

European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: The Northern Ireland Protocol Bill

Wednesday 12 October 2022

3.10 pm

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Members present: Lord Jay of Ewelme (The Chair); Lord Dodds of Duncairn; Lord Empey; Lord Godson; Baroness Goudie; Lord Hain; Lord Hannan of Kingsclere; Baroness O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 3

Heard in Public

Questions 25 - 34

Witnesses

I: Dr Niamh Gallagher, Lecturer in British and Irish History, University of Cambridge; Professor Henry Patterson, Emeritus Professor, Ulster University.

Examination of witnesses

Dr Niamh Gallagher and Professor Henry Patterson.

Q25 **The Chair:** Good afternoon and welcome to this public meeting of the Protocol on Ireland/Northern Ireland Sub-Committee. Today, we are holding the third evidence session of our inquiry into the Northern Ireland Protocol Bill, which received its Second Reading in the House of Lords yesterday. This inquiry follows the publication of our follow-up report into the economic and political impact of the protocol on Ireland/Northern Ireland, also in July.

We are joined today by a panel of academic experts. Professor Henry Patterson is emeritus professor of Irish politics at Ulster University. He is joining us in person. Dr Niamh Gallagher is associate professor of modern British and Irish history at the University of Cambridge. She is joining us remotely. You are both welcome and we very much look forward to the

evidence you will give us. It is now 3.15 pm and we aim to continue for an hour, if that is okay. We have another session after that.

Perhaps I could ask you to introduce yourselves briefly when you speak. I should also say that today's meeting is being broadcast and verbatim transcripts will be taken for subsequent publication. They will be sent to you to check for accuracy. Can I also refer to the list of Members' interests as published on the committee's website?

Welcome again, and perhaps I could start by asking how you would characterise the political, economic and legal impact of the protocol as it is currently operating in Northern Ireland. I will ask Dr Gallagher to speak first followed by Professor Patterson. Over to you, Dr Gallagher.

Dr Niamh Gallagher: Thank you for allowing me to join you today. That is a very broad question, as your Lordships will know. There are mixed views on the current operation of the protocol on Ireland/Northern Ireland as it stands today. Those views are coloured by political stripe as well as perceived economic benefits. If generalisations are at all worth while in talking about Northern Ireland, there is a general desire to see the protocol improved. I think all parties would respect that. The majority of MLAs wrote to the UK Government in June 2022 to make that case. Even moderate UUP leader Doug Beattie said in May 2022 that fixing the protocol in a pragmatic way was desirable.

Economically, I think it is a more positive picture. There are several polls from a variety of different industries—Manufacturing Northern Ireland, the Northern Ireland Chamber of Commerce and Industry, statistics from the National Institute of Economic and Social Research, and separately the Northern Ireland Statistics and Research Agency—that broadly suggest a positive picture, although exceptions can be found. I have those figures, but I will not go into them now for the sake of time.

We all know that the protocol is not yet fully implemented and the ongoing battle between the UK Government and the EU is not presenting much stability for traders or businesses in Northern Ireland.

Politically, however, this is a much more complicated matter. There is no easy characterisation of the political impact on Northern Ireland, although several easy characterisations have been made. Some of the major objections are that it changes Northern Ireland's constitutional position. That is something I would be keen to speak about later, if hopefully you ask me about that. It has been mentioned by self-declared unionist parties, and clearly some public opinion surveys support that view as well.

Another common refrain is that the protocol is destabilising for Northern Ireland. I would like to talk more about that with your permission. Conversely, other parties in Northern Ireland think that the Northern Ireland Protocol Bill is destabilising Northern Ireland – so the domestic piece of legislation rather than the international one is destabilising Northern Ireland. There are no public opinion polls on this, however, so the comparison is more difficult to make.

Generally speaking, unionist parties are happy to break the withdrawal agreement if no solution can be found, whereas both non-aligned and nationalist parties are not.

Legally, I think the issue is clearer. The protocol as it exists under the withdrawal agreement protects the Good Friday agreement because it maintains parity of esteem towards all parties in Northern Ireland, which is the fundamental ethos of the Good Friday agreement. The Northern Ireland Protocol Bill, however, does not. It breaks parity of esteem by looking after one interest alone. It therefore will break the ethos of the Good Friday agreement and will have destructive impacts on the various strands, about which I am very happy to say more.

The Chair: Thank you very much. That has been a very helpful start. You said there were some figures that you would not mention. Could you send those to us just so we have those to flesh out what you have just said in your introduction?

Dr Niamh Gallagher: Yes.

The Chair: Professor Patterson, could I ask you to speak next?

Professor Henry Patterson: Thanks again for the invitation and for the work that the committee has done. Some of the things I will talk about today are in a sense saying back to you material that I gleaned from the evidence sessions you have had, particularly from your follow-up report in July of this year.

I am an historian. I have written extensively on the history of Northern Ireland and Anglo-Irish relations. My most recent book was on the role of the border in Anglo-Irish relations during the Troubles. The work that is most relevant to what we are talking about today and some of the issues that Dr Niamh Gallagher has raised are to do with my work on unionism. I have written about unionism from the period of its formation during the home rule crisis, through the Stormont period, the crises of the 1960s and through decades of terrorist violence, and the peace process. In responding to some of your other questions I will go into particular aspects of unionism in more detail.

To start off on the economic impact, whatever we think of the protocol I think there is a broad consensus that it has had mixed effects. Some businesses and sectors have benefited from privileged access which the protocol provides for the EU market, particularly dairy and meat processing.

In an interview with the *Belfast Telegraph* on Saturday last Sir Jeffrey Donaldson pointed to the potential gains to the Northern Ireland economy from its privileged relationship with the EU single market. However, as your follow-up report noted, businesses reliant on east-west trade, which are the great bulk of businesses in Northern Ireland, particularly among small and medium enterprises, have been harmfully affected by increased bureaucracy, the need for extra staff resources, cost and delay in delivery

times. According to the evidence given by Doug Beattie, leader of the Ulster Unionist Party, small and medium enterprises were absolutely on their knees because of this.

In Northern Ireland, one of the challenges of economic development since the Troubles has been the development of industries with research and development profiles—higher technology industries. It was interesting to read the submission of the body that represents the aerospace industry, which employs about 7,000 workers directly, including Thales, which, as you probably know, has probably made a major contribution to the Ukrainian defence against Russia. According to its representatives, the additional costs and administrative burdens are not sustainable in the long term. The economist Esmond Birnie estimates an increase in cost for businesses bringing goods from GB to Northern Ireland of at least 6%, or approximately £600,000 a year.

