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***55 The Potential of the Good Friday Agreement to Enhance post-Brexit Environmental Governance on the island of Ireland**

Alison Hough

BL, Lecturer, Athlone Institute of Technology*^z

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Abstract This article¹ presents a summary of research report carried out for the Environmental Pillar and Northern Ireland Environmental Link (NIEL), examining cross-border environmental co-operation and joint action on the environment facilitated by the Good Friday/Belfast Agreement, and what role, if any, the Good Friday/Belfast Agreement will have in maintaining this co-operation after Brexit. **Introduction**

The island of Ireland is a single biogeographic unit, despite being divided into two different sovereign territories and being home to three simultaneous political entities—Ireland, Northern Ireland, and the United Kingdom. On this shared island, interconnected ecosystems, webs of living creatures and the mediums they inhabit (the air, water, soil and physical landscape), exist regardless of political boundaries or borders. The salmon in Lough Foyle do not know where the jurisdictional boundary is drawn (although that is hardly surprising, given that whether the humans do is also in question!). The maintenance of environmental integrity on a multi-jurisdictional island such as Ireland requires a cross-border, co-operative approach between jurisdictions, founded on common regulatory frameworks, together with effective and even enforcement of those regulatory frameworks.²

Brexit represents a threat to the coherence of environmental frameworks, the enforcement of those frameworks, and to the current framework of cross-border co-operation that was fostered by the Good Friday/Belfast Agreement (hereinafter “the GF/BA” or “the Agreement”). The shared context of EU membership promoted both regulatory alignment and greater cross-border co-operation and integration,³ enabling more effective implementation of the GF/BA.

The conflict in Northern Ireland was detrimental to environmental well-being, relegating environment down the order of priorities.⁴ ⁵The shared context of EU

membership promoted both regulatory alignment and greater cross-border co-operation and integration,⁶ enabling more effective implementation of the GF/BA. The EU dedicated a number of funding streams (outlined further on) that were important in creating and maintaining cross-border co-operation mandated by the GF/BA.

The Good Friday/Belfast Agreement

The 1998 peace agreement helped settle the decades-long conflict in Northern Ireland, established the basis of a new devolved governance, and created a complex multi-strand political structure of interdependence and co-operation between Northern Ireland, the UK and Ireland, and also more broadly between Ireland and the UK. It created fundamental rights guarantees to protect minorities. It established bodies, mechanisms and areas of co-operation. The Agreement was extremely successful in its twin aims of helping to bring an end to the conflict and in creating a framework for mutual co-operation and interdependence.

The Agreement is divided into three interlocking strands. Strand 1 concerns internal governance in Northern Ireland and provides the basis of the structure of devolved governance in Northern Ireland. This devolved governance is consociational.⁷ This means that power is divided between different groupings and that decisions are made not by majority, but by the culmination of parallel majority within each social grouping.

Strands 2 and 3 focus on external cross-border co-operation between the UK, Ireland and Northern Ireland. Strand 2 describes a North-South cooperative mechanism (the North-South Ministerial Council (NSMC)) and areas and bodies for cooperation. Strand 3 creates an East-West axis of co-operation, establishing a body for UK-Ireland co-operation (the British-Irish Intergovernmental Conference (BIIC)) and a body for co-operation between England, Ireland, Northern Ireland, Scotland, Wales, the Channel Islands, and the Isle of Man (the British-Irish Council (BIC)).

Although discussions of the Agreement tend to focus on Strands 1, 2 and 3, there are six subsequent sections that are equally important. In particular, Section 6, "Rights, Safeguards and Equality of Opportunity", provides a human rights framework with implications for the rest of the UK and Ireland, guaranteeing basic human rights standards, and parity of standards in Ireland and Northern Ireland. The rest of the Agreement consists of guarantees on decommissioning, security, policing, prisoners, and implementation/review provisions.

