

Brexit and the Belfast / Good Friday Agreement's Three Strands

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Introduction

In Northern Ireland, Brexit — with a majority of nationalists voting *remain* and a majority of unionists voting *leave* — has had a transformative and negative effect on many aspects of the *1998 Belfast/Good Friday Agreement*. Along with its generally divisive impact on politics in Northern Ireland, the *Protocol on Ireland/Northern Ireland*, agreed by the EU and UK government during the Brexit negotiations to preserve an open border on the island, has created trade barriers between Northern Ireland and Great Britain, which have further re-ignited deep divisions.

This article examines Brexit's impact on strands two and three of the *Agreement*, which deal with cross-border cooperation and East-West cooperation between the two islands. It also highlights how all three strands are interdependent. The final section explores ways to meet Brexit's challenges to cooperation.

The 1998 Agreement's institutions

Strand one of the *Agreement* provides for a consociational system including a 90-seat¹ devolved Northern Ireland Assembly and a power-sharing Executive composed of the major parties representing both communities (and later the cross-community Alliance Party). By dealing with power-sharing arrangements, strand one has received the most political and media attention since 1998. However, the *Agreement* stipulates that it is *interdependent and interlocking* with two other strands.²

Strand two provides North-South cooperation on the island of Ireland primarily through the North-South Ministerial Council (NSMC).³ This body brings together politicians with executive functions on either side of the border to consult on and discuss matters of mutual interest, including implementing cross-border policy initiatives. The logic here is functional, hoping to foster all-island reconciliation as well as helping parties cooperate in strand one, just as the EU — by developing practical cooperation after World War 2 — aided Franco-German reconciliation in the latter half of the 20th century.⁴ The operation of strand two is directly dependent on strand one under the terms of the *Agreement*; the NSMC cannot meet if the Assembly and Executive are not functioning.

Strand three provides for British-Irish (East-West) cooperation between the two governments and across both islands through two intergovernmental institutions — the British Irish Intergovernmental Conference (BIIGC) and the British Irish Council (BIC). The BIIGC, in particular, formalised cooperation between the two governments, ensuring that both can act as custodians of the *Agreement* and protect the different community interests in Northern Ireland. A core purpose of the BIIGC is to ensure that both governments as guardians carve out a neutral approach that is stable, predictable and builds in unionists' and nationalists' interests fairly. The BIC was included as part of the package to satisfy unionist fears of an imbalance in the settlement. It also seeks to facilitate and encourage cooperation across the other devolved regions within the union (Scotland and Wales), the Crown Dependencies (the Channel Islands and the Isle of Man), the two jurisdictions on the island of Ireland, and the UK government. However, it also complied with one of the *Agreement's* key strategists, John Hume's aim to enshrine the totality of relations between the islands.

The BIIGC is the most important part of strand three, aiming to ensure that both governments are guardians of the *Agreement* and oversee its evolution. The British-Irish intergovernmental relationship was central to the peace process. A joined-up British-Irish strategy was intended to incentivise and frame compromise between the parties in strand one.

The three strands in practice

While the *Agreement* succeeded in achieving peace, it has not achieved reconciliation, its overarching aim,^{5 6} and there have been various collapses of the Executive over the last two and a half decades. In practice, identity politics and different interpretations of the past continued to plague the operation of the *Agreement's* institutions. The early collapses, which culminated in a suspension of strand one in 2002, were most often related to the demilitarisation agenda of the 1998 *Agreement*. Disagreement over the timeline and depth of paramilitary decommissioning (the arsenal and activities of the Provisional Irish Republican Army in particular), coupled with issues like reform of policing, prevented the institutions from operating uninterrupted in these early years.

The 2002 suspension of Stormont is the longest thus far; the institutions did not meet again until 2007. By then, the Democratic Unionist Party (DUP) and Sinn Féin had become the largest parties in their respective designations, rendering the more moderate Ulster Unionist Party (UUP) and Social Democratic & Labour Party (SDLP) peripheral players. However, the St Andrews Agreement of 2006, brokered by both governments, provided a pathway for the DUP and Sinn Féin to cooperate in the Executive by resolving the lingering issues around demilitarisation and the administration of justice. The 2006 Agreement also reformed the operation of some strand one processes, most notably through changes to the appointment of First and Deputy First Minister, which allowed the two largest parties to enter the Executive without formally voting for the other to take office.

