



Wilfried
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Brexit and the Irish question

IN FOCUS

**Part Three: Solving the Border
Conundrum?**

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Summary

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The ‘known known’ in the basket of uncertainties that is Britain’s withdrawal from the EU is the intention of the Commission’s negotiating team to maintain the integrity of the four freedoms. On the British side the objective is to enjoy some of the benefits accruing from its EU membership, whilst at the same time seeking to fulfil the democratic mandate to leave the EU conferred by the referendum verdict. In large part the withdrawal negotiations that ensued after the British Government invoked Article 50 have been a contest between these quite different, indeed conflicting, mandates. Both sides, each from its own standpoint, have offered quite different solutions to the conundrum of the Irish border. With Brexit day fast approaching, this singular issue has become a proxy for the altogether wider question of future EU–UK relations. At the time of writing, the entire sweep of these tense negotiations is concentrated on resolving the ‘Irish Question’—without success until finally a ‘technical’ agreement’ was reached by the negotiators. Whether this ‘solution’ will survive resistance from arch-Brexiteers remains to be seen.

Keywords Brexit, Ireland, United Kingdom, Northern Ireland, Peace Process



Why Can't We Just Move the Irish Border?

During the opening phase of the Brexit negotiations, the UK made various proposals for addressing border management in Ireland. By no means were they all convincing answers to the problem. These proposals have in common what game theorists describe as 'free riding' and EU negotiators as 'cherry picking'. The UK wants to retain all or most of the commercial advantages of EU membership whilst avoiding any of the requisite responsibilities, not least the acceptance of the free movement of people and continuing legal oversight of common trade and related matters by the European Court of Justice.

The most controversial proposal to emerge from these negotiations so far is one favoured by the EU27 negotiators and some British politicians and business interests. It would avoid a politically contentious border in Ireland by relocating the border to the middle of the Irish Sea. This idea eventually became the EU's 'backstop' arrangement for ensuring that, in the event of a no-deal Brexit, there would be assurances that a formal border would not be reinstated on the island of Ireland. The principle of a backstop was agreed by all parties at the meeting of the European Council that concluded the preliminary withdrawal negotiations. Since then, however, the backstop idea has come to be interpreted quite differently by the various parties. A backstop is a mutual understanding whereby a British withdrawal agreement would not happen without arrangements being in place to prevent a hard border.

Seen from Brussels, 'backstop' is intended to ensure that there will be no border in Ireland. To that end, Northern Ireland alone of the constituent parts of the British State would remain a full member of the customs union and / or the single market. As pragmatists see it, the practical advantage for Northern Ireland remaining in the present—or some reconfigured—customs and / or Single European Market / European Economic Area would be the maintenance of closer regulatory alignment across the Irish border, and in this way the avoidance of the usual paraphernalia of a formal border. Northern Ireland would continue to conform to EU technical standards and other regulatory requirements. Likewise it would remain within the Common External Tariff, continuing to observe EU rules on customs and related tariffs and duties.

However, this proposal is firmly resisted by most Brexiteers, whether in Northern Ireland or on the British mainland. They remain ideologically



committed to taking the UK out of the EU in any and every sense. Moreover, the proposal is unlikely to succeed precisely because it fails the supreme ideological test, since it comes up against what for these resolute sovereigntists is the inviolable redline of ‘taking back control’ of national borders. For Unionists, whether in Northern Ireland or mainland Great Britain, this proposal is repugnant, a clear redline and as such politically untenable.

The proposal to move the Irish border to the middle of the Irish Sea has found greater favour with mainstream politicians in the Republic, nationalists in the north and the Brussels institutions. But by no means do all of them share the same intentions. The reasoning here is that installing an east–west border between the whole of Ireland and the rest of the UK is the only feasible solution to the otherwise insuperable conundrum of a Brexit that avoids a hard north–south border on the island. The proposal intends to keep Northern Ireland, at the very least, within the customs union, although a more ambitious variant of the idea anticipates the Province remaining in the single market too.