A relatively unexamined aspect of the GF/BA is the emphasis that it placed on environmental issues, and environmental cross-border co-operation between Northern Ireland and Ireland in particular.⁸ One frequently praised aspect of the Agreement is its ability to contain and provide for both Unionist and Nationalist aspirations in the same set of arrangements, albeit with compromises on both sides. However, it is this characteristic that also draws criticism. The Agreement is often criticised as institutionalising difference and sectarianism by requiring it.⁹ This is most apparent in the consociational structure of the Assembly, but also in the Executive arrangements.¹⁰ Dybris McQuaid characterises this as a product of the need to contain the dynamic of British-Irish difference within peaceful procedural rules, but points out that this comes

at the expense of more fluid and moderate identities ¹¹(for example, the sectoral arrangements in the Assembly structure militate against expressing an identity that is both British and Irish simultaneously).

Good Friday Agreement and Environmental Co-Operation

Environment is one of the 12 nominated areas of co-operation ¹²in the Agreement. In addition, many of the other areas of co-operation have environmental aspects to them (the other 11 areas are Agriculture, Transport, Education, Waterways, Social Security, Tourism, EU Funding, Inland Fisheries, Aquaculture, Health, and Urban and Rural Development).

The environment features in Strand 2 in the remit of the North-South Ministerial Council, which is charged with overseeing the 12 areas of co-operation as well as the six all-island bodies for co-operation, which also have strong environmental aspects to them (Intertrade, Waterways Ireland, the Food Safety Promotion Body, the Loughs Agency, Special EU Programs Body, which distributes EU funding, and the Language Body). In Strand 3, the environment is specifically mentioned as part of the remit of the BIC, a regional co-operation body for the representatives of Ireland, United Kingdom, Scotland, Wales, the Channel Islands, and the Isle of Man.

Enhancing environmental protection through crossborder co-operation is a core aspect of the GF/BA. The relative prominence of the environment in the construction of the Agreement is unsurprising when one considers the practical realities of living on an island sharing two jurisdictions in a single biogeographic unit with common geology, landscapes, interconnected water catchments, and flora and fauna. However, when one considers the historic and well-documented ongoing failures in environmental protection and governance of both Ireland and Northern Ireland ¹³, ¹⁴, ¹⁵in terms of environmental governance ¹⁶, ¹⁷, ¹⁸and the context of the drafting the GF/BA during the Peace Process, it is indeed surprising that environment was given such prominence.

Implications of Brexit for Good Friday/Belfast Agreement Environmental Co-operation

“Brexit”, as UK withdrawal from the European Union is known, represents an obvious challenge ¹⁹to the framework of co-operation created by and resulting from the GF/BA. It threatens to undermine the environmental integrity of the island of Ireland in a number of ways, the most significant of which appear to be the potential for the emergence of different standards and regulations which will make continued environmental co-operation almost impossible.

Some of the main threats posed by Brexit involve:

- **Regulatory divergence**—loss of the shared regulatory context of the European Union creates the potential for less coherent environmental governance/regulation across the island as a whole. The EU has been a big driver of legislative/regulatory activity in relation to the environment, ²⁰particularly in Northern Ireland. ²¹Deregulation in response to market pressure is a possibility, leading to lower standards in Northern Ireland and the UK, issues with cross-border pollution, and environmental degradation

of protected sites (although it must also be said that there is the potential for higher standards to be adopted, as promised by the current UK Government ²²). Membership of regulatory bodies such as the European Chemicals Agency will likely cease. ²³, ²⁴The potential exists for divergence from EU standards by Westminster, further complicated by the divisions of responsibility between the devolved administrations, who may set their own standards in the areas of devolved competence, ²⁵, ²⁶and by the potential for UK Government overreach into the areas of devolved competence for a two-year period post-Brexit ²⁷to amend retained EU law.

