A Solution to the Problem of a 'Hard' Irish Border:

The island's post-Brexit borders

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*This submission was written before the UK General Election whose
unexpected results have made Brexit even more unpredictable. But some
things are now clearer and there have been new developments – particularly
a significant policy shift by the Irish Government, and the reliance of the
British Government on support from the Democratic Unionist Party - which
call for some new conclusions. Revised version, 2 July 2017.*

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A SUMMARY of MAIN POINTS

1. The Irish Republic and Northern Ireland will suffer very severely from Brexit unless there is substantial damage-limitation. Borders encapsulate the problems, but can also embody a solution which minimizes the damage. The EU needs a new international frontier while Brexit is partly about 'stopping immigration', so there will have to be a 'hard' border. The key question is where?

2. The Irish land border between North and South is completely unfit for purpose. It leaks like a sieve – did so even when highly militarized in the Troubles. So the real border for 'stopping immigration' will be the airports and seaports in Britain (where there are already some checks on travellers from Northern Ireland). Likewise, if a supposedly 'hard' but actually leaky land border were re-imposed, it could not be relied on to stop prohibited goods being smuggled into the rest of the EU, and there would have to be checks on goods from Ireland entering ports and airports in the continental EU (and perhaps co-ordinated checks on people and goods on *both* sides of the intervening seas).

3. Attempts to 'harden' the Irish land border to control the movement of people and goods would largely fail. Instead we'd get a series of new and serious problems affecting the whole island: e.g., disruptions, delays, increased costs and possibly some destruction of cross-border production processes, of North-South trade and associated jobs, of cross-border commuting, shopping and social life. Imposing an unpopular 'hard' border would provoke persistent peaceful protests. More ominously, it risks undermining the Peace Process. Building border installations to process freight movements would very probably lead to the 'dissident republican' paramilitaries attacking border posts and personnel, and hence to a re-militarisation of the border. If it were to become the Single Market's supposedly 'hard' but actually insecure border, the island would become a 'smugglers' bonanza', with potential knock-on costs and damage to other EU countries and to Britain.

4. Except for paramilitaries, smugglers and other criminals, avoiding a 'hard' land border is in everyone's objective self-interest - in the 26 continental EU countries, in Britain (including Brexiteers), across the Irish Republic, and perhaps especially in even more vulnerable Northern Ireland irrespective of different attitudes to the quite separate issue of its political union with Britain. The negotiators all promise avoidance of a 'hard' border, but people in Ireland will have to hold them to it by mobilizing actively around a solution. Politically this could prove difficult, not only because of what may or may not happen in Brussels and London, but perhaps especially because of counter-productive entanglements with both sides of the traditional nationalist-unionist conflict.

There is clearly a huge majority North and South opposed to a 'hard' border, and it needs to be prevented at all costs. But will the public and politicians have the ability to work together for a viable alternative in the new Brexit circumstances?

5. Perhaps surprisingly, in technical terms a solution is relatively straightforward in my opinion, at least in broad outline. Talk of 'special status for the North within the EU' with 'the Irish border moved to the Irish Sea' is however quite misleading. 'Imaginative solutions' (to quote the European Council) are needed for the whole island. To have any chance of success they have to include continuing access to vital British markets for the Republic's indigenous industries, as well as Northern Ireland's access to EU markets, while also taking account of interests in Britain and the continent. Solving the problem of 'the Irish border' in the singular involves re-organising all the island's post-Brexit borders in the plural. Inevitably there will be costs for all concerned, but they will be minor compared to the huge overall costs of a 'hard' land border (and some would be incurred anyway in this non-solution, e.g., checks at ports and airports in Britain and the continental EU). The 'hard' land border would bring a wide array of additional complexities and costs through disrupting or destroying legal activities and encouraging illegal ones.