However, what this eccentric proposal offers in common sense, it lacks in political acumen. For nationalists it offers a clear route to eventual Irish reunification. But for pragmatists in Dublin, an invisible boundary or non-border is primarily a means for obviating the impediments of economic barriers and avoiding a revival of the political tensions supposedly dispelled by the peace process. In this clash of irreconcilable preferences, politics has prevailed over rationality. When this proposal was first raised during the preliminary withdrawal negotiations, it immediately brought accusations of betrayal from Unionists, who saw it as proof positive of a pernicious plot by nationalists to use the border predicament as leverage for bringing about Irish reunification.

For similar if not identical reasons, the British government too has refused to contemplate this proposal, or at least the backstop version preferred by Brussels and Dublin. This it has done, in part, because the governing Conservative Party is ideologically wedded to the historical idea of an indivisible union. But there is also a more prosaic reason: since their setback in the 2017 general election, the Conservatives have found themselves dependent for a working parliamentary majority on 10 pro-Brexit Democratic Unionist MPs elected for Northern Ireland constituencies. At the same time the Conservative Party wants to avoid a constitutional crisis. The contemporary political climate in Britain is hardly conducive to radical constitutional engineering. In the aftermath of the 2014 Scottish independence referendum, the UK has been



confronted by an existential challenge from resurgent Celtic nationalism. Moderate Northern Irish Unionists and even mainstream public opinion on the mainland is more resistant than favourable towards anything that might loosen the Britain's constitutional bonds further.

Competing designs for the border backstop

The prospect of reconfiguring Britain's constitutional arrangements is seen altogether differently on the EU side. Separating Northern Ireland from mainland Britain, if only for the relatively benign purpose of softening the material consequences of Brexit for all concerned, remains the EU negotiators' preference for resolving the impasse on the border issue. Dismissed out of hand by the British Prime Minister in talks in Brussels in December 2017, this chimerical proposal reappeared unilaterally and without warning in the EU27s final draft statement on the withdrawal terms. The European Council inserted this as a quid pro quo for its willingness to extend the time frame for the UK's final exit, from March 2019 to December 2020. How feasible are proposals for relocating the Irish border, if only for administrative purposes? Arrangements already exist for repositioning Britain's border with France. These are provided for in the Le Touquet Treaty, which was signed in 2003 by Prime Minister Tony Blair and President Jacques Chirac.

This protocol was a response to particular and pressing circumstances, whereby Britain had become a destination of choice for thousands of non-EU migrants, many without legal status or moral entitlement as asylum seekers to reside in Britain. There is no technical reason that prevents similar arrangements at the Anglo-Irish border, relocating requisite administrative checks to ports such as Liverpool, or indeed to any other British and Irish airport, port or ferry terminal. Thus, there are no technical barriers, but there are certainly political objections in view of the visceral politics in the governing Conservative Party, where many parliamentary members and activists see control of the border as emblematic of an inalienable and indivisible sovereignty. For many Northern Irish Unionists, too, the 1921 border remains a potent symbol of their British allegiance.



Common sense and practical solutions can only go so far. They do not constitute a convincing response to the deeply embedded affective sentiments that drive identity politics. Unionist acceptance of the obvious benefits of cross-border and even inter-communal cooperation in no way implies a readiness to abandon reflexive tribalism and to commit unequivocally to the peace process regardless of how this might affect their political allegiance and cultural connections with the rest of the UK.

The proposal to relocate the border in accordance with the EU's proposed backstop remains on the table, if only as a last resort should there be no agreement between EU–UK negotiators during the coming endgame. Meanwhile, Dublin has complained that the British Government has failed to make any detailed, let alone convincing, response to the backstop proposal it maintains Theresa May accepted during the December 2017 meeting of the European Council that completed the first stage of these negotiations. Between December 2017 and summer 2018 something of the intent of the earlier Council deliberations somehow got lost in translation or was conveniently forgotten in London. In as much as London even acknowledges the terminology, it prefers a narrative of events that accords with the British national interest.