- **Loss of the supranational governance structures of the EU** in Northern Ireland, with their agenda of integration and coherence, including the regulatory, monitoring and enforcement functions of the European Commission, and the supranational jurisdiction of the Court of Justice of the European Union (CJEU) in Northern Ireland, which provides consistency in interpretation of environmental law in both jurisdictions. ²⁸The Supreme Court in the UK will have the option of departing from previous CJEU interpretations of EU law. ²⁹, ³⁰
- **Potential loss of significant streams of funding** for cross-border co-operation in general (for example the European Union's Programme for Peace and Reconciliation, otherwise known as the PEACE IV Programme funding) and environmental cross-border co-operation in particular (for example the European Union's Crossborder Programme for Territorial Cooperation, otherwise known as the Interreg VA Programme funding) which have been acknowledged to be a very important driver of cross-border co-operation. Dr Gravey, Lecturer in European Politics at Queen's University Belfast, points out that crossborder co-operation is largely informal and predicated on pragmatic considerations of the need for joint funding applications from the EU funding streams. ³¹It is through this EU incentivisation of co-operation that the GF/BA was able to "reframe the border as a point for cooperation not conflict". ³²Cross-border funding is a huge driver of environmental co-operation and the loss of it would be detrimental to cross-border cooperation in this area. The EU has guaranteed the PEACE and Interreg funding streams up until 2020 in the event of a no-deal Brexit. ³³The UK has also committed to replacing these funding streams and those under the common agricultural policy (CAP). ³⁴
- **Physical and regulatory barriers to cross-border co-operation.** A hard border or a customs border would represent a potential physical obstacle to cross-border environmental projects, potentially causing innumerable problems from movement of staff on projects and goods necessary for the carrying out of projects, to the more abstract problems caused by regulatory divergence and governance changes necessitated by Brexit.
- Potential reduction of ability to take joint action on prosecution of environmental crime.
- Loss of the EU Charter of Fundamental Rights.

Overall, this means that Brexit presents a challenge for instituting and maintaining cross-border cooperation. It shifts considerably the context within which the GF/BA operates, simultaneously making it more important and potentially less stable than before.

How Can the Good Friday/Belfast Agreement Help?

Potentially these obstacles could be tackled by making greater use of the GF/BA guarantees, bodies, and institutions, using them as a vehicle to maintain policy alignment and regulatory alignment, and as avenues for political dialogue at a high level. Also, the importance of fully implementing the promises of the GF/BA in the area of civic participation cannot be underestimated, in the form of the Civic Consultative Forum and All-island Consultative Forum. Fulfilling the ambition of the Bill of Rights for Northern Ireland could provide an important replacement for some of the human rights protection lost with the EU Charter of Fundamental Rights.

Additionally, the character of the GF/BA as an instrument of constitutional and human rights law and the incorporation of the European Convention on Human Rights (ECHR) into Northern Ireland and Irish law could provide a potential avenue of legal redress for individuals should they be adversely affected by lowered standards of environmental protection.

The GF/BA provides a map for maintaining cooperation on both a North-South axis (through the NSMC) and an East-West axis (through the BIIC), and on a regional British Isles basis (through the BIC). These fora provide important opportunities for high-level policy alignment discussions between heads of State and Ministers of the appropriate areas.

The North-South Ministerial Council

The NSMC should be the primary body for crossborder co-operation, but it has been rendered inoperative by the crisis of Executive formation in Northern Ireland.

The NSMC is a body established for the purpose of co-ordinating all-island co-operation in at least 12 policy areas,³⁵ and managing the work of six North/South implementation bodies in six of these areas.³⁶ The purpose was to bring together those with executive responsibilities in Northern Ireland and the Irish Government, "to develop consultation, co-operation and action within the island of Ireland".³⁷

***58** The NSMC meets in the environment sector in order to make decisions on common policies and approaches in the areas such as environmental protection, pollution, water quality management and waste management in a cross-border context. The work program includes research into environmental protection (with a focus on environmental information and databases), and cross-border water and waste management which encompasses Water Framework Directive river basin issues as well as agricultural impacts.³⁸

The last meeting of the Environmental Sector Council was on 14 September 2016, and the communiqué³⁹ produced from it gives a flavour of the breadth of cross-border co-operation in the area of the environment that the NSMC was responsible for co-ordinating. These included water quality, waste legislation, cross-border illegal dumping, fuel laundering, and co-operation on the main sources of EU funding in the environment sector—Horizon 2020, Interreg VA and LIFE (including joint meetings of Northern Ireland and Ireland contact points, joint training and information events in both jurisdictions, and reciprocal access to partner search databases to facilitate access to the funding).

As mentioned, the NSMC oversees the six implementation bodies prescribed for all-island co-operation under the GF/BA. The ones with environmental relevance are the Special European Union Programmes Body (discussed below), Waterways Ireland, and the Loughs Agency.