6. *That the UK will leave the EU, Single Market and Customs Union (CU) is still the sensible assumption despite the Election results, while a solution must involve Northern Ireland being in the CU alongside the Republic, perhaps joining some version of the European Economic Area. All such solutions require a re-casting of the island's post-Brexit borders and customs regimes. Briefly (for details see pages 8 to 10), people and goods which originate anywhere in Ireland will retain their present access to Britain and to the continental EU. But people and goods which are in Ireland but originated in other countries can be denied entry to Britain and to the continent at their ports and airports. The island will largely remain open as at present to people and goods from Britain and from the continent, though with customs at ports and airports having shared powers to deny access, in line with a UK-EU negotiated settlement and as decided democratically in Ireland. It thus re-gains being in overlapping free-trade zones both with Britain and the continent, but elsewhere they remain separated by the single 'hard' border they both want.*

7. *Some people think a 'softer' Brexit is now probable (e.g., the UK stays in the CU which would solve a lot of border and Brexit problems at a stroke). But it would be folly to rely on it - others think a 'harder' Brexit is now more likely, a weak British Governnment perhaps crashing out of the EU before finalizing a deal. But clearly it is now dependent on support from the pro-Brexit but anti-'hard' border DUP in Northern Ireland; while the Dublin Government has significantly shifted its policy to support an 'invisible' border based not on hi-tech but on Northern Ireland having a 'unique status' connecting it to the CU (see pages 12 to 15).*

Introduction

The island of Ireland, North and South, could suffer most - economically, socially and politically - from Brexit: Northern Ireland more than other regions of the UK; the Republic of Ireland more than the other remaining countries of the EU - and perhaps especially my own county of Donegal which could become largely 'cut off' by Northern Ireland with most people having to cross the border twice to travel between Donegal and the rest of the Republic.

The European Council has said it will "protect" Ireland's cross-border Peace Process and Good Friday Agreement, and given "the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required, including ... avoiding a hard border" (Press Release, 29 April). What can this mean? How might it be achieved?

The main problems arising from Brexit are crystallized or encapsulated in the question of borders, and especially the threatened re-imposition of a 'hard' border with checks on the movements of people and goods between the Republic and Northern Ireland which currently share an open border and free-trade area. By the same token, however, the Brexit damage can be limited or mostly overcome by a 'flexible and imaginative' re-alignment of borders and customs regimes.

In this submission I argue that there will be a 'hard' border; but the present political border is totally unsuitable for controlling freight and personal movements. Attempts to make it suitably secure would not only largely fail but would create a variety of new problems. Technically an alternative solution based on the island's post-Brexit borders is quite feasible in my view, and is indeed relatively straightforward compared to the complexities and costs of trying to make a supposedly 'hard' land border work. There are real dangers of disaster for both parts of Ireland if an alternative is not agreed and implemented, though achieving it will require sensitive and vigorous political mobilization.

There will be a 'hard' border

At issue is a new international frontier for the EU and its Single Market, while for many Brexit supporters in Britain 'stopping immigration' is a major concern. Governments and people require some confidence in secure controls. There will therefore be a so-called 'hard' border, but where? Promises of a 'soft' Irish border have been vacuous, and notions of keeping it 'invisible' by using electronic controls and sending documentation through the internet in advance are either innocent wishful thinking or willful deception. Such methods and processes can of course help expedite legal traffic across borders but they are no

defense against smugglers, 'people smugglers' or illegal immigrants. The 'hi-tech' USA had built a high wall along part of its Mexico border long before Trump arrived on the scene, and getting into the US from friendly Canada can take ages. So the key question for us is where will the border – or rather borders in the plural – be located to avoid disaster, and what new customs regulations need to be put in place?

A border unfit for purpose

For the foreseeable future after Brexit, the Irish border will remain the UK's *political* border and only land frontier with the EU. But it is completely unfit for purpose as an international border, probably the world's worst in social and economic terms, not designed nor intended to be one when established by Britain as a short-term expedient in 1920-21. It was simply made up of the county boundaries established by the English administration in the 16th and 17th centuries which were partly based on medieval Gaelic landownership patterns, clan loyalties, turf-cutting rights and suchlike. In 1925 there was an opportunity to iron out at least its minor kinks (as in the Drummully area where a small part of the South is 'trapped' within the North), but the opportunity was missed when the modest recommendations of the Irish Boundary Commission were ignored in Dublin and Belfast. So today it still wanders drunkenly all over the place for around 300 miles/500 kilometres, through towns and their shopping hinterlands, local communities, farms, and occasionally people's houses – front door in one state back door in the other.

