



Doc. 15615

23 September 2022

The impact of Brexit on human rights on the island of Ireland

Report¹

Committee on Political Affairs and Democracy

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Summary

The Good Friday Agreement described the United Kingdom and Ireland as “partners in the European Union”. The United Kingdom’s withdrawal from the EU has shaken the delicate balance created by the peace process and threatened the common human rights space previously shared by all people on the island of Ireland.

Brexit has reignited deep-seated tensions in Northern Irish society, furthering political division and contributing significantly to the paralysis of devolved institutions. In particular, the rhetoric surrounding the Ireland/Northern Ireland Protocol has been divisive.

The failure to properly address the legacy of the Troubles, the status of the Irish language, segregation and paramilitarism has also had a significant impact on reconciliation and human rights in Northern Ireland.

The United Kingdom should ensure that its withdrawal from the European Union does not result in any diminution of rights for the people of Northern Ireland, refrain from unilateral actions, and reaffirm its commitment to the European Convention on Human Rights. Ireland and the United Kingdom should continue to make the implementation of the Good Friday Agreement an utmost priority, and authorities in Northern Ireland should refrain from using divisive and inflammatory rhetoric surrounding the Protocol.

1. Reference to committee: Doc. 15162, Reference 4541 of 12 October 2020.



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A. Draft resolution²

1. The Good Friday Agreement, which ended three decades of conflict in Northern Ireland, described the United Kingdom and Ireland as “partners in the European Union”. The United Kingdom’s withdrawal from the European Union has shaken the delicate balance created by the peace process and threatened the common human rights space previously shared by all people on the island of Ireland.
2. Brexit has caused serious concerns regarding human rights protection in Northern Ireland and is leading to a misalignment of rights north and south of the border. It has cast a shadow over important provisions of the Good Friday Agreement, specifically related to birthright and just and equal treatment of both communities. In parallel, the lack of progress in implementing some of the human rights provisions of the Good Friday Agreement has compounded the problem: the establishment of a Northern Ireland Bill of Rights and the passage of a law to promote the Irish language remain unfulfilled promises.
3. The introduction by the UK Government on 22 June 2022 of a bill to overhaul the 1998 Human Rights Act has exacerbated the situation. The proposal would add hurdles for those seeking redress in courts, privilege specific rights over others, and challenge the role of the European Court of Human Rights, raising an issue of compatibility with the European Convention on Human Rights (ETS No. 5), a cornerstone of the Good Friday Agreement.
4. Brexit has also reignited deep-seated tensions in Northern Irish society, furthering political division and contributing significantly to the paralysis of devolved institutions. The Parliamentary Assembly notes that Brexit repercussions have been at the heart of the institutional impasse and the political crisis of 2022, which denies the people of Northern Ireland a functioning Executive and Assembly.
5. While the Ireland/Northern Ireland Protocol (“Protocol”) was introduced to limit the consequences of Brexit and avoid a return to a hard border, and while it has had an overall positive economic effect on Northern Ireland, the related rhetoric has been divisive. Polls repeatedly show that the Protocol is not a primary concern for the population, and yet the Protocol is used as a pretext to hold public institutions hostage.
6. The Assembly notes with concern that, despite the European Union’s willingness to find joint solutions with the United Kingdom within the framework of the Protocol, and despite both sides stressing the importance of continued engagement, the UK Government introduced a bill on 13 June 2022 to unilaterally change core elements of the Protocol. Described as a “clear breach of international law” by the European Commission, the move risks further destabilising the delicate post-Brexit situation on the island of Ireland. Article 2 of the Protocol, which guarantees the non-diminution of rights as a result of Brexit, must be safeguarded.
7. The fragility of Northern Ireland’s current institutional framework is abundantly clear. While power-sharing arrangements emanating from the Good Friday Agreement guarantee inclusivity, the current structures entrench divisions along sectarian designations. Continued implementation of the reforms set out in the “New Decade, New Approach” agreement will be important, and all parties should consider ways to transcend sectarian approaches to politics. In this respect, the Assembly welcomes the UK Government’s recent steps to limit the instability of this system, including the passage of the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022.
8. More than two decades after the Good Friday Agreement, the failure to properly and thoroughly address the legacy of the Troubles has had a direct impact on reconciliation and human rights on the island of Ireland, causing pain and frustration in society and sending discouraging signals regarding the pursuit of justice. All parties concerned should honour their obligations under the European Convention on Human Rights and implement, in good faith and as soon as possible, a process consistent with the principles agreed to in the Stormont House Agreement.
9. In this respect, there are serious concerns regarding the compatibility of the Northern Ireland Troubles (Legacy and Reconciliation) Bill introduced by the UK Government on 17 May 2022, with the European Convention on Human Rights. The Assembly welcomes the Committee of Ministers’ decision to ask additional information from the United Kingdom authorities on the compliance of the bill with the Convention. The Assembly also expresses concern that the Northern Ireland Human Rights Commission has not been consulted on legacy issues by the UK authorities, despite being the main body in charge of overseeing human

2. Draft resolution adopted by the committee on 13 September 2022.

rights in Northern Ireland under the Good Friday Agreement and part of the “dedicated mechanism” to oversee the UK Government's commitment to protecting equality and human rights in a post-Brexit Northern Ireland.

10. The Assembly expresses regret over the fact that many people in Northern Ireland continue to experience residential and school segregation. Without addressing such systemic divisions, the laudable work of civil society organisations working across community lines will be left treating the symptoms, and it will be hard to move past the sectarian divides that have marked previous generations.

11. While violence has greatly decreased in recent decades, the tensions deriving from Brexit may contribute to a re-emergence of paramilitarism. In order to bring paramilitarism to an end, it is crucial that policing and justice measures are complemented by actions to tackle the systemic socio-economic issues facing Northern Ireland.

12. In light of the above, the Assembly calls on the United Kingdom to:

12.1. ensure that the withdrawal from the European Union does not result in any diminution of rights for the people of Northern Ireland, in line with its international commitments, nor to a misalignment of rights between north and south on the island of Ireland;

12.2. make use of the “dedicated mechanism” established to ensure that Brexit does not result in any diminution of rights set out in the Good Friday Agreement, in particular by seeking and heeding the advice of the members of this mechanism, of the Equality Commission for Northern Ireland and of the Northern Ireland Human Rights Commission;

12.3. seek, in a constructive spirit, all practical solutions in order to ensure the smooth and efficient implementation of the Protocol, and refrain from unilateral actions which undermine international law;

12.4. reconsider its current proposal to repeal the Human Rights Act and reaffirm its commitment to the European Convention on Human Rights;

12.5. propose a way forward to address the legacy of the Troubles that is in line with European Convention on Human Rights standards on effective investigations, with the Good Friday Agreement, and with the devolution of justice in Northern Ireland; to ensure this is the fruit of wide consultations with victims' groups, political forces in Northern Ireland and in Ireland, and relevant human rights bodies;

12.6. implement the recommendations of the Committee of Ministers and of the Committee of Experts of the European Charter for Regional or Minority Languages (ETS No. 148) regarding appropriate legislation to protect and promote the Irish language;

12.7. continue to support ways of making Northern Ireland institutions more stable and more resistant to political turbulence, in line with the “New Decade, New Approach” agreement, as well as less reliant on sectarian designations.

13. The Assembly calls on Ireland and the United Kingdom to continue to make the implementation of the Good Friday Agreement an utmost priority, and to work together in a co-operative, constructive and forward-looking spirit.