However, these are not simply trade, customs, regulatory and technocratic issues. They are that, obviously, and they are very important for that reason. Quite a few of them are saturated with political implications. Where you get your sausages from—here, I disagree with the leader of the Alliance Party, Naomi Long—may well have implications for the perception of your constitutional relationship with the rest of the UK. Similarly, a lot of neuralgic points have developed, and not just in unionists' perceptions, about the over-rigorous implementation of the protocol over the past two years, such as the absence of the M&S Christmas food range and the impossibility of getting seeds from Great Britain for your garden centre, et cetera, et cetera.

The significance of these for a broad range of unionists is that these instantiate, concretise, what they see as a fundamental constitutional dislocation between Northern Ireland and the rest of the United Kingdom. The protocol does have these constitutional implications.

How serious are they? I am an historian, so I certainly tend to take the long view. I have lived and taught in Northern Ireland at two provincial universities since the middle of the 1970s. I have been reading, analysing and writing about key events—the hunger strikes, the Anglo-Irish agreement, the IRA ceasefires in the 1990s and the Good Friday agreement—as they happened and now, obviously with the benefit of the files being opened, with some sort of historian's hindsight. I tend to take a long view of what is going on at the minute and what is in a sense a pretty profound political crisis.

In his evidence to you, Matthew O'Toole of the SDLP acknowledged unionist disquiet and angst over the protocol, but added that the protests were on a much smaller scale than had been the case in the past. That is definitely true. In 1985 there was a massive crowd of about a quarter of a million outside Belfast City Hall to protest against the Anglo-Irish agreement. The loyalist unrest and violence that occurred in April 2021 was on a much more restricted scale than the violence precipitated by the conflicts over marching at Drumcree in the middle of the 1990s. In that sense, the situation in which we find ourselves is better and the miasma

of terrorist violence, which we were used to living with for about 30 years, has largely disappeared.

There is one really important difference between the unionist and loyalist unrest in 1985 through to the early 1990s and that of today. The Anglo-Irish agreement was specifically designed to be a settlement between London and Dublin; it was essentially imposed on Northern Ireland because of the absence of consensus between unionists and nationalists. I think a lot of unionist angst over the protocol is to do with the way the Belfast/Good Friday agreement provided a direct input at its core in strand 2 for local political parties and leaders, including unionist political leaders. Therefore, there is, albeit in negative form, the capacity for unionists to protest peacefully by political means, which is institutionalised because of what was agreed in 1998.

Article 1 of the Good Friday agreement on constitutional issues states that the sovereign government with jurisdiction in Northern Ireland, the British Government at this time, shall exercise its power with full respect for parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities. Brexit was seen by nationalist Ireland as an assault on this balance. The Irish Government had the support of the European Union in the portrayal of Brexit as a major threat to the Good Friday agreement and even to the peace process.

In a sense, the protocol provides an answer to nationalist disquiet about the Brexit dilemma by avoiding any form of regulatory border on the island of Ireland. The core problem at the moment is the perception and belief among unionists that the protocol as currently structured drives a coach and horses through the structures of the Good Friday agreement, privileging the north-south relationship at the expense of the erection of a customs and regulatory border at Derry, Larne, Belfast and Warrenpoint.

The perception of the constitutional implications of the protocol is shared by a broad section of the Northern Ireland public; it is not simply a unionist perception. Professors Hayward and Phinnemore of QUB conducted a four-monthly panel of over 12,000 adults in Northern Ireland on the protocol in March 2021. Over two-thirds thought that it was having negative effects on Northern Ireland's constitutional position and its place in the UK internal market. There is a broadly shared perception that, in a sense, unites nationalists, republicans, unionists and loyalists, but it does have constitutional implications. How you deal with that obviously is a different question.

The Chair: That has been very helpful. Thank you very much indeed.

Q26 **Baroness Ritchie of Downpatrick:** You are very welcome, Professor Patterson and Dr Gallagher. I well recall Professor Patterson on the radio talking about many elections over many years on Radio Ulster, BBC and UTV.

What is your overall assessment of the UK Government's approach in

relation to the protocol? I will ask Professor Patterson first and then come to Dr Gallagher.

Professor Henry Patterson: I think the protocol Bill is an attempt to respond to unionist disquiet about the protocol in an attempt to restore the balance between north-south and east-west in particular. I think that is the objective behind it. We can discuss later the legal aspects that were discussed in the Chamber yesterday. I supported the Bill in the circumstances given the degree of unionist alienation, which is more widespread.

As you well know, all the unionist parties in the Assembly oppose the protocol. There are differences in their tactical approach to dealing with it, but there is consensus on that. The Government are attempting to address that on the basis that you cannot have stability in Northern Ireland without unionist buy-in. There are arguments about the unionist vote having shrunk, but if we look at the basic fundamentals of how the Good Friday agreement is supposed to work, the aspect of parity of esteem is essential, and part of parity of esteem is respecting the east-west relationship.

Baroness Ritchie of Downpatrick: Dr Gallagher?

Dr Niamh Gallagher: Can I check whether you want me to answer in relation to the protocol rather than the Northern Ireland Protocol Bill?

Baroness Ritchie of Downpatrick: Our inquiry is to do with the protocol Bill. Therefore, it would be the protocol Bill.

Dr Niamh Gallagher: In relation to the protocol as it currently stands, it is a little bit different. The UK Government were quite successful in lobbying for some changes long before the Northern Ireland Protocol Bill was introduced. Medicines and SPS are good examples. I think those negotiations paid off.

We have to recognise that it has been very difficult for the UK Government. It is one state versus 27; it is a very uneven relationship, so it has been a difficult negotiation. The UK has found itself on the back foot in that sense, because it is tough.

The UK Government could have avoided some problems that materialised in those early days when the protocol itself was implemented. It created problems for Northern Ireland traders by announcing only in November 2020 that the protocol would be introduced on 1 January 2021. That gave rise to some of the perceptions that Professor Patterson talks about today, that actually the protocol was going to cause tremendous disruption within Northern Ireland, and that itself was turned into a very long-standing sense of angst that unionists, broadly speaking, have had in Northern Ireland for a long time. Professor Patterson, Alvin Jackson and others have written about an instability within the union that unionists have perceived for some time. That has been whipped up again and fed into the existing narratives.

I have been rather shocked by some of the negotiation tactics that the UK Government have taken. The EU has shocked me as well and I will talk about that when you ask me. Threatening the use of Article 16 in late 2021 and throughout much of 2022 was really surprising for me to watch as an historian. I am no diplomat, but it seems to me that that was not the way to go about negotiation.

In January 2022, the current Prime Minister Liz Truss—she was not Prime Minister then, of course—equated national policy with devolved policy when she said that it was a matter for the Northern Ireland Executive if officials were ordered to stop checks required under the protocol, which the DUP Minister for Agriculture, Edwin Poots, did immediately after the start of February 2022. To me, that seemed grossly irresponsible, playing with the devolved institutions over national policy.

