

Lord Frost speech at British-Irish Association: 4 September 2021

I want to begin by reflecting on just how much has changed since the BIA's last conference in September 2019.

At that time the UK was in the middle of its worst constitutional crisis for at least a hundred years. Parliament was effectively carrying out the role of the Executive but was unable to muster a majority for any specific course of action. The Government's ability to implement the democratic result of a referendum was in genuine doubt. At the core of those arguments were, of course, Ireland and Northern Ireland, and the first version of the Protocol named after them. That document of course predated this Government's arrival in office and I don't think it is a secret, indeed we say it in the Command Paper, that we would have approached the events of the preceding years in quite a different way.

A month later this apparently deep-frozen negotiating ice began to crack. At Thornton Manor on the Wirral, the UK and Ireland reached the outline of an understanding on some core elements of a new Protocol. Although a lot remained to be done, it was clear to me, and I'm sure to others present, that this was a decisive moment. For the first time, a way forward on these vexed problems seemed possible.

Since then, many other things that people said were impossible have nevertheless happened. The UK emerged from its constitutional madness, the British people decided, once again, to re-affirm the referendum result in a decisive general election result, Brexit happened, and a new trade agreement was agreed in record time. With so much now done, it is not easy to think ourselves back to the confusion of autumn 2019.

Yet here we stand once again, two years later, with so much settled, and yet with the vexed question of the Protocol on Ireland and Northern Ireland apparently as controversial as ever. Why are we here and is it reasonable that this question won't go away?

Yes, it is reasonable. Despite our best attempts, the issue is not settled. Our valiant efforts, in hugely challenging circumstances in 2019 and then in 2020, did not find the right balance. The fact that the arrangements have begun to come apart so quickly this year, albeit under the pressure of certain unhelpful actions which could not have been predicted in advance, shows that we have to look at this again. To repeat – it does not mean we got everything wrong. It means that we can learn from experience, that the balance is not right, and that a new balance needs to be found.

Before I go further I want to deal with one canard, which is that somehow this is all about "EU-bashing" (as it was put yesterday) to rally support domestically and that Northern Ireland is this Government's chosen instrument. That is obviously not true. The truth is that, quite apart from

the obvious reality that it would be grotesquely irresponsible for us to behave in that way, we have no interest at all in having a fractious and difficult relationship with the EU or its Member States, and with Ireland above all. Quite the contrary.

Brexit is not a thing in itself. It is not a choice to live in permanent confrontation with our friends and neighbours. Rather it is a first stage, a necessary gateway through which this country had to pass in order to give us freedom, if we make the right choices, to free up and liberalise our economy domestically, to restore genuine political choice to our electorate, and to rebuild the country from some of the distortions created by EU membership.

I hope that our friends in Europe do genuinely want us to succeed in that way – though occasionally we hear comments which cast doubt on that – just as we want prosperous and successful neighbours ourselves. Our domestic political aspirations are self-evidently much easier to deliver if we have good and friendly relations with our neighbours, based on our unprecedentedly broad TCA, than if we are in constant disputes and aggravation.

The truth is the other way round. The current tension in the relationship with the EU ultimately in my view has its fons et origo in the disagreements around the Protocol. Those are genuine substantive disagreements based on real things, and reflecting genuine concerns in Northern Ireland. That's why they need to be resolved in a genuine way.

The reality is that the problems we have run into on the Protocol go to the core of modern-day politics. I recognise that to many across Europe beyond these islands they will be parochial and frustrating. But we here know what is involved – existential issues of territory, of identity, of borders, all against a background of a peace process and institutions in Northern Ireland which can only bear so much weight.

The stakes are high. The arguments can be bitter. And I worry this process is capable of generating a sort of cold mistrust between us and the EU which could spread across the relationship. It's holding back the potential for a new era of cooperation between like-minded states in a world which needs us to work together effectively.

So we badly need to look reality full-on. To put our arrangements here onto a more durable and sustainable footing, one that represents genuinely mutual benefit. Until we do, it is going to be difficult to get the broader relationships into the right place. This will require effort, commitment and creativity.

So let me now turn to the Command Paper and proposed new approach which we set out in July. That document sets out this Government's view of how we got here and of the many missteps on the way which shape the current reality. I don't need to go into the detail for this audience, but suffice it to say that the Protocol on Ireland and Northern Ireland as we now have it is a unique document agreed in unique circumstances of intense political pressure. It seeks to reconcile a number of important, but competing, aims, some, but not all of which, it has achieved.

Written clearly into the Protocol are a number of different principles: protecting all dimensions of the Belfast/Good Friday agreement – the Protocol’s key purpose and *raison d’être* in the first place; ensuring North/South cooperation and avoiding a hard border; respecting the essential state functions and territorial integrity of the United Kingdom; protecting Northern Ireland’s integral place in the UK internal market; and protecting the single market.

All these are at the heart of the Protocol. They are there in black and white. What we can’t do is pick and choose between these.

