

## EDITORIAL COMMENTS

### *Sour lessons from the Union's first encounters with the UK as a "free and sovereign country"*

A central part of the EU-UK Withdrawal Agreement consists of the arrangements to avoid the creation of a “hard border” across the island of Ireland. Difficult negotiations under the Article 50 TEU process led to delicate compromises that contributed significantly to the downfall of Prime Minister May. The very different political priorities of Prime Minister Johnson then led to the conclusion of a revised agreement – which he himself described as a “great [Brexit] deal”.<sup>1</sup> It is true that the border plans contained in the final Protocol on Ireland / Northern Ireland are potentially problematic for every relevant party: for the Union (whose external frontier will be partly managed by a third country); for the UK (whose internal constitutional and economic system has been significantly divided); and perhaps above all for Northern Ireland itself (which will be governed by more complex rules on trade, not least through the application of a dual customs regime). But the Protocol should nevertheless succeed in preventing a “hard border”, whilst protecting the basic integrity of the Customs Union and Single Market, at the same time as satisfying Prime Minister Johnson’s demand that Northern Ireland formally remains part of the British customs territory.<sup>2</sup>

Yet if anyone hoped that the very worst problems caused by Brexit for the people of Ireland had been successfully resolved by 31 January 2020, that hope was quickly to prove misplaced. For most of last year, the Union had to deal with a new set of challenges that – to put it bluntly – demonstrated the willingness of the UK Government to threaten stability and indeed potentially even the peace in Ireland, and therefore in Europe, in pursuit of its own self-interested agenda. In this Editorial, we will update readers on the sorry experience and suggest some lessons the Union needs to learn about future relations with its erstwhile Member State.

To start with, it did not take long after the UK’s withdrawal from the Union, for Prime Minister Johnson to begin misrepresenting the nature, content and implications of his very own “great [Brexit] deal”. For example, Johnson

1. See, e.g. UK Prime Minister, Press Conference at European Council (17 Oct. 2019), <[www.gov.uk/government/speeches/pm-press-conference-at-eu-council-17-october-2019](http://www.gov.uk/government/speeches/pm-press-conference-at-eu-council-17-october-2019)>.

2. The text of the Protocol is published at O.J. 2019, C 384 I/92.

repeatedly claimed that there would be no checks or controls of any kind on trade between Great Britain and Northern Ireland: traders could simply throw any EU paperwork into the bin.<sup>3</sup> The Union was forced time and again publicly to correct Johnson's apparent failure to read or understand the text of his own legally binding Protocol.<sup>4</sup>

More seriously, difficulties soon emerged in adopting the additional decisions and appropriate preparations required for full and proper implementation of the Protocol. In the first place, the Protocol is not entirely self-standing insofar as it calls for further action by the Joint Committee,<sup>5</sup> for example, to define when goods entering Northern Ireland, other than from the EU itself, should not automatically be deemed "at risk" of onward movement into the Customs Union and Single Market (and on that basis, may therefore be exempted from the standard requirement to pay Union customs tariffs).<sup>6</sup> Stakeholders were becoming increasingly desperate to know what rules they would very soon have to respect – yet for months, the Commission's representative on the Joint Committee reported no tangible progress on adopting the necessary decisions.<sup>7</sup> On the contrary: dialogue under the Protocol even seemed to be going backwards, with the UK refusing to agree to a range of minor technical amendments to the more detailed annexes, in exercise of the Joint Committee's power to correct errors or omissions in the original text of the Withdrawal Agreement.<sup>8</sup>

In the second place, the Protocol also requires the adoption of further implementing measures by the UK Government itself. The Commission

3. See, e.g. <[www.theguardian.com/politics/2019/nov/08/boris-johnson-goods-from-northern-ireland-to-gb-wont-be-checked-brexit](http://www.theguardian.com/politics/2019/nov/08/boris-johnson-goods-from-northern-ireland-to-gb-wont-be-checked-brexit)>.