On the Northern Ireland Protocol Bill, which you are here to scrutinise, it is a very extreme move to draft legislation that would unilaterally break international law. That should be taken extremely seriously by your Lordships. International law has never been more important than it is today, given what is happening in Ukraine and what we heard on Radio 4 yesterday about North Korea. It is incredibly important and it should not be broken without really good reason. I do not think that reason is there, and I am very happy to speak more about why I do not think it is there.

The Chair: Thank you to both of you.

Q27 Lord Dodds of Duncairn: In terms of the UK's approach, I was struck by the fact that there was no mention of the UK taking action unilaterally to extend grace periods during that time, a point that is against international law but is accepted by everybody because it has had positive impacts; indeed, it is now welcomed by everybody across the board and is seen as the minimum that needs to be required. That point seems to be overlooked when we list all the bad actions of the UK Government. That was something we did unilaterally to the benefit of Northern Ireland and is now accepted by everyone else.

Professor Patterson, what is your assessment of the EU's approach in relation to the protocol? Is the EU going far enough in addressing the problems? We have heard mention of some of the proposals in relation to medicines and so on, but what is your assessment of its overall approach across the board?

Professor Henry Patterson: This might be in the process of change in terms of the ongoing talks between London and Brussels, but certainly for the first two years I think the presumption of a threat to the EU internal market represented by goods imported to Northern Ireland by GB was exaggerated to an extensive degree. There was inflexibility in the EU's approach.

The full implementation of the protocol has essentially been watered down by the various grace periods and derogations. There have been changes in part as a response to the clear evidence—Maroš Šefčovič has probably picked this up in discussions with unionist political leaders—of

the depth of opposition that exists within the unionist community to the structures of the protocol as they are being operated at the moment. We know that on medicines a lot of the most neuralgic points have been dealt with by a process of grace periods and derogations.

Clearly, there are problems in the approach of both sides to these negotiations. It has taken some considerable time for the EU to recognise that the Good Friday agreement involves more than the north-south relationship. Stephen Collins's new book, *Ireland's Call*, on the Brexit negotiations shows just how effective Irish politicians and officials were in persuading the May Government to accept a definition of the Good Friday agreement that was structurally oriented more or less to eliminate the east-west dimension. That may be changing. I think it has to change if the situation is to improve.

Dr Niamh Gallagher: I would agree with Lord Dodds. I think the grace periods have been useful. Thank you for bringing that up. It might also be worth while raising the caveat that it is very difficult for me to say what full implementation of the protocol will look like. Whether there will be more certainty for businesses or whether those grace periods will continue indefinitely is very hard to say, but I think they have been welcomed.

As for the EU's approach in relation to the protocol, it also has been mixed. In some ways it has been more predictable than the UK's. The EU is nothing but a legal entity, so its responses in using law whenever it deemed that the UK had broken its obligations are probably predictable in that sense.

It also has behaved badly. I would say that it is a story of men behaving badly, but there are probably a few women involved as well. They put metaphorical guns on the table. They triggered Article 16 briefly over the vaccines, as you know, in January 2021. Using legal action surely cannot have helped negotiations as they progressed. There has been posturing on both sides, without a doubt.

There were important points in the UK's July 2021 Command Paper that could have been addressed earlier had both sides trusted each other and those negotiations happened in a better, warmer environment, such as medicines. It need not have taken as long as it did, but it is also important to reinforce that the EU has shown considerable flexibility. This is quite clear from the Queen's University Belfast timeline that Professor Hayward and others have been compiling since 2015. You can walk step by step through every paper, publication and important things in relation to Brexit and the protocol from late 2015 to the present.

Working my way through that timeline, the EU has shown considerable flexibility. It changed its own rules in mid-2021 over medicines; it allowed the UK to have that unilateral extension of grace periods that Lord Dodds mentioned without following up with legal recourse, so in a sense it turned a blind eye.

Maroš Šefčovič in an interview last month with the *Financial Times* said that checks could be reduced to a minimum and done in an invisible manner. It does seem to me that the appetite is there to try to find a solution. I would agree with him that there has been remarkable goodwill shown to a non-member state that wants further divergence from it, but it is also in the interests of the EU to have good relations with states on its borders. Although I think that both camps have certainly behaved badly, I do not get the sense from the EU that it is entirely inflexible and does not want any further revisions to the existing agreement.

Q28 **Baroness Goudie:** Thank you very much for your earlier answers. What is your overall assessment of the political, economic and legal impact of the Northern Ireland Protocol Bill, and what are the most significant elements of the Bill from your perspective?

Professor Henry Patterson: If we look at the things that have caused most angst, if you like—most concern—in a practical sense, they are to do with controls. The proposals for red and green channels are sensible, and on these issues it may be quite possible that the distance between the EU's position and Britain's position is bridgeable.

On dual regulation, there is a range of problems, but in terms of technocratic solutions I think this is possible. At the same time, there is an issue about the jurisdiction of the European Court. I think that yesterday Lord Thomas of Gresford suggested that the Government should negotiate a special chamber of the European Court of Justice with an equal number of UK and EU judges to deal with the issue of final judgment on regulatory and other issues.

The key thing about the Bill from my perspective, looking at it in terms of its political effects particularly on unionism, is that it represented a major effort to bring the unionist community on board.

Dr Niamh Gallagher: I would not want to comment on the Bill's actual impact because it has not been passed or enacted yet. I do not understand law well enough to be able to say whether its provisions will work for the EU, so again I am not an expert in that matter. To a non-expert, I think that some of its surface elements seem favourable. More proportionate checks on goods seem like an advisable way forward.

What I really want to emphasise is the legal justification for this Bill, which I think is profoundly weak. It will break the Good Friday agreement, which is also international law; it disrespects parity of esteem; and it deals only with unionists. There are many other groups in Northern Ireland, many of whom feel profoundly frustrated with the UK Government over successive months. They are nationalists; they are non-aligned voters. They do not neatly fall into each camp, but that is a useful way of describing them.

The EU will not respect this Bill, so what does that mean? The EU will not be confident that the UK will be checking the compliance for goods moving across its border, so a regulatory border will be needed. That will

be a de facto hard border in the island of Ireland, even though rhetorically the EU does not want such a thing. That would break strand 2.

I agree with Professor Patterson in so far as he says that the Irish Government were very successful in negotiating the Good Friday agreement. A large part of the agreement is about strand 2; indeed, strand 3 is also about UK-Irish relations—really British-Irish relations, to be fair. It seems to me that a hard border would absolutely impair the north-south relationship. I cannot see any way of this Bill going forward that would not do that.