Not surprisingly, this border leaked like a sieve. Even when highly militarized during the Troubles, when over 200 cross-border roads were closed (blocked, spiked or cratered, often at great local inconvenience), it was a leaky border. This has not mattered much since then as both the North and South were in the Single Market and there were very few goods worth smuggling (though fuel oil was - and easily, with for instance farms straddling the border and oil tanks with apertures in both states). But if Northern Ireland ceased to have access to the Single Market smuggling would take off as never before. The only thing that would not change dramatically is the border's inherent leakiness. Now – with the cross-border roads re-opened, but even if they weren't - it is also virtually useless for stopping an inflow of immigrants to the UK – a major motivation for Brexit in the first place. So in practice – irrespective of what does or doesn't happen on the Irish land border - the real, hard border for 'stopping immigration' will be the sea around the island of Britain and its ports and airports connecting with the island of Ireland (where often there are already checks on travellers from Northern Ireland). And further modifications would be needed if there were an independent Scotland which remains in the EU (a

prospect which led some Irish nationalists to get carried away on the notion the UK was about to break up with Brexit somehow delivering a united Ireland, but it's a prospect which now seems unlikely for the time being since the UK election with its SNP set-backs).

As we shall see, there are similarly strong reasons for locating the hard borders for freight at ports and airports. Just as the leaky land border would not be relied on to stop illegal immigrants getting into Britain, so too it could not be relied on to stop goods which contravene EU health and safety standards getting into the Republic and hence into the rest of the Single Market. To take a favourite unhealthy example: if cheap hormone-saturated beef from the US (perhaps imported as part of a British deal with Trump) were to get into Northern Ireland, it could easily be smuggled into the Republic (perhaps damaging the island's beef industry as well as people's health), and that in turn would call for checks on goods from Ireland at ports and airports in the continental EU. Alternatively, customs at Ireland ports might have to stop it getting into the island.

The sea borders are much more secure than the Irish land border. Most ports and airports already have physical infrastructures to process freight movements, and without inconveniencing the movement of people, though some will need expanding.

Disruption, a 'smugglers' bonanza' and 'paramilitary paradise' ?

Not only would an attempt to create a 'hard' or secure Irish border fail in its own terms, it is now widely recognized that it would create a whole series of new economic, social and political problems. Attempting to control the cross-border movement of people and goods would cause all sorts of collateral damage and disruptions, legal and, perhaps especially, illegal. These would harm the whole island, not just 'border communities' (and 'border communities' can effectively encompass most of five of Northern Ireland's six counties and the adjacent five in the Republic).

A 'hard' border would sever the free trade between North and South, destroy some of their cross-border production and supply chains, and seriously damage their substantially integrated but relatively fragile economies, perhaps especially the North's (making it more dependent on the annual subsidy from Britain, and the South even less willing to take over the responsibility). Jobs would be lost on both sides. Both would suffer from costly delays to freight movements which would clog up border roads and disrupt the daily travel of some 30,000 cross-border commuters (or what is left of them). It would inconvenience all the other thousands who live their lives on both sides or cross occasionally to socialize,

shop or use shared services.

Making the Irish border the Single Market's supposedly 'hard' but actually leaky border would turn the island into a 'smugglers' bonanza'. Differentials in the market price and (un)availability of a much wider range of commodities would escalate sharply. The border would again become an 'economic resource', but not only for local border communities which have suffered economically from the border's re-imposition, but also for organized criminal gangs and conceivably paramilitary organisations. Not everyone wants borders but it's mainly smugglers who benefit from leaky ones.

Politically re-imposing a 'hard' border would be extremely unpopular across the island. It would very probably provoke widespread and persistent popular resistance, mass protests and civil disobedience. More ominously, it could undermine the Good Friday Agreement and Peace Process which is explicitly based on cross-border institutions and co-operation - on minimising the practical economic and social effects of the *political* border. This in the short term was effectively the alternative to the contentious issue of removing the political border, while holding out the longer term possibility of politically re-uniting (a perhaps federal) Ireland by peaceful means if majorities North and South voted for it in a 'border poll'. A 'hard' border might simply wreck that strategy, leaving the only winners the paramilitaries who prefer violent means.