The NSMC has been described as having played a key role in developing consultation, co-operation, and action on the island of Ireland and potentially had a crucial role to play in Brexit.⁴⁰ It is also viewed as having a crucial role in creating cross-border political and civil-service co-operation, but not providing crossborder co-operation that filters down to on-the-ground grassroots level co-operation.⁴¹ However, in the absence of a Northern Ireland Executive and a First/ Deputy First Minister, the NSMC cannot meet. This represents a very unfortunate missed opportunity for much-needed dialogue on the issues of Brexit.

The British-Irish Council

The BIC⁴² has met on a more frequent basis and has an active work program that includes the environment.⁴³ As a regional body encompassing Scotland, Wales, Northern Ireland, the UK, Ireland, the Channel Islands, and the Isle of Man, it has immense potential to ensure coherent environmental governance in the British Isles and has already been used to deal with issues, such as invasive species and climate change adaptation,⁴⁴ that require joint action.

The BIC was established as part of Strand 3 of the multi-party agreement reached in Belfast on 10 April 1998. Its membership comprises representatives from the Irish Government; UK Government; Scottish Government; Northern Ireland Executive; Welsh Government; Isle of Man Government; Government of Jersey; and Government of Guernsey.⁴⁵ ⁴⁶ Its objective is to “promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands”. A standing secretariat was established under the 2006 St Andrews Agreement.

The BIC's objectives are wide-ranging and nonspecific, and as such it determines its own sectoral focus. It was established to:

further promote positive, practical relationships among the people of the islands; and
provide a forum for consultation and cooperation.

The current list of work areas and the members responsible are:

Collaborative Spatial Planning (Northern Ireland);

Demography (Scotland);

Digital Inclusion (Isle of Man);

Early Years Policy (Wales);

Energy (United Kingdom - Electricity Grids, and Scotland - Marine);

Environment (United Kingdom);
 Housing (Northern Ireland);
 Indigenous, Minority and Lesser-used Languages (Wales);
 Misuse of Substances (drugs and alcohol) (Ireland);
 Social Inclusion (Scotland and Wales);
 Transport (Northern Ireland); and
 Creative Industries (Jersey).

Environment has been a sectoral area of the BIC since 1999. It has covered topics such as food waste, recycling, invasive and non-native species, climate adaptation and the UN Sustainable Development Goals.^{47, 48} The area of Collaborative Spatial Planning (and related area of Housing) is obviously of environmental significance, as is the issue of Energy. The most recent meeting of the Environment sector subgroup took place in Jersey on 10 September *59 2018 and members discussed cross-European efforts to control an invasive species, the Asian Hornet. Generally, the BIC has kept to its schedule of two summit meetings per year plus sectoral meetings. The most recent BIC summit (31st Summit) took place in the Isle of Man on 9 November 2018.⁴⁹

The composition of the BIC, composed of the devolved political entities as well as the UK on an equal footing, overcomes issues raised by the complexity of the devolved governance arrangements across the jurisdictions of Scotland, Wales and Northern Ireland. In the usual course, environment is a partially devolved competence, therefore bodies like the BIIC are compromised in their ability to deal with environmental issues in total. The BIC, on the other hand, would be the ideal vehicle for maintenance of regulatory alignment, in the normal course of things. However, the continued political vacuum in Northern Ireland and the absence of an executive means that there are no representatives with sufficient authority to represent Northern Ireland on the body and make meaningful decisions about policy changes.

This is ameliorated in a way by two factors:

The powers granted to civil servants to make high-level decisions necessary to run their departments under legislation which extends the time during which the executive crisis can continue. Therefore, civil servants could in theory represent Northern Ireland's interests on this body.

The Withdrawal Act provides for powers of "overreach" by Westminster into the devolved administrations, which allow them to amend primary legislation in devolved areas of competence for a period of two years after Brexit.

The lack of political representation for Northern Ireland and the existence of the overreach powers in relation to any matters pertaining to Brexit, means that the BIIC, a previously neglected body, takes on potentially more significance as a vehicle for maintaining policy alignment between the UK and Ireland in a post-Brexit scenario.