I would like to look at the legal justification briefly for the Northern Ireland Protocol Bill. I draw on the Foreign and Commonwealth Development Office's Explanatory Notes, *NI Protocol: The UK's Solution*. It stresses on page 2 "the urgency and seriousness of the problems in Northern Ireland". On page 10 it says that a democratic deficit created by the enduring powers in Northern Ireland of the European Court of Justice "has—and continues to—undermine political stability, with a fundamental sense of unfairness and feeling of separation from the rest of the UK in Northern Ireland". I think Professor Patterson was trying to get across some of those points as well.

Alas, I dispute those claims. Feeling has never been a basis for breaking international law. The constitutional position of Northern Ireland is secure. The Court of Appeal ruled in March 2022 and dismissed all cases as the appellants' arguments were rejected.

It should be borne in mind that modern states have endless flexible arrangements within them. Take the USA; take Canada having its own charter for rights, language and many other things. Within the UK, Scotland has its own law, currency and courts. Northern Ireland was the first to be given a devolved parliament, which was taken away from it in 1972. States have endless flexibility within them. Though it would be unusual for part of a UK state still to rely on EU law, it would not be outside the rules of flexible sovereignty that have come to define modern states.

We also need to think carefully about some of the language used in that document. It refers to the urgency and seriousness of the problems in Northern Ireland. Anything can be urgent and serious and cause political instability in Northern Ireland: parades; the Irish language; and bonfires, regardless of who is lighting them. All of them have the potential to bring about political instability, so we need a better criterion for measuring 'urgency and seriousness'.

There are two criteria I want to mention. First, is there a threat to peace in Northern Ireland? That is the most profound question. The Troubles are over. We know we cannot replicate the 1960s, 1970s, 1980s and 1990s. The world has changed, whether it is from policymakers to policies, or a revived republican movement decommissioned in 2005, or whether it is the actors who helped to make the Troubles what it was,

most of whom have now died. The Troubles are over. Talking about ghostly threats in the face of tangible assurances that it is done and dusted is no good to anybody, and it is certainly not a basis for international law.

I might add some of the following important matters. All parties are committed to peace in Northern Ireland. In the St Andrews agreement in 2006, this is made clear in Clause 3: "Both Governments remain fully committed to the fundamental principles of the Agreement: consent for constitutional change, commitment to exclusively peaceful and democratic means, stable inclusive partnership government". It goes on.

That commitment to peace was also made earlier this year, in March 2022, by a strong unionist alliance of the UUP, DUP, the Apprentice Boys of Derry, and the Loyalist Communities Council in April 2022, who said, "We reaffirm our commitment to ensure a peaceful Northern Ireland whereby all citizens can feel comfortable and be treated with equal respect and dignity within the United Kingdom". There is simply no evidence that large-scale violence is about to break out again. I will say it again: the UK Government cannot evoke ghostly threats in the face of tangible assurances.

The second criterion, and I promise I will finish up, needs to be based on the following. Is it discriminatory to bring in the Northern Ireland Protocol Bill, and is the current protocol discriminatory? The current protocol is not discriminatory in so far as it applies to all people in Northern Ireland equally. The Northern Ireland Protocol Bill has dealt with one section of the self-defined designation of the Good Friday agreement and, therefore, does break that parity of esteem. For the UK Government to pursue this Bill without breaking international law, it necessitates reliance on the doctrine of necessity in Article 25 of international law. That is the Commission's draft articles of state responsibility. In that, it says that international law can be broken only in a situation of "grave and imminent peril". There is no such grave and imminent peril in Northern Ireland.

Looking at case law and previous examples of invoking this plea, there is no comparison with the current situation. Overall, there is no legal justification for the Northern Ireland Protocol Bill that I can possibly find, and I have thought about this hard.

- Q29 **Lord Hain:** To some extent, Dr Gallagher, you have answered my question, but I wanted to pick up particularly and ask for Professor Patterson's view on this. It was something you said, which was, I thought, very significant. You thought that if the protocol Bill was implemented it would lead to a hard border. Would you agree that, if the protocol Bill was implemented legally, Northern Ireland's continued membership of the single market and the customs union would no longer be valid? In other words, the protocol, if implemented fully, would effectively start to remove Northern Ireland from the single market and the customs union. I am just wondering whether your point about the hard border is aligned with that.

The Chair: Who is that addressed to?

Lord Hain: Dr Gallagher, initially.

Dr Niamh Gallagher: I apologise.

Lord Hain: Sorry, I thought I was addressing it to you, but maybe I did not make that clear enough. It is my fault.

Dr Niamh Gallagher: Sorry, I should have listened more carefully, Lord Hain.

The hard border will come about if the Northern Ireland Protocol Bill is brought in, and that is because the EU will not trust this Bill. It will not see it as part of international law, and therefore it will need to police its borders for goods and there will have to be a border. We cannot get away from the logic that there will be a border. It is either in one place or another, or in some imaginative space that we have not yet managed to find.

However, there is clearly no border with the current protocol—that is a north-south border—and there is, as we know, an east-west border instead. I think there seems to be flexibility available there to make that as seamless as possible.

Under no circumstances do I think the UK Government should break international law. It would be really bad for the country and really bad for the world. The world is based on international treaties. They are really important, now more so than ever before.

I do not know if I am answering your question precisely. I should have listened closely, but I did not realise it was addressed to me, so, Lord Hain, if you want to elaborate on that and ask me again I am very happy to answer more precisely. Thank you.

Lord Hain: Perhaps I could just ask for Professor Patterson's observations.

Professor Henry Patterson: As I understand it, the proposals of the protocol Bill would not lead to a hard border, because the proposals for red and green lanes take account of the EU's concern to protect the single market. A relatively small amount of the goods that enter into Northern Ireland go across the border. The protocol has been operating for two years. The EU has had plenty of time to give a serious estimate of the serious strategic and economic challenge represented by the British proposals to the integrity of the single market.

Things have really moved on quite a bit over the last two years and current negotiations are based on the assumption that Britain respects, as far as I understand it—the two main unionist parties at least—the need at all costs to avoid a hard border on the island of Ireland. That threat does not exist to any significant extent.

Lord Hain: Briefly, if you accept the premise that the protocol Bill overrides Northern Ireland's membership of the single market and the customs union, surely that will create a harder border, if not a fully hard border. Perhaps Dr Gallagher might respond briefly on that as well.

Professor Henry Patterson: I suppose it goes back to the amount of trade and the amount of smuggling that would realistically threaten the EU's single market coming in through Northern Ireland. As I said, I think it is a relatively small threat.

Lord Hain: Dr Gallagher, briefly, if the Court of Justice is not to be recognised, which the Bill seems to be overriding, the Court of Justice is essential to the operation of the single market and the customs union, is it not?

Dr Niamh Gallagher: Yes, the Court of Justice is essential to the operation of the legislation that the UK has signed.

