

**The Cambridge seminar on the future of the island of Ireland
Cambridge Centre of Geopolitics and Sidney Sussex College, University of
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'The future of UK-Irish relations', with Sir David Lidington, 20 September 2021¹

David Lidington 20 sept 2021

In 2016, I travelled to Northern Ireland to campaign for a Remain vote in the EU referendum alongside Danny Kinahan, then the Ulster Unionist Party MP for South Antrim, and Alasdair McDonnell, then the SDLP MP for South Belfast. I remember arguing in media interviews that leaving the EU would open up problems over the border between Northern Ireland and Ireland.

The following day, the Northern Ireland Secretary, Theresa Villiers, one of the Cabinet Ministers who supported Leave, insisted that there would be no problem and that there was no reason to expect border arrangements to change. Northern Ireland did not feature much in the referendum campaign, but the then Secretary of State's view was one she stuck to consistently and was in line with the approach taken generally by the Leave campaign.

In April 2016, Theresa Villiers said: "There is no reason to change the border arrangements in the event of a Brexit because they have been broadly consistent in the 100 years since the creation of Ireland as a separate state".

That was a view shared by Boris Johnson both during the 2016 campaign and later as Foreign Secretary and Prime Minister. Theresa May's Chief of Staff, Gavin Barwell, in his memoir of the May government published last week, recounts how Mr Johnson regarded the Irish border issue as a problem invented by Dublin and Brussels and thought that the UK and EU should simply recognise that each of them had a perfectly adequate regulatory and inspection regime and should carry on trading without checks as they had done during the UK's time as a Member State.

During the first half of Theresa May's premiership, I served as Leader of the House of Commons and then as Justice Secretary, and was not centrally involved in the Brexit

¹ A recording of David's intervention and conversation with Prof Biagini is available here: <https://bit.ly/31PcaFE>

negotiations. But my memories of what was discussed at the time and confirmed by some of the interviews recorded by Professor Anand Menon in his “Brexit Witness” archive is that the May government did not at the start see the Northern Ireland issue as a key point in negotiations. Certainly, the belief in the Cabinet was that the border on the island of Ireland was a matter for the second phase of negotiations, the future relationship between the UK and the EU, rather than the Withdrawal Agreement.

Sometime in 2016, before Enda Kenny left office (this isn’t something that can be blamed on Leo Varadkar in the way some of my former parliamentary colleagues tend to do), the decision was made in Dublin to press for the EU’s negotiating position to include dealing with the Northern Ireland/Ireland border in the Withdrawal Agreement and to make a deal on that a key element (along with agreements on EU citizens and a financial settlement) as a core EU objective without which no negotiated Withdrawal Agreement would be possible.

I remember at one point asking our chief negotiator, Ollie Robbins, how such an approach could be justified in law, since under WTO rules all external borders had to be administered in the same way and the EU was insisting that they would not even start talks on the future trade relationship until the Withdrawal Agreement had been concluded.

The answer was that the EU had decided that two principles: necessity and proportionality justified treating the Irish border as a special case. The peace process and political stability in Northern Ireland was a vital, core interest of the European Union : so special treatment was necessary. And trade across the Irish border was such a tiny fraction of EU/UK trade (let alone of the total external trade of the Single Market) that it was proportionate to make that border a special case.

The history and outcome of the subsequent negotiations is well known. The most important thing to understand about Theresa May’s approach is that she was and is a passionate Unionist. She understood that border infrastructure or controls were not just a matter of economic relations between states but touched on deeply sensitive matters about identity. What had the greatest impact on her were meetings with moderate Nationalist or unaligned community groups in Northern Ireland where people said to her plainly that anything that made it harder for people who thought of themselves as Irish but were content to let sleeping dogs lie over unification, would shift towards campaigning for a border poll if border controls or infrastructure were introduced.

In addition, we knew that any border controls North/South would be unenforceable, partly because of the sheer number of crossing places and partly because of the extent of civil disobedience that would follow. My own meetings with business and local authority leaders in Derry/Londonderry, Newry and Enniskillen confirmed that that was the case.

What Mrs May sought to do was to persuade the DUP and her own backbench Conservative MPs that a backstop, designed to be temporary if used at all, could be made acceptable to Unionist opinion. We offered to keep Great Britain allied to Northern Ireland’s (and therefore to a considerable extent the EU’s) regulatory standards for as long as the backstop was in operation and to give Stormont representatives an effective veto over the UK government’s positions in the Joint Committee.

The May government also made a lot of progress with Michel Barnier's team on agreeing a "de-dramatisation" of controls, so that if the backstop were triggered checks would largely be carried out in the market or at the place of manufacture or assembly.

As we all know, those efforts failed. There were various reasons. In my view the Commission made a serious error of judgment in going public with their draft Protocol text, a step that enraged Unionists and made negotiations more difficult. Michel Barnier, a man whom I like and respect, found it very difficult to establish a relationship of trust with Unionists - conversations between them could be very acrimonious. And I thought that the Taskforce never really understood the existential importance to Unionists of British identity and their fear that their position within the UK was being undermined.

As for the Unionists themselves, I had hoped that the fact that some regulatory differences and border checks between Northern Ireland and Great Britain had existed for a long time, particularly over livestock, would persuade them to compromise over the backstop, especially once the May government had got the Commission to agree that the customs agreement with the UK should apply to Great Britain and not only to Northern Ireland. I was wrong. The RHI scandal and the damage that did to the authority of the DUP leadership made them more nervous about compromise and Unionism generally had not come up with a strategic response to the reality that demographic change in Northern Ireland now meant that the survival of the Union depended on enough moderate Nationalists and unaligned voters being willing to support staying in the UK.