The EU27, on the other hand, interprets the idea of a post-Brexit backstop quite differently: not as insurance for the UK but as a guarantee of the only reliable peace process in Ireland. What is more, for the EU the arrangement would apply only to the Irish border and not to the entire EU–UK border. And unlike the British version, it would be without a time limit. In this interpretation Northern Ireland would remain fully aligned to the EU's customs territory and the VAT regime and within a single market for goods. Moreover, EU negotiators insist that a backstop can only accommodate British insistence that Brexit avoids a hard border in Ireland by establishing two quite distinct customs regimes: one that applies solely to Great Britain and the other exclusively to the whole of the island of Ireland with a border between the UK and the whole of Ireland in the Irish Sea.

Recent events have merely reinforced British intransigence over an outcome that presents the Government with a serious predicament. This involves having to accept either the Brussels hard backstop option, which challenges the constitutional integrity of the British State; or an arrangement for future trade that means remaining in something very like



the existing customs union. To avoid what to them are both unpalatable outcomes, hard Brexiteers in Parliament inserted amendments to the Customs Bill that make any such backstop illegal under UK law. By doing this, they sabotaged the prospects for any form of residual customs arrangement. By way of response, the Government, having no majority of its own, chose political survival over logic and accepted the amendments.

For its part, the EU has inverted this convenient and 'principled' British interpretation of its proposal. It continues to make its agreement to a withdrawal arrangement conditional on the UK's acceptance of the Brussels version of the backstop, which its negotiators consider to be the only reliable guarantee of a soft border. For this very reason, if no mutually agreed solution is found to the border imbroglio, the British Government, caught as it is between quite different and contending claims of what is in Ireland's best interests, is more likely than not to walk away from these negotiations without an agreed deal. This would mean, in effect, preferring the vicissitudes of 'crashing out' of the EU to agreeing to something that might accelerate what it fears could be the breakup of Britain.¹

Bespoke arrangements, hybrid solutions

Throughout these negotiations the British government's preference has been for what the Prime Minister has described as a bespoke arrangement for future trade relations with the EU, one that avoids a hard border with the EU27, and not least Ireland. Any such arrangement has been resisted thus far by EU27 interlocutors, who object to what they describe as cherry picking.

One example is the British proposal to include UK-based financial services in a special services arrangement. This would permit British banks, brokerages and finance companies to participate in aspects of the single market in services, but with only nugatory regulatory control exercised by European institutions. Such an arrangement would provide

¹ M. Morris, 'To Break the Irish Backstop Deadlock, May Needs Her Biggest Fudge Yet', *The Guardian*, 20 July 2018, accessed at <https://www.theguardian.com/commentisfree/2018/jul/20/irish-backstop-brexit-fudge-theresa-may-chequers>.



UK financial services with a ‘passport’ to trade in the lucrative EU financial services market on much the same terms as those currently enjoyed by the city of London. At the same time, however, it would exempt the UK from having to meet the customary obligations that come with EU membership, not least acceptance of free movement, being subject to the European Court of Justice and continuing regulatory oversight by the Commission. Hardly surprisingly, the EU has refused any such privileged bespoke arrangement.

Associate EU status exclusively for Northern Ireland

The Government prefers an outcome to this conundrum that lies somewhere between the proposed solutions in extremis outlined above and the avoidance of a hard border. Whether this is attainable is doubtful, as continuing negotiations have failed to resolve the impasse. Numerous proposals from the British negotiators for minimising disruption to current free-flowing transit arrangements at the EU–UK border, all of them based on the premise that Northern Ireland will remain at least in some functional matters in close association with the EU, have failed to answer EU objections. What these various median proposals have in common is the intention to reassure the Europeans that sensible or practicable arrangements at the border can be found that will minimise disruption; facilitate continuing trade and transit, not least across the Irish border; and are compatible with everyone’s redlines.