Building customs facilities along the border to control freight movements would be required of the Republic under standard EU rules, and it's been suggested doing it some kilometres back from the border-line (and would that be duplicated some miles back on the Northern side?). But whatever their precise location, such facilities would be an open invitation for the 'dissident republican' paramilitaries to re-run the IRA's 1950s 'Border Campaign' of attacking border posts and personnel, perhaps leading to a partial re-militarisation of border areas. Given the border's unpopularity, it would risk boosting the dissidents' presently meager support and small numbers, in turn boosting opposing unionist paramilitaries, and together they could conceivably re-ignite a mini- but still deadly version of the Troubles.

Avoiding all these problems requires avoiding a 'hard' border, and that requires an EU-UK arrangement for free trade to continue across the island. This in turn would allow the retention of (a modified version of) the island's vital trading links both with Britain (for the South as well as the North) and with the continental EU (for the North as well as the South).

The possible solution

There is wide agreement that Ireland needs a 'unique' solution (e.g., not creating a precedent for the different situation in Scotland, or regions in the EU such as Catalonia), but as yet there are few indications from officials about what it might look like (if they know?). They have generally been saying what they don't want, but not what they do want. However, loose talk demanding 'special status within the EU' for Northern Ireland with 'the Irish border moved to the Irish Sea' is quite misleading - and arguably counter-productive, simplistic or partial. A functionally and politically workable solution clearly has to be for the whole island, South as well as North; the 'flexible and imaginative solutions' which the European Council says it wants have to encompass continuing access to vital British markets for the island's partly cross-border agri-industry production – its components cannot be separated out without wrecking it - and access for the Republic's indigenous industries in general (with Britain taking over 40% of their total sales). Solutions have to take account of interests in Britain, the continental EU and the Republic as well as Northern Ireland to have any chance of being implemented. Solving the problem of the Irish border in the singular necessarily involves all the island's post-Brexit borders in the plural. Here being an island certainly helps - as the nationalist song puts it, 'Thank God we're surrounded by water'!

In short, Brexit threatens unique problems for both parts of Ireland; they will have knock-on effects on the rest of the EU and back on Britain; and they can only be resolved together through some necessarily wider negotiations between the UK and the EU with involvement from Ireland North and South.

At a minimum, a solution has to involve Northern Ireland being in the EU's Customs Union alongside the Republic. It might also involve joining the European Economic Area which is expressly designed to give non-EU territories (e.g., Iceland, Norway) access to the Single Market (as persuasively argued in *Northern Ireland and Brexit: the European Economic Area option*, by Brian Doherty *et al,* European Policy Centre Discussion Paper, 7 April 2017). Or some 'flexible', specially tailored version of it to better fit the Ireland situation (e.g., the EEA does not automatically include various areas such regional policy, Erasmus and research, or the CAP which people might want included given the importance of cross-border agri-industry).

All such solutions where Britain is outside the Customs Union require a re-casting of the island of Ireland's post-Brexit borders and customs regimes. Some Northern unionists may object that this makes their region an 'anomaly'. However, none of these options would affect Northern Ireland's *political* status as part of the UK; the reality is that the unique Good Friday Agreement has already made Northern Ireland an 'anomaly' in conventional sovereignty terms, unlike other parts of the UK; and it is the only part of the UK which will share a land border with the EU. Contrary to the assumption of some Irish nationalists

(perhaps carried away with the notion that the UK was breaking up), this land border as a *political* border of the UK - and the region's position within the UK - is not in question in these negotiations, but is a quite separate issue where any political change of status requires a 'border poll' ; and that, in my opinion, is very unlikely to be held in the present uncertain circumstances of Brexit, and for the same reason even less likely to get North and South majorities favouring political re- unification. Meanwhile, the EU itself is very familiar with anomalies – there is the 'reverse' anomaly of 'mainland' Denmark being in the EU while another part of the Danish state, Greenland, is not; that does not threaten Denmark's position in the EU, nor Greenland's in Denmark; and Greenlanders get EU grants and have EU citizenship by virtue of their Danish citizenship