4. See, e.g. Michel Barnier, Speech at the William J Clinton Leadership Institute (27 Jan. 2020).

5. On the Joint Committee, see (in particular) Arts. 164–166 of the EU-UK Withdrawal Agreement, O.J. 2019, C 384 I/1. For updates on its activities, see <[ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement\\_en](http://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement_en)>.

6. Art. 5(2) Protocol on Ireland / Northern Ireland. Similarly, e.g. Art. 5(3) on decisions about fisheries and aquacultural products; Art. 6(2) on recommendations concerning controls at NI ports and airports; Art. 8 on decisions concerning VAT and excise duty; Art. 12(3) on arrangements concerning the presence / activities of Union officials; Art. 13(4) on decisions concerning new legal acts.

7. See, e.g. Statement by the European Commission following the first meeting of the EU-UK Joint Committee (30 March 2020); Commission, Press Statement by Vice-President Maroš Šefčovič following the third meeting of the EU-UK Joint Committee (28 Sept. 2020); Statement by the European Commission following the fourth meeting of the EU-UK Joint Committee (19 Oct. 2020). Note also the statements issued by the Commission after each meeting of the Specialised Committee on the Protocol on Ireland / Northern Ireland.

8. Contrast the Commission's proposed amendments as published in COM(2020)195 Final; with the final Decision 1/2020 adopted by the EU-UK Joint Committee, O.J. 2020, L 225/53.

repeatedly called upon the British to act with some sense of urgency.<sup>9</sup> But we waited until May 2020 for the UK to publish its initial proposals.<sup>10</sup> Those proposals were immediately criticized, on various grounds, by both commentators and the Commission.<sup>11</sup> For example: the British were accused of distorting the objectives of the Protocol, so as to focus almost exclusively on the goal of reinforcing Northern Ireland's position within the UK's own internal market; of attempting unilaterally to rewrite key parts of the actual text of the Protocol (including the test for when goods should be governed by / exempt from the “at risk” rule); of failing to answer important questions or at least provide sufficient operational detail on key issues (for example) surrounding new trading processes across the Irish Sea; and of unreasonably seeking to frustrate the Union's attempts to maintain an effective operational presence within Northern Ireland, so that Union officials could perform their duly agreed functions under the Protocol.<sup>12</sup>

However, the act by which the Johnson Government threatened to turn an already difficult situation into an outright crisis, was publication of the United Kingdom Internal Market Bill on 9 September 2020.<sup>13</sup> The Bill is primarily designed to structure trade relations between the constituent territories of the UK, after expiry of the transition period provided for under the Withdrawal Agreement. Its surprisingly robust principle of mutual recognition, with scarcely any scope for justifying internal barriers to trade, combined with the failure to make any particular allowance for the overwhelming economic and political dominance of England over its smaller neighbours, have made those proposals deeply controversial in Scotland and Wales.<sup>14</sup> But international attention focused largely on other proposals contained in the Bill – setting out the UK Government's plans, consciously and explicitly, to breach various

9. E.g. Commission, Statement following the first meeting of the EU-UK Joint Committee (30 March 2020); Commission, Statement following the first meeting of the Specialised Committee on the Protocol on Ireland / Northern Ireland (30 April 2020); Commission, Technical Note on the Implementation of the Protocol on Ireland / Northern Ireland, UKTF (2020) 16. Again: note also the statements issued by the Commission after each meeting of the Specialised Committee on the Protocol on Ireland / Northern Ireland.

10. See UK Government, *The UK's Approach to the Northern Ireland Protocol* (CP226, 20 May 2020).

11. E.g. Commission, Press Statement by Vice-President Maroš Šefčovič following the second meeting of the EU-UK Joint Committee (12 June 2020); Commission, Press Statement by Michel Barnier following Round 4 of negotiations for a new partnership between the EU and the UK (5 June 2020).