Dismissing this as merely fanciful, the EU negotiators have countered with quite different proposals. Amongst those from Dublin, supported by EU27, is a proposal for Northern Ireland, rather than the UK per se, to remain an associate member of the single market. The north would retain its membership of the European Economic Area, an arrangement that would permit free movement of goods, services, capital and people. This would give businesses in Northern Ireland continued access to public procurement contracts throughout the EU, and especially in the Republic, its principal market for this type of trade. It is this proposal that, after subsequent adjustment by Union negotiators, eventually became the EU’s preferred version of the backstop. Brussels maintains that something like this arrangement would alleviate anxiety amongst border communities about a loss of EU rights and negative consequences for economic prospects, both of which are significant elements of the



Belfast Agreement.² Northern Ireland would thus continue to participate in those EU programmes that have signally contributed to the peace process. These include cross-border co-operation on environmental matters; accessing EU financial and programmatic support for initiatives in tourism, public health, and not least police and judicial co-operation (including participation in the European Arrest Warrant scheme and access to EU data-bases on criminal intelligence); and the Erasmus programme for student mobility.

The UK's response to this proposal has been less than positive. It has merely reiterated the familiar assurance that in the event of failure to agree a mutually comprehensive free trade arrangement with the EU, Northern Ireland would have the right to decide whether to follow UK or EU rules in cases of future regulatory divergence. This response merely adds confusion to what is already a convoluted situation. In particular, the admittedly oblique references from British officials to the effect that a resolution of the border conundrum might necessitate differential arrangements for Northern Ireland conflict with the frequent British assertions that the eventual outcome will in no way contravene the fundamental constitutional principle that Northern Ireland remains an 'integral' part of the British State.

Customs partnership

Another British Government proposal has been variously and vaguely described as 'a new customs partnership', and in its latest format as a 'customs arrangement'. This is the option preferred by the Prime Minister and those in her Cabinet who want to stay as closely aligned to the EU's customs union as possible after Brexit. An official statement issuing from London affirmed this proposal as an intention to align 'our approach to the customs border in a way that removes the need for a UK–EU customs border'.³ A key aspect of this proposed hybrid solution is that it 'would involve the UK mirroring the EU's requirements for imports from the rest of the world where their final destination is the EU', even obliging the UK's customs service to collect and pass on duties at its borders on behalf of the EU.⁴

² B. Doherty et al., *Northern Ireland and Brexit: The European Economic Area Option*, European Policy Centre (Brussels, 2017), 39.

³ UK, HM Government, *Future Customs Arrangements. A Future Partnership Paper* (15 August 2017).

⁴ *Ibid.*



This controversial proposal was included in the ‘Chequers Agreement’. Proposed as a non-reciprocal arrangement, it was supposed to fix the final British negotiating position. Even in the unlikeliest of circumstances that agreement on the unilateral collection and redistribution of EU duties by Britain might be achievable in principle, customs experts maintain that the system of variable duties would take years to implement properly, and even then be too complicated to operate.

The principal complaint from Brexiteers here is much less about technical complexity than about their suspicion that any such an arrangement is intended to keep the UK within the EU’s legal ambit. More particularly, an arrangement of this kind would keep Britain under the jurisdiction of the European Court of Justice and subject to the EU legal order. Neither of the hybrid arrangements proposed so far by British negotiators as prospective solutions for managing British trade with the EU post-Brexit—and in particular, for resolving the Irish border question—has even found consensus in the British Cabinet.

The opposition Labour Party has proposed its own variation of a more formal customs arrangement. Many trade unions and business interests have set forth variants of their own. The Labour Party’s proposal is to acknowledge the ‘will of the people’ as expressed in the referendum by leaving the customs union and to replace it with an as yet unspecified form of a customs union based on continuing EU–UK regulatory alignment. Labour spokespersons hope this arrangement will somehow circumvent the EU’s familiar accusations of cherry picking.⁵

The intention behind these median fixes is political as much as practicable: to find a convenient way to square the circle of a soft border in Ireland, whilst simultaneously according with domestic political expectations for a meaningful Brexit that ‘takes back control’ of borders and recovers sovereignty, albeit with only minimal disruption to current trade flows. On the evidence of the negotiations to date, these are less than convincing, let alone deliverable, fixes, As such they have been criticised by Brussels.