14. The Assembly calls on the authorities and political forces in Northern Ireland to:

14.1. work together to ensure the smooth and efficient implementation of the Protocol in Northern Ireland, which had largely supported remaining in the European Union;

14.2. refrain from using divisive and inflammatory rhetoric surrounding the Protocol, and instead make full use of the significant advantages the Protocol has already provided, and can continue to provide, to the Northern Irish economy and to efforts to build a more prosperous future for all communities in Northern Ireland;

14.3. return to power-sharing immediately, so as to enable proper governance in Northern Ireland, and refrain from political acts which undermine the ability of Northern Ireland's institutions to function;

14.4. work to address the systemic socio-economic issues facing Northern Ireland, not only to improve lives but also to create the necessary conditions for the demolition of peace walls and help put an end to paramilitarism;

14.5. promote policies that limit residential segregation and take all necessary steps to promote greater mixing in schools by finally taking decisive steps towards integrated education;

14.6. ensure that the teaching of history pursues the goals of peace and reconciliation, taking an approach based on multiple perspectives which respect the diversity of viewpoints and cultural differences, including by making use of Council of Europe expertise on the teaching of history;

14.7. co-operate constructively with the authorities in Ireland and in the United Kingdom on addressing the legacy of the Troubles and to further support efforts to shed light on the past, such as the work being carried out by the Police Ombudsman;

14.8. consult and make use of relevant Council of Europe bodies with expertise in minority language rights, and to apply, as appropriate, their recommendations in order to make use of European standards and best practices.

15. The Assembly also calls on the European Union to continue to seek, in a constructive spirit, all practical solutions to minimise the adverse impacts of Brexit and ensure the smooth and efficient implementation of the Protocol.

B. Explanatory memorandum by Mr George Katrougalos, rapporteur

1. Introduction

1. The Agreement on the withdrawal of the United Kingdom from the European Union,³ which entered into force on 31 January 2020, acknowledges the need “to establish durable arrangements addressing the very specific situations relating to Ireland/Northern Ireland”. The appended Protocol on Ireland/Northern Ireland (“Protocol”) provides that Northern Ireland shall continue to benefit from the European single market, while remaining part of the customs territory of the United Kingdom.

2. In September 2020, draft legislation in the United Kingdom, entitled the Internal Market Bill,⁴ called certain provisions of the Protocol into question and, according to the Secretary of State for Northern Ireland, broke international law “in a very specific and limited way”.⁵ This controversial bill prompted a motion for a resolution⁶ which was later referred to the Committee on Political Affairs and Democracy for report.

3. Although these contentious provisions were initially removed, the United Kingdom recently deposited another similar bill, forcing the European Union to launch infringement proceedings for breaking international law.⁷ Regardless, the Parliamentary Assembly cannot ignore the events that have occurred since the Protocol entered into force on 1 January 2021. More than twenty years on from the Good Friday Agreement, Brexit is a weight placed on the scales that risks upsetting a delicate balance. It lays bare deep-rooted tensions that have not healed over time in Northern Irish society.

4. The Assembly has had occasion to address the situation in Northern Ireland in the past, in its Resolution 859 (1986), which was adopted following the signing of the Hillsborough Agreement, and subsequently in its Resolution 1163 (1998) in the wake of the Good Friday Agreement. Lastly, Resolution 1389 (2004) stated that the Council of Europe and its Assembly had a moral obligation to do everything in their power to help advance the peace process.

5. Although it does not fall within my remit as rapporteur to retell the history of the conflict in Northern Ireland, I would nonetheless like my report to follow on from the work done by my predecessors and not merely analyse the situation based on the Withdrawal Agreement alone. To do the latter would be to exclude part of a reality whose ramifications are far more complex and must be assessed on the basis of the implementation of the Good Friday Agreement.

6. In line with the committee’s broad mandate, I would like my report to support the efforts of reconciliation made since the Good Friday Agreement and examine the way the existing institutions operate in practice. The impact of Brexit on this equation must be understood in terms of not only political and legal considerations, but also socio-economic and human rights factors. My report also focuses on certain themes that illustrate the difficulties in this territory and highlight the need for strong political governance, such as the fight against residential and school segregation, the promotion of the Irish language in Northern Ireland, ways of addressing the legacy of the Troubles, and the battle against paramilitarism.⁸

7. In order to inform the development of the report, in December 2021 the Committee on Political Affairs and Democracy held a hearing with the participation of Ms Alyson Kilpatrick, Chief Commissioner of the Northern Ireland Human Rights Commission, and Mr Daithí Ó Ceallaigh, Director General of the Institute of International and European Affairs, Ireland, whom I wish to thank for their valuable input. Further, I conducted fact-finding visits to Dublin, Belfast, and London in February 2022, where I met with government officials and members of parliament and civil society to get a sense of the situation first-hand. I wish to thank the delegations of Ireland and of the United Kingdom to the Assembly, as well as colleagues from the Northern Ireland Assembly, for their invaluable support in organising the visits and my meetings.

3. [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), Official Journal of the European Union, C 384I, 12 November 2019.

4. This became the “[United Kingdom Internal Market Act 2020](#)”.

5. “[New Brexit bill does break international law, says Northern Ireland secretary](#)”, *Guardian News*, 8 September 2020.

6. [Doc. 15162](#).

7. [The European Commission launches infringement proceedings against the UK for breaking international law and provides further details on possible solutions to facilitate the movement of goods between Great Britain and Northern Ireland](#), 15 June 2022.

8. Other major social issues, such as health sector reform, will not be dealt with here.

2. Brexit: a catalyst for deep-seated tensions in Northern Irish society

8. The Good Friday Agreement described the United Kingdom and Ireland as “partners in the European Union”. Six years since voters in the United Kingdom chose to leave the European Union, Brexit has called this delicate balance into question.

2.1. The Protocol: an attempt to minimise Brexit’s adverse economic consequences

9. The Protocol annexed to the Withdrawal Agreement aims to preserve all the components of the Good Friday Agreement, respect the constitutional order of the United Kingdom and maintain the integrity of the EU single market and customs union. It provides that while forming part of British customs territory, Northern Ireland enjoys special treatment in matters of trade, health, tax and certain forms of State aid.⁹ A direct consequence of the entry into force of the Protocol, which, it is important to recall, is itself a result of Brexit, is the intensification of checks at the Irish Sea border.

10. A Trade and Cooperation Agreement, which was implemented on a provisional basis from 1 January 2021 and entered into force on 1 May 2021, also states that trade between the United Kingdom and the European Union will be free from tariffs and quotas provided that products comply with appropriate rules of origin and introduces export health checks and physical inspections.

11. Several Protocol-related incidents have dented trust between the United Kingdom and the European Union. The desire expressed by the European Commission in January 2021 – in the context of a shortage of Covid-19 vaccine doses – to trigger Article 16(1) of the Protocol¹⁰ (under which either party can unilaterally take appropriate safeguard measures), aroused general indignation. The unilateral announcement in March 2021 by the Secretary of State for Northern Ireland that the Scheme for Temporary Agri-food Movements to Northern Ireland would be kept in force until 1 October 2021,¹¹ thereby delaying the full application of the Protocol, spurred the European Union to commence infringement proceedings against the United Kingdom.¹²

12. In the second half of 2021, successive extensions¹³ of “grace periods” for customs checks and announcements made by the European Commission, including the temporary staying of its infringement proceedings, calmed the situation down and reduced the risk of a “sausage war”,¹⁴ but despite this, the very UK Government which had negotiated the Protocol continued to express concerns about the arrangement.

