitments established within the framework of the UN, the OSCE and the Council of Europe, notably all of the principles contained in the 1975 Helsinki Final Act, the 1990 Charter of Paris for a new Europe, the 1990 Copenhagen Document, the 1992 Helsinki Document, the 1994 Budapest Documents, as well as the Vienna Declaration of the Council of Europe summit of 1993 and, for the States that are party to them, the relevant treaties and conventions of the Council of Europe, including the 1994 Framework-Convention for the protection of national minorities. These principles refer to sovereign equality, respect of the rights inherent in sovereignty, refraining from the threat or use of force, inviolability of frontiers, territorial integrity of States and respect for internationally recognised frontiers, peaceful settlement of disputes, non-intervention in internal affairs, respect for human rights, including the rights of persons belonging to national minorities, and fundamental freedoms, including freedom of thought, conscience, religion or belief, equal rights and self-determination of peoples, cooperation among States and fulfilment in good faith of obligations under international law.

8.

Good-neighbourly relations must promote regional economic development, in order to reduce the economic and social inequalities which create tensions, as well as transborder cooperation which should enable, in the economic, cultural, administrative and human spheres, the development of free movement of persons, ideas, goods and services.

B

**UK Parliament, House of Commons, Hansard for 28 March 1995
(Volume 257)
Written Answers**

Reference:

<https://hansard.parliament.uk/commons/1995-03-28/debates/d59fd704-de67-4efb-9b92-9e1cf05888fe/StabilityPact>

Ms Quin

To ask the Secretary of State for Foreign and Commonwealth Affairs if he will make a statement on the outcome of the EU conference on regional stability held in Paris. [15687]

Mr. Douglas Hogg

The stability pact concluding conference which took place in Paris on 20–21 March was attended by all participating States of the Organisation for Security and Co-operation in Europe. The Pact's aim has been to help nine prospective members of the EU - Czech Republic, Slovakia, Poland, Hungary, Romania, Bulgaria, Estonia, Latvia and Lithuania – resolve problems, especially concerning frontiers and minorities, before enlargement, by promoting good neighbourliness on the basis of OSCE principles. The conference adopted the stability pact and transferred it to the OSCE which is entrusted with its implementation. The EU joint action under the common foreign and security policy has now been successfully completed.