These median solutions certainly avoid the so-called redline objections by Unionists everywhere that the UK is and must remain a singular and historic political and constitutional entity, recent devolution notwithstanding.

⁵ P. Walker, “‘UK Will Have to Have a Customs Union Post-Brexit’, Says Corbyn”, *The Guardian*, 20 February 2018, accessed at <https://www.theguardian.com/politics/2018/feb/20/uk-will-have-to-have-a-customs-union-post-brexit-says-corbyn>.



In any case, they make these objections ‘on paper’ as exercises in academic serendipity. Nevertheless, as we shall see below, the case for such a median outcome—one frequently made by British negotiators—has been less than persuasive as an exercise in practical politics. Both to EU counterparts, by persuading them that the UK is fully cognisant of their own redlines on the singularity of the single market and its legal and regulatory order, and to arch Brexiteers implacably opposed to the constitutional vandalism they perceive as following from such concessions.

However, the consequences of resisting any such concessions are patent. The dislocation of transborder commerce, dilution over time of regulatory harmonisation, and disruptions in sociopolitical and civic co-operation are all likely casualties of anything other than the softest Brexit. All of them might be averted or at least lessened if the UK remained within the single market and customs union. This outcome would also ensure the continuing participation by Irish stakeholders in those EU programmes that have contributed so much to the normalisation of political relations and to fostering, however conditionally, cultural accommodation, if not quite outright reconciliation, between the communities in the north and on either side of the Irish border. A stark choice is to be made here, and presumably as a rational calculus of likely outcomes. But in politics plain common sense and ideological preferences are by no means easily reconciled, and so it has proved in this case. The British Government’s determination to deliver what it considers a mandate from the electorate and Brussels’ insistence on the integrity of the single market seemingly preclude agreement on the type of hybrid solution that might just resolve the Irish border conundrum for all concerned.

‘Regulatory alignment’ and ‘standards equivalence’

On one level, common sense seemingly commends this proposed solution. After all, at the moment of UK’s withdrawal from the Union, complete alignment will exist between the UK and EU27 on every matter pertaining to regulatory and standards requirements. This is the legacy of the UK’s assimilation of the *acquis communautaire* during 46 years of membership.

The intention here is to avert a regulatory void or juridical lacuna in the immediate aftermath of Brexit. For that very reason it is a merely precautionary and functional response to the clear political trajectory that



is driving Brexit, whose imperative is full recovery of what its supporters claim is the ultimate prize of national sovereignty. The objective is to shadow the EU's regulatory order during an uncertain and unpredictable transition period, but to do so as a sovereign preference and entirely in the national interest and in a manner that in no way compromises the intention for Brexit. The Government's preferred strategy here has shifted in the course of the negotiations from proposing full alignment of regulatory standards to merely 'equivalence'. It is an indication of the determination in Conservative Party ranks to disengage as soon as is feasible from the EU regulatory order.

The logics here are predictable enough. Future trade arrangements between the UK and third parties will surely dilute the present normative fit. In particular, this will happen because the bilateral trade treaties the UK is looking to negotiate with global partners will more often than not result in positive-sum bargains. And these normally require compromise and concessions on standards and regulations by the party with the least bargaining heft. The party with the most economic heft in any such bilateral negotiations is always likely to impose its own regulatory standards as a requirement for closing the deal.

For its own political purposes, the British Government continues to assert that it will be able to make straightforward and reciprocal bargains, thus replacing trade lost due to changed relations with the EU through bilateral agreements with global partners. However, such arrangements are likely to be anything but straightforward. Trade bargains are always hard-driven. Prospective partners seek to impose their own conditions and prioritise their own interests. This much is clear from recent events. Following on the heels of May's 'final' attempt to unite the Cabinet around an agreed position, the latest variant of Britain's hybrid 'customs facilitation' arrangement features a common rule book. But this was immediately denounced by Donald Trump as inimical to what this master of transactional bargaining and the art of 'the deal' prefers as an exclusively 'America First' diplomacy.

