

FOSCAMUN 2023
INTERNATIONAL COURT OF JUSTICE

Case to establish the violation of the international law regarding the Northern Ireland Protocol

Draft of Opinion in favor of the Defense

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The council of Jurors of the International Court of Justice, presided by Judge RUZZANTE, states that:

On the following legal grounds:

Article 16 of the Northern Ireland Protocol
Northern Ireland Protocol Bill

The United Kingdom is not guilty for violating the Northern Ireland Protocol by adding unilateral the Northern Ireland Protocol Bill, that was approved by the British Parliament.

1. Preamble

After the United Kingdom left the European Union on 31 of January 2020. The Northern Ireland Protocol (later in this paper also named NIP.) was established to prevent a violent escalation on the Irish-UK Border. Furthermore, it was in the Interest of both parties to avoid economic problems in Northern Ireland. The Northern Ireland protocol was signed by both parties and put into power together with the EU-UK withdrawal agreement came into power.

2. Accusations of the Plaintiff

The European Union, together with the Republic of Ireland, initiates proceedings against the United Kingdom. The main reason given is a violation of the following laws/documents:

- Article 4 of the North Ireland Protocol
- Article 7A of the North Ireland Protocol
- Article 14 of the North Ireland Protocol
- Article 16 of the North Ireland Protocol
- Article 26 of the Vienna Convention on the Law of Treaties
- Article 27 of the Vienna Convention on the Law of Treaties
- Article 25 of The International Law Commission's Draft Articles of State

3. Northern Ireland Protocol Article 14

Article 14 (d and e) states:

(d) discuss any point raised by the Union or the United Kingdom that is of relevance to this Protocol and gives rise to a difficulty; and

(e) make recommendations to the Joint Committee as regards the functioning of this Protocol

The plaintiffs see this as a justification for placing Article 14 above Article 16.

4. Northern Ireland Protocol Article 16

Article 16 (1, 2, 3) are implemented into the NIP. To ensure Safeguards measures for the UK or the EU. Those measures can be taken by only one side (without a bilateral agreement) if: "... the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist..." (Article 16, §1)

Furthermore, this clause is also limited to be restricted to "their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol."

§2 and §3 of Article 16 adds that if such a measure leads to an imbalance between rights and obligations, the other contracting party may take countermeasures. These measures shall also be as limited as necessary in order not to disturb the Protocol.

5. Northern Ireland Protocol Bill

The Northern Ireland Protocol bill also known as HL Bill 52 was introduced by Liz Truss to patch practical issues of the Northern Ireland Protocol. As stated in the plaintiffs (and defense) presentation of evidence the Bill should improve the following areas:

- Green and Red Channel system to reduce unnecessary paperwork and high costs for businesses. The exchange between good within the UK will be simplified while there will be still the full checks for goods entering the European market
- Businesses have the option for placing goods on the market in Northern Ireland either with EU or UK goods rules
- To ensure that Northern Ireland consumers are not barred from purchasing UK standard goods; and to ensure Northern Ireland as UK and EU regulations diverge over time, including Covid recovery financing and VAT reductions on energy-efficient materials.
- Normalize governance structures so that independent arbitration, rather than the European Court of Justice, is used to settle conflicts.

6. The Northern Ireland Protocol Bill in accordance with Article 16.1

The Green and Red Channel system is in line with Article 16.1, because it is also in accordance with the main objective of the European market which is ensuring a protected market within the EU. This is ensured by full controls and duties on the import of British goods across the Irish border. As long as goods only move within the United Kingdom

(which in practice means between the British Isles and Northern Ireland) all controls are removed. This ensures both the sovereignty of the British market and the protection of the European market.

The Irish market has the privilege of following either EU or UK rules. This provides security of supply and the most practical regulatory route for the people of Northern Ireland. If UK goods are imported into the EU (in effect: into Ireland) they will still have to comply with all EU rules. (Article 4, NIP.)

The change in competence in legal matters concerning the Northern Ireland protocol is due to great bureaucratic expense in dealing with legal difficulties. However, this relates to any practical problems arising from the implementation of the NIP. Treaty changes in the NIP will still have to be made bilaterally.