13. These concerns came to the fore in the Command Paper of July 2021,¹⁵ much of which was rejected by the European Commission.¹⁶ This document called for the revision of large sections of the Protocol, including demanding the abolition of customs formalities for goods destined solely for Northern Ireland and challenging the authority of the Court of Justice of the European Union over the application of the Protocol. In October 2021, in a reconciling effort, the European Commission proposed a package that included reducing by 50% customs formalities on goods moving from Great Britain to Northern Ireland and an 80% reduction in checks on food, plant and animal health.¹⁷

14. In this difficult context, it would have been important for the political and technical discussions between the United Kingdom and the European Union to result in a negotiated solution, in line with the joint statement by EU Commission Vice-President Maroš Šefčovič and UK Foreign Secretary Elizabeth Truss following the February 2022 Withdrawal Agreement Joint Committee meeting. Regrettably, the tone in the spring of 2022

9. See Article 5 of the Protocol: “Customs, movement of goods”. The associated administrative formalities are set out in Article 7 of the Protocol.

10. [Commission statement on the vaccine export authorisation scheme, 29 January 2021.](#)

11. [Written statement by Mr Brandon Lewis, Secretary of State for Northern Ireland, 3 March 2021.](#)

12. On 15 March, the European Commission sent a [letter of formal notice](#) to the United Kingdom for a breach of its obligations under the Protocol on Ireland and Northern Ireland.

13. [Extension to Northern Ireland Protocol grace period for chilled meats agreed, 30 June 2021](#); [Written statement by Lord Frost, 6 September 2021](#); [Statement by the European Commission following the UK announcement regarding the operation of the Protocol on Ireland / Northern Ireland, 6 September 2021.](#)

14. This was a central issue in the discussions during the latest G7 summit (“[Why A Brexit Sausage War Risks Overshadowing The Entire G7 Summit](#)”, *HuffPost*, 11 June 2021).

15. [Northern Ireland Protocol: The way forward](#), Cabinet Office and Northern Ireland Office, 21 July 2021.

16. [Press speaking points by Vice-President Maroš Šefčovič in Belfast, following his two-day visit to Northern Ireland](#); [Speech by Vice-President Maroš Šefčovič at the Queen's University, Belfast.](#)

17. [Protocol on Ireland/Northern Ireland: Commission proposes bespoke arrangements to benefit Northern Ireland](#), European Commission, 13 October 2021.

did not follow this constructive spirit, with no tangible progress achieved in direct talks and Foreign Secretary Truss telling the House of Commons in May 2022 that the government intended to unilaterally make changes to the Protocol.

15. Following through on the Foreign Secretary's indication, on 13 June 2022 the UK Government introduced the Northern Ireland Protocol Bill to parliament, with the stated goal to "fix" parts of the Protocol and "address practical problems" it had created, including with regards to "burdensome customs processes, inflexible regulation, tax and spend discrepancies, and democratic governance issues".¹⁸

16. A majority of members of the Northern Ireland Assembly wrote a letter to Prime Minister Boris Johnson rejecting the bill, and Irish Prime Minister Micheál Martin called it a "low point" which was "very regrettable".¹⁹ Noting how the Protocol was the only solution the two parties could find to protect the Good Friday Agreement while addressing the challenges created by Brexit, European Commission Vice-President Maroš Šefčovič expressed significant concern with the bill, which disappplied core elements of the Protocol. The European Union subsequently decided to launch two new infringement proceedings against the UK Government for breaking international law and to restart the infringement one it had put on hold in September 2021, while also providing additional details on the October 2021 package to facilitate the movement of goods between Great Britain and Northern Ireland.²⁰

17. During my fact-finding visits to Ireland and Northern Ireland, I heard from many interlocutors, including business representatives, civil society organisations and government officials, that all that is needed is a practical solution for goods set to stay in Northern Ireland and coming from other parts of the United Kingdom. Otherwise, the general population is not really worried about the Protocol, and businesses are generally happy with, or at worst unaffected by, what it could bring if the remaining practicalities are sorted.²¹

18. While initially the new arrangements established by the Protocol led to some problems with trade and supply chains between Northern Ireland and Great Britain,²² mainly due to additional paperwork, economic trends are encouraging. Trade between Northern Ireland and Ireland has increased notably since Brexit, with the value of goods imported from Northern Ireland into Ireland rising by 153% between 2019 and 2021, and exports increasing by 69%.²³ While total trade volumes for the United Kingdom have been suppressed since January 2021, also as a result of the Withdrawal, analysis has suggested that Northern Ireland will be the UK regional economy least impacted by Brexit, partially due to the Protocol.²⁴

2.2. Brexit: a flashpoint of tensions between unionists and nationalists

19. Beyond the economic consequences, Brexit's repercussions have also heightened existing tensions. The attempts to intimidate dockers in the ports of Larne and Belfast in relation to the Protocol signalled the beginning of some violence in the spring of 2021.²⁵

20. Starting on 29 March 2021, violent clashes on a scale not seen for many years broke out across several cities and towns, concentrated in areas where criminal gangs linked to loyalist paramilitaries have significant influence. The violence, which mainly targeted law enforcement officers and vehicles on the streets, left over 50 riot police officers injured.

21. The responsiveness and responsibility shown by party leaders of all political hues, who issued a joint appeal for dialogue in April 2021, restored calm. The visit made in May 2021 by the Prince of Wales and the Duchess of Cornwall to County Armagh, a former bastion of support for the Provisional IRA, was also seen as highly symbolic.²⁶ No major disturbances were reported during the Orange marching season and the celebrations of 12 July in particular.

18. [Northern Ireland Protocol Bill](#), Foreign, Commonwealth & Development Office, 24 June 2022.

19. ["Brexit: PM to unveil plans to scrap parts of NI Protocol agreed with EU"](#), *BBC News*, 13 June 2022.

20. ["Commission launches infringement proceedings against the UK for breaking international law and provides further details on possible solutions to facilitate the movement of goods between Great Britain and Northern Ireland"](#), European Commission, 15 June 2022.

21. See also, for example, this Londonberry Chamber of Commerce [survey of members](#).

22. ["Pénurie d'essence au Royaume-Uni: des stations-service contraintes de fermer à cause des problèmes de livraison"](#), *Le Monde*, 23 September 2021.

23. ["Goods Exports and Imports – December 2021"](#), Central Statistics Office.

24. ["Brexit: NI Protocol 'helps lessen impact on NI economy'"](#), *BBC News*, 22 June 2022.

25. ["En Irlande du Nord, des graffitis révélateurs de tensions post-Brexit"](#), *Le Point*, 4 February 2021 (French only).

26. ["Royal visit to Northern Ireland"](#), 19 May 2021.

22. However, on the political stage, the resignation on 28 April 2021 of Ms Arlene Foster as leader of the Democratic Unionist Party (DUP) and First Minister of Northern Ireland²⁷ was just the first in a series of destabilising developments where Brexit loomed large. The current leader of the DUP, Sir Jeffrey Donaldson, has taken a very firm political line on the Protocol,²⁸ warning several times in the fall of 2021 that his party would pull out of the governing coalition if the Protocol was not substantially revised.²⁹ On 3 February 2022, First Minister Paul Givan (DUP) announced his resignation, blaming the Protocol for breaking the delicate balance created by the Good Friday and St Andrews' agreements.³⁰ This move paralysed the Northern Ireland Executive just two years after the reopening of the institutions at Stormont.