The decade after 2007 was remarkably stable relative to what came before and after it. Notwithstanding frequent disagreements and standoffs, the DUP and Sinn Féin were able to lead the Executive for a sustained period without significant interruption. An achievement widely acknowledged as a remarkable turnaround given the positions of those two parties just a few years before. Unfortunately, this stability ended in 2016 over the cash for ash scandal. The Sinn Féin deputy First Minister Martin McGuinness resigned when the DUP First Minister Arlene Foster refused to stand aside while the scandal was investigated.⁷ However, tensions before and after the collapse played a significant role in creating and sustaining it.

A significant political vacuum that prevented the operation of strand one (and therefore strand two) for three years was created in the context of:

- the UK's decision to leave the EU in June 2016;
- the loss of the unionist majority position in the 2017 Assembly election;
- the confidence and supply arrangement between the conservative government and the DUP at Westminster after the 2017 general election; and
- entrenched divisions over cultural issues, such as an Irish Language Act.

Throughout this period, the BIIGC was notably absent.

In January 2020, the *New Decade, New Approach* agreement restored power-sharing by making political commitments to the parties, including on the

implementation of the *Protocol* that resulted from Brexit, and the Irish Language Act.⁸ Working in close partnership, both governments brokered the agreement and, unusually in recent years, both issued a joint statement⁹ immediately afterwards. In hindsight, the timing was remarkably fortunate, given the fallout from the COVID-19 pandemic began just a few weeks later. Shortly after power-sharing was restored in 2020, disagreements between the parties intensified, and some speculated that the institutions would have collapsed again¹⁰ if it were not for the ongoing pandemic. As a result, the Irish Language Act and the *Ireland/Northern Ireland Protocol* remained prominently on the agenda. Within unionism, there was considerable political turmoil, as 2021 saw the UUP elect its third leader in as many years, while the DUP went through three different leaders in as many months. Throughout the post-2020 Executive, threats of collapse from the DUP grew louder as the *Protocol* situation wore on.

Volatility in strand one has affected the other strands and vice versa. For example, the North-South Ministerial Council's (NSMC) operation depends on the Executive, but the NSMC is meant to foster cooperation gradually so that Executive politics will run smoothly. Since 1998, the frequent collapse of strand one has been matched by political unionism's reluctance to engage in North-South initiatives. One example is tourism. Despite *Tourism Ireland* being an all-island body, there was reluctance to sell signature sights such as the Giants Causeway as 'Irish' rather than 'Northern Irish'.¹¹ However, the end of the conflict and the open land border precipitated increased travel for leisure purposes and eased local trade cooperation in border regions. North-South trade increased overall but fluctuated depending on currency exchange rates between sterling and the euro and whether there was an economic recession. There were significant examples of cross-border cooperation in healthcare, such as the designation of Our Lady's Hospital Dublin as the centre for paediatric heart surgery on the island, highlighting that collaboration could occur when unionism was presented with a powerful rationale for it.

In strand three, after 2007, the BIIGC rarely met despite its dynamic role in ensuring that cooperation and reconciliation evolved. Unionists never liked the BIIGC, viewing it as allowing unwelcome Irish interference and possibly joint sovereignty. The *Agreement's* success during this period also led to both governments perceiving the BIIGC as unnecessary, especially given this unionist sensitivity. Thus, after 2007, British-Irish involvement in breaking Executive impasses did not involve the BIIGC. Instead, the Irish Minister for

Foreign Affairs and the Northern Ireland Secretary of State met outside the *Agreement's* structures. Joint statements, which had typified meetings from the 1980s, were rarer, as were Prime Ministerial meetings about Northern Ireland.¹²

Unlike the BIIGC, the British Irish Council (BIC) has met regularly (every six months) as mandated by the *1998 Agreement*. Still, among the institutions created by the *Agreement*, it is perhaps most widely seen as a talking shop. It lacks any substantive role in managing relations across these islands, remaining curiously stagnant since 1998 despite the deepening of the devolution settlement in Scotland and Wales.