On the point of a hard border, again I want to emphasise that the EU will not be confident that the UK checking is taking place for compliance for goods. One cannot imagine away the border; it has to be somewhere, and that will lead to a de facto hard border in Ireland. I can imagine that will not lead to very good relationships between the British and Irish Governments. I am very happy to talk about the democratic deficit with the European Court of Justice, but perhaps you want to ask me separately.

Lord Hain: That is another question. Thanks very much.

The Chair: We may come on to that.

Q30 **Lord Hannan of Kingsclere:** One cannot wish away a border, but one can apply it in different ways. It is striking that throughout this whole debate there has not been any equivalent symmetrical argument in Britain about what kind of border we should put on our side, because we take the mature view that we are dealing with countries that have similar regulatory norms to our own.

I wanted to ask about mechanisms for solving the issues that I think most people accept have arisen as being problematic. Most of us around this table participated in the debate yesterday, and I was struck by the change of tone in one sense that a lot of people who were strong opponents of this legislation were saying, "Well, what about Article 16? Why don't we use a mechanism that's within it?", which was a very different tone from what we had heard a couple of months earlier where everyone was saying that that would be the most irresponsible thing and the sky would fall in.

Let me ask both of our witnesses, maybe starting with Dr Gallagher: if not this, what? Having identified a number of issues that I think all sides recognise as extant—problems with moving goods but also disparities of tax rates, asymmetry of arbitration and so on—how else could they be tackled? Would it be through Article 16? Would it be through more

extended grace periods, which I think both our witnesses and most of the other people accepted were a valid breach of international law, or at least one that was not worth complaining about, or is there some other method, assuming that there is not an international agreement, through which the UK could resolve these issues?

I will start with Dr Gallagher and then I will come to Professor Patterson, if I may.

Dr Niamh Gallagher: Thank you. There is no easy solution to this. I would suggest that there is further negotiation between the UK Government and the EU, hopefully done in a warm spirit and not with the bad posturing we have seen in the recent past. They need to work together for consensus. That is the only way agreements are made, as I am sure several Lordships will know, particularly in relation to Northern Ireland.

I would agree with the UK Government when they talk about a consensual, pragmatic and, where possible, proportionate approach to the protocol and its implementation. That, I think, is important and, in so far as the EU can possibly move, I would urge it to move more to try to ease some of the concerns that exist in Northern Ireland.

I would like to offer a couple of other small recommendations but must stress that I am not an expert in trying to solve this very difficult problem. I have never understood why the checks for goods that are currently destined for the European Union have been applied in Northern Ireland itself and not on the British side. The physical presence is a reminder that the problem exists. Why can they not be on the British side when no one cares particularly a lot about it? For unionists in Northern Ireland, it is a real problem, and I wonder if the physical infrastructure cannot be moved.

Similarly, it is not clear to me how much support has been given to British businesses that are now reluctant to trade with Northern Ireland. What can be done there to improve the problems with documentation and bureaucracy that I know have changed some of the trading relationships between the two?

Please let me emphasise some other points that I really think need to be kept in mind. There is a need for a dramatic restoration of British-Irish relations. They have not been as bad for some time. Northern Ireland has always worked better when the British and Irish Governments co-operated, and Lord Hain will know that well. Constructive engagement from both states together to make the protocol work would be the desired solution. I do not think Article 16 has met the legal requirement to be triggered, and if the UK Government decides otherwise it will undermine economic stability in Northern Ireland. A trade war in this current environment would be irresponsible. It would further fracture relations with the Irish Government and that key component of the Good Friday agreement, which of course is strand 2.

If the Government are going to pursue the metaphorical gun-on-the-table approach, they should follow Article 16, absolutely. They should not introduce the Northern Ireland Protocol Bill. These are my thoughts in descending priority order.

I have one further suggestion. One problem that I understand has really tainted businesses' and others' associations with the protocol is that there has been an extreme lack of good communication regarding implementation, so I would advise any ongoing negotiations and discussions, particularly on fixing the flexibility around medicines, SPS, tax and so on, that there should be good communication with businesses and rapid responses. Problems inevitably materialise in a new process. The new politico-economic relationship between the UK and EU has not been tried anywhere before, in Canada or Japan. This is brand new, so teething problems will come out. They particularly come out when you are dealing with a big beast like the European Union that is slow. Northern Ireland does not move as slowly as the EU, at least in this respect, so better communication and rapid responses would be needed. Thank you.

Professor Henry Patterson: Brexit itself led to a pretty radical deterioration in relations. It has also led to a souring of relationships within Northern Ireland. It has increased the appeal of the traditional forms of Anglophobia in the Republic. It has polarised politics in the north. For those reasons, the current negotiations on issues that are most neuralgic have the potential to shift Anglo-Irish relations on to a better space.

Lord Hannan of Kingsclere: Thank you.

Q31 **Baroness O'Loan:** Both our witnesses have addressed elements of this question, but I will put the question to you. What is your assessment of the Government's argument that the Bill is necessary to safeguard the Belfast/Good Friday agreement? I would emphasise the fact that Lord Thomas asked the question "Where was the necessity?" last night. That is the first part.

Does the protocol engage the Good Friday agreement's provisions on cross-community consent, and what impact has the protocol had, and what impact will the Bill have, on the three strands of the Belfast/Good Friday agreement? Thank you. Dr Gallagher.

Dr Niamh Gallagher: Thank you, Baroness O'Loan. I am glad you have asked me this question. The protocol has no bearing on the provisions on cross-community consent in Northern Ireland. One of the really sad things to witness over the last few months has been the use and abuse of that word "consent" in lots of different ways. I will hopefully clarify it for your Lordships and hopefully aid understanding of what has been happening.

Cross-community consent is exclusively internal to the Assembly, and that is in strand 1 of the Belfast agreement. That is for democratic institutions in Northern Ireland in Section 5(d).

I will walk through some of the ways in which consent has been used. Cross-community consent in the Northern Ireland Assembly has no bearing on international law, which is itself an excepted matter. It is also not for Westminster to interfere with the mechanics of cross-community consent in the Assembly, and it has a particular definition, which if I can find the agreement in my papers, I will read it out, but I will continue. It has a specific definition, which your Lordships are probably familiar with.

There are other ways in which consent has been used: the lack of consent for people of Northern Ireland to agree to the democratic deficit through the continued application of dynamic EU law via the European Court of Justice. That is a fair point. In that sense, there is a democratic deficit. Neither Northern Ireland parliamentarians nor UK parliamentarians will have a say over how EU rules apply to the region.

I imagine it was a political trade-off for the UK Government to agree to either a democratic deficit and a hard border on the island or to the benefits from the withdrawal agreement, particularly Northern Ireland's access to the EU market, and avoiding a hard border. The latter was more important when they signed the agreement, and now they seem to want the former. However, there is some consent for Northern Ireland, its people and its politicians through Article 18 of the withdrawal agreement, and that is the ability to vote on the maintenance of rules every four or eight years.