12. See Art. 12 of the Protocol on Ireland / Northern Ireland.

13. Text available via <[publications.parliament.uk/pa/bills/cbill/58-01/0177/20177.pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0177/20177.pdf)>.

14. The Scottish Parliament and Welsh Senedd (Senate) each refused to give legislative consent to the Bill, but their objections were ignored by the Westminster Parliament – an increasingly common occurrence in UK constitutional law since the 2016 referendum.

provisions of the Withdrawal Agreement it had signed with the Union just months before.<sup>15</sup>

The Bill's original provisions sought to empower the UK Government to commit two main infringements of the Protocol. First, the Government would have been authorized to set aside checks and controls on trade in goods from Northern Ireland to Great Britain as required and provided for under the Protocol.<sup>16</sup> From the perspective of preventing a "hard border" across the island of Ireland, those proposals might have appeared less worrying: after all, the relevant goods are moving *away from* the Customs Union and the Single Market. But the plans still amounted to a clear breach of the Withdrawal Agreement. Secondly, the Government would also have been empowered to set aside EU State aid rules as they are meant to apply in relation to trade between Northern Ireland and the Union in accordance with the Protocol.<sup>17</sup> Those plans were not just in clear infringement of the Withdrawal Agreement, but did this time threaten the conditions for maintaining an "open border" across the island of Ireland: the UK proposals raised the (admittedly ill-defined, but still definite) prospect of unlawfully subsidized British goods gaining free and direct access into the Single Market.

But even more serious than the proposals contained in the UK Internal Market Bill itself, were the Johnson Government's repeated threats to introduce additional provisions (in its planned Taxation Bill) that would confer the power *also* to override the Protocol's core system of checks and controls on trade in goods from Great Britain into Northern Ireland.<sup>18</sup> Such powers would have posed a much more serious challenge to the integrity of the Customs Union and the Single Market – indeed, would have driven a coach-and-horses right through the legal and regulatory system that had been designed precisely so as to avoid the return of a "hard border" across the island of Ireland – just as if years of difficult and complex negotiations between the Union and the UK had simply never taken place.

Reaction to the Johnson Government's plans was almost universally critical. The Union immediately condemned the British behaviour.<sup>19</sup> A few weeks later, the Commission also initiated the process for bringing the UK

15. Readers may have joined in the general sense of bemusement at learning, from a UK minister, that breaking the law is acceptable when done in a "specific and limited" way: see, e.g. <[www.theguardian.com/politics/2020/sep/08/government-admits-new-brexit-bill-will-break-international-law](http://www.theguardian.com/politics/2020/sep/08/government-admits-new-brexit-bill-will-break-international-law)>.

16. Clauses 42 and 45 of the Bill.

17. Clauses 43 and 45 of the Bill.

18. E.g. UK Government, Statement on Notwithstanding Clauses (17 Sept. 2020) and Statement on UK-EU Joint Committee and the Implementation of the Northern Ireland Protocol (7 Dec. 2020).

19. E.g. Statement by the European Commission following the extraordinary meeting of the EU-UK Joint Committee (10 Sept. 2020).

before the ECJ in enforcement proceedings<sup>20</sup> – relying on the duty of good faith as contained in the Withdrawal Agreement,<sup>21</sup> as the legal basis for treating even the UK's proposed powers to engage in future breaches of the Protocol, already as a concrete infringement of its legally binding obligations under that international treaty.<sup>22</sup> In the US, the Democratic Presidential Candidate Joe Biden (ever proud of his own Irish ancestry) iterated and reiterated that he would not tolerate any British action that could threaten the peace process in Northern Ireland – with other senior American politicians also making clear that any such conduct would obliterate the prospects for any future US-UK trade agreement.<sup>23</sup> Also within the UK itself, there was substantial opposition to the Johnson Government's plans. For example: the House of Lords voted simply to delete the offending provisions from the UK Internal Market Bill<sup>24</sup> – though the Government decided, and a majority of MPs then duly voted, to reinstate the relevant clauses when the Bill subsequently returned to the House of Commons.<sup>25</sup>