Clearly, even before Brexit, strands two and three had not fulfilled their potential. Strand one's instability impacted the operation of both strands two and three, but there was also a reciprocal negative influence. In 2022, the Taoiseach Micheál Martin observed: "The harsh reality is that in the past two decades we have done too little to take up the historic opportunity of the [Good Friday] Agreement to build understanding and cooperation on this island".¹³

Brexit and strands two and three

Since 2016 the Irish government and nationalist political parties in Northern Ireland have argued that a hard Brexit would undermine strand two of the *Agreement*. This is because customs infrastructure would have to be implemented to prevent UK goods from seeping into the EU across the land border, thereby undermining the integrity of the single market. The argument was usually not that it contravened the letter of the *Agreement* but rather that it would disrupt the flow of people and trade by creating barriers. Some also said that it would lead to dissident republican violence. There is no doubt that Brexit, especially the UK government's choice of a hard Brexit, potentially undermined the organic flow of goods and services on the island. The UK government's red lines on Brexit have consistently clashed with the EU's defence of implementing single market regulations.

The DUP and UK Parliament's rejection of the 'backstop' arrangement (designed to prevent customs checks on the land border) led to the creation of the *Ireland/Northern Ireland Protocol*. The *Protocol* leaves Northern Ireland within aspects of the EU's single market and customs union as the rest of the UK departs. Like a hard land border, this did not directly

contravene the letter of strand three. Still, it has been deeply opposed by unionism due to its effects on East-West trade and, according to some, an undermining of Northern Ireland's place in the union.

Not surprisingly, amid various implementation problems, opposition to the *Protocol* grew (following some early pronouncements from leading DUP politician's that it could bring economic benefits to Northern Ireland). However, the *Protocol* is supported by a majority of the Northern Ireland electorate, as demonstrated in the recent Assembly elections. Many businesses also support it,¹⁴ though some that traded with Britain have also said they have been negatively affected.

Thus, since the *Protocol's* implementation, there have been two key economic and political impacts on strands two and three. Firstly, there has been trade diversion to the Republic of Ireland. Interestingly, compared to pandemic levels in 2021, there has also been an increase in trade from Northern Ireland to Britain.¹⁵ According to the Central Statistics Office (CSO):

- Imports from Northern Ireland from January to May 2022 increased by €357 million to €1.9 billion when compared with the same period in 2021.
- Exports to Northern Ireland from the Republic from January to May 2022 increased by €586 million to €1.974 billion when compared with the same period in 2021.
- Imports from Britain increased by 71%, from €831 million to €2 billion, compared with May 2021.¹⁶

It is early days and too soon to interpret long-term underlying patterns, but it is clear that Irish and Northern Irish hauliers have increased their use of Irish ports to access mainland Europe. For example, sailings from Rosslare Port have increased significantly. However, there has also been an apparent decrease in trade between Ireland and Britain as Irish firms further diversify to EU states. Thus, Brexit appears to have positively impacted cross-border economic cooperation. Meanwhile, the *Protocol* has caused trade disruption in some sectors between Northern Ireland and Britain but has also reaped benefits for others. A recent House of Lords sub-committee described the situation as a "feast or famine".¹⁷

Politically, Brexit and the *Protocol's* impact on stability and reconciliation have been unequivocally negative. The UK government's rhetoric in their dealings

with the EU has exacerbated the DUP's opposition to the *Protocol* and its fear of an electoral threat from the Traditional Unionist Voice (TUV) party. The DUP's decision in 2021 to boycott the NSMC meetings precipitated its decision to collapse the strand one institutions later in 2022. Their actions are intended to pressure the UK government to take firm steps to amend (or abolish) the *Protocol* to its satisfaction. But it is unknown what the effects of UK government action via its *Protocol Bill* would be. Such a move would be against the wishes of the majority of the Assembly and could drive further crisis in strand one.

Overall, Brexit unleashed underlying tensions, some brewing for decades, but it also caused new tensions and unsettled the union and unionists. During this period, British-Irish cooperation has been wholly absent. Both sides now perceive the other to be adversarial.¹⁸ The non-zero-sum approach of the *Agreement's* negotiators, including the governments, has not been carried into the *Protocol* period. The UK government's commitment to its partnership and joint custodian role with the Irish government under strand three seems very much in doubt, given its threats of unilateral action on the *Protocol* and its unilateral announcement of plans to reverse the Troubles legacy agreement reached in 2014.¹⁹

The megaphone diplomacy between the governments after Brexit and heightened emotion in some media marked a return to the bargaining style of the early 1980s. In the context of hardline rhetoric, it was not likely the DUP would appear 'softer' than its government in Westminster. The Irish government, too, was constrained by the priority that it remains loyal to the EU while seeking to achieve a compromise. The increasing divide between the governments about the *Protocol* also polarised opinion further in Northern Ireland and increased tensions between the DUP and the Irish government. These tensions have contributed to the DUP boycotting NSMC meetings and, more recently, BIC meetings.²⁰