There are a couple of other ways in which consent has been used: consent in terms of the people of Northern Ireland accepting the protocol, which Professor Patterson has made clear about unionists not consenting to the protocol, or indeed the withdrawal agreement in the first place. Again, I have to mention that this is not a matter for anybody in Northern Ireland, as it is not for Scotland and Wales; international affairs are an excepted matter rather than a devolved one.

There is consent as it pertains to Westminster legislation such as Brexit, abortion and the proposed legacy Bill. Westminster has full sovereignty and jurisdiction to do what it wants. It gave Northern Ireland a Parliament in 1921 and took it away. Northern Ireland had an armed police force. Nowhere else in the UK did, and it took it away and replaced it with a different one. Now it is introducing abortion legislation despite protests from many parties within the Northern Ireland Assembly. That is what sovereignty is.

Consent has been used in lots of different ways and deliberately confused, but the issue of cross-community consent applies not at all to the protocol or to the Northern Ireland Protocol Bill. It is an exclusive matter—an internal matter—for the Assembly, not for anything else.

Baroness O'Loan: Thank you very much indeed. Professor Patterson.

Professor Henry Patterson: If we remember the various forces that came together to negotiate the Good Friday agreement, consent in the sense that Dr Gallagher referred to it in that the consent principle applied

to whether or not Northern Ireland was part of the United Kingdom is one aspect of it, but the Good Friday agreement as a totality involved the two communities making an historic compromise in terms of their aspirations. Unionist ideology and unionist belief about their relationship to the United Kingdom and continued membership and citizenship of the United Kingdom was essential to that.

A change in the fundamental customs arrangement regulatory frameworks of the sort that the protocol involves is perceived and felt as a violation of consent. It is possible to argue to people as you would in a lecture theatre that you are wrong, that you do not understand what consent means, and that it is a much more limited thing, but politics is not conducted in a lecture theatre. If sufficient people believe that the protocol has violated their membership of the United Kingdom, that is the reality. You will not change that by, essentially, didacticism—telling them that, fundamentally, your constitutional position is secure. You have to put it in the context of how the peace process was developed and consolidated.

There is an ongoing struggle in Northern Ireland over the very right of the state to exist. Unionists inevitably will see a customs and regulatory barrier within the context of that overall struggle. Yes, it is a perception, but politics are based to a substantial degree on perceptions. In that sense, the consent mechanism, or conception of it or understanding of it, has to be broader than a simply legal one.

Baroness O’Loan: Professor Patterson, are you saying that this protocol Bill is necessary to protect and safeguard the Belfast/Good Friday agreement?

Professor Henry Patterson: Yes.

Baroness O’Loan: Dr Gallagher, can I ask you the same question? Are you saying that it is necessary to safeguard the Belfast/Good Friday agreement?

Dr Niamh Gallagher: I am not saying that in relation to the Northern Ireland Protocol Bill; no, absolutely not. I am saying that the protocol as it stands, although it has of course caused lots of problems and people would prefer not to have it at all, is the only mechanism that preserves the Good Friday agreement as it stands. Can I briefly run through the various strands and how it impacts them, which might help to flesh out my thoughts?

Baroness O’Loan: Yes.

Dr Niamh Gallagher: Thank you. The Bill impacts strand 1 of the Good Friday agreement. The DUP’s actions, as we know, brought down the Executive and the Assembly earlier this year—February onwards and again in May—just as Sinn Féin brought down the institutions in 2017. In the 2017 example, the UK Government did not try to unilaterally comply with Sinn Féin’s demands to force the party to return to the institutions,

and yet they have done that for the DUP. Parity of esteem was broken in these two examples.

There is no guarantee that the institutions will be restored with the passage of the Northern Ireland Protocol Bill. Stormont has only functioned 60% of the time since its operation. It has been broken many times before, sometimes by the Westminster Government, other times by parties in Northern Ireland themselves, and there has been no prior capitulation by the Government to one party or one designated strand of the agreement, unionist or nationalist. Non-aligned did not exist, which is of course something that is new and important, and we should deal with this.

There has been considerable damage done to nationalist and non-aligned parties, which we have not heard mentioned in the course of this discussion. There are other groups in Northern Ireland. They deserve your attention as much as unionists do. This is reflected in the language of a letter sent to the UK Government by a majority of MLAs in June 2022. It is a long letter. I will send it in, but I will read one paragraph out to you.

I quote: "It is also deeply frustrating that you and your Ministers continue to misrepresent our desire to see smooth implementation as an endorsement of your Government's reckless actions on the protocol. It is categorically not. Finally, we strongly reject your continued claim to be protecting the Good Friday agreement as your Government works to destabilise our region".

You can see strand 1 has been affected in so far as different parties have different views of this Bill, but it is very clear that the majority of MLAs think this Bill will drive a coach and horses through strand 1.

Strand 2 is already bad. British and Irish relations are not good, and they were central to the Good Friday agreement. The protocol prevented a hard border, and it is very difficult to think how those north-south relations—that is UK or, rather, British-Irish relations—could have been preserved without making sure no hard border would materialise. This new Northern Ireland Protocol Bill will further destabilise British-Irish relations, which historically have never been good and part of the reason why neither the Sunningdale nor Anglo-Irish agreement worked properly. We know that these two states need to work together to keep Northern Ireland "happy".

Strand 3 of the agreement has always been the vaguest part of the agreement. It has been interesting looking at it again. It is full of inter-parliamentary bodies—the British-Irish Council, the British-Irish Intergovernmental Conference and the British-Irish Inter-Parliamentary Body. It is in the name—British-Irish. Most of these bodies are between Britain and Ireland.

Nowhere in this strand or the others is the concept of east-west used to refer to relations between Northern Ireland and Great Britain, and yet in

the House of Commons on 17 May 2022, now Prime Minister Truss newly reframed east-west relations as being between Great Britain and Northern Ireland. This is a gross misinterpretation of the document, although it is striking how little east-west (in terms of Northern Ireland and the rest of the UK) was discussed at that time. It is surprising to go over those strands again and see that.

There is a sentence in strand 3 that I think has been used quite a lot recently: "The harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands". That sentence is one that has been used to invoke Northern Ireland-GB relations. Clearly, that is a very vague sentence. It is one of those very useful fudges that made up the Good Friday agreement—that different interpretations could be put in it. It can be interpreted in numerous ways, but it was originally given impetus for a closer union internally as much as anything else, and between the UK and Ireland, hence the rest of the strand is built up with bodies between Britain and Ireland.