The British-Irish Intergovernmental Conference

Also under Strand 3, the BIIC was intended to be another East-West orientated body, but instead of operating on a regional basis like the BIC, it is a contact point between the UK and Irish Governments. Designed to replace the Anglo-Irish Conference,⁵⁰ it is described as a forum for bilateral co-operation on "all matters of mutual interest within the competence of both Governments" later specified to be non-devolved issues, in recognition of the Irish Government's special interest in Northern Ireland. Relevant members of the Northern Ireland Administration were also permitted to be present and will be invited to "express views" to the conference, suggesting an observer role.

The BIIC is supposed to meet at summit level (heads of government) primarily, but provision is made for the government to be represented by appropriate ministers. The institution has a very broad and nonspecific remit: basically all non-devolved matters. It has not yet dealt with environmental issues but there is no obstacle to it doing so in principle. One possible limitation on its use as a vehicle for environmental policy alignment are the references to it being a forum for discussion of all matters of mutual interest "within the competence of both Governments" and that there should be frequent meetings concerned with "nondevolved matters". There is no express restriction on discussions of issues that are not devolved, but it could be implied given the parties to it are intended to be the Ireland and UK Governments, and the reference to discussions of non-devolved matters. This could be seen to militate against discussing devolved matters. Environment is a partially devolved area.

There are several factors that would overcome this limitation:

Given the powers of overreach discussed under the BIC above, and the fact that environment is only partially devolved, it would seem possible to use the BIIC as a vehicle for policy alignment discussions between the UK and Ireland, in the absence of an executive in Northern Ireland.

The GF/BA expressly provides for relevant members of the Northern Ireland Administration to be present at meetings and express views, hopefully diffusing any political tension potentially caused by the UK Government engaging in policy discussions of a partially devolved matter.

The now record-breaking executive formation crisis in Northern Ireland makes it look increasingly likely that the UK Government will have to step in to deal with matters which are usually devolved in general anyway. The lack of a government in Northern Ireland means that any policy discussions currently will have to formally go through the UK Government as things stand, and the BIIC was designed as the vehicle to perform this role.

64 *The Consultative Civic Forum

The Consultative Civic Forum⁵¹ in Strand 2 offers an important safeguard against "race-to-the-bottom" ⁵²deregulation ⁵³that may be a danger post-Brexit, offering a chance for a strong NGO/Civil Society voice in policy-making in Northern Ireland. This body was instituted but has not run since 2002.

The Civic Forum is provided for in s.56 of the Northern Ireland Act 1998, which provides that the First Minister and Deputy First Minister shall take from the forum their views; the Forum is the consultee. The provisions were commenced on 2 December 1999 (on devolution). It was established, after cross-party consultation, with 60 members, plus a chairperson who was appointed by the First Minister and Deputy First Minister.⁵⁴ The Ministers also appointed six members. Business and trade unions appointed seven each. The community and voluntary sector appointed 18 members. The other sectors sharing 22 seats were: agriculture/fisheries (3), churches (5), culture (4), arts and sport (4), victims (2), community relations (2), and education (2).⁵⁵ There were arrangements for securing nomination from consortia and other sectors with gender, community background, geographical, and age balance.⁵⁶ The work of the Forum was cut short in 2002 after the collapse of the Assembly due to the dispute over decommissioning. The Consultative Civic Forum has not been convened since 2002.

Recent proposals are to reduce the Forum from its original panel of 60 members (divided into trade union, community and voluntary, and other) to a six person panel.⁵⁷ There has also been a proposal for a Northern Ireland Citizens Assembly.⁵⁸ This, however, lacks the collegiate structure envisaged in the GF/BA for the Consultative Civic Forum and does not envisage any Civil Society organisation representation. It is submitted that neither of these bodies fulfil the role of the Forum originally envisaged in the GF/BA.

The All-island Consultative Forum

The All-island Consultative Forum described in Strand 2, art.19, offers a similar opportunity on an all-island basis. This could be invaluable in terms of development of coherent environmental policy through dialogue with civil society. This body has never been utilised, but the recently held "All-Island Civic Dialogue on Brexit"⁵⁹ offers an important example of how it could be modelled. While the GF/BA did not demand the creation of such a forum (but rather provided for it), the 2006 St Andrews Agreement⁶⁰ states: "The Northern Ireland Executive would support the establishment of an independent North/South consultative forum appointed by the two Administrations and representative of civil society".