23. Since the Northern Ireland Assembly elections on 5 May 2022, which saw Sinn Féin and the DUP receive the most and second-most seats respectively, the DUP has blocked the appointment of a Speaker on two occasions to pressure the UK Government to take action on the Protocol.³¹ Without a Speaker, the Assembly cannot fully function and the power-sharing executive cannot take office.

24. While holding the Northern Ireland Executive hostage over the Protocol was previously rebuked by other unionist leaders,³² a joint declaration of 28 September 2021 made clear that the four main unionist parties are united in their staunch opposition to the Protocol³³ – this notwithstanding multiple surveys which indicate that the Protocol is not a top priority among people in Northern Ireland,³⁴ who largely favour inter-community consensus for practical resolutions to outstanding EU-UK disagreements. This is the case among unionists as well: little more than one in 10 unionists regarded the Protocol as the most important issue leading up to the May 2022 Assembly election.³⁵

25. And yet, political actors I spoke to in Northern Ireland worried that Brexit had contributed to an accepted wisdom that there will not be an Executive after the May 2022 elections, something which is unfortunately happening. This context of institutional uncertainty is at least partly the result of the fact that the British Government overpromised and underdelivered to unionists vis-à-vis the advantages of Brexit, leading to the opposition to the Protocol by some parties we see today.

26. Indeed, speaking with interlocutors in Northern Ireland, it was hard to escape the sentiment that the UK Government had not fully taken into account the very specific dynamics in this province when considering the implications of Brexit. Discussions on the withdrawal were framed around nationality and identity – themes which have much stronger and divisive effects in Northern Ireland.

3. Preserving peace and stability and strengthening human rights in Northern Ireland

27. The consequences of Brexit have also underlined the urgent need for reforms in Northern Ireland to preserve peace and stability and strengthen human rights. Full implementation of the “New Decade, New Approach” deal of January 2020, which restored Northern Ireland’s institutions after a three-year hiatus, is of paramount importance in this respect.

3.1. Ensuring respect for human rights in post-Brexit Northern Ireland

28. In the aftermath of Brexit, there is a confluence of three trends that could significantly affect human rights in Northern Ireland and on the rest of the island: the stall over the Northern Ireland Bill of Rights, the proposed revision of the UK Human Rights Act, and the fragility of the Protocol’s guarantor role.

3.1.1. Northern Ireland Bill of Rights

29. As highlighted by the Chief Commissioner of the Northern Ireland Human Rights Commission during a December 2021 hearing of the Committee on Political Affairs and Democracy, the adoption of a Bill of Rights remains a key unimplemented part of the Good Friday Agreement. The Human Rights Commission delivered its advice to the Secretary of State for Northern Ireland already in December 2008, but the lack of political will

27. “Arlene Foster to step down as Northern Ireland first minister”, *The Guardian*, 28 April 2021.

28. “DUP leader Donaldson addresses party divide, unionism outreach and dangers of ‘sleepwalking into border poll’ in first speech”, *Belfast Telegraph*, 1 July 2021.

29. Speech by DUP Leader Sir Jeffrey Donaldson MP, 9 September 2021.

30. “DUP: NI First Minister Paul Givan announces resignation”, *BBC*, 3 February 2022.

31. “DUP again blocks appointment of Northern Ireland assembly speaker”, *Financial Times*, 30 May 2022.

32. “Stormont ‘could disappear forever’, says Ulster Unionist leader”, *The Guardian*, 13 February 2022.

33. “Unionist leaders sign declaration in fresh bid opposing NI protocol”, *Belfast Telegraph*, 28 September 2021.

34. See, for example, [here](#) and [here](#).

35. “DUP leader insists he is ‘closing the gap’ on Sinn Féin”, *Belfast Telegraph*, 14 February 2022.

has prevented any progress. In Belfast, the *Ad Hoc* Committee on a Bill of Rights of the Northern Ireland Assembly³⁶ concluded its work in December 2021 with a sobering report,³⁷ which noted how it could not take any relevant decision or recommendation because the Panel of Experts meant to assist them in their work was never appointed by the Executive, due to opposition by the largest unionist party, the DUP. This, in turn, has led the UK Government to confirm in February 2022 that it will not move forward with legislation on a Bill of Rights unless there is consensus, including between the Northern Ireland parties, on what a Bill of Rights should include.³⁸

30. This stall does not help the people of Northern Ireland and does not reflect the fact that there is broad consensus about the need for a Bill of Rights. 80% of people polled by the *Ad Hoc* Committee said it would be important or very important to have one,³⁹ and four out of the five main political parties support it. Even unionist interlocutors have expressed to me their bewilderment at the DUP's opposition to any progress on this, if for no other reason than demographic trends, which indicate unionists may soon be a minority.

3.1.2. Proposed revision of the UK Human Rights Act

31. In parallel to these Northern Ireland-specific discussions, the UK Government launched a consultation in December 2021 on a proposal to revise the 1998 Human Rights Act and replace it with a Bill of Rights. Full protection of human rights is paramount for the implementation of the Good Friday Agreement, which explicitly requires “equivalence” between human rights protection in both jurisdictions on the island of Ireland. Both Ireland and the United Kingdom have thus incorporated the European Convention on Human Rights (ETS No. 5) into domestic law through the European Convention on Human Rights Act 2003 and the Human Rights Act 1998 respectively.

32. The effort to revise the Human Rights Act, presented as a way to “restore common sense to the application of human rights in the UK,” strengthen the role of the UK Supreme Court and of parliament, and reinforce specific rights,⁴⁰ was met with fierce opposition from civil society and rights groups, who saw it as a misleading exercise to make the State less accountable, weaken the jurisdiction of the European Court of Human Rights, and thus undermine the Good Friday Agreement.⁴¹

33. The Northern Ireland Human Rights Commission, for its part, “robustly reject[ed] the proposal for reform and its purported premise,” in particular the divisive framing of certain groups of rights holders as less entitled than others. In recommending that the Human Rights Act is retained, it also urged the UK Government to fully consider the complexities and realities of devolution in the context of these proposals, including the history of rights in Northern Ireland and how any changes would affect implementation of the Good Friday Agreement.⁴²

34. These comments are all the more relevant given the role of the Human Rights Commission, along with the Equality Commission, as the “dedicated mechanism” set up in the Withdrawal Agreement to oversee the UK Government's commitment to protecting equality and human rights in a post-Brexit Northern Ireland.⁴³

35. Notwithstanding these concerns, on 22 June 2022 the Ministry of Justice introduced in Westminster a British Bill of Rights, which follows the widely criticised approach outlined by the government during the consultation. It would add hurdles for those seeking redress in courts, strengthen specific rights over others, and challenge the authority of the European Court of Human Rights. Human rights watchdogs warned that the bill would significantly reduce rights across the board and lead to a situation where certain types of rights violations are deemed acceptable.⁴⁴ The bill would essentially limit access to justice and would therefore be in breach of the Good Friday Agreement's requirement to have access to remedies for violations of the European Convention on Human Rights. Of note, the bill was introduced just days after the European Court of Human Rights issued an interim measure blocking the deportation of asylum seekers from the UK to Rwanda,

36. Created as part of the “New Decade, New Approach” deal.

37. [Report of the Ad Hoc Committee on a Bill of Rights](#), December 2021.

38. “No Bill of Rights until Stormont consensus says British government”, *The Irish News*, 17 February 2022.