Above all of course, we simply failed to persuade enough Conservative MPs that the compromise Theresa May had negotiated was a good deal for our country and respected the referendum result, while the Opposition parties increasingly shifted to the view that they would agree to nothing unless a second referendum were included in the package.

I was surprised when Boris Johnson agreed what is now the Northern Ireland Protocol, including as it did permanent rather than a temporary alignment for Northern Ireland on many Single Market regulations while leaving Great Britain outside their scope. The Stormont lock on the continuation of regulatory alignment was a win for him - but it is hard to see, given the demographics of Northern Ireland, a circumstance in which there would be a majority in the Assembly to ditch the Protocol.

The first reaction amongst Unionists of all shades to the Johnson Protocol was a mixture of shock and fury. I remember a conversation with Sylvia Hermon, the Independent Unionist MP for North Down, who had openly supported the May backstop, when she warned me not to think that it was just hardliners who were enraged and added that she was deeply worried that the Loyalist paramilitaries were exploiting genuine public anger among Unionists to build up their support.

The General Election of December 2019, in which Boris Johnson sought and won a clear electoral mandate for his EU deal, including the Protocol, calmed tempers and the pandemic meant that political leaders everywhere had other, more pressing priorities. But the foolish and clumsy move by the Commission in late January 2021 to invoke Article 16 to restrict the supply of vaccines to the UK. The move was abandoned in a matter of hours but the political damage was done.

Now, we have a situation where the Protocol risks becoming the key issue of the Stormont election due in 2022 and, with opinion dividing along sectarian lines.

And of course this all comes at a time when, following Brexit, the relationship between the United Kingdom and Ireland risks becoming attenuated. Our officials and Ministers are no longer getting to know and trust each other through the permanent conversation through which so much of the EU's business is done: Council meetings - and the informal chats over coffee or lunch; EU caucus meetings in the margins of other organisations, from the UN to OSCE, and the bilateral visits and calls prompted by EU business but which build up mutual understanding.

The events of the last five years have bruised the relationship between London and Dublin. What can be done to heal those wounds and rebuild trust?

We have to start with the Protocol. Its implementation, while making Northern Ireland a very attractive destination for inward investment, has caused serious disruption for both customers and businesses in Northern Ireland and is widely seen by Unionists as undermining their identity as British and pushing them by stealth towards a united Ireland.

It is in the interests of neither Brussels nor Westminster to let these divisions fester. Both the United Kingdom and the European Union have a duty to overcome the lack of trust that currently bedevils negotiations and to compromise.

For the United Kingdom, I believe that compromise has to involve accepting the implications of the Protocol that they negotiated and ratified. Since the majority of the checks and paperwork currently required concern food and agriculture, I would like to see a self-standing, time-limited treaty between the UK and the EU to agree in detail on sanitary and phytosanitary standards that reflect the standards now in force under both EU and UK law. This would not be an infringement of UK sovereignty: negotiating and ratifying an international treaty is a fundamental expression of sovereignty.

For its part, the EU should not only bring forward the bespoke solutions that it has drafted to address such things as ensuring supplies of medical drugs from Great Britain to Northern Ireland but also come forward with proposals that de-dramatise paperwork and inspections so that they become a much less onerous burden for business and consumers.

Since the Johnson government, in contrast to the May government, has rejected dynamic alignment on agri-food and industrial goods, I am conscious that this is asking quite a lot from the 27.

However, in agreeing a compromise the EU would be applying the principles of necessity and proportionality that its negotiators cited frequently during negotiations in 2017-2018. Those principles seem as relevant now as they were four years ago.

Second, London and Dublin should establish a pattern of bilateral relations that requires regular contact between the two governments. Elements of such a strategy, which could be

incorporated into a new treaty between the two countries, might include an annual summit between Taoiseach and Prime Minister, a joint Cabinet meeting, a structured dialogue on security threats (both internal and external), and a secondment programme for officials to spend 6 or 12 months working for the other government.

We should also try to make the Strand Three institutions more vigorous. It's quite hard to see what changes could be made to the British/Irish Council (BIC), which involves the three Crown dependencies and the three UK devolved administrations as well as the two sovereign governments, though it would be possible for UK/Ireland bilateral meetings to take place between different departmental ministers in the margins of each BIC.

The British-Irish Intergovernmental Council (BIIGC) is a different matter. There we could be more ambitious. The dependence of Theresa May's government on DUP votes in the House of Commons meant that it was not possible to push forward as much as I would have wished and it is dismaying that the Johnson government's first BIIGC with Irish ministers took place only in June this year, almost two years after the Prime Minister came to office.

The BIIGC should meet regularly perhaps once a quarter. It needs to become a routine, boring part of intergovernmental business, with meetings not being treated as a big political event. There are lots of practical issues to discuss, such as how to coordinate what Ireland is doing to regenerate the North-West with the UK's City Deal for Derry/Londonderry and Strabane.

Finally, we should take a fresh look at parliamentary relationships. The current inter-parliamentary body does good work, but I wonder how many MPs or TDs know much (if anything) about its existence. It cannot be for government to tell Parliament what to do, but ideas might include a regular, annual meeting between the Speakers and more frequent contact between committee chairs in London and Dublin.

A drive to beef up Strand Three relations will need to be handled with sensitivity and respect for what, under the Belfast/Good Friday Agreement should properly be the responsibility of Strand One or Strand Two work. But the relationship between the UK and Ireland is one that will remain important to both governments. Mutual trust between Dublin and London and understanding of each another's positions is a vital part of helping to support elected leaders in Northern Ireland to continue to work to build a genuinely shared society.