Some commentators take a rather more sanguine view of the likely outcomes here, maintaining that regulatory alignment need not apply to EU–UK economic relations in their entirety, to every product or service. Their case is that some degree of regulatory alignment might be possible, but only where it is in the mutual interests of all parties and required for



maintenance of a soft border in Ireland. One such proposal is to limit regulatory alignment to trade between the EU and Northern Ireland, and then only in those areas of economic activity that are critical for cross-border trade between the Republic and the North. In particular, this would apply to sanitary and phytosanitary regimes—in plain language, to rules that ensure food safety, and animal and plant health standards. But even if this was feasible in principle, doubts remain on the EU side about the workability of such complex and variable arrangements.

The technological ‘fix’?

Less politically contentious although equally problematic is the proposed solution to the border management issue often referred to as the technology ‘fix’. This was put forward by the British Government in its official position paper on future customs arrangements.⁶ It is one of two distinct yet closely related proposals for avoiding a hard border in Northern Ireland and for facilitating the smooth transit of goods—and to a lesser degree, services and people—between the UK and the EU27. This ‘highly streamlined customs arrangement’ is described in official jargon as ‘maximum facilitation’ (max-fac).⁷ This refers to a procedure for ensuring continuing trade flows between the UK and the EU27, but one that is some way short of a comprehensive customs union. Accordingly, a smart digital arrangement ‘would aim to: continue some of the existing arrangements between the UK and the EU; put in place new negotiated and potentially unilateral facilitations to reduce and remove barriers to trade; and implement technology-based fixes making it easier to comply with customs procedures’. As well as using advanced technology, this strategy would permit exemptions from the usual customs checks for small businesses. Moreover, it would supposedly harness reciprocal goodwill between the authorities in both jurisdictions in order to circumvent hindrance caused by excessive formalisation at the border.

The intention here is to avoid reinstating an administratively problematic and politically contentious hard border in Ireland, by operating, where possible, unobtrusive checks away from the actual border. This would involve ‘utilising the UK’s existing tried and trusted third country processes for UK–EU trade, building on EU and international precedents, and

⁶ UK, HM Government, *Future Customs Arrangements. A Future Partnership Paper* (15 August 2017).

⁷ *Ibid*, p.2.



developing new innovative facilitations to deliver as frictionless a customs border as possible.⁸ The British Government has made much of the successful technological arrangements in place at the Nordic border for ensuring rapid transit. Needless to say, the EU side has repudiated any such comparison as entirely misplaced, rebutting the technology fix (combined with differential customs and tariffs, and some degree of regulatory alignment) as being impossibly complicated and hard to operationalise. Meanwhile, Brussels remains sceptical about the workability of such schemes, given both their complexity and the lack of suitable technology for preventing the illicit movement of goods and people from third countries into the EU market via a permeable British border in Ireland.

The Irish border undoubtedly presents a unique challenge, although there will be comparable if by no means identical difficulties in the post-Brexit transit of goods and people between Gibraltar and Spain. Greece and Cyprus too have signalled concerns, shared by Brussels, that ambiguity over the state of the Irish border might set a risky precedent for relations with Turkey or other neighbouring non-member states. These collateral issues confirm that the adverse consequences of setting up border controls between the UK and the EU27 will by no means be confined to the border in Ireland even if historical precedent suggests that their worst political outcome is likely to occur there. To date, the British Government's hybrid offers on border management are rather more fanciful than feasible. They are especially problematic in the case of the UK–Irish border because they offer no firm assurance to those who inhabit the region about avoiding the incipient threat to a still fragile peace.