It is not hard to understand the widespread criticism levelled against the Johnson Government. Above all: the UK's conduct was ultimately capable of threatening stability and therefore peace in Northern Ireland. If the UK had pressed ahead with its plans, it would have effectively ripped up the Protocol and posed a direct challenge to the EU – using Ireland as the innocent victim of that confrontation. Either the Union could have allowed the British to compromise the frontiers of the Customs Union and the Single Market. Or the Union would have been forced to take appropriate action to preserve the integrity of its own external borders and internal policies – by creating some system of checks and controls on trade with Northern Ireland, not just Great Britain, of exactly the sort that the Protocol was meant to avoid. Such checks and controls would have provided a focal point for (justified) Catholic-Irish nationalist resentment in Northern Ireland that (nevertheless) would have risked escalating into more active opposition (and from there, the potential for more serious disorder and the descent back into communal violence with Protestant-British unionists).

20. In accordance with Art. 131 of the EU-UK Withdrawal Agreement, cited *supra* note 5.

21. Art. 5 of the EU-UK Withdrawal Agreement, *ibid*.

22. See Commission, Withdrawal Agreement: European Commission sends letter of formal notice to the United Kingdom for breach of its obligations (Press Release of 1 Oct. 2020).

23. See, e.g. <[www.theguardian.com/politics/2020/sep/16/us-uk-trade-deal-in-danger-if-good-friday-agreement-jeopardised-democrats-warn](http://www.theguardian.com/politics/2020/sep/16/us-uk-trade-deal-in-danger-if-good-friday-agreement-jeopardised-democrats-warn)>.

24. See the text available via <[publications.parliament.uk/pa/bills/cbill/58-01/0224/200224.pdf](http://publications.parliament.uk/pa/bills/cbill/58-01/0224/200224.pdf)>; referring to the revised version of the Bill available via <[publications.parliament.uk/pa/bills/lbill/58-01/135/5801135.pdf](http://publications.parliament.uk/pa/bills/lbill/58-01/135/5801135.pdf)>.

25. See the text available via <[publications.parliament.uk/pa/bills/lbill/58-01/156/5801156.pdf](http://publications.parliament.uk/pa/bills/lbill/58-01/156/5801156.pdf)>.

But the negative consequences of the UK's actions – even as proposals, and regardless of what eventually unfolded in due course – have also reverberated well beyond the island of Ireland.

The UK has rightly been regarded as a leading architect of the post-war institutions and values that seek to promote greater multilateral cooperation and the peaceful resolution of disputes. So it was shocking and sad to see the British join with the likes of Trump's USA in their overt assault on the integrity of the rules-based international order. Of course, the entire Brexit project was always and already an integral part of that multi-pronged challenge. Rejecting membership of the European Union went hand-in-glove with a deliberate turn towards nationalism and unilateralism – albeit expressed one day in terms of a nostalgic and isolationist yearning for some imagined past, the next day as the key to an equally mythical spirit of globe-trotting, buccaneering free trade – in either case, of the sort that naturally feeds a disdain for international constraints on the sovereign State's will to act. And of course, it is also fair to say that Prime Minister Johnson has already acquired a rather unenviable reputation, even at home, for regarding compliance with the law as an option rather than an obligation.<sup>26</sup> But even so... to threaten explicitly to reduce a newly signed international agreement to tatters and make an open mockery of the international rule of law? Such behaviour not only damages the reputation and standing of the UK itself; it also undermines the considerable efforts made by the Union and its allies to defend their values in an increasingly unstable global environment.

Why on earth would the UK take such risks, with its own international reputation and long-term national interests, let alone with the more immediate safety and security of its own population?