Whatever details are eventually negotiated, the Irish border problem cannot be solved piecemeal. There has to be a coherent package of customs (re-) arrangements, not only for the movement of goods and people between the island of Ireland and the island of Britain, but also between Ireland and the continental EU, and between Ireland and the rest of the world. There will of course be some new costs involved, but most would happen anyway if there were a 'hard' but unreliable land border, and in any case they will be minor compared to the huge collateral costs – and absence of benefits - which the 'hard' border would inevitably entail.

The stakes are high, not only safeguarding all-island free trade, but, as an integral part of that, safeguarding the South's crucial access to markets in Britain, and the North's to continental markets. If properly handled, the obvious advantages compared to a 'hard' border should be enough to marginalize political opposition within Ireland. The threat of Ireland potentially suffering most from Brexit would be turned around. In this scenario the island will for most purposes be in a free-trade zone with Britain, and simultaneously in one with the continental EU. These larger zones will overlap in Ireland but elsewhere will be completely separated from each other by the *single* hard border which Britain and the continental EU want for themselves (as in a Venn diagram) – and here they can thank God that Britain too is surrounded by water. In effect Ireland would be an 'intermediate' space located between *two* relatively 'soft' borders between Britain and the EU (perhaps comparable to the double-door security system for banks where between the doors one is neither fully inside nor fully outside).

Princeton Professor Philip Pettit has detailed an imaginative, though incomplete, 'shared-space model' of how the entry and exit customs regulations can work (*Irish Times* 24 March). These are always complicated, especially for people and goods which originate 'somewhere else', but we can summarise the main points of his model. Firstly, customs regulations would stay the same as at present allowing the free entry of people and goods to the island from the continental EU and from Britain. Secondly, exit to the continent and to Britain would also follow

the existing rules of free movement for people and goods which originate in Ireland. But, thirdly, this free movement would *not* apply to people and goods which originated *outside* Ireland. For example, non-Irish EU citizens or would-be non-Irish immigrants travelling from Ireland can be denied entry to Britain - Ireland is not Britain's 'back-door for illegal immigrants'. Similarly it is not a 'back-door' for non-Irish goods which contravene EU standards getting into the continental EU - for example, the dreaded US hormone-saturated beef can be denied entry at the ports and airports on the continent (something that would probably have to happen anyway if the EU were to supposedly rely on a 'hard' but leaky land border).

The great strength of Pettit's model is that most existing economic arrangements stay the same with as little change as possible. However this static element and its associated apolitical or technocratic orientation are also a weakness because trade patterns will not stay the same, and the model is incomplete with respect to its political capacity to implement EU rules (nor would political opponents be hood-winked by apolitical language). He sees the customs authorities in the North and in the South mostly operating as presently for things entering and exiting their own part of the island, but there is no recognition that their 'shared-space' needs shared or joint management - a co-ordinating 'all-Ireland joint British/Irish authority' as suggested by John Palmer (*Social Europe,* 2 February).

This has to be added to give what we can call a 'complete shared-space model'. Here - just as ports and airports already have physical infrastructures - Ireland already has the basic political infrastructure of cross-border institutions (e.g., a North-South Ministerial Council and a British-Irish Council) on which to construct shared border management which can be made democratically accountable to both political jurisdictions, North and South. The customs officials at the island's ports and airports can be empowered to deny access to certain goods (e.g., US hormoned- beef), as required by EU rules or as agreed democratically in Ireland. This is absolutely essential as trade patterns, including with the rest of the world, change in new and perhaps threatening ways. Ireland's border management must be able to respond.

Making it happen

The reasons for avoiding a 'hard' land border are compelling, and there does not appear to be a genuine solution beyond some variant of 'the possible solution' outlined above. But 'the power of reason' is not enough to make it happen. Rather than relying on vague promises of a 'soft' border (even where well-intentioned), there needs to be active campaigning around a coherent solution and the mobilization of maximum public support, North and South from nationalists, unionists and others, to hold negotiators to their promises. 'It's the

politics stupid'. And to confront the obstacles and avoid the pitfalls, it will have to be smart and vigorous politics.