The Centre for Cross-Border Studies in its Briefing Paper "The Belfast/Good Friday Agreement and (postBrexit) cross-border environmental cooperation", highlighted the concerning lack of platforms for civic dialogue, particularly in the absence of a functioning Assembly and Executive.⁶¹ Such civic fora offer important opportunities for the expression of more complex moderate identities⁶² outside the political binary institutionalised in the GF/BA construction of the Assembly and Executive.^{63, 64}

Cross-Border Funding

Cross-border funding and the work of the Special European Union Programmes Body (SEUPD) is a huge driver of environmental co-operation and its loss would be detrimental to cross-border co-operation in this area.⁶⁵ Ensuring that there is no disruption to those funding streams should be high priority.

SEUPB⁶⁶ is responsible for handling funding streams under the European Regional

Development Fund. SEUPB's main role is to manage cross-border European Union Structural Funds programmes in Northern Ireland, the border region of Ireland, and parts of Western Scotland. SEUPB's two current programmes (2014-2020) are the PEACE IV Programme and the Interreg VA Programme. SEUPB is responsible to the European Commission, the Northern Ireland Executive and the Irish Government for the delivery and management of the programmes.

Concerns have been raised⁶⁷ regarding the continued eligibility of SEUPB for structural funding from the EU. Reassurances have been given that funding is secure up to 2020, and that work is being conducted by the European Commission on a PEACE Plus funding program to replace the PEACE and Interreg Programs.^{68, 69} However, it is not known whether the funding will continue past that point.

Tannam and others argue that funding is a key driver of co-operation.⁷⁰ Clearly, the EU funding channelled through this body plays a significant role in on-the-ground grassroots co-operation.

Environmental Governance Issues in Northern Ireland

Outstanding and well documented environmental governance issues in Northern Ireland^{71, 72, 73, 74} (outlined below) need to be addressed by either the Northern Ireland Executive, should one form, or the UK Government. The most significant of these appears to be the lack of an independent regulator in Northern Ireland.^{75, 76}

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- Lack of consistency in the application of EU environmental law leading to differing standards across the jurisdictions of the UK.^{77, 78}
- Crisis of executive formation which has several deleterious consequences for environmental governance:
 - No legislation being passed to update and implement EU environmental law.
 - Civil servants filling the role of Ministers without the power to make high-level decisions⁷⁹ (as mentioned, this is addressed somewhat by the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018,⁸⁰ but these arrangements would seem to be an unsatisfactory long-term arrangement).
 - Legislation⁸¹ giving civil servants the power to make high-level decisions, which was introduced to fill the power vacuum of the Executive crisis, creating transparency and accountability issues.⁸²
 - Lack of a voice for Northern Ireland at a crucial time, in general in the negotiation of Brexit, and in important developments like the Common Frameworks,⁸³ as civil servants still cannot officially negotiate or represent Northern Ireland in these discussions, even if doing so unofficially.
- Lack of an independent monitoring environment agency within Northern Ireland, with the Northern Ireland Environment Agency being situated in a government department.^{84, 85, 86, 87}
- Problems with cross-border enforcement in the area of environmental crime.⁸⁸
- Cross-border illegal dumping.⁸⁹
- Cross-border fuel laundering.

- Gaps in protected sites designation.

Dr Ciara Brennan of Newcastle University states that in order to have effective environmental protection, there needs to be all-island governance and coherent policy in areas like protected sites designation, cross-border crime, and waste management.⁹⁰ At the moment there are gaps in all these areas, caused in part by the lack of joined-up thinking. For example, the section of Carlingford Lough in Northern Ireland is designated as a Special Protection Area whilst the section over the border in Ireland is designated as both a Special Area of Conservation and a Special Protection Area. Hence, Carlingford has the same protection north and south of the border for its bird interest, but not for its priority habitats. Clearly there should be one jointly managed Special Area of Conservation in the whole area. The lack of agreement regarding territorial claims to the border loughs, Carlingford and Foyle, may also lead to friction and barriers post-Brexit.