39. Research and Information Service Briefing Note: NI Bill of Rights Survey, 19 March 2021.

40. “Human Rights Act Reform: A Modern Bill of Rights – consultation”, UK Ministry of Justice.

41. “UK plans to overhaul human rights laws come under fire”, *Financial Times*, 13 March 2022; “Human Rights Watch Response to UK Ministry of Justice Consultation”, 8 March 2022.

42. “NIHRC response to the consultation on Human Rights Act Reform: a Modern Bill of Rights”, 9 March 2022.

43. See Article 2 of the Protocol on Ireland/Northern Ireland, as well as [Explainer: “UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland”](#).

44. “No 10 to set out sweeping plans to override power of human rights court,” *The Guardian*, 21 June 2022.

a move criticised by numerous British Government officials and which led some members of the Conservative Party to call for the UK to pull out of the European Convention on Human Rights⁴⁵ – rhetoric eerily reminiscent of that which led to Brexit.

36. During a current affairs debate in the Assembly in June 2022, dozens of MPs from across the political spectrum and from a wide range of countries denounced the introduction of the Bill as a departure from the European Convention of Human Rights and as a dangerous decision that could systematically undermine the legal protection of individuals in the United Kingdom. Similarly, the Council of Europe Commissioner for Human Rights expressed worry that the proposed reforms could weaken human rights protection and undermine one of the foundations of the Good Friday Agreement.⁴⁶

3.1.3. The fragility of the Protocol's guarantor role

37. A further critical piece of the puzzle regarding human rights safeguards is the Protocol, of which economic and trade impacts are well known, but which also has an important human rights component. In Article 2, the UK Government committed to ensuring that no diminution of rights, safeguards, or equality of opportunity, as set out in the Good Friday Agreement, results from its withdrawal from the European Union, and Article 3 relates to freedom of movement.

38. During my fact-finding visit, interlocutors regularly brought up fears that current negotiations on the Protocol, the related negative rhetoric by some political actors, and the UK Government's recent proposals on human rights reform, are jeopardizing these important provisions. Immigration legislation currently being considered in Westminster, which would require non-Irish EU citizens to obtain approval before crossing from Ireland to Northern Ireland, has raised more alarm bells.⁴⁷ There is concern that this legislation would be an additional potential breach of the Protocol, especially due to new requirements for Electronic Travel Authorisation, a pre-entry clearance system, which would create a hard border on land for persons resident in the south and travelling north.

39. The UK's withdrawal from the European Union has cast a shadow over important provisions of the Good Friday Agreement, specifically relating to birthright and just and equal treatment of both communities.⁴⁸ Article 2 of the Protocol currently stands as the guardian of certain rights, as well as of important EU anti-discrimination commitments.⁴⁹ Nonetheless, new EU human rights and equality directives – other than those which amend or replace directives in Annex 1 to the Protocol – will automatically apply only to part of the island of Ireland, potentially leading to a significant misalignment north and south of the border.⁵⁰ Instead of living in a shared human rights space, Northern Ireland will need to rely on specific action in Westminster or Stormont to keep up with European standards.⁵¹

3.2. The adoption of a law and a strategy to promote the Irish language in Northern Ireland

40. The promotion of the Irish language in Northern Ireland is an issue that has long been bound up with a claim to identity, carries strong political overtones and represents a core element of cultural expression.

41. The Good Friday Agreement played an important part in the formal recognition of the Irish language in Northern Ireland. In the St Andrews Agreement of 2006, the Government of the United Kingdom pledged to introduce domestic legislation on the Irish language and work with the Northern Ireland Executive to support and protect its development.

45. "Priti Patel: 'Scandalous' grounding of Rwanda flight shows it's time we quit ECHR," *The Telegraph*, 17 June 2022.

46. "United Kingdom: backsliding on human rights must be prevented", Council of Europe Commissioner for Human Rights, 4 July 2022.

47. In addition to condemnation from Dublin. "No border checks to enforce new visa waiver scheme says UK as Ireland reveals 'concerns' over legislation", *Sky News*, 23 March 2022.

48. The Good Friday Agreement allows the people of Northern Ireland to identify as Irish or British, or both, and accordingly hold British and Irish Citizenship, without differential or detrimental treatment. Now, some people on the island are EU citizens, others not.

49. See Annex I of the Protocol on Ireland/Northern Ireland.

50. Politicians as much as civil society raised this concrete concern with me during my fact-finding visit, with the 2019 [EU Work-life Balance Directive](#) a recurring example.

51. In 2020, the UK Government [committed](#) to developing corresponding rights protections in Northern Ireland if the European Union decides to improve the minimum levels of protection available under rights in Annex I to the Protocol.

42. Despite the many cross-community efforts made to promote the teaching of Irish and incorporate it into school curricula in recent years, the issue remains deeply divisive. A prominent feature of the “New Decade, New Approach” deal was the proposal of official status and legal protection for this language and the appointment of a Commissioner with responsibility for recognising, supporting, protecting and developing the Irish language in Northern Ireland.⁵²

43. However, it is regrettable that to date, more than 15 years on from the 2006 Agreement, no legislation on the Irish language has been passed. This issue resurfaced in June 2021 when a new Northern Ireland Executive came in office, prompting the British Government to make a political commitment that the Westminster Parliament would pass a law in October 2021 if the Stormont Assembly had not done so by then and appoint Commissioners in March 2022. In May 2022, the UK Government introduced the Identity and Language (Northern Ireland) Bill, which largely reflects draft legislation published alongside the “New Decade, New Approach” deal.

44. Both the Committee of Ministers of the Council of Europe, in relation to the Framework Convention for the Protection of National Minorities (Resolution of 7 February 2018), and the Committee of Experts of the European Charter for Regional or Minority Languages (evaluation of 22 March 2021), have called on the United Kingdom to adopt appropriate legislation protecting and promoting the Irish language. In its latest mid-term evaluation (from March 2021), the Committee of Experts further expressed concern that proposed amendments to the Northern Ireland Act are limited in scope vis-à-vis a dedicated Irish Language Act. The progress of the Identity and Language (Northern Ireland) Bill through parliament will be important in this respect.

3.3. The fragility of Northern Ireland's institutional framework

45. The recurring threats of shutdowns of Northern Ireland's institutions, including the current deadlock, serve as a reminder of the limitations of the power-sharing model established by the Good Friday Agreement.⁵³ The Northern Ireland Assembly has already been suspended five times since 1998, most recently from 2017 to 2020, and has not yet been able to elect a Speaker following the May 2022 elections, due to the DUP's veto.

46. The model, which was originally designed to bring the two communities closer together, has been misused over time and has accentuated dividing lines, deepening sectarian rifts. It makes it difficult to challenge political decisions without endangering the operation of institutions. “Stormont could disappear forever” if larger parties are allowed to blackmail the Executive's ability to function, a party leader warned during the February 2022 political crisis when the First Minister resigned.⁵⁴

47. The fact that the 90 members of the Stormont Assembly must define themselves in terms of community affiliation – as “unionists”, “nationalists” or “other” – curbs their individual political freedom and gives the group to which they belong greater veto power. A study by The Guardian⁵⁵ of 871 motions and amendments debated since 2000 reveals that 51% (442) of them did not receive cross-community support and only 32% were passed with at least one vote from a member of the other community. Just 15% of the motions were passed by a unionist and nationalist majority.⁵⁶

48. Previous abuse of the “petition of concern” procedure, which requires a matter to be passed on a cross-community basis rather than by simple majority,⁵⁷ has entrenched these divisions and side-lined political groups classified as “other”, hampering their efforts to establish themselves as an alternative to the unionist/nationalist dichotomy in the political arena. This procedure has not been used since the restoration of the Northern Ireland Assembly in 2020, leading the UK Government to conclude in January 2022 that no reform to the “petition of concern” was necessary. Nonetheless, it is clear that the mere threat of the procedure might sometimes be enough to block proposals.