Ireland is not really a high priority for the EU and UK negotiators, which puts a lot of responsibility on the Republic as an EU member state, and it needs an ambitious strategy working in tandem with Northerners. The EU may not feel it owes the UK any favours - and that could extend to Northern Ireland despite its clear 56% majority vote opposing Brexit - but it certainly owes the vulnerable Irish Republic which has been 'EU loyal' to a fault. Dublin has worked hard to get support from fellow EU governments, and that may help Britain as well, for the Republic is 'caught between' Brexit Britain and the EU and it needs favourable relations with both while not being over-reliant on either. Northern Ireland, likewise vulnerable, will have a major concentration of Irish and therefore EU citizens living outside the EU who can demand to be heard. If the EU is politically smart - always a question - it will reward its supporters.

The Brexit border issue is inevitably entangled with Ireland's national conflict, but if nationalists and unionists are smart – sometimes another big 'if' - they will acknowledge (now that the electioneering is over) that the threat of a 'hard' land border is not simply another round of their familiar conflict, but something new with the potential to seriously damage all sides. While some nationalists saw Brexit as an opportunity for a border poll, the late Martin McGuinness, who had intimate understanding of Northern politics, was visited in hospital by the SDLP MP Mark Durcan and was reportedly very worried about the possible negative consequences for the Peace Process (*Irish News* 23 March).

It is of course possible that a reckless and de-stabilising Brexit might ultimately lead to Ireland's political reunification, but it would be a very reckless and irresponsible nationalist who gambled on something so inherently unpredictable. It is perhaps equally possible - who can say? - that it might lead in the opposite direction, re-igniting and prolonging the conflict in the North and the associated or reactive partitionism in the South. And we saw that a border poll would be unlikely to deliver the desired result because of Brexit uncertainties, but more to the point demanding one now is arguably a divisive distraction in the face of the immediate threat of a 'hard' border which calls for the maximum possible united response from all sections of the population (a political opportunity which more far-sighted nationalists might welcome).

However, nationalists have also addressed the 'hard' border issue, the SDLP for example publishing "Securing our Future in Europe: Proposals for a Special Status for Northern Ireland within the EU", and Sinn Fein publishing "The case for the North to achieve Designated Special Status within the EU". They make some good points but basically want Northern Ireland to stay in the EU, and all its relationships (including present funding) to stay the same, despite Britain leaving the EU. Their proposals make sense as maximalist party political

negotiating demands rather than worked out plans for a post-Brexit Ireland, but unfortunately they come across as unrealistic 'wish-lists' as there is little or no indication of how they might be achieved.

Unionists in contrast have had relatively little to say about Brexit, partly no doubt because they are divided on the issue. The smaller Ulster Unionist Party was 'on balance' anti-Brexit, while the North's largest unionist party, the DUP, is pro-Brexit, albeit a 'soft' version apparently, though this is a problem which puts it out-of-step with the North's 56% anti-Brexit majority. Furthermore, Ulster unionism has always had an irreconcilable nationalistic fringe (or core?) – by no means all the DUP, nor only in the DUP - who prefer nostalgic fantasies of absolute British sovereignty to dealing pragmatically with the problems we face - including ones created by conventional sovereignty. However this should not blind us to the greater reality that the 56% anti-Brexit majority included about a third of unionist voters, and very few pro-Brexit unionists actually want a 'hard' border (while of course most Southerners are totally opposed to Brexit).

Some new conclusions

Brexit has become even more unpredictable since the UK General Election. Some people think a 'soft' version has become more likely - e.g., the UK stays in the EU's Customs Union (CU), and perhaps the EEA, which would solve a lot of border and other problems at a stroke through reducing the need for economic borders within the CU.