There is a fear that there could be a lowering of standards in the area of the environment after Brexit,^{91, 92, 93} in particular because elements of the Brexit campaign were motivated by a deregulation agenda to get rid of “red tape”.⁹⁴ However, it should also be pointed out that there is the potential for maintaining or even raising of standards, as committed to by Michael Gove in his Green Brexit Agriculture Report.⁹⁵

The GF/BA and Human Rights Law

The GF/BA is also a human rights instrument, guaranteeing equivalence of human rights protection between Ireland and Northern Ireland, and that the ECHR and a Bill of Rights for Northern Ireland would be effected by the UK.⁹⁶ The Bill of Rights was never enacted, but the UK did give effect to the ECHR through domestic legislation in the UK, through the Human Rights Act 1998. There was talk of withdrawing from the ECHR, but it is considered that this would be in breach of the GF/BA, as its implementation was a specific obligation in the Agreement.

The Charter of Fundamental Rights of the European Union gave additional human rights protections to the people of Northern Ireland, but these will be lost as the UK Government does not plan to convert the Charter to UK law post-Brexit.⁹⁷ However, Dr Thomas Muinzer of Stirling University doubts that this guarantees a lower level of environmental rights protection than that currently available, citing the lack of robust protection of environmental rights in the case law on the Charter.⁹⁸

Under the Withdrawal Agreement Protocol on Ireland and Northern Ireland, Irish citizens from Northern Ireland will continue to enjoy rights as EU citizens, including where they reside in Northern Ireland.

The UK has committed to ensuring that, in Northern Ireland, “no diminution of rights is caused by its departure from the European Union” and this is enshrined in the Protocol on Ireland and Northern Ireland. In its position paper on Northern Ireland, the UK Government promised that people born in Northern Ireland who hold Irish citizenship will still benefit from EU citizenship and rights after Brexit.⁹⁹

***65** The continued application of the ECHR to Northern Ireland could provide an avenue of legal redress should environmental deregulation result in environmental

degradation or a reduction of the kind of environmental procedural rights usually facilitated by Environmental Impact Assessment¹⁰⁰ and Strategic Environmental Assessment Regulations.¹⁰¹ The European Court of Human Rights has found that an aspect of art.8 (right to respect for private and family life) encompasses the right to live in a home that is not affected by pollution or environmental nuisance, (see, for example, *Lopez Ostra v Spain*¹⁰²) and to participate in environmental decision making (*Taskin v Turkey*¹⁰³). Therefore, removal of any procedural environmental rights or lowering of standards that results in environmental harm could result in a cause of action for those whose homes are affected by the environmental harm that results.

In the realm of environmental procedural rights, the UK will continue to be subject to the Aarhus and Espoo Conventions, and any reduction below the standards guaranteed in those Conventions could result in a claim against the State in the domestic courts, where the provisions of those conventions have been given effect under domestic law (i.e. where they have already been given effect through EU law, and that EU law will be part of the retained "Acquis"). Both Conventions also have compliance mechanisms that can adjudicate on non-compliance by state parties with the Conventions' provisions, which may provide some avenue to tackle non-compliance in a deregulation scenario.

Professor McIntyre from University College Cork cautions against over-optimistic reliance on the human rights aspects of the GF/BA to maintain regulatory alignment. He cites the margin of appreciation that pertains in all human rights law, which has the potential to frustrate enforcement, pointing out that it can be hard to determine when a right has actually been breached.¹⁰⁴ Professor McCrudden from Queen's University Belfast also cautions that rights-based approaches are not always the best way to tackle political problems, and that they can form obstacles to flexible negotiations.¹⁰⁵

It remains concerning that the enforcement of a human rights-based environmental right would rely (at least initially, while exhausting domestic remedies) on the UK domestic courts, which have not demonstrated a robust approach to protecting human rights,¹⁰⁶ and have well-documented issues with access to justice in environmental matters.