Hybrid solution or merely hydra? Prospects for a border outcome

Politics is never straightforward, even between allies and friendly neighbours. It is conflictual by definition, and these current negotiations are no exception. Only thorough-going nationalists with an exaggerated sense of national entitlement would expect anything other than hard bargaining from Brussels in defence of what the Commission's representatives see as its legitimate mandate to 'speak for Europe'. The UK's intermittent offers vary as to their content but not their intention. They constitute a medley of what London has prescribed as workable solutions to the problem of

⁸ Ibid.



post-Brexit relations. Each of them is framed in the certain knowledge that after Brexit day the border between what will be two quite separate legal jurisdictions and economic regimes will become the locus of future trade and positive political and security relations between formerly close partners.

It remains to be seen whether some workable arrangement is the way forward, the only feasible route out of present impasse, or merely a many-headed hydra, a recipe for Britain crashing out without interim arrangements in place, thereby ensuring discord and chaos. As things currently stand, any future outcome remains in the balance. All that can be said with any certitude about the prospects for accommodation and compromise between the two so far irreconcilable negotiating positions is that this outcome will require considerable movement, significant compromise by both sides.

Even before Michel Barnier's tepid response in the July 2018 White Paper to the 'final' British offer, the Government in London had decided to circumvent the Commission. It would employ bilateral diplomacy through ministerial excursions to selected member states seen as key players and prospective allies. These tactics were intended to unravel the Commission's united front and loosen its collective hold over the member states, on whose behalf it exercises a negotiating mandate on the terms for the UK's withdrawal. British ministers have embarked on contemporary versions of the medieval pilgrimage of grace, travelling around the EU capitals. They intend to encourage some of the leading member states to defect from the Commission line by appealing to their distinctive national interests. These tactics are too disjointed to be called a 'strategy'. There is something of desperation about them, as the clock ticks remorselessly on towards Brexit day.

There is no convincing evidence that the recent increase in bilateral British diplomacy, in countries such as Belgium and the Netherlands, has actually changed minds, let alone weakened the political resolve of the EU27 to maintain a solid front in its negotiations with the UK. If the present united front does hold, Britain's preference for a Brexit that encompasses some variant of the hybrid solution discussed in this paper will certainly evaporate. In that eventuality, London's options will be severely constrained. On the one hand, it can crash out without a deal. On the other, it can accept what the EU has argued for from the outset of



these negotiations and continue in close alignment in a customs union that maintains the integrity of the EU's current trade regime.

As the negotiations continue, prospects for the latter outcome increase. Even the phlegmatic Governor of the Bank of England, Mark Carney, has called the chances of a 'no deal scenario' 'uncomfortably high' if 'highly undesirable'.⁹ Meanwhile, British business at every level and on all sides has been exhibiting growing uncertainty, indeed alarm, at what it sees as a prospectively catastrophic outcome: withdrawal without any future arrangements in place, known by doomsayers as 'blind Brexit'.

With the clock ticking ever faster on the withdrawal negotiations, the sudden prospect of what is described as a 'technical deal' does suggest that common sense compromise has finally prevailed over intransigent politics. This may nevertheless be a premature judgment, for the withdrawal terms are only part of the story of post-Brexit diplomacy. Agreeing the terms of UK withdrawal is one thing, negotiating the actual terms of EU / UK relations on trade and much else going forward, is another matter entirely. For that very reason, many of the issues and potential 'solutions' that have featured in negotiations on the Irish border issue after Article 50 was triggered, will continue to be problematic during the next stage in the Brexit Odyssey, remaining as contentious matters in the no doubt febrile negotiations on the actual terms of EU / UK relations going forward. To adopt Winston Churchill's bon mot describing an earlier historic challenge confronting the British State, agreeing the terms of EU withdrawal are merely 'the end of the beginning', but this outcome is by no means 'the beginning of the end'.

⁹ A. Bruce, 'BoE's Carney Sees "Uncomfortably High" Risk of No-Deal Brexit', *Reuters World Business*, August 3 2018, accessed on <https://www.reuters.com/article/uk-britain-eu-carney/boes-carney-sees-uncomfortably-high-risk-of-no-deal-brexit-idUSKBN1KO0VD>.



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