But in fact what we often hear – first hand and in day to day conversations – is that the Protocol is all about protecting the EU single market. That this is the primary objective. And that that means that goods moving from Great Britain into Northern Ireland have to be treated if they were crossing an external border of the EU, without regard to other objectives.

And herein lies the problem: that isn’t a correct assessment. Any approach which views this as being the ‘heart’ of the Protocol, as its primary aim, is fundamentally flawed and unbalances it.

We have seen the impacts of that lack of balance play out on the ground, both in terms of political and societal impact in Northern Ireland, in trade diversion, and in the impact it has had on the essential economic ties between Northern Ireland and Great Britain. I won’t labour these points – this audience knows them better than any other.

To be clear: these difficulties flow from implementation of the Protocol – not ‘failure’ to implement it. We have problems precisely because we are imposing customs checks, not because we aren’t. That is why solutions which involve “flexibilities” within the current rules won’t work for us. The difficulties come from the way the Protocol is constructed, not just the way it is being implemented.

That is why we have had to set out the approach we have in the Command Paper. That approach is a coherent one. What we have put on the table is workable and manageable. It may be awkward, it may be unwelcome to some. It may challenge accepted ways of doing things in customs or goods standards. But I haven’t heard anyone say it can’t work in principle.

Our view of what must happen next is based on two possible routes – both, to be clear, centred in the Protocol.

One solution envisaged in the Protocol is set out in Article 16 – a provision for appropriate safeguard measures. It is clear that the threshold for triggering Article 16 has been met and it is open to the UK Government to take a range of safeguard measures on this basis. That is simply a statement of fact.

The other solution envisaged in the Protocol is the one which we would, for now, prefer to work on. It is the one set out in Article 13(8) – the explicit provision that a subsequent agreement may replace parts of the existing text.

That is where we need to put our efforts. We are now beginning a process of working out with the EU whether we can see a path forward that delivers a sustainable and enduring arrangement.

I hope this is possible.

But if this is to work, we need to see substantial and significant change. It is going to need serious engagement with our proposals, and specifically with the three areas that we say need to change – movement of goods into Northern Ireland, the standards for goods within Northern Ireland, and the governance arrangements for regulating this. I want to be clear that any response which avoids serious engagement with those ideas, and aims at just dragging out the process, will in the end not work for us.

I don't want to go through the detail of our proposals today but I do want to underline two points in the Command Paper.

First, our proposals go with the grain of the Protocol. They do not remove it. They retain controls in the Irish Sea for certain purposes. They envisage that EU laws can still be valid, within certain circumstances, in Northern Ireland. And they recognise that the EU and Ireland have an extremely legitimate interest in how these arrangements are enforced. Some would like us to sweep all the existing arrangements away. That is not our position. It is obvious there will always need to be a dedicated UK-EU Treaty relationship covering Northern Ireland. It is a question of finding the right balance.

Second, some have seen the third of our three negotiating strands, on governance, as either ideological, nothing to do with Northern Ireland, or alternatively a discard designed to help us get what we "really" want. That is not the case and in a moment I will say why.

I make these two points because they are linked. We are sometimes told that the EU has made a major concession in allowing its border to be policed by a third country and therefore it is only reasonable that the full panoply of EU legal controls should be applied to make it work.

But we too have done something unusual and unprecedented – in accepting that another entity's external border can be operated through the middle of our own country. I am not sure that any country anywhere has done that. Nevertheless, our proposals in the Command Paper retain that concept for certain purposes. But if that is to be remotely workable, or have any chance of being sustainable in the future, it can't be on the basis of automatic extraterritorial application of EU law. It can't be on the basis of dispute resolution arrangements under which the EU institutions treat the UK as if Northern Ireland is a part of the EU with an 'end goal' of 'full compliance', without any of the checks and balances which apply within the EU. We can now see, from observed behaviour and the EU's rapid resort to legal action for minor issues, albeit paused for now, that such arrangements simply won't work and will be a constant source of aggravation and discord in the very sensitive circumstances in which they are designed to work.

So the current governance arrangements have to evolve to reflect the reality

that this is an agreement between two sovereign and autonomous entities, not a relationship of subordination or one where one party's rules have to be applied mechanically by the other. Better ways are available and have to be found, and they exist in most other international treaties.

Let me finish by urging everyone to take these proposals seriously. You should be in no doubt about the centrality of this problem to our politics and to this Government. The issue needs to be fixed and we are determined to fix it. It is, as the PM made clear to allies at the G7 Summit, inseparable from our view of our own territorial integrity and of what is best for Northern Ireland in the decades ahead. It is important everyone grasps the opportunity, looks at the risks of not doing so, and acts constructively. We are absolutely ready to do so.

There is no doubt this is a challenging moment. But it is also a moment of huge opportunity. When one looks at the Protocol and sets it against other international challenges that we face, one wonders what future generations would say of us if we were unable to make the small muscle movements needed to get this right. If we can work to put the Protocol on a better footing, we can create a new dynamic – between us and the EU, but also of course between the UK and Ireland. If we approach this in the right way, we can move forward to a better relationship and one which truly delivers for everyone – Northern Ireland and Ireland above all.