These brief examples of the strands' interdependence highlight the centrality of strand three's BIIGC role in embedding sustainable British-Irish intergovernmental cooperation through crises. Without that cooperation, the other strands are not adequately robust. Brexit has severely impacted all three strands of the *Agreement*, despite its positive impact on cross-border trade. Still, weaknesses in implementing strand three and in availing of strand two's potential are also causes of the current crisis. Suggested methods of overcoming current challenges by using strands two and three are in the next section.

Strand two and three: Meeting Brexit's challenges

The weak implementation of strands two and three have masked their potential to allow Northern Ireland to have a voice in EU-UK negotiations. Particularly their potential to empower unionists, given the demographic and electoral challenges they face. For example, the *Protocol* explicitly allows for a *specialised committee* on implementation to “examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies”.²¹ If this channel was utilised, unionists would have a direct link into implementation, including addressing the practical implications they oppose (or simply a less contentious route to opposing the *Protocol* entirely). This channel would not solve identity objections to the *Protocol* but would help those unionists who are upset, but pragmatic. Indeed, in September 2021, the new UUP leader Doug Beattie called for an additional cross-border body to manage issues caused by the *Protocol*, particularly disruption caused to the movement of trade across the Irish Sea.

Similarly, although disliked by unionists, the BIIGC could be used creatively to empower Northern Irish voices, especially for unionists, who are no longer a majority. Mark Durkan, a former leader of the SDLP and one of the *Agreement's* negotiators, commented there is a potential convergence of interest between unionists and nationalists: “... in agreeing some substantive adjustment in strand two, which the EU might be able to rely on as vouchable assurance and oversight on relevant single market precepts and/or due compliance²² [and that] this points to a channel of representation for the views of Northern Ireland ministers which can help to answer the charge against the *Protocol* that nobody from here can have any say in future EU decisions that affect us”.²³

Under strand three of the *Agreement*: “Relevant executive members of the Northern Ireland Administration will be involved in meetings of the Conference, and in the reviews ... to discuss non-devolved Northern Ireland matters”.²⁴ The *Agreement* stipulates that the BIIGC's remit includes “all-island and cross-border cooperation on non-devolved issues” to keep international treaties, institutions and machinery under review. In this way, Executive members could have direct access to higher-level meetings discussing EU issues that affect them.²⁵

Thus, strands two and three have hidden *Agreement* tools that Executive members can use in many ways. The short text of the *Agreement* masks its

complexity and flexibility in dealing with unknown challenges, which are not limited to Brexit. The UK and Irish governmental commitment to establishing a regular schedule of BIIGC meetings as a normal feature of the political calendar would further strengthen its impact. Most importantly, re-setting the British-Irish relationship and rebuilding cooperation should be considered essential for the stability of Northern Ireland and these islands. For that reason, one of the *Agreement's* key negotiators has emphasised that the new British Prime Minister and the Taoiseach must meet in Autumn 2022 but not outside the *Agreement's* framework. In other words, the BIIGC must be convened in any attempt to rebuild relations.²⁶ The loss of the EU forum where officials met formally and informally for several decades necessitates using the *Agreement's* institutions. The BIC also offers opportunities. For example, it allows members to develop separate bilateral or multilateral arrangements.²⁷ The BIC could also allow the Northern Ireland Executive to communicate concerns about the *Protocol* to the Irish government. The Irish government could then act as a useful ally as an EU member state. Thus, the BIC could be used to find compromise on key issues caused by the *Protocol's* implementation.²⁸

Conclusion

Brexit has been a considerable challenge to strands two and three of the *Belfast/Good Friday Agreement* in isolation and because of its impact on strand one. The weakness of strands two and three have also weakened strand one, given the interdependence of the strands. However, this article has shown that Brexit alone did not create instability in Northern Ireland – the *Agreement* had not fulfilled its potential by 2016. Nevertheless, Brexit has affected the ability to contain tensions, and in 2022 the *Agreement* is in serious jeopardy. If its institutions are more robustly implemented, Brexit's challenges – and the challenges faced by unionists – can be managed more effectively to benefit all in Northern Ireland and the two islands.

Endnotes

- ¹ Reduced from 108 seats.
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