Conclusion

While the GF/BA did not have the environment as its main focus, it removed any possible objections or impediments, and created a gentle impetus for co-operation. In that sense, it is important to see the GF/BA as an enabling agreement and as can be seen from the "Mapping Exercise",¹⁰⁷ co-operation has expanded to areas that were not originally envisaged by the Agreement (for example, the development of the All-island Single Energy Market).

Because of the existence of the GF/BA, the EU dedicated a number of funding streams to crossborder co-operation in many areas, including the environment, under the PEACE, LIFE and Interreg VA programmes, as well as indirectly through the environmental initiatives under CAP. The importance of EU funding streams for maintenance of crossborder co-operation in many areas including the environment, and for the success of the GF/BA, cannot be overstated, and much of this cross-border

funding was as a result of the GF/BA and the EU's attempts to support it.

The institutions of the GF/BA, such as the NSMC, BIC and BIIC, represent important avenues of environmental policy discussion and formulation to ensure the shared regulatory context necessary for cross-border co-operation is maintained, and to encourage/initiate cross-border projects. Mechanisms such as the Consultative Civic Forum and the AllIsland Consultative Forum provide an important community and NGO voice in policy-making, and in particular the latter body provides avenue for a coherent, all-island policy discussion.

The GF/BA was designed as an important toolkit for creating a dynamic and evolving cross-border co-operation, and environment is one of the areas of focus for such co-operation. This potential has not yet been fully exploited, perhaps in part because the shared context of EU membership provided alternative forums for sharing goals and policy alignment. However, it is clear that a greater level of co-ordination is required than that which has been achieved simply through EU membership. In a sense, EU membership provides the ideal growth medium for co-operation to occur, but the GF/BA mechanisms, institutions and bodies are needed to actually effectuate it. Therefore, full implementation of all of the structures, institutions and bodies of the GF/BA should be top priority in order to continue to foster and enhance cross-border co-operation in all areas, in particular the environment. This is true in the context of EU membership. However, should a no-deal Brexit occur, full implementation of the GF/BA could become absolutely vital if cross-border cooperation is to be maintained, and the onus is on all actors to create alternative conditions in which such co-operation is still possible.

It is also important to bear in mind that the GF/BA co-operation cannot really be forced by legal means, as that would defeat the spirit of the Agreement. Therefore, any co-operation that does occur is largely dependent on the willingness of the various stakeholders in the environmental sphere to come together on co-operative initiatives, or as a result of the driving force of EU legislation, in the case of protected sites designation. It is incumbent on all stakeholders working in this area to direct their efforts in a solution-orientated manner to the issue of postBrexit environmental co-operation.

Political will, rather than legal enforceability, is the lifeblood of the GF/BA; enabling co-operation in every area including the environment. Therefore, it is vital that all stakeholders in the Brexit process prioritise the maintenance of this co-operation, and that all efforts are directed towards this. It is also important that the problems arising are approached in an open-minded, imaginative and flexible way, leaving aside divisive mindsets. Only flexible and innovative solutions can overcome novel politico-legal problems like the ones presented by Brexit in the context of the island of Ireland.

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*. Alison Hough practised as a barrister for eight years and now lectures in environmental law among other subjects in Athlone Institute of Technology. Alison's research interests and publications primarily lie in enhanced public participation, the Aarhus Convention, and more recently, Brexit

1. This article presents a summary of the research carried out for the report "Brexit, the Good Friday/Belfast Agreement, and the Environment: Issues arising and possible solutions" carried out for the Environmental Pillar and NIEL. The executive summary of the report is available at <https://nienvironmentlink.org/cmsfiles/Brexit-GFA-report-SUMMARY.pdf> [Accessed 25 September 2019]. The full report is available at <https://nienvironmentlink.org/cmsfiles/Brexit-GFA-report-FULL.pdf> [Accessed 25 September 2019]. This research was presented at Law and Environment Conference, University College Cork, on 11 April 2019 under the title "Solving Brexit: The Role of the Good Friday/Belfast Agreement in Environmental Cross-Border Co-operation" and at a Seminar in Queen's University Belfast on 18 April 2019 entitled "All-Island Environmental Governance post-Brexit and the Good Friday/Belfast Agreement". The author is grateful for the comments and feedback received at these events.

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