52. Some critics nonetheless maintained that the Agreement would water down the pledges made in the St Andrews Agreement.

53. As amended by the [St Andrews Agreement](#) of 13 October 2006.

54. “Stormont ‘could disappear forever’, says Ulster Unionist leader”, *The Guardian*, 13 February 2022.

55. “Stormont: where Northern Irish politics splits and where it holds together”, *The Guardian*, 22 June 2021.

56. These cross-community votes sometimes reflect strong social conservatism. The most recent social changes (right to abortion, right to same-sex marriage) were passed into law at Westminster in 2019, when the Northern Irish Assembly was suspended.

57. The [“New Decade, New Approach” agreement](#) calls for tighter controls on when this mechanism can be triggered and narrows its scope.

49. Furthermore, while the appointment of the First Minister and the deputy First Minister by the top two political parties, as well as the arrangements for appointing ministers, guarantee a broader representation in government, this setup precludes a more finalised form of individual and/or collective responsibility by the Executive.⁵⁸ It also prevents the top two political parties from opting out of government should they not want to enter an agreement, as other parties have a right to do, thereby leading to high risks of institutional impasse.

50. As I was able to ascertain directly while in Belfast, some politicians do still see the value of a system based on the nationalist/unionist designation. As one powerful interlocutor told me, Northern Ireland is still at the point where it is better to guarantee inclusivity at the cost of gridlock, where it is preferable to have checks and balances rather than abuse. Others, however, note how the current structures enhance divisions along increasingly irrelevant sectarian designations, and allow one party to hold the institutions to ransom.

51. The United Kingdom Government recently took steps to limit the instability of this system, by extending the period of time between the resignation of a First or deputy First Minister and the call for new Assembly elections, and by allowing ministers to continue in their post in this period.⁵⁹ The Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022⁶⁰ came into force on 8 February, but was made to apply retroactively, therefore allowing the continuation of some governance after First Minister Givan's resignation on 3 February. While the new legislation prevents a complete collapse of institutions as in the past, the impact of the lack of an Executive remains severe: no new policy or budget can be agreed on, government strategies on important topics such as gender equality and language cannot be approved, and investments cannot move forward.

3.4. The need to end residential and school segregation

52. Despite considerable budgetary investments and political rhetoric in favour of religious mixing, Northern Ireland's population is still divided along sectarian lines. Although the Northern Ireland Executive pledged in 2013 that peace walls would be brought down by 2023 and described this measure as a "decisive step forward" towards the integrated cohabitation of communities,⁶¹ the fact is that more than 100 such barriers still exist today.⁶²

53. A majority of neighbourhoods are still segregated and mostly inhabited by people who belong to the same community. Without clear intervention by the authorities on several fronts – housing allocation but also education and economic reforms – this phenomenon will continue to grow, because clustering does not merely happen to communities; people also actively choose to stay within their own communities because of economic and social factors.

54. This intervention is all the more necessary because the gap between the communities in terms of population growth is causing tensions that impede residential mobility and are putting strain on relations between neighbourhoods. The many urban boundaries (peace walls, barriers, symbols of identity, etc.) limit access to public services. While "shared neighbourhood" schemes are to be praised, there are not enough of them.

55. This residential segregation is mirrored in classrooms. More than nine in every 10 schoolchildren are educated in a single-faith school, and in 85% of schools, fewer than 10% of pupils belong to the other denomination.⁶³ In addition to integrated schools, there is also a programme of shared education, where children from different religious backgrounds come together in schools to participate in classes and projects. Still, many children in Northern Ireland do not meet peers from the other community until they are in university.

56. These statistics raise a more general question about the nature of the education system, which perpetuates the historical separation of Catholic and Protestant schoolchildren. Decisions about what school a child will attend are based on parental choice. A recent Ulster University research paper criticised the education system for being "divided, splintered and overly expensive",⁶⁴ while other studies have drawn

58. The principle of greater ministerial responsibility was laid down in the "New Decade, New Approach" agreement in the aftermath of the turmoil caused by the failings in the Renewable Heat Incentive scheme, which led to the suspension of the Stormont Assembly in 2017.

59. In line with the "New Decade, New Approach" agreement, par. 18.

60. Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 – Government Bill.

61. "Les murs séparant les communautés à Belfast seront démolis d'ici 2023", *Le Monde*, 9 May 2013 (French only).; <https://internationalfundforireland.com/>.

62. "More than 100 peace wall barriers remain in Northern Ireland", *The Irish Times*, 5 January 2022.

63. "L'éducation comme vecteur de réconciliation en Irlande du Nord post-conflit", *Eyes on Europe*, 23 November 2020.

attention to the economic impact of segregation, in particular due to the large amount of duplication (separate teacher training colleges, separate education authorities, separate school boards of governors, etc.). It has been estimated that over the past decade, approximately £1 billion has been spent on bringing young people into contact with each other in various cross-community initiatives, and the cost of home-to-school transport is approximately £81 million per year.⁶⁵

57. The “New Decade, New Approach” deal stated the need for a “transformation” of the current education system, deeming it unsustainable. A key commitment in the agreement was the establishment of an independent review of the system, and in September 2021 the Northern Irish Minister of Education announced the appointment of a panel of experts to undertake such a review, expected to take a minimum of 18 months.⁶⁶

58. Since the 1980s, Northern Irish civil society has sought to develop alternatives to single-faith education. Teachers and parents have set up “integrated” schools to encourage social and religious mixing. The first such school was opened in 1981 in South Belfast (Lagan College). Although there are now 65 such schools,⁶⁷ which have the backing of parents and receive financial support from the Education Authority, only a tiny minority of children in Northern Ireland – 7% – attend them,⁶⁸ and groups of parents and non-profit organisations are still the driving forces behind their creation.

59. In a bid to increase the number of integrated schools, the Integrated Education Fund, one of the main organisations working to end segregation, has launched a campaign called Integrate My School,⁶⁹ which has been relatively successful to date despite fierce political and religious opposition. Both the DUP and the UUP voted against a recent education bill designed to promote integrated education.

60. There is now increasing support for “shared” education, an alternative system that implements joint teaching arrangements in two schools of different faiths on a regular basis. Arrangements of this kind are now in place in 76% of faith schools.⁷⁰ While shared education has undeniably positive societal and cultural effects and can be seen as a pragmatic response to the current divisions, civil society tends to support more fundamental changes to education in Northern Ireland, with a focus on integration.⁷¹

61. When discussing segregation in Northern Ireland, it is important not to overlook the social class component. Neighbourhoods are now socially separated too – peace walls, for example, are mainly in lower class areas – and this has a considerable impact on conflict resolution. This applies also to the education sector, where the grammar school selection exam at age 11 is as important as religion in determining a pupil’s path, creating at a very early age a “system of haves and have-nots.”⁷²

4. Healing the wounds of the past in order to look to the future

62. Although the Good Friday Agreement brought thirty years of war to an end, this peace is still fragile. As well as improving the economic situation and increasing the number of cross-community initiatives, the process of building a common future and seeking a softer concept of identity must also involve an institutional response to the legacy of the Troubles and an all-out battle against the influence of paramilitary organisations.