But others think the possibility of a 'hard' Brexit has increased, which would intensify our 'hard' border problem. A weakened and inept British Government might 'crash' - or be 'crashed' - out of the EU before a deal is finalized, perhaps propelled by acrimony over the UK's 'divorce bill', perhaps because 'hard' Brexiteers decide to short-circuit a long 'transition' before departure and/or ensure that the UK does leave the CU as Theresa May promised. Leaving without a deal could mean that all UK-EU trade would then need customs clearance.

The Tory Party's 'hard' right-wing Brexiteers see leaving the CU as essential to make the most of Brexit through the UK being able to make its own - and better - trade deals with countries all over the world. But to their opponents this smacks of imperial delusion. They ask how could these hypothetical deals possibly equal, never mind surpass, the actual trade with the EU and the benefits from the existing world-wide trade deals already negotiated by an economically much stronger EU which the UK as a member state currently enjoys? But staying in the CU probably depends on the Tory right being politically defeated.

Perhaps there will be a long and orderly 'transition', but it is also conceivable that

the Tory Party could split, and/or the Government could fall, or a 'crash' could happen sooner rather than later. Here our only safe conclusion is that developing an alternative to the 'hard' border needs to start right away.

Two developments since the election are particularly relevant: firstly, Mrs. May's Government now depends on the support of the pro-Brexit but anti-'hard' border DUP, which raises the question of its attitude to the CU; and secondly, the Irish Government is beginning to formulate a solution to the 'hard' border through a 'unique status' which connects Northern Ireland to the CU.

There is nothing in the DUP's stated agreement with Mrs. May about its attitude to the CU, but the border issue was almost certainly discussed and may feature in an unstated side-deal or tacit 'understanding'. Here there's a lazy assumption that because the DUP is pro-Brexit and seen as 'right-wing British nationalist' it necessarily lines up with right-wing British Tories who oppose the UK being in the CU, but there is some evidence suggesting otherwise. It's true there are some DUP politicians who do oppose CU membership (as we've seen unionists in general are divided on Brexit), and actual political outcomes may hinge on changeable parliamentary arithmetic at Westminster's. However, the DUP's pragmatic leadership will be aware that the UK staying in the CU best suits the party's own objective interests: it not only minimizes the 'hard' border problem, it also minimises the possibility of a solution which requires border checks and symbolic differentiation between Northern Ireland and the rest of the UK (and we saw that they would be needed anyway if there was no solution and a supposedly 'hard' but leaky land border became the border of the CU).

DUP leader Arlene Foster as First Minister along with deputy Martin McGuinness wrote to Mrs. May last August about initial concerns, including the border becoming 'an impediment to people, goods and services', a 'catalyst for illegal activity' and 'undermining the peace process'. Nothing was written about how these concerns should be handled, but the simplest answer involves Northern Ireland being in the CU, either along with the rest of the UK (this was before May signaled her intention to leave the CU), or in a separate arrangement for Northern Ireland. Then in a piece headlined 'Northern Ireland leader says special status for province possible after Brexit', Mrs. Foster reportedly indicated that 'Northern Ireland could have a different relationship to the European Union's single market or customs union from the rest of the United Kingdom following its exit from the EU'. Again there were no details but she emphasised that the North will be the only part of the UK to have a land border with the EU and that she wanted to avoid a 'hard' border with customs posts and checks (Reuters [World News] 29 October 2016).

More recently, in response to the SDLP and SF demands for the North to get 'special status within the EU' (emphasis added) the DUP has been widely reported as rejecting 'special status' and saying 'no' to any checks on citizens entering Britain

from Northern Ireland; or in another version 'no' to any new checks, for of course travellers from Northern Ireland regularly have to show their ID (e.g., a Driving License showing place and date of birth, or a Passport) when entering Britain, so this is hardly an insurmountable 'game-changer'. But the DUP rejecting what are seen as nationalist demands for Northern Ireland to stay in the EU when the rest of the UK leaves is hardly surprising – they are all too easily interpreted as an attempt to politically decouple Northern Ireland from the UK. Party spokespeople reportedly went on to claim it was unacceptable because it created tariffs and barriers between Northern Ireland and its biggest market, Britain. However the basis of this claim is uncertain for neither the SDLP nor Sinn Fein indicated how their wishes might be achieved; though by the same token, they don't provide any details with which to counter the DUP's depiction of their position either, but they do say they wish tariff-free trade with Britain to continue. That, and tariff-free trade with the Republic and the rest of the EU, can be achieved by the 'complete shared-space model' of borders and customs described above, without Northern Ireland staying 'within the EU'.