The plaintiff claimed that the UK government modified illegally the Protocol but the Defense proved that it is not correct, because of the existence of Article 16, which is applicable because there is a situation of necessity in Northern Ireland. Article 16 aid that UK was allowed to change the protocol unilaterally, safeguarding and taking immediate actions to resolve the social and political issues.

7. Freedom of choice between Articles 14 and 16

Because severe economic problems arose due to the NIP. (see Section: 8), the United Kingdom has the right to apply Article 16. In this particular case, the British government was free to apply either Article (14 or 16).

As the European Union signed the NIP, they must also assume that the UK will apply Article 16 in such situations. Article 16 §2 and §3 entitle the European Parliament and the European Commission respectively to take unilateral action to redress the imbalance between rights and obligations, if these are deemed to have arisen under HL Bill 52 (North Ireland Protocol Bill).

8. Economic problems caused by the Northern Ireland Protocol

As we all know, the island of Ireland has been for a long time subject of serious political issues, due to the presence of two parties: the unionists, who wanted to stay in the United Kingdom and the nationalists who wanted to join the Republic of Ireland, in the last century took place a three decades of bloodshed, making Ireland the most dangerous place in Europe and this bloody conflict ended with the "Good Friday Agreement" which main purpose is to avoid hard border between the Republic Of Ireland and the Northern Ireland, then for the next twenty years the political status of Northern Ireland looked settled until the Brexit happened, after a long negotiation between the United Kingdom and European Union, the political instability did not get improved, indeed, the situation in 2020 got worse, when the nationalist party "Sinn Féin" won the election, this is because the DUP refused to name a deputy, therefore, according to the Good Friday Agreement a new government can not be formed due to the absence of the deputy, the DUP declared explicitly that it would not name a deputy until when the Northern Ireland Protocol is torn up or rewritten whith purpose to facilitate the bussiness in and out of Northern Ireland, accordingly the UK in order to safeguard the rights of all the citezens and business trade, decided to set up the so called Northern Ireland Protocol Bill.

The EU claimed that the political problems that resulted in the creation of the Protocol Bill

are because of the Brexit, so caused by their own decision. But that is not correct because the political problems that led to the Protocol Bill are strictly related by the unlawful implementation of the Protocol by the EU.

The plaintiff stated multiple times that the problems that were rising in UK were predictable: but that is in fact not true, because such problems are impossible to predict. As the defense stated many times, the consequences of a Protocol are not predictable as economy is not a science, and in the 2 years following the Protocol, those problems had yet to happen.

9. Economic problems caused by the Northern Ireland Protocol

The plaintiffs have sustained multiple times that the United Kingdom can not apply the "Document of necessity", contained in the article 25 of the International Law (which guarantee the United Kingdom the power of acting unilaterally in order to safeguard the rights of the citizens in front of a grave and imminent peril) because it has contributed to the economic issues of Northern Ireland, but things are not that simple, it has surely affected the economy in an indirect way by not concerning immediately the economic aspect, considering that there are other more concerned political issues to solve, however, it is far too much to affirm the direct contribution, because the United Kingdom surely can not predict the excessive paperwork, quality checks of EU on everything, with no distinction between risky goods, which have the possibility of entering the EU single market through Northern Ireland and those absolutely not risky, thus harming the local economy of Northern Ireland.

10. Legal status of the Northern Ireland Protocol Bill

Because of Article 16 (see section 6 and 7) the HL Bill 52 also named Northern Ireland Protocol Bill is on the same jurisdictional level as the Northern Ireland Protocol. It represents just an addition to the NIP. Therefore, it can not be said that the UK puts domestic law over international law.

11. Northern Ireland Protocol in accordance with the Vienna Convention on the Law of Treaties

The plaintiff claimed that the UK violated the Vienna Convention, but if there had been a violation of the protocol by the UK then the Vienna Convention would apply, but because of the existence of the article 16 of the Protocol then there was no violation of the Vienna Convention.

12. Supreme protection for the Good Friday Agreement

An important point that the defense brought up many times is the absolute priority of both the UK and the EU is to safeguard the Good Friday Agreement. By enforcing harsh border controls in the Irish sea, the EU is risking an escalation of violence. By adding the Northern Ireland Protocol Bill, the UK is trying to ensure full protection for the Good Friday Agreement.