64. “Education in NI ‘divided and splintered’, says Ulster University report”, *BBCNews*, 17 February 2020.

65. “Time to count the cost of segregated education”, “Schools: the price of segregation”, <https://scopeni.nicva.org/>.

66. Panel to undertake Independent review of education announced, Education Department.

67. Integrated schools, Education Department.

68. “Integrated education in Northern Ireland is urgent – why can’t our leaders see that?”, *The Guardian*, 2 December 2021

69. A law passed in 1978 (Dunleath Act) allows existing segregated schools to become integrated. Since little use has been made of it, the Integrated Education Fund has launched a campaign to work with parents and teachers to convert their schools through parental ballots.

70. “The shift from integrated to shared”, *thedetail*, 6 June 2014.

71. See, for example, “It Didn’t End in 1998”, Commission for Victims and Survivors; “Same Difference? Shared Education and Integrated Education”, Integrated Education Fund.

72. “Grammar schools: Theresa May ignites debate that has raged in Northern Ireland ‘for years’”, *BBC News*, 9 September 2016.

4.1. Seeking an institutional response to the legacy of the Troubles

63. While this report is focused on the impact of Brexit, in May 2022 the UK government introduced a bill on the legacy of the Troubles which will have a direct impact on reconciliation and human rights on the island of Ireland. For this reason, this theme cannot be overlooked when analysing the context following the UK's withdrawal from the European Union.

64. Even following the 1998 Good Friday Agreement, Northern Irish society was left without much progress regarding the darkest chapters of the conflict that had engulfed the island for decades prior. In response to the failure to investigate the deaths and disappearances of the Troubles, the Governments of Ireland and of the United Kingdom, along with Northern Ireland's political leaders, signed the Stormont House Agreement in 2014, which set out a new framework and new institutions, including an independent Historical Investigations Unit. This body was to take forward investigations into outstanding Troubles-related deaths through a victim-centred approach, while also meeting European Convention on Human Rights Article 2 requirements.

65. In the "New Decade, New Approach" agreement of January 2020, the UK Government committed itself to publishing and introducing, within 100 days, legislation in parliament to implement the Stormont House Agreement.

66. In an interim report of 21 October 2020, the Northern Ireland Affairs Committee of the UK House of Commons expressed deep concern over the lack of clarity in the government's intentions since the signing of the "New Decade, New Approach" agreement and called on it to introduce legislation compatible with the six principles of the Stormont House Agreement as soon as possible.⁷³

67. In an interim resolution adopted on 3 December 2020,⁷⁴ the Committee of Ministers of the Council of Europe emphasised that the United Kingdom had an obligation under Article 46 of the European Convention on Human Rights to abide by judgments of the Court. It expressed deep concern over the lack of detail given as to how the government's proposals for the winding-up of all historical investigations within five years will work in practice and whether they are consistent with the obligation under Article 2 of the Convention.

68. In the summer of 2021, the British Government published Command Paper 498,⁷⁵ which proposed a statute of limitations that amounted to a *de facto* general and unconditional amnesty ending all Troubles-related "judicial activity". A study by several transitional justice experts underlined that the proposed plan went further than the amnesty declared by the former Chilean dictator Augusto Pinochet.⁷⁶

69. This proposal was rejected by all Northern Ireland's political parties, the Irish Government, the opposition Labour Party at Westminster and the Northern Ireland Human Rights Commission. Two UN Special Rapporteurs voiced their grave concerns over this plan in a statement and urged the authorities to "refrain from regressing on their international human rights obligations through the establishment of a statute of limitations for conflict related prosecutions and barring all related investigations, inquests and civil claims".⁷⁷

70. In a letter sent on 13 September 2021 to the Secretary of State for Northern Ireland, the Council of Europe Commissioner for Human Rights likewise expressed concerns in this regard.⁷⁸ In his reply, the Secretary of State for Northern Ireland stated that the Command Paper should be regarded as a process of engagement with all stakeholders and not as a final position.⁷⁹

71. A more definite position seemed to have emerged on 17 May 2022, when the UK Government introduced the Northern Ireland Troubles (Legacy and Reconciliation) Bill. The proposed law would set up an Independent Commission for Reconciliation and Information Recovery (ICRIR), which would conduct investigations based on requests from families, the government, or other actors. The ICRIR, which is envisaged to be operational for five years, will be able to grant immunity to alleged perpetrators who, in the

73. "Addressing the Legacy of Northern Ireland's Past: the Government's New Proposals (Interim Report)", Northern Ireland Affairs Committee, 21 October 2020.

74. Interim Resolution CM/ResDH(2020)367.

75. "Addressing the legacy of Northern Ireland's past," Northern Ireland Office, 14 July 2021.

76. Model Bill Team Response to the UK Government Command Paper on Legacy in NI, September 2021.

77. "UK: UN experts voice concern at proposed blanket impunity to address legacy of "the Troubles" in Northern Ireland", 14 August 2021

78. Letter of the Commissioner for Human Rights of the Council of Europe to the Rt Hon Brandon Lewis, Secretary of State for Northern Ireland, 13 September 2021.

79. Reply of the Secretary of State for Northern Ireland to the Commissioner for Human Rights of the Council of Europe, 22 September 2021.

eyes of the Commission, co-operate to shed light on the truth; those who do not co-operate would instead remain liable to prosecution. The legislation would cause all ongoing criminal investigations and many ongoing civil action to cease and prevent future inquests, civil actions and criminal investigations by the Police Service of Northern Ireland or the Police Ombudsman related to the Troubles.⁸⁰

72. The Secretary of State for Northern Ireland argued that the proposal supported information recovery and reconciliation and would help society look forward. Noting that “the current system is failing, delivering neither truth nor justice for the vast majority of families,” he said that the ICRIR would give people a reason to come forward, “something which at the moment doesn't exist.”⁸¹

73. Victims' groups, all political parties in Northern Ireland and the UK Labour Party came out in strong opposition to the proposal,⁸² as did the Irish Prime Minister and the Irish opposition leader, who both framed it as a unilateral departure from the Stormont House Agreement.⁸³

74. Intervening as a witness during a 7 June 2022 hearing of the Northern Ireland Affairs Committee, the Chief Commissioner of the Northern Ireland Human Rights Commission expressed disappointment that the Commission was not consulted by the authorities during the preparation of the bill and highlighted numerous elements of concern regarding its compliance with human rights standards. Noting how the bill would essentially channel all investigations, prosecutions, civil claims, inquests, and police complaints arising out of the Troubles away from the police and judicial bodies into this one Commission, she characterised it as a “very substantial interference with the rule of law and with everything that the UK has signed up to.” She characterised the immunity provisions as “*de facto* amnesty”, given that no type of crime seems to be exempt from potential immunity, and in general given the lack of safeguards. Furthermore, victims and survivors do not have any opportunity to challenge the assertions made by the person trying to gain immunity, to ask for information to be admitted, to appeal the decision, or even necessarily see a complete report of the decision. Given that the procedures outlined in the bill cannot meet obligations under articles 2 and 3 of the Convention, the Chief Commissioner claimed the bill is in breach, among others, of the Good Friday Agreement.⁸⁴

75. In the context of its work supervising the execution of judgments of the European Court of Human Rights, on 10 June 2022 the Committee of Ministers of the Council of Europe issued a decision asking for additional information from the United Kingdom authorities on the effectiveness and Convention-compliance of the Northern Ireland Troubles (Legacy and Reconciliation) Bill, as well as on the process of engagement undertaken and planned to gain confidence and bring stakeholders on board.⁸⁵

76. A process which would lead to some form of amnesty would have several unintended consequences, as the Northern Ireland Minister of Justice Naomi Long told me during a meeting. First, it would allow alleged perpetrators to present their side of the story publicly without the chance for families to seek accountability in courts. Second, taking legacy cases outside the modern justice system would undermine trust in the new, reformed institutions of present-day Northern Ireland. And third, one should consider the message it would send to still-active paramilitary organisations.