That is a more difficult question to answer. For sure: one shouldn't take too seriously the self-justifications offered by the UK Prime Minister in his parliament and in public. For example: Johnson claimed that the Bill was designed to prevent the EU from imposing a threatened “food blockade” upon the people of Northern Ireland – even though the powers proposed under the Bill itself actually had nothing to do with the movement of goods from Great Britain into Northern Ireland and so (even if that ludicrous and frankly offensive claim had contained the slightest ring of truth) the Bill did not offer any solution to this alleged problem.<sup>27</sup> Or again: Johnson claimed that additional powers to suppress checks and controls on the movement of goods from Great Britain into Northern Ireland were a necessary “insurance policy”

26. Consider, in particular, his unlawful decision to shut down the UK Parliament as robustly condemned by the UK Supreme Court in *Miller v. Prime Minister* [2019] UKSC 41.

27. See Prime Minister, Opening Statement at the Second Reading of the UK Internal Market Bill (14 Sept. 2020).

in case the Joint Committee failed to reach agreement on full implementation of the Protocol – because in such a scenario, the EU was now threatening to adopt an extreme and unreasonable interpretation of the Withdrawal Agreement, to the effect that all goods entering Northern Ireland would be presumed “at risk” also of entering the Customs Union and the Single Market.<sup>28</sup> Yet that is what the plain text of the Protocol itself clearly says. The Joint Committee may well be empowered to adopt decisions on further implementation of that rule (for example, by identifying appropriate exceptions and derogations). But the rule itself is crystal clear, so the EU’s interpretation could hardly have been described as either extreme or unreasonable.

But if the UK’s public justifications were not very credible, then what might the real explanation for its behaviour have been? At this point, one is obliged to engage in rational speculation about the considerations that drove the Johnson Government’s strategy – bearing in mind that different and even competing political factions might well have been at work behind one and the same initiative.

For example, we know it is important not to underestimate the ideological fervour of many leading Leave supporters – a fervour that can blind them to the real world consequences of their own inward-looking actions. Many simply never wanted any deal with the EU and would be quite happy to scupper what had already been agreed. Furthermore, a substantial proportion of Brexit activists never even believed that the border problems facing Ireland were actually real; or instead thought that those problems could be entirely solved simply through [non-existent] customs technologies; or ultimately considered that the “troublesome Irish” should just learn to live with some checks and controls as the price for “British freedom”. With such a mindset, it is perhaps easy to convince oneself that the consequences of breaching the Protocol would be more apparent than real, or at least far less serious than critics were suggesting. After all, the Bill would also have empowered the UK Government simply to ignore any adverse judicial ruling from the ECJ.<sup>29</sup> And as for damaging future relations with the EU? For the diehard Brexitist, no deal remains better than a bad deal: the difference between the future relationship as envisaged by the UK Government *versus* ending up with no agreement at all, could be regarded as sufficiently thin to reduce substantially the risks associated with a total breakdown in EU-UK negotiations; while an outcome in which the self-styled “People’s Government” wins a glorious victory over the hated EU, in defence of the nation’s territorial and economic

28. Again, see *ibid*.

29. Clause 45 of the Bill (version of 9 Sept. 2020) / Clause 47 of the Bill (version of 30 Sept 2020).

integrity, offers substantial political capital in appealing to Brexit's core voter base.

But there was probably also a more rational faction at work in the strategic thinking of the UK Government. Put simply: the Irish border could serve as a bargaining chip to exercise leverage in the negotiations for an agreement on longer term EU-UK relations in fields such as trade and security. As we know: the Johnson Government insisted upon revisions to the Political Declaration that had been agreed previously by Prime Minister May, so as to provide for a genuinely more distant future relationship between the two parties.<sup>30</sup> The UK then proceeded, as soon as the act of withdrawal had been completed, to renege even on its own revised Political Declaration – by insisting on an array of additional red lines and fresh demands that amounted to a revival of Prime Minister Johnson's favoured “cake and eat it” approach to diplomacy.<sup>31</sup> The UK then insisted, even despite the onset of the global pandemic, that the transition period, and therefore the deadline for the entry into force of any future relationship agreement, would end on 31 December 2020 – without any prospect of extension, as provided for under the Withdrawal Agreement.<sup>32</sup> That consistent pattern of behaviour put the entire negotiations under extreme pressure. But assuming the Johnson Government was engaging all along with at least enough good faith as to regard *some* form of agreement as preferable to a “no deal” outcome: playing games with the Irish border might well, to Downing Street eyes, have been merely another tool for putting pressure on the Union to concede further towards the UK’s preferences.