Reflecting the mixed feelings of many unionists, the DUP seems to favour a 'soft' Brexit in order to get a 'soft' border, which is not the direction Mrs. May was heading. They may not work hard enough to stop a 'hard' Brexit but would almost certainly baulk at 'crashing' out of the EU without a deal (though in that event their ten votes would hardly be enough to save a Tory government). What they do say they want is a 'seamless and frictionless' border (actually one of the stronger verbal rejections of a 'hard' border currently in circulation). Again there is no indication how their wish might be achieved; but whatever else a 'seamless and frictionless' border might mean, it cannot mean the CU stopping at the border between the six and the twenty-six counties. Rather than accusing them of being insincere it is more sensible to accept them at their word, and if necessary hold them to it.

The previous Irish Foreign Minister, Charlie Flanagan, also rejected 'special status' for Northern Ireland (presumably on similar grounds to the DUP or out of concern about assumed sensibilities). But there was nothing positive on offer when Michel Barnier, the EU's chief Brexit negotiator, kept asking the Irish in particular to come up with 'flexible and imaginative solutions' to the border problem. Now, however, the new Minister, Simon Coveney, has begun to formulate an answer, still incomplete and hesitant but clearly a shift in policy (Irish Independent 23 June 2017).

He has been given Brexit responsibilities and intimated that the Government's 'bottom line' is maintaining an 'invisible border' (like the present). He poured scorn on (British) notions of this being achievable by hi-tech: a customs barrier, even an 'e-border' using technology, would be a non-runner.... "We're not going to stand for

that". Instead he has come out in favour of some form of 'special status' (later correcting himself to call it a 'unique' status) for Northern Ireland to ensure the border remains as close as possible to the current arrangement. But whatever it's called, this would mean "Northern Ireland retaining a connection to the customs union", and he added that Michel Barnier was on board. The Republic will be in the CU, "So if we're going to avoid a hard Border ... there needs to be some relationship with the customs union and common market that allows Northern Ireland to be able to operate the way that it does today".

Its constitutional status and the integrity of the UK would not be threatened and Northern Ireland would leave the EU with the rest of the UK. However his answer was less than convincing when asked in the interview did he mean that if the North was in the CU and the rest of the UK was outside it and a border was still needed, would it have to be in the Irish Sea? "Not necessarily", he replied, but then went on to talk vaguely about the need to discuss whether checks could be facilitated at airports and ports with Ireland and the UK working together. It sounded like he had not fully thought it through.

*Was the response of Catherine Day, adviser to Jean Claude Juncker, therefore perhaps understandable when she bluntly declared that she couldn't see 'how part of a non-member state can be part of the customs union' (*Irish Independent *27 June 2016)? Day asked, in the event of the British doing 'a less attractive deal' with another part of the world (our US hormone beef example again), "Which rules would apply to Northern Ireland? The EU rules, or the British rules, it just doesn't work". Fair question, but wrong conclusion (and not much sign of imaginative or flexible thinking – in fact rather odd coming from a European Commission official who must know of similar 'anomalies' in the EU (e.g., the Denmark/Greenland case, page 9 above). The answer is neither simply EU, nor simply British rules, but rules administered jointly by Ireland North and South in the context of an EU-UK agreement, as already outlined in the 'complete shared-space model'.*

As we have seen, any solution to the border problem involving the North being in the CU and Britain outside it necessitates some version of the all-island customs regime, vis-a-vis Britain, the contintental EU and the rest of world. And it's not a 'special deal' for Northern Ireland but an arrangement for the whole island which also minimizes the damaging knock-on effects on the rest of the UK and the rest of the EU. Let's hope they co-operate, and that the public and politicians in Ireland have the sense to work together to make it happen.
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