77. While proposals leaning towards blanket amnesty are widely condemned, as I also gathered during my fact-finding visit to Northern Ireland, there is acceptance that the rule of law, effective investigations and the emergence of the truth must be cardinal elements in any credible process. In a recent poll, not only did more than two thirds of respondents agree on the need to deal with the legacy of the conflict, but importantly 85% accepted that all sectors of society were harmed during the Troubles.⁸⁶ This shows that a blanket amnesty is not an acceptable solution. A solid basis for a process anchored on the truth, centred on all victims, and which provides closure is required.

78. The numerous concerns expressed regarding the Northern Ireland Troubles (Legacy and Reconciliation) Bill come at a time when several initiatives have made significant headway in terms of investigations that comply with the relevant provisions of the Convention and are based on an approach

80. “Secretary of State for Northern Ireland to outline way forward to address the legacy of the Troubles”, Northern Ireland Office, 17 May 2022.

81. “Secretary of State for Northern Ireland to outline way forward to address the legacy of the Troubles”, Northern Ireland Office, 17 May 2022; “NI Troubles: Legacy bill published by the UK government”, *BBC News*, 17 May 2022.

82. “NI Troubles: Legacy bill published by the UK government”, *BBC News*, 17 May 2022.

83. “Victims ‘want no amnesty’ for Troubles-era killers, Irish tell UK”, *Politico*, 17 May 2022.

84. Oral evidence: Addressing the Legacy of Northern Ireland's Past: The UK Government's New Proposals, 7 June 2022.

85. Committee of Ministers' decision, H46-35 *McKerr group v. the United Kingdom* (Application No. 28883/95). Supervision of the execution of the European Court's judgments, 10 June 2022.

86. “More than a third support 'drawing a line under the past' – new research”, *The Irish News*, 15 February 2022.

centred around victims' families. Examples include the Ballymurphy Massacre Inquest, which found in May 2021 that the 10 victims of a 1971 Army operation were innocent, and Operation Kenova, an independent investigation led by a former Chief Constable that has shown that the truth can come to light in many unresolved cases.⁸⁷

79. The Police Ombudsman has also carried out important work to shed light on what happened, with more than 428 cases currently within the office's Historical Directorate. She recently issued two thematic reports outlining significant investigative and intelligence failures and "collusive behaviours" by the Royal Ulster Constabulary in relation to a series of murders and attempted murders in the late 1980's and 1990's.⁸⁸ Given the role of the police in past events, and in particular of what has been described as a "force within a force",⁸⁹ it is important for such investigations to be given appropriate support and resources.

4.2. An all-out battle against the influence of paramilitary organisations

80. The peace process set in motion by the Good Friday Agreement did not spell an end to the existence of paramilitary organisations, which still have thousands of members, a number of them active. The announcement of 4 March 2021 by the Loyalist Communities Council, a group of loyalist paramilitaries, that it was withdrawing its support for the Good Friday Agreement in protest over the Irish Sea border illustrates this vividly.⁹⁰ In a February 2022 interview, the group's Chairperson warned that if the UK Government were to reach another agreement with Brussels on the Protocol, "the message it would send is that the only thing that works is violence."⁹¹

81. Although the number of security-related incidents has fallen over the past decade, increasing the credibility and recognition of the Police Service of Northern Ireland, there has been something of a resurgence in paramilitary-style attacks. The death of the journalist Lyra McKee served as a cruel reminder of this in 2019.⁹²

82. In its latest report of December 2021, the Independent Reporting Commission⁹³ indicated that reactions to Brexit, including to the Protocol, have led to new complexities and to increasing prominence of paramilitarism. It reiterated that while policing and justice measures are essential in bringing paramilitarism to an end, they are not enough in themselves and need to be complemented by actions to tackle the deep and systemic socio-economic issues facing communities. The Independent Reporting Commission further called for a dedicated, formal process of group transition, to engage directly with paramilitary groups with the end goal of disbandment.

83. During my fact-finding visit, I was reassured to hear that interlocutors were not worried about a return to the violence of the Troubles. There is no appetite among the population to reverse the trend towards peace. The situation requires, however, careful management, if not it could slip back into small-scale violence. In particular, socio-economic factors and a sense of political detachment were brought to my attention: the combination of decline in economic opportunities, brain drain, and the consequent feeling of disconnect with the political class, can lead certain groups to find greater affinity with the paramilitary calling.

84. The ongoing smear campaign against a Belfast-based Human Rights Law professor focusing on the constitutional future of Northern Ireland following the UK's withdrawal from the European Union, which has included physical threats, and which drew the condemnation of four UN Special Rapporteurs in March 2022,⁹⁴ demonstrates the real dangers of further radicalisation related to the impacts of Brexit.

5. Conclusions

85. While circumstances have somewhat changed since the motion for a resolution at the origin of this report, recent developments have confirmed the timeliness for the Assembly to examine the impact of Brexit on human rights, peace, and reconciliation on the island of Ireland.

87. <https://www.opkenova.co.uk/>.

88. See public statements by the Police Ombudsman from 14 January 2022 and 8 February 2022.

89. "RUC told to put intelligence before arrests, reveals secret MI5 report", *The Guardian*, 26 June 2018.

90. "Loyalist group withdraws support for Good Friday Agreement", *BBC News*, 4 March 2021.

91. "Upheaval in Northern Ireland, With Brexit at Its Center", *The New York Times*, February 2022.

92. "Lyra McKee murder: Journalist shot dead during Derry rioting", *BBC News*, 19 April 2019.

93. This Commission was created under the 2015 "Fresh Start" Agreement and succeeded the Independent Monitoring Commission.

94. "Attacks against human rights advocate threaten academic freedom in Northern Ireland" – UN experts.

86. The contentious provisions of the 2020 Internal Market Bill were ultimately scrapped, but 2022 saw the introduction of the similarly controversial Protocol Bill. As relevant institutions and non-governmental organisations were calling attention to the potentially damaging effects on human rights of the UK's withdrawal from the EU, the UK government introduced legislation this summer to override the Human Rights Act, calling into question its commitment to the European Convention on Human Rights, one of the main anchors of the Good Friday Agreement. And as Brexit-related policy complications made the political discourse in Northern Ireland increasingly divisive, a brief unifying factor was the near universal rejection of British plans to address the legacy of the Troubles in a way that undermined the rule of law and led to de facto amnesties.

87. Taking all these elements together, it is clear that the United Kingdom's withdrawal from the European Union has shaken the delicate balance created by the Northern Ireland peace process and threatened the common human rights space previously shared by all people on the island of Ireland. The danger of having one island with two distinct human rights realities, and the related repercussions for the preservation of an open border, is real.

88. The Good Friday Agreement lists the European Convention on Human Rights among the safeguards to ensure that all communities in Northern Ireland are protected and can work together in the democratic institutions. While Brexit is not strictly related to the Convention, this report has looked at ways in which post-withdrawal developments risk undermining it, thereby posing a serious threat to the long-term implementation of the peace process.