Of course, full and proper implementation of the Protocol was essentially distinct and separate from, and never itself dependent upon a satisfactory (or indeed any particular) outcome to, the broader negotiations on future EU-UK relations as a whole. After all, neither the obligations contained in the Protocol, nor the various problems attributed to them by the Johnson Government, would be significantly affected by any agreement on future EU-UK relations: checks and controls will still be required on the movement of goods between Northern Ireland and Great Britain; Union State aid rules will still need to be respected as regards all relevant trade governed by the Protocol. But that merely reinforced the perception that the Johnson Government might be generating unnecessary tension over the Irish border, primarily in order to gain some sort of negotiating advantage in talks with the Union about future trade and security relations.

30. See the Political Declaration as published at O.J. 2019, C 384 I/178. Contrast with that published at O.J. 2019, C 66 I/185.

31. See UK Government, *The Future Relationship with the EU: The UK’s Approach to Negotiations* (CP211 of 27 Feb. 2020).

32. In accordance with Art. 132 of the EU-UK Withdrawal Agreement, cited *supra* note 5.

Whatever the inner motivations or calculations that originally drove the UK's unlawful actions, on 8 December 2020, the Union and British representatives on the Joint Committee announced that agreement had finally been reached, in principle, on the decisions necessary for further implementation of the Protocol.<sup>33</sup>

At the time of writing, we await full details of the terms, which in any case remain subject to internal endorsement by each party, followed by formal approval within the Joint Committee itself.<sup>34</sup> But for now, we know that the agreement in principle covers a wide range of matters, for example: the system for export declarations on the movement of goods from Northern Ireland to Great Britain; an update on border control posts / entry points for checks on animals, plants and derived products entering Northern Ireland; rules on the supply of medicines, chilled meats and other food products to supermarkets in Northern Ireland; more detailed criteria for determining which goods entering Northern Ireland are to be considered not "at risk" of onward movement into the Customs Union and Single Market; the exemption of agricultural and fisheries subsidies from Union State aid rules; and more generally, a clarification about the anticipated application of Union State aid rules under the Protocol. The Joint Committee representatives also signalled that agreement in principle had been reached over both the Union's outstanding proposal to amend the Protocol so as to correct certain errors and omissions in its original drafting; and the detailed practical arrangements governing the Union's physical presence in Northern Ireland for the purposes of conducting its rightful activities under the Protocol. On that basis, the UK Government further announced that it would withdraw the offending provisions from its existing UK Internal Market Bill; and also refrain from introducing further plans to breach the Protocol under its forthcoming Taxation Bill.

Of course, it is good news that the Joint Committee has reached an agreement in principle that should facilitate full and proper implementation of the Protocol – even if that agreement could and should have been secured far sooner, for the sake of all those stakeholders who will now have just weeks or even days to make the necessary adjustments and preparations.

But why the sudden change in track on the part of the UK Government? Again, one can identify several plausible factors. At exactly the same time as discussions within the Joint Committee concerning the Protocol were

33. See EU-UK Joint Committee Statement on implementation of the Withdrawal Agreement (8 Dec. 2020).

34. Note that additional details were provided by the UK Government in a statement to the House of Commons: see Michael Gove, Oral Statement to Parliament: Withdrawal Agreement Update (9 Dec. 2020). However, readers will understand that (particularly under the circumstances) we would prefer to see the proper legal text before offering any further comment.