Overall, with those three strands outlined and with my previous views that we know that legally there is no constitutional interference with Northern Ireland's place in the union (and given that Northern Ireland stays in the customs union of the UK – that is the most common method of state economic sovereignty today) there is no impact on the constitutional question, although clearly there are perceptions that there has been an impact, which Professor Patterson has brought to the fore. The Northern Ireland Protocol Bill drives a coach and horses through the Good Friday agreement—I cannot interpret it any other way—whereas the protocol protects the Good Friday agreement as well as Northern Ireland's constitutional position in the union. I hope that is clear.

Baroness O'Loan: That was very clear. Thank you very much.

The Chair: Thank you very much. Professor Patterson, did you want to comment on that?

Professor Henry Patterson: I have just two things. Starting at the end, when I was talking about the importance of perception in evaluating the state of instability that has existed politically in Northern Ireland over the past four or five years, I should not be understood as saying that the customs and regulatory differences established by the protocol between Northern Ireland and the rest of the United Kingdom are not real, material institutional barriers and controls. They are of great practical, institutional and perceptual significance, but it is not solely a question of perceptions.

To go back to strand 1 of the agreement and consent, I referred earlier to Article 1 of the Belfast/Good Friday agreement—the obligation on the British Government to give parity of esteem to the two main political and cultural community traditions in Northern Ireland. From that perspective, a vote of a simple majority within the Assembly based predominantly on nationalist parties is not compatible with the essential spirit of the agreement in terms of how the place works.

You cannot basically have a numerical majority that is fundamentally composed of two nationalist parties and a party that is, if you like, agnostic on the constitutional question, and say to the unionists, “You are in a minority”. That did not work in the past and it is not working now. If you approach the outworking of the protocol Bill ongoing negotiations in that spirit, it is not going to work out in the future either.

The Chair: Thank you for that.

Lord Dodds of Duncairn: I crave your indulgence just to correct a point that Dr Gallagher made about government responding unilaterally to Sinn Féin threats. In fact, the reason why the debate is happening today on the Identity and Language (Northern Ireland) Bill is a direct result of Sinn Féin threatening not to go into the Executive at the time Paul Givan was made First Minister unless that was passed. It is incorrect to say, in fact, as Dr Gallagher asserted, that somehow there was a double standard in that regard.

Secondly, in terms of the constitutional position, it has not been mentioned of course that the courts in Northern Ireland have ruled that the protocol violates and subjugates Article 6 of the Act of Union itself. I am always reminded of what Tom McTague, a highly respected writer at *The Atlantic*, said when we talk about the protocol Bill: “At the heart of the matter is a reality few want to admit: the protocol implements, in effect, a nationalist solution to the Brexit border trilemma”. When people talk about this being a unionist solution, we have to remember that the protocol itself is, in effect, a nationalist solution to the trilemma, and we have to find a way forward that both sides can live with.

The Chair: Thank you, Lord Dodds.

Q32 **Lord Thomas of Gresford:** The question I have in front of me has already been covered by both witnesses, so I would like to ask another question to which Dr Gallagher referred earlier, and that is the relationship between Northern Ireland and the CJEU—the European Court. She said she was going to say something on that particular topic in which I have a particular interest. I suggested yesterday in debate, as Professor Patterson read out, the possibility of a special chamber in that court comprising judges equally of both the UK and the EU. I do not ask you to comment on that, but I do ask for your views, Dr Gallagher.

Dr Niamh Gallagher: Certainly. Briefly in relation to Lord Dodds as well, my understanding is that the language issue with the Irish Language Act has been there for a very long time—long before 2017—so I do not think

¹ Note from witness: ‘Debates over the Irish Language Act have been ongoing for a long time—long before 2017—so I do not think the UK government’s interference over language was uniquely due to the circumstances regarding the 2017-20 collapse but is in fact a longstanding unresolved issue.’

that dating a starting point from 2017 for that is probably accurate in that sense.¹

I would like to talk about the European Court of Justice. If I repeat myself, please forgive me.

Yes, the European Court of Justice, because it will still have continued application of EU law in Northern Ireland, leaves Northern Ireland in an unusual place compared to everywhere else in the United Kingdom. That is true. I do not think Northern Ireland parliamentarians will have a say in what the EU decides to do with its laws. Of course they will not unless, as you say, somehow a new Assembly is brought in. I am not sure that would happen. The UK parliamentarians will have no effect on EU law either, so there is a democratic deficit that is very real.

As I said before, perhaps that was a political trade-off that the UK Government must have made back when it agreed to the withdrawal agreement in preference not to have a hard border on the island of Ireland and then for Northern Ireland not to benefit from the EU market. It is unusual for one region to be subject to the rules of somebody else, but I want to stress again that it is not totally uncommon.

As I said, modern states can have any number of endless flexible arrangements. I gave some examples of Scotland and Canada. One can even look at the history of the United States of America. A whole bunch of different arrangements can exist within modern states. It would be unusual for Northern Ireland to be aligned with the ECJ, but it is certainly not incompatible with sovereignty or indeed the constitutional integrity of the UK. I hope that answers your question.

Lord Thomas of Gresford: Thank you. Do you have any comment on that, Professor Patterson?

Professor Henry Patterson: It is unusual. It is the only part of the United Kingdom that will be subject to the European Court of Justice, according to the protocol. However, as I mentioned earlier, Jeffrey Donaldson talked last Saturday about the advantages that Northern Ireland could gain from exporting into the single market. That implies some degree of acceptance of the need to be subject to EU regulations, and it would be unreasonable to expect that, in a situation like that, whatever settlement is worked out, if it is worked out, the ECJ would continue to have a role. It is an area for a possible compromise.

Lord Thomas of Gresford: You do see the possibility of compromising in a limited way by allowing the CJEU, the European Court, to have jurisdiction particularly over the rules and regulations that it brings forward.

Professor Henry Patterson: It is a question of adjudication. If there was a dispute, it would need to be some form of hybrid adjudicating body.

Lord Thomas of Gresford: You referred to the solution I suggested.

Perhaps something could be worked on in that direction.

Professor Henry Patterson: Yes.

Lord Thomas of Gresford: Thank you.

Q33 **Lord Godson:** Thank you, my Lord Chair, and thank you to both our witness. I should also declare an interest in respect of Professor Patterson, who, among others, kindly gave me a brief commission as a visiting professor at the University of Ulster—nothing so distinguished as himself or Baroness O’Loan, but none the less it was nice to have the bouquet at the time.

Can I just follow up with Dr Gallagher and her characterisation of strand 3 and east-west, which particularly interested me? I want to get your words absolutely correct, because I have taken care to look at your work earlier this year on the misuse of the Good Friday agreement and ministerial protests over the protocol. I want to understand that east-west is not significant or has been misunderstood in the context of strand 3, and I just want to hear a little further from you on that.