reaching their successful political conclusion, negotiations on future EU-UK relations were generating their own considerable and very public crescendo: several months of apparently fruitless discussions on the key points of disagreement, then gave way to several anxious weeks of intensive talks between the negotiating teams, leading next to a series of high level calls between Prime Minister Johnson and Commission President von der Leyen, all surrounded by the ever-present noise of media speculation and pre-emptive recriminations.<sup>35</sup> Perhaps the Johnson Government simply realized that its gamble with Ireland / Northern Ireland had failed: negotiations on trade and security were about to be resolved, one way or another, largely regardless of British threats to undermine the Protocol. Or perhaps the Johnson Government actually believed that its brinkmanship with Irish peace had in fact succeeded: negotiations on trade and security were about to be resolved, one way or another, thanks in part to the British masterstroke of ransoming the Withdrawal Agreement. Either way, the strategy of deliberate provocation had run its course – and given the impending deadline of 1 January 2021 for applying the Protocol, maybe it was time, after all the jolly swagger and diplomatic games, to pin down some sort of mutual settlement and concrete plan for the future of Northern Ireland...

However, there was almost certainly another influential factor at work here. One should not underestimate the talismanic importance, to the average Leave enthusiast, of the UK's future relations with the USA. Donald Trump's failure to secure re-election undoubtedly marked a major setback for the dear-held plans and global ambitions of Brexit Britain: no more promises of an easy trade deal, right at the front of the queue. Instead, the UK now has to reckon with a President Joe Biden – whose fundamentally pro-Irish and naturally pro-EU sentiments must seem about as appetizing to Leave activists as a chlorinated chicken burger or a hormone-treated beef stew; while for many US Democrats, the Johnson administration will be forever tarnished by its leader's unsavoury attacks on Barack Obama as well as the Tories' overly-cosy association with Trump himself.<sup>36</sup> So Biden's election has surely changed the entire cost-benefit equation at stake in the UK's foreign policy calculations. In particular, it is easy to imagine that the new transatlantic dynamic persuaded the Johnson Government: both to re-separate the need for a specific agreement over proper implementation of the Protocol, from the progress of

35. At their meeting on 9 Dec. 2020, the UK Prime Minister and the Commission President indicated that a final decision (for an agreement or for no deal) should be made by 13 Dec. 2020; this was extended a number of times. On 24 Dec., it was announced that an agreement on trade and security had been reached. The UK-EU Trade and Cooperation Agreement, which will be applied provisionally from 1 Jan. 2021, will be commented in a future issue of this *Review*.

36. See, e.g. <[www.theguardian.com/politics/2016/apr/22/boris-johnson-barack-obama-kenyan-eu-referendum](http://www.theguardian.com/politics/2016/apr/22/boris-johnson-barack-obama-kenyan-eu-referendum)>.

wider negotiations on future EU-UK relations; and to defuse American concerns about wanton risks to stability in Northern Ireland, by climbing down from the UK's existing plans to breach the Withdrawal Agreement.

Whatever combination of domestic British calculations, successful resistance from the Union, and fresh American pressure we have to thank, a major crisis has in any event been averted – a crisis that first and foremost would have fallen upon the people of Ireland, north and south – though we will all still have to live with the challenges and problems that even a properly operational Protocol may well bring in due course.

As for the UK's deliberate challenge to the rules-based international order and those who defend it: what might have once seemed to its advocates an audacious exercise in “taking back control”, now looks more like a pointless and self-defeating attempt to throw around one's own rather limited diplomatic weight. It is certainly good news if we can feel more confident that the EU and the US will once again stand together in defence of their shared values – over Ireland of course, but also in much broader ways and contexts. Yet it remains a worry for the future that “Global Britain” might readily succumb to the tendency to act more like “Delinquent Britain”. And there is surely an important lesson to learn from the experience of 2020 as recounted in this Editorial Comment: there must come a point when the Union's rational self-interest is best served, not by its usual pragmatism and genius for compromise, but instead by adhering faithfully to its founding ideals and by staunchly defending its core principles. In relations with the UK, the Union should henceforth proceed with even greater caution.