Dr Niamh Gallagher: Yes, certainly. I think strand 3 has always remained the vaguest and a fairly nebulous part of the Good Friday agreement. It is full of inter-parliamentary bodies, mainly British and Irish inter-parliamentary bodies. From what I understand, it has no explicit clause about Northern Ireland and the rest of GB. My understanding of how this situation has been interpreted is that the only real explicit discussion of Northern Ireland’s place in the union happens prior to strand 1 under the constitutional issues section of the Good Friday agreement.

Strand 3 is mainly about bodies, and it also has that very important sentence about the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands. I imagine that can be interpreted in numerous ways and it will be coloured with political stripes. Can I answer you any more precisely on what you would like to hear from me?

Lord Godson: No, I was just interested in teasing it out a little bit further, because certainly the east-west dimension was very important to my late biographical subject, David Trimble. Indeed, I discussed it with him almost every day in the run-up to the forging of the Good Friday agreement on 10 April 1998.

Strand 3 is between the Republic of Ireland and GB, not between NI and GB. Clause 2 says that membership of the BIC will comprise representatives of the British and Irish Governments, devolved institutions in Northern Ireland, Scotland and Wales, and, where appropriate, representatives of the Isle of Man, the Channel Islands and so on. Then it says the BIC will exchange information, discuss, consult, use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant Administrations. A quite wide smorgasbord of issues is identified here.

In terms of the factual side, if one considers Tony Blair's memoir of his period as Prime Minister, he also very much flags it up and calls it east-west specifically. We have two key players in the Belfast agreement who would take issue with your characterisation. I would just like a little more on that. Are they both wrong—the late Lord Trimble and Tony Blair?

Dr Niamh Gallagher: I would take issue with how you have presented that actually, your Lordship. I do not take issue with what Tony Blair has negotiated, nor with what David Trimble thought he had negotiated. I think there has been vague language in that strand that was deliberately useful to the context of Northern Ireland and in solving everything that happened. I am not responsible for the text in strand 3. In fact, it would be quite interesting to know why it was written in the way that it was written. It would, in fact, be foolish to say that Northern Ireland's place within the UK was not a part of that consideration. Clearly, it was.

You are the biographer, as you well know, of the late David Trimble, and it was incredibly important to Lord Trimble in devising a secure place for Northern Ireland within the union. But the wording in strand 3 is not so clear. You have pointed out that lots of different people can be involved in strand 3, including in the British-Irish Council, the Channel Islands, the Isle of Man and the other devolved institutions. It is a wider project, for sure. It is not explicitly about Northern Ireland and Great Britain, and nowhere was that written in a legal manner, but I am not responsible for that text, so I cannot explain why it was not written more concisely.

Lord Godson: Thank you. Thank you, my Lord Chair. I relinquish the floor.

The Chair: Thank you very much for that.

Q34 **Lord Empey:** This is an easy question to conclude the session on. What is your view of the way forward to resolve the current impasse? You can both point the way ahead to us. Dr Gallagher.

Dr Niamh Gallagher: Thank you, Lord Empey. I might be repeating myself, because I think I responded to that earlier on. My view would be that there has to be negotiation within the international agreement that is already there, whether we like it or not, because signing treaties is important. That is fundamentally what I think. However, there should be as much flexibility, compromise and pragmatism as possible, and I hope that Maroš Šefčovič meant what he said yesterday by suggesting that that is possible—reducing checks to a minimum, and I assume with that comes documentation and everything else. That would be the way forward.

I also think you need to have a reparation, and so do the Irish Government. The Irish and UK Governments need to get together and need to be more aligned on how this is going to work. Fundamentally, the Good Friday agreement was signed when both of them were within the European Union.

Just having spoken about strand 3 and the harmonious relationships within these islands, that language of union is very much there—unity—in strand 3, which reflects the European Union dynamic when both entities were a part of that upon the signing in 1998. They will have to find a new way forward that works together, because Northern Ireland is stable when we work together.

I do not think the criteria have been met to trigger Article 16, but if the UK Government choose to do so, I would recommend that they trigger Article 16 as opposed to bringing in this new Bill, which I think, as I already said, would drive a coach and horses through the Good Friday agreement.

There will have to be considerable work done to shift unionist perceptions of what has happened. I do not have any strict answer for how to do that. I hope that unionists will be able to work closely with the UK Government, and, more importantly, that the UK Government show more of an interest in unionists. They have only visited the place on a handful of occasions over the last couple of years. They should work with them and reassure them, and try to do whatever they can to make sure that they feel comfortable within that entity that is the UK. That is a serious concern, and the UK Government should make it a priority. But fundamentally, they need to stick with the international agreement. Thank you.

Lord Empey: You started your answer with the international agreement. Are you suggesting that, instead of simply trying to mitigate the operation of the protocol, you would need to change the actual agreement itself rather than tweaking how it is implemented on the ground?

Dr Niamh Gallagher: I think both parties are tweaking it currently. That is what they have been doing with medicines and other things. That stays within the parameters of the law. One side cannot unilaterally change anything. That would break the agreement. Is that what you were looking for?

Lord Empey: I accept that agreements need normally to be bilaterally changed, but would you suggest that, in fact, a change would be desirable as opposed to simply tinkering or tweaking the current operation?

Dr Niamh Gallagher: I find it hard to distinguish between change and tweaking. Any tweaking implies change. My view would be that the protocol should be worked on with both sides together as much as possible, tweaking it as much as possible and therefore changing it to make it work for Northern Ireland businesses, traders and people, and particularly to allow unionists to feel more comfortable within it, but it is probably the responsibility of the UK Government to take charge of the latter problem.

Lord Empey: Thank you, Dr Gallagher. Professor Patterson.

Professor Henry Patterson: The British Government have invested considerable time and intellectual energy in engagement with the main unionist parties, particularly over the last year or so. The problem of unionist perception is not based on the fact that they have been neglected. I think the Irish Government and Irish media have a role to play in reassuring unionists about their strategy for a long-term relationship with the north.

What could have significantly helped the situation as we enter into these ongoing talks is the recognition on the part particularly of the DUP of what the protocol Bill represents in taking on board the main issues that have agitated its support base over the last number of years and more reciprocity in movement towards engagement. For instance, it could have nominated a speaker after the Second Reading of the Bill. That would have improved the general political atmosphere quite a lot.

Lord Empey: Thank you very much indeed, professor. Thank you, Lord Chair.

The Chair: Thank you very much indeed to both of you for the evidence you have given to us. It has been extremely useful and helpful to us. Thank you very much, Professor Patterson, for being with us today, and, Dr Gallagher, thank you very much for being online. I hope you get to your lecture on time. Thank you very much to both of you. I am very grateful to you. I now call this formal session of the meeting to a close.